A contestatory theory of political obligations

A Contestatory Theory of Political Obligations

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Thesis submitted for the degree of
Doctor of Philosophy

Department of Philosophy
Birkbeck, University of London
August 2021

I, Steven Montgomery, hereby certify that this thesis is my own work and is the result of research carried out while enrolled at Birkbeck, University of London.

To Juno, who came along in the middle,

and changed everything.

Acknowledgements

To the following, I owe a huge debt of gratitude. To my supervisor, Michael Garnett, who has been a constant source of sage advice and good counsel – and also excellent parenting tips. To the Department of Philosophy at Birkbeck, for providing an academic home and in particular to Susan James, Cristian Constantinescu and Hallvard Lillehammer for their help and direction. To my fellow graduate students who have provided both a philosophical sounding board and great companionship in Bloomsbury. To those undergraduates in my seminars who asked sharp questions. And finally, to my wife Alex, and my friends, for their enthusiastic support and encouragement. Thank you all.

Abstract

There is an orthodox approach towards questions of political obligation. This neatly divides all the philosophical terrain into two opposing views. On one side, the standard theory of political obligation to the state, on the other a sceptical view which is often described as philosophical anarchism. In this thesis I argue that this is a false distinction. I examine three important features of the major political principles thought to ground such obligations: their lack of specificity, the multiplicity of relevant political entities, and the intersecting claims of different political principles.

Combining these with the defeasibility claimed by all models of political obligation, reveals that all the standard theories are in fact a form of plural multiple-principle theory. Further, sceptical approaches are also the same kind of multiple-principle theory of obligation. This false distinction has led us away from the radical potential of a theory of political obligation to illuminate the lived political experience of citizens.

This dissertation develops a unified and contestatory theory of political obligations. This is a theory which is maximally plural, and also simultaneously a theory of political obedience and civil disobedience. It addresses the complexity of real world (i.e., non-ideal) duties and dilemmas of people confronted with the demands of the state. It maps out the political moral landscape for citizens. It engages with a range of partial political duties which are often in conflict.

I consider the three most plausible kinds of political principles: natural duty, association and fair play. By taking a synoptic view of their normative impact, I show that while each may fail under the orthodox approach, they all still succeed, in interesting ways, to ground a range of partial and potentially contestatory duties for citizens. These obligations may support each other, and they may conflict. As circumstances change, the same set of political principles may recommend obedience to the law and other demands of the state, or actions orthogonal to such, or constitute a permission to disobey, or even make disobedience one's political obligation.

I explore two important implications of this theory. The first concerns philosophical anarchism. Here I demonstrate that models of philosophical anarchism and other sceptical models do not in fact constitute a substantively distinct alternative view but instead depict a theory of political obligation. Their position is not theoretically distinct and, in many respects advocates of either position have been talking past each other.

The second concerns civil disobedience. The contestatory theory incorporates different political principles which may conflict with each other. In many circumstances, civil disobedience may represent the best way of responding to the normative demands of political life. To better accommodate this, I develop a new model of civil disobedience which is expansive and free of many of the fractures and constraints which characterise much of the post-Rawlsian philosophical theorising on civil disobedience. Although theoretically freestanding, it is designed to be complementary with the normative implications of the contestatory theory. The conception of civil disobedience I develop here is specifically designed to function as a moral and political shield for citizens against the overwhelming power of the state.

Contents

Chapter 1
Introduction: The State We're In.

There's something happening here
What it is ain't exactly clear
There's a man with a gun over there
Telling me I got to beware

I think it's time we stop, children, what's that sound
Everybody look what's going down

Buffalo Springfield.[1]

The Bokeh Problem.

In photography, the bokeh effect is a technique, commonly used for portraits, which presents a subject in pin-sharp focus but leaves the background and foreground blurred. I think that a similar restrictive focus has led the philosophical search for the source of citizens' political obligations to miss important details about those obligations. And once these aspects of our political duties are brought into clearer view, they reveal an altogether different picture of the state of political obligations. That is my aim here.

[1] Buffalo Springfield, "For What It's Worth (Stop, Hey What's That Sound)", New York: Atlantic Records, 1966.

1. A Different View

In this thesis, I begin with the main principles commonly advanced as grounds for political obligation, such as a natural duty of justice, political association, or fair play. The traditional question for each is whether it can be said to support a general political obligation for the citizen. I argue that the orthodox approach to answering that question misses a more important feature – that each obligates people much more than is commonly thought. In turn, this fuller, wider, normative claim affects the answer to the traditional question.

Notably, depending upon the circumstances, *the same political principle may ground a duty to obey the law, and also a duty to disobey the law*. As a result, the normative demands of these political principles upon the citizen resembles, not some straightforward general duty of obedience, but rather, a complex moral landscape of conflicting political principles. Key to navigating this terrain will be several generally overlooked political features: the specificity of political duties, the multiplicity of relevant political entities and the intersecting claims of different political principles.

This radically plural, partial and contestatory approach can be described either as a maximally plural theory of political obligation, or a fully elaborated theory of philosophical anarchism. I say either, because from this perspective, there is little substantive difference between these supposedly different theories, as I will go on to argue (Chapter 2). Further, this normative landscape of diverse political obligations underpins a broad and catholic model of civil disobedience. In turn, this model of political obligations recognises – as others do not – the important practical role of the term "civil disobedience" in both identifying and protecting an important kind of law-breaking in the political sphere (Chapter 6). As a whole, this is what I call the contestatory approach to political obligation. It stands in contrast to the established orthodox approach.

2. History and Orthodoxy in Political Obligation.

There is a widely accepted traditional view of the main debate around political obligation in political philosophy. This neatly divides the philosophical terrain into two opposing views. On one side, there is a standard theory of political obligation to the state, on the other a sceptical view which is commonly described as philosophical anarchism.[2] The popularity of the latter position is based upon a supposed inability of the former to develop a "successful" theory of political obligation.

The orthodox approach resolves a consideration of political duties into two distinct positions: the standard model of political obligation and its supposed opposite, a standard sceptical theory of philosophical anarchism. I consider both in more detail in Chapter 2. However here we can, very roughly, sketch both sides of the debate from the traditional perspective.

- The standard model posits that a political principle (e.g. fair play), or several in concert (e.g. fair play plus a natural duty), grounds an obligation for citizens to obey the law and other state directives. This must meet certain success criteria. It is a defeasible duty, and this model does not exclude other moral reasons bearing upon a citizen facing a requirement to comply.

- Philosophical anarchism posits that no single or combination of political principles succeeds in grounding a political obligation. It does not exclude other moral reasons bearing upon a citizen as regards compliance. In fact, it relies upon this point to further argue that citizens will generally have defeasible duties to comply.

I think this is a false distinction. When we consider more closely the actual claims made by both sides of this theoretical divide, we can see there is little substantive difference between

[2] The idea that philosophical questions of political obligations revolve around this division is almost universally held. Some indicative examples: C. H. Wellman and A. J. Simmons, *Is There a Duty to Obey the Law?*, Cambridge: Cambridge University Press, 2005; George Klosko, *Political Obligations*, Oxford: Oxford University Press, 2005; Anna Stilz, *Liberal Loyalty*, Princeton: Princeton University Press, 2009; Richard Dagger, *Playing Fair: Political Obligation and the Problems of Punishment*, New York, Oxford University Press, 2018; R. P. Wolff*, In Defense of Anarchism* (3rd Edition), Berkeley: University of California Press, (1970) 1998.

the two. Both presuppose a set of defeasible moral reasons in favour of political obligations, as well as a set of moral reasons against such. Both sustain a wide territory of obedience to the state and allow for other areas where non-compliance is permitted. Both ultimately have the same approach to civil disobedience. Both could, as I will go on to argue later, be effectively described as multiple principle models which vary (as all such models do) mostly in their choice of which political principles justify different obligations. And further, both of these artificial positions leave out much of what is important and valuable in their description of the political duties of a state's citizens.

How has the established orthodox approach to the question of political obligation come about? I suspect it is in large part based upon a particular view of what we might call, following Leslie Green, the "self-image" of the state.[3] The idea is that a state is able to issue directives which have a certain character. Precise philosophical conceptions of this self-image vary but they typically stipulate at least that such directives apply widely to almost all citizens, that they may be comprehensive to almost all the laws and that they ought to be obeyed by its citizens – simply in virtue of the authority of the state. As Laura Valentini puts it in an imagined dialogue with an officer of the law; when asked for a good reason why one ought to have obeyed a directive, the officer replies simply: "The law says so.".[4]

This self-image underpins a widely held intuition, that one ought to obey the directives of one's state; that every citizen has a moral reason to obey the laws of their state.[5] Further, it has also been argued that contemporary examination of political obligation is shaped by the historical impact of consent in political philosophy.[6] That is, even though consent (whether express or tacit) has not been seen as a plausible argument for political obligation for a long

[3] Leslie Green, *The Authority of the State*, Oxford: Clarendon Press, 1990 [1988], p63-88 & p239-240.
[4] Laura Valentini. "The content-independence of political obligation: what it is and how to test it", Legal Theory, Vol 24 (2018), p135-157; p135.
[5] That such is a widely held intuition is asserted by critics and advocates alike, for example, John Simmons, *Moral Principles and Political Obligations*, Princeton: Princeton University Press, 1979, p3, p196; Klosko, 2005, p13-16; John Horton, *Political Obligation*, 2nd edition, Basingstoke: Palgrave Macmillan, 2010, p169-170; Margaret Gilbert, *A Theory of Political Obligation*, Oxford: Oxford University Press, 2006, p49; Stilz, 2009, p3-7 & p209. Cf. Leslie Green, "Who Believes in Political Obligation?", in J. T. Sanders and J. Narveson (eds), *For and Against the State*, Lanham MD: Rowman and Littlefield, 1996, p1-17.
[6] Klosko, *Why Should We Obey the Law?*, Cambridge: Polity Press, 2020, p30. See also Horton, 2010, p83 & Carole Pateman, *The Problem of Political Obligation*, 2nd Ed., Oxford: Polity Press, 1985. As a ground of political obligation, the classic presentation of consent is: Locke, *Second Treatise of Government*, New Haven: Yale University Press, 2003 [1690]. See however Ch. 2, n. 101.

time, it casts a continuing shadow as to what *form* an ideal model of political obligation in a state could, or ought, to take.[7]

In turn, the orthodox approach stems from a considered response to this (ideal) self-image and is an attempt to answer the question: is it accurate? Or, put another way, do we have this kind of political obligation?

Thus stated, there is a goal towards which this approach aims. Typically, this means an obligation which is which is universally applicable to most people in a state and also comprehensive in that it covers almost all the laws and other directives of a state. It is often also argued that this general political obligation needs to be, in some manner, independent of the content of specific laws and owed only to the state of which a citizen is a member.[8]

It is worth noting that this self-image of the state is not necessarily representative at all of the actual attitudes of individual citizens, or of state officials. Although a police officer may try to forestall debate with a curt order (as per Valentini's example above), states themselves usually take great pains to justify why specific laws and demands upon their citizens are important and deserve support. Moreover, people typically also apply independent moral standards as regards the laws which they face.[9] Nevertheless, this view helps to support the orthodox approach to questions of political obligation.

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[7] Consent has an early and prominent place in the history of thinking about political obligation (e.g. it is one of the justifications for political obligation in the Crito; see note 18 below. Cf. Pateman, 1985, p100). There are two main reasons it is no longer considered as a justification here. First, very few people do, or ever have, consented. Second, that any such offer of consent, to be a free choice, would have to be made with plausible alternative options (which are not realistically available). The idea that you can be considered as consenting unless you emigrate was famously criticised by Hume: "Can we seriously say, that a poor peasant or artizan has a free choice to leave his country, when he knows no foreign language or manners, and lives from day to day, by the small wages which he acquires? We may as well assert, that a man, by remaining in a vessel, freely consents to the dominion of the master; though he was carried on board while asleep, and must leap into the ocean, and perish, the moment he leaves her." (Hume, "Of the Original Contract", in David Hume, *Political Essays*, Haakonssen, K (ed.), Cambridge: Cambridge University Press, 1994, p186-201; p193. Express consent has however been advanced as a potential theory of obligation fit for some possible future political state where such a plausible choice and openly integrated express consent into its model of citizenship; e.g. Harry Beran, *The Consent Theory of Political Obligation*, London: Croom Helm, 1987.

[8] For example: Green, 1990; Huemer, *The Problem of Political Authority*, New York: Palgrave Macmillan (2013); Dagger, 2018. Note though, not all for example, see Klosko, 2020. See also Chapter 2, section 3.

[9] For a criticism, see: Klosko; "Are Political Obligations Content Independent?", Political Theory, Vol. 39 (2011), p498–523. For an exposition of the historical development of authority which is unfriendly to the idea of a stable self-image, see Christopher Morris, *An Essay on the Modern State*, Cambridge; Cambridge University Press 1998.

That orthodox approach has a methodology which proceeds by looking closely at one or more political principles (e.g. a natural duty of justice, fair play, political association) and judging whether singly (or in combination) they can reach that goal, and ground this obligation. The result is either a success, the goal is reached, and a model of political obligation obtains; or alternatively, a failure and a resignation into a sceptical theory of philosophical anarchism Hence the orthodox approach is wed to the division I noted above, between two putatively different models.

I think that this approach misses much of importance. For even when specific political principles under consideration "fail", they often fail in interesting ways, and nevertheless manage to generate a broad range of obligations. A principle, or a combination of principles, may fall short of the traditional goal of political obligation (and be accordingly discarded), but still succeed in a more limited or partial way to ground political obligations and provide reasons for action.

My approach is somewhat different. Rather than start with a goal to reach, I begin with the question: what political obligations do people have? In that way I hope to cast a light more broadly as to what citizens ought to do when faced with the directives of a state. I hope modestly that this will be a more politically useful approach.[10]

For example, it is a common criticism of the natural duty of justice principle advocated by Rawls – not that it doesn't obligate people – but rather that it fails to uncontroversially obligate each citizen to only his particular state (i.e. the particularity requirement).[11] However most discussions of this political principle stop precipitously there, declaring the principle to have fallen short or failed. Yet interesting questions remain about what kinds of (possibly non-general) obligations for citizens are grounded by this principle. In fact, those are to my mind the most interesting questions about this political principle. And similar examples can be advanced for other prospective principles of political obligation. In each case, a particular principle may be judged to have failed to ground a general obligation

[10] George Klosko has also explicitly rejected content independence as a success criterion. Although his multiple principle approach adheres to other aspects of the orthodox approach I note here, he has also rejected using the state's self-image as a basis for enquiry (see Chapter 2, note 97).
[11] Rawls, *A Theory of Justice*, Cambridge, MA: Harvard University Press, 1999 [1971], p99-101 & 293-296. The term 'particularity requirement' was coined by John Simmons (see Chapter 3, note 39 for references). I discuss the particularity requirement in more detail in Chapter 3.

to obey the law but will still obligate citizens in interesting ways, *for or against compliance* with the demands of the state. So now we can begin to see what a more open and contestatory approach to the political principles which apply to us in a state looks like.

In judging a particular political principle to have failed and then rejecting it from further consideration, philosophers miss what a partial success might mean in the political context and what interesting or stringent obligations could actually flow from that principle. At its worst, this is a kind of methodological myopia, where the interest in a narrow question (i.e. is there a singular general political obligation?) obscures the wider moral picture. This is the case when a particular theory fails to reach its own success criteria. But note, it would also be the case *even where a particular (standard) model of political obligation was judged to be a success.* To be clear, even if the standard model is correct and grounds a general duty to obey the law, it still fails to say much of genuine interest and value as regards people's actual lives in a state.

Why is this – why even if it were to succeed by its own lights can I claim it fails? It is because the standard theory only views the full picture of a citizen's political obligations through a single narrow aperture. For example, let us imagine that the standard model of political obligation based upon a political principle of express consent really does reflect the (voluntarily assumed) political duties of all the citizens of a state. In other words, it succeeds in grounding a general duty to obey the law. Now if in that case citizens really did have a general duty to obey the laws of a state based upon a regularly renewed and freely made pledge of allegiance, it would still say remarkably little about whether, and also why, a citizen ought to obey a law. It provides a very 'thin' description. That is because of the *other* moral reasons, justified by other political principles (fair play, political association, justice, samaritanism etc..), which also apply, to a greater or lesser extent in any particular situation, in support of, or against, the normative claim of a law.

For example, if a law is unjust there will be reasons against compliance and the power of express consent here may be weakened, or potentially overridden. In the case of a particularly immoral law, it may be void ab initio.[12] And if a law is binding that will also often be because of *other* moral principles. To use our consent example, surely the principle

[12] Although not universally agreed, it is a standard position that a promise to a (particularly) wicked act is not merely one which may be outweighed, but is not a valid promise at all.

or substantive reason why it will be wrong in this state to murder or assault people is mainly because of the fact that this is wicked, and not because you have formally agreed to obey the law. In that case it is a natural duty to not harm people which does much of the heavy moral lifting, not the promise to obey state directives in general.

The necessary involvement of other principles is not denied by other models, but it is often marked with only a slight obiter by philosophers keen to demonstrate the merits of a particular standard theory. Almost every model acknowledges that a citizen's political obligation is supported by some moral reasons and also defeasible in regard to others. That is, it can be outweighed by one or more other moral reasons – other duties and obligations. This mere passing mention is the point where something quite important is missed. For all these other duties may not only outweigh a putative general obligation to obey the law, or alternatively support it. In many cases they may weigh *more significantly* for – or against – legal compliance than the principle object of any standard model. It is part of my argument here that they too are as much a part of the picture of a citizen's political obligation as any other duty.

The true picture of political obligations is that any duty to comply with any law will be built upon the consideration of many different political principles. Consider the number of candidate political principles which have been advanced as plausible candidates for a theory of political obligation; e.g., fair play, gratitude, justice, samaritan rescue and care, utility, the common good, freedom in living together, and communitarian association. It is extremely unlikely that not one of these will ground any obligations, at least for some people some of the time within a state, regardless of whether they ultimately fail or succeed to ground a general political obligation under the standard approach. In short, it doesn't matter if one may (in some contexts) ground a general obligation, if all the rest also may apply at the same time.

This inevitable plurality is seen most clearly, in the orthodox position, as multiple principle models (as opposed to those which focus upon a single political principle, e.g. natural duty). In these cases, two or more political principles are considered in combination and

assessed to see if they can reach a general political obligation.[13] But even here, under the orthodox approach, the goal of establishing a general obligation restricts the scope of what is considered a plausible political principle suitable for consideration. Moreover, it is also common for philosophical anarchists – when they argue that many citizens will obey the law for reasons other than political obligation – to restrict their models to a limited sub-set of principles.

This thesis approaches the question of political obligation from a wider and more open perspective, exploring the implications of an unrestricted set of political principles in the political context. To see political obligations not through a narrow aperture but as a panorama. When we do this, we come to see the actual moral position of people in a political state resembles a topographic map – the individual finds themselves in a complex "moral landscape" where their position and progress are affected by various moral landmarks. In turn, this allows us to deploy more useful analytical tools, measuring the extent of the reach of a political principle rather than its more instrumental role in supporting a standard model to be sufficiently comprehensive or general.[14]

Citizens in this moral landscape, have obligations that are political, even if they (singly or in combination) fail to meet any threshold for success as a general duty.[15] I suggest that this moral landscape may be a closer match to the actual moral relationship between the citizen (or indeed, person in a state) and the state, than the 'standard' depiction.

In one sense this is a more complex and potentially confusing picture than that which is generally *presented by* the orthodox approach for either standard models of political obligation, or existing theories of philosophical anarchism. Apprehending this, a citizen may well feel lost and bewildered by the many different claims upon them. For such a political-moral vertigo I am afraid there is no easy solution (though see Chapter 3, section

[13] See notes 18 & 19, below.
[14] An instrumental judgment does involve some assessment of a political principle's reach, my point here is that a broader view allows us to see that reach more fully (e.g. when might it count against obedience?).
[15] Note that the claim that a principle (e.g. fair play) may impose a political duty or obligation upon a citizen, even if not a generally applicable or comprehensive one, is the same claim made overtly in multiple principle models of political obligation, when they function to aggregate (presumably partial) duties from different principles in an attempt to cover all the laws and demands of the state. It is also, as I will go on to argue, the same claim made (less overtly) by models of political obligation which employ just one principle and also by theories of philosophical anarchism (Chapter 2).

5). Moreover, in Chapter 6 I develop a new and more capacious conception of civil disobedience which is supportive of the principled disobedient citizen. And more broadly I aim to illuminate in more detail what citizens' political obligations are in different contexts. Being an optimist, I hope that seeing where we are will help with the shove, push and struggle which inevitably accompanies any wider political progress and improvement.

This then is an approach which is citizen-centred. For it is the citizen who faces an all-things-considered decision. To focus upon one aspect separated artificially is to miss the central dilemma, one which is recognisable in the fine-grained experience of people everywhere in political society. In fact, one might say that this is the principle job of a theory of political obligation. That is, to provide a map of the normative terrain of our political obligations.

3. A Contestatory Theory

Of course, it will not be able to capture all the full detail of the moral demands of political life. As Borges wittily demonstrates, some scale is both inevitable and practicable.[16] And with scale comes a loss of detail. But it can provide some general directions, even if rough and ready. This is the contestatory theory. It involves lifting the different political principles out, free from their (orthodox) limited service towards the goal of a general obligation to the state, and then examining how each may ground different obligations in relation to the directives of the state. These different political duties may combine or conflict in different ways, and from that disputed terrain we may discern citizen's actual all-things-considered political obligations.

[16] "... In that Empire, the Art of Cartography attained such Perfection that the map of a single Province occupied the entirety of a City, and the map of the Empire, the entirety of a Province. In time, those Unconscionable Maps no longer satisfied, and the Cartographers Guilds struck a Map of the Empire whose size was that of the Empire, and which coincided point for point with it. The following Generations, who were not so fond of the Study of Cartography as their Forebears had been, saw that that vast map was Useless, and not without some Pitilessness was it, that they delivered it up to the Inclemencies of Sun and Winters. In the Deserts of the West, still today, there are Tattered Ruins of that Map, inhabited by Animals and Beggars; in all the Land there is no other Relic of the Disciplines of Geography." (Jorge Luis Borges, "Of Exactitude in Science", in *A Universal History of Infamy*, Harmondsworth: Penguin, 1975, p131)

It is often said that political philosophy considers the proper object of political obligation to be obedience to the law and to government, with (civil) disobedience justified in virtue of independent moral considerations which may conflict with political obligation.[17] Because the contestatory approach is free from the explicit goal of a general and comprehensive duty to obey the law, we can examine the normative claims of the main political principles in the round. What we see, is that the same principles, such as natural duties, political association and fair play which in many cases justify obedience to the law can also, in different circumstances, justify disobeying the law.

Thus, the contestatory theory works to chart the limits of state authority and legitimate political obligations. It also aims to reveal when it is correct to oppose the directives of the state. It is a theory of political obligations which is *simultaneously a theory of political obedience and civil disobedience.* It has the following main features:

1. It is comprehensively plural as regards political principles. Alongside unary theories of political obligation, multiple principle approaches have an historic lineage; most notably with Plato, who advanced at least four principles in the *Crito.*[18] In common with this, and many more recent attempts to reach a general and comprehensive political obligation, the contestatory approach includes a range of different political principles.[19] However, because it is not wedded to the same goal, it can be even more inclusive than these theories; so we might also call it maximally plural.

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[17] For example, Ronald Dworkin, *Justice for Hedgehogs*, Cambridge MA: Harvard University Press, 2011, p318 & p323; David Lefkowitz, "The Duty to Obey the Law", Philosophy Compass Vol. 1 (2006) p571-598; p573-574; Dorota Mokrosińska, *Rethinking Political Obligation*, Basingstoke: Palgrave Macmillan, 2012, p11 (note, Mokrosińska invokes the norm, and argues against that view in her own model).

[18] The personified Laws of Athens provide the following four reasons for compliance: (i) Tacit consent: "you agreed, not only in words but by your deeds, to live in accordance with us." (52d5 and elsewhere). The evidence presented for tacit consent includes: bringing up children in the city (52c); almost never leaving (52b5); seventy years of residence in Athens, even though life in other cities was available (52e-53a). (Food for thought for advocates of political obligations through tacit consent!). (ii) A duty of gratitude to the state for all that he has been given (50d & 51d). (iii) From the negative consequences to the state of disobedience (50a-b, 50d, 51a5). (iv) An associative argument based upon analogy with the family (50d-e, 51e5). Plato, *Crito*, in G. M. A. Grube, (trans.), J. M. Cooper (rev.) *Plato: Five Dialogues*, (2nd Ed.), Indianapolis, IN: Hackett, 2003. Other interpretations are available; for example: A. D. Woozley suggests not four but three principles (Woozley, Law and Obedience: The Arguments of Plato's Crito, London, Duckworth, 1979). John Simmons argues that the Laws also intend a duty of justice (Simmons, 2005, p106-107.On this dubious suggestion, see Ch 3, n. 2).

[19] Examples of prominent recent multiple principle approaches include: (i) George Klosko, who developed a three-part model, based upon a principle of fair play, a natural duty of mutual aid and a duty to help provide the common good (Klosko, 2005. More recently he has advanced a variation which emphasises that the common good principle operates as a second duty of fair play. See Klosko, 2020, p65-105). (ii) Chaim Gans

2. It is sensitive to the role of context in determining the normative pull of different political principles. Political principles ground obligations which vary in their moral valence and stringency according to the facts and circumstances which are present (which may include the operation of other political principles). I call this the question of specificity of content.

3. It recognises the many different entities which play a role in the existence and function of different political principles. The political obligations of citizens are not solely one-to-state relationships but involve relationships with fellow citizens and with other political entities within and without states (for example, states within federations, diasporas, human rights movements, trade unions). In considering the pull of political principles (e.g. fair play, association), I call this the question of multiplicity.

4. It presents a citizen's political obligations, not as a straightforward (if defeasible) general duty of a certain strength, but rather a normative matrix of moral reasons. It is from this normative matrix that the citizen's all things considered obligation, in response to the demands of the state, is to be determined.

5. It recognises that citizens have political obligations to obey state directives, but also political obligations to disobey.[20] The context and circumstances of the citizen in political society determines the normative valence of a citizen's political duties. In

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who employs fair play, a natural duty of justice, an associative principle and a consequentialist principle (Gans, *Philosophical Anarchism and Political Disobedience*, Cambridge: Cambridge University Press, 1992). (iii) Jonathan Wolff, who employs mutual self-interest (in this case incorporating some elements of the common good), fairness and justice (Wolff, "Pluralistic Models of Political Obligation", Philosophica (Belgium), 56, 1995, p 7-27). (iv) Massimo Renzo, who suggests an overlapping combination of consent, fair play, political association and a natural duty not to harm (Renzo, "Associative Responsibilities and Political Obligation", The Philosophical Quarterly, Vol. 62 (2012), p106-127; p119, n.21 & Renzo, "State Legitimacy and Self Defence", Law and Philosophy, Vol. 30 (2011), p575-601; p598). See also W. D. Ross, *The Right and the Good*, Oxford: Oxford University Press, (1930) 2002, p27-28; D. D. Raphael, *The Problems of Political Obligation*, (2nd ed.), London: Macmillan, 1990, p175-208 (especially p204-5); Dudley Knowles, *Political Obligation: a Critical Introduction*, London: Routledge, 2010, p57-58; p68-70 & p75 (following Wolff); Govert den Hartogh, *Mutual Expectations: A Conventionalist Theory of Law*, The Hague: Kluwer, 2002, chapters 4 & 5.

[20] Philosophers typically view political obligation as defeasible and that is how they tend to frame disobedience to the law. It is less common to see a reference to disobedience as a possible duty and rarer still to see it mentioned as a political obligation. There are some exceptions which will be highlighted through the discussion of specific political principles.

either case, a duty to obey or to disobey, is the result of the operation of the same set of political principles working in the political context.

6. Because it is a theory of both political obedience and disobedience, it requires a suitable theory of civil disobedience. This foregrounds the practical role of civil disobedience as a designator of permissible disobedience and as a shield against the power of the state in opposition.

I will argue that these features also entail that, in many circumstances, most standard theories, have justificatory gaps. That is, they fail to ground an obligation to comply with a comprehensive set of state directives. However, even if my criticism is wrong here, this radically plural contestatory theory still obtains. Because, in that case, the same political principle (e.g. a natural duty of justice, political association, or fair play) would also ground other moral reasons which (may) undermine that duty to obey (and even outweigh it). Further, additional political principles will also apply on a partial basis, providing moral reasons in support of some laws and against others.

For it to be otherwise, two states of affairs would need to pertain: First a standard model would have to succeed on its own terms (as a unary or multiple principle model). Second, the political principle(s) grounding that comprehensive obligation would have to ground no further significant political duties either for or against complying with the laws. And also, that all other political principles would have to not ground any significant political duties for or against the laws (regardless of their ability to ground any universal or comprehensive political obligation).

These are presented as negative claims. As negative claims, both are necessary conditions for any standard model to represent a valid and informative picture of the political duties of citizens. Their reverse (as positive claims), i.e., (i) no successful standard model, (ii) a manifold of different political duties, constitute principle positive claims of my approach. Note that, as positive claims, only the second premise is a necessary and sufficient condition for the contestatory theory. The first is however important, in that it provides a fuller depiction of the normative matrix which applies to the citizens of a state.

4. Duties, Obligations and Moral Reasons

As regards terms such as 'obligation' and 'duty', I will be adopting a philosophically ecumenical position and using these broadly and interchangeably, rather than following the distinction which has been employed by some philosophers where obligations, unlike duties, arise out of voluntary acts.[21] In turn, political obligations and duties are a species of moral reason which is directed towards a particular act in the political sphere. As John Dunn says: "To recognise the existence of a duty in this sense entails the agent having *a* reason for executing it.".[22] For example, we might say that in situation x, the principle of fair play justifies a duty (or an obligation) which is a moral reason which counts, straightforwardly, in favour of a certain act.[23]

These obligations, duties, and moral reasons in the political sphere, are not conclusive or final, but can be overridden by other competing duties. As such they are described as *prima facie* or *pro tanto* reasons.[24] Such reasons are subject to being overridden by other moral reasons; that is, outweighed rather than erased. For example, a promise to host a dinner party may be overridden by a sudden emergency, perhaps to drive a friend to hospital. The all-things-considered obligation now is to attend to the medical emergency. However, the initial obligation still exists as a reason, and still carries some moral weight, even if other reasons, pulling in a different direction, carry more weight in the decision to act. Thus, after our dinner host has returned from the hospital and the countervailing moral reason has expired, they still owe their guests an explanation, apology, or an offer to reschedule. As

[21] See: H. L. A. Hart, "Are there any natural rights?", Philosophical Review, Vol. 64 (1955), p175-191; p179, n.7; Rawls, 1999, p93-101; Richard Brandt, "The concepts of obligation and duty", Mind, Vol. 73 (1965), p374–93; Simmons, 1979, p11-16.
[22] Dunn, *Political Obligation in its Historical Context*, Cambridge: Cambridge University Press, 1980, p252 (emphasis in the original). See also Green, 1990, p223-230.
[23] In general, I will be considering the political obligations of citizens and long-term residents in a political state. The latter is a slightly broader category although in many cases it has little impact upon the set of political duties which apply. Where it does, I will highlight this (see Chapter 4). I do not however intend to explore in any detail the political obligations of those who are in a state but not established residents (even though that would be interesting).
[24] See Ross, 2002, p19-20 et al. Given that prima facie is also considered to refer to an epistemic distinction rather than an ontological one, pro tanto would be more accurate. However, given its widespread currency I will be employing prima facie throughout. In the relevant literature, both terms are widely used. For a brief discussion, see Knowles, 2010, p14-16. Although Ross was unhappy with the term straight-away, he predicted (rightly) that it would catch on (ibid, p20).

such, prima facie duties are a necessary requirement for the defeasibility of standard models of political obligations.[25]

These moral reasons which are grounded, or justified, by different political principles – which apply in regard to the demands of the state – vary in their strength. In one sense, given our common experience that the moral imperatives of different laws (and the justification of different acts of civil disobedience) also varies, this seems appropriate. I will discuss this throughout with reference to specific political principles in context.

The political principles I will examine, such as natural duty or fair play, feature in the standard models to ground citizens' political obligations. Paradigmatically this means a duty to obey the law, but it is also often taken to include other political duties.[26] For example, in some situations a citizen's political obligation might include a requirement to take an active interest in the welfare of their political community. Or, to take part in various activities such as voting. Or to speak out or take other action when the state errs and perpetrates injustice or pursues a grievously self-defeating policy. Or, to act in ways which benefit or otherwise support the common life and general conditions of one's fellow citizens. It may be hard to see how some of these duties may apply in a large and plural state – however we recognise it in the justified condemnation of a citizen who, although scrupulously obeying the letter of the law, steadfastly refuses any further support of their fellows and the public good. Think for example of Jacob Marley and Ebenezer Scrooge. Accordingly, I will focus upon political obligations as a duty to obey the law, but on occasion I will also refer to its wider sense – particularly when I discuss situations where different political obligations may come into conflict.

By obey the law I mean, straightforwardly, to conform one's behaviour with the directives of the state at a particular juncture. Political obligation is sometimes taken to mean a duty to obey the law in the sense that one's motivation is of a particular kind, more specifically, to act because the state has directed you to act. In turn, that is said to determine whether

[25] David Lyons has suggested that in everyday usage, duties and obligations are rarely considered decisive or absolute and accordingly using prima facie as a term of art here can be confusing. This seems sensible, but the usage is now sufficiently embedded in the relevant literature (Lyons, "Need, Necessity, and Political Obligation", Virginia Law Review, Vol. 67 (1981), p63-77; p66-67).
[26] For an excellent discussion, see: Bhiku Parekh, "A Misconceived Discourse on Political Obligation," Political Studies, Vol. 41 (2003), p236-51.

one is obeying (or complying) as opposed to conforming with the law. Here, I eschew a subjective component in people's practical political reasoning, since I am concerned to map out the range of moral reasons why citizens ought to obey (or disobey) the directives of their state.[27] In what follows I will use terms like obey and comply as synonyms.

