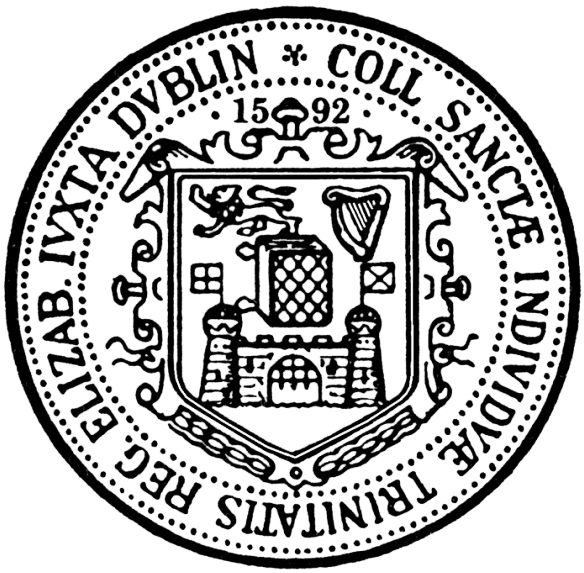
Just Peace and Presumptive Benefit: Using Fair Play Theory to Explain Political Obligation to Provisional Authority Arrangements

Kevin Lacourse



University of Dublin, Trinity College

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Dissertation
Presented to the University of Dublin, Trinity College
in fulfillment of the requirements for the degree of
Doctor of Philosophy
University of Dublin, Trinity College

Final Submission: 19 July 2021

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ACKNOWLEDGEMENTS

In September of 2019, I somewhat jokingly told my parents that I was beginning 21st grade. It was the beginning of the last year of my Ph.D. and my 21st consecutive year of formal education. As a result of the COVID-19 pandemic, it has taken me until the 22nd year of formal education to complete my dissertation. During the past 22 years, the help and support of others have been invaluable to me. I am keenly aware that this support and encouragement has played an integral role in my achievements and successes. Now that my dissertation is complete, I would like to take a minute to recognize and thank all of the individuals who have had a role in getting me to where I am today.

First and foremost, I would like to thank my family. To my parents, Ken and Deb, thank you for always advocating for me and for believing in me even when no one else would. You have both worked hard to give me everything you never had- whether that be a college education or something as simple as a father's love and support. To my brother Keith, you have always been my best friend and biggest inspiration. I am in perpetual awe of your incredible strengthen, bravery, and optimism. You have taught me how to face every challenge that life throws at me with grace and dignity. In finishing this dissertation, I will gain a new title. Yet, no title will never mean more to me than being Keith's brother. I love you more than I could ever articulate.

To the monks of Saint Anselm Abbey, thank you for your constant prayers and support. A special thanks to Brother Celestine Hettrick, O.S.B., for his friendship and for regularly checking in to ensure that I was still alive and sane during the final year of this degree. To Brother Basil Franciose, O.S.B., thank you for our friendship, encouragement, and willingness to listen to me vent at least twice a year. I reckon that you might be listening to me vent a bit

more frequently in the years to come. To Abbot Mark Cooper, O.S.B., thank you for being an incredible mentor and for helping me to discern the path my life should take. Lastly, thank you to Father Benedict Guevin, O.S.B., for always being ready to go for a coffee or a cocktail. Your advice to “put your ass in the chair and write” was not only wise but invaluable to me in finishing this degree. I promise to return the favor and support all of you in the years to come as I begin a new chapter.

To my friends from my undergraduate days at Saint Anselm College, especially Bobby Celona, Katie Muzzy, and Hilary Beaton, thank you for your unfailing support and friendship. To my one-time debate team co-captain, Katie, thank you for putting up with me on all those debate trips and for remaining a friend ever since. Blaring "Part of Me" by Katy Perry in a hotel lobby remains the single best way to get pumped up before giving a speech. Katie, without a Ph.D. to keep me busy, you should prepare Luke for many more visits from his honorary uncle Kevin. To Bobby Celona, you were one of my first friends at Saint Anselm, and for nearly a decade, you have always been there to support me. I will always treasure our weekly 'parles' in the spring and summer of 2020 to commiserate about COVID 19. Regularly hearing a familiar and friendly Boston accent made that uncertain time a bit less stressful. I have always known you to be ready for a pint; now that this dissertation is complete, I fully intend to join you at the pub. A special thanks to the 'New and Improved Wine Club.' Hilary, Haley, Michael, and Mary: our virtual, gossip-filled wine nights made me laugh and kept me sane during the initial COVID-19 lockdown. Although Michael, I am still unsure how you managed to infiltrate the initial wine club, I can only say well-done, sir.

To my college debate coach, David Trumble, thank you for your advice and patience over the years. You are the person to taught me how to develop a convincing argument. Your mentoring is a big reason why I have grown into the teacher that I am today.

To Professors Peter Josephson and Dale Kuehne, you began as incredible teachers and developed into amazing mentors and lifelong friends. You both showed me that political theory was an exciting and important subject. Your enthusiasm for political theory is what made me want to pursue a Ph.D. and make a career studying this subject. Although it may be a cliché, your influence, both personally and professionally, changed my life. To quote the Broadway musical *Wicked:*

I've heard it said
That people come into our lives
For a reason
Bringing something we must learn
And we are led to those
Who help us most to grow if we let them
And we help them in return
Well, I don't know if I believe that's true
But I know I'm who I am today
Because I knew you

For all that you both have done to help me grow as a person and as an academic, I owe you a profound thank you. I can only hope that, in my career as an academic, I will be able to impact the life of a student in the same way that you both have impacted mine.

To Dr. Ashley Taylor, who first introduced me to the discipline of political obligation and encouraged me to pursue doctoral research in the subject, thank you. I still have the syllabus from PHI373.

To everyone at the Sheffield Catholic Chaplaincy, you taught me what it meant to be a part of a community. Your friendship made what could have been a truly hectic and stressful year full of fun and made leaving Sheffield incredibly difficult. Tom O., Tom A., Dom, Crystal,

George, Lisa, Maria, Mary, Miguel, Matt, Zac, Jennie, and anyone I may have forgotten, thank you for making my time in Sheffield one of the most memorable years of my life. A special thanks to Father Pete Cullen, 8 am mass with you, and your exceptional bacon sandwiches motivated me to get up early and write my master's dissertation. I am truly blessed to call you a friend.

To my intellectual big brother, Dr. Gavin Morrison, you were my first friend in Dublin; you made what would have overwise been a lonely and miserable 23rd birthday a truly merry occasion. You supported me and encouraged me in the early days of the Ph.D. program as I battled homesickness and did my best to figure out how to teach and do research worthy of a doctoral dissertation. Thank you for constantly reminding me that Peter's harsh feedback did not mean that he thought that I was stupid or unworthy. Perhaps, most importantly, you taught me how to drink like an Irishmen. Although I will likely never be able to keep up with your commitment to pints of Guinness, I promise that I will give it the old college try and always respect the rule of three when at a pub.

To my fellow Ph.D. students, Andrea, Elenora, and Marco, although the three of you gave me Italian culture shock when I first moved to Dublin, it has been a privilege to go through this degree with you all. To Giulia Saydon, despite our first impressions of each other, I am ever thankful that we have evolved into friends. I will treasure the memories of venting about grad school over gin and tonics and playing music bingo at the PotterHosue. I am rooting for you during this final year of your Ph.D. To Christian Oswalt, I have enjoyed our countless 'fresh air' breaks, even if the smoke from your cigarette polluted the fresh air. Thank you for your constant friendship and willingness to commiserate about the challenges of being a Ph.D. student. I am rooting for you as you begin the final year of your Ph.D.

To Heike Stone, you always welcomed me into your home with a smile. Thank you for always encouraging me and taking an interest in my well-being. You were a poised and gracious hostess at every meeting of the Political Theory Reading Group.

To my roommate Michael Sherry, we lived together for two years, and in that time, you have become one of my closest friends. You were always willing to listen to me vent or talk through an argument in my dissertation. Your love of gossip always made me smile and helped me survive life as a graduate student. A special thank you for all the times you cooked me dinner; living with a professional chef is something I would recommend to any Ph.D. student. Although I would have never admitted it at the time, your makeshift haircuts and climbing onto the roof of our apartment building to eat dinner or get a bit of fresh air were great lockdown life hacks. Binge-watching *Tiger King* and *The Stanger* on Netflix made the early days of lockdown a little easier. I promise to remain an ardent supporter of your cocktail-making hobby, even though nearly every glass in our apartment broke as a result of that hobby. Finally, even after two years and multiple attempts to change my mind, I still believe the phrase 'Cold Play music' to be an archetypical oxymoron. Thank you for your constant support and patience, and most importantly, for being a friend whom I could always trust.

To Charlotte Chapman-Hart and Joel Salisbury, I still remember the day we first met as master's students at the University of Sheffield. Since that day, you have both become dear friends, whom I cherish. The letters, cards, and messages from you both reminded me that I was not alone, no matter how isolated or lonely that I felt at the moment. I owe both of you a profound thank you for your constant support and lively philosophical debates over WhatsApp or a glass of wine. Charlotte, I know you will make a great philosopher, and Joel, you will make a great father. I promise to encourage you both the way you have encouraged me. And

Joel, without a Ph.D. to keep me busy, you should prepare your son for the most meddlesome honorary uncle in English history.

To Philip Power, thank you for your support and encouragement, especially during the COVID 19 lockdown and in the final days of this degree. You always believed in me and helped me keep things in perspective. For that, I am truly and eternally grateful.

To Conor O'Malley, Ashley Philbeck, and every other friend I have neglected to mention here by name, thank you. Your friendship and willingness to meet for coffee or drinks have helped me forget the woes of doing a Ph.D. and played a big part in keeping me sane throughout this process.

To Emma Murphy and Samuel Johnson, you have both been amazing colleagues and even better friends. I will never forget sitting in History of Political Thought, trying to agree where we should go to lunch while Peter lectured. Recalling our nights out or impromptu trips to the pub to commiserate about marking or being a Ph.D. student will always make me smile. Thank you for the memories. I am rooting for you both as you begin the final two years of your Ph.Ds.

Finally, I would like to thank my supervisor- Dr. Peter Stone. Peter, without you, this dissertation would not have been possible. Not only have you been an exceptional mentor, but you have become a true friend. For that, I am lucky. I will admit that reading your commitments on my work usually drove me to drink. However, those comments made me and my academic work better. You supported me and believed in me even when I did not believe in myself. For all that you have done for me, I owe you a debt of gratitude that is greater than I could ever repay with words alone. For now, I will say a most profound thank you.

SUMMARY

This dissertation aims to answer the question: can individuals owe political obligation to a provisional authority arrangement established during or after a war? Research that answers this question is motivated by a perceived gap in the existing literature on political obligation. The current theories of political obligation primarily focus on explaining an individual's relationship to a particular institution, namely the state. Consequently, it is unclear how these theories apply to other governing institutions, such as a provisional authority arrangement. This dissertation seeks to address this issue.

The argument of this dissertation proceeds in two parts. Part I is comprised of chapters one through four and focuses on the concept of political obligation. Chapter one begins by articulating the defining characteristics of political obligation, namely, generality and universality. Then it develops a framework to evaluate the validity of a theory of political obligation. This dissertation argues that three qualities make a theory of political obligation successful in explaining an obligation to obey the law. First, it must distinguish between obligations and the right to enforce obligations. Second, a theory must be compatible with individual rights of freedom and equality. Finally, a theory must satisfy the particularity requirement.

Chapter one then applies this framework to the fair play theory of political obligation. The idea of reciprocity is integral to fair play theory; it is wrong to benefit from the sacrifices of others without making a similar sacrifice yourself. The theory argues that the state is the institution that provides and protects presumptive public goods. Presumptive public goods are goods that are presumptively beneficial and non-excludable. That is to say that presumptive public goods are indispensable to the welfare of a community and cannot be provided to some

individuals but denied to others. Examples of such goods include the rule of law and clean air (amongst others).

Chapter two examines the consent theory of political obligation. The chapter argues that although consent theory can explain general moral obligations in a wide range of cases, such as medicine or intimacy, it cannot explain political obligation. There is a simple reason why. The institution that a theory of political obligation must explain is the state, yet consent theory is incompatible with the nature of the modern state.

Chapter three analyzes the associative duties theory of political obligation. This chapter contends that the most plausible version of associative duties theory only succeeds to the extent which it becomes indistinguishable from fair play theory. Thus, chapter three concludes by rejecting the associative duties theory as a distinct theory of political obligation.

Chapter four evaluates the natural duties theory of political obligation. The chapter argues that the natural duties theory of political obligation is more effective at explaining how a foreigner relates to a particular state (i.e., how a Canadian citizen relates to the state of France) than it is at explaining how a person relates to their own state. Consequently, chapter four rejects the natural duties theory of political obligation because of its inability to satisfy the particularity requirement.

Part II is composed of chapters five through seven and applies the fair play theory of political obligation to the case of a *postbellum* provisional authority arrangement. Chapter five will define the term 'just peace.' Chapter six will develop a case for why a just peace should be considered a presumptive public good. Chapter seven examines what characteristics an institution must have to serve as a provisional authority arrangement. The chapter concludes

by evaluating whether existing institutions such as the United Nations or a sovereign state have these characteristics.

Finally, the dissertation will conclude by reviewing the contributions this dissertation makes to the literature and by articulating some possible avenues for further research on the topic.

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INTRODUCTION

In March 2003, a coalition of western military powers invaded Iraq. By 9 April 2003, the government of Iraq, led by Saddam Hussein, had been deposed. As a result, from April 2003 through June 2004, Iraq was not, strictly speaking, a sovereign state (Chinnappa 2019, 415). Instead, during this time, Iraq was governed by an institution known as the Coalition Provisional Authority (C.P.A.). The C.P.A. held supreme executive, legislative, and judicial authority in Iraq (Ricks 2007, 81). American and British forces unilaterally instituted the C.P.A. and selected the individuals who would administer it without any Iraqi input.[1] The C.P.A. is just one example of a type of institution called a provisional authority arrangement. Other notable examples include the United Nations Transitional Authority in East Timor (U.N.T.A.E.T.) and the Allied Control Council, which governed Germany for several years following World War II. There are other lesser-known examples of provisional authority as well. These include the United Nations Transitional Authority in Cambodia and the United Nations Temporary Executive Authority of West New Guinea.[2]

Arrangements such as the C.P.A. and the U.N.T.A.E.T raise an interesting question: can an individual owe political obligation to a provisional authority arrangement. In other words, does an Iraqi citizen have an obligation to obey rules put into place by an American institution? Can an American citizen have authority over the Iraqi people in this way? Or the

[1] In effect, the C.P.A. was an agency of the United States Federal Government. The United States Congress approved funding for the C.P.A. as part of the operating budget of the U.S. Department of Defense. The President of the United States appointed the Administrator of the C.P.A. and other high-ranking officials in the same way that he appoints other American government officials such as the White House Chief of Staff or the National Security Advisor. The Administrator of the C.P.A reported to the U.S. Secretary of Defense, rather than the Iraqi People (Dobbins et al. 2009a, 2009b).

[2] This list is not exhaustive. Unfortunately, there is no list of provisional authority arrangements cataloged in existing scholarly literature.

United Nations over the Timorese? If so, what are the circumstances and terms under which that obligation comes to be? This question is the research question which this dissertation will seek to answer. Before this dissertation develops an answer to its research question, it must address two preliminary matters. First, the dissertation must define what a provisional authority arrangement is and, in doing so, articulate how such an arrangement differs from another type of political institution, namely the state. Second, the dissertation must explain the problem posed by political obligation to a provisional authority arrangement. This explanation will serve to motivate the research which the dissertation aims to complete. The introduction to this dissertation will address these preliminary matters, then will conclude by articulating a structural overview of how the dissertation will solve the problem of political obligation to a provisional authority arrangement.

Definition

A provisional authority arrangement is still a relatively new phenomenon, having only arisen post World War II. Consequently, there is no concise or agreed-upon definition of this type of institution in the existing literature. As a result, describing the nature of these institutions can be a bit challenging. The fact that a state and a provisional authority arrangement are incredibly similar magnifies this challenge. Yet, the similarities between the state and a provisional authority arrangement motivate the need to define and distinguish between the two types of political institutions. This dissertation will define a provisional authority arrangement as an institution that has three characteristics.

The first characteristic of a provisional authority arrangement is that it claims to exercise the same power as the state. In other words, both a state and a provisional authority arrangement possess a monopoly on the legitimate use of force and violence within a given territory (Weber 1965). In this regard, a provisional authority arrangement is normatively no different than a state. However, a provisional authority arrangement is not merely a state by a different name; the second and third characteristics of a provisional authority arrangement are necessary to convey what makes these institutions distinctive and problematic *vis-a-vis* political obligation.

The second characteristic of a provisional authority arrangement is that it is temporary. These arrangements live to die from the moment they come into being. The purpose of a provisional authority arrangement is only to transition a population from war to peace when a population lacks the institutional capacity to transition itself. During such a transition, the role that a provisional authority arrangement fulfills is twofold. First, it provides basic coordination and governance to a territory and its population. And two, it establishes a state. The purpose of establishing a state is to create stability and give a population the capacity to self-govern going forward. Once this transition is complete, a provisional authority arrangement ceases to be, and another institution replaces it. Historically, provisional authority arrangements have only come to be in an exclusively *postbellum* context. However, it is perhaps theoretically possible for these arrangements to exist outside of the context of war. For example, the United Nations could use a provisional authority arrangement to rebuild a failed state like Somalia, which has completely fallen apart. Nevertheless, this dissertation will focus entirely on *postbellum* provisional authority arrangements.

This second characteristic begins to distinguish a provisional authority arrangement from a state. A state has no expiration date. The universal understanding in political obligation scholarship is that the state is a permanent or at least indefinite arrangement. Alternatively, provisional authority arrangement only exists, at most, a matter of years before reaching its expiration date. However, this second characteristic fails to demonstrate that a provisional authority arrangement is entirely distinct from other political institutions besides the state. So far, a provisional authority arrangement also presents no comprehensible problem in regard to political obligation.

Consider the case of an interim government. Politics and the art of governing a population are not static exercises. Governing arrangements change, at times substantial so. In times of considerable change, there can be an interim government in place which transitions a state and the population it governs. Examples of such institutions include the Transitional Government of Ethiopia, the Interim Government of Iran, and the Provisional Government of Bangladesh.[3] In each of these three cases, the interim government in question held power analogous to that of the state. In other words, the interim government claimed to have a monopoly on the legitimate use of force and violence in a given territory. As the name suggests, an interim government is, by nature, temporary. For example, the Interim Government of Iran lasted approximately nine months (Shain 2008, 132; Sinkaya 2015, 79). Nonetheless, there is little dispute in existing scholarship that an interim government is a morally acceptable way for a population to transition from one political arrangement to another. In sum, the second characteristic of a provisional authority arrangement distinguishes it from some political arrangements- namely, the state- but fails to differentiate a provisional authority arrangement

[3] For an in-depth analysis of transitional or interim governments, see (Shain 2008).

from other types of temporary political arrangements such as an interim government. For this reason, a third characteristic is necessary to demonstrate that a provisional authority arrangement is, in fact, its own separate and unique type of political institution.

The third characteristic of a provisional authority arrangement is that it is foreign to the population which it governs. For example, the C.P.A. governed the Iraqi people, yet the officials responsible for administering the C.P.A. were American and British citizens. The U.N.T.A.E.T. governed the people of East Timor, but the individual in charge of directing the U.N.T.A.E.T. was a Brazilian citizen named Sérgio Vieira de Mello (UNTAET n.d.).[4] The foreign character of a provisional authority arrangement extends beyond the nationality of the individuals who administer it. A provisional authority arrangement is unilaterally imposed on a population by a foreign actor. The American government did not consult the Iraqi people before putting the C.P.A. into place.[5] Unlike the C.P.A., there may be cases where a provisional authority arrangement does not appear unilaterally imposed as such. For example, the United Nations instituted U.N.T.A.E.T. to help realize the will of the Timorese people to be independent of the prolonged Indonesian occupation of East Timor. The Timorese people expressed their desire to be sovereign and independent in an internationally recognized referendum (Fox and Soares 2001, 80). However, although the Timorese people voted for

[4] Sérgio Vieira de Mello's formal title was: 'Special Representative of the Secretary-General for East Timor.' He was informally known as the 'Transitional Administrator' (UNTAET n.d.).

[5] The C.P.A. did seek Iraqi advice and input at various times. For example, the C.P.A. instituted a body called the Iraqi Governing Council. The members of the Iraqi Governing Council were all Iraqi citizens. Nevertheless, the intended purpose of the Iraqi Governing Council was to assist in the drafting of a new Iraqi constitution rather than to govern the country as such. Additionally, the Iraqi Governing Council was appointed by and reported to Paul Bremer, an American citizen and Administrator of the C.P.A (Iraq - Government and society n.d.). The American government, in particular, made the initial decision to enact the C.P.A. before the Hussein Regime was deposed and without consulting the Iraqi people (Ricks 2007, 81).

independence, they never formally requested assistance in transitioning from occupation to independence from the United Nations (or any other foreign actor for that matter). However, in fairness, the Timorese people had no institutional capacity to make such a request. Therefore, it is impossible to say definitively whether or not the institution of the U.N.T.A.E.T. was in accord with the will of the East Timorese people or not.

Even though the purpose of a provisional authority arrangement is to aid a population in collectively self-determining, it is still an arrangement in which a foreign actor is selecting the individuals who will govern a population without seeking the input or approval of that population. While there may be a cognizable reason why a foreign actor cannot obtain such input or approval, the foreign character of a provisional authority arrangement does make such an arrangement resemble an act of conquest or direct colonial rule. In a certain sense, the institution of a provisional authority arrangement is a form of subjugation via military force. Additionally, in selecting the individuals who will govern a population without seeking the input or approval of that population, a provisional authority arrangement excludes members of a population from most high-level or meaningful government decisions. The C.P.A. is a clear example of this; foreign military forces invaded Iraq. As a result of this invasion, the existing government fell, and the Iraqi people were under the dominion of the American and British military for approximately fourteen months. Although during this time, Iraqi citizens did have input in some matters, such as the writing of a constitution, yet they had virtually no say in the day-to-day governing of the country.[6] This subjugation and exclusion are defining features of

[6] It is important to note that not all provisional authority arrangements are alike. The novelty of this type of political institution means that there is no formulaic rubric to follow. Different provisional authority arrangements each exhibit varying degrees of subjugation and exclusion. For example, at the beginning of the U.N.T.A.E.T., the Timorese people had only an advisory role in governing their society and territory. The so-called National Consultative Council served as a forum in which representatives of the East Timorese discussed various policy ideas and proposals relating to the

acts of conquest or direct colonial rule (Doyle 1986). However, unlike an act of conquest or colonization, a provisional authority arrangement never subsumes a territory or population. For example, during the administration of the C.P.A., the state of Iraq never formally or legally ceased to exist. Iraq never became part of American or British territory. The institution that governed remained entirely separate and distinct from the population it governed; this is a defining characteristic of a provisional authority arrangement.

In sum, the third characteristic of a provisional authority arrangement illustrates what makes such an arrangement a truly unique and distinctive political institution. The essence of a provisional authority arrangement is that a foreign actor is taking control of a population and a territory for a temporary period of time. Unlike other types of foreign occupation or interference, the purpose of a provisional authority arrangement to give a population the ability to self-govern when it cannot do so independently.

Motivation

A provisional authority arrangement is a unique and distinctive type of political institution. This uniqueness creates a problem for these institutions vis-a-vis political obligation. In this section of the introduction, I will examine why the question of political

formation of a new government with international leaders (UNTAET/REG/1992/2 n.d.). Yet, National Consultative Council gave the Timorese people little say in the day-to-day running of their country. This changed in July of 2000 with the formation of the National Council. The members of the National Council were all Timorese. The council served as an early legislative body where the Timorese could debate the regulations enacted by the U.N.T.A.E.T. (MacQueen 2015). However, the National Council stopped short of ending foreign involvement in the day-to-day politics of East Timor and giving the Timorese people full autonomy over their own country. The approach of the United Nations in East Timor stands in clear contrast to the inter-workings of the C.P.A., throughout which the Iraqi people had almost no involvement in the day-to-day politics of their country, see (Ricks 2007).

obligation to these institutions is problematic and motivate the need for research that solves this problem. This dissertation is motivated by a perceived gap in the existing literature on political obligation; existing scholarship does not address the question of political obligation to a provisional authority arrangement. Political obligation is an area of study that examines if there is an obligation to obey the law *because* it is the law. Understanding the concept of law is necessary to comprehend why this gap in existing political obligation scholarship exists. In a political context, the law is a range-limited concept. In other words, the law always applies to a specific group of people; it governs a particular society.

The concept of range-limitation is evident in the two well-known works of political philosophy: the *Crito* and *Leviathan*. In *the Crito,* Socrates asks why he must obey the laws of Athens. He concludes that to do otherwise would harm his fellow citizens of Athens and the laws of Athens (Plato 1999, 50a-52a). For this reason, Socrates does not flee Athens, even though he is facing execution. Alternatively, in his book, *Leviathan*, the enlightenment era thinker Thomas Hobbes used the concept of the social contract to explain the limited range of the law. According to Hobbes, the mutual transfer of rights is what establishes a society. Individuals come together and give up all of their rights on the condition that everyone else in society does the same (Hobbes 2017). In exchange, individuals receive protection of their life from an absolute sovereign. Only those who have given up their rights are entitled to protection from the sovereign. Therefore, the essential thrust of the social contract is that an individual agrees to form a society with a particular group of people. If an individual is not a party to this agreement, then the laws of that society do not apply to them.

In sum, scholars have never asked questions like "is an Athenian citizen required to obey the laws of Sparta?" or "is an American citizen required to obey the laws of Argentina?"

Such a question is nonsensical because it misunderstands the nature and purpose of the law. It is like asking, 'why aren't there four bases in baseball?' or 'why aren't there 200 yards on an American football field?' It just is not part of the game. The applicability of law is inherently limited to particular groups.

Several prominent documents of international law, namely the Treaty of Westphalia and the Charter of the United Nations, codify the concept of range limitation. The Treaty of Westphalia, which ended the Thirty Years War in 1648, is the origin of a concept known as Westphalian sovereignty. According to the theory of Westphalian sovereignty, each state is independent, meaning it has the exclusive right to govern its territory and population. Every state has an equal right to have its sovereignty respected (Stirk 2012).[7] The corollary of Westphalian sovereignty is the principle of non-interference (Dubay 2014). According to the International Court of Justice: "[t]he principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference… a prohibited intervention must be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely (for example the choice of a political, economic, social and cultural system, and formulation of foreign policy). Intervention is wrongful when it uses, in regard to such choices, methods of coercion, particularly force" (Nicaragua v. United States of America 1986).[8] Westphalian sovereignty and the principle of non-invention are both enshrined in the Charter of the United Nations. Article 2(4) of the United Nations Charter

[7] A. John Simmons offers an account of state sovereignty based on territorial rights instead of the Treaty of Westphalia (Simmons 2001).

[8] Carolyn Dubay calls the principle "the principle of non-interference." Alternatively, the International Court of Justice refers to the principle as "the principle of non-intervention." The difference between the two principles is purely semantic. Dubay and the I.C.J. are referring to the same principle; see (Dubay 2014).

stipulates that "[m]embers shall refrain…from the threat or use of force against the territorial integrity or political independence of any state" (Charter of the United Nations 1945). Elsewhere the UN Charter goes on to say that: "nothing…should authorize intervention in matters essentially within the domestic jurisdiction of any state… this principle shall not prejudice the application of enforcement measures under Chapter Vll" (Charter of the United Nations 1945).

From all of this, I conclude that there are two reasons why the question of political obligation to a provisional authority arrangement is problematic. First, the study of political obligation developed when the Westphalian state largely dominated research in political science. The Westphalian state is the only institution in the modern world that makes and enforces laws. Consequently, the Westphalian state is the only institution that theories of political obligation within modern political theory needed to explain. Therefore, scholars have tailored their existing accounts of political obligation to explaining the Westphalian state. In sum, provisional authority arrangements are not addressed in existing literature because they are beyond the scope of the Westphalian state; it is not the kind of institution which a theory of political obligation has ever needed to explain or claimed to explain. That is the first reason why the question of political obligation to a provisional authority arrangement is problematic.

A provisional authority arrangement is not only a novel type of political institution, but it also appears to violate the principle of non-interference. By definition, a provisional authority arrangement entails an actor taking control and governing a foreign territory and population. That is a clear case of interference in the internal affairs of a society and, at the very least, shows a disregard for Westphalian sovereignty. The violation of the principle of

non-interference forms the basis of the second problem provisional authority arrangements pose vis-a-vis political obligation.

At worst, the fact that a provisional authority arrangement seemingly violates the principle of non-interference could make these arrangements illegal under international law. However, rejecting a provisional authority arrangement as illegal seems too drastic. For one, the United Nations has used provisional authority arrangements numerous times. If such arrangements were to be considered illegal, then the United Nations would be violating the principles it claims to protect and uphold as an organization. Furthermore, a provisional authority arrangement can also be a necessary and unavoidable tool for transitioning a population from war to peace. Societies do not transition from war to peace organically. These transitions are deliberate and coordinated processes. Institutions provide the coordination and deliberation necessary for these transitions to occur.

The vast majority of wars will end with existing institutions which remain in place. That is the case when a war ends in a peace treaty of an armistice. In such cases, the institutions which foster and coordinate a just peace are existing states. Various international organizations may aid in establishing peace, yet the state remains the primary institutional actor. Prominent examples of wars that have ended in this way include the Korean War or the First Gulf War. In both cases, the governments of each state decided to end the respective wars and negotiated the terms of a peace settlement.

However, as examples such as Iraq following the American invasion in 2003 and East Timor in 1999 following the prolonged Indonesian occupation demonstrate, it is not always the case that war, or military occupation ends with existing governing institutions in place. There are many possible reasons why this might occur. Consider a war of self-defense in which

the aggressive state is defeated and deposed, leaving a population with no other viable institution that can coordinate a transition. Alternatively, there could also be a war in which a state commits such egregious human rights violations, such as genocide, that it cannot be allowed to remain in place. Germany following World War II is an illustrative example of this latter case. Nazi Germany was responsible for coordinating and carrying out the Holocaust; leaving such a government in power would condone the systematic murder of nearly six million people. Overlooking such an act is morally impermissible. However, it would also serve to undermine the goals of the Allied powers.

The challenge of transitioning a population from war to peace or occupation to independence can also extend beyond the mere lack of preexisting governing institutions. It is often the case that societies that lack institutions to govern transitions will also lack the capacity to enact such institutions independently. Consider the case of East Timor. After being occupied by Indonesia for nearly a quarter of a century, the Timorese people could not even effectively organize a referendum effectively. It is difficult to imagine how a population in this position could have written a constitution, established a legislature, for built institutions that resembled a functioning state in general. This point is not unique to East Timor either. The entire justification for a war of humanitarian intervention is that a state has committed egregious human rights violations and left a population unable to defend itself. Therefore, it is difficult to see how an existing state could remain in place following a war of humanitarian intervention. In addition, if a population independently address an egregious act such as genocide, it seems reasonable to extrapolate that that same population will be unable to enact the institutions necessary to transition from war to peace and build a state on its own. Thus, it

seems that in any case of humanitarian intervention, a state is likely to lack the institutional capacity to transition from war to peace independently.

A possible response to the inability of a population to enact institutions to facilitate a transition from war to peace would be to hold that peace is not possible until a population gains the capacity to enact the necessary institutions to coordinate the process. This response is overly restrictive, for it seemingly forecloses the possibility that a war of humanitarian intervention could end justly. Perhaps more importantly, however, this response is also unfair to the population which has just endured war or military occupation. Peace or political independence should not be dependent on the ability of a population to enact governing institutions. War is an intrinsically onerous and traumatic experience for all involved. Consequently, instead of expecting members of a population to endure the hardships of war for longer than is necessary, relevant actors should pursue peace regardless of a population's institutional capacity.

A provisional authority arrangement provides an institutional means to transition a population from war to peace or occupation to independence in the absence of a state. Although these arrangements often play a vital role in transitions from war to peace, they are unavoidably foreign by nature. Consequently, there is a tension between the need for institutions like provisional authority arrangements and concepts like the principle of non-intervention. The primary motivation of this dissertation is to address and resolve this tension. The dissertation will provide this resolution by revising and extending the existing understanding of political obligation.

In summary, no scholar should dismiss a provisional authority arrangement as an illegal or morally impermissible type of political institution. These institutions can play a valuable

role in fostering peace and allowing populations to become politically independent. Thus, this dissertation will refine the existing understandings of political obligation to account for these institutions and the role that they play in transitions from war to peace. A refined understanding of political obligation is necessary and worthwhile for three reasons. First, it provides an alternative mechanism to establish peace when the typical or transitional methods or arrangements, like the state, are not viable. Second, it will tell scholars more about the concept of law and the institutions which are entitled or permitted to make and enforce it. And finally, a refined understanding of political obligation provides a metric for evaluating whether past instances of provisional authority, such as the C.P.A. or the U.N.T.A.E.T., were, in fact, permissible or not.

Structural Overview

The previous two sections of this introduction have defined what a provisional authority arrangement is, explained the problem posed by political obligation to this kind of institution, and motivated why research into solving this problem is necessary and worthwhile. The final section of this introduction will conclude by articulating a roadmap of how this dissertation will go about answering its research question. This dissertation will answer its research question by developing a theory of political obligation to a provisional authority arrangement in seven chapters. The dissertation will split these seven chapters into two parts. Part I will consist of chapters one through four and be devoted to political obligation. The broad aim of part one will be to determine how an individual acquires political obligation in ordinary circumstances. In other words, part I will articulate a theory of how political obligation arises in a Westphalian state. This dissertation will argue that an existing theory of

political obligation, namely fair play theory, can be expanded and applied to the case of a provisional authority arrangement rather than developing a new theory altogether. For this reason, it is first necessary to explain and evaluate what existing theories of political obligation claim. That is the task of chapters one, two, three, and four.

Chapter one of the dissertation has several aims. First, it intends to explain the characteristics of political obligation and qualities that make a theory of political obligation successful. The beginning of chapter one will provide a brief overview of how the scholarly study of political obligation developed historically. Next, chapter one will define political obligation as an obligation for all citizens of a state to obey all, or at least nearly all, of the laws of their particular state. I will argue that a theory must have three qualities to explain such an obligation successfully. First, a theory of political obligation must distinguish between an obligation and the right to enforce an obligation. Second, a theory of political obligation must be compatible with the individual rights of freedom and equality. The former refers to the relationship between individual members of a population and a governing institution. The latter, on the other hand, relates to individuals themselves. A successful theory of political obligation must explain both the relationship that exists between individuals and the right of an institution to enforce the obligations derived from that relationship. The last quality of a successful theory of political obligation is the ability to satisfy the particularity requirement. The particularity requirement is necessary because it limits and specifies the institution to which members of a population owe political obligation. The purpose of these qualities is to serve as a benchmark for the subsequent analysis of the existing theories of political obligation.