Similarly, the contestatory theory produces a set of moral reasons which need to be balanced against each other as part of a citizen's practical political reasoning. I am content at this stage to rely upon a (relatively) simple weighing model here. In that sense, the results of different political principles in the political sphere can be considered (to use Joseph Raz's term) first-order reasons to be weighed in arriving at a final all-things-considered ought.[28] That is not to say that the theory which I develop here could not be adapted or applied to a Razian approach. However, here the prima facie moral reasons grounded by different political principles are to be considered part of a more straightforward model which balances different considerations in order to achieve a sound outcome.

5. An Important Empirical Question.

This is a work of political philosophy. Nevertheless, deep and abstract questions about the nature of the moral claim of a state upon its citizens often reach to, or rely upon, the actual beliefs and behaviour of people in a state when the law or state makes a demand. One way in which this underpins a theoretical position, is the claim that people's disobedience to any extent beyond a minimal amount will have a damaging effect upon the functioning of the state.[29] The truth however, is that in many modern sophisticated states, disobedience to the law is quite widespread. As Kent Greenawalt puts it:

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[27] See Ch. 2, n. 92. Moreover, even if we do accept such a distinction, the usage of different terms (e.g. obey, comply, conform) is not settled (e.g. Stephen Perry, "Political Authority and Political Obligation", in Leslie Green and Brian Leiter, eds., *Oxford Studies in Philosophy of Law*, Vol. II, Oxford: Oxford University Press, 2013, p1-74; p14, esp. n. 14).

[28] Raz, *The Authority of Law*, (2nd ed.) New York: Oxford University Press, 2009, p3-27; Raz, *The Morality of Freedom*, Oxford: Oxford University Press, 1986; Raz, "Facing Up: A Reply", Southern California Law Review, Vol. 62 (1989), p1153-1256. For a strong critical view of both the Razian pre-emptive model and the straightforward weighing model, and an argument that in the presence of a sufficiently competent legal system, citizens have good reason to adopt a disposition to obey the law (alongside the weighing of practical reasons, see Noam Gur, *Legal Directives and Practical Reasons*, Oxford: Oxford University Press, 2018.

[29] See Chapter 4, section 4 & Chapter 5, section 1.1 for example.

> Many laws are not obeyed by most people. In many localities in the United States, laws against jaywalking and driving over fifty-five miles an hour on highways come immediately to mind. In some societies, pervasive violation of currency restrictions and tax liabilities occurs.[30]

It is illustrative to note that, for example, personal tax evasion and in many modern economic states is widespread.[31] Of course, many laws are closely observed, in particular those which mirror strong moral norms and also those which are often perceived as being fair.[32] Additionally, the widespread disobedience of some particularly significant laws would in fact be destabilising. In the following chapters, when I come to examine some of the claims which rely upon the role of legal observance as a basis for (say) moral norms, or the stability of the state I will try and take a more nuanced perspective.

6. Overview

I will defend the thesis that people's political obligations are more partial, plural and contestatory than is commonly thought, and that seeing this clearly helps to resolve a number of problems with established political philosophy on this subject. I examine the orthodox approach's three foremost political principles (as examined by both advocates and sceptics). By taking a more open perspective to questions of political obligation, a picture emerges of a more complex moral-political landscape in which citizens are situated.

In Chapter 2, I consider whether the radically plural contestatory theory is a model of political obligation or instead a sceptical rejection of such. I argue for a surprising answer –

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[30] Greenawalt, Conflicts of Law and Morality, Oxford: Oxford University Press, 1987, p137.
[31] In the US, it has been estimated that approximately 16% of the adult population illegally evade taxes every year (reported in Huemer, 2013, p70). And the "tax gap", which is the difference between what taxpayers should have paid and what they did pay, was estimated in 2009 to be $390 to $540 billion (R. J. Cebula & E. L. Feige, "America's unreported economy: measuring the size, growth and determinants of income tax evasion in the U.S.", Crime Law and Social Change, Vol 57 (2012), p265-285).
[32] Klosko, 2005, p13-16 & p181-222. The classic presentation of this is social psychological (specifically survey-based) research by Tom Tyler in Chicago which concludes that people often obey the law when they believe that it is moral, just and fair (Tyler, *Why People Obey the Law*, New Haven: Yale University Press, 1990).

that the standard models of political obligation and the established sceptical philosophical anarchist approaches are, in fact, the same model. That is, there is no substantive difference between them. Thus, this contestatory theory may be seen either as a variation on a theory of political obligation, or as a more fully elaborated model of philosophical anarchism (I will argue for the former). Moreover, this conclusion throws some doubt upon the way in which the debate around political obligation is currently framed.

In Chapter 3 (Natural Duty), we see that the standard model is challenged by a significant feature of natural duties, their external focus. The full significance of this is often underappreciated. It lies behind the well-known particularity criticism, however its full effect upon the normative demand of (any) natural duty, is wider. I show that the same natural duty may ground reasons both to comply with the law and also to disobey it. Moreover, the operation of a number of different natural duties, in the same political context, entails that instead of a single duty to obey the state, citizens are bound by a web of different and potentially conflicting natural duties. These will intersect in different ways according to the varying demands of the state.

In Chapter 4 (Political Association), I focus on two overlooked aspects of this political principle: specificity of content and multiplicity of association. The former entails (as with natural duty) a context-dependent contingent relationship between the demands of an associative political principle and the requirements of the law. An illustration I use is the distinction between an obedient citizen and a good citizen. Next, we see that this principle also grounds a range of associative political duties owed to those alternative associations which make a claim to affect citizens' obligations to obey the state ("non-state political groups"). I conclude that the associative principle may be able to justify a broad political obligation to support state directives in many circumstances. However, it too can also act as a ground for political obligations contesting the demands of the state – which includes a duty to engage in civil disobedience in some cases. Further, political association also potentially particularises a number of natural duty political obligations.

In Chapter 5 (Fair Play), I argue for a partial-state approach for grounding political duties (in line with Klosko's well-known model), where a range of the demands of the state are supported by this political principle. Next, I introduce a novel analysis of how the principle

of fair play works generally. This allows for the state to be represented by more than one – potentially competing – fair cooperative scheme. Further, as with political association, we see that some alternative non-state cooperative schemes may ground fair play political obligations which conflict with those of the state-level schemes. Finally, I show that the strength of fair play obligations, counterintuitively, does not depend upon the importance of the goal of the related fair cooperative enterprise but upon the contribution required by each member of a fair cooperative scheme. This has implications for how practical political reasoning might weigh competing political duties with regard to the demands of the state.

The interregnum includes an interim summary of the contestatory theory of political obligations. In Chapter 6 (Civil Disobedience), I expand upon the other side of this theory, where a citizen's political duties may permit, or require, civil disobedience. Here I demonstrate that the conception of civil disobedience which is common in contemporary philosophical thought is both theoretically and practically problematic. For reasons that are partly to do with the history of thinking about civil disobedience in political philosophy, philosophers have lost sight of the moral and political role of civil disobedience. It is my contention that civil disobedience, in a morally important sense, is a designator of a significant kind of law-breaking which is morally permissible. Further, it has an established practical role as a claim for protection, from the massive power of the state, for the principled law breaker. Accordingly, I develop a new theory of civil disobedience which fits with the contestatory approach, and which also supports its important role in political society. Finally, in the conclusion I indicate some of the limits of this thesis and suggest several possible areas of future development.

Chapter 2
Philosophical Anarchism and Political Obligation

As I went walking that ribbon of highway
And saw above me that endless skyway,
And saw below me the golden valley, I said:
This land was made for you and me.

Was a high wall there that tried to stop me
A sign was painted: said Private Property
But on the other side it didn't say nothing –
This land was made for you and me.

Woody Guthrie.[1]

Summary

In this chapter I argue that the contestatory approach to political obligation, with its emphasis upon a broad perspective and a full range of political principles, illuminates a surprising feature about the division between philosophical anarchism and political obligation – that it does not exist as a distinct substantive perspective. To be clear, there is almost no practical or theoretical difference between sceptical philosophical anarchism and standard theories of political obligation. And what distinctions do exist are the same kind and degree as those between different standard models of political obligation.

[1] Woody Guthrie, "This Land is our Land", (trad.), Versus 2, 4. As with many traditional folk & protest songs there is some variation in the lyrics. The fourth verse is often omitted but was included in the version sung at the 2009 US Presidential Inauguration.

This position runs counter to established philosophical views of political obligation. If I am correct, we may say that: the contestatory theory shares some features both with a plural model of political obligation and also a sceptical philosophical anarchist model *because* they are themselves the same in both theoretical structure and their normative commitments.

1. Scepticism About Political Obligation

Anarchism is too broad and protean to be a singular political philosophy. It is perhaps more helpfully thought of as encompassing a number of diverse schools of thought which nevertheless share some foundational views. Two of which are prominent; all anarchists are broadly committed to a rejection of state authority and all anarchists have a view as to what form(s) of society and organisation ought to replace it. These may not be revolutionary or all-encompassing views, but both a critical rejection, and a future ambition, seem to be shared by most anarchist approaches, even if they do not agree on much else.[2]

Philosophical anarchism holds that the state lacks moral legitimacy, but it is supposed to be distinct from its political cousin in that it does not necessarily enjoin action to eliminate the state.[3] For philosophical anarchists the state may be seen as a necessary evil, towards which the correct position is: "an attitude of watchful acquiescence to the demands of law—as long as they are independently justified…".[4] And in many cases the rejection of state authority is founded upon a prior philosophical claim; such as utilitarianism in the work of

[2] For a survey of anarchist approaches, see David Miller, *Anarchism*, London: J. M. Dent & Sons, 1984 and George Woodcock, *Anarchism*, Harmondsworth Middlesex: Penguin Books, 1963.
[3] Note, not *necessarily* to require action. Of course, some philosophical anarchists may also be in favour of, or support, acts which do aim at changing or removing a state. Depending upon the specifics of their views, political anarchists may also be philosophical anarchists. The distinction as used here is more one of emphasis, in that in general many philosophical anarchists are content allow the current state and political arrangements to exist.
[4] Edmundson, "State of the Art: The Duty to Obey the Law", Legal Theory, Vol. 10 (2004), p215-259; p219. I think we might say that philosophical anarchism is agnostic as to what specific forms of authority are required for a flourishing human life.

William Godwin.[5] Or egoism in the work of Max Stirner.[6] Or a Kantian view of autonomy in the work of Robert Paul Wolff.[7]

More recently it has become divided into two forms. Following John Simmons's work, these are often referred to as "a priori" anarchism" and "a posteriori" anarchism".[8] The first form holds that the state, and its moral demands, are illegitimate because of one or more basic features it possesses which cannot coexist with a fundamental moral principle. For example, the hierarchical nature of a state and the equal moral status of people, or the need for a state to have borders and a universal right to free movement. The classic example of this view is that of Wolff, who argues that moral autonomy is a core moral fact and a duty for the individual and as such sits in opposition to the recognition of the authority of the state, and any concomitant political obligations. Although in some cases we may be able to set aside our autonomy temporarily, ultimately the duty to be autonomously free cannot be reconciled with the political directives of the state.[9]

The second form, a posteriori philosophical anarchism, admits that a legitimately authoritative state may be possible, it just isn't for the state under consideration (or for any current state). Here the claim of state illegitimacy is contingent upon the character of specific states.[10] For example, a state may be grossly unequal or unjust, or its citizens may

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[5] Godwin, in Mark Philp (ed.), *An Enquiry Concerning Political Justice*, Oxford: Oxford University Press, 2013; esp. Book II, Ch. 6 & Book III.
[6] Max Stirner, *The Ego and His Own*, David Leopold, (ed.), Cambridge: Cambridge University Press, 1995.
[7] Wolff, 1998.
[8] Simmons, *Justification and Legitimacy: Essays on Rights and Obligations*, Cambridge: Cambridge University Press, 2001, p102-121.
[9] Wolff, 1998. Wolff did allow that a form of unanimous direct democracy might be able to reconcile both positions but would be so limited in application as to be inapplicable to any contemporary context. Wolff's view has generated a substantial critical response. For example: Jeffrey Reiman, *In Defense of Political Philosophy*, New York: Harper & Row, 1972; Harry Frankfurt, "The Anarchism of Robert Paul Wolff", Political Theory, Vol.1 (1973); p405-414; Gans, 1992, p10-41; Horton, 2010, p123-9; Dagger, 2018, p33-36.
[10] Other classifications of philosophical anarchism are available. For example, Chaim Gans distinguishes "autonomy-based anarchism" from "critical anarchism" (Gans, 1992, p2-3). The former applies to Wolff's approach and the latter is based upon a rejection of the grounds of political obligation (paralleling Simmons). John Horton marks a similar distinction between, on one hand, a principled incompatibility with state authority and on the other, a more contingent failure to achieve a suitable political obligation with his "positive" and "negative" philosophical anarchism (Horton, 2010, p107 & p121-133). Of these, Horton's positive philosophical anarchism is closest to Simmons's idea of a priori philosophical anarchism, as it allows that other moral principles beyond autonomy, may be incompatible with state authority. Both Gans's critical anarchism and Horton's negative anarchism are, I think, close to Simmons's a posteriori anarchism. Simmons would disagree as he has argued his a posteriori anarchism is broader than Horton's negative anarchism (and by implication Gans's critical anarchism) because it is not merely based upon a (contingent) failure of an attempt to ground political obligation but also upon an ideal of state legitimacy (e.g. an egalitarian ideal, or a community ideal) which a state fails to meet (Simmons, 2001, p105-106, n.8). I am however not convinced

have insufficient moral reasons to obey the law. However, this view allows that legitimate states are possible – given suitable reforms. Typically, that might involve some form of expressly voluntarist political society.[11]

A posteriori philosophical anarchism (hereafter simply philosophical anarchism, to avoid repetition; departures to other forms of anarchist theory will be noted), has from the start occupied one side of a division in philosophical debate on the questions of political obligation.[12] This division is one important feature of what I have been calling the orthodox methodology as regards political obligation.

Speaking broadly, the orthodox approach posits two opposing positions. The first camp argues that all citizens are under a broad obligation to obey the law and support the state in other ways. This is justified by one political principle (or sometimes several in combination), meeting certain success criteria. The second – sceptical – camp, philosophical anarchism, denies this and argues instead that a careful balance of reasons informs the citizen of whether, in any instance, it is morally correct to follow a state directive or not.[13] Some have suggested that currently the sceptical approach is increasingly

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this is a clear distinction, because any state will have a character where it approaches different such ideals (e.g. all states stand in some relation to an idea of justice however that is defined). Simmons's ideal of legitimacy conception is contingent, otherwise it would be a priori anarchism. As such it forms the background for any philosophical anarchist's assessment as to whether the state can effectively justify political obligation. Thus, both critical (Gans) and negative (Horton) anarchism should be assumed to also apply to a state which is suitably just, egalitarian, respectful of autonomy etc.., in so far as those political values are reflected in the principles which ground political obligation (or not). In response, Simmons might insist that some of the principles which are thought to ground political obligation and of which the philosophical anarchist is critical are not connected to this wider (ideal) view of the state. I am not concerned here to press the point other than to note that in the main, the sceptical approach which is supposed to occupy the leading position in opposition to models of political obligation is characterised by the argument that these models contingently fail to ground political obligation. And that this is so across the full range of sceptical positions in the philosophical literature, including those which even eschew the label philosophical anarchist.

[11] The chief exponent of this is Simmons, whose Lockean voluntarist view underpins both his rejection of current models of political obligations and his (hypothetical) endorsement of such grounded by express consent; see Simmons, 1979 & x`. For such a "reformist" consent theory, see Beran, 1987.

[12] While here I concentrate upon political obligation, this division entails related positions on related questions of state legitimacy and authority.

[13] Simmons, 2001, p102-121. See also Simmons, 1979, p192-201; Simmons, "The Anarchist Position: A Reply to Klosko and Senor", Philosophy & Public Affairs, Vol. 16 (1987), p269-279; Simmons, 1993, p248-269, Simmons, 2005, p190-196. For other philosophical anarchist views in the same vein, see Smith, M. B. E. "Is There a Prima Facie Obligation to Obey the Law?", Yale Law Journal 82 (1973), p950-76 & Smith, M. B. E. "Review essay / the obligation to obey the law: Revision or explanation?", Criminal Justice Ethics, Vol 8 (1989), p60-70; Donald Regan, "Law's Halo", Social Philosophy & Policy, Vol. 4 (1986), p15-30; The philosophical anarchist tradition is traditionally taken to include a number of theorists who advance similarly sceptical views about political obligation even though they may not describe themselves as philosophical anarchists, or eschew the term. For example: Green 1990; Lyons, 1981; Woozley, 1979.

prominent and potentially even a majority opinion in political philosophy.[14] Others claim that scepticism is in fact diminishing and point as evidence to the recent influx of new theories of political obligation.[15] Whereas scholarly opinion on the merits of different theories of political varies widely, as do views as their respective philosophical popularity, there is almost universal consensus on this basic division between the two camps (*almost*, see below). Here for example is John Simmons:

> A wide variety of accounts of the nature and source of our duty to obey is currently on offer, with all such accounts opposed not only by proponents of alternative accounts, but also by an array of sceptics who deny the existence (and in some cases, even the possibility) of such duties.[16]

And for the other side of the challenge, here is Richard Dagger:

> If we are to take the case against the *a posteriori* form of philosophical anarchism to its conclusion … It will be necessary to prove it wrong by developing a satisfactory account of political obligation. That, indeed, will be the best response to any version of the anarchist challenge.[17]

This idea that there is a crevasse between the two positions has for many years been the mainstream position in the literature and is reinforced in the elaboration of the theories and critical views on both sides. At each stage they orient their position with regard to the opposing position.[18] I will argue below that this division has been hugely overstated – to the detriment of the wider philosophical debate on political obligation.

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[14] Edmundson *Three Anarchical Fallacies*, Cambridge: Cambridge University Press, 1998, p7; Dagger, 2010, p28.
[15] Higgins, *The Moral Limits of Law: Obedience, Respect, and Legitimacy*, Oxford: Oxford University Press, 2004, p3
[16] Simmons, 2005, p96-97
[17] Dagger, 2018, p40 (emphasis in the original)
[18] Examples abound, see Horton, 2010, p106-107 & p121-134; Dagger, 2018, p15-28 & p32-40; Magda Egoumenides, *Philosophical Anarchism and Political Obligation*, London: Bloomsbury, 2014; Jonathan Wolff, "Anarchism and Skepticism", in J. T. Sanders and J. Narveson (eds.), *For and Against the State: New Philosophical Readings*, Lanham, MD: Rowman & Littlefield, 1996; p99-118; Ryan Windeknecht, "Law Without Legitimacy or Justification? The Flawed Foundations of Philosophical Anarchism", Res Publica, Vol. 18 (2012), p173-188.

In fact, in spite of this asserted division, and particularly in the last 10 to 15 years, there are a few initial signs in the literature of some rapprochement between these two opposing positions. In part, this is as a result of the development of increasingly sophisticated non-voluntary models of political obligation which, in turn, are responding to critical pressure from the sceptical camp. It is also, I suspect, driven to a degree by an increasing willingness to elaborate positions where principled disobedience to the state is justified.

For example, some standard models are now more explicit in their acknowledgment that there might be gaps in what a political obligation covers – that some laws may remain ungrounded by a political principle, or that the scope of what is overridable by other moral reasons is wider than thought. In short, a willingness by advocates of political obligation to accept that their theories may only be partial.[19]

Thus, Christopher Wellman, whose theory of political obligation I consider in more detail in Chapter 4 & 5, explicitly admits it cannot justify: "many of the practices of existing states, even liberal democratic ones".[20] Wellman cites voting and military service but he thinks it likely that other areas of state demands will remain unjustified under his particular model, including also demands to support some public goods.[21] And George Klosko, reflecting upon his theory – which combines three principles, each justifying different groups of laws – wondered if such a model: "…might appear to verge on philosophical anarchism" (although in the end he thought not).[22] Recently also, with regards to the division between political obligation and philosophical anarchism, Samuel Scheffler observed that, with the qualifications added to many theories of political obligation and the refinement of sceptical positions to incorporate different reasons to obey the law, this conventional division was less clear cut:

> So the difference between the opposing positions, which looks stark at first, may seem to melt away as the positions become increasingly qualified, and some may

[19] For example, on associative political obligations, compare Ronald Dworkin's early presentation of his model (Ronald Dworkin, *Law's Empire*, Cambridge MA: Harvard University Press, 1986, p195-224) with his more recent admission of its partial nature (Dworkin, 2011, p323-323). Dworkin is explicit that this is a change to his previous model (Dworkin, 2011, p473 n.16).
[20] Wellman, 2005, p54
[21] Wellman, 2005, p54-73. See especially, p55-56 & p72-73. On public goods generally, see p63-64; on taxes, see p69-70. For some additional examples, see note 70 below.
[22] Klosko, 2005, p248.

> suspect that, as a practical matter, it makes little difference which of the duly qualified positions one holds.[23]

These tentative suspicions, I think, reflect a deeper truth about both sides of the orthodox division. Once we look closely at the actual positions characteristic of both sides, we will come to see there is in fact no substantive structural difference between standard models of political obligation and models of philosophical anarchism. In short, philosophical anarchism is not in fact a separate perspective at all, but merely another one of the standard models. This is what I call the "no difference" view.

2. No Structural Difference Between Philosophical Anarchism and Political Obligation

This may seem surprising. As noted, the vast majority of philosophical discussion regarding questions of political obligations is in many respects oriented around a division between two putatively opposing theoretical positions.

2.1 The standard model of political obligation

Consider the first position, what I refer to here as the standard model of political obligation under the orthodox approach to the debate. This posits that a political principle (e.g. fair play), or several in concert (e.g. fair play plus a natural duty), grounds a political duty for citizens to obey the law, comply with other state demands and otherwise support the state.[24] Importantly, this model does not exclude the possibility that *other moral reasons* will also bear upon a citizen facing a requirement to comply with a state directive. For example,

[23] Scheffler, "Membership and Political Obligation", The Journal of Political Philosophy, Vol. 26 (2018), p3-23; p3-4. Nevertheless, in that same article he stakes his claim for a specific model of political obligation of the traditional form.
[24] Most often the former is dealt with exclusively as a paradigm example of the somewhat broader locus of obligation. See Parekh, 2003, for what remains the best discussion of the scope of political obligation to date.

when Klosko discusses political obligations from a principle of fair play (subsequently, part of his multiple principle model), he notes:

> As is true of other theories, the obligations that fairness theory generates are single political principles that must be weighed against other, often conflicting, political principles.[25]

Similarly, Kent Greenawalt acknowledges that a number of different political principles ground obedience in different circumstances and that such prima facie political obligations may be outweighed.[26] Although many such models may feature one (or several) duties they do not exclude the operation of others in the political arena and on the same political question.

Or, consider the associative model of John Horton and Gabriel Windeknecht. As an illustrative example, they consider a military campaign of questionable justice. Here, an associative political obligation which includes, inter alia, a duty to serve in the military to defend one's state is, in this case, weighed against the moral reasons of two other principles; a political duty to uphold democratic liberty and equality, and a natural duty of justice. The judgement for the citizen in their particular example is that they have no overall duty to serve in the military.[27]

Overall, under most standard models of political obligation, the reason why a citizen ought to refrain from assault, fraud and theft is because: (A) a duty to obey the law grounded by a specific principle (or sometimes several in concert), plus (B) a number of "additional" moral imperatives, such as an associative obligation, or a natural duty not to harm people, or to act justly, or to avoid the very poor consequences of such an act. Each political principle, and presumably each other additional duty, may be said to provide a moral reason towards compliance with the law. And other moral reasons may act against these imperatives to comply with the law. As I noted in Chapter 1, all standard models argue for a defeasible political obligation. This is so as to avoid the risk that a theory might impose

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[25] Klosko, 1992, p124. See also Klosko, 2005, p11, p52, p76-77, p248.
[26] Greenawalt, 1987. For the acknowledgment of different political principles, p222; for outweighing, p32.
[27] John Horton & Ryan Gabriel Windeknecht, "Is There a Distinctively Associative Account of Political Obligation?", Political Studies, Vol. 63 (2015), p903-918; p916, n2.

upon citizens final, or absolute, claims to obey unjust laws or state. This defeasibility, alongside a commitment to practical rationality more generally, welds the standard approach to the prima facie structure. This structure is prevalent throughout the full range of standard models, yet it is almost never fully specified. Here it is, in simple form:

Figure 1. The normative claim of the standard model.

To comply.

(A) one or more political principle(s) which establish a defeasible duty (i.e. provide moral reasons) to comply with a comprehensive set of state directives. For example; fair play, a natural duty of justice, political association	Plus	**(B)** other principles which also provide moral reasons to comply with state directives. For example, a natural duty to support a reasonably just police system. Typically, these are thought to apply in a more partial or context-sensitive manner.

To not comply.

One or more countervailing principles which provide moral reasons which may – context depending – count against compliance. For example, that the law in question is immoral or wasteful, or that in this context it would cause avoidable harm to others.

Both (A) and (B) provide moral reasons for compliance with the law. In that sense there is no substantive difference between the principles. The reason a (particular) standard model will focus upon the normative claim of (A) is because the moral reasons from this set of principles are thought to meet its goal of achieving a suitable, general, comprehensive set of political obligations. Where a standard model does engage with any of the moral reasons from (B) it tends to do so in a cursory or critical manner.[28]

[28] For example, Jonathan Seglow has developed a model based upon political association (i.e. moral reasons A). He also notes that citizens have other political obligations in addition (i.e. B). However, these other moral reasons are only mentioned briefly (Seglow, *Defending Associative Duties*, New York: Routledge, 2013; p132 & p146). For another example, Thomas Christiano has developed a model based upon a (natural) duty of public

For example, a model built upon a natural duty (i.e. A), may reject outright a principle of association (B) as a ground for political duties, recognise that other natural duties (also B) may apply on occasion, and also that some citizens may have moral reasons to comply based upon fair play (B).[29] Observe that this often fits with the everyday experience of engaging with state directives. We know that, for example, we ought to obey a law against stealing, for a range of reasons, i.e. both A and B. We also recognise that sometimes reasons which apply in one set of circumstances might not apply in a different set. And, in certain contexts, there are also good moral reasons to steal.

This structure is prevalent throughout the full range of standard models, yet it is almost never fully specified. In many theories it is merely claimed in passing that any justified political obligation is defeasible.[30] In some, often multiple principle models, the idea of several different principles supporting a duty to comply with the law is given more room. Nevertheless, the figure above represents in abstract, the actual structure of the different normative claims included in the standard model of political obligation as currently envisaged under the orthodox methodology. It also reflects, in abstract, the structure of practical reasoning of the citizens faced with the demands of the state.

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equality which provides moral reasons to comply (i.e. A). He further notes that citizens are also still subject to "other kinds of instrumental reasons for obedience" (i.e. B). In this case he only mentions these in the context of supporting obedience, if (A) fails (Christiano. *The Constitution of Equality: Democratic Authority and Its Limits*, Oxford: Oxford University Press, 2008; p277).

[29] Rawls, for example, relies upon a natural duty of justice but argues that some citizens will have additional reasons to obey the law based upon fair play (see Chapter 5, section 3).

[30] Examples abound, for example: Horton, 2010, p12-13; Knowles, 2010, p15-16; Dworkin, 2011, p318, p323; Dagger, 2018, p22, p271; Stilz, 2009, p98; Michael Kramer, "Legal and Moral Obligation", in *The Blackwell Guide to the Philosophy of Law and Legal Theory*, Golding and Edmundson (eds.), Oxford: Blackwell, 2005, p179-190; p179-180; Kevin Walton, "The Particularities of Legitimacy: John Simmons on Political Obligation", Ratio Juris, Vol. 26 (2013), p1-15; p4; Lefkowitz, 2006, p573-574. Scheffler, notes defeasibility (Scheffler, 2018, p4-6 & p9) and adds specifically that people may also have different additional political obligations which favour legal compliance (ibid., p12-13). Although he does not observe that they may conflict. Multiple principle models, for obvious reasons, often give some more consideration to the idea of different principles interacting. For example, Govert den Hartogh claims different principles overlap which may lead to the law being overdetermined but also defeasible, (Den Hartogh, "The Political Obligation to Donate Organs", Ratio Juris, Vol. 26 (2013), p378-403; p401). See also: Gans, 1992, p88-89; Klosko, 2005, p101 & p111; Wolff, 1995 (the last is notable in that Wolff also notes that on occasion the three principles he considers may conflict, though he does not go into any detail (p24-25).

Thus, figure 1 represents in abstract form, the *actual* structure of the different normative claims included in the standard model of a standard theory of political obligation as currently envisaged under the orthodox methodology.[31]

Each moral reason is of prima facie force and bears upon other moral reasons in that it might reinforce the strength of each or count against it. The individual in a state faced with a law or directive, so the standard model goes, ought to obey the law when the *balance of moral reasons* makes it the right thing to do all things considered.

As an illustrative example, consider a model which grounds a comprehensive political obligation upon an associative political principle and then imagine that in that state voting is made mandatory by law.[32] In this case, a citizen may find they have relatively few weighty countervailing moral reasons to set against the moral reason to comply, provided by that associative principle. Moreover, some additional reasons may also work in favour of voting (depending upon the circumstances, for example, a natural duty to provide for the common good, or a principle of fair play). Alternatively, depending upon the way in which the law is drafted and enforced and the nature of the election, moral reasons against obedience may apply. Perhaps the electoral system is corrupt, or the law unjustly penalises, through fines, the poorest people who cannot afford to travel long distances to a small number of polling stations. The point is simply that in a standard model, deliberation for the citizen facing the state directive will involve a number of moral factors beyond that of a single ground of general political obligation. In the first version, the all-things-considered ought, is to obey. In the second, it is less clear. In both cases the final assessment depends

[31] As noted in Chapter 1, I am not committed to a model of practical reasoning which includes a distinction between first and (exclusionary) second order moral reasons (Raz et al). Instead, I discuss throughout a model of practical reasoning which assesses the relative weights, as far as this is possible, of the different moral reasons which apply (as a default position). Is this a significant commitment as regards my comparison of the normative claim of models of political obligation vs philosophical anarchism? I do not think so, for even as regards such a (Razian) model of practical deliberation, it still aims to ground a particular political duty which is defeasible, and as such it still must be open to other moral reasons applying as the facts and circumstances change. Moreover, the practical reasoning necessary in order to derive any complete second order reason is similar to that required for a resolution between competing first order reasons – in that initially determining the second order reason, requires some balancing of the different moral reasons which apply.

[32] Although not very common, laws requiring people to vote in certain elections are currently in place in a number of countries; for example: Australia, Brazil, Peru, Cyprus, Singapore. In some states the law is tightly enforced, in others less so.

upon a range of circumstances, for example; the degree of political dishonesty, the ease of voting, the penalty for disobedience.[33]

It is noteworthy that in the literature, many examples used by advocates of standard models to illustrate the prima facie nature of their general political obligation do not illuminate the kind of subtle moral deliberation outlined in the voting example above, but instead depict a lop-sided comparison which does not really require deliberation. For example: stealing a car which will be used by killers, so as to foil a murder; or, meeting for tea at 4pm versus stopping to save a life; or an associative duty to join with racist fellow members of one's community in administering a racist beating versus a duty to not harm people; or breaking the speed limit to rush a pregnant woman experiencing difficulties in labour to hospital.[34] While such examples are successful in demonstrating defeasibility (especially as regards wicked states or laws), they are less effective at illuminating the nature of citizens' political obligations.

However, these kinds of "blunt" examples should not obscure the fact that the moral/political deliberation required before a prima facie moral reason becomes a final duty, actually requires a careful consideration and balancing of all the different moral reasons before a final all-things-considered reason becomes morally clear. The standard model is wedded to a thoroughgoing defeasibility and weighing of moral reasons. To claim otherwise would require some further argumentation.[35] This is made explicit in multiple principle models of political obligation (and then only for the principles which they choose to include), but it is nevertheless prevalent for all models.

Cognisant of the fact that an all-things-considered duty obviously requires some moral deliberation, and hence the weighing of other moral reasons, some theorists have argued that the first principle (i.e. "A" in figure 1) provides more than merely a prima facie moral reason but a *generally particularly weighty* prima facie moral reason in comparison to other

[33] It may also vary according to the circumstances of specific citizens (or groups of citizens).
[34] Respectively Knowles, 2010, p15; Klosko, 1992, p13, Lefkowitz, 2006, p577, Edmundson, 1998, p9. To be fair, not all examples are so skewed. For example, a law requiring military service to serve in a conflict which is conducted immorally (Yael, Tamir, *Liberal Nationalism*, Princeton, N.J.: Princeton University Press, 1993, p136).
[35] As noted above, what one model of political obligation commends as a core principle another only allows as a possible additional reason. My point here is that it does not matter which.

duties (i.e. "B", or those reasons to not comply).[36] For example, William Edmundson states that a prima facie political obligation is understood to only yield to: "extraordinary countervailing reasons".[37]

I am sceptical of the idea that some duties or moral reasons are, in general, weightier than others. In the discussion in Chapters 3 – 5, we will see that instead, context and specific circumstances plays a central role in determining the weight of a certain moral reason. For example, the stringency of a duty of fair play depends, at least to a certain extent, upon the contribution or sacrifice of one's fellow members in a cooperative scheme. Consider also for example, how a difference in the economic situation of potential beneficiaries affects the pull of a duty of justice, or the difference between a straightforward promise and a binding oath. Moreover, this is congruent with the everyday experience of the pull of state directives – where some are considered stringent and some of relatively trivial weight.

However, even if we grant the case that some political principles in the standard models of political obligation are in general weighty, or generally provide more weighty moral reasons, all this shows is that the deliberation ought to take that normative weight into account. Thus, if in some situation a principle of fair play generates a weighty reason to obey the law then such laws may be binding (i.e. outweigh contrary moral reasons) in the face of minor disbenefit.

In short, the standard model of political obligation cannot escape a requirement for deliberation and assessment between other different prima facie moral reasons which are justified by different principles.[38] Moreover it makes little practical or theoretical difference whether such reasons arise out of a specific principle which has been advanced to ground a specifically political obligation (e.g. fair play, gratitude, political association), or whether

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[36] W. D. Ross was of the view that some prima facie duties were generally more stringent than others, e.g. a duty of non-maleficence being *generally* stronger than a duty of beneficence; but he was also rightly circumspect about broad guides sans context (Ross, 2002, p19, p22, p41-42 et al).

[37] Edmundson, "Review: A Duty to Obey the Law: For or Against? by Christopher Heath Wellman and A. John Simmons", Law and Philosophy, Vol. 28 (2009), p101-107; p102 (see also Edmundson, 2004, p216). Unfortunately, Edmundson is only stipulative here and provides no argument. In my experience, this is very much a minority view in the literature, with little theoretical argument behind it. Rather, most models will admit that prima facie political obligations will vary in stringency and may be weighty or light. See for example, Den Hartogh, 2002, p106, Lyons, 1981, p66-67, Scheffler, 2018, p14.

[38] Defeasibility applies to all such moral reasons (from figure 1: A, B, and those opposing compliance).

they originate from other moral principles, or indeed from both sources. They are all part of a weighing-up and deliberation which is required in advance of a final all-things-considered decisive political requirement.

2.2 Philosophical Anarchism

Consider now the second position under the orthodox schema, philosophical anarchism. Here too an assessment and weighing of all the different moral reasons which apply to a particular situation of possible obedience is required.[39] While for standard models of political obligation this assessment or evaluation of a number of moral reasons is often presented as implicit or peripheral, in philosophical anarchism it is explicit.

Although each sceptical approach has its own structure and set of moral reasons which apply to citizens, they all have in common the idea that an assessment of the morally right action in the face of the state's demand, will require a weighing or assessment of relevant moral reasons. Further, philosophical anarchists in general claim that this balancing leaves the overall moral position of citizens of most contemporary states in roughly the same position as it is under most standard models of general political obligation. John Simmons argues that following this balancing of reasons: "*nothing* follows immediately concerning a justification of disobedience."[40] Leslie Green concurs and claims that "most modern sceptics" do also.[41]

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[39] For example: "Our practical stance with respect to the state, the philosophical anarchist maintains, should be one of careful consideration and thoughtful weighting of all of the reasons that bear on action in our particular political circumstances." (Simmons, 2001, p109)

[40] Simmons, 1979, p193 (emphasis in original)

[41] Green, 1990, p249-250. At p251-3, Green argues explicitly for his "nothing changes" view against the concern of Tony Honoré that otherwise there would be substantial undesirable consequences (Honoré, "Must We Obey? Necessity as a Ground of Obligation", Virginia Law Review, Vol. 67 (1981), p39-61). See also: M. B. E. Smith, 1973, p969 & Woozley, 1979, p72-74. Of course, it may be that given the principles which they think apply, philosophical anarchists are wrong that nothing will follow as regards citizens' political duties. For a criticism of Simmons on these lines, see Thomas Senor, "What if there are no Political Obligations? A Reply to A. J. Simmons", Philosophy and Public Affairs, Vol. 16, (1987), p260-268. There is nothing however to stop philosophical anarchists from responding by emphasising additional principles which apply to encourage obedience, or arguing the circumstances under which their approach will license more disobedience are less common than critics think (e.g. Simmons, 1987).

John Simmons, who has probably written most extensively on philosophical anarchism in recent years, includes a range of different sources of reasons for complying with the directives of a state. These include a natural duty of justice which, for Simmons, entails supporting and furthering "just government".[42] In addition to justice, he has recognised at least five further broad duties (which we might consider natural duties), that may support legal obedience: a duty to help other people, to not harm people, to not deceive people, to rescue those in danger and also a duty to give surplus wealth to the poor (this last, for example, Simons admits may ground support for government welfare schemes).[43] Adding to that list of natural duties Simmons includes the consequences of legal disobedience as a source of moral reasons to comply.[44]

Combined, these natural duties will, in turn provide obligations to support a wide range of laws, and they also ground a duty to support those good institutions which instantiate such duties: "duties to support (and, possibly, to obey) governments that exhibit virtues ("justice") making them worthy of support".[45] Further still, the support and compliance owed to just or virtuous states, which is grounded by these natural duties, does not apply only to perfectly just states but also those which are reasonably good: "even if a government does some coercing without right, it may be sufficiently just to merit support.".[46] This may also include supporting a range of taxes (if not all).[47]

In addition to these grounds, Simmons thinks citizens also have a duty to support some important coordination schemes such as traffic laws, maintaining a criminal justice system or certain public infrastructure programmes.[48] We also have moral reasons (albeit relatively

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[42] Simmons, 1979, p193; See also: Simmons, 1987, p277-279 and Simmons, 2005, p191.
[43] For duties to help others and not harm people, see Simmons, 1987, p276 and Simmons, 2005, p191. For duties to not deceive and to rescue others, see Simmons, 2005, p191. For the duty to redistribute wealth, see Simmons, 1993, p262.
[44] Simmons, 1979, p193; Simmons, 1993, p267; Simmons, 2001, p116.
[45] Simmons, 1987, p279; more broadly p277-279.
[46] Simmons, 1987, p277. This appears intended to be fairly broad assessment and includes such things as whether states are committed to securing rights, acting in the interest of their citizens, behaving well internationally etc. (Simmons, 1987, p277-278; see also Simmons, 1993, p262-269).
[47] Simmons, 1987, p279 & Simmons, 1993, p265-266.
[48] For traffic, see Simmons, 1979, p194; Simmons, 1993, p264; Simmons, 2005, p191. Simmons suggests traffic schemes as an example of public systems/programmes requiring support and compliance. Although he does not explicitly cite the other two examples I use, I think that given that the criteria for such support is that these schemes are desirable, prevent danger, prevent unintended harm, or have beneficial consequences (Simmons, *op cit*), they are reasonable additions to the kinds of illustrative examples his philosophical anarchism entails. In addition, since Simmons also notes that states are routinely permitted to punish people

weaker ones) to treat people well, to respect them and not inconvenience them which will, in turn, support compliance with laws.[49]

Beyond natural duties, support for good states, consequential considerations, coordination schemes and other moral reasons to comply with the law, Simmons also argues we have additional duties where "natural morality leaves open the detailed content" which can be filled in via agreement or convention (e.g. duties relating to property or contracts).[50] Finally, he also thinks that philosophical anarchism is consistent with some "small numbers" of people being bound by a general political obligation.[51] In sum, for Simmons, all these moral reasons in support of political duties are why philosophical anarchism is not an overly counterintuitive position.[52]

Leslie Green, who has eschewed an anarchist label but who has proposed a similarly sceptical model, advances a range of reasons which may generate acts in conformance with the law in the absence of an established general political obligation for the citizen.[53] To begin there is, as he puts it: "the background requirements of natural duty".[54] Alongside beneficence, prudence, the consequences of obedience/disobedience and justice.[55]

In addition, Green also develops, what he calls, a virtue of civility. Green bases this "virtue" upon a refinement (specifically a more moderate version) of an idea which he earlier rejects – a virtue of obedience.[56] Importantly, this more moderate approach is still intended to provide a prima facie moral reason for compliance with the law in *almost all*

– one can presume that this ought to be done in an organised manner (i.e. as part of an coordinated scheme) rather than in an ad hoc fashion.

[49] Simmons, 1993, p263; Simmons, 2001, p110; Simmons, 2005, p191 (see also more broadly, Simmons, 1987, p275-279).

[50] Simmons, 2005, p191, n5.

[51] Simmons, 2005, p101. Simmons does not say what grounds such political obligations, but we can assume it is one of the main principles commonly suggested, e.g. fair play or association.

[52] Simmons, 1987, p275. See also Simmons, 1979, p193; 1993, p260-261.

[53] Green claims distance from philosophical anarchism (Green, 1990, ix) but his views are similar in many respects, and he is, I think rightly, classed as a philosophical anarchist in the literature (e.g. Lefkowitz, 2006, p594; Dagger, 2018, p32 n.38; Stilz, 2009, p27 & p29).

[54] Green, 1990, p250

[55] Green, 1990, p253-255 & p267. We can assume that this would include other natural duties..

[56] I put virtue in quotes I this instance to differentiate it from the kind of virtue employed in virtue ethics. One of the principle distinctions for virtues in that case is that they are foundational in the normative theory – whereas Green is here explicit that his virtue of civility is built upon two further grounds. There are other distinctions; for a useful discussion, see Rosalind Hursthouse, *On Virtue Ethics*, Oxford: Oxford University Press, 1999.

circumstances (i.e. it is broadly comprehensive to all laws and general in applying to most people), with the sole noted exception being serious injustice by the state.[57]

Green's virtue is itself built on two grounds. The first is an instrumental justification based upon its effect in sustaining "valuable institutions" which are necessary components of the state, and this in turn requires support for the government.[58] The second is an expression of a shared and reciprocal commitment to political institutions.[59] In other words we might say it is built upon and reflects a combination of the necessary provision of a public good, and (either) a form of political association, or a contribution towards a specific shared public good of citizenship.

The sceptic, M. B. E. Smith cites three principles as examples (of a longer list); to not harm others, to keep promises and to tell the truth.[60] These "moral rules" in combination, Smith argues, will provide moral reasons to: "obey the law in most circumstances."[61] More recently (and more broadly) he has also argued a law ought to be obeyed when it secures valuable moral interests, including much, if not all, "social regulation".[62] Another sceptic, A. D. Woozley, argues that it is the value of the results of certain laws which (in the main) provides moral reasons for obedience. This includes compliance not just to individual specific laws but also to systems of law which benefit people. In particular he includes the socially and morally desirable conduct which may be enjoined by certain laws, and the valuable public goods and activities which are enabled by laws which require coordination (he calls this latter class, uniformity laws).[63] Note that, neither Smith nor Woozley limit

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[57] Even then, Green's virtue will still recommend compliance if the injustice is "both within the bounds of tolerability and not easily avoided." (Green, 1990, p265). Green does claim that his virtue incorporates a judgement before such a recommendation, but given these limiting factors, it will presumably provide moral reasons for obedience across a huge range of circumstances for a citizen in a modern democratic state.
[58] Green, 1990, p265-266
[59] Green, 1990, p266. What is meant here by political institutions? In one sense, as they are seen as supporting the government, they could refer to the law and legal institutions or other pillars of the state. In another sense they may refer to the government itself (this latter meaning reflects much of his usage here (e.g. Green, 1990, p17, p134, p195, p227-228).
[60] M. B. E. Smith, 1973, p969.
[61] M. B. E. Smith, 1973, p969. Note here that Smith equivocates from "obey" to "act in accordance with the law" (ibid), illustrating a point I discuss in more detail below.
[62] M. B. E. Smith, "Review essay / the obligation to obey the law: Revision or explanation", Criminal Justice Ethics, Vol 8 (1989), p60-70; p63 & p66. Smith's target is of course, not so much the extent of citizens' political obligations (which he grants is extensive) but the idea of a single uniform general duty to obey. As I hope is becoming apparent, I think that target is an unnecessary and misleading one.
[63] Woozley, 1979, p72-73. He also notes that other moral reasons might potentially be available in different circumstances; see p74-75 & p140.

their principles of obedience to specific laws or coordination (provision) schemes for certain public goods. Given the range of state directives they are meant to cover, one can presume that they would apply broadly in both cases.

This approach, whereby philosophical anarchists provide a range of moral reasons to ground a broad conformity with state demands is common.[64] The reason it is common, I suspect, is because of a core commitment of the sceptical thesis, that it entails no substantial difference to social and political life, and the normative demands of such, in a state. This is notably in contrast to theories of more overtly political anarchism, which in many cases reject compliance with a particular state's laws – partly in order to effect radical political change from the state to a new form.[65]

As regards the circumstances where philosophical anarchists think obedience will not follow from their balancing of moral reasons, we might hope to see some examples that clearly differentiate the two positions. Here Simmons features what he calls "distinctively political legal requirements" which includes "certain taxes or military service" alongside laws which are paternalistic, outlaw victimless activity or which exceed the bounds of morality.[66] These are candidates for disobedience and Simmons intends them as examples to illustrate a difference between philosophical anarchism and political obligation.

Since Simmons thinks the moral reasons included in his theory of philosophical anarchism require citizens to support just or virtuous states, we can presume the distinctively political "certain taxes" will include those which are connected to state activity which is immoral (or at least unsupported by a wide range of other moral reasons). One thinks perhaps of a military poll tax or some hypothecated levy to support partisan political activities. Green's virtue will leave gaps where the law is unjust beyond tolerable levels and both Smith and Woozley consider that their theories would not provide reason to support laws which underpinned unimportant public goods or pointless coordination.

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[64] For example, Donald Regan eschews a general political obligation but then argues that because in a reasonably just state, most laws aim towards securing genuine goods and avoiding harms, we ought in most cases obey them (Regan, 1986, esp. p25).
[65] e.g. to a collectivist or syndicalist form of organisation and collective life.
[66] Simmons, 2001, p115 (see also Simmons 1993, p264-268 & Simmons, 2005, p191).

These are tame examples indeed – far from even the kind of resistance recommended by Thoreau or the disruptive street protest of many climate change or peace protestors (see Chapter 6). More importantly these are all also candidates for any standard model of political obligation to reject. This is because many of the same principles which Simmons and other sceptics rely upon are also employed in the balancing of prima facie obligations as part of the standard model (or even featured as central grounds). Just as with philosophical anarchism, a standard model also requires a weighing of potentially competing moral reasons and also permits disobedience in (some) cases of similarly pointless or deficient state directives. As to the question of whether these are decisively different from what a standard model of political obligation might recommend, all-things-considered, I am not sure there is a clear difference.

2.3 Philosophical Anarchism and Political Obligation compared

By now I hope we can start to see the close similarity between the two different positions – standard models of political obligation and sceptical philosophical anarchism.

(i) Both positions involve a set of prima facie duties. These are moral reasons which potentially count in favour of obedience to the law (and also to other demands and to support for the state).

(ii) Both include reasons which, in their scope, apply to both specific laws and also to sets or groups or areas of law (e.g. traffic regulations or the criminal justice system), including potentially, as an institution, the whole state.

(iii) Both necessarily incorporate a rational deliberation (balancing, weighing) of the relevant prima facie duties in advance of a final all-things-considered moral ought for the citizen faced with the question of obedience to the law.

(iv) Both recognise that some of these moral reasons may count for and also against obligation. And that any political duties (writ broadly) are in turn defeasible.

(v) Both are critical of some of the moral reasons (and some of the principles which are the sources of these moral reasons) which have been advanced as possible grounds for the obligations of citizens. For example, many models of political obligation advance one principle as a central ground of a duty to obey and then exclude others, or limit their ability to provide moral reasons to obey the law.[67]

(vi) Both assert a fundamentally conservative conclusion, which is that overall a widely applicable and broadly comprehensive duty to obey the state (i.e. most laws for most people) remains after this careful weighing up and deliberation. Although in some cases both positions will qualify this conclusion.

Note that this comparison treats the different moral reasons for and against complying with state directives, and also of course supporting the state, as broadly of the *same type or kind* (at a reasonable level of abstraction). This is because of the features they share, viz: they have moral force and a direction towards or against certain acts in particular circumstances (though see section 3.3 below). They are also mostly recognisable as being derived from a familiar set of political principles. Thus, a natural duty to avoid harm (arguably) grounds reasons to comply with laws (and coordination schemes) that protect people from harm and to support some sympathetic state activity. A principle of fair play (arguably) grounds reasons to support state action and comply with some laws, which in turn correspond with one's fair contribution as part of a fair cooperative scheme to produce certain essential public goods. And the same applies to other principles, e.g. gratitude, consequences.

From this perspective, a standard model of political obligation will generate reasons to comply with the law based upon a number of specific principles. For example, (following Horton) an associative principle alongside various natural duties, or (following Klosko), a principle of fair play alongside other principles. Further, this model may also include additional moral reasons as circumstances dictate. All of these moral reasons will inform the careful weighing required before an all-things-considered judgement is made on the decisive obligation of a citizen.

[67] Though, all too often, after excluding them as a central ground, these theories are silent about what such principles may in fact obligate in the political realm. I discuss this phenomenon in the following chapters.

Similarly, from this perspective, a theory of philosophical anarchism will also generate reasons to comply with the law based upon a number of specific principles. For example, (following Simmons) different natural duties, a consequentialist principle and the necessity to provide certain public goods which require coordination. Bearing in mind the commitment by such sceptical theorists to a "nothing changes" practical end-point of political duties, these will be (presumably) defeasible. So philosophical anarchism, just like a standard model of political obligation, necessarily also incorporates the normative claim of a full range of natural duties that make up the typical moral reasons which are weighed alongside any putative political duties.

Both models of political obligation and theories of philosophical anarchism reject some political principles and allow others. Any substantive difference then would appear to be reduced to the question of *which* principles. We might suspect that many theories of philosophical anarchism rely quite heavily upon natural duties and a consequentialist principle. Yet as noted above Simmons and others also employ quite comprehensive interpretations of the scope of different principles which extend to supporting state institutions and the state itself in many respects.

The field of political principles employed by the various standard models of political obligation is diverse. However most standard models employ only some of these principles. Some rely upon natural duties, some a principle of fair play, or association. All standard models also rely upon some additional considerations of natural duty in their weighing up before recommending a final all things considered ought. Note that many models of political obligation also claim that some principles do not extend generally in the sense above, or comprehensively. For example, as we will see in Chapter 5, although Rawls's model of political obligation is based upon a natural duty of justice, it also allows that fair play obligates other groups of people.

In terms of the comprehensiveness of what is covered by the moral reasons from either camp, we should note that it is not uncommon for theories of political obligation to admit that the principles upon which they initially lean may leave some areas of state demands uncovered by political obligation. I mentioned above, (section 1) that Wellman thinks a

number of areas of state demands will not be covered by the samaritan principle, upon which his model relies. This includes some public goods and possibly some tax demands. His response to this problem is to appeal to other (supplementary) duties: "there is no reason why defenders of the samaritan approach cannot appeal to other considerations that justify various additional obligations."[68] One duty Wellman suggests which might cover some of the justificatory gaps is a natural duty of justice.[69]

Thus, both sides of this putative theoretical division have the same response as regards justificatory gaps between the demands of the state (in a contemporary, reasonably just democratic state), and as regards the moral requirements of the different principles which bear upon citizens.[70]

Note also that Wellman here is explicit in his model about something which I think is a universal feature of standard models of political obligation, even if it is rarely highlighted. That is, as in Figure 1., they all leave room for (are inclusive of) other principles which also may apply to ground political duties. The consequence of this – which is to be clear, an inevitably multiple principle approach – is a set of political duties which often matches closely, if inexactly, in terms of what it obligates, to the directives of many contemporary states. And, as we have seen, the same is true for philosophical anarchist approaches. It seems plausible that the duties covered under the principle sceptical theories will be just as comprehensive as many standard models. In fact, they may even be more so. Consider from the examples above, just how comprehensively applicable something like Green's virtue of civility is, or Simmons's wide list of natural duties which apply to acts and institutions, or Woozley's notion of valuable public behaviour and goods.[71]

And just like standard models, each variation of philosophical anarchism leans more heavily upon some principles over others. To use the examples above, for Simmons, it is natural duties which apply to specific laws and to institutions allied to a consequentialist

[68] Wellman, 2005, p54 (see also p52, p72).
[69] Wellman, 2005, p83.
[70] For examples of other standard models which admit of a justificatory gap, see Dworkin 2011, p322-3; Walker, 1988, p204 & p210; Nina Brewer-Davis, "Associative Political Obligation as Community Integrity", Journal of Value Inquiry, Vol. 49 (2015), p267-279; p279; Gans 1992, pp43, p126 & p130-131. Cf. Higgins, 2004, p31 & p42.
[71] Note that I argue in Chapter 3 that more natural duties may not necessarily mean a more comprehensive coverage of political duties, because they may conflict.

approach. For Green it is his "virtue" of civility (grounded on necessity and association) plus the operation of natural duties. For Woozley it is the value of certain public goods and behaviour secured by compliance (i.e. necessity and common good).

Perhaps though, it might be said that philosophical anarchism is different from a model of political obligation in the sense that its operation excludes (or limits the function of) certain kinds of principles; such as those which are said to bind citizens in a monolithic and comprehensive manner, such as consent, association or the whole-state version of fair play (see Chapter 5). But multiple principle models of political obligation also acknowledge that one principle alone may be insufficient to ground a fully comprehensive set of political obligations. Further, not only do most prominent theories of philosophical anarchism include a wide range of principles, they also include some which they claim do bind comprehensively via support for the whole state (and/or almost all its laws). We have also seen how some standard models of political obligation are content with less than comprehensive coverage from the principles which they favour. Again, it is difficult to see how these standard models (and others) are different from philosophical anarchism.

Redescribing philosophical anarchist models and standard models in this way helps to reveal their similarities, not just in the end result of their normative claims, but also in the structure of their approach. What we might perhaps say is that what philosophical anarchism really resembles, is in fact, a standard theory of political obligation – typically a multiple principle model. Further, all standard models of political obligation, even if they foreground a particular principle, are also in this sense, multiple principle models.

Simmons would reject my view that the moral reasons and principles employed by political obligation and philosophical anarchism are of the same kind. Instead he argues for a distinction between: "political obligations and general moral reasons for acting".[72] With the latter also characterised as "independent moral concerns".[73] We can see this at one point where Simmons responds to Chaim Gans's criticism that many of the same principles

[72] Simmons, 2001, p114
[73] Simmons, 2001, p115.

criticised by philosophical anarchists are also employed by them to justify their conservative approach towards disobedience.[74]

> Gans's project in effect just ignores the distinction between moral reasons for acting (of variable weight and application) and grounds for a general political obligation.[75]

Looking at Simmons's statement, we can see several points of possible distinction. First, variable weight, with the implication that political obligation is of a more fixed and invariable duty.[76] However political obligation does not have a fixed weight or stringency. Even if we accept the orthodox approach at face value (which I do not) the idea that all laws will bind with the same weight is not as far as I am aware accepted by many (if any) of the main advocates of political obligation.[77] Even as a prima facie obligation, it strikes me as odd to think of a political obligation generated by any principle as being of uniform weight. Even those who think it is in general weighty, do not also argue it is uniformly so.

Next, variable application. This would seem to indicate that these reasons for conformity (i.e., non-political obligations, in Simmons's view) apply to different laws, or perhaps to different laws in different contexts. However, as I note above, Simmons's own philosophical anarchism (and that of other sceptics) actually displays a degree of invariance inasmuch as it ascribes laws to support groups of laws, systems, institutions and in some cases the state. Moreover, the *defeasibility* of standard models of political obligation means that in some cases – perhaps even the same cases that Simmons or other sceptics have in mind (e.g. unjust laws, wicked institutions, extenuating circumstances) – any duty to obey will vary and apply less or even not at all. In short, the coverage proposed by both standard models and sceptics is often relevantly similar. That this is the case is also entailed by the commitment of philosophical anarchism to the status quo for citizens' political duties. (I suggest what a philosophical anarchism which was not so committed might look like in section 4).

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[74] Gans, 1992, p90-91.
[75] Simmons, 2001, p116. See more broadly: Simmons, 2001, p114-117.
[76] Simmons also refers to Gans's own multiple principle model as comprising "a variety of variable" reasons (Simmons, 2001, p117).
[77] For an illuminating discussion of the weight of political obligation (although characterised by a framework with which I disagree), see Higgins, 2004, p39-42.

Elsewhere Simmons and others have also argued that the standard model defends a moral presumption in favour of obedience, which is rejected by the sceptical approach.[78] But this is a misunderstanding of the ambition of advocates of political obligation. It is true that they often argue for a strong political obligation (in many cases). It is even true that some argue for a duty which is more than prima facie (though as I note above, this is relatively uncommon). And some may prefer that as a psychological attitude a presumption to obey (i.e. in the face of unclarity or on the basis of probability) it applies. However, as a moral statement about the normative claim of the principles which provide moral reasons in favour of compliance, a presumption to obey does not follow from the standard model.[79]

Finally, with the term "general political obligation" here (and at several other points in the same text), Simmons is I think gesturing at a possible difference between the sceptical position and political obligation; beyond the "mere" demands moral reasons in the political realm. I discuss this in the section below when I consider some stronger potential objections to the no difference view.

3. Objections to the "No Difference" View.

A supporter of the orthodox division might say that there is a structural difference which I have not addressed. This is that the standard model of political obligation posits a *general obligation to obey the state*, which is – in turn – what philosophical anarchists claim is false. This claim has three possible components. First is the idea of a general duty or obligation. Second is the specific object of the obligation (e.g. the state). Third is the kind of duty and its relation to the act required – whether it is independent of the content of the act required by the law.

[78] Simmons, 1993, p263; Simmons, 2001, p104, p109, p117; Simmons, 2005, p101 & Green, 1990, p265.
[79] One notable exception who argues directly for a presumptively weighty duty is Honoré, 1981.

3.1 The generality of political obligation

Looking first at the idea of a general political obligation, there are three possible and non-exclusive interpretations, it seems.

(i) an obligation which has one general ground or principle justifying it.
(ii) an obligation which applies to most people in a state.
(iii) an obligation which is comprehensive in that it covers almost all the laws, directives and demands of a state.

The first interpretation, a singular ground, is not particularly plausible. In the *Crito* for example, Plato identifies at least four different grounds of obedience to the laws of Athens. And I have already observed that a multiple principle approach is just as much of a traditional or orthodox approach in standard models of political obligation as a focus upon a single principle as ground.[80] Nor do advocates of philosophical anarchism consider a single ground a requirement for political obligation.[81] In fact, they seem happy to concede that both theories of political obligation and their sceptical approach include a wide range of different political principles which bear upon citizens.

The second interpretation, that a general political obligation is one which applies most broadly to almost everyone in a state (i.e. most but not necessarily all) fits with the most common use of the term as regards political obligation.[82] The idea is that a successful model of political obligation must be able to bind very many or most people in a state, that is it must apply generally, follows from the (pragmatic) rejection of absolutely universal coverage for absolutely all citizens. However, note that philosophical anarchism, for as long as it claims that all (or most) citizens will still be bound by a number of moral principles of

[80] See Chapter 1.
[81] Simmons, 1979, p35 & p37.
[82] The term has become well-known in this manner in the literature. For example, Simmons: "a wider criterion of success requires that an account … be reasonably general in its application, that is, that it entail that most (or at least many) citizens in most (or many) states are politically bound" (Simmons, 1979, p55. See more broadly p38 & p55-56). For example, Lefkowitz, 2006, p572. Klosko, 2005, p10-11, 100-101. Dagger, 2010, p129. One outlier is Dudley Knowles who prefers the term universal (Knowles, 2010, p67-71).

the kinds just mentioned, to act in accordance with (many) state laws and directives, is here no different from the standard model of political obligation.[83]

The third possible interpretation of a general duty is the idea is that it translates into a duty to comply with all (or almost all) of the state's directives.[84] It is the case that most standard models of political obligation at least aim to cover the full range of demands states place upon citizens.[85] Nevertheless, this is not a necessary condition for a standard theory, for as I have noted above, a range of such models are happy to concede that there are some gaps between what the state demands and what the particular political principle central to that model will ground. Moreover, since the *prima facie* duty of standard models is subject to being overridden by other moral reasons, almost every standard model allows that obedience to some laws will (according to circumstance) fall outside of an all-things-considered political obligation.

Note too, as we have seen, models of philosophical anarchism also make largely the same claim – that the set of different duties which they include will (in most if not all) circumstances require compliance with almost all laws and demands of the state. This is the basis of both the "nothing changes" claim by philosophical anarchists and the accusation that philosophical anarchism is a "practically inert" theory.[86]

In each case we find that philosophical anarchism and political obligation have the same approach. This applies to most approaches on both sides of the divide, although it is most easy to see in the models of political obligation which are explicitly multiple principle (rather than being, as I have argued, multiple principle in virtue of their defeasibility and acceptance of other moral reasons which apply).

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[83] Simmons specifically has noted that he sees political obligation as a general duty in two ways: first in the sense here as applicable to all or most citizens; and second, flowing from a certain kind of legitimate state authority, a "right to rule" (Simmons: "Political Obligation and Authority", in *The Blackwell Guide to Social and Political Philosophy*, Robert Simon (ed.), Oxford: Blackwell, 2002, p17-37; p17-18). I deal with this latter point below (section 3.3).

[84] As noted, these need not be exclusive. For example, David Lyons considers that political obligation is general as regards most people and most laws (Lyons, "Review: Philosophical Anarchism and Political Disobedience, by Chaim Gans", The Philosophical Review, Vol. 103 (1994), p734-736; p734).

[85] This is more often described as comprehensiveness. For example: Klosko, 2005, p11-12, 53, 95, 100-102, 110-111, 249; Edmundson, 2004, p216 & p244). It has also been termed "universality" (Lefkowitz, 2006, p572, p594) or "completeness" (Knowles, 2010, p68-70, p144).

[86] Knowles, 2010, p92.

There are however two other options which may be used by the sceptical approach to differentiate itself: *the object of* a duty and *the kind* of duty.

3.2 The object of a political obligation

Thus far, the two positions employ similar sets of duties, to ground the same laws for the same people; is there a difference between the object of these duties? There are two candidates: the suitably obligated citizen may owe duties to their fellow citizens, or to the state itself. Although it is true to say that many models of political obligation talk about political obligation requiring obedience to the demands of the state, they are often agnostic on the object. For example, a principle of fair play is based upon what one owes one's fellow contributors (in this case, citizens), whereas gratitude tends to bind citizens directly to the state. In both cases this comes into effect as a political obligation as a duty to obey the directives of the state. Different approaches to an associative political theory tend to either recommend obligations to the state or to fellow citizens with the state as a coordinating entity. And natural duties will ground a duty to the state inasmuch as it helps them discharge their duty broadly (e.g. a morally important coordination scheme).

More broadly we might say that for standard models of political obligation, the object of those obligations can be derived from the nature of the political principle concerned. And again, we should note that the same is also true of philosophical anarchism, where duties from different principles are owed to citizens or the state as circumstances and particular principles vary. For example, various natural duties, consequentialist considerations and instrumental justifications.

There is however a different version of the argument that the object of a political duty marks a distinction. Regardless of whether a political duty is owed to citizens or the state, it is still different for believers in political obligation than sceptics. For the former it is a duty to *my* state or *my* fellow citizens, but not for a philosophical anarchist. As Simmons puts it:

> the issue of to whom the relevant moral duties and moral consideration are owed - our fellow citizens qua persons versus our government or our fellow citizens qua citizens.[87]

For Simmons, the idea that political obligations are special in this sense also underpins his particularity requirement and subsequent criticism of natural duty theories of political obligation (see Chapter 3 section 2 & Chapter 4, section 7). This is based upon the idea that citizens commonly believe and feel they are (morally) tied primarily to one particular state.[88]

In response to this I would note that from the perspective of the citizens it is always "my laws" (and my state) which make(s) demands upon me – which press and bind. And as a practical matter, when I return home after a long trip abroad, not only may I feel that this is my "home" I also know that the laws here will apply directly to me, as a citizen. There need be nothing beyond this phenomenological experience to attach any normative weight (unless you are an associative theorist employing a communitarian identity approach). This applies I think regardless of the underlying justification of the laws. They are enacted specifically to bind people like me, in fact alongside my fellow citizens, they specifically include me. Moreover, from the perspective of a state, it is normally clear to whom its directives are meant to apply – regardless of the underlying justification.

Of course, psychologically one may *feel* that one owes special duties to support the laws of one's own state. But that genuine feeling can be overlaid onto the moral duties one has to the state and citizens regardless of their particular ground. And such a psychological attachment is of course felt to varying degrees by different groups in different states at different times and contexts (and in some case not at all). But the sense of ownership, or

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[87] Simmons, 2001, p115. Note that in the accompanying text, Simmons is explicit that this is one of two reasons which differentiate his theory of philosophical anarchism from theories of political obligation; the other being the "source" of the relevant political duties – as he indicates in the quote above (note 75 above).
[88] "Political Obligations are felt to be obligations of obedience and support owed to one particular government or community (our own), above all others." (Simmons, 2001, p68). Simmons also claims that the idea that political obligations must be special in this (specific and non-contingent) way is "our ordinary conception" (Simmons, 2002, p28), and also "a feature of ordinary thought" (Simmons, 2005, p110). Further, he warns that if we were to think of political obligations as not suitably special, then we would have to abandon any connection they have with "patriotism, allegiance and loyalty" (Simmons, 2005, p167). Note that Simmons ties the idea that we normally believe our duties to be special with his particularity criticism. However, particularity need not depend upon a psychological or affective component. It also raises questions of whether natural duties in the political sphere can be excessively burdensome or overinclusive (which in fact Simmons also raises, see Chapter 3, note 40).

belonging, need not affect the justification of all state directives. In some respects, it may be parallel, in others, epiphenomenal on the habit and day-to-day practice of legal compliance. Either way, this feeling may map onto the duties and the justified laws which affect these citizens without any substantial normative effect.

There is a certain irony in Simmons's reliance upon feelings and common beliefs to support his particularity requirement in opposition to many standard models of political obligation. For elsewhere he is scathing about the moral import of such feelings. For example, as regards the idea of associative political obligations, he dismisses the feelings of belonging and political attachment which are said to indicate such duties as "false consciousness" which (typically) come from a lifetime of socialisation in a country.[89] In fact he has similarly dismissed the import of beliefs more broadly in political obligation.[90] I agree with Simmons that such feelings and beliefs may apply without necessarily impinging upon the normative claims of political principles (excepting political association, see Chapter 4). As such, beliefs of special attachment can be present alongside a range of political obligations (whether special or general in origin). Further, they may also be seen alongside the political obligations which different philosophical anarchist theories advance as part of their commitment to the *obligatory status quo*.

Perhaps however Simmons has in mind that a citizen's political obligations are necessarily composed of special duties rather than general natural duties – thus matching with some common beliefs. If that is the case however, it needs a separate argument in addition to one that relies upon a link between how citizens feel about their political responsibilities. Moreover, given that sceptical philosophical anarchists are also, as noted above, generally open-ended about the sets of political principles which may apply to ground obedience it seems plausible to consider that they too would include some special duties (Green's virtue comes to mind) as components of their overall depiction of the moral status quo for political obligations.