The second half of chapter one will demonstrate that the fair play theory of political obligation possesses all three qualities of a successful theory of political obligation. The

conceptual heart of fair play theory is the idea of reciprocity; it is wrong to benefit from the sacrifices of others without making a similar sacrifice yourself. The theory argues that a society is a cooperative scheme that produces certain necessary goods, known as presumptive public goods. The state is the institution that coordinates the provision of and protects these goods. I will argue that the nature of presumptive public goods makes them compatible with freedom and equality. The fact that both the state and an individual's fellow citizens are integral parts of fair play allows it to explain both authority and obligation. Finally, the nature of a cooperative scheme allows fair play theory to fulfill the particularity requirement.

By the end of chapter one, the reader should know what a theory of political obligation is trying to explain, the traits that make a theory of political obligation successful, and how fair play theory possesses these traits. It may strike the reader as peculiar to start by analyzing the most successful theory of political obligation first; the reason for structuring the dissertation in this way is that the degree to which other theories (of political obligation) succeed they become undisguisable from fair play theory. Analyzing fair play theory first will provide a metric to illustrate this point.

Chapter two will analyze the consent theory of political obligation. Despite its popularity with some liberal thinkers and its intuitive plausibility, consent theory only succeeds in generating general moral obligations but fails at generating political obligations. The state does not function in the manner that the consent theorist argues that it does. The state is a fundamentally nonvoluntary institution. As a result, there is no way for an individual to give their consent to the state. Thus, this chapter will argue that consent theory fails as a theory of political obligation because it misunderstands and misconstrues the nature of the institution which it claims to explain.

Chapter three will analyze the associative duties theory of political obligation. There are many different variations of associative duties theory. This chapter will argue that the most defensible conception of associative duties theory is the welfare-based version first articulated by Ronald Dworkin. The chapter will then contend that Dworkin's conception of associative duties theory does have the potential to be a successful theory of political obligation. However, if read charitably, the version of the theory that Dworkin articulates collapses into a version of the fair play theory of political obligation.

Chapter four will be devoted to the natural duties theory of political obligation. The chapter will begin by reviewing the historical development of natural duties theory. It will focus its analysis on two different conceptions of natural duties theory articulated by John Rawls and Jeremy Waldron. This chapter will argue that neither version of the theory can satisfy the particularity requirement. Each version of the theory fails for different reasons. In the case of Rawls, mechanisms like the original position don't go far enough. The original position may successfully assign duties to a particular institution. However, there is nothing that requires these institutions to be Westphalian states. In other words, the original position could simultaneously justify an American citizen's obligation to obey both the United States Government and the World Health Organization. The obligation produced by appeals to the original position is not specific enough to be a successful theory of political obligation. Alternatively, Jeremy Waldron's version of the theory fails to satisfy the particularity requirement because it does not convincingly distinguish between individuals who are inside the range of a principle and those who are not.

Part II of the dissertation will consist of chapters five through seven and focus on applying political obligation to the case of a provisional authority arrangement. The goal of

part II will be to articulate how the fair play theory of political obligation can explain political obligation to a provisional authority arrangement. The dissertation will accomplish this goal by conceptualizing a just peace as a presumptive public good. The argument of part II of the dissertation will proceed in three parts, each of which the introduction will outline below.

Chapter five will define the term 'just peace.' Although 'just peace' is a frequently used term, especially in contemporary just war theory scholarship, there is little in the way of agreement about what the term means. The chapter will begin by reviewing the existing just war theory literature to determine why a term such as 'just peace' lacks a clear definition. The chapter will then use the work of Brian Orend to defend a conception of a just peace which is rooted in the restoration and vindication of human rights. Defining a 'just peace' in this way will distinguish the term from other types of peace, such as a 'bare peace.'

Chapter six will articulate an argument for considering a just peace as a presumptive public good. To be considered a presumptive public good, a just peace must be presumptively beneficial and non-excludable. That is to say that a just peace is something that all individuals should want regardless of what else they want and cannot be provided to some while being denied to others. These qualities, chapter six will argue, are enough to generate an obligation of fair play amongst members of a population to support the establishment of a just peace.

The final chapter of the dissertation, chapter seven, will focus on the institution of a provisional authority arrangement, in particular. The chapter will examine why such an arrangement is the most appropriate institution to provide a just peace and enforce the demands of fair play which arise from the provision of a just peace. The chapter will begin by analyzing how an actor acquires an interest in enforcing the obligations of fair play. It will then explain how a provisional authority arrangement, particularly, has an interest in enforcing obligations

that stem from the provision of a just peace. The chapter will conclude by offering some possibilities of specific actors, for example, a foreign state or an international organization such as the United Nations, which could serve as provisional authority arrangements.

Closing Remarks

In summation, this introduction has sought to provide a foundation for the arguments which the rest dissertation will make. It started by defining a novel type of political institution called a provisional authority arrangement. Next, it introduced the problem posed by political obligation to a provisional authority arrangement and motivated the need to solve this problem. Finally, the introduction articulated a road map for how the dissertation will solve this problem. The dissertation will now proceed to develop a theory of political obligation to a provisional authority arrangement.

Part I
Political Obligation

Overview

The primary aim of part I of this dissertation is to articulate a theory of political obligation to a Westphalian state. The dissertation will analyze four possible theories of political obligation: fair play theory, consent theory, associative duties theory, and natural duties theory. The goal of this analysis will be to demonstrate the validity of the fair play theory of political obligation. I have chosen these four theories in particular for two reasons. First, scholars seemingly consider these four theories to be the four most popular theories of political obligation in the existing literature.[9] Consequently, scholars have thoroughly developed each of these four theories. This detailed development makes fruitful engagement with each theory easier. Second, these four theories are widely considered the four most plausible and distinctive accounts of political obligation in the existing literature. None of these four theories are ludicrously far-fetched to be *prima facie* inconceivable. At first glance, there is also little obvious overlap between the theories allowing this dissertation to analyze the most extensive swath of existing literature possible.

I will omit several noteworthy theories of political obligation from this dissertation. These theories include Margaret Gilbert's theory of joint agency (Gilbert 1993, 1999, 2000)[10] and plural subjects and Plato's gratitude theory of political obligation (Plato 1999).[11] The reasons to deliberately exclude these theories from the dissertation are as follows. In the case

[9] John Horton and Dudley Knowles analyze all four theories in their respective books on political obligation (Horton 2010; Knowles 2009). Ronald Dworkin and Christopher Heath Wellman also both analyze all four theories in various works. A. John Simmons analyzes fair play, consent theory, and natural duties theory in his book on the subject (Simmons 1979). Simmons subsequently analyzed associative duties theory in a later article (Simmons 1996).

[10] Facundo M. Alonso offers an account of joint agency theory that is similar to Gilbert's account (Alonso 2009).

[11] For a contemporary account of the gratitude theory of political obligation, see (Walker 1988).

of gratitude theory, there is a consensus in the existing literature that Plato's account is too underdeveloped and implausible to be a successful theory of political obligation (R. Dagger and Lefkowitz 2014; Klosko 1989, 1991; Simmons 1979, 166–67).[12] In the case of joint agency theory, some argue that Margaret Gilbert has articulated a theory that is too vague and broad to offer a compelling account of political obligation (Bratman 1993).

There is a final clarification of terms that is necessary before part I of the dissertation can begin. The term 'legitimacy' frequently appears in the existing political obligation literature. Legitimacy can be defined normatively or descriptively. Normatively defined, legitimacy refers to a justification of political obligation (Peter 2017). A state that is normatively legitimate is one where citizens have political obligation. In a state that is not normatively legitimate, citizens do not have a moral obligation to obey the law. In this sense, political obligation and legitimacy must coexist; you cannot have one without the other. Scholars such as John Locke, Jean Jacques Rousseau, and A. John Simmons, among others, define the term 'legitimacy' normatively (Locke 1988; Rousseau 2014; Simmons 1999).

Alternatively, descriptively defined, the term 'legitimacy' refers to a person's beliefs or perceptions about the state and its ability to make and enforce laws (Peter 2017). Beliefs alone do not necessarily justify political obligation. Consequently, citizens of a descriptively legitimate state may or may not have an obligation to obey its laws. For example, a North Korean citizen may believe that the Kim regime can make and enforce laws. In this sense, North Korea is descriptively legitimate. However, given the authoritarian government of

[12] The line "gratitude is a duty to be paid, not a right to be exacted" in the *Discourse on the Origins of Inequality* by Jean Jacques Rousseau seems to support the argument Simmons makes against the gratitude theory of political obligation (Rousseau 1985). However, Rousseau never explicitly develops a critique of the theory himself.

North Korea and how poorly the country is known to treat its citizens, there is likely not a genuine political obligation on the part of the North Korean citizen. On the other hand, a state could have a constitution and legal code that is the epitome of fairness. The citizens of such a state may, in reality, have an obligation to obey the law. Yet, if the citizens or even other states do not believe a state has the authority to make and enforce laws, then that state lacks descriptive legitimacy. Political obligation can exist without descriptive legitimacy and vice versa. Max Weber is an early advocate of descriptive legitimacy (Max Weber 2012, 342). Contemporary scholars such as Arthur Isak Applbaum and George Klosko also seemingly endorse the idea that citizens may have political obligation without a state having legitimacy (Applbaum 2010; Klosko 2007).

Political legitimacy is undoubtedly an interesting and important concept. However, in this dissertation, I will largely sidestep questions of political legitimacy. I will not endorse either a normative or descriptive understanding of political legitimacy. For the sake of clarity, I will avoid using the term 'legitimacy' in these pages. Instead, I will only use the term 'political obligation' to refer to the obligation to obey the law.

CHAPTER I
The Qualities of Political Obligation and Fair Play Theory

Introduction

There is a puzzling disagreement between scholars of political obligation. On the one hand, political obligation is regarded by some, such as Richard Flathman and George Klosko, as the most important question of contemporary political philosophy (Flathman 1973, 1; Klosko 2003, xi). On the other hand, scholars claim there is "neither a consensus on how the problem of political obligation is to be solved nor even an agreement that it can be solved" (R. K. Dagger 1977, 86). This disagreement is perplexing, to say the least; how can such a fundamental question lack a clear answer? This chapter will seek to solve this puzzle and, in doing so, defend the fair play theory of political obligation. The chapter will develop its argument in three stages. First, the chapter will define political obligation as the obligation of all citizens to obey all the laws of the state. Next, the chapter will articulate three qualities that a successful theory of political obligation must possess. First, a theory of political obligation must distinguish between obligations themselves and the right to enforce those obligations. Second, a theory of political obligation must be compatible with the natural rights of freedom and equality. Third, a theory of political obligation must satisfy the particularity requirement. I intend these qualities to be neither too vague to provide a meaningful metric nor too nuanced to presuppose or favor a particular theory of political obligation at the outset. Finally, the chapter will then use George Klosko's work on presumptive public goods to develop how the fair play theory of political obligation can fulfill these three criteria and thus explain a general obligation for all citizens to obey the law.

The Qualities of a Successful Theory of Political Obligation

The fundamental question of political obligation is: is there an obligation to obey the law (Klosko 2003, 1–2; Raphael 1990, 174). There is little doubt that an individual has a pragmatic reason to do as the state commands him. However, whether or not individuals have a (political) obligation to behave in this way is a different question. Having political obligation means that an individual has done something morally wrong, rather than merely imprudent and unwise when he disobeys the laws made by the state. In the Westphalian system, which currently dominates political science, the state is virtually inescapable. Therefore, John Chapman is correct to argue that "political obligation is the central problem of political theory. It is not a question that an individual can refuse to answer, dismiss as dangerous, or define out of sight. For it has to do with the kinds of life that are humanly worth living, the supreme question for intrinsically normative begins" (Chapman and J. Ronald Pennock 1970, 174). The omnipresence of the state in modern politics means that questions of our obligations to the state are ones that individuals cannot dismiss, ignore, or write off. This reality serves to motivate the need for an area of study such as political obligation.

Despite its obvious importance, political obligation has not always received the scholarly attention it deserves. Interest in the question of political obligation first began back in Ancient Greece. For example, the play *Antigone* addresses such questions as what a person owes to their political community and those who govern it and what a person ought to go when these obligations come into conflict with familial obligations (Sophocles and Knox 2000, 115–68). The ancient Greek thinker Plato is known for formulating the gratitude theory of political obligation and, to date, remains the most prominent proponent of the theory. Finally, although it is most well-known for introducing the gratitude theory of political obligation, Plato's

dialog *the Crito* also outlined the ideas that would become the conceptual heart of the consent and fair play theories of political obligation (Plato 1999, 50b–54d).

Notwithstanding the interest of ancient thinkers, the question of whether an individual is morally required to obey the law has been largely ignored and taken for granted to the extent that the *Crito* remained the only work explicitly dedicated to political obligation for several centuries. The phrase 'political obligation' itself first appears in lectures given at Oxford University by T. H. Green from 1879-1880 (R. Dagger and Lefkowitz 2014; D'Entreves 1959, 3).[13] Even so, political obligation does not appear as a distinct area of study within political philosophy until after World War II, with the vast majority of political obligation scholarship appearing during and after the 1970s and 1980s. Since that time, there has been a great diversity of arguments regarding what constitutes "the true ground or justification for obedience to law" (R. Dagger and Lefkowitz 2014; D'Entreves 1959, 3). The first step to evaluating the validity of these different and diverse arguments is to determine what the defining characteristics of political obligation are.

[13] There is disagreement about what to call the discipline that studies the obligation to obey the law. While T.H. Green's phrase, "political obligation," remains the most common, there are those, such as Leslie Green, who suggest the use of the term "legal obligation" (Green 2012). However, the phrase "legal obligation" can be dismissed quite quickly. Although political obligation is interested in obedience to the law, the scope of political obligation goes beyond a legal obligation. A legal obligation is fundamentally descriptive. It tells an individual what the law demands of him. However, there may not be a moral obligation to behave in the way the law demands. For example, a teenager in Nazi Germany may have had a legal obligation to join the Hitler Youth, but only because the law said so, not for any moral reason. Political obligation seeks to determine if there is a moral reason to do as the law demands. Others, most notably Bhikhu Parekh, suggest that the obligation to obey the law should be known as civil obligation. He reasons that the obligation "to obey the laws enacted by the civil authority" is the bare minimum required of a citizen. A citizen's political obligation goes beyond this and involves "a positive duty to take steps to secure the safety and advance the interests of her country" (Parekh 1993, 240). Whether or not obeying the law includes both positive and negative duties is interesting but ultimately tangential to the focus of this chapter. Hence, while I acknowledge the debate surrounding what to call the obligation to obey the law, I will use the dominant phrase, political obligation, throughout the dissertation.

Characteristics of Political Obligation

John Simmons defined political obligation as "a moral requirement to support and comply with the political institutions of one's country of residence" (Simmons 1979, 29). This moral requirement is general and universal in scope (Valentini 2018, 149). Generality refers to an individual's obligation to obey the entire body of laws of the state. Universality requires that the entire population of a state must obey the laws of a state (Valentini 2018, 156).[14] A political obligation does not apply only to a particular group of individuals within a population or a specific subsect of laws. Generality and universality are the defining characteristics of political obligation. Any obligation of lesser scope is not a political obligation. In sum, political obligation entails the obligation of every member of a population to obey the entire body of laws of their state (rather than just particular people obeying particular laws).

Generality and universality are not absolute; there will always be exceptions. The entire population obeying the entire body of laws in a state does not necessarily translate to a moral requirement that every citizen obey every law. For example, in the United States, there is a law that requires children to receive vaccines for smallpox, polio, and tetanus, among others, before they can attend school (School Immunization Requirements n.d.).[15] At the same time, some individuals do not want their children to receive any vaccinations. For example, religious groups such as the Church of Christ, Scientist, and the Dutch Reformed Church prohibit their members from receiving any vaccine (Grabenstein 2013). In response, the United States

[14] Valentini and others describe universality in terms of citizens. I find the focus on citizenship somewhat incomplete and misleading for reasons that I will explain in a future section of this chapter. Thus, I have deliberately defined universality in terms of members of a population instead of citizens.

[15] While different states and localities in the United States have slightly different vaccination requirements, these differences are largely minute. For the sake of argument, I will take the New York State requirements as representative of the entire United States.

Government allows the members of these groups and others with similar sincerely held religious beliefs to be exempt from vaccinating their school-aged children. Thus, not every member of a population is required to follow every law. Yet, it seems too drastic to say that a person who receives a religious exemption from a mandatory vaccination law does not have a general obligation to obey the law. There are principled and legitimate reasons why a particular group might not feel compelled to obey a particular law. Scholars, notably John Simmons, recognize the need for exceptions to generality: "no obvious objections to a theory which allows that some people have political obligations while others, and even others in the same state, do not" (Simmons 1979, 36).[16] The human race is diverse, and its members have a propensity to err and make mistakes. If scholars fail to recognize this fact, they will set the bar too high and thus demand too much of the concept of political obligation. The result would be an obligation so onerous and expansive that no theory could ever explain it successfully.

The allowance of exceptions raises an important question regarding the scope of political obligation. That question is: how many people can be exempt from how many laws before political obligation ceases to be general. It is challenging to give a quantifiable answer to this question. I reckon that I, or any other scholar, would be unable to answer the above question with a percentage or numerical value without being completely arbitrary. For instance, I see no obvious or convincing reason why political obligation would be general if 85 percent of a population had an obligation to obey 85 percent of a state's laws but would not be general if only 84.9 percent of a population were obligated to obey 84.9 percent of a state's laws. Instead, for the sake of this dissertation, I will stipulate that for political obligation to be

[16] If interpreted in isolation, this passage may seem like a critique or objection to the very idea of generality. However, this passage appears in Simmons's defense of generality (Simmons 1979, 35–37). Thus, it seems likely that Simmons' meant his words to qualify the idea of generality rather than to reject it altogether.

general, the vast majority of a population must be morally required to obey the vast majority of the laws of a state. Any exceptions to the obligation to obey the law should be exceedingly rare and only given for principled or morally weighty reasons.

It should be noted that when an individual receives an exemption to obeying the law, that person may incur other obligations as a result of the exemption. For example, recall the parent who refuses to vaccinate their child because of a sincerely held religious conviction. A sincerely held religious conviction seems to be a reasonable and morally weighty cause of an exemption from a school vaccination law. However, a state can morally require a parent to keep their unvaccinated child home from school during an outbreak of a disease.

In evaluating the defining feature of political obligation, it is equally as important to evaluate what political obligation is not. Political obligation is not strictly moral or a content-independent obligation. The law is not a set of moral principles by a different name. The law and moral principles often coincide. For example, there are laws against murder or stealing and moral principles that say a person should not murder or steal. In addition, the law also provides practical coordination. Such laws include mandates to drive on the left side of the road or stop at a red light. Laws of coordination have no inherent moral status.[17] The side of the road a person drives on is a morally neutral fact; the left side is no better than right. If the

[17] The fact that laws of pure coordination (i.e., driving on the left side of a road) have no inherent moral status does not mean that a person is not morally required to follow them. The value of such laws is that chaos will ensue unless everyone in a community does the same thing. Imagine a roadway where some cars drive on the left side and others on the right side. The difference between laws of pure coordination and laws that coincide with moral principles is as follows. When a law coincides with a moral principle, a person has reasons to behave in a particular way besides the law. An individual is morally required to refrain from committing murder regardless of whether the law forbids it. That is not the case with laws of pure coordination. A person is morally required to drive on the left side of the road because that is what the law says. If the law commanded that a person must drive on the right side of the road instead, he would be morally required to drive on the right. The law is the only source of moral requirement in this case.

law is just a set of strictly moral principles by a different name, then the law would not be able to account for the rules of pure coordination that have no inherent moral status but are integral to a functioning society. Thus, the law is not strictly moral.

Before concluding this section, it is important to recognize the limits of political obligation. Political obligation is not content-independent.[18] Law does not require that an individual does anything a state commands. Put another way, an individual is not morally required to obey the law simply because it is the law. Such an expectation would require too much of an individual. The laws of the state are a human creation; the state could err in making the law. Consequently, the state could enact a law that is absurd or even immoral. For example, suppose a state passes and enacts a law requiring individuals to kill every red-haired person they encountered. I hope that such a law strikes the reader as not only absurd but immoral. An individual is not morally required to obey such a law just because they are laws. Of course, a law requiring the murder of red-haired individuals is so outlandish it would be unlikely to ever come into existence. However, states in history have routinely passed laws that require something outright immoral of their subjects. Consider Jim Crow laws in the United States that were blatantly racist. The mere fact that the state passed, and enacted Jim Crow laws does not mean that an individual is morally required to support racial segregation.

Before proceeding, I need to acknowledge that most proponents of content independence recognize that an individual cannot be morally required to do what is immoral and unjust. Nevertheless, I contend that the simple fact that the state has issued a command or enacted laws is too vague a standard to require compliance. The state must pass and enact

[18] For two detailed examinations and criticisms of content independence see (Klosko 2011) or (Valentini 2018).

laws within certain constraints for an individual to be required to obey. In addition to issuing moral commands, or at least morally neutral, the second half of this dissertation will argue that a state must issue fair commands. An individual is not required to obey a law that is blatantly unfair to them or others simply because it is a law.[19] To mandate compliance in such a circumstance is unreasonable.

Qualities of a Successful Theory of Political Obligation

Different intellectual traditions have justified the obligation to obey the law in different ways. This dissertation is particularly interested in how a liberal would justify obedience to law; this is to say that this dissertation is developing an explicitly liberal theory of political obligation.[20] That, of course, does not mean that a theory of political obligation must be liberal or that political obligation is a distinctively liberal problem. For example, there is a Confucian theory of political obligation which was developed by Shu-Stan Lee (Lee 2020). There are also theories of political obligation which are explicitly theist. Sir Robert Filmer's theory of the divine right of kings is an example of such a theory (Filmer 2008). There is even a Buddhist take on the social contract that could be considered a Buddhist theory of political obligation (Huxley 1996). Nevertheless, developing an explicitly liberal theory of political obligation is worthwhile for several reasons. First, the majority of contemporary, western political thought is at least implicitly liberal (Gaus 2003). Liberalism dominates the western world order as it

[19] It is important to note that individuals may have other pragmatic reasons to follow unfair laws. For example, a person may pay their taxes, even when the tax code of a state is blatantly unfair, because of his desire to avoid being sent to prison.

[20] For the remainder of this dissertation, I will use the phrase 'political obligation' to mean a liberal theory of political obligation.

exists today. Second, international law and documents such as the Charter of the United Nations, which will be extremely important to part II of this dissertation, are largely based on liberal principles (Slaughter 1995; Slaughter and Alvarez 2000).

Lastly, there seems to be a pair of competing thoughts about political obligation in liberal theory. On the one hand, "it is widely assumed that citizens in the liberal democratic state do have a justified political obligation" (Pateman 1985, 1). Some scholars have been quick to deem consent theory the obvious candidate for a liberal theory of political obligation (Wellman 1997, 2001; J. Wolff 1991). However, others have been equally as quick to recognize issues with consent as a theory of political obligation. Thus, the question of a liberal theory of political obligation is far from settled.

On the other hand, some liberal scholars argue that political obligation is incompatible with liberalism. Robert Paul Wolff is one such liberal. Wolff argues that to make laws, the state must have authority. Authority is defined as the "right to command, and correlatively, an obligation to obey the person who issues the command" (R. P. Wolff 1998, 9).[21] Thus, obeying the law of the state is not just a matter of doing what the state tells you to do. It is a matter of doing what the state tells you because the state told you to do it (R. P. Wolff 1998, 9). On the other hand, human beings are by nature autonomous beings. To be autonomous is to be independent and self-governing, to have free will and thus be responsible for one's actions. Because a person is autonomous, he may do what another person asks of him, but only because he chooses to, not because he is told. That is the essence of what it means to be free, according to Wolff (R. P. Wolff 1998, 14). Wolff concludes that the tension between authority and autonomy is irresolvable: "[i]nsofar as man fulfils his obligation to make himself the author of

[21] Dudley Knowles offers a similar definition of authority (Knowles 2007, 23).

his decisions, he will resist the state's claim to have authority over him. That is to say, he will deny that he has a duty to obey the laws of the state *simply because they are the laws* [emphasis in the original]" (R. P. Wolff 1998, 18).[22] In sum, the essence of Wolff's conclusion is that the demands of political obligation are just simply incompatible with the nature of a human individual.[23]

I believe that both of these conclusions are flawed. It is wrong to overlook political obligation and deem it a settled question out of hand. It is just as misguided to say that political obligation is incompatible with liberalism. However, these competing assumptions among liberals motivate the need to articulate an explicit metric by which a liberal theory of political obligation can be evaluated. What are the traits which a liberal theory of political obligation must possess? When must a liberal reject a theory of political obligation as incompatible with their beliefs or principles? This chapter aims to provide such a metric; this metric will consist of three qualities.

First Quality

[22] Robert Ladenson reaches a similar but less drastic conclusion. He concedes that the state could have a right to rule but agree with Wolff that there is no correlative duty to obey (Ladenson 1980).

[23] There are cases where authority is obviously present. Parents clearly have authority over their children, yet this authority ceases as these children become fully independent and move out on their own. There could be cases of epistemic authority as well (Knowles 2007, 25). For example, a surgeon has authority in an operating room. Cases of epistemic authority are always context dependent. The surgeon only has authority where his expertise is needed and relevant. A surgeon does not have authority outside the operating room or even in an operating room where his knowledge is not applicable. For example, a cardiologist cannot claim epistemic authority during brain surgery. In these cases, resolving the tension between authority and autonomy is less demanding, if it exists at all. However, the state claims practical authority, not epistemic authority. Those who made and enforce the law have the authority to do so in virtue of the position they hold rather than the knowledge they have. The laws that practical authorities make are intended to be universal in that they apply to all citizens. This practical authority seems to be what Robert Paul Wolff is objecting to.

Political obligation has two integral dimensions, an interpersonal dimension, and an institution dimension. That is to say that a theory of political obligation must explain two interrelated but distinct relationships. The first relationship is an interpersonal relationship between individual members of a population. This dimension of political obligation examines the obligations individual members of a political community have to each other. The second relationship is an institutional relationship between a population and a state that governs the population. This dimension of political obligation examines the right of an institution, namely the state, to enforce the existing obligations between members of a population. A key feature of the second dimension of political obligation is the enforcement of obligations is done coercively.

The concept of law explains why political obligation is a two-dimensional problem. When one breaks the law, he harms the members of the community that complied with the law. By speeding through a red light and breaking traffic laws, I show disregard for others who stopped their cars at the red light. I have endangered their safety. By not paying my taxes, I deny the other members of my community funding for social programs they may need. The fact that my actions negatively affect those around me seems to indicate that there is some kind of morally relevant relationship between us; otherwise, my breaking the law would not matter to my neighbors and those around me.

Political obligation is unlike any other type of obligation because of the enforcement institution. The state can coerce an individual into compliance. If a person breaks the law, they will be punished. A lawbreaker might even go to prison. The state is an integral dimension to political obligation because, without the state, political obligation is no different than another type of obligation, say the obligations that exist between friends. Individuals should treat their

friends in a particular way; someone is wronged when their friend does not uphold the obligations of friendship. However, most people likely recognize that friends can't coerce each other into fulfilling the obligations of friendship- one cannot imprison a friend because they refused to loan them money in a time of great need. The state has a power that no other institution does. That, coupled with the fact that it is the institution that makes and enforces the law, makes it an integral dimension of political obligation.

In a political context, an obligation arises from the relationship between members of a population. The relationship between population members can be described as horizontal because, in such a relationship, the parties are equal to each other. In a horizontal relationship, the rights and duties you have to me are the same rights and duties that I have to you. According to Richard Dagger, an obligation has two essential components. First, for an obligation to exist, there must be a "previous committing action."[24] Second, an obligation is fundamentally relational. An individual must be able to point to a party to whom she has an obligation. Dagger uses the example of marriage vows. In that case, an individual must love, honor, and be faithful to their spouse. In the words of Dagger, "one who has an obligation *owes* [emphasis in the original] something or is *indebted* [emphasis in the original] to another party" (R. K. Dagger 1977, 87). In the case of the state, the members of the state's population owe it to other members to comply with the laws of their state.

Dagger seemingly understands the phrase 'previous committing action' in voluntary terms. A person makes a marriage vow to another because he or she freely chooses to do so; otherwise, such a vow is not valid. Nonetheless, Dagger seemingly derives the phrase

[24] Dagger frequently uses the phrase "previous committing action" in his characterization of obligation. Dagger makes clear that the phrase was originally coined by EJ Lemmon (R. K. Dagger 1977, 87).

'previous committing action' from H.L.A. Hart's conception of the term obligation. Instead of a previous committing action, Hart argues that an obligation is dependent "on the actual practice of a social group" (Hart et al. 2012, 100). Hart and Dagger should not be seen as mutually exclusive but rather complementary to each other. The actual practice of a social group can be voluntary or involuntary. But the fact that a social group does have a particular custom or practice can serve to commit members of a particular social group to each other.

H.L.A. Hart has a third component that is integral to his understanding of obligation. This component is coercion. To illustrate the role of coercion, in the case of obligation, Hart juxtaposes getting robbed at gunpoint and borrowing money from a creditor who then threatens to file a lawsuit when the borrower fails to repay the loan (Hart et al. 2012, 189). In both cases, an individual is compelled to give another party money and threatened with a sanction if he fails to comply. However, the common intuition is that by failing to comply, an individual has only done something morally impermissible in the case of the creditor. The reason for this is not driven by the difference in the degree of sanction. If the robber threatened to take something from your house of roughly equal value to the amount of money in your wallet instead of shooting you, our intuition would not change.

The reason for our intuition is that coercion is only morally permissible in the case of an existing obligation. An existing obligation justifies coercion; absent obligation an individual is simply using naked violence or brute force to achieve an end they desire. Coercion is rooted in obligation, but to understand its role in enforcing obligation, it is necessary to understand when or more accurately in relation to whom coercion is used. As Richard Dagger points out, those who fulfill their obligation are not subject to coercion precisely because there is no need to coerce those who have done what they are morally required to do (R. K. Dagger

1977, 89). The only time coercion is used is when an individual does not fulfill an obligation. Coercion does not create a new relationship or reason to act, rather it enforces and validates something, which already exists. This understanding of obligation and coercion finds support in the work of Hart and Dagger. Hart argues, "'Sanctions' are…required not as a normal motive for obedience, but as a guarantee that those who would voluntarily obey shall not be sacrificed to those who would not" (Hart et al. 2012, 193). Dagger largely concurs "[c]oercion, as related to obligation, is a response to one whose abuse threatens the practices through which we undertake obligations and conduct our lives…coercion acts to guarantee, so to speak, that those who would voluntarily fulfill their obligations are not sacrificed to those who would not. An obligation is secured by coercion, but it is not rooted in it" (R. K. Dagger 1977).

The type of sanction or degree of coercion that can permissibly be used presumably depends on the nature of the obligation and the relationship between the relevant parties. For example, when a spouse breaks his or her marriage vow, some sort of sanction may be justified. Perhaps the spouse may file for divorce, or the couple may separate for a period of time. Yet, no reasonable person can argue that violence of any kind is an acceptable sanction for breaking a marital obligation. Political obligation is a certain type of obligation, just as a marital obligation is a specific type of obligation. The first word in the phrases 'political obligation,' 'marital obligation,' and 'familial obligation' indicates who is a party to the relationship of obligation and how coercion or sanction can be used in relation to that obligation. For instance, a martial obligation is between spouses, and a political obligation is between members of a political community.

A political obligation is an obligation between members of a political community that is secured by coercion from the state. Political obligation can be thought of in the following

way. First, there is the basic obligation, the thing which makes one party indebted to another. In the case of political obligation, this relationship is between members of a political community. This obligation is the fundamental building block of a theory of political obligation. The obligation that exists between members of a political community is codified by law. Law also codifies the degree of sanction or coercion that is appropriate if a person does not act in accord with his obligation. The state is the institution that makes and enforces laws. That is to say that the state is the institution that sanctions and coerces members of a political community when they do not act in accord with their obligations.

Coercing an individual is akin to enforcing their obligation to you. Coercion is a tool to ensure that individuals act in the way that their obligations demand of them. The fact that the state is the institution that coerces members of a population and enforces the obligations which members of a population have to each other creates a vertical relationship between the state and those it governs. This relationship can best be described as vertical in nature because, in such a relationship, the parties are not equal to each other. In a vertical relationship, the rights and duties that you have to me are not the same rights and duties that I have to you. The factor which makes the relationship between the state and its subjects vertical in nature is that the state, by definition, holds a monopoly on the legitimate use of force in a given territory (Weber 1965). The state is the only one with the resources necessary to enforce the obligations of a member of its population.

In sum, obligation and political authority don't exist in a kind of Venn diagram overlapping and relating to each other in certain aspects are remaining completely distinct and others. At least in regard to a theory of political obligation, the two concepts relate to each other in a very specific way. An obligation is the first building block, if you will. It explains

the fundamental relationship that is relevant to a theory. The right of enforcement is derived from an existing obligation; the right of enforcement cannot exist without obligation. This is likely a contentious argument but one that is justified, nonetheless, by the work of scholars such as H.L.A. Hart.

The work of Jurgen Habermas provides a justification for structuring a theory of political obligation in this way.[25] Habermas characterized the law as inherently Janus-faced (Habermas and Rehg 1998, 448). Habermas' characterization refers to Janus, the Roman god of the crossroads. Janus was always depicted as having two faces, one looking towards the future and the other looking towards the past (Janus | Myth, Meaning, & Facts | Britannica n.d.). To understand Janus, one had to understand both the face that looked towards the future and the face that looked towards the past. If one understood one face but not the other, one has a misleading and incomplete understanding of the god Janus. The law, according to Habermas, is much the same. There is a face of the law that is moral. The law comes to be according to certain set procedures. Those around you will act a certain way based on this fact. Those around you have a reasonable presumption that you will do the same. Then there is a face of the law that is pragmatic. The state is the institution that makes and upholds the law. The state, by definition, has a monopoly on the use of violence. The fact that a person will face repercussions or other negative consequences if they disobey the law gives them a practical incentive to do as the state commands. Without the first face, the state would be nothing more than a gang or the mafia by a different name. But without the second face, the law would be a

[25] I am grateful to my supervisor Dr. Peter Stone for drawing my attention to the work of Jurgen Habermas. It is his idea to apply Habermas' Janus-faced conception of law to other areas of scholarship such as political science.

code of ethics that lacks the tools necessary to ensure an individual complies with the normative demands which rules make of him.