Thus far there is very little, if any, difference between theories of political obligation and theories of philosophical anarchism as regards the general nature of political duties and the

[89] Simmons, 2001, p83
[90] Simmons, 2002, p23 & Simmons, 2005, p98-99. For a similar observation, see Walton, 2013.

objects of such duties. Or at least we might say that what differences there are, are the same differences as we see between the different models of political obligation. And in a sense, this ought to not be too surprising since, as we have already observed, they rely upon similar principles to ground the duties of citizens in similar circumstances.

3.3 The kind of obedience required by political obligation

Perhaps though, the sceptical philosophical anarchist can accept their position is substantively the same as a model of political obligation in terms of its scope and range of duties, and as regards the people and institution(s) to which those duties are attached but is nevertheless distinctive in terms of the *nature* of the compliance required. That is, the standard model needs to provide reasons to obey a law which are separate from the independent merit of the act so enjoined – reasons which are content independent.[91]

The idea of a content independent reason in this context is linked to the authority of the state – in this case citizens have a moral reason to comply with the directives of a state which has the right kind of (legitimate) authority. That in turn is based upon one or more political principles (e.g. fair play, a natural duty). If a state has authority in this way, its laws provide reasons to obey without reference to the moral quality of the acts required – but simply because they are the laws.[92]

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[91] This is often described as the view that one ought to obey as directed simply because the law commands it (e.g. Valentini, 2018, Green 1990). It sees clear expression in Hobbes: "COMMAND is, where a man saith, *do this*, or *do not this*, without expecting other reason that the will of him that saith it." (Hobbes, *Leviathan*, Oxford: Oxford University Press, 1996, Chapter XXV, para. 2 (p169). Hobbes defines the law of the state as command in this sense (ibid., XXVI, para. 2 (p175)). The term was coined by HLA Hart in Hart, "Legal and Moral Obligation", in A.I. Melden (ed.), *Essays in Moral Philosophy*, Seattle, University of Washington Press, 1958, p82-107; p102.

[92] As Scott Hershovitz has observed, the "because" clause here is ambiguous, it can refer to the justification of the reason to comply with the law (which is independent of the merit of the act required), or it can include a specific requirement for the agent's practical reasoning, which is to obey in virtue of the law's demand (Scott Hershovitz, "The Authority of Law", in Andrei Marmor (ed.), *The Routledge Companion to the Philosophy of Law*, New York: Routledge, 2011, p65-75). In the latter conception, the content of what is required includes *both* the act and the (subjective) rationale. For example: "The core idea is that the fact that some action is legally required must itself count in the practical reasoning of the citizens." (Green, 1990, p225; more broadly, p225-226 & p41-42). Or: "Obedience is not a matter of· doing what someone tells you to do. It is a matter of doing what he tells you to do *because he tells you to do it*." (Wolff, 1998, p9, emphasis in the original). This latter conception is of course less plausible, as it requires an overly narrow subjective constraint on a citizen's practical reasoning. For example, it implies that someone who pays their taxes because they think that is what justice requires, or because they do not want to get caught, is not in fact obeying the law (see Valentini, 2018,

The question then is, does this broader conception of content independence (thus defined) identify a clear distinction between the two opposing theoretical positions? The answer would seem to be no.

First, the content independence of moral reasons does not appear to be a necessary component of any model of political obligation. For example, it is entirely possible to answer the challenge of the *Crito*, most centrally: should I obey the state (or not), without needing to resolve the degree to which any relevant moral reasons do or do not depend upon the nature of the acts enjoined (i.e. are content dependent or not).[93] The core questions of political obligation; questions of generality, comprehensiveness, specificity – questions which matter to citizens and state alike – can all be answered independently of the degree to which such moral reasons may or may not depend upon the nature and character (i.e. merits) of the specific acts the laws require. Of course, the latter may inform the former. For example, it may be argued that content independent reasons are more likely to be comprehensive in that they can apply to a wider set of laws. That may be so, but it is the comprehensiveness which is important not the content independence.[94] The most important characteristics of these moral reasons, and the theories upon which they depend, are evinced in shape (and limits) of the political duties which they impose and the laws they support, not in any distinction as regards their content dependence.

We can see this in the literature where the sceptical challenge focuses upon questions of comprehensiveness and generality, et al., of candidate principles rather than their possible content dependence. That is, sceptical views rarely claim that a particular established theory of political obligation both: (a) succeeds in grounding a general and comprehensive duty to obey the demands of the state, and (b) is however not political obligation because it is not content independent. Instead, sceptics tend to argue that such theories fail on both

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p137-138 & Perry, 2013, p13-18). In what follows, I will be using the first conception only, and employ content independence to refer to a particular kind of justification for moral reasons in the political sphere.

[93] In fact, in the *Crito*, Plato introduces reasons to do as the laws of Athens say which are – to use the distinction here – both content independent (e.g. consent) and content dependent (e.g. consequences).

[94] Content independence is sometimes said to be important to establish the moral authority of a state insofar as it correlates with an obligation to comply with the law (i.e. a claim right on behalf of the state). However, a range of alternate views of the authority of the state are also advanced. For example, where it possesses liberty rights only, to establish (good) policies and enforce them (see Greenawalt, 1987, p47-61 & Edmundson, 1998).

accounts.[95] In fact, it occurs that if such a claim were to be made – that is, one which concedes the case for a suitably general, comprehensive and specific (and indeed otherwise acceptable) obligation to obey the state which is however not content independent – then the sceptic would then have to invent a new term to replace political obligation (which-is-not-content-independent). Perhaps something like, "general political duty". And of course, then much of the debate about those moral reasons (e.g., their coverage and range alongside questions of justification and disobedience) which are central to political obligation, would shift onto that territory.

It is true that many advocates of a standard model include a requirement for content independence, although this is often merely stipulated rather than argued for.[96] However, some others have rejected it as a necessary requirement. Most notably Klosko who argues that it is an obstacle to creating any theory of political obligations which aims to address an important practical task:

> This is providing moral reasons why people should obey the laws of their countries, without requiring that it satisfy additional requirements of content-independence and support the "self-image of the state".[97]

While Klosko is notable in his explicit rejection of content independence, a wide range of theorists have advanced otherwise standard models of political obligation which rely upon content dependent reasons (wholly or in part). For example, Wellman's model discussed above, involves assessing the merit of the specific acts (i.e. their content) which many different laws require of citizens before granting if there are (samaritan) reasons to obey. It also explicitly incorporates a range of additional content dependent principles, such as the application of other natural duties to specific laws.[98] Jonathan Wolff's multiple principle

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[95] For example, Michael Huemer, in a discussion of both the comprehensiveness and content independence of coercion in a lifeboat scenario (analogy for the state), chooses to highlight only the possibility that an authority may fall short in terms of specific laws which are unjustified (i.e. comprehensiveness) rather than fall short by issuing laws which are binding only when the merits of what they require meets some normative standard (i.e. they are content dependent). Huemer, 2013, p94-95.
[96] For example, Dagger 2018, p19 & p129-130; Lefkowitz, 2006, p572-573; Renzo, 2011.
[97] Klosko, 2020, p31 (see more broadly, p102-105). See also Klosko, 2005, p13-16 & Klosko, 2011.
[98] Wellman 2005 & notes 21 & 21 above. Wellman's reliance upon the content of specific laws is the basis of Edmundson's criticism of his model as being close to Simmons's philosophical anarchism (Edmundson, 2009, p102 & 104.

model involves matching specific laws to specific principles on a fine grained level, with the grounding principles determining the content of the laws and support for different state policies for different citizens. It also relies in part upon a consequentialist principle.[99] As another example, Nina Brewer Davis's model rejects a general duty to obey the law "as such" for a duty to obey those laws which fit with certain values of the political community – which she claims is in specific contradistinction to Dworkin's (content independent) general duty.[100]

Further still, some models of political obligation appear to contain a partial or limited form of content independence (more than merely restrained within the bounds of morality). For example, Dorota Mokrosińska's hybrid natural duty and associative model includes a form of content independence where the directives of a state are only justified if they fulfil the demands of a separate set of underlying principles (including a range of natural duties). If not, then those laws are unsupported.[101] More broadly, I would question that if one has to consult the content of a law in order to determine if what it requires fits within the prescribed ambit of a justifying principle, then that principle actually grounds a content dependent political duty.[102]

Moreover, from the perspective of the citizen, the authority of any state laws will likely only ever be any state authority could ever be more than *partly* content independent. Recall the structure presented in Figure 1. Because of the necessary inclusion of (often many) other

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[99] Wolff, 1995, esp. p18-26.

[100] Brewer-Davis, 2015, p279. Two other examples of models that appear largely content dependent are: Horton & Windeknecht, 2015 & Tamir, 1993 (for at least some of the citizens in a state, see p136-139).

[101] Mokrosińska, 2012, p131-132 & Mokrosińska, Communal Ties and Political Obligations, Ratio Juris, Vol. 26 (2013), p187-214; p206-209. As an additional example, Klosko argues that Locke's consent-based theory is also only content independent within limits, where the laws the state enacts must pass "content justification" (Klosko, 2011, p506). See also note 103 below.

[102] It is common to limit content independent duties to within a broad domain of morality (Valentini, 2018, p139). Knowles does address this question with regards to laws which contravene some *general* limits (immoral, absurd and pointless) and concludes that in such cases, reasons may still be content independent (Knowles, "The Domain of Authority", Philosophy, Vol. 82 (2007), p23-43 (esp. p36-39) & Knowles, 2010, p40-48). I am not entirely persuaded, because some laws are pointless because they do not achieve the effect which the state intends. Knowles recognises that in such cases there will be "a spectrum of cases between the absurd and the sensible" (Knowles, 2007, p37). However, it seems hard to see how the degree to which a law is ineffectual could be assessed without examining the content (the merit) of the acts it enjoins. Knowles leans his argument upon a similar longstanding problem as to whether utilitarianism can support a system of rules. This we can acknowledge, but also note it is an unresolved area of debate. I will not press the point here any further, other than to suggest that what might be the case is – interestingly – that content independence, either in a political context, or more broadly, is itself something which applies to a greater or lesser extent across a range of circumstances.

moral principles as regards obedience, any theory could only be entirely content independent if all those other moral reasons were also content independent. But many reasons to comply with the law are content dependent. Further, in many situations it will be those content dependent reasons (as so defined here) which constitute the *most significant or pressing reasons* as regards compliance.

Thus, even those standard models which deliberately aim at establishing a content independent moral duty of obedience are only able to establish such reasons as one component of any overall duty to obey. For example, Samuel Scheffler's model aims to establish a general content independent duty based upon political association. Yet he is also happy to include many other moral reasons to comply with the law, which may also be considered "political obligations" alongside the associative moral reasons.[103]

However, even if it was the case that content independence was a necessary feature of standard models, it would still not mark a clear distinction between the two positions. This is because many sceptical views also employ putatively content independent moral reasons in their approach. For example, as noted above, consider the support for (just, virtuous) states and institutions accepted by Simmons, and the compliance required in support of valuable coordination schemes which many sceptics agree upon. Or, the comprehensive compliance to the law which Green's virtue of civility would entail.[104] In these cases, the reasons for citizens to obey the directives of the state would also appear to be independent of the content of specific acts so enjoined – given that the (reasonably) just state may be able to issue any laws, or laws requiring any acts, which bind upon citizens.

In sum, we can say that neither standard models of political obligation and theories of philosophical anarchism need employ content independent moral reasons to ground a

[103] Scheffler, 2018, p12. Note also that although Scheffler claims to establish an obligation to obey the law as such, laws in his model are only justified if and when they are amongst the widely accepted norms of conduct in a political society (Scheffler, 2018, p23). This would also seem to require deliberation around the content of specific laws, in order to determine if that is the case. Note that Scheffler does however think that a general duty to comply is a widely accepted norm. I disagree (see Chapter 4). Nevertheless, that does not affect the normative structure of his model.

[104] Keen to maintain a distinction the sceptic might counter that some such coordination schemes are only partial or less than comprehensive. Because they do not cover all the laws of the state they do not establish that it is a legitimate "authority". Again, as with the requirement for content independence, this is a position that stands in need of justification. Nevertheless, some of the wider schemes which philosophical anarchists argue require support do in fact have a comprehensive reach.

political obligation. In some cases, both positions choose to do so. Again, there seems no clear distinction between either position which is not also the same kind of distinction within positions.

3.4 An Interim Conclusion on Philosophical Anarchism

As I noted above, perceiving that there is no structural difference between the two positions is complicated by the fact that for many years, descriptions of each side have largely been set up to emphasise contradistinction. Here, a closer look has shown that the positions are the same, it is just the specific political principles in use which vary – as they also do within each position as well. In other words, the "difference" between a theory of political obligation and a theory of philosophical anarchism is the same as that between different models of political obligation (i.e. at the level of particular principles which are in focus). In this sense it means little to say, as many have, that one ought to argue against philosophical anarchism or the sceptical position:

> In the end, of course, the best response to philosophical anarchists, especially those of the a posteriori kind, will be to produce or defend a theory of political obligation that proves immune to their objections.[105]

This approach is wrong. One might argue *for* a theory (whether sceptical or standard) which has a particular structure of political principles (e.g. you might foreground a particular natural duty or model of fair play) but note that this is no different than arguing for any one theory of political obligation against another. One might suggest that sceptical theories prefer natural duties (with Green's exception) and are critical of other principles, but it does not seem that this is necessarily the case, nor is it attributable only to philosophical anarchism.

Theories of political obligation, and those of philosophical anarchism, are both in this sense multiple principle theories of political obligation. These different theories may vary

[105] Dagger, Richard and David Lefkowitz, "Political Obligation", The Stanford Encyclopedia of Philosophy (Summer 2021 Edition), Edward N. Zalta (ed.). For a similar statement, see Horton, 2010, p133-134.

according to how they view different principles operating in different contexts, but there is no deeper or more significant distinction.

4. Radical Philosophical Anarchism?

It is possible to imagine a version of philosophical anarchism which is substantively distinct (unlike the sceptical approaches of Simmons, Green and others). One example might be a radically libertarian philosophical anarchism based upon a greatly circumscribed harm principle which importantly also denies that any other principles or natural duties apply in the political context. In this case, *some* criminal laws and *some* commercial laws might have grounds for citizens' compliance, but very little else. That would be a politically and morally distinct position, but it would leave a large gap between what is morally justified and what is demanded by a contemporary democratic state. This point generalises – to establish a distinct position a sceptical approach would have to abandon its commitment to the (more or less) status quo for a reasonably just democratic state. In turn such a position would be open to more direct criticism as to the plausibility of its normative position.

This example illustrates the form and limits of my argument that that the two (orthodox) positions have substantively the same structure and moral import. For although our example libertarian model employs a recognisable moral principle (like both standard and sceptical theories), it deviates from the model in Figure 1 *because* it eschews all the other principles. Now many theories (on both sides) also exclude or limit some moral principles but here it is the degree of exclusion from moral consideration which marks the distinction. Similarly, both standard and sceptical theories admit of gaps between what is demanded by states and what is required – but the extent of the justificatory gap here again marks the distinction. Thus, a genuinely distinct philosophical anarchism differs from political obligation and ersatz philosophical anarchism in terms of two scales: (i) range of principles, (ii) range of unjustified legal gaps.[106]

[106] That is not to say there may not be other marks of distinction; e.g. as regards the groups of people under different political obligations.

We might say that as regards a theory of citizens' political duties (conceived broadly), the further along those two scales it moves, and in particular, the larger the justificatory gap it has, the more radical it is. Such a theory then starts to resemble either a *revolutionary* claim aimed at changing the current state (in particular its morally ungrounded demands) or a *political* anarchist position. I am not sure that there is room between those radical positions at the end of the scale(s) and the natural variation of the model in Figure 1 at the other. For both standard theories and sceptical approaches allow for a considerable use of civil disobedience where a particular law is unjust or immoral (see Chapter 6, section 7). Instead, I am inclined to think that a genuinely distinct philosophical anarchism is essentially the same as political anarchism/revolution. And it is accordingly accompanied by a commitment to radical political change.

5. Conclusion

In the following Chapters 3 to 5, I will develop a radically plural and contestatory theory of citizens' political obligations. This incorporates a wide range of political principles and highlights in some detail how, as circumstances change, the same principle may provide moral reasons in support of obedience or disobedience. Is such a maximally plural approach a theory of political obligation or of philosophical anarchism? From the discussion here I argue that the contestatory theory is distinct from philosophical anarchism, for the following reasons:

1. All philosophical anarchist theories are in fact also multiple principle theories of political obligation. As are all standard theories of political obligation. They both have the same basic structure.

2. Theories of philosophical anarchism tend to be politically conservative. There is a status quo bias. In contrast, the contestatory approach is catholic as regards applicable principles. It is also less confident that "nothing changes".

3. The contestatory approach also incorporates a range of political entities beyond the nation state. This means that as well as moral relationships between the individual (citizen) to the state, and to other citizens, political duties also follow from our relationships with some "non-standard" political groups and associations. This is a richer and more complex picture of political obligations than either philosophical anarchism or existing models of political obligation.

Does this matter? Is it important whether the contestatory theory is, for instance, a radically plural theory of political obligation, or a fully detailed description of philosophical anarchism? In one sense, no; what this aims to do is to accurately describe the plural and complex nature of citizens' political duties – using a number of established political principles.[107]

In another sense, yes; this work helps us to understand better what matters about political obligation – and also to distinguish what it is and what it is not. So, understanding the structure of political obligation (and sceptical approaches) helps us to see how the political duties we have as citizens are almost inevitably fractured, partial, context specific and contestatory.

And what is important about a theory of political obligation is that – from a wide perspective – it illuminates the structure and shape of our duties as citizens, in terms of both obedience to the law and disobedience. It should not be seen, as some would have it, as a stand-in for some definition of state authority. It is instead a complex moral nexus of overlapping and competing moral reasons which in many cases requires compliance with the demands of the state, but which also opens up a wide space for civil disobedience.

[107] Thus, if the reader is unpersuaded by my argument that there is no substantive difference between the two (orthodox) positions, they are welcome to consider my wider theory of contestatory political obligation as developed here to be (instead) a theory of philosophical anarchism – although one much more exhaustively worked-through than any existing theory. Also, one less committed to the status quo.

Chapter 3
Natural Duties in the Political Sphere

But a certain Samaritan, as he journeyed, came where he was:
and when he saw him, he had compassion on him,
And went to him, and bound up his wounds, pouring in oil and wine, and set him on his own beast, and brought him to an inn, and took care of him.
And on the morrow when he departed, he took out two pence, and gave them to the host, and said unto him, Take care of him; and whatsoever thou spendest more, when I come again, I will repay thee.
Which now of these three, thinkest thou, was neighbour
unto him that fell among the thieves?

Luke 10: 33-36

Summary

In this chapter I consider natural duties as a ground for political obligations. I argue that under the orthodox theoretical approach, any natural duty will only succeed to a limited degree, grounding only some obligations to comply with some laws. However, a natural duty, such as justice, or samaritanism, which cannot support a fully comprehensive set of laws, and which therefore "fails" as a standard model, does not vanish or cease to obligate. It continues to bind citizens with a set of partial political obligations.

The reason for this is because natural duties in the political context are oriented towards a goal which is external to the state. This is also what underpins their traditional vulnerability to the particularity criterion (i.e. to ground obligations to one's own state in particular).

However, this external focus has in fact a much broader effect upon the normative claims of natural duties in the political context. It means they may also provide moral reasons which count against laws. In some circumstances, the same natural duty may provide political obligations to both obey and disobey the law.

Next, we consider how *multiple different* natural duties apply in the same political context. I argue that the most salient fact which determines the actual political obligations of citizens, grounded by natural duties, is not the ability of any specific natural duty to ground a general and comprehensive obligation. Rather it is that a number of different natural duties may – according to circumstances – obligate both compliance with the state and disobedience. The result is a dramatically plural view of potentially competing political obligations.

1. Different Natural Duties

In general, natural duties are considered to apply to all people as "equal moral persons", independently of any previous voluntary or transactional history, nor any institutional relationship.[1] Because they apply widely to people and may also require action in a diverse range of instances, they have obvious advantages when pressed into duty as a political principle. They appear in the *Crito*.[2] They feature in Aristotle's idea of a correct political rule which aims at the common good – being a just share of advantages or benefits for the citizens.[3] A form of a natural duty is present in the divine right to rule of early Christian

[1] Rawls, 1999, p99; Simmons, 1979, p13; Lefkowitz, 2006, p587. See more broadly, Klosko, 2005, p75-97.
[2] Plato, *Crito* (50a-b, 50d, 51a5) As either a duty to avoid harm or as a proto-consequentialist duty. The personified Laws of Athens claim that an act of disobedience (i.e. escape) by Socrates would damage them and the city. John Simmons suggests that (50a-b) refers to a duty of justice, and more specifically a duty to uphold just institutions, because harming some states is permissible, but not Athens (Simmons, 2005, p106-107). I am not entirely convinced and think that Plato's argument here is instead (more straightforwardly), that because Athens is particularly important and worthy of reverence (and specifically akin to one's parents; see 51a-b) that the harm of escape and public flaunting of the Laws would be worse.
[3] Aristotle, *Politics*, III 6-7 (with citizens by analogy as sailors, in various roles, in support of the ship of state at *Pol.* III.4). See also *Pol.* III 9, 1280b29-1281a4. While political obligation (as is widely understood today) is not a central concern for Aristotle, he does address the political duties of citizens in a number of places (particularly from what we would consider now to be a republican-communitarian approach). See for example: *Pol.* VI.5, 1320a15-16 for an (admittedly fairly weak) injunction to keep citizens supportive of the constitution; and commending disobedience in the face of unjust rule by a tyrant at: *Pol.* IV.10, 1295a17-23.

states, epitomised in the Pauline injunction of obedience in Romans 13. And it is from this historical tradition that Thomas Aquinas develops his doctrine of natural law, linking the binding force of law to, amongst other things, the merits of the legal directives:

> Laws framed by man are either just or unjust. If they be just, they have the power of binding in conscience from the eternal law whence they are derived, according to Pr. 8:15: "By Me kings reign, and lawgivers decree just things." Now laws are said to be just from the end, when, to wit, they are ordained to the common good.[4]

Given this historical lineage it should perhaps not be surprising to see natural duties central to many contemporary models of political obligations. Given the broad definition I used at the start, we can count more than twenty-five different theories of political obligation based (wholly or in part) upon a particular natural duty which have been advanced, or defended, in recent decades.[5] Because we will be looking at the function of more than one natural duty in political society, I have identified four broad groupings of these theories. Each shares some similarities in how the natural duty is said to apply.

1.1. Common Good

This is seen prominently in the natural law account following Aquinas. More contemporary natural law advocates include John Finnis and Mark Murphy who both advocate a natural duty to support the common good.[6] W. D. Ross also included the common good as one of

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Aristotle, in Barker, (trans.), *Aristotle Politics*, Oxford: Oxford University Press. 1995. For a broad discussion, see Andres Rosler, *Political Authority and Obligation in Aristotle*, Oxford: Clarendon Press, 2005.

[4] Aquinas, Summa Theologica I-II; at Ques. 96, art. 4. In: Aquinas, *On Law, Morality, and Politics (Second Edition)*, William P. Baumgarth & Richard J. Regan, (eds.), Indianapolis: Hackett, 1988; p70.

[5] See below, notes 6-36.

[6] Of course, much of how this political principle functions and obligates hangs upon the further question of what is the common good. The Thomist view is a perfectionist good of the political community as a whole. For a contemporary view of this kind, see Yves R. Simon, *A General Theory of Authority*, Notre Dame, IN: University of Notre Dame Press (1980), p23-79, esp. p30. John Finnis exemplifies a more instrumental approach which involves the set of conditions in a political community which enables citizens to achieve their own ambitions and goods; notable examples being the smooth resolution of coordination problems and a reasonably just legal system (Finnis, *Natural Law and Natural Rights*, (2nd Ed.) Oxford: Oxford University Press, 2011; p154-6 & p245-252. For a discussion, see George Duke, "Finnis on the Authority of Law and the Common Good", Legal Theory, Vol. 19 (2013), p44-62). Mark Murphy offers a variation on this with an aggregative conception of the common good which is the realisation of the good for all the members of a political society (Murphy, "Natural Law, Consent, and Political Obligation," Social Philosophy and Policy,

the three principles which together grounded a duty to obey the law: "…from the fact that its laws are potent instruments for the general good".[7] George Klosko has included what he calls a common good principle to supplement his fair play model of political obligation. This is based upon support for a wide assortment of different state activities ranging from important public goods such as economic regulation and public education through to more controversial examples such as museums, symphonies, and national parks.[8]

One variation on the common good approach is necessity. The classic example here is Hume who argues that the authority of the state is essential for political society and all the common benefits thereof.[9] More contemporary versions include: Elizabeth Anscombe, on the basis that in some circumstances a person in authority is required to make decisions, and Tony Honoré, on the necessary to combat the dangers of widespread sceptical disobedience to the law.[10] More recently, Govert den Hartogh includes necessity as part of a his multiple principle model of political obligation.[11] And John Hasnas has based a model of legal obligation upon its necessity for ensuring what he calls, "social peace", which is a prerequisite for securing the common good.[12]

Another variation is utilitarianism. Here the citizens' duty is to maximise the good (though specifically, the only duty).[13] So, it has some similarity with other common good models in terms of what it might require. However, because it is maximising, discharging a utilitarian

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Vol. 18 (2001), p70-92 & Murphy, *Natural Law in Jurisprudence and Politics*, Cambridge: Cambridge University Press, 2006, p61-90).

[7] Ross, 2002, p28, the other two being gratitude and tacit consent (p27-28).

[8] Klosko, 2005, p111-120 & p245. Klosko cites this principle as being both inspired by the Humean approach and also "clearly along consequentialist lines" (p111). Unfortunately, he did not explore whether a consequentialist principle would actually justify support for (i.e. tax demands as well as other regulations) the range of different public goods he has in mind. More recently Klosko has developed this common good approach into a (second) fair play duty which operates as part of his multiple principle model (Klosko, 2020).

[9] Hume, *A Treatise of Human Nature*, L. A. Selby-Bigge (ed.), P. H. Nidditch, (rev.), 2nd Ed., Oxford: Clarendon Press, 1978; Bk III, Pt II, sections 7, 8, 9. See also Hume, "Of the Origin of Government" & "Of the Original Contract", in K. Haakonssen, (ed.), *Hume: Political Essays*, Cambridge: Cambridge University Press, 1994; pp 20-23 & 186-201 respectively.

[10] G. E. M. Anscombe, "On the Source of the Authority of the State", Ratio, Vol. 20 (1978), p1-28 & Honoré, 1981. For the criticism specifically that Honoré is too cynical about the prospects of damaging disobedience, see Lyons, 1981. J. L. Mackie also advanced a duty of obedience on the basis that any organised society will need structures of organisation and law which, in turn, require general compliance (Mackie, "Obligations to Obey the Law", Virginia Law Review, Vol. 67 (1981), p143-158).

[11] Den Hartogh, 2002.

[12] Hasnas, "Is there a Moral Duty to Obey the Law", Social Philosophy and Policy, Vol 30 (2013) p450-479.

[13] Some consider utilitarian models distinct from natural duty approaches to political obligation, e.g. Horton, 2010; Greenawalt, 1987. Others include it, e.g. Wellman, "Political obligation and the particularity requirement", Legal Theory, Vol. 10 (2004), p97-115; p98-99); Wolff, 1995, p8-9); Edmundson, 2004, p234.

duty may not match closely with many state directives as it will be possible to perform acts in the same circumstances with greater utility (varying according to the metric of utility).[14] As a result, act utilitarianism appears unlikely to provide a solid defence of anything close to a general or comprehensive set of political obligations. However, rule utilitarianism appears to overcome some of these problems, and Dudley Knowles has recently advanced a rule utilitarian defence of a general political obligation.[15]

The normative claim of the common good in a political community will vary according to how such a good is conceived. Whether, for example, one takes a more Thomist intrinsic view, or alternatively, conceives of it in aggregative terms. Similarly, some more specific public goods (e.g. a secure state, or basic rights) could be considered to fall under this heading. However, where that normative claim is distinct from a more general common good, I have placed them into a different group.

1.2. Samaritan Rescue and Assistance

As a political principle, this comes in two forms. The first is predicated upon the state as an effective agent for rescuing everyone from the hazards of life outside of a state (i.e. from a particularly Hobbesian state of nature). In turn, this is said to ground obligations to secure a well-functioning stable and secure state. This is the model advanced by Christopher Wellman.[16] The second form takes a broader view of the scope of the natural duty. It includes safety from the "political peril", but also rescue from a much wider range of harms and hazards. Because states often help and support people in need, across many different

[14] In addition, utilitarianism itself has come under sustained and effective criticism as a distinct ethical approach. Two classic criticisms: David Lyons, *Forms and Limits of Utilitarianism*. Oxford: Oxford University Press, 1965 & Bernard Williams, in J. J. C. Smart and Bernard Williams, *Utilitarianism: For and Against*, Cambridge: Cambridge University Press, 1973. For an explicit rejection of utilitarianism as a ground of political obligation, see Wellman, 2004, p99.

[15] Knowles, 2010, p145-155.

[16] Wellman, "Liberalism, Samaritanism, and Political Legitimacy," Philosophy & Public Affairs, Vol. 25 (1996), p211–237; Wellman, "Toward a Liberal Theory of Political Obligation," Ethics, Vol. 111 (2001), p735–759; Wellman, 2004; Wellman 2005 (this last is the fullest account of his theory). Wellman's narrowly drawn natural duty, what we might call "'Hobbesian rescue", has been criticised as a strange hybrid of both rescue and charity (e.g. Simmons, 2005, p184-5; Knowles, 2010, p164-5). Regardless of its truth, this criticism misses the point, as there seems no reason why a theory of political obligation could not contain two (or more) natural duties. A more charitable reading by these critics would see that this is in line with their own rejection of singularity of ground as a requirement for any such theory.

circumstances, this second form appears to ground a wider range of political duties in support of that wider range of (samaritan) state activity.[17]

With both, the focus is upon the state as an agent able to deliver (all of) us from peril, and hence the citizen's duty is to support it in that role. This is of course connected with the idea of the common good, although in this case restricted to one aspect of the state. That would lead us to think that a narrower range of directives might be supported by such a duty, limiting the comprehensive reach of such a model (although Wellman attempts to address that issue through mediating the duty through a principle of fair play, which I discuss in Chapter 5). It has also been argued that the two different forms of samaritanism in the political sphere might conflict. For example, where discharging a samaritan duty to help people in need might cut across a duty grounded in securing the state itself.[18]

1.3. Freedom & Security

Kant argues that in the state of nature, people living together (in a finite environment) cannot avoid interacting with each other; and because they each have a right to do "*what seems right and good*", this will inevitably lead to conflict.[19] In that state they possess a kind of freedom without laws – which is dependent upon each individual's ability to coerce others and limited by what we may be coerced to do. In effect, we are all a hazard to each other, and the existence of a person or group in a state of nature robs others in their proximity "of any such security".[20] Only the state can guarantee a genuine freedom for all people by imposing one set of obligations over everyone. As a result, there is a duty upon all to enter

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[17] Knowles, "Good Samaritans and Good Government", Proceedings of the Aristotelian Society, Vol. 112 (2012), p161-178. Delmas, "Samaritanism and Political Legitimacy", Analysis, Vol. 74 (2014), p254-262 & Delmas, *A Duty to Resist*, Oxford: Oxford University Press, 2018. p138-140. (See also note 48 below). Klosko incorporated a political principle of samaritanism (preferring the term mutual aid) as part of his multiple principle model, Klosko, 2005, p95 & p105-111. A form of samaritanism as a political duty is also hinted at by Richard Arneson (Arneson, "The Principle of Fairness and Free-Rider Problems", Ethics, Vol. 92 (1982), p616-633; at p629-630). Rawls also suggests a similar natural duty, characterised as helping others in need or jeopardy, although he does not advance it as a political duty (Rawls, 1999, p98).

[18] Renzo, "Duties of Samaritanism and Political Obligation", Legal Theory, Vol. 14 (2008), p193-217.

[19] Kant, *The Metaphysics of Morals*, Mary Gregor (trans.), Cambridge: Cambridge University Press, 1991 (hereafter 1991a), p124 (emphasis in the original).

[20] Kant, *Perpetual Peace: A Philosophical Sketch*, in (2nd ed.), H. B. Nisbet (trans.) & H. Reiss (ed.), *Kant: Political Writings*, Cambridge: Cambridge University Press, 1991, p98.

into and obey the laws of a state and in so doing we gain a freedom which is no less than the freedom we might otherwise have in the state of nature.[21]

A version of this justification has been advanced recently by Anna Stilz.[22] Massimo Renzo has developed a similar model predicated upon a duty of self-defence; roughly that by refusing to so enter the state other people pose a risk to us, even if they may personally mean us no harm.[23] It is also this idea of (Kantian) self-defence which Jeremy Waldron employs when he addresses the problem of particularity, in defence of a natural duty of justice as a ground for political obligations.[24] Additionally, although they could also potentially be classed as duties of justice (depending upon how broad a definition of justice is employed), David Lefkowitz's (positive) duty to promote basic rights and Allan Buchanan's duty to protect people's human rights both employ the idea that obedience to the state is required in order to help people live together freely in peace.[25]

1.4. Justice

Most notable here is Rawls's conception of a natural political duty of justice, to: "support and further just institutions." This is divided into two parts: to comply with and do our share in these, when they exist and apply to us, and to help establish them when they do not.[26] (this second part is qualified in that it only binds when of a limited cost).[27] Rawls's model is tied closely to his wider Kantian contractualist model of justice; the idea being roughly that that this natural duty (alongside some other natural duties) would be agreed to

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[21] Kant, 1991a, p127. More broadly, see p123-129.
[22] Stilz, 2009 & Stilz, "Why Does the State Matter Morally? Political Obligation and Particularity", in Ben-Porath & Smith (eds.), *Varieties of Sovereignty and Citizenship*, Philadelphia: University of Pennsylvania Press, 2013, p244-264. See also Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, Cambridge MA: Harvard University Press, 2009.
[23] Renzo, 2011.
[24] Waldron, "Special Ties and Natural Duties", Philosophy & Public Affairs, Vol. 22 (1993), p3-30; p14 & p22.
[25] Lefkowitz, "Simmons' Critique of Natural Duty Approaches to the Duty to Obey the law", APA Newsletter on Philosophy and Law, Vol. 7 (2007), p9-14. Buchanan advances a duty (he calls it a "robust natural duty of justice") to ensure access to institutions that protect everyone's basic human rights. Buchanan, "Political Legitimacy and Democracy," Ethics, Vol. 112 (2002), p689-719.
[26] Rawls, 1999, p99 & p293-294. More broadly, see sections 19 & 51.
[27] Perhaps this instead describes two distinct natural duties, one of support and one of establishment? For this view see George Klosko, "Political Obligation and the Natural Duties of Justice", Philosophy & Public Affairs, Vol. 23 (1994), p251-270. See also Simmons, 2005, p158-165.

by the participants of a political society in the original position.[28] Thus we might, following Simmons, refer to this as a "postinstitutional" natural duty in contrast to those which are presumed to apply in the state of nature.[29] Variations of a natural duty of justice, most of which overlap only with the first part of Rawls's duty and most of which are quite separate from any Rawlsian theoretical structure, have been subsequently advanced by, for example: Jeremy Waldron, Dudley Knowles, William Smith and Candice Delmas.[30] Further, a natural duty of justice has also been included as part of a number of multiple principle models of political obligation, for example: Jonathan Wolff and Chaim Gans.[31]

Also in this category are models of political obligations which are grounded on some form of duty towards equal (just) treatment. For example, Thomas Christiano's duty to treat other humans as equals, which is supposed to require compliance with democratic institutions that publicly realize the equal advancement of citizens' interests.[32] And similarly, Daniel Viehoff, argues that a commitment to not acting upon unequal power relationships grounds the authority of democratic structures.[33] Overall, natural duties of justice in the political sphere, like those of samaritanism, can be drawn widely or narrowly in terms of their ambit.[34] What I am referring to here is the unmediated requirements of a natural duty of justice. The concern I have is that this breadth will provide more scope for conflicting political duties based upon the same principle (I discuss this more below, especially in section 3).

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[28] In the literature, it is common, following Simmons's initial presentation and criticism where he detaches Rawls's duty of justice from its wider theoretical structure in his Theory of Justice, to treat a natural duty of justice as a more or less freestanding natural duty (Simmons, 1979, p143-145. I will do so here. However, it is worth noting that Rawls's conception of it is derived from hypothetical agreement, as in fact Rawls contends all the natural duties are (Rawls, 1999, p99). I will not explore whether a hypothetical contract approach to political obligation along Rawlsian lines would eo ipso change the normative claim of such a natural duty because my account is not itself wedded to a specifically Rawlsian account of a natural duty of justice. For two accounts which do examine Rawls's theory as a model of hypothetical consent, to different conclusions, see Wolff, 1996 & Huemer, 2013, p46-58.

[29] Simmons, 2005, p156, n.38.

[30] Waldron, 1993; Knowles, 2010; Delmas, 2018; William Smith, *Civil Disobedience and Deliberative Democracy*, London: Routledge 2013.

[31] Wolff, 1995. Note that Wolff is drawing this category widely and includes the duty to assist others (arguably approaching a samaritan duty) and a utilitarian approach. He sometimes refers to this group as "reasonableness theories". Chaim Gans employs the Rawlsian natural duty to support just institutions as part of his four-part multiple principle theory (Gans, 1992, p78-83 & 88-89).

[32] Christiano, 2008.

[33] Viehoff, "Democratic Equality and Political Authority", Philosophy & Public Affairs, Vol. 43 (2014), p337-375.

[34] For a good example of a widely drawn range of claim for justice, see Wolff, 1995, p20-21 & p24. I discuss mediating other natural duties through a principle of fair play in Chapter 5.

This rough taxonomy captures many of the of the theoretical lines of development for natural duty theories. It should not be considered definitive; different models have their own characteristics and parameters which overlap with other duties and groups. Nor is this classification exhaustive. There are other natural duties which have been advanced which do not sit easily in one group or another.[35] For example, Philip Soper has proposed a Kantian-style duty to defer to the demands of the law, to accord moral weight to its requirements, predicated not upon the negative impact of disobedience, but on avoiding contradicting a hypothetical legislator. Because for Soper, such a hypothetical legislator shares the same values and ideals of the citizen (in effect standing in their place) as they issue directives, disobedience to the law would be, in a sense, self-contradictory.[36] Moreover it may be that a duty to secure the common good includes a samaritan component, or that a duty based upon justice is also one which would be required for Kantian freedom. Finally, other new natural duties to be gainfully employed as grounds for political duties could be advanced (I briefly discuss two possible new possible natural duties which might serve as political principles in section 4 below, and suggest a third in Chapter 4, n.61).

Under the orthodox approach, each of these individual models aims to secure a fully comprehensive duty to obey the law (directly or in conjunction with another principle). But it is important to note that natural duties which *fail* to ground suitably broad political obligations for a standard model do not vanish or suddenly fail to impose moral reasons, but *still bind* citizens with a partial (and still potentially very wide) set of political duties.

Acknowledging that allows us to see that a more subtle pattern of normative demands upon citizens follows from a natural duty in the political context. This will ground obedience to some laws. In other circumstances, it may permit or require disobedience. I noted in Chapter 1, that the proper object of political obligation is generally regarded as obedience and not disobedience. Although some theories do note on occasion that

[35] John Horton, for example, argues that a principle of gratitude ought to be classed as a natural duty (Horton, 2010, p96-99).
[36] Soper, *The Ethics of Deference*, Cambridge: Cambridge University Press, 2002. Although the idea of not contradicting one's own values has a distinctly Kantian feel, Soper's duty of deference has also been interpreted (and criticised) as a form of associative duty (Kimberley Brownlee, Legal Obligation as a Duty of Deference, Law and Philosophy, Vol. 27 (2008), p583-597). Soper recognises the similarity but insists upon the distinction (Soper, 2002, p169-172).

disobedience may be required, it is usually regarded as the exception and rarely discussed in any detail.

Combining the point that natural duties still ground some political obligations (regardless of whether these are comprehensive or not), with the array of different plausible natural duties which have been advanced as such grounds (in our brief survey), leads to a radically diverse model. Here multiple natural duties provide a – potentially wide – range of political obligations in a political community. In what follows I will be following a plural approach, including a number of natural duties operating together.

2. Natural Duties in the Political Context

One of the most notable features of a natural duty in its role as a political principle is that it points to a goal external to the immediate political context. For example, a duty of samaritanism (regardless of its particular conception) requires helping another in need. In this sense, natural duties are, we might say, "externally-focussed".[37] Even those which are intended to apply to a state, like the Rawlsian natural duty of justice, or Wellman's samaritan duty, derive their moral force from the fact that the state serves a purpose towards that (external) goal. Consequently, if the state proposes action which falls outside of what a natural duty will require, then we should consider *that aspect* of state activity no longer morally obligatory.

This is a particular problem for standard theories which attempt to ground political obligations which are comprehensive (including a duty to support the state as a whole). It arises when a specific law clearly does not meet the (external) aim of the natural duty. For example, a natural duty of justice, or a natural duty to protect basic rights, cannot compel conformity with a law which is unjust (or irrelevant to justice), or which does not safeguard basic rights. Even Wellman's samaritan duty – which is intended to ground support for the state as a whole, because, as his theory goes, only the state can rescue people from the

[37] This external focus is notably different from the focus of other political principles e.g. consent, fair play, association, gratitude, as these are oriented to the specific entities to which they apply.

Hobbesian state of nature – still cannot include laws and directives which are unconnected to the state's stability and functioning (as Wellman realises).[38]

This distinctive feature of natural duties, their external focus in the political sphere, lies behind possibly the most well-known criticism of natural duty theories – the problem of particularity.[39] Particularity is a requirement that political obligations are owed specifically to one's own political society. It is a problem for standard theories because it seems plausible that other political states may also have as good or better claim upon a person in virtue of a natural duty. For example, if one might be able to better secure justice (or basic rights) by supporting a different state to one's own.[40]

My observation is that the particularity problem, which is widely seen as an obstacle for natural duty theories, is in fact only part of a *more general and widely applicable* feature or characteristic of natural duties in the political context. Rather than it being only other states which may present alternative ways of discharging the burden of a natural duty, it may also be other actions more proximately. This is the feature of *specificity*.

This external focus of natural duties is directly linked to the specificity of their normative claim. That is, what actions they demand from us. I introduced this in Chapter 1 as one of the features of political principles which is often overlooked in discussions of political obligation. In this case, an external focus entails a degree of variability as to what might count as an appropriate discharge of one's natural duty (of justice, samaritanism etc..). There is thus a potential mismatch between state directives and the normative demands of a natural duty.

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[38] On Wellman's acknowledgment of obligation gaps in his model, see Chapter 2, notes 20, 21, 68, 69. Note that this applies even if his duty is mediated through a principle of fair play (see Chapter 5).

[39] See Simmons, 1979, p31-35, p43, p147-156; Simmons, 2001, p68-69; Simmons, 2002, p27-31; Simmons, "The Particularity Problem", APA Newsletter on Philosophy and Law, Vol. 7 (2007), p19-27. Jeremy Waldron has presented a well-known defence against this criticism (Waldron, 1993). In reply, see Simmons, 2005, p170-179). For good discussions, see Edmundson, 2004, p230-234; Wellman, 2004; Higgins, 2004, p32-39; 2008; Knowles, 2012, p171-174; Walton, 2013.

[40] Simmons uses particularity to reject a natural duty (of justice) because: (i) political obligations are felt or believed to be moral bonds which tie us specially to a particular state, not potentially to every state; and (ii) a person could not fulfill their duties of justice to all reasonably just states as they would be overly onerous or incompatible (Simmons, 2005, p167-168). He has more recently used it to argue that some proposed political principles are over-inclusive, obligating people who should not be (Simmons, 2007). It has also been employed to argue that other states might be rival candidates for discharging the burden of a natural duty (e.g. Renzo, 2008).

That the nature of the specificity of natural duties in the political context may permit actions in support of the laws of other states as well as one's own is a characteristic of the particularity criticism. But the demands of a natural duty upon a citizen need not reach to supporting an alternative state, they may more straightforwardly point towards an alternative act to that which is demanded by the state. In short, the character of a natural duty's specificity – its external focus and contingent possibility of permitting or requiring alternative appropriate acts – poses a difficult problem for a standard unary natural duty model of political obligation.

To see this, we may imagine what would actually be required for a natural duty to guarantee a general political obligation; it would have to be a specific natural duty *just to obey state laws*. And this is not a natural duty which would be recognised and accepted by many people at all. Most commonly accepted natural duty theories take the view that a state requires support because it is important for, or acts to secure, an external goal (e.g. justice, basic rights). Thus, both acts of compliance and also the state itself play an instrumental role in securing that external goal.

However, our common experience of political life tells us that there is much of what states do, and ask of us, which is not a match for the goal of a natural duty of justice, or samaritanism, or for the common good. As a result, there are obligatory lacunae amongst the directives of the state. Further still, some of what a particular natural duty requires of us, may conflict with those state directives.

Possibly the closest theory to one which is a duty to obey the law simpliciter, is the Rawlsian natural duty of justice (first component). This claims a duty to comply as part of supporting one's state and doing one's share in it.[41] Yet even here, Rawls does not argue for a duty merely to *obey the law*, but one which ultimately, as noted above, aims overall to support and further the just state, which in turn (ex hypothesi), requires compliance

[41] See notes 26 & 28 above.

alongside other forms of support.[42] Unfortunately, in many cases supporting a state does not equate to obedience and in other cases, obedience may be irrelevant.

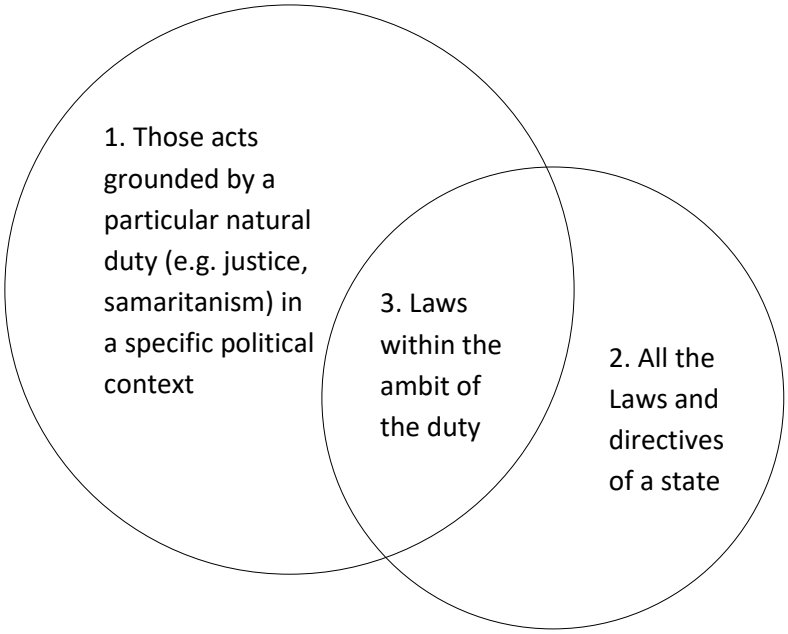
This applies to the natural duties outlined in the survey of candidate grounds of political obligations above. As a result, an assessment of their binding ability upon citizens in the political context can only be done on a piecemeal basis. In some cases, a law or a group of laws may be supported by a particular natural duty (one likely candidate here is the criminal justice system in a just state). In other cases, laws may not be supported.

Perhaps however this limitation should not be surprising, because the advantage a natural duty has for a standard theory of political obligation is that it applies broadly to all people. Is there not something suspicious about a natural duty, which might be discovered (so to speak) to compel all the people in a state to obey all the laws the government issues, neatly and without exception (even if on a defeasible basis)? Some reflection upon the many-stranded complexity and range of functions of a state, and the diversity of its demands upon the citizenry, must lead us to suspect that even a duty to specifically *support* a specific state likely entails support for some discrete aspects of it and not for others.

This more partial and specific normative picture illuminates the correspondence between a natural duty and the demands of the state as a relationship between two sets of possible obligations. The question for theories of political obligation is whether obligations deriving from a natural duty match up neatly with those purportedly imposed by the state.

[42] Rawls argues that his natural duty of justice is based upon securing: "the stability of just institutions" through support and compliance (Rawls, 1999, p295). This is presumably why it would be chosen by people in the original position – and interestingly brings the Rawlsian natural duty of justice closer to Wellman's political samaritan duty. For a similar alignment, see Waldron, 1993, p22 (citing Hobbes).

Figure 1. A simple model of natural duties in the political context.



Set 1, covers the normative demand of a natural duty upon those people in this political community. Set 2, comprises the full set of state directives. Set 3, is those laws which have moral reasons, from a natural duty, in favour of obedience.

We can make some preliminary observations. First, if a standard natural duty model of political obligation is to succeed (specifically to be comprehensive as regards its laws), then the state's laws and directives have to be included *entirely within* the set of potential obligations in context grounded by that natural duty. Given the wide range of laws and demands which any state makes upon its citizens and how these will also vary according to circumstances, this is I think unlikely.[43]

[43] This is ultimately an empirical question. However, given how states are now, and how they have been it is improbable. Although it is not impossible that in the future some state – most likely a small and politically minimal state – might only issue laws which fall within the ambit of some natural duty. For now, this remains a science fiction scenario.

Examples of what is likely to be supported by a natural duty include, state health and welfare programmes (and the laws which are required to produce them), alongside policing and justice. This will include requiring individual action from citizens in support of laws, as well as support for, or adherence to the demands of, cooperative schemes which fulfil that natural duty (meeting the demands of a natural duty in a political community will often require coordination, or collaboration, with others – particularly if joint activity is necessary for such fulfilment). Undoubtedly which directives are justified will vary according to the principle. For example, laws ensuring good equal education for citizens may be a common good (or even support justice) but are not commonly associated with a samaritan duty.

Typically, however, a description of the full set of laws and directives will only partially overlap with the requirements of natural duty (e.g. justice, or the common good). Most states, as we know all too well, behave in ways which are often unjust, harsh, foolish, harmful and self-destructive, all the while requiring (or demanding) the cooperation of their citizens. In most non-ideal situations, a large portion of any state's laws will sit outside of what a particular natural duty like justice will require. There is then a justificatory gap (i.e. that portion of Set 2 that sits outside of Set 3).[44]

The depiction in figure 1, can be considered to represent a single specific context. As the context and circumstances vary, the overlap between the two sets will vary. So, if a state enacts a number of unjust laws, then the degree to which a natural duty of justice provides grounding for that state's laws (Set 3) will diminish. And if a corrupt police and justice system improves its operation, then more of what it demands will be grounded by the same natural duty. This last point should remind us that it is not just the statute book, as it were, which is a guide for the extent of justification by a natural duty, but also the performance of the state as it acts in the world. Any judgement of whether a natural duty grounds obedience to a law goes all the way down.[45]

[44] This identifies not just specific laws but the extent to of state activity which is not supported by a natural duty. This is determined by circumstances (e.g. whether a justice system is corrupt or a tax system poorly run) and is often a question of degree.

[45] Similarly, if the demands of a natural duty are mediated through a principle of fair play, that may affect the extent to which Set 2 falls under Set 1. It may nevertheless still leave much of what a state demands outside of Set 3. I discuss natural duties and fair play in Chapter 5.

If we take the example of a freestanding natural duty of justice, not only injustice but also inefficiency and benign incompetence will reduce the extent if state directives it will ground. Moreover, some laws, even if they are in themselves not unjust, nor unjustly or incompetently administered, may simply not fall within the ambit of justice, such as laws (and taxes) supporting commercial development, education or the arts. And the same applies to other natural duties which can be considered political principles, such as samaritanism, or securing the common good.[46]

From the perspective of the standard unary natural duty model of political obligations (e.g. Rawls's duty to support just institutions, Honoré's necessity, Lefkowitz's duty to promote basic rights), this is a failure. Yet, figure 1 reminds us that just because a natural duty fails to generate a fully (or nearly) comprehensive set of political obligations and is therefore "rejected" from the point of view of the standard approach, it does not thereby disappear from the political context. It continues to bind us with a *partial set* of political duties. Further, not only may a "failing" natural duty still provide moral reasons in support of some parts of state activity and some laws, but it may also provide moral reasons to oppose or disobey the law.

[46] What of particularity? If the specificity (i.e. external-focus) of a natural duty allows for support for another state as well (or instead) as one's own, does that mean more acts will, potentially, move away from Set 3? Yes, I think it will happen but *within limits*. Practically, many states do not actually make legal demands upon non-citizens to compete with their own states. So, the question is not whether the fact that we may have some natural duty obligations to other states disqualifies any we have to our own state – but rather, what kinds of obligations might we have to other states and under what circumstances. Then, we can practically reason as to what the impact of that state of affairs is. For example, Simmons critically imagines that if one were to go and live in a country for a month then all one's political obligations would (implausibly) transfer over to that country (Simmons, 1979, p33). However, it is not implausible that *some* political obligations transfer (e.g. obeying the police, following traffic regulations) and some remain with one's home state (e.g. paying taxes). It is worth noting that this "practical" particularisation will likely affect the bonds of some natural duties more than others. For example, a natural duty of security in living together, which justifies laws which resolve the problems of people living side by side, would be oriented towards a range limitation in a way in which a samaritan natural duty is not. Similarly, providing many (but not all) common goods is in many cases only possible within the confines of a nation state. For sympathetic views on the practical limitations of the particularity criticism, see, Greenawalt, 1987, p167 & Gans, 1992, p82; Renzo, 2011, p598, n.57. Dudley Knowles also shares that pragmatic perspective, but additionally argues that natural duties such as Rawls's duty of justice and Wellman's samaritanism are in fact "particularized at the point of formulation" because they are oriented around a particular population's coordination problem (Knowles, 2012, p173, n.14 & more broadly, p171-174). Finally, I suggest a possible new particularizing extension to natural duty political obligations, using political association, in Chapter 4, section 7.

3. Natural Duties and Disobedience

Figure 1 illuminates two ways in which a natural duty affects whether citizens' disobedience may be justified. First, there is a justificatory gap. In cases where a law or directive sits outside the ambit of a natural duty it will lack a ground for compliance. In this case, a law will have to rely upon other moral factors for that. If they are not available, disobedience is morally permitted.[47]

Second, if we look at figure 1, not only is there a justificatory gap, but there is also a corresponding region of duties (or we might say more relevantly in this case, potential obligatory acts) which sits outside of the demands of the state. In many cases these are orthogonal to the demands of the state; for example, supporting a charity, or getting involved in local politics or a volunteer rescue scheme. But in other cases, that part (of the binding ambit) of the natural duty will obligate action against a particular state directive – to disobey the state.

This is a more complex picture than the unary model of political obligation based upon a natural duty. It is my contention that much of this principled disobedience can be properly classed as civil disobedience, however a full argument for that (and a correspondingly wide remit for civil disobedience) will have to wait until Chapter 6. For now, the reader should think that when I refer to principled or political disobedience I am doing so in the same generally positive manner as I would civil disobedience.

For example, a samaritan natural duty might provide moral reasons in support of parts of a state which rescue and protect people and provide political stability and security (i.e. samaritanism considered broadly). In other areas, it may be unconnected with those activities. However, if a law appeared to threaten people or harm the good functioning of the state, then the samaritan duty is disobedience.[48] This principled, political, civil,

[47] Of course, it is likely that other moral factors will typically apply, although that may not necessarily lead to the law being grounded; on which, see below and following chapters.

[48] Knowles notes that a samaritan duty may require civil disobedience when citizens are threatened by a law although he does not elaborate on this (Knowles, 2012, p171). Delmas argues that a samaritan natural duty can be a basis for both political obligation and civil disobedience (Delmas, 2014 & Delmas, 2018, p136-167; p238-241). As regards disobedience Delmas focuses almost entirely upon extremely grave circumstances (e.g. state brutality, terrible crimes and broad injustices). Consequently, her case for samaritan-based disobedience

disobedience may apply (as noted above) where the law is unsupported by a natural duty; this is paradigmatically, the case of an unjust law. But it may also apply in cases where the law appears to be supported *by the same natural duty*. This could, for example, be seen where a system of coordination is supported by a natural duty but an application of it is not.[49]

Consider a *moderately* unjust local police force for example. A natural duty of justice may impose a political obligation to support a nation's criminal justice system, including policing, courts, prisons, and the enforcement of a monopoly on justice and law enforcement. However, in a particular city policing has for some time been run in an unjust manner, to the extent that not just specific officers but many routine practices are unjust. The citizen living in this city when confronted by a demand by the police or courts, will have to make a fine-grained judgement in order to discharge what this political principle of justice requires of her. The context will configure the conflict to a large degree. For example, being asked to comply with a traffic regulation versus whether to divulge the whereabouts of a wanted suspect. Local injustice may provide, in some instances, a strong moral defence – or an imperative – for disobedience, even if other parts of the overall system are well run.

Another way in which a natural duty may provide moral reasons both for and against obedience to particular law, is in cases where disobedience of a just law is the best (or only)

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appears built upon disobeying laws which would not – by my model here – be grounded by a samaritan duty to obey. On the contrary, Delmas assumes a general samaritan duty to obey all laws (earlier, she notes briefly in passing that there may be some limits as regards the level of taxation (Delmas, 2014, p261)). My approach is more complex: I argue that a samaritan-based political obligation is partial, and in some areas (e.g. state action which falls outside of a samaritan duty, but which does not threaten people or the state), the law may be unsupported by a samaritan duty but not opposed by it. In those cases, a different natural duty may oppose or support the law. The fact that a particular law *is not supported* by a samaritan natural duty is an important factor for citizens' practical political reasoning. Further, if a law is unsupported by a samaritan political obligation (or other natural duty; perhaps for example, it is a very trivial law) then it could, I think, be overridden by a relatively weak samaritan duty if for example, the threat posed by a law to people was relatively weak. It is, in other words, easy to see how obviously dire state policies and laws can attract legitimate samaritan disobedience, less so for the wider range of laws where the context and circumstances determine the degree to which they may (or may not) be harmful. Moreover, and more significantly, my model incorporates a number of natural duties in combination, which has an impact upon both grounding political obligations and justifying civil disobedience.

[49] In such a case one might think that a better description of this conflict between two opposing moral reasons from the same natural duty is that it only *potentially* obligates in different ways and then in this particular context, this potentiality is resolved into a single moral reason to (in this case) disobey. I would be open to that alternative description, as nothing of normative significance hangs upon it. However, I do think that describing the dilemma as competing pulls of a natural duty better reflects our strong moral intuitions are in such cases.

way of protesting against a *different* and separate injustice. We see instances of such potentially justified action where protestors are unable to directly address (and disobey or thwart) a law or state action which they feel is objectionable. For example, government military programmes and action, or state policies concerning pollution and climate change. Examples of this kind of indirect civil disobedience include, environmental protestors who trespass and blockade, or peace activists who enter restricted areas and vandalise military equipment (while taking care not to harm people).[50] Many of these public order laws would fall clearly into the overlap between a natural duty of justice and the laws of a state (i.e. Set 3 in Figure 1) and are hence justified by it. However, it is the wider ambit of the same natural duty of justice which also – depending upon the circumstances – provides a moral reason to disobey the law. In cases like these, citizens may be breaking laws which are just, in pursuance of a just outcome.

In these and in other cases of disobedience, the obligation for the citizen is generated by a natural duty as political principle. The same natural duty which in some circumstances and for some laws will ground an obligation to obey; and in other circumstances and for other laws, a permission, or an obligation, to disobey. The role of context is obviously critical here – for it is common for theorists of political obligation to discuss disobedience focusing upon examples of serious, large-scale and/or structural injustice; for example racist policies, government corruption, police brutality.[51] Yet I argue here – at least as regards natural duties – that a relatively small change in context is all that may be required for the same natural duty to permit disobedience (or even require it).

Example – A New Robin Hood.

> John is a personal assistant to an extremely wealthy banker. His duties, not untypically in this situation, include the confidential management of a wide range of personal and business affairs. To do this he is given considerable access to private information. John's employer instructs him to make a charity donation from her

[50] The growth of indirect Civil Disobedience in the US was, as I note in Chapter 6, a subject of public concern through the 1960s.
[51] For example: Mokrosińska, 2012; Delmas, 2018; Rawls, 1999, p326-327.

bank account. This charity is a worthy cause which helps families in desperately poor circumstances. His employer stipulates a relatively small donation. John knows she can afford to give very much more without noticing and so writes a cheque for ten times that amount (far in excess of what he is personally able to make). He is confident there is only a very small chance of discovery, and this is not the first time he has done this. John estimates he will not always be in this job (his employer likes to change staff every few years) and while he has the opportunity, he should use the resources at his disposal to help other people in need while the chance of discovery is low.[52]

Let us assume from the previous discussion that John has an obligation under a natural duty of justice, to obey the criminal laws of the state. Relevant in this example are laws against theft and fraud, violation of which also threatens the stability of economic and social structures.[53] However he also has an obligation under the *same natural duty,* to redistribute in the face of this massive material inequality to a just cause – for example to help people who are very poor – and arguably, in this case, to disobey the law. By stealing here and now he can help many more people in need than he could ever hope to otherwise. The fact that John has a time-limited opportunity to do this just act changes the context, making the pull of the duty more stringent in one direction.

Context permitting, similar arguments could be made for a natural duty of samaritanism, where the situation of the people he could help is perilous, they are suffering, and the situation of his employers is one where the theft would not imperil their lives at all. Or perhaps a duty of necessity in delivering the common good. Here, both the basic criminal laws and the urgent charitable programmes are an important part of the common good of

[52] Here is a parallel real-world case: In 1998, Joyti De-Laurey started at the Investment Bank, Goldman Sachs in London (wage £7.50/hour). Soon she was working as a personal assistant to some extremely wealthy staff, and shortly thereafter began to transfer sums from their personal accounts to her own. By April 2002, when this was discovered, she had stolen more than £4.5 million. How did this pass unnoticed for so long? Former Goldman Sachs managing director, Nomi Prins, put it thus: "When you're making £60m a year, a few million missing is like a regular person not remembering the last penny on their account.". < http://news.bbc.co.uk/1/hi/business/4616635.stm > & < http://news.bbc.co.uk/1/hi/england/london/3564533.stm >. In the end, she spent it on a lavish lifestyle. But what if she had given it away instead to worthy causes? Another example is that of Enric Duran, who between 2006 and 2008, used unsecured loans to defraud 39 Spanish banks of nearly half a million euros which he then donated to progressive political causes. < https://www.theguardian.com/world/2014/apr/20/spain-robin-hood-banks-capitalism-enric-duran >.

[53] This could be directly or mediated via a principle of fair play (see Chapter 5)

the state, but the charitable programmes are financially precarious whereas the criminal laws are not.

I say above, *arguably*, because a final all-things-considered ought will depend upon a range of circumstances. I have not chosen to present a straightforward case of a state behaving unjustly or wickedly where it would be immediately clear why a natural duty might obligate disobedience to an unjust law (or to disobey a just law in reasonable pursuit of halting and reforming an unjust practice). In this example we can see instead how the context is central to a determination of what a natural duty may require of us in many circumstances.

In this example, the circumstances are presented so as to ground a permission to disobey. We can easily imagine a slightly different state of affairs where; this is a one-off opportunity, the banker is so absurdly wealthy and spendthrift they will never notice (e.g., regularly wastes more on reckless gambling), and this donation will stop the charity from having to close. Thus, adding more weight to the moral reasons to disobey the law. And of course, we can imagine circumstances less friendly towards justified disobedience as well. I that case, the charity is large and well-funded and even this donation will not change its existing programme of service delivery. Again, this example shows how natural duties as grounds for political obligations, can justify duties to obey or disobey, without having to reach for examples of grievously immoral and unjust laws.

This depiction of political obligations becomes more complicated still when we consider that more than one natural duty may apply to this possible act and hence need including in John's practical reasoning towards the morally right act in this situation. If we recall the survey at the start of this chapter, it is likely that several natural duties may be relevant.

4. Multiple Natural Duties

If one natural duty can work as a political principle, as regards partial obedience and also possible disobedience, why not others, why might this be the *only* natural duty which will generate some political obligations? Advocates of multiple principle models of political obligation typically employ several different political principles (e.g. Gans's inclusion of justice, fair play, association and consequentialism).[54] They generally do so with the aim of building a theory which provides a duty to comply with all the laws of the state. I share this inclusive approach but not the goal.

Freed from that (orthodox) target and methodology we can start to see more clearly what the actual political obligations of citizens might be. I see no good reason to arbitrarily exclude some political principles.[55] For the evaluative question is not whether they 'fail' tout court (as regards a standard theory) but rather which political duties do they ground, and which do they not.

Just like other plural approaches, employing a number of different grounds, here I am considering a number of natural duties as political principles. Each is capable of providing justification for obedience to some laws and state directives. And as I have argued, each may also justify disobedience to the law. Further, their normative claims may overlap, to support some laws or to support some disobedience, or they may diverge and undermine the claims of other natural duties.[56] The result is a much more radically plural environment than any standard model of political obligation.

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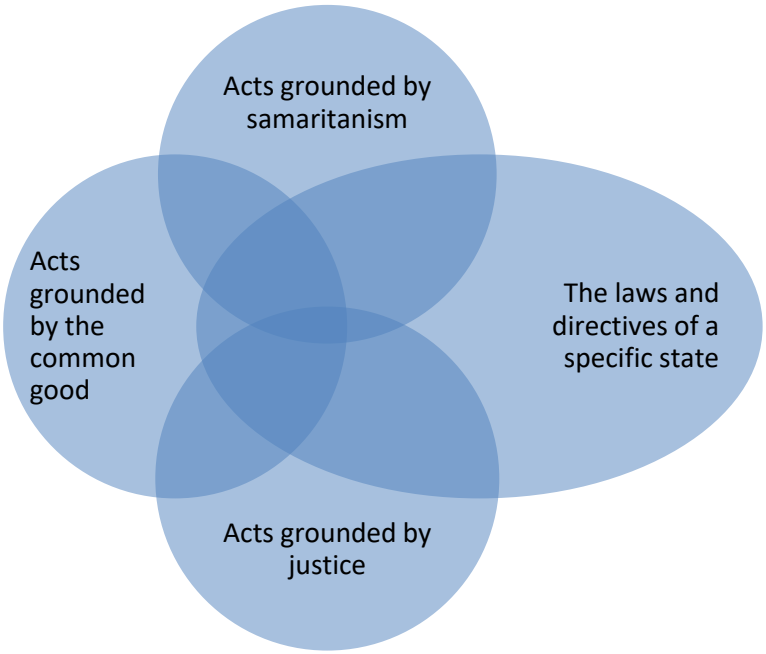
[54] Gans, 1992.

[55] It is an accepted practice, even under the orthodox methodology to reject what has, since Simmons, been called singularity of ground (Simmons, 1979, p35-36). See also Wolff, 1995; Knowles, 2010, p69-70; Klosko, 2019, p67-69.

[56] This is not to argue for what we might call a *simple additive approach* for practical political reasoning, but rather to describe the common experience of having two or more reasons which may push towards the same potential act, or work against each other.

Figure 2. Three different natural duties in the political context.



The depiction in figure 2 is only a rough illustrative approximation of how three different natural duties may interact with the laws of a state. Bear in mind, as with figure 1, for each natural duty, the area of its ambit which sits outside of the overlap with the set of state directives, may also ground a permission or obligation to disobey the law. The normative demands of each separate natural duty may also support or undermine the bonds of a different natural duty (a more accurate depiction would likely require a multi-dimensional model).