I argue that a theory of political obligation should be understood in much the same way. In the first instance, a theory needs to explain the relationship which members of a population have to each other, and the obligations generated by that relationship. Just as important, a theory of political obligation must explain the relationship between the state and the citizens it governs. To do this, it must explain why the obligations which exist between members of a population are worthy of enforcement and why a particular actor is the one that gains the right to enforce these obligations. If a theory of political obligation explains one of these relationships but not the other, it has painted a distorted and incomplete picture of the obligation to obey the law. For these reasons, a theory of political obligation should be understood as Janus-faced.

Second Quality

The second quality of a successful theory of political obligation pertains to how the theory treats individuals. A successful theory of political obligation must consider individuals to be free and equal participants in the enterprise of the state. This quality is specific to a liberal theory of political obligation. As the name suggests, liberalism is an ideology built on the concepts of freedom and equality. Jeremy Waldron contends "that liberals are committed to a conception of freedom and of respect for the capacities and the agency of individual men and women" (Waldron 1987, 128). Ronald Dworkin argues that equality is integral to a liberal state. Liberalism: “takes as fundamental that government treat its citizens as equals, and insists on moral neutrality only to the degree that equality requires it” (Dworkin 1985, 205). Dworkin

continues: “[i]t must impose no sacrifice or constraint on any citizen in virtue of an argument that the citizen could not accept without abandoning his sense of his equal worth” (Dworkin 1985, 205). In sum, freedom and equality are two of the fundamental principles of liberalism. A theory that contradicts these principles cannot be considered liberal.

H.L.A. Hart provides a second justification for the first quality of a successful theory of political obligation. According to H.L.A. Hart, “there is at least one natural right, the equal right of all men to be free” (Hart 1955, 175). Hart goes on to explain: “I mean that in the absence of certain special conditions which are consistent with the right being an equal right, any adult human being capable of choice (i) has the right to forbearance on the part of all others from the use of coercion or restraint against him save to hinder coercion or restraint and (2) is at liberty to do (i.e., is under no obligation to abstain from) any action which is not one coercing or restraining or designed to injure other persons” (Hart 1955, 175). Natural rights are rights that every individual holds simply in virtue of their humanity; these rights bind person *qua* person.

Hart argues that the equal right of all men to be free is a natural right because it stems from the characteristics a person has, namely that they are capable of choice, not any voluntary action an individual may take. A theory of political obligation obligates individuals to act in a particular manner. Thus, a theory of political obligation must reflect the fundamental characteristics of the subjects it wishes to bind. Another way to phrase the first quality of a successful theory of political obligation is to say that a liberal theory of political obligation must be compatible with the natural rights of freedom and equality.

Third Quality

The third and final quality of a successful theory of political obligation is the ability to satisfy the particularity requirement. A. John Simmons summarized the particularity requirement in this way:

> Suppose we accepted …that we have an obligation or a duty to support just governments, and that is what our political obligation consists in. And suppose that I am a citizen living under a just government. While it follows that I have an obligation to support my government. it does not follow that there is anything *special* about this obligation. I am equally constrained by the same moral bond to support every other just government. Thus, the obligation in question would not bind me to any particular political authority in the way we want. If political obligation and citizenship are to be related as I have suggested they should be, we need a principle of political obligation which binds the citizen to one *particular* state above all others, namely that state in which he is a citizen. (Simmons 1979, 31–32)

The particularity requirement tracks our common intuitions about the state and how individuals relate to the state in practice. For example, individuals pay taxes to a particular state, not all states. Individuals follow the laws made by a specific government rather than laws made by all governments. In other words, the particularity requirement essentially puts the expectation of the law being a range-limited concept into words.

A central dimension of the problem of political obligation is why a person must obey the commands of someone else in virtue of the position that person holds. By not satisfying the particularity problem, a theory of political obligation only partially solves this problem. It tells an individual why they must obey a person in a particular role, that of President, Prime Minister, and so on; yet, such a theory provides little guidance on which president, prime minister, etc., should be obeyed if multiple exist. Given that we live in a world where multiple states exist, political obligation must explain why an individual should obey one individual or group who holds a particular position but is not required to obey another individual or group in an analogous role. That is what makes solving the particularity problem so important.

John Simmons is undeniably the most prolific advocate of the particularity requirement (Simmons 1979, 31–32, 1996, 250, 2007). Other prominent proponents of particularity include John Horton and Ronald Dworkin (Dworkin 1986, 193; Horton 2010, 204). All three of these scholars conceptualize particularity in terms of a citizen's obligation to obey the laws of their particular state. That is an understandable and reasonable way to approach particularity. A person's citizenship is the reason that the vast majority of individuals obey the laws of one state over the laws of another. Nevertheless, this traditional understanding of particularity does prove somewhat limiting. An individual can be morally required to obey the laws of a state of which he is not a citizen. For example, an American couple that takes a honeymoon in France must obey the laws of France; this fact illustrates the need to refine the existing understanding of particularity.

Instead of citizenship, jurisdiction is a better measure of particularity. A state governs a population but also rules a physical territory. A state's laws apply just as much to its territory as they do its population. Consequently, anyone within the borders of a state has an obligation to obey the laws of that state, regardless of their citizenship. For example, the American citizen must comply with the laws of the United States Government. The French citizen visiting Disney World in Florida must also obey the laws of the United States Government. The Swedish citizen who has lived and worked in New York City for the last twenty years must comply with the laws of the United States. Finally, the German citizen living in Massachusetts while she attends Harvard University must obey the laws of the United States Government. These examples demonstrate that particularity needs to amount to more than just an obligation to obey the laws of the state of which a person is a citizen.

A state could even have jurisdiction beyond citizenship and territory. Consider an American Citizen who never leaves American soil but has money in a Swiss bank account or even owns a rental property in Zurich. Must he comply with the laws of Switzerland? Most would likely intuitively answer yes; the American must comply with Swiss banking laws or comply with a directive from the Swiss government to keep his property up to a specific maintenance standard. In short, whenever a person is within the jurisdiction of a state, he must comply with the laws of that state regardless of whether or not he is a citizen of that state.

Even though particularity amounts to more than an obligation to obey the laws of the state of which they are a citizen, there are still meaningful differences in the above five examples. Those who are residents within the territory of a state seem to have a noticeably different relationship to the state and their fellow residents than others who are only visiting or only keep property within a state. To evaluate these differences and their significance, I will divide the above five examples into three groups. The first group is composed of the American citizen, the Swedish citizen who has lived and worked in New York City for the last twenty years, and the German citizen living in Massachusetts while she attends Harvard University. The second group is comprised of the French citizen visiting Disney World in Florida. The final group consists of the American citizen who never leaves American soil but keeps his money in a Swiss bank or owns property in Switzerland.

I will use several questions to analyze these three groups. First, do the individuals in all three groups have an institutional relationship with the relevant states? That is to ask, do the American, Swedish, German, and French citizens have an institutional relationship with the American state, and does the American in group three have an institutional relationship with the Swiss state. The answer in all five cases is yes. Every individual in the above

examples must obey the laws of the relevant states regardless of their citizenship. For instance, the Swedish person working and living in New York cannot claim she does not have an obligation to pay taxes because she is not an American citizen. Similarly, the German student studying at Harvard cannot claim she does not have an obligation to obey Massachusetts traffic laws because she is not an American citizen. To do so would demonstrate contempt for the law and undermine its effectiveness. If an individual has an obligation to obey the law, they must have an institutional relationship with the actor that makes and enforces the law.

The next question is: do the individuals in all three groups have an interpersonal relationship with the other members of the relevant populations? In other words, do the American, Swedish, German, and French citizens have a relationship with members of the American population? Or does the American in group three have an interpersonal relationship with the members of the Swiss population? The answer to this question is where clear differences between the three groups emerge. The answer to the above question for everyone in group one is yes. The American, Swedish, and German citizens all have a morally significant relationship with other members of the American population. This relationship is either in virtue of their citizenship or their residence in American territory. I take the American relating to his fellow citizens in a morally significant way to be uncontroversial.

Although they lack the formal status, the foreigners who are residents within a territory seem functionally the same thing as citizens. The day-to-day life of a permanent resident is no different than that of a citizen. Both obey traffic laws; both pay taxes on their earnings; both qualify to use social support programs such as unemployment insurance, both ostensibly send their children to public school. Finally, permanent residents can form friendships and meaningful relationships with those in their communities regardless of citizenship. In short,

the lack of a formal status like citizenship does not inhibit an individual from being a member of a community. If an individual is a member of a population, it seems reasonable that they would be a party to any morally significant relationship between members of a population.

Consider another foreigner, the French citizen on vacation in Disney World. The status of the French citizen is a bit less obvious than the cases of the residents above. A vacation is much shorter than residencies in a territory. Yet, the French citizen is still in American territory; she obeys traffic laws during her visit, pays sales tax on all of the goods she buys, and ostensibly could use a local fire department in the case of an emergency during her visit. In other words, the French citizen on vacation appears to have similar access to state services and similar obligations compared to the permanent residents during their time within a state's territory. So, it seems reasonable to say that the vacationing foreigner has a relationship with members of a population during their time in the state's territory, similar to that of a permanent resident. The length of time one is within a territory does not seem to be of the greatest importance, morally speaking. Time is not what creates a morally significant relationship.

The American citizen who owns property in Switzerland but never steps foot on Swiss soil is different from the other four foreigners above in two morally relevant ways. First, he does not seem to be a part of the Swiss population in the way that the Swed working in New York is a part of the American population. He never interacts with the members of the Swiss community in any regular way and never uses any state services within Swiss territory. The property-owning American citizen who never enters Swiss territory, of course, would not use roads in Switzerland or call a Swiss fire department in an emergency. Second, the property-owning American citizen does not seem to have a general obligation to obey the laws of Switzerland; he is under no obligation to obey Swiss traffic laws or Swiss education and

welfare laws. The only laws which he is morally required to obey are the laws that relate to the property he owns in Switzerland; if he keeps money in a Swiss bank, he must obey Swiss banking laws; if he owns a rental property in Zurich, he must obey with Swiss building laws and rental codes. In short, the property-owning American seems to be under a limited moral requirement to obey Swiss political institutions, yet this moral requirement falls short of political obligation.

In summation, the particularity requirement means that an individual is only morally required to obey the laws of a state if he is within the jurisdiction of the state. An individual can be within the jurisdiction of a state if he is a citizen of that state, a non-citizen within the territory of that state, or a non-citizen who has an interest, particularly a financial interest within a state's territory. Citizens and non-citizens within the territory of a state have a morally significant relationship to each other and can be said to be under a general moral requirement to obey the laws of a state that is characteristic of political obligation. The non-citizen who maintains a financial interest in a state without physically being present must comply with the relevant directives from a state but lacks a relationship with the members of the population of the foreign state and the generality that is characteristic of political obligation.

Conclusion

At this point, the distinction between characteristics and qualities of political obligation may seem pedantic, meaningless, merely semantic. However, there is a subtle but meaningful difference between the characteristics of political obligation and the qualities of a successful theory of political obligation. Characteristics are what define political obligation. If the obligation to obey the law were not general or universal, it would not be a political obligation.

Instead, it would be something a bit less comprehensive, such as a religious obligation. The qualities of a successful theory of political obligation, on the other hand, are necessary conditions for a theory of political obligation to satisfy, given the world that currently exists.

Consider the three qualities which this chapter evaluated above. The state is a dominant and virtually inescapable institution in the modern world. Yet, one could imagine a primitive tribal society that was acephalous. In this instance, there is no governing institution as such. There is only a population. In this case, there is only one relationship to explain, namely the relationship between members of a population. A primitive acephalous society would likely still have laws or rules that governed how the society functioned and how each member of the population related to the others. However, there would not be an institution or state to make these rules. Instead, they would be made or set by the members of a population themselves. Despite the lack of a state or formal institution making laws or issuing directives, all of the individuals who live in a primitive acephalous society could conceivably have an obligation to obey all of the rules of that society. It is just a reality of the modern world that acephalous societies are extremely rare, if not non-existent. In modern society, a formal governing institution is near inescapable, and a successful theory of political obligation must account for this fact. Secondly, as this chapter previously argued, there are theories of political obligation that are not liberal. Such theories might not necessarily adhere to liberal values such as equality and freedom. Liberalism is the dominant ideology in the western world and the one to which this dissertation aims to contribute. Finally, although the world is comprised of dozens of different states, that need not be the case. One could imagine a single world state where all people are governed by a single institution; that would erase the need for the particularity requirement. Granted, none of this is very likely to happen; I point it out to highlight the

difference between the qualities of a successful theory of political obligation and the characteristics of political obligation.

Fair Play Theory

The second half of this chapter will seek to evaluate the fair play theory of political obligation using the metric for success articulated in the first half of the chapter. The purpose of this evaluation is to demonstrate that, in the case of the Westphalian state, fair play theory explains an obligation to obey the law. At the outset of this analysis, there needs to be a distinction between the benefits theory of political obligation and the fair play theory of political obligation. The two theories are related but ultimately distinct from each other. The benefits theory of political obligation grounds an obligation to obey the law in that the state provides benefits to its citizens (Wellman 2001, 736–37). The fair play theory of political obligation, on the other hand, is based on the principle of fair play. The fact that the state provides benefits to its citizens is relevant to fair play theory, which is likely why it is tempting to confuse and conflate the two. However, the mere fact that a person has received a benefit is not enough to place them under an obligation to the benefactor.

Consider the practice of gift-giving; when an individual receives a gift, they receive a benefit. In accepting a gift, a person likely incurs an obligation to show gratitude to the gift giver. However, it is unclear that any obligation generated by gift-giving goes beyond one of gratitude. Strictly speaking, gift-giving is a unilateral practice that is motivated by benevolence and charity rather than an expectation of reciprocity. For example, if John gives Sarah a gift to commemorate her retirement, John has no reasonable expectation of receiving a gift from

Sarah in return when it comes time for him to retire.[26] Social conventions may make certain instances of gift-giving reciprocal, for example, friends exchanging birthday gifts. If a friend gives me a gift on my birthday, the expectation is that I will also give her a gift when her birthday comes. If I repeatedly accept a birthday gift and do not reciprocate, I have not only been incredibly rude but, *ceteris paribus*, I have done something wrong. But in this case, it is the social convention, not the act of giving a gift as such, that generates a reciprocal obligation. In a benefits theory of political obligation, the mere receipt of a benefit generates an obligation to obey the law. In the fair play theory of political obligation, the concept of reciprocity is what generates an obligation to obey the law. This factor differentiates the fair play theory of political obligation from a benefits theory of political obligation. Reciprocity is integral to fair play theory and the concept that allows the theory to possess the first quality of a successful theory of political obligation.

Foundations of Fair Play Theory

The fair play theory of political obligation is based on the principle of fair play.[27] According to HLA Hart, the principle of fair play states that:

> [W]hen a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission. The rules may provide that officials should have authority to enforce obedience and make further rules, and this will create a structure of legal rights and duties, but the moral

[26] I am grateful to Dr. Adina Preda for her suggestion to include this example in this chapter.

[27] In the existing literature, there are two different names for the principle in question. Some, such as George Klosko, call it "the principle of fairness" (Klosko 2003). Others, namely John Rawls, call it "the principle of fair play" (Rawls 2001). The difference between the two phrases is purely semantic. For the sake of consistency, throughout this dissertation, I will use the phrases 'fair play theory' and 'principle of fair play' to describe the relevant theory of political obligation and the principle on which that theory is based, respectively.

> obligation to obey the rules in such circumstances is *due to* [emphasis in the original] the co-operating members of the society, and they have the correlative moral right to obedience. (Hart 1955, 185)

There are two ways to understand the principle of fair play. The first is as a compliance-justifying principle, and the second is as a content specifying principle. When the principle of fair play is used as a compliance-justifying principle, it "aims to account for why we have obligations to undertake our just or fair share of burdens, in the context of institutions or practices" (Olsaretti 2020, 5). On the other hand, when the principle of fair play is used as a content-specifying principle, it settles "the question of what a just distribution of burdens and benefits is" and determines "what constitutes the fair share of the burden that individuals are expected to bear" (Olsaretti 2020, 8).

John Rawls takes the principle of fair play articulated by Hart and formulates it into a theory of political obligation. In his essay "Legal Obligation and the Duty of Fair Play,"[28] first published in 1964, Rawls describes the fair play theory of political obligation in this way:

> Suppose there is a mutually beneficial and just scheme of social cooperation, and that the advantages it yields can only be obtained if everyone, or nearly everyone, cooperates. Suppose further that cooperation requires a certain sacrifice from each person, or at least involves a certain restriction of his liberty. Suppose finally that the benefits produced by cooperation are, up to a certain point, free: that is, the scheme of cooperation is unstable in the scene that if any one person knows that all (or nearly all|) of the others will continue to do their part, he will still be able to share a gain from the scheme even if he does not do his part. Under these conditions a person who has accepted the benefits of the scheme is bound by a duty of fair play to do his part and not to take advantage of the free benefits by not cooperating. (Rawls 2001, 122)

[28] "Legal Obligation and the Duty of Fair Play" is one of Rawls' earlier works and consequently was published before *A Theory of Justice*. Several of Rawls' arguments in the legal obligation paper are at odds with arguments he made in *A Theory of Justice*. Rawls does largely forsake fair play as a theory of political obligation in *A Theory of Justice* (though he does not drop concerns of fairness entirely). I am not using the "Legal Obligation" paper to articulate Rawls' views as such, but instead to illustrate different ways to conceptualize fair play theory.

In the context of the fair play theory of political obligation, the principle of fair play is primarily playing a compliance justifying role. In other words, the principle is explaining the reasons why the obligation to obey the law exists. The principle of fair play explains the origins of political obligation. The principle of fair play also plays a content specifying role in the fair play theory of political obligation. That is to say that fair play theory explains the origin of an obligation to obey the law and the substance of what that law requires.

For the purposes of this chapter, I am going to take John Rawls to be providing an accurate summary of the fair play theory of political obligation. From this summary alone, it is clear how fair play theory can satisfy the particularity requirement. The essence of what generates an obligation of fair play is that you have received a benefit as a result of the sacrifice of a particular person or group. X only has an obligation of fair play to Y if X benefited from the sacrifice made by Y. In a political context, the members of a particular polity benefit from the sacrifices of their fellow members. There may be any number of cooperative schemes where sacrifices occur; yet, an individual does not benefit from the sacrifices made by members of other polities in the way that he benefits from sacrifices made by members of his own polity. This fact limits those to whom an individual has an obligation of fair play and thus allows fair play theory to possess the third quality of a successful theory of political obligation. Fair play theory is not without its critics. This chapter will now articulate an objection to the foundation of fair play theory before developing the theory in response to this objection.

The Radio Station Objection

Robert Nozick articulates perhaps one of the most well-known objections to fair play theory. The objection centers around the example of a community radio station.[29] This radio station primarily does two things, it plays pleasant music or entertainment programs for the residents to hear and is used to alert the town residents of any danger that may arise, such as a natural disaster or armed intruder into the town. A group of volunteers operates the radio station. Nozick stipulates that there are 365 people in town and each resident takes turns running the station for one day a year (Nozick 2013, 93).

Nozick then poses the following question: if a resident of the town has not consented to the radio station, is he still required to run the station when his assigned day comes? Nozick argues that according to fair play theory, the answer is yes. The residents of the town have benefited from listening to the programming throughout the year and being informed by the entertainment system of any emergencies. Nozick argues that according to a fair play theory of political obligation, this is enough to generate an obligation for citizens to do their share. Nozick disagrees with the conclusions of fair play theory, arguing "[y]ou may not decide to give me something, for example, a book, and then grab money from me to pay for it, even if I have nothing better to spend my money on" (Nozick 2013, 95).

The example of a public entertainment system is highly flawed, for listeners voluntarily choose to accept the benefits provided to them by such a system.[30] If an individual does not want to listen to the programming, she can turn her radio off. By leaving the radio on and

[29] Nozick initially uses the term "public address system" (Nozick 2013, 93). Subsequently, he seems to equate a public address system with a radio (Nozick 2013, 93–94). Others in the secondary literature have also likened a public address system to a radio, see (Mapel 2005). A public address system and a radio are functionally the same in most respects. Thus, throughout my analysis of Nozick, I will use the terms interchangeably.

[30] Nozick himself seems to concede this point (Nozick 2013, 94).

listening to the programming, the individual tacitly consents to the benefit. This tacit consent meets the threshold set by A. John Simmons for being legitimate.[31] The benefit of the public address system is not thrust upon an individual, as Nozick suggests. Consequently, the example of a public address system is unconvincing and does not further Nozick's argument.

Instead, Nozick makes a stronger argument with the example of a street sweeper. Imagine, he argues, that instead of a radio station, your neighbors decide to start a scheme whereby "each day a different person on your street sweeps the entire street." Must you also take your turn at sweeping the street when your assigned day comes? What if you do not care about the cleanliness of the street? How is an individual meant to decline the benefit provided by the street sweeper? Must you, Nozick ponders, "imagine dirt as you traverse the street, so as not to benefit as a free rider?" (Nozick 2013, 94). Here Nozick's agreement is on much stronger ground because it is not obvious that the individual has tacitly consented to receive the benefit. In this case, the benefit seems much more imposed rather than accepted by the person.

The essence of Nozick's objection is a denial that fair play theory creates a reciprocal obligation. In all of Nozick's examples, the benefits and burdens of a good or scheme are imposed on an individual unilaterally. Nozick seemingly assumes that the essence of fair play theory is that receiving a benefit is enough to generate an obligation for an individual to behave

[31] Simmons argues that tacit consent must meet five conditions to be legitimate. First, "[t]he situation must be such that it is perfectly clear that consent is appropriate and that the individual is aware of this." Second, "[t]here must be a definite period of reasonable duration when objections or expressions of dissent are invited or clearly appropriate, and the acceptable means of expressing this dissent must be understood by or made known to the potential consenter." Third, "[t]he point at which expressions of dissent are no longer allowable must be made clear in some way to the potential consenter." Fourth, "[t]he means acceptable for indicating dissent must be reasonable and reasonably easily performed." Fifth, "[t]he consequences of dissent cannot be extremely detrimental to the potential consenter" (Simmons 1976, 279–80). For a more detailed analysis of these conditions, see chapter two of this dissertation.

in a particular way. That, at least, is the position he argues against in *Anarchy, State, and Utopia*. However, Nozick's characterization of fair play theory seems to equate it with a benefits theory of political obligation. According to both benefits theory and Nozick's understanding of fair play theory allow benefit, and thus obligations, to be imposed on an individual unilaterally. The argument Nozick is making is tantamount to a denial that fair play theory treats individuals as free and equal participants in an enterprise. If Nozick is correct, then fair play theory cannot possess the second quality of a successful theory of political obligation.

The common intuition of most people is likely to agree with Nozick; a person cannot simply place a book in my hand and subsequently demand compensation. However, that intuition does not provide a reason to reject fair play theory. The reason is that all of the goods which Nozick uses in his examples are either excludable or trivial. There is likely to be some benefit derived from having a public address system or street sweeping scheme. But in both cases, the benefit is one that a person could reasonably not want or decline. An individual might prefer listening to music rather than reading a book or might choose to forgo a clean street in the pursuit of other goods. Consider the young professional who lives in a dirty and rundown neighborhood because the rent is cheap, and she is focusing on pursuing her career. Alternatively, a person might prefer to spend his money traveling the world instead of paying rent in a cleaner and more expensive part of town.

In sum, Nozick’s objection demonstrates that there may be a flaw in the principle of fairness, as stated by Hart. However, this flaw is by no means a reason to reject the principle of fairness altogether. Instead, a more nuanced conception of the nature of the goods provided by a fair play scheme ought to be developed. If the nature of the goods in question were altered,

a person's intuitions to agree with Nozick's conclusions likely fade. If the goods that the state provides are non-trivial and cannot be declined, an individual cannot reasonably say that the state is unilaterally imposing an unwanted benefit on them, as Nozick suggests. The next section of this chapter will use the work of George Klosko to characterize the state as a scheme that provides nontrivial goods. This conception will serve two purposes. First, it will explain how individual members of a population acquire obligations to each other. Second, it will illustrate how fair play theory is compatible with the natural rights of freedom and equality and thus possesses the second quality of a successful theory of political obligation.

Presumptive Public Goods

George Klosko bases his version of fair play theory on the state's role in the provision of presumptive public goods. As should be clear shortly, these goods explain the first relationship necessary to a theory of political obligation. That is to say: presumptive public goods explain how individual members of a population acquire an obligation to each other. Presumptive public goods have two fundamental characteristics. First, presumptive public goods are presumptively beneficial. Second, these goods must be non-excludable. A good must have both characteristics to be a presumptive public good. If a presumptive public good were to have one characteristic but not the other, Klosko's version of fair play theory would still be vulnerable to Nozick's radio station objection. Both presumptive benefit and non-excludability are integral parts of what makes Klosko's version of fair play theory stronger than the initial versions of the theory to which Nozick objects.

Presumptively beneficial goods resemble what Rawls calls primary goods; they are goods that are so fundamental to human life that every person can be presumed to want and

desire them, regardless of what else they might want. Klosko characterizes these goods as either "necessary for a minimally acceptable life" or "indispensable to the welfare of the community" (Klosko 1987b, 355). Examples of presumptively beneficial goods include clean air, education, the rule of law, and the social basis of self-respect, amongst others (Klosko 1987b, 354; Rawls 1999a, 62). Presumptively beneficial goods can be excludable. Consequently, not all presumptively beneficial goods are presumptive public goods. For example, in the list above, the good of education is excludable and thus not a presumptive public good.

To illustrate the second characteristic of a presumptive public good, Klosko uses a distinction in the existing literature on public goods. According to this distinction, public goods can either be excludable or non-excludable. Excludable goods are ones that "can be provided to some members of a given community while being denied to specified others" (Klosko 1987a, 242). Non-excludable goods are goods that cannot be denied or withheld from anyone (Klosko 1987a, 242). If you provide an excludable good to one person, then you must provide it to everyone.

Klosko concedes that there are exceptionally few goods that literally cannot be withheld from specified individuals. However, there are certain goods that one could theoretically withhold from some individuals but doing so would be prohibitively inconvenient. In this case, Klosko classifies the good in question as a non-excludable good (Klosko 1987a, 242). Klosko gives the example of a public road to illustrate his point.[32] It would be possible to allow only those who pay their taxes in full to use a public road. A state

[32] Although this is the example Klosko uses, it is now a bit out of date. Tolls are commonplace in most European and North American countries. Yet, the traffic backups which Klosko seems to fear have not come to fruition.

could set up a roadblock to check the identity of every person in a vehicle and ensure that their yearly tax bill is paid in full before they drive onto the road. However, this would be extremely tedious and require the state to expend many resources. That is not to mention the traffic backups that are likely to result from checking every vehicle at rush hour.[33] Similarly, you could theoretically deny a particular person clean air by locking them in a cell and pumping only polluted air into the cell. Of course, such a plot is so elaborate and diabolical no state is very likely to carry through with it. These barriers, Klosko argues, make providing access to roads, infrastructure, and clean air to some but not others possible but too inconvenient to do in practice.

Klosko argues that the principle of fair play can apply to schemes that provide both excludable and non-excludable goods. In schemes that provide excludable goods, the participants voluntarily accept the benefits provided by the goods. That makes applying the principle of fair play to such schemes intuitive and uncontroversial for Klosko. Klosko uses the example of a neighborhood party to illustrate this. Suppose a group of neighbors decided to have a potluck party where everyone brings a dish for the others to share. In such a scheme, you may only eat the food provided by others if you have provided a dish to share. To do otherwise would be unfair (Klosko 1987b, 354). In other words, the fact that an individual decides not to incur the burden associated with a particular benefit can be understood as a tacit dissent to receiving that benefit and serve as justification for withholding that benefit.

Non-excludable goods, of course, cannot be understood in voluntary terms. Even if an individual were to refuse a particular burden, that act of refusal has little meaning or significance. An individual will still receive the benefit even when they refuse the burden. For

[33] Klosko never explicitly elaborates on why denying certain people access to a road would be prohibitively inconvenient. This analysis is my best guess as to what he has in mind.

Klosko, it does not matter whether an individual has an opportunity to voluntarily accept a non-excludable good, as long as the good has three qualities. First, the goods must be “worth the recipients' effort in providing them.” Second, the goods must be "presumptively beneficial." And finally, the goods must be “have benefits and burdens that are fairly distributed” (Klosko 1987a, 246).

Presumptive public goods must be both non-excludable and presumptively beneficial. Non-excludability is what distinguishes presumptive public goods from primary goods. One could imagine goods that are presumptively beneficial yet excludable. In addition to the good of education mentioned above, healthcare is another example of a presumptively beneficial good that is excludable. It may seem peculiar to limit the definition of presumptive public goods in this way. If these goods are as fundamental and indispensable as Klosko claims, then why is that fact alone not enough to generate obligations? The answer stems from the fact that the value of reciprocity, rather than mere receipt of benefit, characterizes the fair play theory of political obligation.

George Klosko has undoubtedly done more than any other scholar to develop and refine fair play theory. However, by arguing that the principle of fair play applies to schemes that provide both excludable and non-excludable goods, Klosko makes what seems to be a blatantly obvious mistake. In Klosko’s words: “[t]he principle of fairness works rather easily in cases of excludable goods. If A’s neighborhood sets up a potluck supper at which everyone who attends brings a dish, if A attends, he is obligated to bring a dish” (Klosko 1987b, 354). I do not intend to suggest that Klosko is incorrect when he says that non-compliance with the rules of an excludable scheme is unfair. If you do not bring a dish to share but nevertheless eat the food provided, you have acted unfairly to those who complied and brought a dish to share. Your

non-compliance, in this case, is morally wrong, and thus it is permissible to deny you the benefits derived from the scheme.

The reason that benefits can be withheld from you if you do not comply with an excludable goods scheme is that agreeing to attend a neighborhood potluck party is akin to a promise that you will bring a dish to share with the other attendees. That was what was expected of you when you agreed to attend the potluck party. Whether it should be called a promise, as such, or not, deciding to attend a party is a voluntary decision. This voluntary decision is generating the obligation each attendee has to others. In short, the principle of fair play does not justify compliance in an excludable goods scheme. The voluntary decision to attend a potluck party is the origin of the obligation, not fair play. At best, the principle plays a content specifying role in an excludable goods scheme. Presumably, at a potluck party, every person should bring roughly the same amount of food. If one person contributes a bag of chips and another contributes a full dish of pasta, the person who contributes the chips has acted wrongly. The principle of fair play accounts for why it would be wrong not to bring one's fair share of food to a potluck party but not why a person has an obligation to contribute to such a scheme in the first place. Admittedly, the explicit distinction between compliance justification and context specification is incredibly new, having been made in 2020 (Olsaretti 2020). Thus, it is impossible to know whether or not Klosko buys into this distinction or whether he believes the principle of fair play is justifying compliance in an excludable goods scheme. If he does believe the latter, he is mistaken. Fair play only justifies compliance when the good in question cannot be refused.

Presumptive public goods are different from other goods in both degree and kind. Presumptive benefit makes a presumptive public good different in degree from other goods.

The fact that a good is presumptively beneficial makes a good more fundamental than other goods. Non-excludability makes a presumptive public good different in kind from other goods. Put a different way: a presumptive public good does not function in the same way as other goods; it cannot be provided in the same way as other goods precisely because it is non-excludable. Non-excludability changes how an actor can provide a good, and this, in turn, changes how scholars must treat ideas like freedom and equality in relation to these goods.

Non-excludable goods are such that three scenarios are possible. First, no one sacrifices, and no non-excludable goods can be provided. Second, everyone in a cooperative scheme similarly sacrifices, and non-excludable goods can be provided. Third, some people in a cooperative scheme sacrifice and others do not, and non-excludable goods can still be provided. Of these three options, the second is the one that should be preferred because it is the only reciprocal solution in which non-excludable goods are provided.

These three scenarios illustrate a flaw in Nozick's thinking. Nozick is concerned about fair play theory creating a unilateral arrangement by allowing a party to bestow a good on another party (regardless of that party's wishes). Nozick makes an implicit assumption that such a unilateral arrangement is morally problematic because it treats one party as unequal to the other party. However, by being subject to the provision of certain goods and not complying with the accompanying obligations, an individual creates an unequal arrangement, just in a different way. Because there is no choice as to whether or not a good is received or provided, there is no inequality created by its provision. Either everyone receives the good, or no one receives it. The inequality arises if a person selects not to comply with the obligations necessary to provide a particular good.

Because presumptive public goods are different in kind from other goods, we cannot analyze freedom in relation to these goods in the same way we would analyze it in relation to other goods. The natural right to freedom allows someone to decide if he does or does not want certain goods for himself. However, the natural right to freedom does not allow a person to choose if other individuals do or do not want certain goods for themselves. You can refuse a particular good for yourself, but you cannot withhold that good from another person. The burden is on a person who would refuse a presumptive public good to make their stance known (Klosko 2014). A person who claims that he does not want presumptive public goods is either grossly irrational, given how fundamental these goods are to human well-being, or the person dishonest. Neither of which is sufficient reason to release them from their obligations. That justifies the provision of presumptive public goods.

In summation, Klosko's conception of presumptive public goods illustrates how individual members of a population come to have obligations to each other. Presumptive public goods are the goods that are necessary for a minimally satisfactory human existence. Because a presumptive public good is non-excludable individual members of a population cannot choose whether or not they wish to receive the good. These goods are too fundamentally important to go unprovided. Thus, the only way to ensure that individuals remain equal to one another is to demand and ensure that all members of society make similar sacrifices to allow for the provision of presumptive public goods. Presumptive public goods show that fair play theory is not a matter of thrusting an unwanted benefit on an individual. Instead, it is about creating a society where the most fundamental individual and collective needs are met and where equality is preserved to the greatest extent possible.

While George Klosko's account of presumptive public goods does enable fair play theory to refute Nozicks' radio station objection successfully, this chapter must engage with two other well-known objections leveled against fair play theory. These objections are the voluntariness objection and the scale objection. These objections either mischaracterize fair play theory or neglect meaningful aspects of the theory. Consequently, this chapter will reject both objections.

The Voluntariness Objection

John Simmons bases the voluntariness objection on a distinction between receiving a good and accepting a good. Simmons argues that an obligation to be generated a benefit must be accepted and not merely received. For goods to be accepted, there must be a meaningful opportunity to refuse. In that the state provides goods that no one can withhold from someone else, there is no meaningful opportunity to refuse these goods. Thus, at least at first, presumptive public goods appear to be merely received rather than accepted. However, the objection is a bit more complex than it seems at first glance. Simmons conceives of a way in which non-excludable goods can be accepted rather than received.[34]

[34] Simmons never uses the terms excludable good and non-excludable good. Instead, he refers to goods as open or readily available goods. An individual can only avoid an open good by changing their lifestyle. Alternatively, a person can avoid a readily available good without facing any inconvenience. Simmons uses different types of police protection to illustrate this distinction: "the benefits which I receive from...police officers who patrol the streets, capture criminals, and eliminate potential threats to my safety are benefits which are 'open.' They can be avoided only be leaving the area which the police force protects. But I may also request special protection by the police, if I fear for my life, say, or if I want my house to be watched while I'm away. These benefits are 'readily available'" (Simmons 1979, 130). Roughly speaking, an open good is analogous to a non-excludable good, whereas a readily available good is analogous to an excludable good. In this chapter, I will follow Richard Dagger in treating this as a mere terminological difference (R. Dagger and Lefkowitz 2014).

According to Simmon, an individual can accept the benefit provided by a non-excludable good if two things are true. First, the individual must judge the good to be worth the cost of receiving it. Second, the individual must know that the good and its benefits are provided via a cooperative scheme (Simmons 1979, 132). If both of these things are true and an individual continues to knowingly and willingly receive a good, they cannot claim that the good has been forced or thrust upon them as such. The problem for Simmons is that he believes most people view the state in contractarian terms rather than as a cooperative scheme. In his words: "even in democratic political communities, these benefits are commonly regarded as purchased (with taxes) from a central authority rather than as accepted from the cooperative efforts of our fellow citizens" (Simmons 1979, 139). Thus, the non-excludable goods that the state provides are received as opposed to accepted. The mere receipt of goods and benefits is not enough to generate obligation for Simmons.

There are two reasons to reject Simmons' objection. First, in demanding that goods be accepted instead of received, Simmons misunderstands the nature of fair play theory. A defining characteristic of the state is that it provides non-excludable rather than excludable goods. Fair play theory has no compliance justifying role to play in schemes that provide only excludable goods. The provision of excludable goods is, in a meaningful sense, voluntary. The precise reason that fair play theory is relevant to an analysis of the state is that the state is not a voluntary enterprise. By insisting that goods be accepted, not merely received, Simmons, is stripping fair play theory of its distinctiveness as a theory of political obligation and transforming it into nothing more than a repackaged version of tacit consent. Requiring the acceptance of a good for there to be an obligation is too stringent and unrealistic.

Even if Simmons is correct that accepting a benefit is necessary to generate obligation, there is still reason to reject his objection. Fair play theory can satisfy the conditions set out by Simmons for the acceptance of non-excludable goods. First, Simmons is wrong about how individuals view the state. Most people see the state as a cooperative enterprise, not a contractarian one, as Simmons suggests. Seeing one's tax dollars as purchasing the benefits provided by the state is a convenient and intuitive analogy. However, this comparison is a misleading one. Individuals do not view paying their taxes as an isolated transaction. In other words, individuals do not pay taxes only to purchase a service from the state for themselves. An individual pays taxes with the expectation that others around him, his fellow citizens, do the same. For example, if an individual were to pay taxes as a means for purchasing the use of a public road, the assumption, when he sees another person driving on the road, is that they have also paid their taxes. For, why should a person receive a similar benefit to me unless they have also incurred a similar burden or cost? If an individual's fellow citizens were not paying taxes yet still received the same goods and services as the individual who was, there would be little incentive to continue paying taxes. The rate of compliance is likely to diminish once an individual knows that his fellow citizens are receiving benefits without paying their taxes. That demonstrates that individuals do view the state as a cooperative enterprise.

It is also the case that individuals expect their fellow citizens to incur a burden even if they do not use a good. For example, all citizens must pay taxes, even if they do not use certain goods like a public road. If a citizen does otherwise, they will likely find themselves charged with a crime like tax evasion. In a purely contractarian world, this would be senseless. Individuals are not required to purchase goods they do not need and a not required to pay for

services they do not use. Contracts or the purchase of goods do not work this way. Thus, Simmons is mistaken to argue that the state is a contractarian enterprise.

Simmons also stipulates that an individual must view a good or benefit as worth the cost of its provision. However, he provides no metric by which an individual might judge if the provision of a good or benefit is worth their effort. There is also no realistic way to ask every citizen if the relevant goods are, in fact, worth their sacrifice. Asking such a question would be pointless, as even if some citizens do not judge some or all goods to be worth their sacrifice, they will receive the goods anyway. Yet, if presumptive public goods are indispensable to the welfare of a community, as Klosko claims, then it seems reasonable to assume that it must be worth the effort required to provide them. If a good that is integral to the welfare of a community is not worth it, it is hard to see what other would be worth the cost of provision. Thus, by Simmons' own metric non-excludable goods appear to be accepted rather than merely received. Consequently, this chapter can reject the voluntariness objection.

The Scale Objection

Does the compliance or non-compliance of a single person make a difference? That is the essential question M.B.E. Smith asks in posing the scale objection. Smith does not dispute that fair play theory can create obligations, but only in schemes of a particular size. He argues that "the obligation of fair play governs a man's actions only when some benefit or harm turns on whether he obeys" (Smith 1973, 957). His objection to fair play theory has two contentions. First, for a fair play scheme to generate obligations, each member must play a significant part. The situation must be such that if one member of the scheme does not do their part, the scheme will break down. Second, in the context of the modern state, one citizen is insignificant.

Therefore, fair play theory cannot generate an obligation to obey the law because the state is too large-scale a scheme. If one person were to consistently break the law or infringe on a presumptive public good by polluting otherwise clean air, for example, it would make no substantive difference. The state would continue operating as it otherwise would, taxing citizens, protecting borders, etc. In addition, the good of clean air is hardly going to perish because one person pollutes.

Smith is likely correct that the state will not perish if one person disobeys the law. However, there are two reasons to reject the scale objection. First, Smith characterizes fair play theory as a mere numbers game. In so doing, he misunderstands the mechanism which creates an obligation in a fair play scheme. Second, even if the basis of the scale objection is correct, Smith emphasizes the wrong level of compliance. It is the integrity of the scheme, not the impact of a single individual, which matters in a fair play scheme.

How individuals relate to each other in a cooperative scheme is what generates obligations. Even if an individual's non-compliance does not cause a scheme to break down, an individual has still acted in a morally impermissible way by not complying. Non-compliance with the demands of a scheme creates a unilateral arrangement that takes advantage of others. A unilateral arrangement is incompatible with equality. Equality is the bedrock of the principle of fair play. When an individual receives a benefit without assuming a burden, he has taken advantage of the sacrifice of another person. When this occurs, the parties involve become unequal to each other. That is something that Smith does not deny and seemingly makes non-compliance morally wrong regardless of whether a scheme breaks down as a result.

If a scheme breaking down was the only factor that made non-compliance morally wrong, then fair play theory would become the charter of a lawbreaker. The reason for this is

that any instance of non-compliance or rule-breaking would be permissible if the scheme would not break down as a result. If a basketball player could not dribble the ball for ten seconds and the game would still go on, this would be permissible. An individual could steal goods for a large retailer as long as that retail could rename afloat. But in either case, the actions are morally impermissible because of how those acts treated the others playing a game of basketball or shopping at the retailer: unfairly.

The scale objection is in large part practical; Smith does not argue that the principle of fair play is normatively flawed or reaches unsound conclusions. Instead, he argues that, compared to other cooperative schemes, the state can endure higher levels of non-compliance before it breaks down. Consequently, the compliance (or non-compliance) of a single individual makes little if any difference. This fact alone is not surprising. Yet focusing on the role of a single individual is misleading. It is not necessarily the actions of a single individual that generate obligation, but rather the point at which the scheme will cease to function effectively. The threshold at which this occurs can be the compliance of a single individual, yet this is not necessarily the case.

Smith is correct; if no one or very few people complied with a fair play scheme, it would fall apart. However, in that Smith focuses on the individual, his objection to fair play theory is misguided in an important way. In objecting to the practicality of fair play theory, the focus should not be whether the participation of one person makes a difference. Instead, scholars ought to base any numerical or practical consideration on the level of compliance necessary for the scheme to remain viable. As Smith points out, in smaller schemes, it may be that a single person's compliance, or lack thereof, may make the difference between a scheme being viable or non-viable. However, in the modern state, a single individual makes virtually

no difference to a scheme's viability. However, it is also unlikely that only one person will not comply with the laws of a state. Instead, it is more likely that large groups of people will not comply. In this sense, Smith is entirely unrealistic to demand that a single individual make a difference in the viability of a fair play scheme.

Presumptive public goods are by nature non-excludable. That means that in a practical sense, there is no incentive to comply. Whether a person complies or not, he cannot be denied or deprived of a non-excludable good. Therefore, it is not unreasonable to think that a fair play scheme as large as one the size of the modern state will break down due to non-compliance, even when singular acts of non-compliance may appear (and, in fact, be) insignificant. Thus, Smith's objection fails because it presents a practical critique of fair play theory, which is unrealistic. The focus of his objection should be on the level of compliance necessary for the scheme to remain viable and not on the difference a single individual can make. Given the lack of practical incentives to comply with the burdens associated with the provision of presumptive public goods, there is a reason to conclude that widespread non-compliance is at least possible, if not likely, in the case of presumptive public goods.

Enforcement

Thus far, this chapter has examined how fair play theory generates obligation, but not the right to enforce an obligation. In other words, this chapter has analyzed how fair play theory creates a relationship between individual members of a population. However, this alone is only half the story. Any theory of political obligation needs to explain the institutional relationship between the state and a population. In the context of fair play theory, the state exists to enforce the obligations between members of a population. The state ensures that

individuals make the sacrifices necessary to provide presumptive public goods and stop individuals from freeriding.

Before examining the institutional relationship between a state and a population, there is one preliminary matter to address. Some obligations exist yet cannot be enforced. For example, two friends may have an obligation to each other, but these obligations enforceable in a meaningful way. My friend cannot coerce me into supporting her in a time of need. Enforceable obligations are usually understood to be enforceable only by particular actors. For example, the obligation of a Roman Catholic to attend mass on Sundays and other Holy Days, if it is enforceable at all, is only enforceable by other Roman Catholics. Consequently, to explain the institutional relationship of political obligation, this section of the chapter must explain why are obligations that are generated by fair play theory the kind of obligations which can be enforced coercively. The chapter must also explain why fair play obligations are enforced by a particular actor- namely, the state.

In one sense, the importance of the goods provided by the state and the natural rights which fair play theory seeks to foster and protect, namely equality, are enough to justify coercive enforcement of the demands of fair play theory. A scheme that provides presumptively beneficial goods, by definition, provides goods that are indispensable to the welfare of a community or so fundamental to a minimally satisfactory human life that all persons are presumed to want them regardless of what else they want. A scheme defined by fair play is dedicated to fostering the natural right of equality. Thus, to the degree that equality and presumptive public goods are valuable to members of a scheme, they should be protected and ensured. Additionally, because the provision of presumptive public goods is unlikely to occur absent the enforcement of the demands of fair play, enforcement is justified simply by

the importance of presumptive public goods. The importance of the concept of equality generates yet another reason to enforce obligations of fair play. However, there is an even more fundamental justification for enforcing the demands of fair play.

The nature of presumptive public goods creates a kind of paradox. On the one hand, presumptive public goods are valuable to individuals. This fact gives individuals a reason to ensure the provision of these goods. On the other hand, individuals have an incentive not to comply with the rules of a scheme that provides presumptive public goods. The reason for this is that presumptive public goods are non-excludable by nature. This reality gives an individual the incentive to free ride and not comply with the obligations generated by a scheme. Regardless of whether or not individuals sacrifice or restrict their liberty, they will still receive the benefit of the relevant good precisely because an actor must provide that good to all rather than just some. Admittedly the incentives that a person has to evade the burdens associated with a scheme and thus free ride is a pragmatic concern. If a person freerides, he still has an obligation of fair play. All the person has done is ignore the obligation and fail to act as was morally required of him.

However, unlike some other theories of political obligation, such as consent theory, the actions of a single person are not enough to create an obligation, according to fair play theory. Whether or not an individual acquires an obligation of fair play is, to a certain degree, dependent on the actions of others. An individual is only obligated to sacrifice or assume a burden if the other members of a scheme do the same. By not complying with the obligations generated by being a member of a cooperative scheme, an individual has created a unilateral arrangement. As a result, as soon as others do not comply with the obligations they have as

members of a scheme, your obligation to do your fair share, and comply with the rules of a scheme also ceases.

All of this points to an epistemic problem relating to the provision of presumptive public goods. This problem is that it is unlikely we will know whether or not our fellow scheme members have assumed the burdens associated with the provision of presumptive public goods. Additionally, it is difficult for members of a scheme to know with certainty the degree of non-compliance when it occurs. As a result, an individual might be unsure of whether or not an obligation of fair play exists at all. This uncertainty justifies the need for an institution that enforces obligations generated by fair play theory.

The example of taxation illustrates this point. Taxation is an insurance scheme of sorts for those who would do the right thing voluntarily (Sugin 2004, 1995). If an individual is motivated by justice, he is likely willing to voluntarily contribute money towards the upkeep of roads, infrastructure, and funding of various social programs. However, to paraphrase the *Federalist Papers*, if men were angels, there would be no need for the state (Hamilton, Madison, and Jay 2015). An individual can be sure that not all individuals are motivated by justice. A functioning society demands that individuals who are motivated by justice coexist with those who are not. Whether or not we are, in fact, motivated by justice, all individuals presumably share a desire for others not to take advantage of us. Taxation exists to ensure that both those individuals who are motivated by justice and those who are not motivated by justice contribute to funding social schemes and programs.

The argument in favor of enforcing obligations generated by fair play theory takes the same form. Individuals motivated by justice will fulfill their fair play obligations regardless of whether or not they are coerced to do so. Fulfilling these obligations is what justice requires of

them. Those who are not motivated by justice are more likely to evade their fair play obligations and free ride. Having an agent such as the state whose purpose is to enforce the obligations generated by fair play provides individuals in a community who will do what is morally required of them voluntarily a reasonable expectation that everyone else is doing the same. In so doing, the agent providing enforcement preserves the integrity of a scheme and ensures a peaceful community defined by equality. That justifies enforcing the obligations generated by fair play theory.

Finally, by requiring a good to be both non-excludable and presumptively beneficial, this chapter has significantly restricted the number of goods which can be characterized as presumptive public goods. Although the number of presumptive public goods may be relatively small, the right of enforcement expands the scope and breadth of obligations generated by fair play theory quite significantly. If the provision of presumptive public goods generates an obligation, the institution charged with protecting these goods, namely the state, must also have the right to supply and protect the means necessary to provide presumptive public goods effectively. Including the means by which a good is provided is necessary because if a population lacks the means to protect a good, providing that good in the first place is not likely to be very fruitful or meaningful.

For example, the good known as the rule of law demands that all persons are equally subject to the law and are not subject to an arbitrary, unchecked power(Rule of Law English Definition and Meaning | Lexico.com n.d.). Society has a court system complete with judges, prosecutors, court reporters, and so on, who enforce the law and punish crimes. This legal infrastructure serves as the means to provide the rule of law and is funded using tax dollars. Without this infrastructure, the rule of law would not be possible. Everyone is not equally

subject to the law if some individuals break the law and are not punished or held accountable for their actions. This infrastructure also increases the breadth of obligation that is generated by fair play theory. In sum, by giving the state the right to supply and protect the means that are necessary to provide presumptive public goods, fair play theory generates a fairly far-reaching obligation, even if the number of presumptive public goods is relatively few.

Conclusion

Regardless of whether or not political obligation poses the central question of political philosophy, this chapter has demonstrated that it is a question that can be convincingly answered. This chapter explained why there is an obligation to obey the law in three stages. This chapter explained why there is an obligation to obey the law in three stages. First, the chapter defined political obligation. The obligation to obey the law is a general obligation; it applies to all members of a population and all of the laws of a state. Next, this chapter articulated three essential qualities of any successful theory of political obligation and explained how the fair play theory of political obligation possesses each of these qualities. According to fair play theory, the provision of presumptive public goods justifies the institution of the state. If the obligation generated by fair play theory is understood in terms of H.L.A. Hart's tri-partite conception of obligation, then the theory can account for the distinction between the obligations which individual members of a population owe each other and the institutional relationship between a state and a population. Lastly, because the obligation is owed to the other members of a cooperative scheme, fair play theory can satisfy the particularity requirement. For these reasons, fair play theory can explain the obligation to obey the law successfully.

CHAPTER II
Consent Theory: The State Does Not Work That Way

Introduction

Consent theory is arguably the most well-known theory of political obligation. Ask the average person, and she will most likely attribute the state's authority to the consent of those whom it governs. Such a perception is understandable; consent is a pervasive phenomenon in modern life. Even when doing something as mundane as surfing the internet, an individual must 'accept' or 'consent' to cookies before opening their website of choice. The need for consent stems from the value that human beings place on being autonomous. An autonomous person can self-govern or make decisions regarding how to live their own life. Consent theory applies in a wide array of circumstances, from medicine to sexual relations. It is reasonable to conclude that if consent is necessary before a doctor performs surgery or before two adults can sleep together, then it must also be necessary for an individual to have an obligation to obey the laws of a state. Despite this perception, by and large, consent theory is not applicable in the case of the state. This chapter will seek to explain why.

This chapter will begin by reviewing the existing literature on the consent theory of political obligation. The chapter will use this literature to articulate the nature of consent and how an individual may give their consent in different circumstances. The argument which this chapter will seek to prove is severalfold. First, to be valid, consent must be the product of a freely made decision. Second, valid consent can and does generate general moral obligations in certain circumstances. Third, although consent can generate general moral obligations, the consent theory of political obligation rests on an inaccurate understanding of the state. Consequently, even in cases where an individual appears to give her consent, the theory still

fails to explain an obligation to obey the law *because* it is the law. In sum, if the state possessed the qualities which consent theorists stipulate, consent theory would be a successful theory of political obligation. However, because consent theorists have a flawed and unrealistic conception of the state, their theory fails to explain the origins of political obligation.

Consent and How It's Given

Consent is, at its core, a form of agreement. If I consent to surgery, I have agreed to allow my doctor to perform a particular procedure. The nature of consent has two essential elements. First, consent is transformative; it makes something that was once impermissible permissible. For example, consent transforms what would otherwise be rape into sex, what would otherwise be bodily mutilation into surgery, what would otherwise be unjust coercion into authority, and so on. Second, consent is a voluntary and freely chosen act (Horton 2010, 19). Inherent in the idea of a voluntary act is the presence of a genuine choice; without this, an agreement is not truly an agreement at all.

Scholars disagree about what constitutes a genuine choice and thus a valid act of consent. A. John Simmons argues that for an act of consent to be valid, "the consequences of dissent[35] cannot be extremely detrimental" (Simmons 1976, 280). Alan Wertheimer disagrees; he argues that consent given because of fear or to avoid extremely detrimental consequences is not necessarily invalid. To demonstrate this point, Wertheimer uses the example of a deadly brain tumor. Suppose, his example goes, that you have a brain tumor, and your doctor gives

[35] Scholars use the term 'dissent' to mean one of two things. First, dissent can mean a simple lack of consent. Second, when it is understood more narrowly, dissent can refer to the clear manifestation of disagreement. Throughout this chapter, I will use the term 'dissent' broadly to describe instances where consent is lacking.

you two choices. Either your doctor surgically removes the brain tumor, and you return to good health, or without surgery, the brain tumor will cause certain death (Miller and Wertheimer 2009). Two things are true about Wertheimer's hypothetical. First, the patient must give his consent for the doctor to perform surgery. Second, there is no viable alternative to surgery. So, for the patient in the example Wertheimer describes, the consequences of dissent (to surgery) are extremely detrimental, even catastrophic. For this reason, the standard which Simmons sets renders consent invalid in this case. However, it intuitively seems absurd to argue that the patient in Wertheimer's hypothetical cannot consent to surgery. The entire purpose of medicine is to save lives. Consent is a normative tool that allows medicine to fulfill its purpose even in non-ideal circumstances. Thus, Simmons' position is overly restrictive and unworkable.

While negative consequences do not necessarily invalidate an act of consent, it would be too drastic to say that an act of consent can never be invalid. Certain conditions render an act of consent null and void (Estlund 2005, 352). One such condition with near-universal support in the existing literature is that an act of consent is invalid if it is not will-tracking. An act of consent is will-tracking if it is an accurate expression of the agent's will. Conversely, if giving consent is not something you would have freely chosen to do, then the act of consent is not an accurate expression of the agent's will (Estlund 2005, 355). The primary reason that an act of consent may not be will tracking is coercion. Suppose that an individual does not want to have sex with another person but 'consents' because there is a loaded gun to their head. In the most basic sense, the individual has made a decision; they chose to consent. They could have withheld their consent and effectively chosen to die. However, the individual in this circumstance had no reasonable or viable alternative to consenting. Because the individual did

not want to engage in sex and only agreed to do so because of coercion, their consent was not will-tracking and null and void.

Requiring that an act of consent be will tracking illustrates the point made by Wertheimer and demonstrates that even if the consequences of dissent are extremely detrimental, an individual's consent can still be will tracking. Yet, certain consequences do alter an individual's will. Having a loaded gun to their head will almost certainly impact an individual's response to a request for consent. Thus, we ought to qualify the condition Simmons places on an act of consent. Instead of the condition being that "the consequences of dissent cannot be extremely detrimental," the condition should be "the agent seeking consent cannot impose extremely detrimental consequences on the potential consenter for dissenting." This iteration of the condition better captures what I take Simmons to be trying to get at with this condition. As long as the relevant act of consent is will tracking, the negative consequences of dissent do not invalidate it. However, an agent cannot impose extremely detrimental consequences on an individual to make them consent against their will.

Before analyzing how an individual can give his consent, this chapter should distinguish the consent theory of political obligation from hypothetical consent. Roughly speaking, hypothetical consent refers to what a person would have agreed to in a particular circumstance if they were rational, fully informed, and had the opportunity to agree (Lewis 1989; Stark 2000, 314). Some prominent scholars who use hypothetical consent in their work include Hanna Pitkin and John Rawls (Pitkin 1966; Rawls 1999a). In that hypothetical consent relies on the same language and vocabulary as consent theory, it is somewhat tempting to view hypothetical consent as a type of consent. The fact that early consent theorists such as Hobbes and Locke are fairly opaque about whether concepts they employ, such as the state of nature

and the social contract, are meant as historical occurrences or as elaborate hypothetical thought experiments only magnifies this temptation. Neither thinker points to a specific time when the state of nature existed (Bookman 1984; Greeson 2017). Additionally, it is not likely that a state historically formed in the way that early consent thinkers like Hobbes and Locke suggest.

Scholars such as Ronald Dworkin refute the temptation to consider hypothetical consent as a type of consent. Dworkin argued: "a hypothetical contract is not simply a pale form of an actual contract; it is no contract at all" (Dworkin 1978, 151). Hypothetical consent and the consent theory of political obligation are making fundamentally different arguments. Consent theory attributes political obligation to a voluntary decision. Hypothetical consent, on the other hand, relies on non-voluntary moral principles to explain obligation. Thus, although the two approaches use the same language and vocabulary, the similarities between the two are superficial at best. For these reasons, this chapter will not analyze hypothetical consent as a part of the consent theory of political obligation.

An individual can convey their consent in two different ways: expressly or tacitly. Express consent occurs when there is some obvious and outward declaration of agreement. An individual can convey their consent in two different ways: expressly or tacitly. Express consent occurs when there is some obvious and outward declaration of agreement. Similarly, if an individual were to sign a contract, they would have expressly consented to the terms of that contract. Tacit consent occurs when an individual conveys her agreement to the state via some action without explicitly expressing or declaring her consent. For classic consent theorists such as John Locke, examples of actions that constitute tacit consent include owning property within a state and using public goods such as roads and infrastructure (Locke 1988, sec. 95).

Express and tacit consent create a problem in determining the validity of an act of consent. Express consent sets the bar of validity too high, while tacit consent sets the bar of validity too low. If express consent is the only valid form of consent, then no modern state, and no state that has existed historically, for that matter, can ever be owed obligation. The overwhelming majority of citizens quite simply do not articulate their consent (or dissent) to the state in an expressed manner. Additionally, the modern state lacks the necessary channels and structures to enable the vast majority of citizens to consent expressly. On the other hand, it is nearly impossible not to tacitly consent to the state, at least as John Locke defined the term. Practically every citizen owns some property, and it is almost impossible not to use public goods such as a road. By Locke's definition of tacit consent, every state seems entailed to political obligation.

A theory that either justifies no state or every state seems too drastic and unworkable. The purpose of political obligation is to explain the origins of an obligation to obey the law (*because* it is the law). Hence, it is reasonable to want something more than a theory that is all or nothing. The issue with Locke's characterization of tacit consent is that it is too expansive. He leaves no room for a completely voluntary decision to be made. For tacit consent to be a workable and meaningful way to manifest agreement to the state, there must be conditions placed on tacit consent to ensure that an individual can make an autonomous decision, even if that decision is not articulated or communicated in an expressed manner. Simmons provides such conditions.

Simmons argues that tacit consent is only valid if it meets five conditions. First, "[t]he situation must be such that it is perfectly clear that consent is appropriate and that the individual is aware of this." Second, "[t]here must be a definite period of reasonable duration when

objections or expressions of dissent are invited or clearly appropriate, and the acceptable means of expressing this dissent must be understood by or made known to the potential consenter." Third, "[t]he point at which expressions of dissent are no longer allowable must be made clear in some way to the potential consenter." Fourth, "[t]he means acceptable for indicating dissent must be reasonable and reasonably easily performed." Fifth, "[t]he consequences of dissent cannot be extremely detrimental to the potential consenter" (Simmons 1976, 279–80).

To apply these conditions to a simple circumstance, imagine a teacher and her class. The teacher can be said to have a certain degree of authority over her classroom and students. Suppose the teacher were to say to her students, 'class, I believe it would be a good idea to move the exam, which I originally scheduled for Thursday to Friday. However, I do not want to inconvenience anyone. If anyone would prefer to take the exam on Thursday, please raise your hand.' After waiting ten seconds or so and seeing no raised hands, the teacher says, 'ok, I will move the exam to Friday.'

In the case of the teacher, the students have tacitly consented to move the exam. When the teacher says, 'would anyone object to moving the exam,' it was clear the teacher was requesting consent from the students. By waiting ten seconds, the teacher gave a definite and reasonable period where dissent was acceptable. When the teacher says, 'I will move the exam to Friday', it is clear that dissent is no longer appropriate. It is made clear to the students that raising their hands is how they express dissent. And finally, it is not likely anything detrimental will occur if the students chose to dissent since the exam would stay on Thursday, as was planned. Thus, all five of Simmons' conditions are satisfied.

Although Simmons focuses his analysis on tacit consent, the five conditions that he proposes apply to acts of consent more broadly. For example, a contract is hardly binding if an

individual only signed it because there is a loaded gun to their head. An expressed declaration as such does not erase the need for validating conditions. The five conditions which Simmons provides are fundamentally a way to test and ensure that an act of consent remains the product of a voluntary decision regardless of how an individual communicates that decision. In conclusion, the first section of this chapter has analyzed the nature of consent and evaluated the different ways in which an individual can convey their consent to others. The chapter can now analyze the state and why consent theory is incompatible with that institution.

The State and How It Works

There is a fundamental question with which the remainder of this chapter must engage. Namely, can consent theory explain the origins of political obligation. Another way to frame this question is: is consent theory compatible with the modern Westphalian state. The vast majority of scholars, even those who are critical of consent theory, seemingly believe that an act of consent has the potential to generate political obligation. The problem with consent theory is that the modern state does not have the necessary structures to facilitate consent in any meaningful way. As a result, almost no individual has ever had the opportunity to consent in the context of the modern state. This chapter will examine the attempts made by several different scholars to reconcile consent theory and the state. Ultimately, all of these attempts prove unsuccessful.

Express Consent

One way to address consent in the context of the state is to stipulate that the state must enact structures to facilitate the express consent of its citizens. That is the position of Harry Beran. Beran goes as far as to argue that only an act of express consent can generate political obligation (Beran 2019). Beran's argument is not *prima facie* impossible. For example, a state could mandate that every citizen or person entering its territory over a certain age signs a document agreeing to follow the laws of that state. The state could provide the document beforehand, giving individuals ample time to read and understand it. The state could also educate potential consenters about what consent is, the ways to give consent, what it means, and so on. That would ensure that potential consenters are fully informed.

The issue with mandating express consent is how to handle individuals who chose to dissent. The state must address those who dissent for two reasons. One, a theory of political obligation articulates reasons why all individuals within a particular jurisdiction are obligated to obey the laws of that jurisdiction. If individuals remain in the territory of a state even after they have dissented to that state, then consent theory has not done that. Instead, it has only explained the obligation of a specific group, namely those who consented, to obey the laws of the state. Two, the way the state handles dissent may determine whether an act of consent (or dissent) is will-tracking. For example, suppose an individual does not want to consent but knows that the state will require him to relocate to another state if he does not. In addition, suppose that the individual lacks the financial means to relocate. So, even if this individual were to 'consent' because they lacked the means to dissent, his consent is not will-tracking and thus not valid. In sum, if consent theory does not address how to handle those who chose to dissent from the state convincingly, then it is unlikely to be a successful theory of political obligation.

The way that Beran handles dissent makes his theory of express consent entirely unworkable in the context of the modern state. Beran provides three mechanisms to address those who do not wish to consent to a state expressly. A dissenter can either relocate to another state, secede, and form a new state, or reside in a territory devoted to dissenters (R. Dagger and Lefkowitz 2014). These strategies for handling dissent are not mutually exclusive; all three can coexist. There is no obvious reason why all dissenters must relocate to a new state, or all dissenters must form a new state. Presumably, some dissenters can relocate, some could secede, and others could reside in a territory designated for dissenters. Yet, all three of these mechanisms are unsatisfactory for reasons that this chapter will now explain.

According to Beran, the first way to handle dissenters is to mandate that they relocate to another state. Beran argues that the state must also facilitate this relocation (Beran 1977, 2019). It is not clear what exactly this would look like in practice, but one thing Beran likely has in mind is providing monetary assistance to dissenters to ease the financial strain of relocation. This course of action would help to ensure that an act of dissent is will-tracking because it removes one of the most common and significant barriers to relocation. If the state is paying for an individual to relocate somewhere else, the individual only needs to be willing to pack up and start anew. There might still be a burdensome cost to relocation; a person might not see their family as often and might need to reestablish their career in a new place. Yet, these substantial costs do not in and of themselves invalid an act of consent or dissent. It is only when an actor imposes an extremely detrimental cost that alters a person's will that an act of consent or dissent is no longer valid.

Beran's relocation solution is an unsatisfactory way to handle dissent because it treats those who have consented unfairly. According to Beran's solution, the state has an obligation

to provide for an individual who has dissented. The consenting citizens of a state have accepted the burden of being a member of a particular state, while a dissenter has explicitly rejected this burden. Yet, according to Beran's solution, the dissenter still receives a benefit for the state and its citizens in the form of financial assistance to relocate. In short, the citizen's burden, in the form of tax dollars, is what facilitates the dissenter's ability to relocate. This solution appears to susceptible to a form of Robert Nozick's Radio Station objection. The solution allows an individual (the dissenter) to thrust a burden on someone else (the citizen). It hardly seems reasonable or fair to demand that those who have sacrificed provide something to those who have not. Additionally, it seems unlikely that any citizen would actually accept these terms. There is little incentive to make a one-sided sacrifice.

State sovereignty provides another potential complication to Beran's relocation solution. State sovereignty guarantees every state the right to refuse a foreigner entry to its territory on specific grounds. A state could thus quite possibly refuse a dissenter's request or attempt to relocate. If a dissenter cannot find another state to relocate to, she would presumably have no choice but to stay in her original state. That would make her act of dissent meaningless and leave the dissenter in an awkward position. She must either 'consent' against her will or live within a state from which she has expressly dissented. Either outcome proves to be an unworkable way to address dissenters within a state. It may be unlikely that a person would be unable to find a state to relocate to, but it is still possible. That possibility demonstrates that a person may not be completely free to relocate if she chooses to dissent to her current state.

The second possibility Beran proposes to handle dissent is essentially secession. Beran argues that a group of like-minded dissenters could come together and form a new state (Beran 1984). Beran argues that contemporary scholars and classical thinkers alike have largely

neglected the topic of secession (Beran 1977, 266). On this account, he seems to be correct. Beran and Allen Buchanan remain the only two scholars that give secession any serious or sustained attention(Beran 1984; Buchanan 1991). This chapter does not dispute that secession could be a morally acceptable way to handle dissent. However, secession has not historically been a quick or easy process. It requires an immense amount of time and coordination. In addition, most if not all modern states have been born out of conflict and violence. After all, an existing state rarely willingly gives up a claim to a piece of its territory. Even if a population can peacefully take possession of a particular region, there is still the process of writing a constitution and other essential founding documents, forming a government, and building a societal infrastructure. These processes have historically been lengthy affairs, marked by uncertainty. Being subjected to such violence and uncertainty seemingly violates at least Simmons' fourth condition that the means of dissent must be reasonable and reasonably easily performed.

It is also unclear who else besides the dissenters must assume the burdens and demands of formulating such a state. A territory is an integral component of a state. There are not vast swathes of the Earth unclaimed and available for allocation. The obvious question then becomes, who must provide the territory for a new state of dissenters. Mandating that some states give up unused territory to those dissenters looking to form new states seems incompatible with a commitment to autonomy and self-determination that a proponent of express consent ought to hold. Alternatively, mandating that a state give up some of its territory to meet the needs and desires of a former citizen who has dissented from that state hardly seems a reasonable and fair burden for any state to bear. Practically speaking, either strategy is not likely to be something a state would agree to or allow.

Finally, the size of the Earth is finite. There is only so much territory that one could potentially allocate to dissenters looking to form a new state. It is not unreasonable to think that the demand for territory and new states could be greater than the amount of territory available for allocation. If and when this occurs, it means one of two things for dissenters wanting to form a new state. Either forming a state is not an option that a dissenter can pursue, or dissenters will be forced into conflict and violence with others in the name of securing territory for a new state. For these reasons, forming a new state hardly seems like a viable way to handle dissent.