Combined, a plurality of different natural duties could justify a range of partial political obligations. For example, a system of just and efficient policing and criminal justice, including courts, and the monopoly restriction on alternative policing and justice which routinely accompanies such systems, could be supported by a number of natural duties (e.g. justice, samaritanism, common good, protecting basic rights). Further, different natural duties might well, circumstances permitting, provide additional moral reasons to directly comply with some, but not all, of the actual criminal laws in a just state. This may also include activity beyond legal compliance, such as a duty to set-up or participate in a local

neighbourhood watch scheme; or actively help with police enquiries, serving in jury duty, volunteering for rescue auxiliary programmes. Justice could be considered supportive of some governmental redistributive programmes; samaritanism supportive of welfare programmes; the common good and samaritanism as grounds for state defence and security, border integrity and biosafety. In short, compliance with and support for many areas of important state activity (again, not all) can be, in many cases, defended with a plurality of natural duties.

Combined, these natural duties could also count against many of the state's directives. For example, many laws in many states are otiose and/or unjust. But more interestingly, the combination of natural duties may make even those laws which are supported by a natural duty, less strong, or not obligatory, or even obligatory-to-oppose. For example, the honest discharge of jury duty may be supported by duties of justice and the common good. But in a case where the penalty would be genuinely catastrophic (upon the defendant and their family) and is extremely likely to be applied, a samaritan duty could provide a moral reason to advocate for a false acquittal. Now those samaritan reasons may not be sufficient to outweigh the justice and common good weighing in favour of an honest result, but if the proposed punishment was also overly severe (i.e. unjust) and the crime relatively trivial, then that may change the final all-things-considered ought for the citizen. This is the kind of difficult practical political reasoning which is sometimes required to make a sensitive judgement in a plural political environment. More broadly, it is the political context which concretises the demands of the different natural duties in play. It determines the valence and strength of the moral reasons which different natural duties bring to bear when a citizen is faced with the force of the law.

Recall the previous example of the New Robin Hood. Under a complex and contestatory approach, John should consider the full range of different natural duties which apply (as well as other political duties which might be relevant, some of which I discuss in further chapters). Weighing clearly in favour of compliance alongside the natural duty of justice is a duty of the common good. Which duties weigh in favour of disobedience is perhaps less immediately clear, however depending upon the circumstances it may be that justice also requires movement of monies from the (very) wealthy banker to help some of the poorest people. A consideration of the common good, or to secure some basic rights for all

citizens, may also apply here towards disobedience. It would depend upon exactly what use the charity would make with the donation. It could itself be a vital vehicle for providing help for citizens in desperate need (samaritan duty). On the other hand, it may be that this charity supports a cause that lends itself less (immediately) well to support from natural duties, such as a museum or art gallery.

In figure 2 we have three natural duties which each ground partial political obligations. How many natural duties might function as political principles in this complex and intertwined manner? From our initial survey: a samaritan natural duty, (the wider inclusive variation), a natural duty of justice, and a duty to provide the common good are strong candidates. In addition, duties connected with securing certain basic rights and protections also seem relevant to supporting some aspects of a state's actions.

Further, we can imagine some new natural duties which could be advanced as political principles. For example, one based upon a different natural duty suggested by Rawls, that of mutual respect. However, in this case it is specifically oriented at a relational egalitarian goal conceived of in social and political terms.[57] We might call this a natural duty of equal standing. This could provide support for certain acts of redistribution focused upon relational income and wealth redistribution in a political society (specifically, in a reasonably just and efficient modern welfare state, a duty to pay some of one's tax burden).

Or alternatively we can imagine a suitable environmental natural duty. The grounds for much positive environmental action emphasises an instrumental justification based ultimately upon other natural duties; viz.: justice or the common good (now and for future generations). However, there is also a strand of environmental philosophical thinking that eschews that linkage and focuses upon the *intrinsic* value of biological communities and resources beyond any considerations of anthropocentric value.[58] This has not to my knowledge been included as a possible ground for political obligations. It is not plausible as

[57] Rawls, 1999, p156, 297, 447. The literature on relational equality is extensive, two good examples: Elisabeth Anderson; "What Is the Point of Equality?", Ethics, Vol. 109 (1999), p287-337 & Anderson, "The Fundamental Disagreement between Luck Egalitarians and Relational Egalitarians," Canadian Journal of Philosophy, Vol. 40: suppl. (2010), p1-23. Alternatively, this could more straightforwardly be a broader way of understanding a natural duty of justice.

[58] For an introduction to the idea of environmental value broadly, see Robert Elliot (ed.), *Environmental Ethics*, Oxford: Oxford University Press, 1995. Another option of course is one which addresses the treatment of other animals by humans.

a ground for a standard unary model, but it would ground some partial political obligations (e.g. to protect and remediate local, national and international environmental resources). It could also serve as a ground for disobedience, as it is currently employed by some environmental activists when they make a claim of civil disobedience.[59]

Both new natural duties, one of equal standing and one of environmental respect could be added to those more established natural duties – all acting as political principles in this partial, radically plural and contestatory model. And one reason why they can be considered here is that under the contestatory theory – unlike the standard model – there is no need to aim for a comprehensive duty to support all the laws of a state.

Of course, some natural duties will be excluded since they do not bind at all in the political context. Perhaps the moral reasons they justify are too weak or unfocused in any political context. In addition, some purported natural duties, such as Renzo's natural duty of self-defence, face strong criticisms ab initio.[60] Note also, that of those which do apply, there will be a large degree of overlap and amalgamation of the normative demands. This will help when it comes to determining their "binding ambit". For example, a broad natural duty of justice and one which aims to secure basic rights will likely overlap.[61] Figure 2 shows three natural duties for illustration. Given the overlap, in many common circumstances, only two or three may apply as regards a citizen's practical deliberation. In other more complex situations, we may see more.

[59] The concept of intrinsic environmental value is not uncontroversial. It is not my intention to discuss it here or advance a substantive natural duty to preserve, ameliorate or expand intrinsic environmental value as a political principle on its own. That would take us too far from the main line of argument.
[60] In this case that people (i.e. one's fellow citizens) do not pose that particular kind of threat which Renzo's suggested duty aims to address (Uwe Steinhoff, "Renzo's Attempt to Ground State Legitimacy on a Right to Self-Defence, and the Uselessness of Political Obligation," Ratio Juris, Vol. 29 (2016), p122–135).
[61] These duties may also be further mediated through a political principle of fair play (see Chapter 5).

5. Practical Political Reasoning for Natural Duties

This is a dizzyingly plural moral environment. The actual obligations for citizens in a political context, whether for or against obedience to the laws of their state, are here governed through a range of different natural duties, all varying according to the particular and specific political context. This will determine which natural duties apply, to whom, their direction of moral pull and their stringency.

Startling as this may be, it is also the actual moral position which people face in the political landscape. For it is common to recognise that some laws are strong, some weak and some vary according to how they are being administered. Some state activities are genuinely vital, many are not. Political states waste much of their taxpayers' money – even beyond what might be reasonable to allow. All of this we (may) know already. The contestatory theory describes the normative landscape for people as it is configured by the actual political principles which apply. That may be uncomfortable for those who are used to a more straightforward and easy relationship with their state.

This is also, as I argued in Chapter 2, also the actual state of affairs for both standard models of political obligation and sceptical philosophical anarchist theories. Here too, a range of different moral reasons applies in the political sphere when it comes to responding to state directives. The difference is that in this contestatory approach, the complexity is explicit, and I tentatively hope that this explicit awareness may help when it comes to reasoning as to what a citizen ought, ultimately, to do.

In a sense then the conclusions of the orthodox approach, as least as far as it goes with a particular natural duty, do not matter very much. Or at least are less important than has been traditionally imagined for determining the overall obligations of a citizen in the state. What is important is the multiplicity of natural duty political principles and how the various moral reasons they ground, will vary according to the political context.

How one might, even roughly, assess the different weights attached to these competing obligations grounded by natural duty political principles is not straightforward. In many cases it seems that the weight of obligations generated by principles of natural duty will

depend upon the circumstances in which the application of the principle generates an obligation and those in which the agent finds himself. For example, a principle akin to Wellman's samaritanism, which obligates assistance for those in peril, will have a different weight according to the specific peril, the likely opportunities for help and the circumstances of the citizens etc...

It is sometimes suggested that natural duties are in general weak and limited in terms of cost. For example, risking one's life to save another may be an act of samaritanism but it is also supererogatory rather than a duty. Whereas some laws are onerous – and may in the case of, say, military service in national defence – require just that kind of risk.[62] It is true that many natural duties present themselves as being cost-limited, however just where that limit lies is not immediately clear in general. Perhaps a more accurate description of the strength of natural duty partial political obligations (to obey or disobey) is not that they are generally strong or weak, but that they are in fact context sensitive. Just as in some cases a promise can be outweighed by a natural duty and in others a promise may outweigh a natural duty. For example, intuitively, I would think that a range of restrictions on people's behaviour could be justified in virtue of securing or protecting a just state of affairs.

Similarly, it is also true that many laws are not particularly onerous. As regards those state demands which are exacting, they are often supported by moral reasons from more than one natural duty and potentially more than one political principle. For example, the (onerous) tax demands for some important public goods may be justified through natural duties of justice, the common good and securing basic rights as well as a partial-state principle of fair play (on this last, see Chapter 5). And the most burdensome demands of the state (e.g. wartime military conscription) tend to be supported by a wide range of different natural duties, in circumstances where they are most pressing, again alongside

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[62] For example: Klosko, "Fair Play, Reciprocity, and Natural Duties of Justice", Ratio Juris, Vol 33 (2020), p335-350. See also, Klosko, 1994 (esp. p256-257) & Klosko, 2005, p77; p80-86; p91. For the argument that natural duties can be weighty, see Delmas, p164-165 & Knowles, 2012, p169-171. For an argument that duties of charity (writ broadly) can be enforceable and also sharply delineated as regards what they require (i.e. just like duties from a natural duty of justice), see Allen Buchanan, "Justice and Charity", Ethics, Vol. 97 (1987), p558-575.

other political duties (e.g. political association, fair play).[63] And if they are not, perhaps then they are not obligatory.

This is, to a degree, a problem for a (standard) model which aims to use a natural duty as ground for a comprehensive political obligation. From the contestatory perspective however, if some natural duties (in combination), in some circumstances, are insufficiently strong to justify some laws, this helps to determine which directives may be grounded and where any justificatory gaps lie. It also helps to determine how strong any political *obligations of disobedience* may be.

Balancing a set of possibly competing natural duties, each of which may support or undercut a duty to obey or disobey the law is a daunting position for the citizen. However, I also do not want to overstate at this stage how much hard work such a theory of practical political reasoning would be. There is a parallel I think between this faculty of reasoning and that described by Mill in his discussion of utilitarianism. One of the criticisms of classical utilitarianism is that if it is treated as a decision-making procedure, (in addition to a standard of right action), it requires impossibly complicated and lengthy moral decision-making of people.

Mill's response is that there is no need to start every decision from a calculative clean sheet, as human history is rich with helpful examples and guides as to what will be best in many circumstances. For Mill, these secondary principles act as: "landmarks and direction-posts" which indicate which decisions are going to work poorly and which will be good.[64] They are essential for (imperfect) day-to-day decision making, and over time, will continue to be refined and improved.

I think that the process of practical political reasoning around a genuinely plural political theory, can here make good use of Mill's advice. One possible worry is that without a single

[63] I am, for obvious reasons, reluctant to commit to the idea that some principles are *in general* more able to ground a duty on the scale of (e.g.) seriously risking one's life. However, if pressed, I think that political association and fair play are probably the two most plausible candidates, across a wider range of circumstances.

[64] Mill, *Utilitarianism*, G. Sher (ed.), Indianapolis: Hackett, 2001, p24 and more broadly, p18 & p23-25. See also J. O. Urmson, "The Interpretation of the Moral Philosophy of J. S. Mill", The Philosophical Quarterly, Vol. 3 (1953), p33-39.

overarching goal to provide direction (e.g. utility) our metaphorical moral direction posts may all end up pointing in different directions. Is this a problem? If it is I do not think that it is as large a problem as it may seem on first sight – for although the citizen-state relationship does not have a single clear goal, it does not operate in a moral vacuum. There are established moral backgrounds already present. For example, most people in most reasonably just states will assume that life is better with a degree of state stability, justice in action and a strong set of human rights. At the same time, there will be often be disagreement and doubt and, on occasion, principled disobedience. The clear presentation of natural duties we have here will, I hope, help to illuminate a citizen's practical reasoning towards an all-things-considered decision – alongside other moral reasons, such as those from political association or fair play.

The second point of (some) comfort to note is that, although here we are engaged with the moral demands of a number of natural duties in the context of the demands of the state, we are doing it in a *political community*. That means we do not always have to reason alone. In fact, when it comes to difficult decisions whether to obey or not, the contemporary history of dissent and civil disobedience tells us that it is most often groups of people, organised movements, collective protests, local gatherings, and bands of concerned citizens who tend to work out these difficult decisions together

6. Conclusion

Natural duties considered in the political sphere are, what I call, externally-focused, as regards their normative claim. This lies behind the well-known criticism of particularity, however it generalises to affect the wider specificity of their claim upon citizens in a state. Here we have seen that this means a standard model of political obligation which relies entirely upon a natural duty will fail to justify obedience to a fully comprehensive set of laws and directives.

However, just because a particular political principle is rejected from the point of view of the standard approach does mean it disappears. It will continue to bind with a set of partial

political obligations. The extent of this set of political duties varies according to the justice and function of the state.

In line with the rejection of singularity as regards grounds for political obligations, common in the literature, I argued that in most circumstances, three or four (or more) different natural duties will apply to justify a broader range of political duties. The proper object of these plural, partial natural duty political obligations includes both obedience and disobedience to state directives. As regards a *political obligation of civil disobedience*, this also applies across wide range of circumstances, and not just when the state is manifestly unjust.

By eschewing the orthodox goal of a general and comprehensive set of political obligations we have been free to take a more open view as to the bonds of natural duties in the political sphere. The result is a contestatory model, which includes a partial set of political duties which binds citizens to many laws and directives, but which also grounds a wide range of civil disobedience.

Chapter 4
Associative Political Obligations

> Yes, and it would be another easy mistake to make, to think that one loved one's country less because it happened to be in the wrong. Germany is where I was born. Germany is where I became what I am. Germany is all the faces of my childhood, all the hands that picked me up when I fell, all the voices that encouraged me and set me on my way, all the hearts that speak to my heart. Germany is my widowed mother and my impossible brother. Germany is my wife. Germany is our children.
>
> *Michael Frayn.*[1]

Summary

The associative political principle is widely advanced as a foundation for a standard model of citizens' political obligations. Here I argue that this principle has a flaw which makes it unsuitable under the orthodox approach. In that sense, associative theories will fail on their own terms. However, this failure opens-up a more complete, nuanced and illuminating picture of the scope of associative political obligations. Central to this picture is the distinction between an obligation to support and further the interests of one's political community and fellow members, and an obligation to obey all the directives of the state.

The normative claim of a citizen's associative political obligations is determined by two descriptive features I introduced in Chapter 1, specificity of content and multiplicity of

[1] Michael Frayn, *Copenhagen*, Act 2. London: Methuen, 1998. The character speaking is the fictionalised Werner Heisenberg, in 1941.

relevant political entities. The former entails that political association can provide moral reasons in support of obedience compliance to state directives as well as moral reasons which favour disobedience. The latter identifies that an associative political principle may bind members to a number of different groups or associations all of which also operate in the same political arena as their home state. The result is a partial, plural and contestatory set of associative political obligations, both for and against the demands of the state.

1. The Family and the State

An old joke: a driver who has lost his way in unfamiliar parts, stops to ask directions from a local man lounging by a crossroads. After some thought and a dramatic pause, the local replies, "well, if I were you, I wouldn't start from here…" Just like the unfortunate driver, we understand it is impossible to wholly separate ourselves from where we are in the journey of our lives. And we do not travel alone, we are family members, friends, neighbours, colleagues, and citizens; we belong to different groups and communities. The relationships we have with our fellow members are in part constituted with different responsibilities and duties. So too, any political obligations we have are determined, in part, by where we are on this journey. As a result, the starting point for considering our political obligations, ought to be, to borrow a phrase from Alasdair MacIntyre, our social identity, an identity which cannot be conceived of properly without certain duties.[2]

> I am someone's son or daughter, someone else's cousin or uncle; I am a citizen of this or that city, a member of this or that guild or profession; I belong to this tribe, that clan, this nation. Hence what is good for me has to be what is good for one who inhabits these roles. As such, I inherit from the past of my family, my city, my tribe, my nation, a variety of debts, inheritances, rightful expectations and obligations. These constitute the given of life, my moral starting point.[3]

[2] Alasdair MacIntyre, *After Virtue* (3rd Ed.), Notre-Dame: University of Notre Dame Press, 1981 (2007), p220 (however, see also p254 at al., for his pessimistic view of contemporary political society).
[3] ibid.

Being a member of some groups or associations, entails certain obligations (alongside other ideals and supererogations etc..). Of course, one will have other moral reasons as well, but a full description of our moral life will require an account of these associative obligations.[4] Like voluntary duties, these are special duties. As such they are distinct from and cannot be reduced to a more cosmopolitan morality of duties which apply to everyone.[5]

Not all groups will generate associative obligations. Typically, those which do are marked by shared interests amongst members and some (even if loose) forms of cooperation or coordination.[6] Paradigm examples are family and friendships. Others commonly included are: neighbourhoods, volunteer fire or rescue groups, trade unions, workplaces, colleges, environmental groups, religious communities, ethnic communities and the nation state.[7]

The argument for associative *political* obligations starts from these associations and posits that duties of citizenship are grounded in the same manner.[8] Being a citizen is, in a moral sense, akin to being a family member, a neighbour or a colleague. At its most tentative

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[4] The term "associative obligations" was coined by Ronald Dworkin (he also uses "communal obligations"). Dworkin, 1986; p196 et al. The roots of such a political duty, of course, run much more deeply. For example, a form of associative political obligation may have been widely recognised in 4th century Athens, binding upon all citizens of a certain standing, specifically oriented around making contributions (*eranos*) to the state (Peter Liddel, *Civic Obligation and Individual Liberty in Ancient Athens*, Oxford, Oxford University Press, 2007; p140-143). Moreover, the Aristotelian idea of citizens as dutifully contributing members of their state, working in different ways in support of a just constitution could be said to resemble an associative duty (see Ch. 3, n. 3). There is also, it might be noted, a brief and critical discussion of similar duties amongst friends, neighbours and compatriots by Henry Sidgwick in: *The Methods of Ethics* (7th ed.), London: Macmillan and Company, 1907 [1874]; Book III, Chapter IV, §3-5 & 7.

[5] As well as voluntary duties, obligations of gratitude and reparation are often taken to be in the class of special duties. See Scheffler, *Boundaries and Allegiances*, Oxford: Oxford University Press, 2001; p49-50. Other classifications are available, such as one which distinguishes three: universal, voluntary and associative (e.g. Bas van der Vossen, "Associative Political Obligations", Philosophy Compass, Vol. 6 (2011), p477-487; at p477-478 & Delmas, 2018, p170).

[6] For a more detailed discussion on this point, see Andrew Mason, *Community, Solidarity and Belonging*, Cambridge: Cambridge University Press, 2000; p21-30.

[7] Many philosophers are quite expansive in this regard. For example; Dworkin includes family, friends, neighbours, union members, colleagues as well as citizens (Dworkin, 1986). He specifically excludes ethnic and religious groups (Dworkin, 2011; p323-4). Massimo Renzo includes both ethnic and religious groups and even football fan groups (Renzo, 2012, p116-117). Yael Tamir allows a wide range, including some criminal fraternities (Tamir, 1993). One notable outlier is Michael Hardimon who stipulates only two: family and country (Hardimon, "Role Obligations", The Journal of Philosophy, Vol. 91 (1994), p333–63; p347, n.22).

[8] This should not be confused with what is sometimes called the "conceptual argument" where a duty to comply is thought to follow from the very meaning of terms such as state or government or authority. From this perspective, to ask why one ought to obey is to make a mistake, for the duty is a component of the meaning of those terms. But this kind of argument omits an important part of each term, for a duty only follows if an authority is legitimate or perhaps, morally compelling. In effect the conceptual argument just pushes the philosophical question of justification back one step. For a critical discussion see Pateman, 1985, (from whom the term comes); Horton 2010, p138-146; Knowles, 2010, p175-6; Simmons, 2001, p72-3.

formulation the associative political principle asserts that: "…there is something normatively significant in an associative account that cannot be captured by other theories of political obligation."[9] More robustly, it is claimed that such associative political obligations ground a strong general obligation to obey the law.

This idea of associative political obligations possesses a number of attractions. It is faithful to the phenomenology of everyday interaction between the individual and the state. For example, we disapprove of a country which behaves immorally but it is only with our own that we also feel guilt or shame. Similarly, we feel pride when our fellow citizens do well on the world stage.[10] It is intelligible to understand our relationship to our state as containing a range of obligations, and also that our fellow citizens share these. This phenomenology goes beyond shallow patriotic fervour, often runs deep and shares characteristics with the obligations and identification we recognise accompanies membership of other groups, communities, extended families. Here is Thomas Nagel, speaking of writing philosophy as an American citizen during the Vietnam war:

> Citizenship is a surprisingly strong bond, even for those of us whose patriotic feelings are weak. We read the newspaper every day with rage and horror, and it was different from reading about the crimes of another country...[11]

2. A Range of Associative Approaches

The seminal presentation of associative political obligations is from Ronald Dworkin.[12] Here, obligations apply to members of what he calls a "true" community, as opposed to one which is merely identified by geographical, genetic or historical conditions (a "bare" community). What distinguishes the true community from the bare, is that its members

[9] Horton & Windeknecht, 2015, p905.
[10] Examples abound. See Tamir, 1993, p98 for a good description.
[11] Nagel, *Mortal Questions*, New York, Cambridge University Press, 1979, p. xii. For discussion of guilt, shame and pride in the context of associative political obligations, see Higgins, 2004, p146-149.
[12] Dworkin, 1986, p195-224 & Dworkin, 2011, p311-324 (esp. p317-324). Also: Dworkin, "Replies", in Justine Burley (ed.) *Dworkin and His Critics*, Oxford: Blackwell, 2004; p376-380.

hold four attitudes about their responsibilities towards each other. That their duties are special and only apply within the group; are not collective but personal, running to and from each member; reflect a general concern for the well-being of members; and finally that group practices are based upon a plausible conception of equal concern for all members.[13] A state where members hold such attitudes, or where the practices of the state reflect such, is a "community of principle", where people are treated with equal concern and members sacrifice their interests for the well-being of others. In a political community of principle, the members all have duties which they owe directly to their fellow citizens (i.e. horizontally) and which are enforced by the state.[14] More specifically, of these political obligations; "The central obligation is that of general fidelity to law."[15]

Following Dworkin, a range of models of associative political obligations have been advanced. While these vary to a degree in terms of their structure, they all have in common a number of core claims.

First is the claim that membership of a political association is the ground of the political obligation. To be a citizen is to occupy a role which is defined, in part, by a set of duties, the most prominent of which is to support the state. As Massimo Renzo puts it:

> the central intuition of the traditional associative view in that it grounds political obligation in those responsibilities we have simply by virtue of our membership in the political community.[16]

Note that this emphasises an approach which begins with citizens' political relationships and utilises an exploratory or hermeneutic approach to uncover the normative demands of political membership and the political obligations which follow. As such, it relies heavily

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[13] Dworkin, 1986, p199-201. Although these may have the sound of psychological properties (i.e. concern) which must be shared by a group of citizens, Dworkin argues this is not the case and rather what matters is that the practices might be reasonably interpreted as coming from such a group (although he does admit that without any such attitudes to some degree, the practices would likely fade (p201). For the criticism that Dworkin's criteria impose an overly restrictive moral criteria on what kind of communities may ground associative duties, see Brewer-Davis, 2015.
[14] Dworkin, in, Scott Hershovitz (ed.), *Exploring Law's Empire: The Jurisprudence of Ronald Dworkin*, Oxford: Oxford University Press, 2008; p305.
[15] Dworkin, 1986, p208.
[16] Renzo, 2012, p123.

upon the role of intuition in interpreting the shape of these duties.[17] One version of this approach, following the communitarian tradition of philosophers such as Alasdair MacIntyre, Michael Sandel and Charles Taylor, emphasises that the responsibilities and duties which follow from membership in a state constitute an important part of the (shared) identity of the members.[18] Prominent advocates include Yael Tamir, John Horton, Ryan Windeknecht and Massimo Renzo.[19]

Second, that membership in the association (in this case the political society) must be, in some manner, valuable for the citizens. For Dworkin, the state helps people live with dignity and also provides necessary order and support (see section 4). Similarly, Horton argues that it is the provision of the kind of order and security necessary for a society to function which is the paradigm value.[20] Jonathan Seglow has advanced a model which relies upon the value of a state which recognises and supports the public equal standing of citizens in shaping the law.[21] Alternatively, for Samuel Scheffler, living in a political community enables certain forms of social life.[22] Two points are worth noting here. Even though a group has some instrumental value, the associative duties which flow from membership are grounded by the membership and are thus non-instrumental. Just because having friendships is good in many ways is not why one values a particular friendship. Second, the claim that a group needs to have some value for its members is not the same as a claim that the group needs to be morally valuable or just. On this, theories do differ (see section 3).

Third, that associative political obligations, alongside associative obligations more generally cannot be reduced to other cosmopolitan, or contractual, duties. As Scheffler observes:

> And if, in due course, we inject our own wills into this mix—straining against some ties and embracing others, sometimes severing old bonds and sometimes acquiring

[17] Horton, 2010; Van der Vossen, 2011; Renzo, 2012, p110.
[18] MacIntyre, 1981, Sandel, *Liberalism and the Limits of Justice*, Cambridge: Cambridge University Press, 1982. Taylor, *Sources of the Self*, Cambridge: Cambridge University Press, 1989.
[19] Horton, 2010, Tamir, 1993, p96-102 & 130-139; Renzo, 2012; Horton, & Windeknecht 2015. For critical responses see Simmons, 2001, p65-92; esp. p80-92. It is also sometimes called the identity-constituting theory (Renzo, 2012, p108, n.5).
[20] Horton, 2010, p176-180 (he calls it the "Hobbesian argument"; p176).
[21] Seglow, 2013; esp. p139-148.
[22] Scheffler, 2018.

> new ones—the verdict of common moral opinion seems to be that we can never simply wipe the slate clean. Our specific historical and social identities, as they develop and evolve over time, continue to call forth claims with which we must reckon: claims that cannot without distortion be construed as contractual in character, and which are not reduced to silence by general considerations of need.[23]

Although associative political obligations may not be reducible to natural duties, they do incorporate some elements, or degree, of voluntarism. For example, both Horton and Tamir maintain that political membership, in the full sense of accepting various responsibilities and duties, is something into which people grow over time, and must at least consciously acknowledge and accept.[24] Renzo goes further, arguing that a citizen must endorse their identity before its duties bind (although that may involve simply taking one's membership for granted).[25] Despite the inclusion of some voluntary component however, it is important to remember that it is membership which grounds the obligations, even if some form of acceptance is a necessary precondition. Moreover, given the degree to which such membership pervades people's lives and constitutes part of their identity, actively disowning it is not something which can be done in an unreflective or casual manner. What this recognition does do however, is remind us that associative political obligations may be limited to some degree in terms of generality, not binding those who explicitly reject their membership as citizens (even if they accept its de facto authority).

Fourth, is the claim that citizens are thus obligated to support their political society and its members. As Dworkin argues, this includes and features a defeasible duty to obey all the laws which the state issues. That is, in general, for standard models, discharging one's political obligations means being an obedient citizen.[26] This is also supplemented, in some cases, by the further claim that that such political obligations support the legitimacy of the state.[27] It is also worth noting in this regard that most associative models of political

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[23] Scheffler, 2001, p64.
[24] Horton, 2010, p183-4 & 186-7; Seglow, 2013, p29 & 38; Tamir, 1993, p134-139 As Tamir notes: "In this restricted sense, we could approach associative obligations as voluntarily assumed." (p135).
[25] Renzo, 2012. See also Horton, & Windeknecht 2015, p908-912. For a criticism, see Dagger, 2018, p79-82.
[26] One notable exception is Nina Brewer-Davis, who notes in passing that a law which is outside of what a political society takes to be its guiding principles might be best delivered by disobedience, although she does not explore this thought any further (Brewer-Davis, 2015, p279).
[27] Van der Vossen, 2011, p482. Examples include Dworkin, 1986; Seglow, 2013. In contrast, see Stephen Utz, "Associative Obligation and Law's Authority", Ratio Juris, Vol. 17 (2004), p285-314 & Horton, 2010, p190.

obligation are unary theories of political obligation – where it is only the associative connection which is said to ground political obligations.[28]

3. Associative Approaches Under Scrutiny

There are at least five notable objections to the idea of associative political obligations. First, that these duties are, or can be reduced to, other locally mediated universal and cosmopolitan duties (e.g. natural duties or a virtue-based approach).[29] Thus is not to deny that associative duties exist, but rather that they have – to Christopher Wellman's words "*basic* moral significance".[30] Second, that such "local" duties, which apply only to those inside a group, leads to an unpalatable distributive injustice.[31] Note that these first two objections attack the idea of associative obligations broadly. Other criticisms admit that they are a legitimate source of normative claims, but deny they apply in the political sphere (amongst others). Thus, the third objection argues that a state is, unlike family, friends (or perhaps a college or a volunteer group etc…), not the kind of collective body which can

[28] Two exceptions: Dorota Mokrosińska has advanced a hybrid model where the associative principle binds citizens within limits which are governed (albeit indirectly) by various natural duties and what a society motivated by such would dictate (Mokrosińska, 2012 & 2013). Chaim Gans is another exception to the unary model, in that he includes a "communal obligation" based upon Dworkin's approach, as part of his multiple principle theory (Gans, 1992, p83-89). Other notable associative theories have been advanced by: Seth Lazar, who develops a model based upon the importance of providing an appropriate response to (and specifically a non-teleological assessment of) the demands of special relationships (Lazar, "The Justification of Associative Duties", Journal of Moral Philosophy, Vol. 13 (2016) p28-55); Andrew Mason, who bases his approach on the intrinsic value of citizenship as analogous to friendship. He focuses upon a duty to participate in public life over a duty to obey the law, though he is not unfriendly to the idea (Mason, "Special Obligations to Compatriots", Ethics 107 (1997), p427-447 & Mason, 2000, p32-41 & p96-114). Thomas Hurka whose model is predicated upon compatriots possessing a shared history of working together for each other's good (or alternatively, shared suffering (Hurka, "The Justification of National Partiality", in Robert McKim and Jeff McMahan (eds.) *The Morality of Nationalism*, New York: Oxford University Press, 1997, p139–157). See also: David Miller, "Reasonable Partiality Towards Compatriots", Ethical Theory and Moral Practice, Vol 8 (2005), p63-81.

[29] Examples of the first, reductive, criticism include: Wellman, "Relational Facts in Liberal Political Theory: Is There Magic in the Pronoun 'My'?", Ethics, Vol. 110 (2000), p537-562; Jeske, "Special Relationships and the Problem of Political Obligations", Social Theory and Practice, Vol. 27 (2001), p19-40; Richard Vernon, "Obligation by Association? A Reply to John Horton", Political Studies, Vol. 55 (2007), p865-879; Scheffler, 2001, p54-56 & 97-110; Simmons, 2001, p85-90.

[30] Wellman, 2000, p562 (emphasis in the original).

[31] Examples of the second, distributive, criticism include: Seglow, 2013, p21-23; Scheffler, 2001, p56-64, 73-76; 79, 82-96 & 107-110; Niko Kolodny, "Do Associative Duties Matter?", Journal of Political Philosophy, Vol. 10 (2002), p250-266.

ground an associative duty; for it lacks the close interpersonal relationships which are a necessary requirement.[32]

The fourth objection claims that we may be mistaken in our intuitions about associative political obligations. That we are collectively suffering a form of false consciousness, brought on through the actions of self-interested authorities. For this is what we have been taught and been socialised to accept throughout our lives.[33] The fifth objection has it that an associative model of political obligations entails that people may have duties to obey wicked and immoral states and further, that a defence which employs other duties (e.g. natural duties) to limit the risk of "immoral" associative duties risks ceding ground to those other duties.[34]

The associative approach has attracted other criticism; however, this brief survey addresses the main ones.[35] In response to the first, reductive criticism, associativist theorists have (re)affirmed the distinctiveness of the phenomenological experience of associative duties in their application across arrange of different groups.[36] As regards the second, distributive objection, they acknowledge that such duties may conflict with other general duties in ways which may be resolvable (or which may form moral dilemmas). This is a feature which associative duties share with other moral duties.[37]

As regards the third criticism that the state differs from paradigm examples of associative duty, particularly in regard of close attachments and mutual concern, they argue that critics

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[32] For the third, analogy, criticism, see Simmons, 2001, p77-79 & 91; Dagger, 2018, p75-76; Wellman, "Associative Allegiances and Political Obligations", Social Theory and Practice, Vol. 23 (1997), p181-204; Wellman, "Friends, Compatriots, and Special Political Obligations", Political Theory, Vol. 29 (2001), p217-236; Jeske, 2001.

[33] For the fourth, manipulation objection, see Simmons, 2001, p83; Wellman, 1997, p198-199; Dagger, 2018, p80.

[34] For the fifth immoral states, criticism, see Simmons, 2001, p85-89; Dagger, 2018, p82-86. For a discussion see Mokrosińska, 2012, p68-72 & Mokrosińska, 2013.

[35] For example, for an interesting although I think ultimately unpersuasive argument that associative obligations cannot be duties but are instead representative of virtue theory, see Wellman, 2001.

[36] Tamir, 1993, p103; Horton, 2010; p148-149; Mokrosińska, 2012, p68-72; Van der Vossen, 2011, p485. For good discussions, see Seglow, 2013, p11-15 & Saba Bazargan-Forward, "The Identity-Enactment Account of Associative Duties", Philosophical Studies, Vol 176 (2019), p2351-2370.