The third and final way Beran proposes to handle dissent is to have a territory reserved for those who dissent from a state to live in together (Beran 1977, 2019). This proposal is undoubtedly novel and unique; however, it also proves problematic. Dissenter's territory, as I will call it, could take to different forms. First, it could be that there is a single dissenter's territory in the world. Second, it could be that each state has a dissenter's territory within its borders. One should reject either form of dissenter's territory. If there is a single dissenter's territory where every state sends those who dissent, this solution would lack distinctiveness. It would be functionally no different than mandating that those who dissent relocate to another state. The only thing that would change is the precise location or territory where the dissenter has relocated. All the challenges associated with using relocation to handle dissent would apply to this strategy as well.

There are similar challenges associated with each state having a dissenter's territory within its borders. In this case, the dissenter's territory could have two different statuses. First, the dissenter's territory could remain part of the state. Alternatively, the dissenter's territory could break away and become its own new state. If the latter is true, then once again, this option

would lose its distinctiveness. Breaking away and becoming a new state is the definition of secession. All the challenges associated with using secession to handle dissent would apply to this strategy as well. Thus, it seems more likely that the dissenter's territory should remain as part of an existing state; however, this creates problems of its own.

The status of those living in the dissenter's territory is the most problematic aspect of this strategy for addressing dissent. The act of dissenting is distinct from the act of revolting or an act of civil disobedience. A citizen can revolt against a government or perform an act of civil disobedience and remain a citizen (Allan 1996; Locke 1988, sec. 155). Alternatively, an act of dissent effectively renounces or gives up an individual's citizenship. If those living in a dissenter's territory have given up their citizenship, then the concept of dissenter's territory is nonsensical. A state does not have a right to retain territory when those living in that territory are not citizens or nationals of the state. Doing so is effectively a form of occupation or conquest which is morally impermissible (Ypi 2013). If a person living in a dissenter's territory gives up their citizen, it is once again unclear how having a dissenter's territory is a distinctive way to handle dissent. Living in a dissenter's territory would be functionally no different than relocating or forming a new state. If having a dissenter's territory is a distinct way to handle dissent, then it seems that such a territory must remain part of the state, and those residing there must remain citizens of the state. Yet, this raises more problems still.

First and foremost, if those who inhabit a dissenter's territory remain citizens, then the act of dissenting is meaningless. There is no fundamental change in the dissenter's status. The dissenter is just living amongst like-minded people. Presumably, retaining citizenship in a state would mean keeping all the privileges, benefits, and burdens of citizenship. For example, in so far as a dissenter's territory is still in the territory of a state, it would presumably still be

protected against foreign invasion by the military of the state. Dissenter's territory would also be subject to the rule of law, and those inhabiting dissenter's territory, in that they remain citizens, would still be expected and obliged to pay taxes to help fund all the benefits provided by the state. If the residents of a dissenter's territory do not retain all the privileges, benefits, and burdens of citizenship, the territory will presumably devolve into chaotic anarchy. There will be no actor to provide order or coordination. Without basic order and coordination, a population is worse off than it would otherwise be with that coordination. That fact is relevant because it raises the question of whether or not an act of consent is will-tracking. To avoid the chaos and anarchy of a dissenter's territory, an individual may 'expressly consent,' even when his genuine intent is to dissent. In that case, the act of consent (or dissent) is meaningless and invalid. Thus, unless the residents of a dissenter's territory retain all of the privileges, benefits, and burdens of citizenship, it seems that Beran's dissenter's territory might undermine rather than foster acts of consent and dissent.

There is an important moral dimension to the question of whether those residing in a dissenter's territory retain the privileges, benefits, and burdens of citizenship. In such an arrangement, there are two distinct classes of citizens, those who receive the benefits of the state and those who do not, or those who incur burdens and those who do not. Corralling those who dissent into a specific territory devoid of the usual protections provided by the state seems more akin to placing populations into concentration camps than like something any justifiable state would do. This characterization might seem harsh but consider the nature of a dissenter's territory. The residents of a dissenter's territory have their movement restricted to a particular area within a state when other citizens can move more freely. Residents of a dissenter's territory are also in an ambiguous position. At best, their rights and protections as citizens are

unclear, and at worst, these rights and protections do not exist even though dissenters still find themselves under the jurisdiction of the state. A person in such a position is a citizen in name only. The fact that a person freely chose to dissent does not make the practice of dissenter's territory any less morally objectionable. Individuals can dissent from a state for any number of reasonable and principled reasons. Reasonable and principled dissent and disagreement hardly make stripping the normal privileges and benefits from a citizen permissible. Going to dissenter's territory would likely be a last resort, something people had to do because they dissented but could not relocate to a different state. Dissenter's territory will likely be an arrangement that those who are comparatively worse off anyway are forced into if they chose to dissent. That reality adds an additional level of injustice to an already unjust arrangement.

This chapter has already dismissed relocation and secession as permissible or viable ways to address the problem of dissent. The only one of Beran's proposals for handling dissent that remains is the dissenter's territory. For the dissenter's territory to be a viable mechanism for handling dissent, two things must be true. First, a dissenter's territory must remain in the territory and under the jurisdiction of the state. Second, those residing in dissenter's territory must remain citizens of the state (which they just dissented from). If either of these is not true, then the dissenter's territory reduces down to relocating to a different state or forming a new state with like-minded individuals rather than a separate course of action. The citizens residing in a dissenter's territory must retain both the benefits and the burdens of citizenship. If they keep the burdens without receiving the benefits, or vice versa, then an unjust and unequal arrangement is created. This arrangement would not only be one that no individual had any incentive to accept but also one that is morally impermissible. However, if a citizen retains all the benefits and burdens of citizenship even after she expressed dissent from the state, then

that dissent has lost all meaning or significance. Thus, Beran's attempts to handle dissent seem to be unsuccessful. Consequently, his theory of express consent can be rejected.

Tacit Consent

John Simmons offers a different approach with his theory of tacit consent. According to Simmons, five conditions make an act of tacit consent valid. These conditions preserve what is distinctive about consent. In other words, they ensure that obligations originate from a voluntary decision, not external moral principles masked as consent. According to Simmons, all five conditions are necessary to generate obligation. Satisfying four of the conditions is not enough. Unfortunately, at least four of these conditions are not satisfied in the case of the state. This chapter will restate these conditions below and one by one evaluate the potential trouble in applying these conditions to the state.

To restate, the five conditions which Simmons places on tacit consent are as follows. First, "[t]he situation must be such that it is perfectly clear that consent is appropriate and that the individual is aware of this." Second, "[t]here must be a definite period of reasonable duration when objections or expressions of dissent are invited or clearly appropriate, and the acceptable means of expressing this dissent must be understood by or made known to the potential consenter." Third, "[t]he point at which expressions of dissent are no longer allowable must be made clear in some way to the potential consenter." Fourth, "[t]he means acceptable for indicating dissent must be reasonable and reasonably easily performed." Fifth, "[t]he consequences of dissent cannot be extremely detrimental to the potential consenter" (Simmons 1976, 279–80).

The trouble with the first condition is that consent is not something the vast majority of people never deliberate about in a meaningful way. Individuals are born as citizens of a particular state, they grow up and build a life in that state. The fact that the state taxes individuals or can issue binding directives is just taken as axiomatic. Most people likely never seriously consider the possibility of changing the political or governmental arrangements if they disapprove of these arrangements. Hence it does not seem that it is perfectly clear to most individuals that consent is appropriate in the case of the state or even that there is a meaningful choice to make concerning politics, or which set of laws to follow.

The second clause of condition two, "the acceptable means of expressing this dissent must be understood by or made known to the potential consenter," is what makes that condition so hard for the state to satisfy. It is not clear what the accepted means of expressing dissent is. Must a citizen sign a document? Must they relocate to a different state or form a new state altogether? The answers to these questions are unclear at best. Scholars have offered potential answers to these questions. However, as this chapter has argued, these solutions are unsatisfactory in addressing the problem of dissent.

Concerning the third condition, it is unclear when a citizen is no longer free to dissent from the state. Is it when they turn a particular age, accept their first benefit from a public good, or cast their first vote? (To name a few options.) There is simply no procedure to determine when a citizen ought to express their dissent to the state and no agreement about when an expression of dissent is no longer welcome or appropriate. Without agreement on this point, it is difficult to argue that something like continued residence in a state is, in fact, a sign of tacit consent to the laws of that state. Thus, the third condition is not satisfied in the case of the state.

The primary challenge with the fourth condition flows from trouble with the third condition. One can hardly evaluate the reasonability of a particular means of dissent without knowing what that means is in the first place. In other words, satisfying condition three is a prerequisite for meaningful engagement with condition four. There is a secondary concern regarding the intent of an act of dissent. There are several actions which an individual could interpret as dissent. For example, a person may intend their decision to permanently relocate to another state to be an act of dissent. Yet, that may not be the case. Individuals relocate for any number of reasons. A person could move to another country to start a new job. Another person may move to a foreign country because they are married to someone of a different nationality. Yet another person may move to fulfill a desire to study abroad and chose to remain overseas. The same action can have several different motivations. That makes it difficult to know whether an act of dissent is will tracking. If it is not will tracking, which is to say not meant as an act of dissent, it is invalid. That, in turn, limits the scope of tacit consent altogether in the case of the state. Very few actions can be taken as a sincere act of dissent, absent an express declaration of intent. Those actions that a person clearly intends as an act of dissent, such as forming a new state, are clearly not actions that are easy to perform. Forming a state is a difficult process that often takes many years. For these reasons, condition four is not satisfied in the case of the state.

Depending on how it is defined, condition five is the only condition with the potential to be satisfied in the case of the state. If Simmons' definition of the condition is correct, then the condition is not satisfied. The consequences of dissenting in the case of the state have the potential to be detrimental and onerous. Relocating one's entire life to a new state or even forming a new state altogether are difficult and time-consuming processes. A person might

face financial hardship, the loss of their career, or strained family relationships if they relocate to another state. Although the dissenter may be able to rebuild their life somewhere else, their short-term sacrifice can still be extremely detrimental to them. For some, the process of migrating to another state itself could be life-threatening. Consider a person who travels from Central America to the United States, a notoriously risky journey. A dissenter who cannot relocate is likely to face violence from the state if they do not uphold the burdens of citizenship. This violence may take the form of prison time, amongst other things.

In a certain sense, Simmons' point about detrimental consequences is moot. As Wertheimer demonstrates, harmful consequences need not invalid an act of consent. Consider the example of a person who seeks a divorce from their spouse after many years.[36] In this case, the consequences of dissent are detrimental. There is a financial cost for the spouse who ends their marriage; divorced couples must divide their property between the parties, one spouse has to find a new place to live. That is in addition to the emotional cost of ending a marriage and starting over. Yet, no one would say that these high costs invalidate an individual's decision to get divorced. As long as the spouses intend to get divorced, their dissent is valid despite the potentially high detrimental costs.

Whether or not condition five is satisfied in the case of the state depends on how one understands the consequences of dissent. If the state imposes extremely detrimental consequences in order to alter an individual's desire to dissent, the fifth condition is not met. In other words, if a state mandates that a dissenter must migrate or succeed for the purpose of altering a person's desire to consent or dissent, condition five is not met. If, however,

[36] The decision to seek a divorce is functionally the same thing as terminating a contract. Thus, a person seeking a divorce is more or less dissenting from their marriage.

migration, succession, or any other strategy for handling dissent are just that, strategies for addressing dissent, then condition five could be satisfied in the case of the state.

I am inclined to argue that migration, relocation, succession, or so on are detrimental consequences of dissent, yet not ones imposed by the state specifically to alter the will of an individual. Consequently, condition five could be satisfied. However, I will not pursue or develop this argument any further. The question of whether or not condition five is satisfied is ultimately moot. As Simmons argued, an act of consent must meet all five conditions to be valid. In that the other four conditions Simmons articulates are not satisfied, this chapter can reject his theory of tacit consent as unsuccessful in the context of the state regardless of condition five.

Alternatively, broader understandings of tacit consent lose what is distinctive about tacit consent and collapse into a version of fair play theory. One such popular understanding of tacit consent argues that tacit consent comes in the form of "active participation in the institutions of the state" (Steinberger 2005, 218). There is a lengthy list of actions that scholars argue should represent active participation in the institutions of the state. That list includes calling the police or fire department and sending one's children to a public school. The problem with a broader conception of tacit consent is that it is unclear whether this conception leaves room for a meaningful choice or viable alternative. For example, there is no viable alternative to calling the fire department when your house is burning. It is not as if there are competing private fire departments in a town; only one institution that puts out fires pr provides an EMT when an individual calls 9-11. Asking an individual to fight a fire with a garden hose if they do not wish to consent to a state seems entirely unreasonable. Furthermore, when an individual calls the fire department during an emergency, they are acting under duress. Watching a fire

destroy one's livelihood is not unlike having a gun to one's head. Any agreement in these circumstances is not likely to be will tracking. Thus, calling the fire department is not a form of valid tacit consent.

Even sending one's child to a public school seems to fail the test for tacit consent. Parents indeed have options, at least in theory, of how and where to educate their children. One may home school or enroll their child in a private school should she not wish to give their tacit consent to the state. However, the practical realities of modern life are one, that parents must work to support their children, and two, private alternatives to public school are most often expensive. Couple these realities with the fact that education is often not optional- children are required to go to school. It is easy to see how the average parent may not be able to afford the alternatives to public school. Thus, a parent could have no meaningful choice but to enroll their children in public school regardless of whether or not they wish to consent to a state or not.

Despite the lack of viable alternatives to a fire department or public school, most people likely intuit those who use a fire department or public school have some obligation to the state. It is wrong to use a good or benefit provided by the state without incurring a share of the cost associated with the provision of that good or benefit. Fair play theory can clearly explain this intuition. To restate Hart: "those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission" (Hart 1955, 185). An individual has sacrificed to allow another person to send their children to public school or call the fire department in a time of emergency. Accepting the benefit provided by this sacrifice without also sacrificing yourself creates a unilateral arrangement.

As the first chapter of this dissertation argued, unilateral arrangements are incompatible with the natural right of equality. If the sacrifices necessary for a fire department or school to operate are not reciprocal, there is the potential to deprive others of the ability to send their child to a public school or to use the fire department in a time of emergency. When those who have sacrificed are deprived of a good or those who have not sacrificed still receive a benefit, inequality and injustice are created. This inequality, or more accurately preventing this inequality, generates an obligation to obey the laws of a state.

In sum, when a person actively participates in the institutions of the state, an obligation to the state is generated. However, whether or not an individual would consent to the state when they actively patriciate in its institutions is irrelevant. Even if an individual would otherwise dissent to a state when they send their children to a public school or call a fire department during an emergency, they incur an obligation. That illustrates why consent theory cannot explain the state as it currently exists. The modern state has developed in such a way that is incompatible with the consent theory of political obligation.

Conclusion

The consent theory of political obligation is well known and often cited as the reason citizens must follow the law of their respective states. This paper has attempted to demonstrate that despite widespread familiarity with consent theory and its applicability in multiple contexts, such as medicine and intimacy, consent theory struggles to explain political obligation. For consent theory to generate political obligation, there must be a free and voluntary decision made. As a result, theories such as hypothetical consent, which use the name consent but are not based on a voluntary decision, are not really theories of consent at

all. Actual consent fails to generate political obligation for two reasons. First, the state is not an institution that most individuals have ever opted into; second, the state lacks the mechanisms to address dissent. The consequences of this are twofold; first, in the case of the state, an act of consent is not always the product of a voluntary decision. Second, the consent theory of obligation does not explain a fully general obligation to obey the law. Instead, it only accounts for the obligation of those who voluntarily agreed to follow the law. That is not robust enough for a theory of political obligation. For these reasons, this chapter rejects the consent theory of political obligation.

CHAPTER III
Associative Duties: All Roads Lead Back to Reciprocity

Introduction

An associative duty is a duty owed by virtue of an individual's membership in a particular group or community (Wellman 1997, 182). The associative duties theory of political obligation seemingly develops in response to a perceived flaw in typical liberal reasoning. The associative duties theorist would argue that it is a mistake to employ external standards to determine what generates political obligation. Instead, individuals should examine how we think and feel about the state that we are members of and develop a theory that accounts for these emotions. There are several different versions of the associative duties theory of political obligation. This chapter will begin by reviewing the arguments made by different associative duties theorists. This chapter will then argue that only one version of associative duties theory, the welfare version, offers a potentially workable theory of political obligation. The concepts of dignity and reciprocity are integral to the welfare version of associative duties theory. That ultimately means that, despite its promise, the welfare version of associative duties theory imitates another theory of political obligation, fair play theory. Thus, this chapter will conclude that associative duties theory is not successful as a distinct theory of political obligation.

Foundations of Associative Duties Theory

An associative duties account of political obligation can be traced back to the work of Edmund Burke. Burke argued that: "[i]f we owe to [civil society] any duty, it is not subject to our wills. Duties are not voluntary…without any stipulation on our own part, we are bound by

that relation called our country…The place that determines our duty to our country is a social, civil relation…The place of every man determines his duty" (Burke 1852, 459–61). Burke himself never articulated or defended a complete associative duties theory of political obligation. Nevertheless, the ideas expressed in the above passage lie at the heart of an associative duties account of political obligation.

The first complete associative duties account of political obligation is articulated by Ronald Dworkin in the 1980s. Dworkin describes associative duties as "[t]he special responsibilities social practice attaches to membership in some biological or social group, like the responsibility of family or friends or neighbors" (Dworkin 1986, 196). According to Dworkin, the essential thrust of associative duties is that: "[p]olitical association, like family and friendship and other forms of association more local and intimate, is in itself pregnant of obligation" (Dworkin 1986, 206). Other scholars, such as Michael Hardimon, characterize citizenship, friendship, and the family as "non-contractual role obligations" (Hardimon 1994, 347). These are obligations that arise as a result of the positions and roles into which each person is born.[37]

John Horton largely echoes the general argument made by Dworkin, using an analogy between the state and the family to describe associative duties: "a polity is, like the family, a relationship into which we are mostly born: and that the obligations which are constitutive of the relationship do not stand in need of moral justification in terms of a set of basic moral principles…furthermore, both the family and the political community figure prominently in

[37] There is a disagreement between early associative duties theorists about what to call the theory they are describing. Some have used the term "role obligations," others "communitarian" or "communal obligation," still others "membership theory." All of these names functionally describe the same thing. In the interest of consistency and clarity, I will follow Ronald Dworkin and use the term "associative duties theory" throughout this chapter.

our sense of who we are: our self-identity and our understanding of our place in the world" (Horton 2010, 150–51). At first glance, Horton's argument seems very insightful. However, upon a more detailed inspection, he may be pushing this analogy a bit too far.

Critics of associative duties theory have questioned whether or not membership in an association creates genuine obligations. The criticism argues that there is a difference between a genuine obligation and a felt obligation. According to Richard Dagger: "[s]omeone may have a sense of obligation, even a powerful sense of obligation, without truly being under the obligation in question"(R. Dagger 2000, 108). There are two reasons for this; the first relates to the knowledge a person has, and the other relates to an individual's tendency to err. Having an obligation is independent of an individual's knowledge of that obligation; in other words, we may have obligations without knowing they exist. For example, suppose a person got drunk on a night out. In their drunken state, the person damages a friend's property. In the morning, the person awakes with no recollection of what they had done the night before. In this case, the friend is responsible for the damage they caused while they were drunk. Consequently, they have an obligation to repay their friend or repair the damage they caused. Because the person was drunk when the damage occurred, they may not know or realize this obligation exists. However, a person is morally required to repair the damage they caused in this case, regardless of whether they are aware that they have this obligation.

Human beings can err and thus be mistaken about the obligations they have to others. Consider a wife who stays in a marriage that is physically and mentally abusive because of her children. In this example, the woman may think she has an obligation to remain married because of an obligation to her children to keep the family together or perhaps because of a felt obligation to her church. However, in this case, the woman is wrong; no person is under

any obligation to remain in a relationship that is abusive to them in any way. But because of her children or any number of other factors, the woman has a sense of an obligation to stay. Finally, consider a driver who rear-ends the car in front of him. The driver may have a sense that he does not have an obligation to pay for the damage he caused. Perhaps the car in front of him stopped very abruptly, making him feel as if the accident was not his fault. However, despite what the diver may feel, the driver has an obligation to pay for the damage he caused to the car in front of him, in that the accident is his fault. In sum, obligations can exist even when an individual thinks or feels otherwise.

A second objection questions the strength of the analogy associative duties theorists make between the state and the family (R. Dagger 2000; Wellman 1997). Admittedly, it seems uncontroversial that an individual has some special obligations to members of his family that he does not have to non-members. However, few of us are likely to feel any strong sense of obligation towards our third cousin, whom we've met only once. Furthermore, the obligations an individual has to family members are complex and dynamic; for example, the obligations that one has to one's parents are different in nature and character from the obligations one has to their siblings. For these reasons, the objection goes, the associative duties theorist is wrong to draw an analogy between the state and the family. The modern state is such that an individual has likely never met, let alone forged meaningful relationships with most of his fellow citizens. Familial obligations arise from the close personal relationships and emotional connections family members have to each other. In that, most people have never met the majority of their fellow citizens, these sorts of close emotional bonds rarely, if ever, develop between citizens.

This objection raises an interesting point. The concept of the family is not static or uniform. The nature of what it means to be a family has evolved over time and across cultures.

In the western world, it common to be raised by two parents and to have perhaps one or two siblings; that is the typical nuclear family. In days gone by, extended family such as cousins or grandparents often played a greater role in everyday family life than they do in most families today. While it is widely accepted in the present day, at least in the western world, in the 1950s, the idea of a gay couple raising a child and being called a family would have seemed absurd. Even today, a deeply religious person might characterize the family differently than someone from a non-religious background. In addition, there are outliers, those who are raised by a sibling or distant relative, due to the unwillingness or inability of the biological parent. All of this raises the question of what counts as an association? And when does membership in an association generates obligations?

All these objections to the associative duties theory of political obligation seem intuitively plausible. However, the associative duties theorist has a readymade response to each. Neither the limits of human knowledge or emotion nor the dynamic realities of social conventions diminish associative duties in any meaningful way. The fact that a person might not know an associative obligation exists or might feel as if no obligation exists does not mean that there are no associative duties; it simply means that the individual is incorrect or unaware that particular obligations do exist. Similarly, the fact that at one time, society may not have considered a same-sex couple capable of being parents to a child does not mean that that couple does not have the familial obligations of fatherhood to the child they have adopted and raised. For all these reasons, it seems that this chapter can reject these initial objections to associative duties theory and proceed to a more in-depth exploration and analysis of the theory.

Types of Associative Duties Theory

A central goal of the associative duties theory of political obligation is to explain the phenomenology of membership. All associative duties theorists agree that an association is a morally significant enterprise and that membership in an association is a morally significant status. However, associative duties theorists disagree on what makes associations morally significant and what gives an individual's membership in an association moral status. This difference is critically important as it puts scholars such as Ronald Dworkin and Yael Tamir, both of whom claim to be associative duties theorists, at direct odds with one another. For Dworkin, the concepts of dignity and welfare are reasons associations generate obligations. Tamir, on the contrary, argues that the role membership in an association plays in forming a person's identity is what generates associative duties. The remainder of this chapter will seek to accomplish three things. First, it will analyze the communitarian version of associative duties theory and explain the reasons why this version of associative duties theory is a nonstarter in terms of political obligation. Next, the chapter will explain how proponents of the welfare version of associative duties theory make a much stronger argument for the theory. Finally, the chapter will develop the ways in which the welfare version of associative duties theory becomes indistinguishable from the fair play theory of political obligation.

Communitarian Associative Duties Theory

The fact that a communitarian variation of associative duties theory exists at all may strike some as outright peculiar. Early communitarians such as Thomas McPherson seemingly dismiss the need to justify political obligation. McPherson argues that “why should I obey the government is an absurd question. We have not understood what it means to be a member of

political society if we suppose that political obligation is something we might not have had and that therefore needs to be justified" (McPherson 1968, 64). This position itself is extremely weak. McPherson seemingly no more than assumes that the state is a rationally justifiable enterprise. However, given the awesome coercive power of the state, its justification ought to be demonstrated rather than taken for granted.

Later communitarians, attempt to use the role which associations play in shaping a person's identity to justify political obligation. Yael Tamir argues that: "the true essence of associative obligations…are not grounded on consent, reciprocity, or gratitude, but rather on a feeling of belonging or connectedness"(Tamir 1993, 135). A feeling of belonging or connectedness defines our identity as persons. In the words of Alasdair MacIntyre: "to be a man is to fill a set of roles each of which has its own point and purpose: member of a family, citizen, soldier, philosopher…the rational justification of my political duties, obligations, and loyalties is that, were I to divest myself of them by ignoring or flouting them, I should be divesting myself of a part of myself, I should be losing a crucial part of my identity"(MacIntyre 2007, 54). My identity is in large part determined by my place in the world and my relationship with others; this mere fact generates obligations for a communitarian.

Communitarians do capture something that tracks the basic intuitions of most people. Individuals do forge emotional bonds with members of their families or their fellow countrymen. These emotional bonds do form part of our identity as individuals. This emotional bond also explains things like feelings of patriotism or shame when members of an association behave badly. For example, a person's Catholic identity seems to explain why members of the Catholic Church may feel a sense of shame or responsibility about the sex abuse scandal, even if they played no direct role in it themselves. And a feeling of patriotism explains why an

American citizen might feel a sense of shame at the actions of the American military during the Iraq War.

Despite its ability to explain some widely held intuitions about a polity and its members, there are three reasons to reject the communitarian version of associative duties theory. First, communitarian associative duties theorists are not clear about just how far they wish to go in arguing that identity creates an obligation. This lack of clarity leads these thinkers to neglect an important distinction about obligation; namely, an obligation can be generated *because* of something or generated *to* something. These are distinct qualities of an obligation that often, but not always, go together. Consider two examples; suppose a person reads a novel and their identity is shaped by a particular character. It is unclear how a person would or even could have any obligation to a fictional character. Yet, it does seem possible for a person's identity to be shaped, in part, by their experience of a fictional character. Consider a person like Michael Jackson, who very publicly claimed his identity to be shaped by his experience of the children's book character Peter Pan. Similarly, consider an individual whose identity was shaped by a particular event, say the 9-11 terrorist attack. Admittedly, an event or experience, such as being in New York City on 11 September 2001, may impact a person in such a way that an obligation is generated as a result. However, just as it is unclear how an individual could have an obligation to a fictional character, it is unclear how an individual could have an obligation to an event. Any obligation that arises as the result of these examples is thus an obligation *because* of an event or character, but not necessarily *to* the event or character. Forming a person's identity could conceivably generate an obligation because of an association, but communitarians fall short in explaining how forming an individual's identity can generate an obligation *to* an association.

Communitarians neglect the nature of a political association. Consequently, the communitarian version of associative duties theory does not possess the first quality of a successful theory of political obligation. That is the second reason to reject the communitarian version of associative duties theory. A state or a polity is a particular kind of association. To possess the first quality of a successful theory of political obligation, communitarians need to explain how obligations that identity generates becomes political. In other words, communitarians need to explain the role that the state as an institution plays in their theory, which they do not. Recall that the problem of political obligation has two dimensions in the context of the modern state. There is a horizontal relationship between members of a population, but there is also a vertical relationship between the state and the population it governs. Communitarians explain a horizontal relationship between members of a population. Being in a community with my fellow citizens may form an integral part of my personal identity and thus create an obligation to my fellow citizens. Yet, communitarians neglect the institutional relationship of political obligation. It is unclear what role the state plays in this theory or where the right to coerce and sanction members of a population is derived. The institution of the state seems to be a fact of life for communitarians born out of coincidence. Thus, the communitarian version of associative duties theory is incomplete at best.

Forming a person's identity may generate an obligation, but this does not generate the right to coerce or sanction a person. Consider two associations: friendship and religion. Both of these associations often play a meaningful role in informing the identity of a person. However, the obligations which are associated with friendship are entirely horizontal.
A person cannot coerce a friend into loaning them money in a time of great need. Obligations that arise from a person's religion are perhaps a bit more than merely horizontal obligations,

yet they do not rise to the level of political obligations. Several obligations come with being a member of the Roman Catholic Church. These obligations include attending mass on Sundays and other holy days, not receiving Holy Communion in a state of mortal sin, and confessing your sins at least once a liturgical year. All of these examples are obligations as such. The Roman Catholic Church may sanction its members who fail to fulfill these obligations. For example, if a Roman Catholic does not confess their sins, they can be denied Holy Communion. However, the Roman Catholic Church cannot sanction an individual violently or forcefully. If being a citizen and a member of a particular religion both form a person's identity, and if forming an individual's identity is what generates a (political) obligation, then the onus is on the communitarian to explain why one identity-forming institution can coerce its members and another cannot. That is an explanation which communitarians do not provide. Thus, their version of associative duties does not possess the first quality of a successful theory of political obligation and should be rejected.

The final reason to reject the communitarian version of associative duties theory is that it defines the term association too broadly and thus concedes too much. Associations can have many different traits. There can be associations that are characterized by fairness and the effective accomplishment of their ends and associations which are characterized by unfairness and ineffectiveness. There can be associations which seek to accomplish just and admirable ends and associations that seek to achieve unjust ends. Communitarian versions of associative duties theory largely ignore this reality. Consequently, if one accepts the argument of the communitarian version of associative duties theory as true, then associative duties theory not only grounds an obligation to obey the laws of the state but also grounds an obligation for gang members or pirates to obey the rules and norms which govern those associations. A gang is,

by definition, a group of criminals; a group whose primary objective is to organize criminal acts to further their own personal ends. Being a member of a gang usually requires a person to, on some level, be involved in activities such as robbery, murder, and other forms of physical violence. It is possible, if not likely, that members of a gang feel a sense of identity and connectedness with other gang members. Thus, by the argument of the communitarian version of associative duties theory, members of a gang must have an obligation to obey the commands of a gang leader in the same way that citizens must obey the laws of the state. That intuitively seems wrong; associative duties theory is a theory of moral obligation. A person cannot be obligated, *ceteris paribus*, to carry out an unjust or immoral action. Therefore, it seems the communitarian version of associative duties theory has explained too much; it has grounded an obligation to obey the wrong kind of association.

Communitarian Yael Tamir concedes the basic assertation of this objection. An individual can feel a sense of belonging or connectedness in an association that seeks to accomplish immoral ends. That fact generates obligations in the same way as it would for members of an association with moral ends. When membership in a morally suspect association requires a person to act immorally, there are simply other reasons at play that override the reasons that being a member of an association gives a person to act. In Tamir's words:

> Associative obligations are independent of the normative nature of the association. There is no reason to assume, as Dworkin does, that only membership in morally worthy associations can generate associative obligations. For example, members of the mafia ae bond by associative obligations to their fellow members, meaning that they have an obligation to attend to each other's needs, to support the families of killed 'in action', and the like. These obligations are not ultimate, and there are obviously sound moral reasons that could override them, but we cannot rule out their very existence…If only morally valuable communities could generate associative obligations, the latter would become a meaningless concept. Our obligation to sustain just associations is not contingent on our membership in them but rather on the justice of the association's

> actions. Conversely, our obligation to help fellow members derives from a shared sense of membership rather than from the specific nature of their actions. Hence had we been born into a community of 'villains' we might, nevertheless, be bound by associative obligations, although the latter could be overridden by moral obligations. (Tamir 1993, 101–2)

There are two particularly noteworthy lines in Tamir's response. The first is that "[a]ssociative obligations are independent of the normative nature of the association" (Tamir 1993, 101). By separating the obligations members of an association have to other members from the obligation to obey the rules and norms of the association, Tamir has led us back to the second argument that this chapter makes against the communitarian version of associative duties theory. The communitarian version of associative duties theory may explain a horizontal obligation between members, but it does not necessarily account for a vertical obligation between the members of an association and the institutions which govern the association. The second noteworthy line in Tamir's response is: "[i]f only morally valuable communities could generate associative obligations, the latter would become a meaningless concept" (Tamir 1993, 102). In this regard, Tamir is correct, but that is precisely the problem. The communitarian version of associative duties theory is too weak to stand on its own. The account always needs another principle or theory to be coupled with it to explain political obligation successfully. However, when this occurs, associative duties theory is at risk of losing what makes the theory distinctive from other accounts on political obligation. Consequently, the communitarian version of associative duties theory is not robust enough to be a successful theory of political obligation. Thus, this chapter rejects this version of associative duties theory.

As troublesome as the communitarian version of associative duties theory is, rejecting a particular version of a theory is not enough to discard the theory altogether. This chapter will now examine a version of associative duty theory which emphasizes welfare instead of

identity. This chapter will seek to demonstrate how this alternative focus puts the two versions of associative duty theory at odds with each other. In addition, the emphasis on welfare instead of identity makes for a stronger version of associative duties theory.

Welfare Version of Associative Duties Theory

Welfare centric variations of associative duties theory are based on what Seth Lazar calls the welfarist teleological thesis. This thesis makes a two-pronged argument. First, the thesis argues that certain relationships and associations are fundamental to the wellbeing and flourishing of human beings. Second, the thesis argues that without associative duties these relationships and associations would perish (Lazar 2016, 28). If these associations and relationships perish, then the general welfare of the human race is diminished in an important way. This fact is what generates obligations that stem from membership in an association.

Lazar gives many examples of those whose work clearly fits into the welfare variation of associative duties. These include Simon Keller, who argues "a healthy parent child relationship adds value to the life of both parent and child for as long as it exists"(Lazar 2016, 29), and Samuel Scheffler, who believes "people's interest in obtaining the rewards of special relationships is so strong that morality cannot possibly fail to accommodate it"(Lazar 2016, 29). Others such as Joseph Raz and David Miller argue that "friendship makes an intrinsically valuable contribution to wellbeing" and that "people's lives go better just by virtue of being involved in this kind of relationship" respectively (Lazar 2016, 29–30). All of these examples emphasize the role of welfare and benefit in creating an obligation.

The welfarist teleological thesis is a relatively new addition to the literature on associative duties theory. Seth Lazar seems to be the scholar who first coined the term.

Inevitably there is a certain amount of difficulty in determining whether or not scholars like Horton and Dworkin would endorse the welfarist teleological thesis. The thesis first appears in the literature long after Horton and Dworkin first articulate their theories of associative duties, and neither scholar explicitly emphasizes the term welfare in their work. However, at the very least, the accounts of associative duties which Dworkin and Horton provide are not incompatible with what Lazar and others say about the role associations play in human welfare and flourishing. Dworkin characterizes associations as enterprises that individuals "need and cannot avoid" (Dworkin 2013, 320). This emphasis on the necessity of associations seems, at the very least, to allude to the importance of welfare. Individuals need these associations because, without them, human beings could not flourish as persons. For example, without the love and protection, a parent provides, a child would almost certainly die.

Associations can be both natural, such as the family, and artificial, such as the state. Natural associations very clearly serve the purpose of furthering welfare and human flourishing. The reason associations such as the family exist on a fundamental level is to foster wellbeing for each of its members. In the case of artificial institutions, it would be very peculiar, even nonsensical, to justify an association that puts individuals in a position that is worse than the position they would have been in without the association. We would strain to think of a moral justification for an association whose existence impedes rather than fosters the welfare and flourishing of its members. Dworkin, in particular, bases his account of associative duties theory on two principles of human dignity. The first principle is respect for the equal importance of all human lives. The second principle is that every individual has special responsibility for their own life (Dworkin 1986). These principles generate positive and

negative duties; for example, the first principle of dignity entails a duty not to kill or harm others. The second principle of dignity gives us a positive duty to further our own interests.

Dworkin begins his theory by articulating a definition of an association. According to Dworkin, an association must meet the following four criteria. First, the members must regard the group's obligations as special, holding distinctly within the group, rather than as general duties its members owe equally to persons outside it. Second, they must accept that these responsibilities are personal: that they run directly from each member to each other member, not just to the group as a whole in a collective sense. Third, members must see these responsibilities as following from a more general responsibility each has of concern for the wellbeing of others in the group. Forth, members must suppose that the group's practices show not only concern but an equal concern for all members (Dworkin 1986, 204). These four criteria are what distinguish a bare community from an association.

A shared commonality may unite particular individuals into bare communities with one another. For example, there may be a community made up of left-handed people or a community made up of people who regularly watch a particular television program. These bare communities do not seem to have any moral status. The fact that two individuals write with the same hand or share the same taste in television programs does not, in and of itself, generate any obligations. That is why Dworkin's four criteria are relevant and important. The criteria allow Dworkin to develop a more nuanced version of associative duties theory than his communitarian counterparts.

The four criteria which Dworkin lists ensure that an association will be compatible with the two principles of human dignity. This in turn provides a reason why members of an immoral association, such as a group of pirates, a gang, Tamir's community of villains, or even

an outlaw state has no obligation to obey the rules of that association. A gang or a group of pirates does not show any genuine concern for the well-being of its members, let alone an equal concern for its members. For instance, it would be common for a gang to ask one of its junior members to put themselves in harm's way during a bank robbery or other nefarious plot as a way of proving themselves. Similarly, the leaders of a gang are usually the ones who receive the lion's share of the benefit obtained from a bank robbery or other plot rather than those members who did the dirty work. The purpose of an association is to allow its members to fulfill their moral responsibilities. Any practice that does not do this does not generate a genuine obligation. Instead, such a practice only is useful to the organization in a pragmatic way.

Associations are inherently social enterprises. For this reason, Dworkin argues that relationships that generate obligation are shaped by social conventions. Friendship is an association that is entirely reliant on social convention. Without convention, it is unclear who is my friend or what the obligations which come along with being someone's friend are. Even biological relationships are colored by social convention. The mere fact that a man is the biological father of a child does not itself tell us much about the obligations that man has as a parent. A parent must not only provide for and protect their child but treat their child with love as well. A parent's obligation to provide for and protect their child ceases to exist at a fixed point, usually the child's 18th birthday, rather than whenever the child can fend for themselves. This parental obligation is the result of social convention.

Social convention dictates that, in certain relationships, individuals must show deference to the needs, desires, or interests of another individual. Parents routinely must defer to the interests of their children. In a political context, citizens must defer to the authority of

the state and those who govern. Social convention establishes what is expected of individuals in particular relationships. Social convention and deference increase the risk that human dignity will be violated. If the deference required by social convention in a relationship is unilateral, it does not show respect for the equal importance of all human lives. Thus, anytime deference is required, it must be reciprocal to be compatible with human dignity.

In a political context, deference and social convention set up a paradox. Absent any governing institutions, the dignity of individuals is threatened. Without a coercive government, the deference which individuals show to one another is more likely to be unilateral. Deferring to the interests of others is burdensome; it puts the individual who defers in a vulnerable position. If an individual can avoid this burden and vulnerability but receive the benefit of another person's deference, he has every incentive to do so. A scenario without a coercive government is one in which human dignity is likely to be infringed upon or violated. It is also a circumstance that is likely to be characterized by chaos and mistrust because individuals never know when the deference that they show to others will or won't be reciprocated.

On the other hand, a coercive government itself threatens human dignity because it gives particular individuals authority over others. For these reasons, Ronald Dworkin argues that a state characterized by reciprocity is necessary for human dignity:

> [w]e find ourselves in associations we need and cannot avoid but whose vulnerabilities are consistent with our self-respect only if they are reciprocal - they include responsibility of each, in principle, to accept collective decisions as obligations…it is an important part of our own ethical responsibility…that we accept for ourselves and require of them the particular associative obligation - political obligation. (Dworkin 2013, 320–21)

So, a coercive government is necessary, but such an arrangement will violate the dignity of some members of a polity unless all members accept a reciprocal obligation to abide by collective decisions made by that government. Dworkin articulates the strongest possible

version of associative duties theory. If one reads it charitably, it possesses all three qualities of a successful theory of political obligation. However, as the last section of this chapter will explain, Dworkin's version of associative duties theory only succeeds to the point where it becomes indistinguishable from the fair play theory of political obligation.

Associative Duties, Reciprocity, and Fair Play Theory

There are undertones of benefits theory throughout the associative duties theory of political obligation. The obligation a child has to her parents stems from the benefit the child received from being raised by them. Even the communitarian version of associative duties theory alludes to benefit. The reason forming an individual's identity generates obligations is because there is value and benefit in having a unique personal identity. Admittedly, referring to the parent-child relationship and individual identity in this way is overly clinical, but it does illustrate the connection between the associative duties and fair play theories of political obligation. By rooting his conception of associative duties theory in principles of human dignity, Dworkin sets the stage for bringing these two theories of political obligation together.

The essence of fair play theory is that the state's provision of presumptive public goods generates obligations for the population which benefits from these goods. A presumptive public good is a good which is presumptively beneficial and non-excludable. The way in which Dworkin characterizes associations makes associations fit the criteria of a presumptive public good. Dworkin describes associations as something which individuals "need and cannot avoid" (Dworkin 2013, 320). In that characterization of associations, the word need corresponds to presumptive benefit, and the phrase cannot avoid corresponds to non-excludability. Individuals need associations because, without associations, our dignity as persons is threatened. Human

beings need the order and stability which a state provides to live well and peacefully. Without the state, a person's life is at greater risk of harm. If human dignity is the basic level of respect that every human being is owed in virtue of their humanity, it is difficult to see how it would be something that a person would not want regardless of what else they might want. Furthermore, a basic level of respect between persons is necessary for any community to form and function effectively. Given that associations are essential to human dignity, an association can be said to be presumptively beneficial.

Human dignity also explains why associations are non-excludable. Human dignity is something that every person has; it is the respect that a person is owed simply in virtue of their humanity. If the justification for a political association or political institution is that without such an association, human dignity would be threatened, then that association cannot be provided to some human beings but denied to others. If human dignity is at stake, if there is no association to protect it, then there is no justification for excluding any individual from political associations. In sum, associations have the same criteria as a presumptive public good. Both fair play theory and associative duties theory are trying to explain the obligations that arise when individuals receive a benefit from something that is presumptively beneficial and non-excludable. The difference between the two seems to be one of semantics rather than substance.

The way in which associations function illustrates another similarity between associative duties theory and fair play theory. According to Dworkin, associations are essential to human dignity; however, political associations also threaten human dignity. In a political association, citizens must defer to the law and, more specifically, to those who make and enforce the law. Dworkin argues that deference makes an individual vulnerable, but deference also requires sacrifice. Deference requires an individual to submit to the interests, needs,

opinions, or commands of another individual. In so doing, the individual who defers is sacrificing his own needs, wants, opinions, or interests and is most often acting in this way for the benefit of another. For example, a parent sacrifices her desire for uninterrupted sleep to feed her child or change a diaper in the middle of the night. A parent may sacrifice his desire for a vacation or a night out with friends to help his child with a homework assignment or ensure that more money goes into his child's college fund. In a political context, following the law requires deferring to those who make and enforce the law, but it also requires sacrifice. A law that orders an individual to pay taxes means that that individual can't use the tax money to pay bills or to purchase a good or service which he wishes to have. A law that forbids people from gathering in large groups during a public health emergency requires that a person not spend time with his friends and family. Such a law may also require a person to work from home where he may be less productive than normal. These are all sacrifices for those who defer to what the law requires.

The aim of every one of these sacrifices is the provision of a benefit. Tax dollars fund schools that provide children an education. Staying home during a global pandemic provides a wider society with the good of public health. If the sacrifice and deference required in obeying the law is unilateral then obeying the law is a threat to human dignity. Put another way, a unilateral sacrifice makes some unequal to others. If only some members of a population obey the law, then the lives of those who obey the law are not shown equal respect by those who do not follow the law. Those who repeatedly sacrifice are less able to fulfill their special responsibility for their own lives unless those around them sacrifice in a similar way and obey the law.

Obeying the law is akin to demonstrating a kind of special concern for your fellow citizen. For example, paying your taxes is akin to saying the education of your neighbor's children takes precedence over how you desire to spend your money. Suppose the neighbor whose children were educated in part because of your tax dollars refuses to pay his taxes when the time comes. His refusal is akin to saying, 'what I desire to spend my money on takes precedence over the education of your children.' The neighbor who refuses to pay taxes denies his fellow citizen the kind of special concern that the fellow citizen showed to him. This denial undermines the principles of human dignity unless it is reciprocal. Hence Dworkin's characterization of associative duties theory:

> "[w]e find ourselves in associations we need and cannot avoid but whose vulnerabilities are consistent with our self-respect only if they are reciprocal- they include the responsibility of each, in principle, to accept collective decisions as obligations...it is an important part of our own ethical responsibility…that we accept four ourselves and require of them the particular associative obligation- political obligation- that we are now considering." (Dworkin 2013, 320–21)

Let us consider the example of neighbors paying taxes in a slightly different light. Neighbor A and neighbor B both have children who use the local public school, which is paid for by tax dollars. Neighbor A pays his taxes, while neighbor B does not. In failing to pay his taxes, neighbor B has denied neighbor A special concern and undermined his human dignity. However, another way to look at this situation is that neighbor A has sacrificed to provide neighbor B with a benefit. In receiving that benefit and not sacrificing to provide neighbor A with a benefit, neighbor B has acted unfairly. That is the argument of the fair play theory of political obligation.

In sum, associative duties theory and fair play theory use different words and phrases to make their argument. Yet, both theories rely on the same concepts to make their point. Those concepts are equality via reciprocity. Both theories argue that the state is necessary and

unavoidable if individuals want to live a minimally satisfactory existence. However, the state also has the potential to make some citizens unequal to others unless there is a reciprocal obligation on all citizens to behave in a certain way. In this regard, associative duties theory and fair play theory are indistinguishable from one another.

Conclusion

This chapter has examined associative duties theory and evaluated its effectiveness in explaining political obligation. There are two different versions of associative duties theory, namely, the welfare version and the communitarian version. The communitarian version of associative duties theory argues that it is the role an association plays in shaping a person's identity that grounds political obligation. On the other hand, the welfare version of associative duties theory argues that associations play a critical role in providing a basic level of welfare and human flourishing to its members. The welfare version of associative duties theory is far stronger than the communitarian version. The strength of the welfare version stems from the fact that it is repackaging an argument already made for political obligation by fair play theory rather than articulating a new and distinct account of political obligation. Both fair play theory and the welfare variation of associative duties theory are fundamentally concerned with human wellbeing and characterized by a relationship of deference and reciprocal responsibility. Although each theory may seem superficially distinct, they are substantively alike. Viewing these theories in this way eliminates the need to view the welfare variation of associative duties theory as a distinct theory of political obligation. Instead, one can view the welfare variation of associative duties theory as a repackaged version of fair play theory.

CHAPTER IV
A Particular Problem: Analyzing Natural Duties Theory

Introduction

As intrinsically moral agents, human beings must pursue justice. In so far as institutions are necessary to administer principles of justice effectively, human beings have a moral imperative to establish, support, and refrain from undermining such institutions. This is the basis of Jeremy Waldron's claim that individuals "have a natural duty to support the laws and institutions of a just state" (Waldron 1993, 3). The natural duties theory of political obligation was first articulated by John Rawls in his seminal work *A Theory of Justice* and subsequently refined by other scholars, notably Jeremy Waldron. There is some intuitive appeal to a theory that bases political obligation on something other than what an individual has said or done. However, many scholars of political obligation, including Simmons, Dworkin, Horton, and Klosko, argue that natural duties theory cannot satisfy the particularity requirement. In other words, natural duties theory does not account for the special moral relationship that individuals have to a particular state. Consequently, these theorists reject natural duties theory as a theory of political obligation. This chapter aims to evaluate whether or not this conclusion is correct. The chapter will begin by reviewing the existing natural duties theory literature and examining how the theory historically develops. The chapter will then explain the special allegiance objection, which serves as the basis for the critiques made by Simmons and other scholars. Finally, the chapter will analyze the mechanisms that two of the most prominent natural duties theorists, John Rawls and Jeremy Waldron, use to address the special allegiance objection. The mechanisms which both scholars use are unsatisfactory. In Rawls' case, this is because the original position and veil of ignorance are too vague to produce a duty that resembles a duty

to obey the law. Alternately, Waldron answers the special allegiance objection in an impoverished way. Waldron's theory says more about the obligations that foreigners have to a state than obligations that those within a state's territory have to its governing institutions.

Historical Foundations of Natural Duties Theory

The origin of the natural duties theory of political obligation is somewhat nebulous. Some, such as Kent Greenawalt, trace natural duties theory back to ancient and medieval conceptions of natural law (Greenawalt 1985, 8-10, 1989). The term 'natural law' is usually understood to refer to a set of rules which are derived from human nature, using reason. Natural law is universal and binds all human beings independent of any positive law or political allegiance (Aristotle 2010, 1373b 2-8). According to medieval conceptions of natural law, God is the origin of authority and obligation. Greenawalt points to the following passage from the Letter of Saint Paul to the Romans as evidence of this: “[l]et every soul be subject unto higher powers. For there is no power but God: the powers that be ordained by God” (Romans 13:1).

However, as John Horton and others have argued, an explicitly religious or theist understanding of natural law does not make for a convincing theory of political obligation (Horton 2010, 96). A theory of political obligation is, by nature, general; it gives a reason for every citizen to obey the laws of a state. Theories of political obligation that rest on the existence of God are unsatisfactory because they are only convincing to those who believe in God. Even those who believe in God are likely to have different understandings of the nature of His will (Horton 2010, 97). For example, a Christian is bound to have a different understanding of God’s will and authority than a person of the Islamic faith. Thus, any

theologically grounded theory of natural duties is likely to be an inadequate account of political obligation.

John Rawls articulated the first contemporary version of the natural duties theory of political obligation in his seminal work, *A Theory of Justice.*[38] Rawls expresses his account of natural duties in the following way:

> From the standpoint of the theory of justice, the most important natural duty is that to support and to further just institutions. This duty has two parts: first, we are to comply with and to do our share in just institutions when they exist and apply to us; and second, we are to assist in the establishment of just arrangements when they do not exist, at least when this can be done with little cost to ourselves. It follows that if the basic structure of society is just, or as just as it is reasonable to expect in the circumstances, everyone has a natural duty to do what is required of him. Each is bound irrespective of his voluntary acts, performative or otherwise. (Rawls 1999, 293-294)

According to Rawls, this natural duty is universal; it binds person *qua* person. In other words, all human beings are required to behave in a particular manner, not because of any voluntary actions, but simply in virtue of the fact that human beings are moral agents.

Although Rawls can be considered the father of contemporary natural duties theory, his account of the theory is very much underdeveloped. Other than the passages cited in this dissertation, Rawls never expands on what the natural duty to support and further just institutions means or requires. In fairness to Rawls, he never claimed to be developing a full-fledged theory of political obligation; that just was not his aim in *A Theory of Justice*. Thus, it

[38] Most scholars consider Rawls' account of natural duties to be a theory of political obligation. However, Rawls defines obligations narrowly; voluntary action is the only thing that can make a person incur an obligation, according to Rawls (Rawls 1999, 113). Since natural duties bind an individual regardless of their agreement or lack thereof, Rawls would say he is not developing a theory of political obligation *per se*. Instead, he is developing a theory of (natural) duties to a just polity. Rawls' critics and proponents alike have acknowledged this. Most agree that this just a terminological issue; the duty to promote and support a just institution is functionally the same thing as a theory of political obligation (Horton 1992). Thus, in this chapter of the dissertation, I will follow Horton and others in treating Rawls' duty to promote and support just institutions as a theory of political obligation.

makes sense that what Rawls does offer in *A Theory of Justice* is somewhat vague. Other contemporary versions of natural duties theory have sought to expand on Rawls' work by explaining what it means to support and promote just institutions. Some argue that supporting and furthering just institutions is colored by a Samaritan duty of easy rescue (Wellman and Simmons 2005).[39] Others argue that supporting and promoting just institutions requires the equal advancement of people's interests (Christiano 2010). Yet another group of scholars describes the duty to support and further just institutions as a Kantian duty of respect for others' freedom-as-independence, understood as a secure sphere of self-determination defined by a person's rights (Stilz 2009). By and large, these contemporary accounts of natural duties theory are all relatively disparate from each other. However, these accounts share three general traits in common. First, all contemporary accounts of natural duties theory aim to expand upon the work of John Rawls. Second, these accounts are all at least implicitly Kantian. Finally, these accounts are all are susceptible to the special allegiance objection. This chapter will focus the remainder of its analysis on the special allegiance objection in particular. After explaining the special allegiance objection, the chapter will evaluate how Rawls and Waldron respond to the objection. Ultimately, the chapter will conclude its analysis by arguing that the responses from either scholar are insufficient. Consequently, the natural duties theory of political obligation fails to explain why citizens of a particular state must obey the laws of that state.

The Special Allegiance Objection

[39] For a detailed analysis and critique of Samaritanism and political obligation, see (Renzo 2008).

Many scholars are quick to dismiss the natural duties theory of political obligation described by Rawls and later Waldron. The special allegiance objection is the reason for this dismissal. The objection is described by Simmons in this way:

> Suppose we accepted …that we have an obligation or a duty to support just governments, and that is what our political obligation consists in. And suppose that I am a citizen living under a just government. While it follows that I have an obligation to support my government. it does not follow that there is anything *special* about this obligation. I am equally constrained by the same moral bond to support every other just government. Thus, the obligation in question would not bind me to any particular political authority in the way we want. If political obligation and citizenship are to be related as I have suggested they should be, we need a principle of political obligation which binds the citizen to one *particular* state above all others, namely that state in which he is a citizen.
> (Simmons 1979, 31–32)

Ronald Dworkin largely echoes the critique made by Simmons. Dworkin argues that natural duties theory: "does not provide a good explanation of legitimacy, because it does not tie political obligation sufficiently tightly to the particular community to which those who have the obligation belong; it does not show why Britons have a special duty to support the institutions of Britain" (Dworkin 1986, 193). The essential thrust of the special allegiance objection is that natural duties theory cannot satisfy the particularity problem.

Some scholars have questioned the wisdom of the special allegiance objection. Dudley Knowles, in particular, critiqued the objection arguing: "[w]e wish to determine the ground upon which children should respect their parents…We propose the answer: children should respect their parents if and only if their parents treat them with tender loving care. We would never want to be tempted to think that an answer of this kind is flawed in principle because it entails that children should show respect to all parents (other children's parents included) just in case those parents treat their own children with tender loving care"(Knowles 2009, 158). All parents have an obligation to treat their children with tender loving care, just as all states

have an obligation to be just. The mere fact that a father treats his child with tender loving care is not enough to obligate all children in the world to him. Similarly, a state that is just cannot claim political obligation from every individual in the world. Although Knowles is not a proponent of natural duties theory, his critique of the social allegiance objection indicates that the way in which individuals relate to an institution is central to an adequate understanding of natural duties theory. Still, this relationship must be developed and justified, not merely articulated or asserted.

Despite Knowles' critique, the special allegiance objection is still widely seen as problematic and even devastating for the natural duties theory of political obligation. Given the possible devastating potential of the special allegiance objection, the remainder of this chapter will examine how both Rawls and Waldron go about addressing the objection. In the end, this chapter will conclude that neither Rawls nor Waldron answers special allegiance adequately.

Rawls and Waldron

At the outset, it is not clear that the special allegiance objection is entirely fair to Rawls. After all, the purpose of the original position is to determine the principles by which society will be organized. If an individual is not a member of that society, the principles agreed upon in the original position do not apply to that individual, so to speak. That includes the duty to support and comply with the set of institutions that govern that society and is seemingly the reason Rawls includes the phrase 'and apply to us' in his formulation of the duty to support just institutions. With this phrase, Rawls is distinguishing between all just institutions and those of which we can be considered a member. The implication being if an individual is not a citizen

of a particular state, the laws of that state do not apply to her. That does seem intuitively plausible; the fact that a person is a citizen of France and not a citizen of New Zealand (or vice versa) is what gives a person an obligation to obey the laws of France but not New Zealand (or vice versa) even if both are basically just.

However, Rawls has still faced criticism for including the phrase, "and that apply to us" in his theory of natural duties. Critics argue that the phrase is an arbitrary add-on to the theory meant to pre-empt an objection (Simmons 1979, 147–52). The phrase is not necessary to a theory of natural duties, nor does it add much to the theory, especially given that Rawls leaves the reader to work out what it means for an institution to apply to us for himself. Even if the phrase 'that applies to us' is an *ad hoc* addition to natural duties theory in using the original position Rawls does have an answer to the special allegiance objection built into *A Theory of Justice*.

Although the original position seems to answer the special allegiance objection, it has problems of its own. These problems stem from ambiguity in what the phrases "that apply to us" and "when this can be done with little cost to ourselves" mean in the context of the natural duty to support just institutions. The phrase "when this can be done with little cost to ourselves" is known as the cost proviso. Rawls himself only includes the cost proviso in the duty to establish just institutions, not in the duty to comply with just institutions. Scholars, notably George Klosko, argue the omission of the cost proviso is misguided. Klosko believes both the duty to establish and the duty to comply with just institutions should be qualified according to cost (Klosko 1994, 254).

Klosko believes that if both duties are qualified according to cost, the resulting duties will be too weak to resemble a duty to obey the law. The argument is reasonably

straightforward. Klosko posits that, according to Rawls, individuals are risk-averse in the original position. Obeying the law, Klosko argues rightly, can be an extremely onerous task. It can require an individual to pay a large sum of their income in taxes or even to be drafted into the military and go to war. Klosko concludes that no risk-averse person would agree to these requirements; thus, the duty to comply with just institutions will not be strong enough to resemble a duty to obey the law (Klosko 1994).

Regardless of whether Klosko's cost argument has any teeth, there is a second reason to reject the Rawlsian version of natural duties theory. A central aim of *A Theory of Justice* is to explain the structure of a just society. It is almost certain that the just institutions that Rawls writes about are intended to be Westphalian states. Rawls likely intended the phrase "apply to us" to be read as 'the Westphalian states that apply to us.' A Westphalian state is without doubt one just institution that could apply to an individual. Yet, states are not the only just institutions that exist. International organizations such as the United Nations or the World Health Organization could plausibly be considered just institutions. What's more, is that both these international organizations could be said to apply to us. The United Nations fosters and facilitates peace among all nations and peoples. The World Health Organization works to ensure the globe can address disease and pandemics when they arise. Given the global scope of both the United Nations and the World Health Organization, it would be reasonable to say that these institutions apply to us. According to Rawls' account of natural duties theory, this would be enough to generate political obligation. Yet, this is a step too far; political obligation justifies the state. Few scholars claim that an international organization such as the United Nations or the World Health Organization could have the same coercive power as the state. In sum, despite what he might have intended, Rawls' theory is too vague and justifies political

obligation to too many institutions. We need a theory that justifies obligation to a state, not necessarily the United Nations or World Health Organization.

Jeremy Waldron has a different strategy for addressing the special allegiance objection. He explicitly takes his work to be building on the work of Rawls in *A Theory of Justice* (Waldron 1993, 4–5). That being the case, there is a curious omission in the ways Waldron develops the theory. Waldron never mentions mechanisms such as the veil of ignorance or the original position- either in his summary of Rawls' argument or his development of the theory. Given the importance of the veil of ignorance and the original position in Rawls' work, it seems odd Waldron would omit them entirely. Waldron is undoubtedly aware of the veil of ignorance and the original position and their importance in Rawls' work. It is unclear whether he omits these mechanisms because he believes they are unnecessary or because, like Klosko, he thinks them to be problematic for natural duties theory.

Instead of the original position, Waldron addresses the special allegiance objection by arguing that the duty to support just institutions is a range-limited principle. A range-limited principle distinguishes between insiders and outsiders in relation to the principle. An individual is within the range of a principle "if it is part of the point and justification of the principle to deal with the conduct, claims, and interests" (Waldron 1993, 13). Waldron uses an example to illustrate range limitation.

> Hobbes has five children and one cake. He decides that the fair way to divide the cake is to give each child an equal share: "To each an equal amount of cake" is his principle. a neighbor's child, called Calvin, is watching these proceedings from across the fence. Astutely, Calvin points out to Hobbes that the principle "To each an equal amount of cake" entitles him (Calvin) to a slice to a slice as well. Hobbes responds that Calvin has misunderstood the principle. The formulation is elliptical, and the principle it abbreviates is not "To each and every one in the world…an equal amount of cake," but rather "To *each of Hobbes' children* [emphasis in the original] an equal amount of cake." (Waldron 1993, 12)

The cake principle which Waldron refers to above is range limited. Hobbes' children are inside the range of the principle, while Calvin is outside the range of the principle. For a more relatable example, imagine a wedding where the couple says, 'everyone gets one party favor.' That principle is only valid for those at the wedding because their guests are the only people with which the couple is concerned. Only the wedding guests are entitled to a party favor, not everyone person in the world. In a political context, an individual who is a citizen of a state, or resident in its territory, is within the range of its government institutions, while the ordinary non-citizen or non-resident is not.

Waldron uses the work of Immanuel Kant to justify his conception of range limitation. Kant argues that the state is an arrangement that individuals must enter into so that conflicts can be avoided and effectively settled when they arise. In Kant's words: "[e]ven if we imagine men to be ever so good-natured and righteous before a public lawful state of society is established, individual men…can never be certain that they are secure against violence from one another" (Kant 1999, 76). The individuals whom we are physically closest to are the ones with whom we are most likely to come into conflict. Thus, those are individuals we must enter into a state with in the first instance.

The concept of range limitation itself is not novel or controversial. However, the way in which Waldron uses the distinction is somewhat impoverished, in a meaningful way. Admittedly, the expanded understanding of particularity in Chapter I of this dissertation seemingly supports Waldron's general argument. Both a citizen and a visiting or resident foreigner in a state's territory are within the range of its political institutions. Waldron argues that those within the range of an institution have an obligation not to undermine the institution and support it. Those outside the range of an institution have an obligation not to undermine

the institution (Waldron 1993, 17). This distinction seems correct and insightful. One thing of note is that those within the range of an institution have a more onerous burden or duty to that institution. One might ask why someone with the range of an institution must take on an extra or more onerous burden. Waldron's answer is seemingly geographic; crossing a state's border is seemingly enough to place one within the range of its governing institutions. One might wonder why the simple act of crossing into a territory is enough to generate a more onerous burden than before; the mere fact that I am in a physical territory does not itself does not indicate I must take on any particularly onerous burden. When I enter a territory, I join a community and become part of a cooperative scheme. In such a scheme, I acquire benefits from the sacrifices of others. Justice seemingly demands that I do not take advantage of the sacrifices of others. The fact that I become part of a cooperative scheme when I enter a territory generates obligations rather than merely my physical location. That appears to be a fact Waldron overlooks. In short, Waldron reaches the correct conclusion regarding obligations and range limitation, but his explanation of the origins of obligations is somewhat lacking and incomplete.

Conclusion

Natural duties exist; there are duties that bind individuals to act in a particular way, man *qua* man. However, this fact alone does not make natural duties a successful theory of political obligation. A theory of political obligation must be able to justify a duty to obey the laws of a particular state. The attempts by Rawls and Waldron to account for this fall short. In the case of Rawls, it is because the terminology he uses is too vague and thus generates an obligation that is of too wide a scope. Waldron reaches the correct conclusion regarding range

limitation. However, his account is lacking in that it fails to provide a justification as to why individuals must take on the burdensome sacrifices required by being a member of a particular political community. Waldron's conclusion is better supported by fair play theory than natural duties theory. For this reason, Waldron's account of natural duties theory should be rejected.

Part II
Applications

Overview

Part I of the dissertation argued that fair play theory can explain the origins of political obligation in the case of the Westphalian state. Part II of the dissertation will seek to apply fair play theory to institutions other than the Westphalian state. The purpose of this application is to determine if individuals can have an obligation to obey commands issued by entities other than an individual's own state.[40] Part II will focus on a particular instance of political obligation beyond the Westphalian state, namely a *postbellum* provisional authority arrangement. The focus on this specific institution does not mean that a provisional authority arrangement is the only instance that a person could have political obligation to an institution other than a state; or that such institutions could only arise following war or military occupation. One could potentially have political obligation to a wide range of institutions other than the state in an array of different circumstances. This dissertation will focus on *a postbellum* provisional authority arrangement in particular for two reasons. First, postbellum is a context in which a governing institution other than the state has existed historically and clearly may be necessary. Second, a *postbellum* provisional authority arrangement provides a clear institutional contrast with the state. These institutions are distinguishable from the state and not just a similar institution by a different name.

This dissertation will justify political obligation to a *postbellum* provisional authority arrangement by conceptualizing a just peace as a presumptive public good. The argument of part II will proceed in three stages. First, chapter five will define the term 'a just peace.' Just peace is a term that lacks a single, clear, agreed-upon definition. In this sense, chapter five is

[40] I am grateful to Dr. Laura Valentini for this characterization of part II in her comments on a previous draft of this dissertation.

foundational to part II of the dissertation. One cannot develop an argument around a concept without having a clear idea of what that concept means. Next, chapter six will explain how a just peace meets the criteria for being a presumptive public good. Recall that political obligation consists of two relationships. Chapter six will explain the first of these relationships, the interpersonal relationship. In other words, the purpose of chapter six to develop how individual members of a population acquire an obligation to each other in transitions from war to peace. Finally, chapter seven will explain the second relationship that is integral to political obligation. It will describe the relationship between a population and the entity that serves as a provisional authority arrangement. That is to say that the purpose of chapter seven is to explain how members of a population acquire an obligation to obey the commands of a particular institution. In explaining this relationship, chapter seven will also seek to justify the foreign character and the temporary nature of a provisional authority arrangement.

CHAPTER V
Defining a Just Peace

Introduction

Just war theory is the area of political philosophy that addresses questions of justice that relate to war and armed conflict. The ideas which make up just war theory date back to ancient and medieval thinkers such as Cicero and Augustine of Hippo (Augustine 1994, 213–30; Cicero 1913; Harrer 1918). Traditionally, scholars have divided just war theory into two parts, *jus ad bellum,*[41] meaning justice before war, and *jus in bello,* meaning justice during a war. Recently, Brian Orend proposed adding a third component of just war theory called *jus post bellum* (Orend 2000). The primary concern of *jus post bellum* is to determine the principles by which a society ought to transition from war to peace. In other words, *jus post bellum* examines how to establish a just peace. Although establishing a just peace is the aim of an entire section of just war theory, there is little sustained scholarship on how a just peace ought to be defined. Providing a concise definition of a just peace is the aim of this chapter. The chapter will start by analyzing why the concept of a just peace is largely absent from classical just war theory scholarship. The chapter will then motivate the need to define the term 'just peace.' Finally, the section will articulate the principles which make up a just peace.

Historical Foundations and Motivation for *Jus Post Bellum*

[41] This phrase literally translates as 'right to war.'

Early thinkers in just war theory made no distinction between *jus ad bellum, jus in bello*, and *jus post bellum*. Instead, they treated principles of morality and warfare generally. Despite the lack of principles explicitly concerned with peace and how to attain it, traditional just war theory does not ignore the subject entirely. Although he never explicitly defines the term, Augustine, considered by some to be the father of just war theory, believed peace to be "the purpose of waging war." Augustine further argued that "[w]hat, then, men want in war is that it should end in peace" (Augustine 1958, 452). Even before Augustine and the advent of formal just war theory, Aristotle wrote that "the purpose of war is to remove the things that disturb peace"(Grotius 2018, 375).[42]This is not an idea that is confined to ancient or medieval thinking either. American Civil war general William Sherman, best known for the policy of total war, argued that "[t]he legitimate object of war is a more perfect peace" (quoted in (Patterson 2012, 77). In addition, contemporary scholars such as James Childress have argued that "[t]o go to war with right intention, therefore, is to fight for a just peace" (Childress 1983, 78–79).

The initial distinction in just war theory was between *jus ad bellum* and j*us in bello*. Even after this distinction, there are still no principles explicitly concerned with peace; yet the concept of peace does not go ignored altogether. Two prominent *jus ad bellum* principles are last resort and reasonable chance of success (Eckert 2014; Mouch 2006). The point of the principle of last resort is to avoid war to the greatest extent possible and ensure that war only occurs when necessary. Similarly, the principle of reasonable success aims to ensure that once a war begins, it has a reasonable chance of accomplishing its purpose while ending

[42] Grotius cites Aristotle as part of his own book, *The Right of War and Peace*, in which Grotius endorses the general sentiment of this quote.

expeditiously and not devolving into perpetual conflict. Accordingly, it seems that these principles are at least in some way concerned with attaining peace. This concern for peace, however tangential, seemingly renders *jus post bellum* unnecessary for most traditional just war theorists (Williams and Caldwell 2006, 312).

Whatever the reasons were for the exclusion of *jus post bellum* and explicit principles of peace, this traditional understanding of just war theory is flawed and incomplete. There is no one interpretation of these principles which is universally accepted. Basing a conception of a just peace on contentious principles that lack agreement hardly seems prudent. Beyond that, even if classical just war theorists such as Augustine or Aristotle are correct that attaining a 'more perfect peace' is the primary intention of waging war, that still does not mean that explicit principles of peace are unnecessary. If peace remains undefined, the result is that soldiers, political leaders, and policymakers may not know what it is they are seeking or how to go about attaining it.