[37] Seth Lazar, "Debate: Do Associative Duties Really Not Matter?", Journal of Political Philosophy, Vol. 17 (2009), p90-101; John Horton, & Ryan Windeknecht, "Associative Political Obligations and the Distributive Objection", Phenomenology and Mind, Vol. 9 (2015, hereafter 2015a), p162-171; Abizadeh, Arash & Pablo Gilabert. "Is There a Genuine Tension between Cosmopolitan Egalitarianism and Special Responsibilities?", Philosophical Studies, Vol. 138 (2008), p349-365.

have either set the bar too high or have missed the point. What is important is not a close interpersonal emotional attachment, but a sense that a citizen understands and appropriately values their membership in a political community.[38] In response to the fourth criticism, the worry that citizens have been indoctrinated or are acting with false consciousness, it is argued this is improbable given the history and pervasiveness of identification over time and across many different states. In turn, this argument often resolves to a balance of probabilities rather than a rebuttal.[39]

Finally, as regards the possibility of associative obligations to immoral groups, associative theorists have noted that this problem also applies to principles of explicit consent (and is there not treated as a reason to abandon that principle). Moreover, as associative obligations are defeasible, immoral or unjust duties would be outweighed by other more universal moral reasons. Hence the associative principle provides an explanation for commonly felt experiences of moral dilemmas.[40] Of course some promises are taken to be void *ab initio*, and similarly it seems reasonable to claim that certain particularly immoral groups are just not capable of grounding obligations, or in some cases not actually the right kind of groups to which associative duties may attach at all.[41]

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[38] For examples, see Mason, 2000, p38-41; Scheffler, 2018, p10; Gans, 1992, p85-86 & p88. Communitarian associative theorists acknowledge that as membership affects identity, feelings of belonging and ownership are important (e.g. Tamir, 1993, p135), but this does not commit them to the kinds of close interpersonal connection characteristic of friendship and family. Note that Dworkin does admit that in his model an emotional bond of some kind would, over the longer-term, be required to support the features an association must have if it is to ground duties (Dworkin, 1986, p201).

[39] For indoctrination, see Horton, 2010, p153 & p157-158; Renzo, 2012, p125-126.

[40] Tamir, 1993, p136 et al. see also Horton, 2010, p163 & p179 & Utz, 2004, p303. Andrew Mason has argued that if an association has intrinsic value, it may ground defeasible obligations to do immoral actions, but associations which do not have such value (he cites a group of racists) any duties are null (Mason, 1997, esp. p444-5 & n.49). For a similar view, permitting associative duties from groups which are contingently unjust (as many groups are), but ruling out those which are founded upon (or focused upon) injustice, see Miller, 2005, p66-67. Interestingly, Michael Hardimon has a theory of role obligations as political obligations where citizen's duties must pass a hypothetical choice scenario. That is, if one were to step back and reflect upon them, they would be considered acceptable; e.g. are they just, rational etc.. (Hardimon, 1994). Of course, many groups are (or commit to actions which are) both just and unjust; the state being in many respects a paradigmatic example. In these cases, one reasonable position for advocates is to adopt some form of threshold. (I take a different and more complex approach, see sections 4, 5 & 7 below). Scholarly opinion here is divided, with some theorists accepting that immoral groups may (under some circumstances) ground associative duties, whereas others deny this. Contrast for example, Tamir, 1993, p101 with, Bas van der Vossen, "Associative Political Obligations: Their Potential", Philosophy Compass, Vol. 6 (2011, hereafter Van der Vossen, 2011b), p488-96; at p489-490.

[41] For example, Brewer-Davis argues that since there is no such thing as a "white race" group in the appropriate manner, racists are unable to claim they have associative duties to other white people. Racism is thus both immoral and mistaken (Brewer-Davis, 2015, p271). While that is true, it does not rule out some more plausible groups which routinely practice immoral acts (e.g. a racist sports club). Mokrosińska, limits

I have here only surveyed briefly the most well-known criticisms. My own view is that the associative principle broadly survives these objections.[42] So, at this stage we can accept that membership of a political community, like membership of a family, a friendship, or a trade union, comes with a web of political duties. Moreover, this set of duties binds the majority of citizens (excepting those who explicitly reject their membership of the state). Next, I will focus upon a different and more significant criticism which applies even when we accept the broad thrust of the associative principle as a ground of political obligations. It is significant because, not only is it the most telling problem with the standard associative political model, but more importantly it opens-up a vista of new and interesting associative political obligations, including disobedience.

4. The Question of Specificity

What is the *content* of associative political obligation? Thus far the associative principle may be said to underpin some special concern for fellow members (i.e. citizens) and a number of duties. More specifically this is commonly thought to require adhering to established and accepted moral norms, or conventions, ideals of action, and appropriate contributions which support and further the political community. And then, in turn, to cite obedience to a state's laws as an example of a widely agreed norm or principle.[43]

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associative political obligations by (inter alia) natural duties as part of her multiple principle approach (Mokrosińska, 2012 & 2013).

[42] I would concede that in some cases these criticisms might limit the extent or impact of the associative principle. For example, as regards some unjust associations, or in situations where large-scale manipulation of the citizenry is being practiced by state authorities.

[43] Van der Vossen, 2011, p482; Scheffler, 2018; Brewer-Davis, 2015; Hardimon, 1994, p358. Dworkin uses the terms "social practices" and "conventions" (Dworkin, 2011, p315-6). See also: Perry, "Associative Obligations and the Obligation to Obey the Law", in Hershovitz (ed.), *Exploring Law's Empire: The Jurisprudence of Ronald Dworkin*, Oxford: Oxford University Press, 2006, p183-205; at p201-202. Sometimes the content of associative political obligations is suggested through an indicative list. For example, Seglow suggests (inter alia), obey the law, treat each other with civility, participate in politics, speak out against injustice, protect the environment, support national health, education and welfare systems (Seglow, 2013, p129 & Seglow, "Associative Duties and Global Justice", Journal of Moral Philosophy, Vol 7 (2010), p54-73; p68). Tamir notes: "support and maintain political institutions, obey the laws, participate in the political process, defend one's country, and the like." (Tamir, 1993, p131). See also Horton, 2010, p191. See also notes 58 & 63 below.

The problem is that it is not necessarily clear what special concern entails and the norms for citizens in a state may be unclear and open to disagreement.[44] In fact, if we reflect upon the range of duties attached to membership of other associations, and the kind of norms which are commonly said to exist in political society, it seems to me that what associative political membership entails, is a duty to be a *good citizen* rather than an *obedient citizen*. The two may overlap in many circumstances, but they are not coterminous.

I will return to the idea of the norms of political society below. However first it is worth noting how Dworkin addresses the concern that associative political duties need not include general legal obedience. First, his theory:

> …aims to show that obligation to obey the collectively enacted laws is derivative from the more basic attitudes, which are not themselves attitudes of obedience, that hold among the citizens of a true community.[45]

Dworkin believes that collective coercive government is essential for any a political society; providing order and the essential "efficiencies" required for citizens to flourish and live with dignity.[46] At the same time, such authority means living under the kinds of control, power and sanctions which threatens the dignity of those same citizens (both those under dominion and those exercising collectively that dominion). Hence the need for reciprocal political obligations for all citizens which has, as its content, a duty to obey the state authority and all its laws. It is based upon accommodating the necessity of state authority.[47]

Unfortunately, with the assumption of a certain kind of political authority and concomitant general political obligation, Dworkin's model is question-begging. As I note in Chapter 1 –

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[44] Simmons, 2001, p90-1. For a similar criticism see also: Leslie Green, "Associative Obligations and the State" in Justine Burley (ed.) *Dworkin and His Critics*, Oxford: Blackwell, 2004, p272-3; Wellman, 1997, p202, n.6 & Edmundson, 2004, p248.
[45] Dworkin, "Replies", p378, in Burley (ed.), 2004.
[46] Dworkin, 2011, p320.
[47] For an interpretation of Dworkin's theory as really a natural duty of justice theory, in virtue of the attitudes which fellow members must hold, see Knowles, 2010, p179. See also Higgins, 2004, p157-169 (esp. p165). Dworkin himself refers to his theory as based upon a natural duty which applies to members of true political communities (Dworkin, 1986, p198). Nevertheless, if we do conceive of associative obligations as grounded ultimately by a natural duty it does not affect my criticism which follows, which is about the content of such political duties. Note that some associative theorists accept that a natural duty to fulfil one's associative duties may be a plausible (if unilluminating) moral foundation for associative obligations (Horton & Windeknecht, 2015, p913-914. See also Greenawalt, 1987, p159).

it is not universal obedience which is required for a state (and its citizens) to function and flourish. And as I observed above, what is important for others in a society is not a defeasible duty of universal obedience, but the thoughtful response to state directives of a good citizen.

Of course, many laws, especially those which reflect independent moral norms, natural duties and well-established collective moral requirements will likely be candidates for inclusion as associative political obligations. Others will be excluded. For example: immoral or unjust laws; pointless or ineffectual laws; laws which are widely and routinely rejected or disobeyed; laws which tolerate a high degree of widespread disobedience without ill effect; laws which might otherwise be considered established norms but where social, economic or political circumstances make their application at this point harmful or damaging or otherwise irrelevant to the common weal of state, society or citizens.[48] In short, the citizen, as a member of a political community, has associative political obligations which include complying with just those laws a responsible, moral, citizen – concerned with the flourishing of the state and the welfare of its citizens – would have. This includes much of what a state demands in law and otherwise. But it leaves open a range of gaps where the associative principle fails to ground an obligation to obey.

Example – Paying Your Dues

> Susan is a union representative organising a strike as part of a wage dispute. Her country has a long history of trade union activity, which over that time has led to great improvements in working conditions, wages, and employee rights.[49] More recently however, her government has passed a law which severely limits the ability of workers to withdraw their labour and unions to take other industrial action.[50] This law has permitted Susan's company to secure an injunction prohibiting the

[48] Nor need disobedience in such circumstances damage the authority of the state.
[49] For a general history of unions improving working conditions and providing benefits to society, the classic study is: Richard Freeman and James Medoff, *What Do Unions Do?* New York: Basic Books, 1984 (see also Bennett JT and Kaufman BE (eds), *What Do Unions Do? A Twenty-year Perspective*, New Brunswick, NJ: Transaction Publishers, 2007).
[50] Of course, overmighty unions and unlimited unionisation may also bring a range of economic and social problems, this example should be considered to refer to reasonable beneficial unionisation.

> strike – if it takes place, many will be arrested. Nevertheless, Susan plans to go ahead (with suitable warnings and caveats for fellow union members). In her considered and correct judgement, this particular law is not binding because it places greatly excessive restrictions on workers and will in time worsen workplace conditions. It is thus neither in the interests of citizens, or the state as a whole.

Although this kind of law might not be prima facie unjust or discriminatory, it is in this example, not supported by an associative political principle. Of course, varying the circumstances would change the moral calculus. In some cases, states are correct to limit over-mighty union power which itself can be harmful. In other cases they are self-serving (e.g. strong unions exercise political power which may be perceived as a threat to established political structures). However, we can easily think of other laws which benefit no-one, either by definition or in virtue of poor implementation. And of course, we can also call to mind many examples from recent history of laws brought forward by democratic states which are unjust or immoral.

In reply, it might be observed that the Dworkinian claim is for a general (i.e. universal) duty to obey all the laws, concomitant with state authority, which is *defeasible*. So that some of that list – for example, unjust laws which have the weight of natural duties against them – outweigh any associative political duty to obey. But this example above is of the kind of law which is not grounded by an associative political principle in the first place. The animating reason for Dworkin is to preserve the order and efficiencies of the state (and permit the collective responsibility of necessary authority) – something which this law does not do.[51] More broadly, it is not clear that universal obedience is necessary to preserve the stability of the state, when it is not what is practised currently in different states.

[51] An alternative possible defence of Dworkin's approach occurs, prompted by his use of "collective" as a prefix before laws (Dworkin 1986, p214 & 2011, p320). Here, Dworkin is describing the ideal manner of formulating law. However, it is suggestive of the idea that, in a Dworkinian true community, with citizens possessed of important attitudes towards each other, explicitly collective decisions have normative force *because* they arise from and reflect the concerns of people who possess such attitudes. The value of the association would then not be the necessity of coercive authority (as Dworkin explicitly states) but its reflection of the collective self-legislation of the members of the association (Note: Perry hints briefly at such a defence at: Perry, 2006; p201; but takes it no further). Unfortunately, such an idea runs up against the brute reality of actual legislation, where the totality of the laws is unlikely to reflect the actual collective concerns or will of the people, but often diverges to a large extent from what many people want. Moreover, even in an ideal situation it is not clear that there is a collective will or desire of citizens or, if it existed, whether it could be satisfied by specific laws. Of course, however, the fact that some laws reflect some citizens' concerns fits with the idea that associative duties are determined by widely agreed norms in society, which I discuss below.

This generalises to other associative theories. For example, Horton, recognising the problem in defining the specific claim of an associative principle, proposes a solution based around the value a political community has for its members. In this case basic order and security; as Horton puts it, the "Hobbesian argument".[52] In some ways this is similar to Dworkin's argument – in order for a state to provide the kind of (predictable, secure) order which that enables cooperation and all the benefits of political life, its authority to enforce that must be recognised through a general obligation to obey all laws.[53] Unfortunately it suffers from the same flaw.

As I note above, many associative theorists, seeking to defend a duty of general comprehensive obedience to the law, as a political obligation, argue that it is an established group norm, principle, or accepted convention of their political community. Instead of relying upon the (purported) instrumental value of a duty of general obedience to the law for one's political community, the argument runs straight from what is widely accepted and expected by the members of that community. Again by analogy, friendships, families, and colleges often have norms of behaviour which are partly constitutive of their nature.

This is, for example, the path taken by Stephen Perry who develops Dworkin's associative model. He claims that political society is (in part) constituted by a norm of general legal obedience ("each and every law").[54] However, we should remember that although the self-image of a particular state may *stipulate* that kind of universal authority, a group norm or principle is in fact constituted by the members, person-to-person (horizontally), not imposed vertically. Many people in political society are sceptical of claims of universal obedience to the law as a norm. Further, the degree to which people obey the law, and why they obey, is, heterogenous. In different countries, some laws are widely recognised to be morally binding, others less so. In some countries, this varies across substantial groups of the population. Consequently, a norm of general obedience to all laws is not obviously a

[52] Horton, 2010, p176-177.
[53] Horton, 2010, p179; p184; p188-189. Similarly, Gans argues that a society needs (i.e. values) a legal system and because such a system is damaged by disobedience, political association supports a duty to obey the law (Gans, 1989, p88). Note however, Gans also admits that his model leaves some laws unsupported (see Ch. 2, n. 70).
[54] Perry, 2006, p201.

universally accepted norm. At the very least, one would expect such a significant empirical claim to be backed up by some evidence.

Further, it is important to note that any norm which is related to legal obedience concerns what people accept as morally binding, not just what they practice day-to-day. Many people obey many laws prudentially, or out of habit, or just unmindfully. And here I agree with Scheffler who writes; "a sufficient number of people must *accept* the norm, in the sense that they regard deviation from it as grounds for criticism."[55]

The consequences of this are such that, even if citizens did routinely obey all the laws in a particular state, that would still not be sufficient evidence for the existence of a group norm in the right way to ground a correlating duty of general obedience. It would have to be shown that the reason people obey is not because of, say, fear of punishment, but because they believe morally it is the right thing to do.

Given the phenomenological basis of political association, the idea that widely accepted moral norms or ideals of practice determine in large part the content of the political obligations which are part of being a member of a particular state (citizen) is entirely plausible. We accept, for example, that families, friends and other associations have generally accepted norms of behaviour which determine what members ought to do. Universal obedience may not be a group norm, but it is nevertheless implausible that a state would exist (at least like many current states) which has no widespread norm *related* to legal obedience. It would I think be a strange and anarchic political society which had no such norms (although not impossible). But at the same time, different norms in political societies regarding the law, are also available and in many cases widely accepted.

So, it seems to me that the interpretation of Perry and others as regards norms of obedience is too quick. Instead, norms related to legal obedience (or relatedly the authority of the state) are based upon *social facts*. In some states, because of their particular historical

[55] Scheffler, 2018, p18 (emphasis in the original). See p16-20 more broadly. Scheffler in fact relies upon universal obedience to the law as a norm for his model (note 43 above) and thinks that this requirement merely risks limiting its scope – and presumably not so much for him to revise his model in any way. I disagree; from the discussion above and in what follows, I think it commits the associative model (at least) to a particularistic bindingness as regards political obligations, leaving lacunae amongst the comprehensive demands of the state.

development, in some circumstances, obedience to all laws (still defeasible) might possibly approach a universal norm. In other, often more socially and politically diverse states, especially those with an historical tradition of non-conformity or pioneer self-reliance, we can be more confident that no such norm exists, or to an attenuated degree. In such cases, the closest to such a norm might a widely accepted convention of watchful respect for state directives (bearing in mind of course that at the same time, other (moral) reasons may apply as regards whether certain laws are binding.

In conclusion, universal obedience to all state laws, even when defeasible, is neither a norm nor a necessity. More broadly there is a clear distinction between an obligation to support and further the interests of one's own political community and the obligation to obey the directives of that political community. While they may overlap there are also gaps.

At this point the search for an associative ground to obey a comprehensive set of laws has hit a formidable obstacle. However, just because this principle fails as a justification for a standard model does not mean it ceases to bind citizens. By taking a wider view, by stepping away from the orthodox approach, we can explore what it does ground in political society. And so, based upon political association, how much of what a state requires is likely to be obligatory? And what ought to be rejected?

5. Associative Obedience and Disobedience – a Contestatory Model

Consider some suggestions as to what might be an acceptable as obligatory norms which could be reasonably part of a shared relationship for many national identities. All of the following are, I think, potentially within the scope of our associative political obligations:

(i) A duty to protect the state and to defend it when necessary.

(ii) A duty to help maintain the political structures and governance of the state, including (jointly) subsidizing state activity and not harming or undermining national institutions, or its economic and social life.

(iii) A duty to obey many laws which are established part of the norms of society.

(iv) A duty to act towards the common good of the state (which may itself have more than one form).

(v) A duty to assist fellow citizens, either as a group or singly.

If, considered broadly, one's associative obligation is a duty to sustain the state and support the flourishing of it and one's fellow members, then all of the above (and potentially others, see for example, section 7) could be required duties of a good citizen in a state according to the circumstances.[56] Immediately we can see the possibility of conflicting political duties. For example, the obligation to further the common good of one's political community might conflict with the obligation to obey a particular law.

Recall the example above of a union contemplating whether or not to organise a strike in the face of an excessive and over-reaching legal prohibition. Openly challenging such a law, with the aim of highlighting its pernicious effect to the country at large might reasonably be considered an act in support of the common good (i.e. (iv) above). Or, depending upon their current negotiating position, of helping citizens (i.e. workers) in this or other companies (v). On the other hand, if we imagine that the law is instead reasonable and restrained, the union over-powerful, and the real reason for the dispute is to build momentum for widespread strikes to secure further union power, then for reasons (ii), (iii) & (iv), the law would be binding under an associative principle.

[56] Are the norms of an associative relationship reductive to a single over-arching norm, such as special care (if this could be a norm), or are they irreducibly plural? I am not sure it matters here. The different norms and (to a degree) other permissible actions constitute the content of associative obligations regardless. It may be that a higher level and more abstract convention may help to shape new norms or provide further countervailing norms, but whether these (in turn) actually function as norms can be determined through a widely shared intuitive grasp. That is, I think sufficient for our purposes here.

Each of these suggested associative political duties above, admits of both subdivision and contestation. Thus, the first example is what people commend when war or serious crime threatens, but it is also what some environmental activists appeal to when they choose to *disobey* the law. For example, the claim that in acting to save an area of precious national wilderness they are acting properly in defence of the state (more specifically its territory, shared resources and national heritage). I discuss different examples of civil disobedience in Chapter 6. But note here that in each case it is possible for the context to determine that the right act for a sensitive and supportive citizen may be to obey a law or state directive, to disobey or even (in some cases), to provide moral reasons both to obey and to disobey.[57]

This is a partial, fragmented and contestatory picture. As such it is similar to that which was concluded from the set of natural duties in Chapter 3 when we examined the specificity of political obligations grounded by natural duties. In the philosophical literature, the fact that a political community will contain a number of different associative political obligations bearing upon citizens is – when it is recognised at all – only noted in passing (and left unexplored) as associative theorists move swiftly to consider obedience to the law.[58] However I am arguing here that it is central to an accurate assessment of the moral consequences of political association. The normative claim of associative political obligations is determined by the feature of specificity. So, we see can see clearly that at the heart of the *idea* of my approach to associative obligations in the political sphere, is a distinction between an obligation to support and further the interests of one's political community and fellow members, and an obligation to obey the directives of the state.

Contrast this with the example of conflicting duties presented in the standard model of associative political obligation. These theories tend to see a general associative political duty

[57] It may sound odd to say a citizen has moral reasons (or an obligation) both to obey and disobey a law, but this refers here not (i.e. not yet) to a final all-things-considered moral ought but to considerations in our practical political reasoning to reach that final ought. For example, if the state is planning to build a deep-water harbour for its navy in an area of outstanding natural beauty (despoiling it and removing public access), the associative pull may be both in support of this state action (especially if the navy is currently important for defence and security) and also against it (especially if suitable and less ruinous alternatives are available).
[58] For example, Dworkin identifies a general duty to obey the law as the "central" obligation amongst a set of the "main obligations associated with political communities." (Dworkin, 1986, p208), yet says nothing about what the others might be. Given the degree to which he leans upon family and friends in his exposition I suspect that he would recognise the list I suggest here. See note 43 above, for some of suggestions from the literature from which could potentially be added to (or subsumed within) the list which follows. Given this, I find it surprising that the idea of conflict between different associative political duties grounded by the same principle has been almost completely overlooked.

in conflict with *other* moral requirements. For example, Yael Tamir imagines an Israeli citizen who is deeply committed to the state of Israel, but who also believes its occupation of the West Bank is unjust. When called up for military service which involves working in that territory, he experiences a conflict between an associative obligation to his home state, to serve in its defence, and opposing "general moral" obligations (we can assume a natural duty of justice for example).[59] This is a plausible depiction of a dilemma between associative duties and other duties, but here I am arguing that it is specifically the citizen's associative political obligations which might require disobedience. For example, if the people in the occupied territory are routinely treated unjustly then the citizen could – quite reasonably – believe this is not a proper action for their state; that laws requiring support or compliance with such are not fitting for their state based upon its history and widely shared values. They may also believe that in the long run such an unjust occupation is not in the best interests of Israel, its common good and the interests of its citizens. Hence the associative political principle, by itself, provides moral reasons both for obedience to the law (military service in defence of the state) and against it (rejecting military service as inappropriate for this state and against its best interests).

Of course, the wider context of such a conflict may well include other moral principles such as a natural duty of justice or an obligation of fair play or gratitude. The point is that a partial, fragmented and potentially conflicting picture of political obligations can easily follow from the associative principle alone. The contestatory model allows that associative political obligations may compete with other associative political obligations. This means that the associative principle may count against a law, and for disobedience, even when (most) natural duties are silent.[60]

If we recall the trade union case from before, political association could ground a number of different and competing responses to the predicament. For example, in the original scenario, where the law prohibiting the strike was over-reaching and unjustified by any associative grounds, a reasonable interpretation of the duties of membership, may also

[59] Tamir, 1993, p136. Two other examples of associative political obligations conflicting with different obligations (e.g. natural duties) are: Lazar, 2009, p101 & Horton, & Windeknecht; 2015, p916, n.2.
[60] Practically it may be impossible to carry out practical political reasoning about such questions with individual moral reasons held suspended, as it were, for isolated attention. Nevertheless, an awareness if the different principles involved may help a determine a reasonable outcome. Similarly, it may be hard to identify a political decision during where all possible natural duties do not apply.

include acknowledging that an overt challenge to policing in this case would harm the common good. Or that given the febrile atmosphere around the dispute with the company, there would be a good chance that some people (union members and others) might be harmed in a stand-off. Both are moral reasons from political association which count against the strike. However, it may also be clear in this case that a highly public stand against such an unjustified restriction of worker-rights is important for the common good of a state.

If we consider the different examples above of the possible content of associative political obligations, we can see how conflict between different associative political duties will occur at many points in political life. A law may in many cases be to the common good but also disobeying it may well be the only way of helping a group of fellow citizens in dire need. And this practical political deliberation will also often involve wider political principles such as one or more natural duty.

Note that this fractured, partial and contestatory picture applies even if it is the case that the norms of a particular state do in fact include *universal obedience to all laws*. That is, if my argument in section 4 above is wrong and there is an associative political obligation which is entirely comprehensive (that to all intents and purposes the standard unary model succeeds in its primary ambition). This is because different possible associative political duties (for example, (i), (ii), (iv), (v) above) may still be able, context permitting, to conflict and potentially outweigh that comprehensive associative duty to obey the law. The way in which the content of an associative political principle is open to different specifications in different contexts, means that this conflict will happen *regardless* of whether one of those specifications is a duty to obey all laws.

To see this clearly, simply replace point (iii) above with "obey all laws". One may grant a comprehensive associative general political obligation – as per the unary theories of Dworkin, Horton, Tamir, Seglow, Lazar and others and still see this subject to radical complexity and conflict between different associative political principles. As argued above (section 4), my own view is that the unary theory is not a viable model for reasons already given and associative political obligations in support of the law will in most cases be partial. The point here is to emphasise that the wider contestatory approach does not necessarily

hang upon my judgment about existing theories. The only way in which that would not be the case would be if a unary theory were able to show that the content of the associative political principle was all and only all state laws. In other words, a general duty of legal compliance excluding any other norm or established support or assistance to state and citizens.

By following a more open exploration as to what political association grounds, the contestatory approach is now quite some distance from a standard associative model of political obligations. While it may provide a ground for many state laws, it may also ground disobedience to some laws.[61]

Example – The Local Hero

> Rosemary runs a youth club in a rough and poor city. In her country, citizens share (amongst others) a general norm of legal obedience and also a norm of a high degree of care for one's fellow citizens ("…we look after each other" etc..). Ordinarily law abiding, Rosemary will on some occasions, where a young person she knows well has committed a relatively minor crime, fail to report this to the police, and/or lie to officers when they investigate. This is when she thinks that the legal process and penalty would engender serious harm to their prospects and their

[61] Delmas is unusual in that she does attempt to explore the possibility of associative political obligations grounding disobedience (Delmas, 2018, p168-197 & p241-246). Unfortunately, she focuses entirely upon an idiosyncratic interpretation of Dworkin's model, which she sees largely as a duty of dignity. Dignity, for Delmas, underpins state authority and is evidenced when laws, policies, and institutions strive to express equal and reciprocal concern (p175 & p182). In turn, there is right to disobey to resist violations of people's dignity. Although interesting, this does not resemble an associative theory at all – but rather a freestanding natural duty. Delmas claims it grounds a "general obligation to resist one's and others' violations of dignity" (p191). Her examples feature protecting, restoring or asserting dignity; whereas one would expect an associative political duty to justify a wider range of potential acts in support of one's community and fellow members. Further, she advocates extending the moral claim of dignity beyond the political association, to people in many different countries. Of course, associative political duties can justify acts to help people beyond the borders of a state, but this justification is based upon the norms shared by members of that state, and not – as Delmas argues – political membership across different countries (p196). Unless, that is, the relevant association is itself all people everywhere – in which case her associative obligation again resembles a natural duty. Despite this confusion, I do think there is merit in examining the normative demands of a duty of dignity, considered as a natural duty in the political sphere. So, insofar as a duty to safeguard people's dignity has a distinct moral demand from that of a natural duty of justice, it could possibly be included alongside those other natural duties which ground political obligations of obedience and disobedience noted in Chapter 3.

family. In these cases, she endeavours instead to resolve the situation involving parents and/or guardians.

In each situation, deciding whether to obey the law and report a crime to the police or to disobey the law, Rosemary is using her practical political judgement to assess a range of different potential specifications for her associative duty.[62] This is informed by her deep experience of the people concerned. Note that in circumstances where she does obey the law and report a child to the police, and those where she does not – both are cases of associative political obligations being discharged.

Adding to the complexity of the contestatory picture of associative political obligation is that associative obligations are not directly, or necessarily instrumental, and in particular not maximising. Just as my duty to my family members is not necessarily to show them the most care and concern, so too my duty to the state is to discharge my associative duties – which are we might say ones of *mediated instrumentality*. They may aim at certain goals (depending upon the specification of their content), but what is important is that the kinds of duties which are widely recognised as acceptable norms of conduct. Put another way, what is important from the associative perspective is that we respond from the palette of shared and widely (commonly) acceptable responses which are here determined at a certain level of abstractness. And in turn at the level of practical deliberation and action – delineated in more detail by the context. In some cases, for example concerning laws which reflect widely held convictions, the appropriate discharge of the associative duty will be clear. However, in some other cases the precise requirements of the associative duty will be blurred to a varying degrees.

Finally, we should note that from this range of possible specifications, acts may be obligatory which are neither laws nor opposition to laws. Not only may the associative principle require legal compliance or disobedience, but it also may require acts which are not legally required. Just as with natural duties, we recognise some associative political obligations will be orthogonal to the demands of the state. For example, if it is a well-

[62] Of course, any associative duties also need to be reconciled with any natural duties which might apply; for example, concerns against avoiding harm or justice or samaritan assistance (alongside other moral concerns). For now, it is important to see how the associative principle itself may operate in the political context.

established norm and a key part of the identity of citizens that they are positively politically engaged, then this may be something which comes (through the associative political principle) to be included as a political duty, even if it is not enforced by law. Although legal compliance is useful as a sharp example of citizen's political obligations it is by no means exhaustive of the idea. As well as responsible (and potentially onerous) political engagement, other (non-legal) examples could include: helping volunteer rescue groups, supporting neighbourhood watch (or police investigations), caring for elderly neighbours, or compliance with public hygiene good practice during a national health crisis.

This is a fundamentally plural and partial picture where the associative membership of the citizen grounds a broad range of different duty-conferring aspects. For example: considering only those five possible foci of an associative political principle suggested above, consider how, in many states, what a government proposes and what is actually in the long-term interest of the state are often separate (as history demonstrates). Similarly, government directives may diverge from what is in the common good of the citizens. Or an associative duty to defend the state may conflict with an associative duty to care for fellow citizens. And of course, these associative political obligations may be supported by, or conflict with, other political duties issuing from natural duties or a scheme of fair play.

In short, associative obligations are really about being a good citizen rather than being an obedient citizen. Although the two may overlap, they are not the same.

Perhaps if we reflect upon other examples of associative relationships this should not come as a surprise. Groups like families, neighbourhoods and colleges are only a fraction of the scale and complexity of any state – but in those cases the actual obligations which bind upon members are often varied, particular to context and prone to conflicting with other associative membership duties.[63]

[63] In response to a concern that associative political obligations are indeterminate Horton says that "…surely people can be, and often are, uncertain exactly of what the binds to their polity require of them…" and argues we can move away from an understanding of these as only a "narrow duty to obey the law." Instead, he says, citing Parekh 1993, that these political duties are "more open-ended" (Horton, 2010, p163-164). This is I think correct, but his admission runs counter to his subsequent attempts to determine the content of such as general obedience to the state (compare with p179 & p184). My (charitable) understanding of this potentially contradictory statement is that he conceives associative political obligations to be *more* than merely obedience (but *definitely including* comprehensive obedience). Parekh is, for example, an advocate of a wider conception of political duties (see Chapter 1, section 4). Again, like Dworkin (see note 58 above) we see that

6. Multiple Political Entities Grounding Political Obligations

It is not just the state which is a locus for associative political obligations. The particular association to which these different possible political obligations attach may also vary – citizens may correctly identify with discrete political societies within states. For example, distinct regions within federal systems, autonomous provinces and territories within nation states. Someone may intelligibly (and for associative purposes, normatively) be a citizen of both Quebec and Canada; Catalonia and Spain; Scotland and the UK.[64] These non-state political communities often come with their own history, culture, and traditions and with deep established identities and norms – all of which shape the related associative political duties. In many of these cases the state has streamlined the formal administration of the alternative political entity to avoid legal conflict. However, given how the characteristic specificity of the associative political principle entails a plural nature of associative political duties, I think it is possible for a duty to one political entity to conflict with a duty to another. For example, to prioritise the common interests of one's fellow members in a political entity, versus the legal demands of the parent state.[65]

Example – Pipe it Down!

> The government plans a controversial new programme of natural gas extraction and pipeline construction. It will stimulate the economy and create many jobs in an isolated and poor territory – one with its own identity within the wider nation state. It will replace highly polluting power generation and help the nation to be independent of expensive imported oil. However, it will have a substantial impact upon one of the few remaining wildernesses in the state and it will be built right through the historically significant lands of an indigenous community. Further,

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the idea that there will be *a number of specific and different* associative political obligations, all grounded in the same state, is merely glossed or hinted at in the literature. Yet it is – as I argue here – the most salient feature which determines how membership in a political community determines our political duties.

[64] For example, currently in Europe there are more than 20 active established separatist or secessionist movements, many with deep and distinct cultural traditions and historically grounded identities separate from the nation states which administer their territories.

[65] Alternative political communities which ground associative political obligations will likely be smaller than those states where their obligations have impact. But not always. They may also overlap (in this sense) with more than one state.

developing other sources of renewable energy would be better. The construction is controversial and attracts both supporters and protestors.

Which political communities are involved here which might ground associative political obligations? The national state has an interest, but so too does this particular territory, which for historical reasons has a regional identity just as strong as that that of the nation. Third, there is an indigenous community which also has a strong identity constituted in part with responsibilities and duties. In this example, the different ways in which the context and circumstances configure the content of the associative political principle, means that members of the three engaged political communities may have conflicting associative duties. For each, discharging their associative duty may mean obeying national laws (to support or not hinder the work), taking action within the law to stop the plans, moral reasons which undercut the moral standing of the law (i.e. permission for civil disobedience), or even a strong duty to engage in civil disobedience.[66] Note that in the cases of groups defined by state injustice, their norms and associative duties to help each other may have no *direct* connection to questions of injustice. However, natural duties and other relevant political obligations may apply in addition to associative obligations.