Just war theory has existed in some form for centuries. Indeed, Augustine was writing some 1700 years ago in the days of the Roman Empire. Even several centuries before that, Aristotle was engaging with ideas such as proper authority that would come to form the nucleus of just war theory. Yet it is only in the last twenty years or so has *jus post bellum has* received any serious or sustained scholarly attention. The vast majority of scholars have seemingly only been interested in questions regarding the permissibility of waging war in the first place and questions regarding right conduct during a war; scholars have shown little interest in the morality regarding the termination of war. Given this reality, it is worth asking whether there ought to be a third *jus post bellum* section of just war theory at all, especially given that *jus ad bellum* and *jus in bello* do not neglect the subject of peace entirely. The following section of

this chapter seeks to answer this question and, in so doing, motivate the need for *jus post bellum* and thus the distinct study of a just peace.

War has a beginning, middle, and end. This fact may seem rudimentary and trivial, but it is critically important in illustrating the need for *jus post bellum* and set principles of a just peace. *Jus ad bellum* addresses questions of how to justify going to war in the first place. *Jus in bello* engages with questions of permissible actions during warfare. Thus, just war theory is concerned with the morality of the beginning and the middle of a war; yet without *jus post bellum,* there is no set of principles to govern the end of a war. If the beginning and middle of a war are morally weighty enough to warrant systematic and sustained scholarship, then it follows that the end of a war has the moral significance to deserve the same degree of scholarly study. It is difficult to understand how the end of warfare could be so different from the beginning and middle of a war that it does not require the same degree of moral regulation.

Brian Orend highlights three reasons why terminating a war deserves the same type and degree of moral regulation as justifying war and determining what actions are permissible during warfare. First, failing to regulate the termination of war allows the parties involved to default into a might-makes-right mentality. Such a mentality allows the victor to enjoy the spoils of war (Orend 2002, 43). In the most basic sense, this mentality is problematic because it takes the focus off justice. Victors who have no laws or clear moral principles to constrain their actions are likely to enact peace treaties that are needlessly harsh and vengeful. Orend cites the Treaty of Versailles at the end of the first world war as a prominent example of what happens when leaders and policymakers with the might-makes-right mentality are left unconstrained by moral regulation at the end of a war (Orend 2002, 43).

The second motivation for *jus post bellum* is that terminating a war absent moral regulation leads to confusion and uncertainty. The result of confusion and uncertainty is that combat is unlikely to end, and consequently, the fighting is likely to be prolonged. If belligerents have no guarantees that combat will end or lack assurances regarding how combat will end, they have little incentive to put down their weapons. Rather, in such a situation, belligerents have every incentive to keep fighting to strengthen their position in a war and at any future negotiating table. Orend gives the Bosnian civil war as an example of prolonged armed conflict resulting from the uncertainty resulting from a lack of *postbellum* moral regulation (Orend 2002, 43).

The final motivation for *jus post bellum* is that the lack of moral principles relating to the termination of war leads to inconsistency. The lack of an established and clear normative blueprint to follow makes *ad hoc* and patchwork solutions at the end of a war more likely. It is improbable, or at least not guaranteed, that such solutions will meet an acceptable threshold of justice or prudence. That is unfair; belligerents and all those involved in warfare deserve a just end to all wars, not just some. Military leaders and policymakers who author peace treaties owe it to belligerents to be like a judge and jury: “evaluating the factual complexities of a given case in light of general principles” (Orend 2002, 44).

Principles of a Just Peace

There is an adage that says beauty is in the eye of the beholder. It seems that the same could be true of the term 'peace.' Countless different thinkers and scholars have used the term 'peace,' yet scholars have rarely agreed on what the term means or what it entails. For example, peace, according to Thomas Hobbes, is entirely different from peace according to Immanuel

Kant. In the vaguest sense, peace is simply the absence of war; it refers to a state free from violence and hostility. Most scholars should agree about that much. Thinkers seemingly disagree about how long peace can last and how robust peace can be.

It is best to understand the concept of peace on a spectrum. To illustrate this, consider four different kinds of peace, bare peace, stable peace, just peace, and perpetual peace. A bare peace and perpetual peace serve as the bookends of the spectrum of peace. On one end, bare peace is the most rudimentary form of peace. A bare peace lacks any normative status or dimension. The mere fact that two actors are not currently engaged in armed combat is enough to constitute a bare peace. A defining feature of this form of peace is the lack of any guarantee, stability, or security. A bare peace could cease to exist at any time. Thomas Hobbes is one prominent scholar who described a bare peace in his work (Hobbes 2017, chap. 13). On the other end of the spectrum, perpetual peace is the most robust form peace can take. As the name suggests, perpetual peace is a peace that permanent and everlasting. It is akin to the complete eradication of warfare. It is the state which Kant described in his work. Importantly, perpetual peace can only come to be via justice and liberal democratic values (Kant 1983).

In between these two bookends are stable peace and just peace. A stable peace is similar to a bare peace in that it entails the absence of war between two (or more) actors and has no normative status. A stable peace is differentiated from a bare peace by the presence of a reasonable guarantee that the existing state of peace will not end at any moment. A dictatorship or authoritarian regime often exists in a stable peace. Consider a state like Saudi Arabia. The King of Saudi Arabia is an absolute monarch who keeps violent conflict from breaking out amongst his people or territory. Although Saudi Arabia may be stable, it is far from a just society. In Saudi Arabia, women lack the most basic rights, gay men can face

prison time for having sexual relations with each other, and political protests are illegal. In short, Saudi Arabia remains peaceful at the expense of justice.

The fourth form of peace, a just peace, is the hardest to define or describe in any meaningful detail. The defining feature of a just peace is that it has a normative dimension. As the name alludes to, a just peace is a peace characterized by justice. Justice itself is a concept with many possible meanings and interpretations. Thus, the phrase 'peace characterized by justice' is too vague to be useful without subsequent elaboration. In the context of war and peace, justice in large part revolves around human rights. That should not be at all surprising as just war theory, more generally, is rights-based. The principles of *jus ad bellum* state that war is justified by the gross violation or infringement of personal rights such as the right to life or by the violation or infringement of communal rights such as territorial sovereignty. The principles of *jus in bello* are largely centered around protecting the rights of combatants and civilians who find themselves in the line of fire (Mégret 2006). In so far as *jus post bellum* is a subsection of just war theory, it makes sense to expect it to be rights centric as well.

The first just war theorist to explicitly study peace was Immanuel Kant. Kant recognized that there was a normative dimension to peace; transitions from war to peace are processes governed by ethics and morality in the same way that questions of when to go to war and how to behave during a war are. There is no evidence of classical just war thinkers explicitly considering the process of transitioning from war to peace before Kant (Orend 2004, 174). In this way, Kant ostensibly invents the category of *jus post bellum.* For this reason, Kant's theory of *jus post bellum* may seem somewhat primitive. Nonetheless, Kant's theory of *jus post bellum* consists of nine articles. The nine articles are as follows:

1. ‘No treaty of peace shall be considered valid as such if it was made with a secret reservation of the material for a future war’.
2. ‘No independently existing state, whether it be large or small, may be acquired by another state by inheritance, exchange, purchase or gift’.
3. ‘Standing armies will gradually be abolished altogether’.
4. “No national debt shall be contracted in connection with the external affairs of the state’.
5. ‘No state shall forcibly interfere in the constitution and government of another state”.
6. “No state at war with another shall permit such acts of hostility as would make mutual confidence impossible during a future time of peace. Such acts include the employment of *assassins or poisoners*, breach of agreements, the instigation of reason within the enemy state, etc. (his italics)’.
7. ‘The civil constitution of every state shall be republican’
8. ‘The right of nations shall be based on a federation of free states’.
9. ‘Cosmopolitan right shall be limited to conditions of universal hospitality’.
   (Orend 2004, 175)

These nine articles can be split into two groups. The first six articles are known as the preliminary articles. The latter three articles are known as the definitive articles. The preliminary articles relate to achieving peace in the first instance. In other words, the preliminary articles address questions of achieving a just peace. The definitive articles are concerned with how peace is maintained long-term and perpetual peace is achieved (Orend 2004, 175). Given that this chapter aims to explain and evaluate what occurs immediately after a war ends, it will largely set aside the definitive articles. Even in these early principles of *jus post bellum,* there is a clear tension between state sovereignty and human rights. For instance, article five protects state sovereignty while several other articles, most notably article nine, seemingly require sovereignty to take a back seat to human rights. This tension between state sovereignty and human rights remains prevalent even in contemporary *jus post bellum* scholarship (Bellamy 2008, 605–10).

While Kant is interested in the question of how to attain peace and arguably provides the foundation for *jus post bellum*, he does not develop this area of just war theory in very much meaningful detail. In fact, Kant’s contribution to just war theory was largely overlooked

and forgotten about until the 1990s. Brian Orend is arguably the first scholar to build on the foundation Kant provides and develop *jus post bellum* into a full-fledged category of just war theory on par with *jus ad bellum* and *jus in bello.*[43] The primary concern of *jus post bellum* is how a just peace is defined and attained.

The most rudimentary way to understand a just peace is as the *status quo ante bellum*. The *status quo ante bellum* is the minimum threshold that a just peace must meet. In other words, at the very least, a just peace requires returning to the state of affairs that existed before the war began. However, this rudimentary definition of a just peace has been heavily criticized. Michael Walzer argued that defining a just peace as the *status quo ante bellum* is nonsensical as it was the state of affairs that obtained before the war which caused a war to break out in the first place (Walzer 2015, 119). Consequently, returning to the *status quo ante bellum* leads only to a perpetuated cycle of war and intermittent peace. Others, such as Brian Orend, have argued that even if the *status quo ante bellum* was something actors ought to want, it is likely an outcome that is not empirically possible to attain. War is characterized by a lack of trust between the parties. War changes the state of affairs too much to expect the parties to be capable of returning to how they once were before war broke out (Orend 2002, 45).

Although the literal *status quo ante bellum* is likely to be neither possible nor advisable, dismissing the idea of a just peace being the *status quo ante bellum* altogether would seem to

[43] While Immanuel Kant and Brian Orend are the two most prominent forefathers of *jus post bellum,* the origin of the term '*jus post bellum'* is exceptionally unclear. Orend attributes the term to Thomas Pogge (Orend 2004, 167). Others such as George Clifford have attributed the phrase to Michael Schuck (Clifford 2012, 42; Schuck 1994). Ultimately the identity of the individual who invented the term, and the precise origins of it, are not critically important to this chapter. What is important is that *jus post bellum* has been universally accepted as the name of the third category of just war theory for the last two decades or so.

be a step too far. The validity of the *status quo ante bellum* would seem to vary depending on the type of war and the status of the actors involved. Consider the example of the First Gulf War in which Iraq invaded Kuwait in a bid to increase its territory. For Kuwait, the *status quo ante bellum* was the restoration of its territorial sovereignty. Given that Iraq's attack on Kuwait was unjust in the first place, this is something to which Kuwait is entitled. However, we would not want the restoration of the literal *status quo ante bellum.* Such a restoration would put Iraq back into a position where it was once again possible to infringe on the rights of another state. That would mean that in addition to its territorial sovereignty, the literal *status quo ante bellum* of the First Gulf War would have put Kuwait in real danger of another invasion. The literal *status quo ante bellum* restores the right of a state like Kuwait to territorial sovereignty. Yet, it does not create a guarantee or any protection of that right. The lack of any protection and guarantees seems to make the literal *status quo ante bellum* unstable. And it is precisely the lack of stability that Walzer seems to be objecting to in his dismissal of the *status quo ante bellum*. In sum, the literal *status quo ante bellum* can provide a useful starting place for thinking about transitions from war to peace. However, the principles of a just peace ultimately need to go further.[44]

The essence of a just peace is the *status quo ante bellum* plus.[45] Generally speaking, the *status quo ante bellum* plus results in the "more secure possession of our rights, both individual and collective" (Orend 2002, 45). The aim of the *status quo ante bellum* plus is "the

[44] I am grateful to my friends and former colleagues, Joel Salisbury and Charlette Chapman-Hart, for their comments and advice on the topic of the *status quo ante bellum.*

[45] Michael Walzer refers to the idea of a just peace as “restoration plus” (Walzer 2015, 19). The difference between restoration plus and the *status quo ante bellum* plus is likely one of semantics rather than substance. However, I believe the phrase *status quo ante bellum* plus more accurately captures what a just peace aims to achieve.

vindication of those rights whose violation grounded the result to war in the first place" (Orend 2002, 46). This general definition alone places a limit on how long a just war can continue. Namely, a just war must end as soon as the rights whose violation or infringement led to war are vindicated. To continue war beyond this point is itself an act of aggression as there is no longer any normative basis on which to wage war (Orend 2000, 123).[46]

The rights vindication that is the general aim of a just peace has four more specific components. First, a just peace must bring combat to an end. Hostilities must cease, and combatants must put their weapons down. Ending combat allows public order to be established in a population. Public order is important for two reasons. First, "public order is an essential foundation for the restoration of human rights" (Williams and Caldwell 2006, 318). Without public order, some claim that a Hobbesian state of nature may ensue. In such a state of being, it is impossible to secure any right in a meaningful way (Hobbes 2017; Williams and Caldwell 2006, 318). Second, public order brings clarity to the decision-making process of military and political leaders. During combat, soldiers, military leaders, and policymakers alike are often in the 'fog of war,' so to speak. The fog is reflective of the fact that war is inherently unpredictable. During wartime, decisions often must be made quickly based on incomplete information (Williams and Caldwell 2006, 313). Establishing public order takes the parties out of the fog of war and ensures that military and political leaders can make careful and deliberate decisions based on full knowledge of the circumstances and the possible consequences of a decision.

The second component of rights vindication requires stopping aggression. Orend argues:

[46] It is worth noting that there is no guarantee that war will end justly; some wars don't. In some cases, the aggressor prevails and 'gets what they want,' so to speak. In cases where the aggressor prevails, there can be no just peace. Where there is no just peace, there is no moral requirement to comply with the institution that facilitates the termination of war.

> The aggression needs, where possible and proportional, to be rolled back, which is to say that the unjust gains from aggression must be eliminated. If, for example, the aggression has involved invasion and the unjust taking of land L, then justice requires that the invader be driven The aggression needs, where possible and proportional, to be rolled back, which is to say that the unjust gains from aggression must be eliminated. If, for example, the aggression has involved invasion and the unjust taking of land L, then justice requires that the invader be driven out of L and secure borders reestablished…The corollary to this principle is that the victim of the aggression is to be reestablished as a political community or state with all the objects of the state rights to which it is entitled. For example, if the victim's legitimate government was forcibly overthrown by the aggressor, it is required to be reinstated, and so on. (Orend 2000, 123–24)

The *jus ad bello* principle of just cause is key to understanding this second component fully. A just cause is a reason a state is justified in going to war. Two prominent just causes for war are self-defense and humanitarian intervention (Orend 2000, 119–20). The aggression Orend refers to is the act that violated or infringed on a right and necessitated war in the first place. In a war of self-defense, the act of aggression would be the invasion of another state and violation of their sovereignty and political independence. In a war of humanitarian intervention, the act of aggression would be a state carrying out an act of genocide on its people. Such an act violates the victim's right to life.

The essence of the second component of a just peace is that these rights violations must stop. Thus, in a war of self-defense, this second component would require two things. One, the invading military must withdraw its troops from a foreign state's territory. Two, independent governing institutions must be established in the state that was the victim of the invasion (if they do not already exist). For example, in the Persian Gulf War, the Iraqi army was required to withdraw its troops from the territory of Kuwait. At the time of withdrawal, Kuwait still had functioning government institutions in place. However, if this had not been the case, the second component of a just peace would require such independent political institutions to be instituted.

Additionally, following World War II, German was required to return pieces of territory to Poland and the U.S.S.R. In a war of humanitarian intervention, the second component of a just peace requires that a state stop committing acts of genocide or other gross violations of human rights. For example, the first component of a just peace would require the systematic extermination of the Jewish people in Nazi Germany to stop and for all those imprisoned in concentration camps to be set free. In short, the second component of a just peace stops the bleeding, so to speak. It ends the infringements and violations of human rights.

The third component of a just peace addresses punishment and victim compensation. Orend defines the component in the following way: "[t]he raw commission of aggression, as a serious international crime, requires punishment, in two forms: (1) compensation to the victim for (at least some of) the costs incurred during the fight for its rights, and (2) war crimes trials for the initiators of aggression (for the crime of violating *jus ad bellum*)" (Orend 2000, 124). War is never the fault of those who are victims of a rights violation or infringement. Yet regardless of who is at fault, war is a costly undertaking for all involved. The third component of a just peace seeks to recognize this reality.

A person who breaks **a** domestic law would face punishment for their crime or be required to pay for the damage their actions caused. The third component of a just peace requires those who break well-established international political laws and norms and even commit crimes against humanity to face justice, be punished, and pay for the damage their actions caused others. In the context of *jus post bellum,* compensation is rarely as clear-cut as in a domestic civil law proceeding. It is not as if a state can tally its military costs and the cost to rebuild its damaged infrastructure and send the aggressor a bill. Any monetary compensation should be enough to recognize the extent of the damage caused by war and help a population

meaningfully rebuild. However, compensation should never become an act of aggression itself. In other words, compensation for an aggressor's crimes can never be used by the victim as an excuse to cripple the aggressor's society. For this reason, Orend argues that compensation may, in certain circumstances, be nothing more than a symbolic sum to acknowledge the damage done by an aggressor's wrongdoing (Orend 2000, 125). Monetary compensation will usually take the form of reparations or economic sanctions. A prominent example of this is the German reparations agreed to at the Potsdam conference in July 1945. German reparations for their acts of aggression in World War Two amounted to several billion dollars (Colonomos and Armstrong 2006; Naimark 1997).

There are crimes for which there can be no meaningful monetary compensation. In such cases, war crimes trials are the best and most common way to hold an aggressor accountable for their actions. For example, no account of money can ever bring justice for all the crimes committed during the Holocaust; the damage is just too grave. Instead of reparations, war crimes trials such as the Nuremberg trials and the trial and execution of Adolf Eichmann in 1961 serve as the best examples of punishment for crimes for which monetary compensation wouldn't suffice (Colonomos and Armstrong 2006). Finally, it is worth noting that monastery compensation and punishment via war crimes trials are not necessarily mutually exclusive. Germany faced both in the aftermath of World War Two.

The fourth and final component of a just peace focuses on deterrence of future wars. Orend describes the fourth component as follows: "[t]he aggressor state might also require some demilitarization and political rehabilitation, depending on the nature and severity of the aggression it committed and the threat it would continue to pose in the absence of such measures" (Orend 2000, 125–26). The function of this final component is to give the victim of

aggression the more secure possession of their rights; it ensures as far as is possible that the aggressor will not be able to violate the victim's rights similarly again. For example, it ensures Iraq is unable to invade Kuwait again or that Germany could not carry out the Holocaust again.

The extent of demilitarization and rehabilitation necessary will vary depending on the war and the nature of the aggressor's rights violations. In most cases, it is likely to take the form of limiting the size of an aggressor's military or limiting the time and place where an aggressor can use their military for training actions and the like. An example of this type of demilitarization is the limits placed on the Japanese military by the United States in the aftermath of World War Two. Japan's political structure remained fundamentally unchanged following World War Two. Yet, its military capacity was severely restricted. In the most severe cases, the aggressor's entire political regime may need to be done away with and replaced by new governing institutions (Orend 2000, 126). In such cases, true rehabilitation is not possible. It is only by changing the institutional structure of a state and its political leaders that the victim's rights can be secured against future acts of aggression. An example of this type of demilitarization would be Germany following World War Two. There was no way to allow the Nazi party to continue holding political power in Germany. The only viable way to avoid another Holocaust was to change the political system of Germany entirely.

Conclusion

Attaining peace has been a concern of just war theory since its earliest days. Yet, it is only recently that scholars have devoted resources to defining the term explicitly. The purpose of a just peace is twofold. A just peace serves to vindicate "those rights whose violation

grounded the result to war in the first place" (Orend 2002, 46) and to bring about the "more secure possession of our rights, both individual and collective" (Orend 2002, 45). A just peace ends combat, then restores public order. It then rolls back the aggression that led to war in the first place, punishes the aggressor, and compensates the victim. Lastly, a just peace rehabilitates the aggressor to ensure that they will not re-offend and violate another state's rights in the future. Rehabilitation serves to make peace secure and lasting. That is what it means for peace to be characterized by justice.

CHAPTER VI
A Just Peace as a Presumptive Public Good

Introduction

According to the fair play theory of political obligation, the state's role in providing presumptive public goods generates an obligation for an individual to obey the law. There is a list of archetypical presumptive public goods that scholars of fair play theory have commonly used to demonstrate their argument. That list includes goods such as national defense, the rule of law, and clean air, amongst others (Klosko 1987b, 354). This chapter aims to demonstrate that a just peace following war should also be classified as a presumptive public good. That task is more challenging than it might initially seem. Even though presumptive public goods are essential to contemporary understandings of fair play theory, scholars of fair play theory have devoted surprisingly little attention to defining what is and is not a presumptive public good. This chapter will argue that the components of a just peace have the same characteristics as other presumptive goods, such as the rule of law, clean air, or national defense. That is to say that this chapter will demonstrate that a just peace is both presumptively beneficial and non-excludable. Conceptualizing a just peace in this way will explain how members of a population acquire obligations to each other in transitions from war to peace and serve as the second step in applying the fair play theory of political obligation to a provisional authority arrangement.[47]

Presumptive Benefit

[47] I wish to thank Dr. Keith Breen and all the participants of the November 2020 All Ireland Political Theory Seminar Series; their comments on a previous draft of this chapter improved the final product immensely.

There are two characteristics that can make a good presumptively beneficial. First, the good is "necessary for a minimally acceptable life" such that the good "must be desired by rational individuals regardless of whatever else they desire" (Klosko 1987b, 355). Second, the good is "indispensable to the welfare of the community" (Klosko 1987b, 355). The idea of presumptive benefit is crucial to most contemporary conceptions of fair play theory but is developed most prominently in the work of George Klosko. Unfortunately, neither Klosko nor the proponents of fair play theory who follow him clearly articulate a metric for determining when a good meets one of the two criteria listed above. Instead, Klosko's argument relies heavily (if not entirely) on the intuitive force of the examples he lists (Carter 2001). Admittedly, examples such as national defense, the rule of law, or clean air are goods that most rational and reflective individuals will likely instinctively prefer over other more trivial goods.

However, it is not difficult to imagine an equally intuitive scenario where a rational and reflective individual would decide to forgo one or multiple presumptively beneficial goods. An extreme pacifist such as Eric Reitan may well consciously reject the good of national defense because he rejects violence against others in any scenario (Reitan 1994). Similarly, one could imagine rational and reflective individuals making tradeoffs. An individual may live in a large and geographically dispersed community that lacks a robust public transportation system. For this individual, having a car would make traveling to work or around town more convenient. Conversely, manufacturing automobiles for every individual, or at least most individuals in a town, requires a factory to pump a certain amount of pollutant chemicals into the atmosphere, which harms the good of clean air. Although I too have little more than intuition to support my argument, I reckon that given a choice between walking long distances every day and having a car but slightly more polluted air, most people would choose the latter. That is not to argue

that Klosko's position is unreasonable. Instead, it demonstrates that the definition of presumptive benefit must include a metric that goes beyond pure intuition.

Any such metric must reflect that the concept of presumptive benefit is not necessarily absolute or static; it may change and evolve with time and circumstance. Reflective and rational individuals do make tradeoffs such as slightly more polluted air for a more convenient commute. What is minimally necessary for the welfare of a particular community depends on the circumstances of that community. It is reasonable to expect that a person living in a sleepy rural community in America will have different basic needs than a population immediately following a war. Thus, context is always an integral part of evaluating and defining presumptive benefit.

There are several ways in which a just peace can be characterized as a presumptively beneficial good. On the one hand, establishing a just peace is a question of bringing about justice. To violate or infringe upon a right is to demonstrate contempt or disregard for that right. The victim of this infringement or violation is owed a recognition that his rights were valuable, meaningful, and worthy of protection and respect. This recognition is something all individuals ought to desire in itself and intuitively seems presumptively beneficial. This fact is especially true because war violates or threatens a person or community's most fundamental rights. Nevertheless, this chapter will attempt to develop a clearer metric of how a just peace is presumptively beneficial by accessing the different stages of a just peace.

To understand the presumptive benefit of a just peace, it is imperative to understand the nature of war. Instability, violence, and distrust are defining characteristics of war. For a person to meaningfully pursue their needs and desires, there must be a minimal level of stability and security. No one can meaningfully or effectively pursue a career when there is a constant

threat that they may be killed or left homeless because a combat operation destroyed their house. Similarly, there is a minimal level of trust and security, which is indispensable to the ability of a community to function. A society cannot function if its members are constantly worried that their neighbors might be harboring members of a hostile army. Likewise, a community cannot function if its members must constantly worry that they will be indefinitely detained because of their religion or another arbitrary factor, as was the case in Nazi Germany.

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The existence of other archetypical presumptive public goods such as the rule of law or national defense demonstrates the need for basic levels of trust and security. Both these goods exist to provide security and protection; they ensure that a community will not devolve into conflict or chaos. These goods do this by protecting a population against foreign sources of conflict in the case of national defense and protecting a population against domestic sources of conflict in the case of the rule of law. A just peace provides this same security and protection, albeit in a slightly different context. The first stage of a just peace ends combat and restores

order to society. Public order serves as the foundation for restoring human rights. Public order removes the short-term threats to a person's life, liberty, and property. If airstrikes stop, then so too does the omnipresent worry that your house will be destroyed, and you will be left homeless. However, the removal of short-term threats alone provides no long-term guarantee. A just peace then punishes aggression and compensates the victim for the damage caused by the act(s) of aggression that justified war in the first place. This compensation allows a community to rebuild and repair the damage that was done during a war. That, in turn, allows a community to regain the basic level of welfare and functionality it possessed *ante bellum*. Finally, a just peace requires a degree of demilitarization and rehabilitation on the part of the aggressor. This demilitarization and rehabilitation make the rights of a population more secure and provides a guarantee that war won't reoccur for similar reasons. That gives a population a sense of security that they will not return to the distrust and unpredictability of war.

The concept of presumptive benefit is unavoidably paternalistic. Consequently, presumptive benefit on its own is not enough to generate obligations to support the provision of a certain good. As George Klosko rightly argued, there is a strong presumption that individuals place value on different things and thus are permitted to decide for themselves which sacrifices to make (Klosko 1987b, 354). Thus, for obligations to support the provision of a certain good to be generated by fair play theory, the good in question must be non-excludable in addition to presumptively beneficial.

Non-Excludability

Public goods usually fall into one of two categories, excludable or non-excludable. An excludable good can be provided to some individuals while being denied to others (Klosko

1987a, 242). Conversely, non-excludable good is a good which cannot be provided to some but denied to others. Demonstrating that a just peace is non-excludable is more challenging and complex than proving it is presumptively beneficial. Nevertheless, there are three reasons to consider a just peace a non-excludable good. The first reason is that a just peace lacks an integral trait of an excludable good. The second reason is that excluding some members of a population from the provisions of a just peace but not others would destabilize peace and cause a just peace to lose its stated purpose. The final reason is that a just peace restores and vindicates group rights in addition to individual rights. I will now develop each of these reasons in turn.

Reason One

At the bare minimum, a just peace does not have the traits of an excludable good. A fundamental characteristic of an excludable good is the ability to opt out of the receipt of that good. In other words, a person can choose whether they wish to receive the good or not. Consider Klosko's example of a neighborhood potluck party (Klosko 1987b, 354). The idea of such a party is that every person who attends brings a dish, which all the other partygoers may share. By bringing a dish to the party, an individual has opted into the scheme. That makes him entitled to the benefits of the scheme- he can eat the food others have brought to the party. On the other hand, if an individual were to come to a potluck party empty-handed, perhaps he just wanted to enjoy the company of his neighbors, then he has clearly and meaningfully opted out of this scheme. Consequently, he is not entitled to the benefits and may not eat the food

that the other neighbors have provided.[48] In short, part of the justification for withholding a good from an individual is that the individual has elected to forgo the good or at least the burden associated with the provision of that good.

There is no meaningful way for an individual to opt-in or opt-out of the provisions of a just peace. War is a fundamentally political activity (Van Creveld 2017, chap. 1). The decision of when war begins and ends is attributed to military and political leaders, not populations. It is unclear if or how an actor could hold a referendum that asks a population: 'Would you like this war to end in a just peace? Please check yes or no.' Seeking popular consent or dissent is just simply not how war has ever worked. Even if there were a mechanism that allowed a person to opt-out of the establishment of a just peace, any result would likely lack any moral validity for two reasons. First, the nature of war is such that any decision to opt-in or out of the provisions of a just peace is likely to be made under duress. As a result, such a decision might not be will tracking and thus be null and void (Estlund 2005, 354–55). Second, in that it is likely to be made immediately *postbellum*, a person might not make the decision to opt-in or out of a just peace with full knowledge of the consequences of that decision. That would be especially true if the population in question has never had the opportunity to make an autonomous decision about politics or governing before. For this reason, there would be a reason to be skeptical of the true desires of a person who decides to opt-in or out of the provisions of a just peace in the immediate aftermath of a war or prolonged military occupation.

[48] I am assuming certain background conditions here, namely that the individual knows the expectations associated with attending a potluck party and is financially able to bring a dish to share.

There is no meaningful or valid way to determine if the members of a population favor or oppose establishing a just peace *postbellum*; this reality gives military leaders and policymakers two options. Either a just peace is established regardless of a population's will, or a just peace is not established. Given the nature of war, a just peace is just simply too important not to be pursued. If a just peace is established without members of a population having the ability to opt-in or opt-out, two outcomes are possible. One, the principles of a just peace will affect all members of a population, regardless of whether they want it to or not. Or two, certain members of the population will arbitrarily be excluded from the principles of a just peace. That would cause the benefit of a just peace to be provided to some but withheld from specified others. In an excludable goods scheme, the basis for denying a certain individual a particular good is not arbitrary. Instead, the basis for denial is that a person has voluntarily chosen to forgo that good. In that this would not be the case in the denial of a just peace, it is reasonable to conclude that a just peace lacks an integral characteristic of an excludable good.

Reason Two

The fact that a just peace lacks the characteristics of an excludable good is likely not a strong enough reason, at least on its own, to classify a just peace as a non-excludable good. In addition to not sharing the qualities of an excludable good, a just peace also possesses an integral quality of a non-excludable good. Practically speaking, it is possible to withhold the restoration, vindication, or more secure possession of a right to some while providing it to others. For example, a state could intentionally fail to prosecute any acts of genocide committed in one region of the country while fully prosecuting acts of genocide committed in

another region of the country. That would have the effect of denying the citizens living in one area of the country the full vindication and secure possession of their right to life. However, is this a society in which anyone would choose to live? Would a just peace be capable of fulfilling its fundamental purpose of ending combat and fostering a stable and lasting peace if its provisions are provided to some but withheld from others? I contend that it would not; unless the rights of all are vindicated *postbellum*, there is little to no incentive for anyone to put down their weapon and thus for combat to cease. More importantly, however, a just peace that is withheld from some, but not others, is by definition not just. That reality makes providing a just peace to some but withholding it from others what George Klosko calls prohibitively inconvenient.

Recall that in his conception of non-excludability, Klosko concedes that, as a matter of fact, there are exceptionally few goods that literally cannot be withheld from particular specified individuals. However, there are cases when withholding a good from an individual or group of individuals is theoretically possible but prohibitively inconvenient. In such cases, Klosko argues the good in question should still be classified as a non-excludable good (Klosko 1987a, 242). Here Klosko again relies heavily on intuition to illustrate what he has in mind. While Klosko does not give his reader a metric to evaluate prohibitive inconvenience, from the list of examples he articulates, it is clear that he seems to be understanding the term in a practical way. Recall the example of a public road from chapter one, which illustrated this point.[49]

[49] The jest of the example was: it is possible to allow only those who pay their taxes in full to use a public road. A state could set up a roadblock to check the identity of every person in a vehicle and ensure that their yearly tax bill is paid in full before they drive onto the road. However, this would be extremely tedious and require the state to expend a lot of resources. That is not to mention the traffic backups that are likely to result from checking every vehicle at rush hour.

My objective here is to apply the concept of prohibitive inconvenience to the case of a just peace, albeit in a slightly different way than Klosko uses the term. Whereas Klosko seemingly views prohibitive inconvenience in practical terms, I aim to add a normative dimension to the concept. In fact, it would perhaps be best to rename the term prohibitively difficult, as prohibitively inconvenient does not seem to convey the appropriate level of significance. According to my proposed definition, the exclusive provision of X is prohibitively difficult when it *could* be provided to some but denied to others but denying X to a specific group means that X would lose its stated goal, objective, or purpose. Thus, a just peace ought to be classed as a non-excludable good in that providing it to some but denying it to others could cause a just peace to lose its stated purpose.

The fundamental definition of just peace is a state of peace that is characterized by justice. In practice, this requires the restoration and vindication of all rights whose infringement or violation justified war in the first place. The fundamental purpose of this is to create a peace that is just, stable, secure, and lasting. Thus, if restoring, vindicating, and securing the rights of some members of a population but not others would cause peace to lose its normative status, withholding these provisions is prohibitively difficult. That is the essential thrust of why a just peace should be classified as a non-excludable good.

The non-excludability of a just peace is derived from the nature of justice itself. Every human being has a right to justice. Conversely, every person has a duty to uphold justice in how they interact with and treat others. Human beings are, by nature, moral agents. That is the origin of the right and duty of justice (R. Dagger and Lefkowitz 2014, sec. Nautral Duty). In the context of a just peace, an actor could theoretically roll back an act of aggression in one part of a state's territory but not another. However, in so doing, the actor has denied justice to

all individuals who live in the part of the territory which is still subject to acts of aggression. If this were to occur a peace would cease to be characterized by justice. In other words, if individuals are excluded from the provisions of a peace settlement, it is definitionally not a just peace. Instead, an excludable peace settlement is, at best, a lesser type of peace such as a bare peace.[50]

A just peace restores and vindicates some of the fundamental rights that a person has. These rights include individual rights such as the right to life and communal political rights. Of the latter, Rawls wrote that there are "no deeper, or more basic, political values...than those human rights that justify a reasonable set of social institutions and ultimately enable a satisfying political existence" (Orend 2002, 45–46).[51] Given how basic these rights seem to be, there is no obvious reason, grounded in justice, why an actor should deny the vindication of these rights to some but provide such vindication to others.

In sum, it is possible to vindicate the rights of some members of a community but not the rights of others. However, this exclusion is itself unjust. An excludable just peace loses its normative status and becomes a lesser form of peace, such as a bare peace. An excludable just peace loses its purpose of being a peace characterized by justice. For these reasons, excluding some from the provisions of a just peace would be prohibitively difficult, and a just peace should thus be considered a non-excludable good.

Reason Three

[50] I do not intend to make any sustained empirical claims about a bare peace. However, it seems that an actor could decide to stop engaging in combat with one person or group while simultaneously choosing to engage in combat with others.

[51] In this passage, Orend is paraphrasing Rawls in *The Law of Peoples* (Rawls 1999b, 40–48).

There is one final reason to consider a just peace as a non-excludable good. In addition to restoring and vindicating individual rights, a just peace also restores and vindicates the rights of a collective. A group right is held group *qua* group rather than by the members of a collective individually. Given that the group is the right holder in this circumstance, it does not make sense to refer to the right as excludable. If a group is the holder of a right, then the members of that group seem to be a party to that right in some meaningful way. For example, if you are a citizen of the United States, you are a party to the collective American right to self-determination. If a just peace is restoring and securing the rights of a group, then it is doing so for all members of that group. Excludability, as understood by scholars of fair play theory, refers to individuals or collections of individuals. There must be a plurality of subjects to talk about excludability. In the context of a just peace, there has to be a plurality of right holders to say that one has been excluded from something which has been provided to others. However, at the level of the group, there is only a singular right holder. If a group has its rights are restored or vindicated, no rights holder has been excluded.

In sum, there are three ways in which a just peace can be considered a non-excludable good. First, it does not share a fundamental characteristic of an excludable good. Although, in practical terms, the provisions of a just peace can be withheld from some but denied to others, doing so would deprive a just peace of its fundamental purpose. Namely, establishing a peace characterized by justice. A peace that is excludable is, by definition, not just. This prohibitive difficulty is the second reason to consider a just peace a non-excludable good. Finally, in that a just peace restores the rights of a group, there is no exclusion as long as group rights are in fact restored and vindicated.

Conclusion

A just peace is a presumptive public good. A just peace restores and protects the most basic rights an individual can have, have such as the right to life. The right to life is the right that gives all other rights meaning. Life is necessary to possess or meaningful exercise any other right. Thus, the right to life is definitionally required for a minimally satisfactory existence. Furthermore, as argued by Rawls, human rights justify reasonable social institutions and facilitate a satisfying political existence. That seems to be something all persons would want, regardless of their other desires. A just peace is also non-excludable. Although a just peace could be provided to some and denied to others, doing so would deprive a just peace of its purpose. If a just peace is not provided to all members of a population, then it is not characterized by justice and has no normative status. Consequently, excluding members of a population from the provisions of a just peace is prohibitively difficult, and a just peace should be considered a non-excludable good. Conceptualizing a just peace as a presumptive public good explains how individual members of a population acquire obligations to each other during a transition from war to peace. That is the first dimension of a theory of political obligation to a provisional authority arrangement.

CHAPTER VII
Political Obligation to a Provisional Authority Arrangement

Introduction

Chapter six of this dissertation demonstrated that a just peace fits the criteria for being a presumptive public good. That generates an obligation for members of a population to sacrifice so that their fellow members can benefit from the establishment of a just peace. However, this is only half of the story. As previous chapters of this dissertation have argued, political obligation has two dimensions. Obligations are enforced by institutions. This chapter will endeavor to explain how a provisional authority arrangement acquires the right to enforce the obligations which arise from the provision of a just peace. The chapter must first answer a broader question. Namely, what are the characteristics of the actor which can enforce the obligations fair play theory generates? This chapter will demonstrate that this is a question that existing conceptions of fair play theory overlook. This chapter will begin by articulating the limits of the existing literature on the question of enforcement. The chapter will then develop a list of characteristics that an actor must have to enforce obligations generated by fair play. The chapter will conclude by explaining how a provisional authority arrangement can fit these criteria and offer a brief list of existing political institutions that could serve as provisional authority arrangements in the future.

Existing Scholarship and Its Limitations

George Klosko approaches the fair play theory of political obligation as a means by which to justify the state. For Klosko, presumptive public goods only provide part of this justification. Since the number of presumptive public goods are relatively few in number, the provision of these goods, Klosko argues, can only justify a fairly minimal state (Klosko 1987a, 253–54). However, most individuals have come to expect a state to be a more robust institution that provides other goods, such as healthcare, to its citizens. Consequently, Klosko attempts to expand fair play theory to include the provision of discretionary public goods (Klosko 1990). In his later work, Klosko attempts to justify the state by coupling fair play with other principles such as the principle of Samaritanism (Klosko 2004).

Klosko's approach to fair play theory is reasonable. Broadly speaking, the intent of political obligation to justify the authority of the state. Furthermore, in the vast majority of cases, the institution that will provide and protect presumptive public goods is not an open question. The state is usually the only viable actor. However, there is a limitation to Klosko's approach. In trying to justify a particular actor, Klosko seemingly overlooks the possibility of an actor besides the state providing and protecting presumptive public goods. At the very least, Klosko never engages with this possibility in any of his work. To illustrate this limitation, consider three hypothetical scenarios.

Different Goods: In territory X, two different governing institutions exist; each institution provides a different presumptive public good. Institution A provides and protects clean air to those within territory X, and institution B provides and protects the rule of law to those within territory X. Both institution A and institution B provide their respective goods in an equally effective manner and make laws allowing for the effective provision and protection of each of the respective goods. In this case, do the residents of territory X owe political obligation (on account of fair play) to institution A or institution B or both?

Different Actors: In territory X, there are two competing governing institutions, institution A and institution B. Each institution claims to be the rightful state in territory X. Each institution

provides and protects all presumptive public goods in territory X with varying degrees of effectiveness. In this case, do the residents of territory X owe political obligation (on the grounds of fair play) to institution A, institution B, or both?

Different Territories: Certain presumptive public goods are not provided and protected by only one state in one territory at one time. Take, for example, clean air. The atmosphere knows no territorial boundaries. No matter what state A in territory X does to provide and protect clean air, if state B in territory Y does not take similar actions, clean air won't exist, at least not to the same extent. Even if it is not two states providing and protecting presumptive public goods, the principles in the example would still apply. Say the United Nations places regulations on its member states regarding the degree of air pollution each state is allowed to emit into the atmosphere. In this case, two different institutional actors both play a meaningful role in providing and protecting the presumptive public good of clean air. So, in this case, to which institution do the residents of territory X owe political obligation (on account of fair play)?

Admittedly, these hypothetical scenarios are unlikely to come to pass in the real world. Yet, it is not entirely impossible to conceive of multiple competing institutions, each of which plays a role in providing and protecting presumptive public goods. However, Klosko's work supplies the reader with no guide for determining which institution should provide and protect presumptive public goods if multiple institutions claim to be providing them. This chapter will attempt to fill this gap by doing two things. First, it will develop the criteria an institution must have to provide and protect presumptive public goods. These criteria will demonstrate that although the state is the most obvious actor to provide and protect presumptive public goods, it is not the only actor. That will, in turn, open the door to allow a provisional authority arrangement to provide and protect presumptive public goods in certain circumstances.

A New Approach to Enforcement

To develop the criteria which an institution would need to have to provide and protect presumptive public goods, it is useful to approach fair play theory from a different angle than Klosko does. I will start with the premise that presumptive public goods exist and institutions

are necessary for their provision and protection. If this is our starting point, then an obvious next question is: which institution should be responsible for this provision and protection? This question is often (if not always) overlooked because there is usually an obvious answer: the state. If this is the case, then developing a set of criteria to determine what makes this actor suited to the provision and protection of presumptive public goods is futile. There is no other institution fighting the state to provide presumptive public goods. The state is not only the most obvious answer, but also likely the institution best suited to provide and protect presumptive public goods. However, this does not mean it is the only institution. This section of the chapter will develop a set of criteria that can be used to determine what institutions can and cannot provide and protect presumptive public goods. Applying these criteria to specific cases will not only demonstrate what makes the state best suited to provide and protect presumptive public goods, but it will also provide a metric that can be used to determine which actor can provide and protect presumptive public goods in the absence of the state.

This chapter will argue that three criteria should be used to evaluate whether or not an institution can be used to provide and protect presumptive public goods. These criteria are effectiveness, interest, and fairness. Of these three criteria, effectiveness and fairness are rather intuitive and simple, while interest is somewhat more complex.

Effectiveness is rather simple as a criterion; to be effective, an actor must be able to prevent free-riding and address it when it does occur. Effectiveness is a rather Hobbesian condition. What I mean by this is according to a Hobbesian theory of political obligation, what makes the sovereign legitimate is that it can protect your life. When the sovereign is unable to do this, it ceases to be the sovereign precisely because it does not fulfill the role which justifies its existence. In much the same way, the enforcer of obligations generated by fair play theory

ceases to be legitimate when it cannot effectively prevent free-riding precisely because it does not fulfill the role which justifies its existence. Effectiveness alone makes for an incredibly wide field of possible enforcement actors. Any number of states could enforce fair play obligations. For instance, the Canadian state could enforce the fair play obligations of the American population effectively (and vice versa). There could even be a non-state actor such as the mafia, which could effectively enforce obligations generated by fair play theory. However, common intuition would likely be that both these examples are impermissible enforcement actors; fair play theory should not ground an obligation to obey the mafia. In short, effectiveness alone does not make an enforcer permissible there must be another principle at work.

To be permissible, an actor must also have an interest in providing and protecting presumptive public goods to members of a particular cooperative scheme. By interest, I do not mean that an actor must want to provide and protect presumptive public goods. Interest also does not mean that it must be advantageous for an actor to provide or protect presumptive public goods. Instead, to have an interest in providing or protecting presumptive public goods, an actor must have a stake in providing and protecting presumptive public goods to members of a particular scheme. That illustrates why it is impermissible for the Canadian state to provide and protect presumptive public goods to the American population; it does not have a stake in that scheme.

The essence of the interest criterion is to determine if an actor has a claim to enforce an obligation. In the context of fair play theory, the primary way a person would develop a claim to enforce obligations would be to be a member of a cooperative scheme. If a person has sacrificed so that others can benefit, then it should be uncontroversial that that person has

a claim to enforce the obligations associated with that cooperative scheme and demand a similar sacrifice of others.

To illustrate this kind of enforcement interest, imagine a scheme such as digging a well. Suppose that A, B, C, and D come together to dig a well which will provide clean water. For the sake of the argument suppose that this cooperative scheme is perfectly fair with A, B, C, and D each doing an equal share of the work. Suppose further that E is asked to contribute to digging the well but declines. In this scenario A, B, C, and D all have a claim to the fresh water that the well yields. A, B, C, and D also all have the ability to prevent free riding by denying clean water from the well to E if he should ask for it. However, suppose E tries to use the well while A, B, C, and D are not around to stop him. Instead, E is stopped from using the well by F. Suppose F knows of the well digging scheme but has access to his own well and thus did not participate in the scheme himself. Can F stop E from free riding in this case? I argue that he cannot. This may seem a bit peculiar; most people are not likely to be too bothered if a foreigner stops an act of injustice from occurring. However, the fact remains that in this example, F does not have a claim to enforce an obligation. In the context of fair play theory, the fact that it was your sacrifice that made a benefit possible generates your claim to enforce the reciprocal obligation to sacrifice on others. If an individual does not sacrifice in a particular scheme, then he has no claim to enforce the obligation to sacrifice on others, regardless of how benevolent the individual's intentions may be. The reason for this is that without a sacrifice, an individual has no skin in the game, so to speak. An individual who has not sacrificed is not wronged when others freeride. If you are not the one who is wronged by freeriding, you have no claim to enforce an obligation and prevent freeriding.

To be a permissible enforcer of fair play obligations an actor must be both effective and have an interest in enforcing these obligations. However, relying on these two factors alone could prove problematic. Return to the example of the mafia; the mafia could use violence and other tactics to effectively enforce obligations which are generated by fair play. Members of the mafia could very likely be citizens of a state in which the mafia operates. So, in the case of the state the mafia would seem to meet the criteria laid out above for the permissibility of an actor that enforces obligations generated by fair play. However, once again this conclusion seems counterintuitive and incorrect; a theory of political obligation should not be giving moral permissibility to entity such as the mafia. This indicates that effectiveness and interest a necessary but not sufficient conditions for being a permissible enforcer of obligations generated by fair play. The way in which interest is defined thus far also does not answer the concerns raised earlier in this chapter by *different goods*, *different actors*, and *different territories*. Thus, there either needs to be another principle added into the theory or interest needs to be defined in a narrower way than just being part of a cooperative scheme.

In addition to being effective and having a claim to enforce obligations generated by fair play one should also evaluate how an actor will enforce these obligations when determining its permissibility. It is worth remembering that equality is at the heart of the conception of fair play theory which this dissertation defends. So, in enforcing obligations an actor must do so equally for all members of the scheme. To paraphrase George Klosko obligations of fair play must be enforced in such a way that the benefits and burdens that are fairly distributed amongst all members of the cooperative scheme (Klosko 1987b, 355). In enforcing obligations which are generated by fair play in this way the enforcer demonstrates concern for all members of the cooperative scheme and acts in the name of all members. Put

simply, you cannot legitimately enforce obligations if you are not going to do so in a way that upholds the central principles of the theory which generated the obligation in the first place. It is this principle that rules out actors such as the mafia who, though they may be capable of effective enforcement and have a claim to enforcement, will not do so in a satisfactory way. After all the mafia guards the interests of the mob boss and its members rather than the members of a wider community. Even within the mafia equality is not something which is valued.

It is easy to see what makes the state an appealing enforcer of obligations generated by fair play theory and why operating in the current Westphalian system scholars of fair play theory would presume the state to be the only actor who could enforce obligations generated by fair play. After all the state is the actor who most obviously and most commonly meets the criteria of a permissible enforcer. The state by definition has a monopoly on the legitimate use of force within a given territory; this monopoly gives the state the capacity and tools it needs to effectively stop and counteract free riding. The modern structure of the state gives it a clear interest in enforcing obligations generated by fair play. The government of modern state is made up of citizens of that state. In this way those who are enforcing obligations are of fair play have an obligation generated by fair play themselves. As an earlier chapter of this dissertation articulated the state is not a unique or separate entity on a fair play story but rather enforcing obligations on behalf of those who have sacrificed namely the citizens of the state. The state, according to fair play theory, is all of us (or at least acting on behalf of all of us). So, for example, the various institutions and offices of the United States Government are staffed by American citizens. What allows these citizens to issue binding directives on other citizens is that they themselves have sacrificed in order to provide a benefit; the citizens who

make up the offices and institutions of the state are part of the cooperative scheme they govern. Finally, the state is a public institution it acts in the interest of all of its citizens rather than just some. The (liberal democratic) state is governed by a constitution which dictates how a state can and cannot behave towards its citizens. In other words, a state must enforce obligations generated by fair play in a fair and equal manner. So, the state is the ideal enforcer of obligations generated by fair play.

Although the three principles articulated above provide us a metric by which to evaluate whether or not an actor is a legitimate enforcer of obligations generated by fair play- these principles do not necessary lead us to choose one enforcer over another. What I mean by this is that there could be two (or more) actors who could each meet these three criteria and reasonably claim to legitimately enforce obligation generated by fair play. This is the essence of the problem in *different goods*, *different actors*, or *different territories.* How an individual ought to choose between two actors which have reasonable claims to enforce obligations of fair play or perhaps more accurately how individuals determine which enforcer is owed obligation and which is not is an interesting and very challenging question. Although it is important that fair play theory have an answer to this question it is largely overlooked by existing scholarship. It is a question that, while relevant to this dissertation, will not be answered in these pages. Instead, my aim here is to demonstrate that there is no reason to believe that the state is the only permissible enforcer of obligations generated by fair play theory. I aim to articulate how an actor other than the state can be a permissible enforcer of obligations generated by fair play and in so doing to validate the existence of political obligations to provisional authority arrangements.

The crux of what makes a provisional authority arrangement problematic *vis-a-vis* fair play theory is that it is foreign to the population it governs. A provisional authority arrangement by definition has the monopoly on the legitimate use of violence in a given territory which makes it an efficient agent of enforcement. Furthermore, stipulating that it enforce obligations equally or in a way that is consistent with the underlying principles of fair play theory seems unproblematic. However, in that it is foreign to the population which it governs a provisional authority arrangement would seem to not have an interest in enforcing obligations generated by fair play. Thus, the goal here is to articulate a set of principles or requirements that allow a provisional authority arrangement to circumvent this problem and obtain an interest in enforcing obligations generated by fair play theory even though the enforcing actor in outside of the cooperative scheme.

To understand how this can be, let us return to the interest criterion. In normal circumstances, being a member of a cooperative scheme and fulfilling the sacrifice required of you gives an actor a claim to enforce the obligations associated with that scheme and require other members to fulfill their share of the necessary sacrifices. In the context of a provisional authority arrangement, there are two noteworthy facts. First, in cases where a provisional authority arrangement is necessary, the individuals who would normally have a claim to enforce obligations of fair play lack the capacity to do so. For example, the German people lacked the ability to govern themselves effectively in the immediate aftermath of World War Two. In other words, no actor who has a usual claim to enforcement is able to provide enforcement effectively. Second, the good which a provisional authority arrangement provides is a just peace. A just peace is a special type of good. As chapter five of this dissertation made clear, a just peace is a peace characterized by justice. Justice is a value or principle to which

every person is owed and has and duty to uphold. A just peace is about vindicating the most fundamental rights that a human being or political society could have. Thus, justice is something that every person and every just institution has an interest or a claim to uphold, provide, protect, and enforce regardless of the cooperative scheme to which an actor belongs. In the absence of a viable actor with a stronger claim to enforcement, I see no obvious argument against allowing another effective and fair actor to provide justice to the members of a cooperative scheme until such a point when the members of a scheme can do so for themselves.

It is important to note that there are two ways to read the claim this chapter is making. The first is that in the absence of a viable actor with a stronger enforcement claim, another effective and fair actor would be required to provide a just peace to members of a cooperative scheme until such a point when the members can do so for themselves. The second slightly weaker claim is that in the absence of a viable actor with a stronger enforcement claim, another effective and fair actor would be permitted to provide a just peace to members of a cooperative scheme until such a point when the members can do so for themselves. Although I believe it would be possible to sustain the stronger of these two arguments, for the purpose of this chapter, I will only claim the weaker argument that it is permissible for an effective in fair actor to provide a just peace to a population in the absence viable enforcement after from the relevant cooperative scheme itself.

Which Actor?

The final step of this chapter's analysis is to apply the principles of enforcement to real-world institutions. This application aims to determine the type of institutions that may be best suited to serve as a provisional authority arrangement in a given set of circumstances. Post-

World War II history provides an obvious answer to this question: the United Nations could serve as a provisional authority arrangement. The vast majority of actual provisional authority arrangements to date have been instituted and administered by the United Nations.

The United Nations has many qualities which make it the ideal actor to become a provisional authority arrangement. Article I the Charter of the United Nations states that two of the basic purposes of the United Nations are: "[t]o maintain international peace and security, to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace" and "[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace" (Charter of the United Nations 1945). These are not mere goals which the charter gives no attention to achieving. Chapter Seven of the charter outlines how the institutions of the United Nations are to go about securing these aims. In addition to the charter the United Nations was responsible for drafting the Universal Declaration of Human Rights. The declaration affirms that every human being possesses certain individual rights and that these rights ought to be recognized, structured, and defended when violated (Universal Declaration of Human Rights 2015, articles 6-11) . So, the United Nations has at least on paper committed itself to achieving a just peace and to securing basic human rights. In fact, the ultimate goal of the United Nations seems to be something akin to realizing Kant's definitive articles of peace.

There is also a quasi-voluntarist mechanism at work here. To become a member of the United Nations a state must submit a written declaration stating their commitment to upholding the norms, values, and obligations to the UN Charter. Joining the United Nations could be seen as a recognition on the part of a state that the United Nations is the institution which brings about a just peace. In joining the United Nations, a state can be seen as transferring its interest in enforcing obligations generated by fair play (in the absence of the home state) to another institution. Put simply, the United Nations could be seen as the institution which has been recognized by its members as the one which will administer a *post bellum* provisional authority in the absence of a legal state.

Expecting the United Nations to play such a role in transitions from war to peace is not merely a lofty goal; the United Nations has acted as a provisional authority arrangement at various times. Prominent examples of this include the United Nations Transitional Authority in Cambodia, the United Nations Interim Administration Mission in Kosovo, and the United Nations Transitional Administration in East Timor**.** Even though the United Nations has acted as a provisional authority before, one still ought to be cautious about giving it the sole power to bring about a just peace in the absence of the state based on three examples, one of which has been ongoing for the past 21 years (UNMIK n.d.).

Additionally, actions taken by the United Nations itself and its member states creates further cause for pause. First, the members of the United Nations only sometimes recognize it as the actor to administer a provisional authority arrangement. The Coalition Provisional Authority which govern Iraq from 2003-2004 is evidence of this as it was administered by the United States and Great Britain rather than the United Nations. Just as expectations play a role in determining if a state is legitimate or not; they also play a role in determining if an

international organization is legitimate. For the United Nations to have the monopoly on instituting *post bellum* provisional authority arrangements its members must see and accept it has having this monopoly. The United Nations is not an organization imposed on the world from on high. The powers and prerogatives which the United Nations has are derived from the agreement of its members. Thus, if two of the proto members of the United Nations clearly do not recognize the organization as having a monopoly on administering provisional authority relying on the organization to administer a *post bellum* provisional authority aspirational at best.

In sum, although it may be permissible for a wide variety of actors to serve as provisional authority arrangements, history, and its fundamental normative qualities make the United Nations the best actor to serve as a *postbellum* provisional authority arrangement. That remains true, even if some prominent members of the United Nations do not recognize the organization as the only institution, which can serve as a provisional authority arrangement.

Conclusion

A provisional authority arrangement can enforce obligations of fair play which are generated by the provision of a just peace. The fact that a provisional authority arrangement is indistinguishable from the state in the power that it holds means that such an arrangement can effectively enforce obligations generated by fair play. The more challenging question is how a provisional authority arrangement acquires a claim to enforce these obligations. A just peace is characterized by justice. Justice is so fundamental to human beings that we all have a claim to provide and protect justice regardless of the cooperative schemes of which we are a part. This claim is even stronger if a cooperative scheme lacks the capacity to provide and protect a

just peace for itself. While there are many institutions which would be permitted to serve as a provisional authority arrangement, the United Nations is the actor best suited to fulfill the role of a provisional authority arrangement.

CONCLUSION

This dissertation has demonstrated that an individual can owe political obligation to a provisional authority arrangement. It has accomplished this by conceptualizing a just peace as a presumptive public good. Doing so allowed the fair play theory of political obligation to be applied to the case of a provisional authority arrangement. This dissertation will conclude by first summarizing how this project went about solving its research question; it will then review the contributions this project has made to the literature, and finally, it will outline a few possibilities for further research into the topic of political obligation to institutions other than the state.

Summary

An individual can have political obligation to a provisional authority arrangement. Brian Orends' definition of a just peace can be conceptualized as a presumptive public good. That, in turn, allows the fair play theory of political obligation to be applied to provisional authority arrangements. That is the essence of the conclusion which this dissertation has reached. This dissertation will conclude by summarizing how the project went about solving its research question. Recall that the research question which this project sought to answer was can an individual owe political obligation to a provisional authority arrangement. If yes, then what are the circumstances in which this obligation comes to be? A provisional authority arrangement is a comparatively new type of political institution. It is an institution that has a monology on the legitimate use of force in a given territory, exists for an expressly temporary period, and is foreign to the population it governs. These institutions have historically arisen

in a *post bellum* context to transition a population from war to peace or from prolonged military occupation to political independence.

Determining whether an individual can have political obligation to this novel type of political institution is challenging for two reasons. First, a provisional authority arrangement lies beyond the scope of institutions which the discipline of political obligation has traditionally aimed to explain. Second, because a provisional authority arrangement is foreign to the population which it governs, it appears that such an institution may violate the principle of non-inference. However, political institutions are necessary to establish peace and facilitate a transition. Thus, where war or military occupation ends without preexisting institutions in place to coordinate peace or a transition, an institution has a vital and indispensable role to play. That provides a reason not to reject provisional authority arrangements. Instead, existing theories of political obligation need to be amended to account for the existence of provisional authority arrangements. That serves as the motivation for answering the research question of this dissertation.

This dissertation was divided into seven substantive chapters; these chapters were grouped into two parts. Part I of the dissertation focused on political obligation. The aim of part I was to study the origins of political obligation to the Westphalian state. To accomplish this aim, chapter one began by defining political obligation. The obligation to obey the law is general and universal. All citizens must obey all the laws that the state makes. The chapter then analyzed three qualities that serve as the benchmark for a successful liberal theory of political obligation.

To explain why there is an obligation to obey the law, a theory must do three things. First, it must distinguish between obligations in the strict sense and the right to enforce

obligations. That is to say that a theory of political obligation must explain two sets of relationships. In the first instance, a theory must explain the relationship between citizens or members of a polity. This horizontal relationship is the fundamental building block of any theory of political obligation because, without a population whose members relate to each other in a morally significant way, there is no political community as such. The factor which distinguishes political obligation from other types of obligation such as marital obligations, medical obligations, or financial obligations is the existence of a particular institution, namely the state. The state passes laws that codify the obligations that members of a polity have to other members. In addition, the law codifies the degree of sanction that is appropriate when a member of a polity fails to fulfill his obligations to his fellow members. The state is the institution that passes and enacts laws. In other words, a state is an actor that carries out the sanctions stipulated by the law. It does this primarily via coercion, violence, and force. That is to say that the state is the institution that enforces the obligations which exist between members of a polity. This enforcement creates a second vertical relationship between the state and the population it governs. A theory of political obligation must explain both the interpersonal relationship between members of a population and the institutional relationship between a population and a state. If it does not, the theory is incomplete in a meaningful way.

Second, a successful theory of political obligation must treat those with an obligation to obey the law as free and equal participants in the enterprise that is the state. That is to say that a successful theory of political obligation is compatible with the natural rights of freedom and equality. This criterion is a distinctive trait of a liberal theory of political obligation. Liberty and equality are ideals that are fundamental to liberalism.

The third quality of a successful theory of a political obligation is that it satisfies the particularity requirement. There are dozens of states which exist and to which an individual could owe a political obligation. However, no scholar of political obligation argues that an individual must obey the laws of all states which exist. Instead, individuals only have an obligation to obey the laws of a particular state if they are within the jurisdiction of that state. There are multiple ways that an individual can be within a state's jurisdiction. These include being a citizen of a particular state, being within the territorial boundaries of a state, or having a financial interest such as owning a house within the territorial borders of a state. The particularity requirement is necessary because the Westphalian state is a sovereign and independent institution. If a theory of political obligation does not satisfy the particularity problem, it is incomplete. It tells an individual the type of institution which is owed obligation but not which specific institution he must obey if multiple institutions or individuals with the same characteristics exist.

After setting the benchmark for a successful theory of political obligation, the second half of chapter one explained how fair play theory meets this benchmark. The essential thrust of fair play theory is equality via reciprocity. Fair play theory argues that the state is a scheme that provides presumptive public goods. A presumptive public good is a good that is so fundamental that it is indispensable to the welfare of a community. Such a good also cannot be provided to some members of a population while being denied to others. A presumptive public good must either be provided to all a population's members or not provided at all. The provision of such goods requires sacrifice. The only way to provide a presumptive public good in a way that treats all individuals equally is for all members of a population to sacrifice so that all their fellow citizens can receive the benefit of a presumptive public good.

An obligation that originates from fair play theory is fundamentally reciprocal. If a member of a scheme fails to fulfill his obligation, then the obligation for other members of the scheme to comply with its rules ceases as well. That, in turn, creates an epistemic problem in the case of a modern state. There is simply no way for an individual to know if all of her fellow citizens are fulfilling their obligations and thus if she must comply with the rules of the scheme. For his reason, the state has the authority to enforce obligations and give all citizens the reasonable expectation of compliance from their fellow citizens.

In addition to fair play theory, part I of this dissertation examined three other theories of political obligation. The first of these theories was the consent theory of political obligation. Although an act of consent can generate general moral obligations in a wide array of circumstances, it is not successful in generating political obligations. That is because the nature of the modern state is incompatible with the demands of consent theory. The state is a fundamentally non-voluntary institution. Individuals are born as members of a state and have no meaningful ability to opt out of a particular state or avoid the existing system of states altogether. In short, the state does not function as the consent theorist argues that it does. The fact that consent theory misunderstands and misconstrues the nature of the institution that it must explain causes it to fail as a theory of political obligation.

Associative duties theory is another unsuccessful theory of political obligation. There are two different versions of associative duties theory. The first, called the communitarian version, argues that the role associations play in forming an individual's identity generates an obligation to political associations such as the state. However, that argument fails to explain how identity generates an obligation to an institution like the state. The communitarian argument also seemingly justifies an obligation to obey an unlawful and immoral association.

For those reasons, this dissertation rejected the communitarian version of associative duties theory. The second version of associative duties theory, called the welfare version, is much stronger. Proponents of this version of associative duties theory argue that associations are integral to the welfare of a human person. Ronald Dworkin, in particular, argued that associations are necessary because, without them, human dignity would be undermined and violated. Although Dworkin's theory could potentially possess the qualities of a successful theory of political obligation, it is ultimately indistinguishable from the fair play theory of political obligation for two reasons. The first is that human dignity is both presumptively beneficial and non-excludable; this means that human dignity fits the criteria of a presumptive public good. The second reason is that the nature of human dignity demands that any obligation to an association such as the state must be reciprocal. Thus, although the two accounts may use different terms to illustrate their arguments, associative duties theory and fair play theory are substantively indistinguishable.

Finally, the dissertation examined the natural duties theory of political obligation. The essence of natural duties theory that a person must support just institutions simply because they are, by nature, a moral agent. The most common critique of natural duties theory is known as the special allegiance objection. The essential thrust of the objection is that natural duties theory cannot solve the particularity problem. Natural duties theory, the objection goes, can explain a general obligation to obey just institutions. However, the theory cannot explain why an individual must obey a specific state or set of just institutions. John Rawls and Jeremy Waldron are two of the most prominent proponents of natural duties theory. The primary difference between Rawls and Waldron is the tools that each scholar uses to solve the particularity problem. Rawls uses mechanisms like the original position and veil of ignorance.

Yet, both mechanisms fail to produce a duty that is specific enough to resemble a theory of political obligation. Alternatively, Waldron argues that natural duties theory is range limited. However, this strategy fails to explain the different burdens associated with supporting and not undermining an institution. Thus, both efforts to answer the special alliance objection fail, and natural duties theory is unable to solve the particularity problem.

After studying four possible theories of political obligation and endorsing fair play theory in the case of the Westphalian state, part II of the dissertation applied fair play theory in the case of a provisional authority arrangement. Part II conceptualized a just peace as a presumptive public good; this allowed fair play theory to explain political obligation to a provisional authority arrangement. The argument of part II had three different stages. The first stage was to define the term 'just peace.' Chapter five accomplished this task.

The first step in establishing a just peace is for combat to seize; belligerents on all sides of a conflict must put their weapons down. Next, it establishes public order. It then rolls back the aggression that led to war in the first place, punishes the aggressor, and compensates the victim. Lastly, a just peace rehabilitates the aggressor to ensure that they will not re-offend and violate another state's rights in the future. Rehabilitation serves to make peace secure and lasting.

Chapter six developed how a just peace could be considered a presumptive public good. A just peace is presumptively beneficial for several reasons. Foremost among them is that peace removes the omnipresent threats to an individual's most basic rights, such as the right to live. In addition, peace and stability are indispensable for members of a community to adequately trust and relate to one another. Although an actor could technically deny the provisions of a just peace to certain members of a population, doing so would be unjust. In

other words, providing a just peace to some but denying it to others would cause a just peace to lose its purpose. An excludable just peace is a just peace that is not characterized by justice.

The final chapter of the dissertation explained how a provisional authority arrangement acquires an interest in enforcing the obligations which arise from the provision of a presumptive public good. While existing conceptions of fair play theory are developed to explain a particular institution, namely the state, there is nothing that necessitates the state be the only institution that enforces demands of fair play. Certain goods are too important to go unprovided or unprotected simply because there is no viable state in place. To enforce the obligations of fair play, an institution must have three characteristics. The institution must be an effective enforcement agent, it must be fair, and it must have a stake in enforcing obligations of fair play. Presumptive public goods are fundamental to all individuals regardless of what scheme happens to provide these goods to a particular individual. The world is interconnected in such a way that the actions of an individual in one scheme may impact the access that an individual in another scheme has to certain goods. For example, a member of one scheme may pollute and thus deprive a member of another scheme of the good of clean air. Actors who are external to a scheme may thus have a weak interest in enforcing obligations of fair play in that scheme. These weak interests are usually trumped by actors within a scheme who have a stronger interest in ensuring that obligation of fair play is enforced. Moreover, in the absence of an internal actor who can effectively enforce obligations of fair play, it is permissible for an external actor with a weak interest to enforce obligations of fair play. A provisional authority arrangement is one such actor and is thus owed political obligation in cases where it establishes a just peace. Chapter seven concluded with a preliminary analysis of what actors could potentially serve as a provisional authority arrangement.

Contributions and Further Research

This dissertation has proved that an individual can have political obligation to a provisional authority arrangement. In doing so, this dissertation has made several contributions to the existing literature. The most fundamental contribution is that this dissertation has explained the moral status and the purpose of a novel type of political institution, namely the provisional authority arrangement. In explaining this type of institution, the dissertation has furthered existing understandings of how war can end justly and how populations can transition from military occupation to political independence. The dissertation has also refined the existing conceptions of fair play theory and demonstrated how fair play theory is applicable in cases other than the Westphalian state. Finally, the dissertation has expanded the list of presumptively public goods. All these contributions make this dissertation and the research it has done interesting and worthwhile.

A provisional authority arrangement is just one type of non-state governing institution. In the future, the work that this dissertation has completed can be applied to other types of non-state governing institutions. One example of such an institution is a Native American Reservation. These reservations are like provisional authority arrangements in that they govern a territory without rising to the level of being a state. However, unlike a provision authority arrangement, Native American Reservations are permanent arrangements. Applying political obligation beyond its traditional limits is the most interesting and promising avenue for further research. However, that research will have to wait for a day different and a different project.

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