This raises an interesting question – is there a limit to which non-state political communities might ground associative political obligations? Above I have highlighted (i) nation states; (ii) sub-state political regions (provinces etc..), (iii) indigenous communities. To this we might add (iv) diaspora groups and (v) coherent established communities within states.[67] This last category need not be formally constituted but can arise organically out of a shared history or experience – particularly in response to the way in which identifiable members are treated within a state. Unfortunately, this is often a bad experience; recently for example, we might identify the experience of black citizens in the USA, or of French

[66] Inspiration for this example comes from the protest campaigns and civil disobedience around the Dakota Access Pipeline (2016-17) and the Keystone Pipeline network (2011-2019) built to carry oil across the USA (the latter carrying oil from Canadian oil sands, a particularly polluting form of oil and oil extraction). On resistance from indigenous peoples to these, see Nick Estes, *Our History is the Future*, London: Verso, 2019, p158-164.

[67] The possibility of associative political obligations owed to other "non-standard" political communities overlapping and potentially conflicting with those owed to a state has been largely ignored by political philosophers. Though the idea that people may have distinct associative political obligations in virtue of their membership of a diaspora has been briefly noted. See Tamir, 1993, p138 & Ilan Zvi Baron, "Diasporas and political obligation" in the *Routledge Handbook of Diaspora Studies*, London: Routledge, 2018; p223-230.

citizens of Algerian descent. Groups with an experience of systematic discrimination will have associative reasons to shelter and protect fellow members, to resist oppression, to build support and resistance structures and to work together to effect systemic change. All of these duties have the potential to conflict with the demands of the state.[68]

These communities are political in a sense, even if they are "non-standard". They operate on a large (territorial and numerical) scale, have histories and identities which relate to that large scale (amongst other things), and typically interact with at least one established state on a number of points of social and economic policy. This breadth also applies to the associative identity of members, which is inclusive and encompassing rather than confined to (say) a single issue or narrow aspect of one's life (in contrast to a trade union for example). They will also have ambitions which relate to the treatment of their members and the wider relationship with the state. In many cases they have ultimate goals that include national self-determination.

I confess that drawing the limits on this category of non-state political groups may seem somewhat arbitrary. Why not, for example, other large associations such as established churches, or multi-country environmental organisations? I do not deny that these association may share some of the characteristics I identified in the list above, but the fewer they possess, the further they are from the idea of a *political* community.

Of course, other associations and groups beyond political societies may ground duties which occasionally conflict with our political obligations. But if we are to engage in political philosophy in a sufficiently abstract level as to see the normative architecture which underpins the relationship between the citizen and the state, then these kinds of distinctions are useful, even if some detail is lost.

[68] Again, I would note that these associative duties are in addition to any natural duties to resist and address injustice which may also apply.

7. The Political Bonds of Association

It is sometimes said that associative duties are too weak to ground political obligations.[69] But reflecting upon our experience with other paradigm associations such as family and friendship would indicate that we commonly see them as potentially strong.[70] More commonly, it is claimed that their strength varies according to the justice of the political society.[71] This seems on the surface a reasonable suggestion, alongside the idea of a threshold of injustice where associative obligations fail altogether. I see no reason why it should be only considerations of justice however.[72] A state which failed to provide many public goods, or one which was reckless in risking harm to people, or which failed to protect its citizens (for example) would reasonably have a weaker call upon its citizens' support. Of course, it need not be so straightforward, a state which falls somewhat short may justify additional encouragement from its citizens, for a while at least, particularly as regards efforts to improve its functioning. This after all is what a good citizen ought to do. Moreover, political duties are owed first to the members of the political association (with the state mediating to enforce), and so while the formal structures of a state may be variously lacking, the citizenry together may still constitute a rewarding and supportive community.

Nevertheless, if a state is consistently lacking in significant ways as a valuable association, it will – at some point – start to ground duties with less weight. Ultimately, a state which fails across a range of criteria may have none.[73] And this cancellation of associative political duties would apply as regards both duties to obey and also duties to disobey. However, even in a "failed" state such as this, people may still have some associative political obligations, but these would be based upon membership in non-state political groups such as those noted in section 6, above. Accordingly, they are likely to be partial as regards the

[69] Andrea Faggion, "Why a Hedgehog Cannot Have Political Obligations", Ratio Juris, Vol. 33 (2020), p317-328; p322-324.
[70] This is the position of many standard associative models. For an argument they have the potential to be extremely strong, see Lazar, 2016.
[71] Scheffler, 2018, p14; Dworkin, 2011, p322-323; Susanne Sreedhar and Candice Delmas, "State Legitimacy and Political Obligation in Justice for Hedgehogs: The Radical Potential of Dworkinian Dignity", Boston University Law Review, Vol 90 (2010), p737-758; p758.
[72] Scheffler links justice to the provision of the value of membership and (similarly) Dworkin to the way in which a state provides for and treats its citizens. Yet it seems to me that this is better assessed on a broader metric than justice (even if that is drawn broadly).
[73] That does not mean that no other political principles apply, however.

laws imposed by the state, and further fragmented according to membership, although also potentially justifying disobedience – especially if the nation state is no longer just or competent.

Modern political societies are vast and complex, and assessing the weight of political obligations is often an intricate affair involving close attention to the particular context and circumstances. So, I am not sure if much more can be said about the weight of associative political obligations *in general*. This is also, we should note, the same position the standard model finds itself in, although my more fine-grained approach here aims to illuminate the normative demands of political association in more detail.

There is however, one final point to make on the normative consequences of an associative political principle. That is, it also acts so as to help specify and ground a number of natural duties in the political sphere. The suggested argument goes like this:

(1) The functioning of an associative principle in a state is a duty to be a good citizen, that is, to sustain the state and help it and one's fellow members flourish.

(2) For any association to be sustained and flourish, certain important social and public goods are necessary. For example, justice, security, safety.

(3) Many of these kinds of goods are delineated, advanced and protected by natural duties.

Therefore that:

(4) One of the ideals or conventions of a political society, is a recognition that the normative claim of natural duties *applies* to that political community. That is, citizens ought (i.e. as part of their associative political obligations) to make their state a *nexus* of associated natural duties.

As a result, in a reasonably just state, the associative political principle acts so as to *particularise* a number of the natural duties (to use Simmons's terminology) we examined in

Chapter 3. As I note there, these are already subject to a degree of practical, or pragmatic, particularisation which applies to the content of such natural duties. The argument here provides a more comprehensive link between natural duties and the particular state in which a person is a citizen. It is because a citizen values the state and its members (associative principle) and ought to act so as to sustain and support it (a common norm), that they are required to consider the demands of several natural duties as applying specifically to their home state and to their fellow citizens.[74]

This would typically include a duty of justice, common good, broad samaritan rescue, a duty to protect basic rights, and potentially others as the circumstances require. These particularised natural duties apply, as natural duties, in addition to the moral requirements of the associative membership of the state. For example, one might have an associative political obligation to pay taxes towards an extensive national welfare system which helps sustain the state and its citizens, supported by the (associatively-particularised) natural duties of samaritanism and the common good. Moreover, as will be familiar from this and the previous chapter, in some circumstances these political obligations may conflict. For example, in the Pipe it Down! illustrative scenario above, national associative political obligations may support a valuable or even essential piece of energy infrastructure (i.e. count in favour of those laws which support it and against any opposing action), however natural duties of justice and protecting peoples' basic rights may, depending upon the proposed plans, count against it (i.e. in favour of oppositional civil disobedience).

[74] This is a fairly novel idea. Note that Chaim Gans has also argued that associative duties (what he calls communal obligations) intersect with natural duties in the political sphere. However, his idea is that a political community specifically needs a legal system, and that a natural duty of justice and a consideration of the harm of disobedience (consequentialist principle) provide moral reasons to make compliance with that system a political obligation. This he takes to replace the idea that there are any distinctive political duties which follow from associative responsibilities by themselves (Gans, 1992, p88-89). In its reliance upon the need for obedience and a narrow view of what is important for a political society, Gans's idea is similar in some respects to Horton's Hobbesian argument (see note 53 and associated text above).

8. Conclusion

Throughout the literature, the standard associative view tends to move very quickly from the normative phenomenon of group association to a justification of a general duty to obey the state. While allowances are made for exceptions in the case of injustice alongside the usual obiters for civil disobedience, the argument in each case is that the same principle which binds us to our family and friends acts on a larger scale to bind us to a general obedience to what the state demands. It would be uncharitable of me to assume that the motivation is mainly to find a principle which justifies a certain picture of state authority rather than genuinely explore just what associative obligations actually might require of us in the political context. Regardless, the standard view is thus committed to a very *politically conservative* approach; specifically, that in almost every (rare) case where disobedience to the state is considered, it is a different (cosmopolitan, universal) moral principle which is the one pushing against the associative duty's support for established laws. Moreover, it assumes that it is the state as a monolithic whole which establishes and defines the norms which shape citizens' associative political obligations.

In contrast, the contestatory approach argues that disobedience which is an impetus for political change can be *associative* disobedience as well. Thus, when we look closely at what political association entails, it turns out to be quite different from a duty to be an obedient citizen. In this chapter I have explored how two features: specificity of content, and multiplicity of political entities, are important determinants of the content of associative political obligation.

By demonstrating that the associative principle can ground a wide range of political obligations, which are partial, plural and which may be oriented in support of or against state directives, the contestatory approach re-purposes this principle and helps us to see more clearly the full range of normative claims political association may require of us.[75] This approach retains many of the attractions of the standard model, viz.: a phenomenological veracity and close match with the people in a region. Further, by not

[75] Hence, I agree with Horton and Windeknecht's tentative conclusions that there is something normatively significant about an associative political principle (note 9 above). What is significant however is that it does not support a unary model of general political obligations, but a fragmented contestatory theory.

restricting its aim to a rigid goal of a general and comprehensive political obligation, it provides a richer picture of possible justified civil disobedience.

Chapter 5
Working Together

Then suddenly he said, "I have it!"

"We are going to swim all together like the biggest fish in the sea!"

He taught them to swim close together, each in his own place, and when they had learned to swim like one giant fish, he said, "I'll be the eye."

And so they swam in the cool morning water and in the midday sun and chased the big fish away.

Leo Lionni.[1]

Summary

This chapter examines a third significant political principle: fair play. I argue here that political society is, in part, composed of a number of separate fair cooperative programmes, and reject the monolithic model, which treats the state as a single scheme. Then, I consider the moral claim of some "sub-state" fair schemes which operate in the political arena. Some of these may also ground political duties which may, depending upon the circumstances, reinforce the demands of the state, or undermine them and permit – or require – disobedience.

[1] Leo Lionni, *Swimmy*, New York: Dragonfly Books, 2017.

To help explore this diversity of fair play political duties, I introduce a new analysis of fair play as a political principle, which reveals a diversity of possible fair cooperative enterprises which might ground different political obligations. I also borrow an older idea from Michael Walzer, of associations which have claims to (political) primacy. One important factor for any practical political reasoning through plural fair play duties is their relative weight. Here I demonstrate that the weight of fair play duties is quite different from how it is commonly understood (this last section also has implications for fair play beyond the political arena). Overall, a picture emerges of political duties which are partial, plural and contestatory; often with a number of different fair play political obligations applying at the same time.

1. Fair Play and Political Obligations

Although the idea of fairness, broadly, is a common and well-worn idea (even when in dispute), as a principle connected to political obligation it is of a more recent origin.[2] There is an early idea of it in Hume's description of the genesis of justice through necessary cooperation.[3] And in 1916, CD Broad introduces a principle of fairness for cooperative action, in his analysis of the argument "what if everyone did that?"[4]

Contemporary discussion of fair play as a ground of political obligation tends to begin with HLA Hart's formulation. Hart described a "mutuality of restrictions", which was justified because it was fair, in this case, equally distributed.[5] For Hart this principle could be seen in a range of social situations of which political society was the most complex:

[2] Fairness or fair play? Both are in common use to the same effect (e.g. compare: Knowles, 2010, Ch. 9 with Dagger, 2018). To avoid confusion, I will employ 'fair play' throughout to describe the political principle and concomitant duties, as I am interested here in the normative claims of specific fair cooperative schemes and 'fairness' is commonly taken to also cover broader (moral) ground.
[3] Hume, 1978, Bk III, Pt II, section 2 (esp. p490, 496-500). Richard Dagger suggests it is hinted at in Plato's *Crito* at 50a (Dagger, 2018, p42). Here I have my doubts and think Dagger is instead misinterpreting an argument for a duty of gratitude. Nevertheless, the idea, writ broadly, is an old one.
[4] C. D. Broad, "On the Function of False Hypotheses in Ethics", International Journal of Ethics, Vol. 26 (1916), p377-397. See also: A. C. Ewing, "What Would Happen if Everybody Acted Like Me", Philosophy, Vol. 28 (1953), p16-29.
[5] Hart, 1955, p185ff.

> In its bare schematic outline it is this: when 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 … but the moral obligation to obey the rules in such circumstances is *due to* the co-operating members of the society, and they have the correlative moral right to obedience.[6]

Subsequently, Rawls's advanced a specific "duty of fair play" as the ground of an obligation to obey the law.[7] This was similar, the main components being, as with Hart's model, a cooperative venture, equal effort or restriction from all members owed to other members.[8]

Both Hart and Rawls considered that fair play was ultimately a voluntary principle. This was why Rawls in his later work abandoned the idea of it as grounds for a general political obligation. For although it seemed to apply to some in political society, he could see it would not be able to ground a universal duty to obey the demands of the state.[9] Thus, for Rawls, fair play was relegated to a supplementary role as regards political obligation, one which may ground additional reasons to obey (see section 3).

The degree to which fair play is a voluntary principle has been central to attempts to advance or repudiate it as a ground for political obligation.[10] On one hand, philosophers

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[6] Hart, 1955, p185 (emphasis in the original).
[7] Rawls, "Legal Obligation and the Duty of Fair Play," in S. Hook (ed.), *Law and Philosophy*, New York: New York University Press, 1964, p3-18.
[8] One notable difference being, for Rawls cooperative enterprises must be just; i.e. meeting Rawls's two principles of justice (Rawls, 1999, p96 & p301).
[9] Rawls, 1999, p96-98, p100, p301-308, p330 & p310, n.13 (this last for an explicit statement of this position).
[10] The voluntary criticism is a fulcrum for the theory of fair play in that the bulk of its development as a political principle has evolved from various responses. However other criticisms have been advanced. For example; that states are too large, diverse and lacking in a genuine sense of cooperation for fair play to be meaningfully said to bind citizens (see Simmons, 1979, p140-141; Simmons, 2001, 38-42. In response, Dagger, 2018, p113-117; Edward Song, "Acceptance, Fairness and Political Obligation", Legal Theory, Vol. 18 (2012), p209-229). Another objection is that a workable fair play theory requires a specification as to what an actual fair distribution of benefits and burdens might be; and this may not be straightforward. As John Horton observes: "…what is fair is itself highly controversial and contestable." (Horton, 2010, p92; see more broadly: p91-93. In response, Dagger, 2018, p58-62 & p105-107). Or, that in displacing other possible counterfactual schemes the fair play political principle is a morally conservative theory (see Calvin Normore, "Consent and the Principle of Fairness," in *Essays on Philosophy, Politics, and Economics*, ed. C. Favor, G. Gaus, and J. Lamont, Stanford CA: Stanford University Press, 2010, p225-241). These are important criticisms but my focus here is not on a defence of fair play as a comprehensive ground, but on what I believe to be its most salient (and overlooked) features and what they entail for citizens' political duties.

like Nozick, Rawls, and Simmons have insisted fair play cannot bind people without their willing voluntary agreement to any mutual restrictions, or contributions.[11] On the other hand, advocates of a fair play political principle, like Klosko, Arneson and Dagger argue that the acceptance of benefits, particularly certain benefits, can bind citizens to a state conceived as a complex mutually beneficial cooperative enterprise.[12]

Most states provide certain public goods which are essential to living an acceptable life – such as: a secure environment, personal safety, disaster mitigation, disease control, a stable legal framework, important health and safety regulation. Such goods are characterised not only by their indispensability for a minimally acceptable life but also the fact that they are nonexcludable, in that they have to be given to everyone or no-one. The idea here is that, if on balance people benefit (i.e. the goods are worth the effort of production), we can presume that they willingly and knowingly accept such public goods alongside the particular obligations which come with being part of the cooperative enterprise necessary for their production. Hence for Klosko, such goods may be termed "presumptively beneficial."[13]

This particular public goods argument makes a strong case for a nonvoluntary political principle of fair play. And it is one which I think is supported by strong intuitions we have as regards the fairness of cooperative action in other situations – as we see below.

[11] Nozick argued against the idea of fair play tout court, let alone that it might support political obligations. Both Simmons and Rawls accept the principle, but argue it is subject to some form of voluntary acceptance which rules it out as a basis for political obligation. See Nozick, *Anarchy, State, and Utopia*, New York, Basic Books, 1974; p90-95; Rawls, p301-308; Simmons, 2001, p1-26 & 27-42. See also: Daniel McDermott, "Fair Play Obligations", Political Studies, Vol. 52 (2004), p216-232.

[12] George Klosko, *The Principle of Fairness and Political Obligation*, Lanham, MD: Rowman & Littlefield, 1992; Klosko, 2005; Arneson, 1982; Richard Dagger, *Civic Virtues*, New York: Oxford University Press 1997, p46-48, 55-57, 68-80 & Dagger 2018. For similar views, see Knowles, 2010, p130-138; Greenawalt 1987, chapter 7; Den Hartogh, 2002, chapters 4 & 5; Samantha Besson, *The Morality of Conflict: Reasonable Disagreement and the Law*, Oxford, Hart Publishing (2005), p477-489; Delmas, 2018; Song, 2012; Garrett Cullity, "Moral Free Riding", Philosophy & Public Affairs, Vol. 24 (1995), p3-34; Isaac Taylor, "Political Obligations and Public Goods", Res Publica, forthcoming 2021.

[13] Klosko, 1992, 2005, 2020. See also: Arneson, 1982, p620-622. Note that the presumption can be rebutted in some cases. Thus, where a citizen can demonstrate they genuinely do not need (say) national defence, then laws necessary for its production will not ground fair play duties (Klosko, 2020, p49-50).

Example – The Crowded Lifeboat

> After a shipwreck, a large group of survivors are crowded into a lifeboat in the open ocean.[14] There are limited water rations, and any rescue will arrive too late. The good news is that there is a populated coast approximately two weeks away at rowing pace. Knowing this, all the survivors start rowing in shifts to reach safety before the water runs out. Accordingly, the boat starts to make good speed and at this pace, disaster will be averted. One passenger, however, declines to row. Despite being fit and in good health, he observes that his additional effort is not necessary as the boat is already making sufficient progress. He refuses to help.

Even though no-one has expressly agreed to the need for a programme of rowing, by refusing, this passenger is free-riding upon the efforts of everyone else. This intuition holds even when his refusal to help in the joint project has no impact on the outcome, nor we might imagine, on the efforts of the rowers (i.e. there are plenty of rowers to share the task and no-one gets exhausted). This strongly suggests that fair play can apply in situations where there is an unavoidable receipt of a certain type of indispensable presumptively beneficial public goods.

We can see this clearly in cases where a fair play enterprise is built upon the demands of a natural duty. For here the benefit (the public good, the aim of the cooperative scheme) will help other people. This is the approach Wellman employs, employing a natural duty of samaritanism (see Chapter 3).[15] In this case fair play obligations are based not upon presumptively beneficial goods, but an obligation to help (rescue) other people. This is not voluntary at all.

Is the state like a lifeboat in this way? Membership is certainly nonvoluntary and it is also true that we (and others) depend upon it for certain indispensable public goods. And although no state confines itself to a single specific (cooperative) goal, there is evidence to

[14] Lifeboat passengers (alongside snowed-in neighbours and thirsty villagers) are a staple of the philosophical literature on fair play. See for example: Huemer, 2013, p86-100 (esp. p87-92); Robert Mayer, "What's Wrong with Exploitation", Journal of Applied Philosophy, Vol. 24 (2007), p137-150; p138; Justin Tosi, "Rethinking the principle of Fair Play", Pacific Philosophical Quarterly, Vol. 99 (2018), p612-631; p625-626 & p631; Den Hartogh, 2002, p75-76 & p91; Delmas 2018, p109.
[15] Ch. 3 n. 16.

show that its citizens do often regard free-riding in some areas and as regards some state demands, as unfair.[16] So, we can allow that nonvoluntary justifications of *some* state activity and concomitantly *some* state demands are plausible. But this is limited, for states do a lot more and demand a lot more than what is covered by the provision of indispensable nonexcludable public goods (or indeed, the discharge of a samaritan duty).

Two responses are possible. One is to treat the state itself and all its actions and demands as a unified whole of which certain public goods are an important or essential part.[17] In this case, the whole polity is the cooperative enterprise. The other response is to identify the specific activities of the state which are necessary for the production or delivery of those presumptively beneficial public goods. In this latter case, the fair cooperative enterprise constitutes the production of these goods, and shared contributions (i.e. the burdens of membership) towards that production is limited and will likely be considerably less than all of what a polity may, or typically does, demand.

The first I will call the whole-state view of fair play. Exponents of this include Dagger and Wellman.[18] The second is a partial-state view of fair play, exponents here include Klosko and Wolff.[19]

1.1. The Whole-State View

Is the whole state view plausible? In its simplest form, the position is that a state ought to be considered as a whole, a fair cooperative system for as long as the overall bundle of public goods and benefits outweigh the burdens. We can assume that some of these public

[16] Tyler, 1990; Klosko, 2005, p181-222.
[17] The term public goods here and in the following paragraphs refers both to presumptively beneficial public goods essential for an acceptable life, and also those public goods which instantiate the delivery of a particular natural duty such as Wellman's (political) samaritan duty which I discuss below. In the latter case this might for example include state provision of a stable environment and the rule of law. The point being that this is instrumental in binding people to a fair cooperative scheme in a nonvoluntary manner.
[18] Dagger, 2018, Wellman, 2005. See also Arneson, 1982; Hart, 1955; Govert den Hartogh, "Review: George Klosko, Political Obligations", Ethics, Vol. 116 (2006), p792-796.
[19] Klosko, 1992 & 2005. Wolff, 1995. See also Knowles 2010, p11, p68 & p137-138; Gans, 1992, p62, n.54 (although there Gans identifies his view of fair play with that of Klosko, elsewhere he seems to intend something more like a whole-state view, referring to the goods in question as the "existence of law and obedience" (p66)).

goods are presumptively beneficial, essential for an acceptable life (safety, security etc…) and consequently bind non-voluntarily. Or, that some state action helps to deliver a natural duty of samaritanism. Of course, much of what a state does, and what it demands, is not connected to relevant public goods or a natural duty. The point is that the overall package of goods/activity constitutes the cooperative scheme. For example, here is Govert den Hartogh, criticising Klosko for his restriction of fair play in a state, to supporting what is required to secure indispensable presumptively beneficial goods:

> Obviously, we cannot allow people to pick and choose the elements of the scheme which they like and to deduct a proportional part from their taxes for the rest. We can only have one scheme for all or no scheme at all.[20]

To avoid begging the question, the whole-state approach needs to provide a reason why all of the state, and all its burdens, constitutes the cooperative venture.[21] If we recall the lifeboat example, there may be many other tasks which make life on board easier and more comfortable, yet which are *not* obligatory. The reason each person is required to make a fair contribution to the rowing scheme is because it is essential for survival. Why must a state's normative claim be monolithic?

Den Hartogh posits that the reason the whole-state must constitute a fair cooperative scheme is because citizens ought to accept a reasonable democratic decision as to the entire package of goods and duties. This, he argues, follows from the fact that some decision method is required in order to allocate the burdens of membership in uncertain circumstances.[22] This latter point is unobjectionable; in fair cooperative enterprises, some indeterminacy is inevitable and some arbitration necessary (e.g. to determine what a fair allocation of a particular burden might be). However, it does not follow that this decision-making method is what *determines* the whole shape of a national-scale fair cooperative scheme.

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[20] Den Hartogh, 2006, p796.

[21] Hart for example, appears to have just assumed that "political society" was, as a whole, a fair cooperative scheme (Hart, 1955, p185). The thought here tends to be that the state provides a set of valuable public goods and as such can be considered as a whole, a fair cooperative enterprise. See for example: Cullity, 1995, especially p21-22; Delmas, 2018; esp. p.110; Song, 2012 (Song's view is distinctive in that he argues the empirical point that many people, at least in the USA, actually do accept that their state is a roughly cooperative scheme).

[22] Den Hartogh, 2006, p795-796.

The overall scope and limit of a state-level cooperative scheme is in fact determined and limited by the goals of the scheme (for example, securing certain indispensable, nonexcludable public goods), and the necessary efforts of members. The common endeavour involved in securing those specific goods is what grounds the fair contribution. In this case, fair contribution equates to obeying those laws and directives which are necessary for securing the goods. This is the normative claim of that fair play scheme.

The normative claim of that fair play scheme is not shaped by the decisions of any democratic (or deliberative) assembly.[23] Of course, such an assembly could decide to add or remove the *provision* of some public goods, some of which may indeed be indispensable and nonexcludable. But it is important to remember that it is the need to secure those particular goods (and not other public goods) which grounds duties to contribute.

For example, a democratic assembly could decide to enact new public health laws which would help secure a population from the imminent threat of dangerous new diseases. IN turn, this would likely increase the range of laws (and taxes) which are justified by a national level scheme of fair play. However, if the assembly also decided to increase taxes to pay for some new non-essential public goods, such as a huge programme of public art and entertainment, that would not bind under fair play, except for those who explicitly agreed to it.

In a sense, Den Hartogh is correct, one cannot pick and choose – but it is also the state (and its democratic assembly) which cannot pick and choose. A democratic assembly can enact all manner of different laws and require a range of taxes. However, it is only those laws and taxes, where compliance is a necessary part of the production of the public goods which are the goal of a cooperative enterprise, which will be grounded by fair play. To use Klosko's conception of presumptively beneficial goods, those laws and taxes which are necessary to secure public safety, security, and other goods indispensable for a minimally acceptable life can be justified through fair play. Whereas laws and taxes which support less

[23] Other than, as I note above, what people cede to it as regards determining the precise contours of what is a *fair* contribution, within the bounds of securing the specific public goods.

necessary state activity, alongside those which are not useful at all, are unsupported by fair play (though they may be otherwise justified).

Notice also, one worrying implication of the whole-state view that packages up all the different activities of a country. It would make citizens hostage to all manner of wicked governments for as long as they are personally receiving some marginal benefits. Given the indispensability of some public goods included in the package, it follows that a government might bring forth all manner of vile and wicked laws and actions and still – considered as a whole – the account of public goods for each citizen would still be such as to ground a general duty of fair play to obey all the laws, including the worst. To be sure, this would be a defeasible duty, with the most immoral laws likely overruled by other principles (natural duties for example). It is nevertheless counter to widespread and settled moral convictions to think exceptionally wicked laws are morally binding in the first place.[24]

Christopher Wellman has developed a more sophisticated account of the whole-state view derived from a natural duty of samaritanism.[25] He argues that the state itself is a specific indispensable public good because it is the (only) way in which we can discharge an important natural duty (i.e. samaritan political rescue).[26] Since delivering this public good necessitates a well-functioning state, citizens are said to be under a fair play obligation to not endanger the effective operation of the state.

For Wellman, this entails a contribution by each citizen of forgoing their discretion as to how they might discharge that natural duty. In his model, discretion is a good, valuable for each person. And he argues that if everyone were able to choose to discharge their duty in

[24] It would I think remain counterintuitive even if, as well as defeasible, it was weak duty.
[25] Subsequently, Lefkowitz has also employed the same approach; using a fair play contribution of foregoing discretion to support a theory based upon (in this case) a natural duty to promote basic moral rights (Lefkowitz, 2007; p12-13).
[26] I should note that Wellman's particular conception of a samaritan duty of rescue has received some criticism (e.g. Simmons, 2005, p182-187); Lefkowitz, 2007, p10; Knowles, 2012, p166-168; this last a friendly criticism). However, I will not criticise it here. The reason is twofold. First even if there is some eccentricity to his restriction of what is otherwise a duty of rescue to one form of specifically political peril, or if it shares some aspects of a duty of charity, I think Wellman nevertheless succeeds in pointing to an indispensable public good – one which we have a natural duty to provide for other people. Thus, I am happy to take any required adjustments to its exposition as read. Second, it is not essential, or even important, to my wider contestatory model of fair play, for every specific goal of a state level cooperative scheme to ground political duties. Moreover, a different natural duty may do better (e.g. Lefkowitz, 2007 and discussion below).

their preferred manner – to decide which actions to support in pursuit of protecting people from the peril of political chaos – states would struggle to function effectively.[27]

> The upshot of this is not only that we must sacrifice to rescue others from the perils of the state of nature, but also that we (as individuals) *have essentially no discretion as to the form that our sacrifice must take.*[28]

The idea here is that a state can only suffer a small amount of disobedience and still function well. Choosing to disobey is arrogating an unfair amount of discretion to disobey, even if your disobedience is otherwise as just (writ broadly) as obedience. For example, Wellman suggests, withholding taxes to donate to a worthy charity, or paying extra taxes to offset disobedience to other laws. The citizen is making an exception of themselves.

This form of a whole-state approach is valuable for illuminating how important the existence of a functioning state is to the delivery of public goods. For example, it would also apply to a model which relied upon the provision of Klosko-style presumptively beneficial goods. However, as an argument for universal (comprehensive) obedience it rests upon a mistake.

Wellman's emphasis upon discretion and choice obscures the normative structure of these circumstances (i.e. for an agent facing a decision whether to obey or not). It alludes to the question, because not everyone may choose to disobey, what makes me so special? But people both make a choice when they obey and when they disobey. They *ought* to choose what the just act is, all things considered. And the just act is based upon the moral reasons which apply in the circumstances. Their *mere* choice (or preference) is not normatively significant. If it is the case that those moral reasons in concert point clearly towards an act which is at variance with the law, then that is what the citizen ought to choose – all things considered. To take Wellman's samaritan duty, if the law in one situation would be grossly unjust, and some disobedient alternative is just, then disobeying is the right action to take. Presumably also, a noncompliant citizen would happily accord to other citizens the same

[27] For the argument in detail, see Wellman, 2005, p41-46. For a similar argument see Lefkowitz, 2007.
[28] Wellman, 2005, p45; emphasis in the original.

license to disobey that unjust law in the same circumstances. After all, we are not discussing mere criminality or whim, but what a person ought to do all things considered.

Of course, we cannot generalise the principle: disobey when you *think* an act is more just than disobeying the law. However, we can generalise the principle: if, all things considered, in this specific circumstance, this law (or state directive) is unjust then you should do what is just instead. With specific regard to Wellman's argument, *one of the moral reasons which applies* is connected to the practical impact of such principled disobedience upon the state. Wellman's examples omit that factor, comparing for instance, tax revenues only with charity donations.

Once we include that factor (and moral reason) back into a consideration as to whether to obey or not, we see that Wellman's claim about discretion is connected to the specific circumstances of the citizen facing a demand for compliance and in turn, to the question of how much any disobedience might affect the state.[29] To use his example, of a tax-dodging charity donor, he ought to factor into any decision whether the state could function if his actions were generalised – that is, is he contributing the same effort as the others members. Let's say in his (well-functioning) society, people generally under-report their taxes and on average pay only 95% of the total taxes they owe. In that case, if he withholds 5% and donates it to charity, he could do so without having to take account of that fair play duty. If the state routinely wastes large amounts of its revenue through inefficiency and fruitless endeavours and could easily run on 80% of its normal tax take, he could more easily justify withholding more. However, if he were contemplating withholding almost all his taxes, he would have to factor in that fair play political duty against the benefits as it weighed against his actions – for no state can function on zero tax.

Moving away from taxes, as I noted in Chapter 1, actual legal disobedience (often unjust law-breaking) is both routine and widespread in many states which nevertheless continue to function quite well; at least well enough to deliver a public good of samaritan rescue and safety.[30] Harmless, restrained and unobtrusive disobedience, often has little effect upon the

[29] As I note in Chapter 1, although the self-image of the state involves a peremptory view of legal compliance it does not in fact demand obedience (in the traditional content independent sense).
[30] Greenawalt makes a similar observation: "Citizens have a fair play duty only to do as much as their fellows; since most people do disobey many laws, no one has a fair play duty to do better in terms of law observance

functioning of the state. Disobedience to those laws which are unjust, harmful, ineffectual, outdated or particularly wasteful may even be beneficial to the running of a political society. The same might be said for laws which may be just, but which are administered or implemented in a poor or unjust manner. Again, disobedience – in these particular circumstances – could be generalised without harming the state unduly.

The guide here is that a citizen's fair contribution towards a state-supplied public good will include a fair contribution towards the *necessary* means of its production.[31] The functioning of a state can be included as one of the necessary means. How much compliance is necessary to ensure that the state is not itself imperilled, to secure its ability to deliver on a specific morally important public good? This is an empirical question, but I think we can sketch a few broad guidelines. It is not I suspect a matter of how much in total (i.e. as a percentage), but rather, *what kind* of compliance and to which laws. Generalised flagrant disobedience of a range of well-established criminal laws (murder, assault, fraud) would indeed be damaging beyond a certain level. But, as I note above, generalised disobedience of laws which are relatively trivial, outdated, wasteful or unjust could have very little poor impact. If the effective functioning of the state is a necessary ancillary public good for the provision of samaritan rescue and safety – it can be satisfied by a degree of careful action and appropriate legal compliance by the citizen (both obedient and disobedient).

As a result, Wellman's whole-state model requires only partial compliance to the law in line with a fair share of what is necessary to support the functioning of the state.[32] This is far from the general duty to obey he suggests. In fact, it is the same as the partial-state approach endorsed by Klosko and other multiple principle theorists.

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then they do." (Greenawalt, 1987, p147; see also p137). I agree, although I would emphasize that no one has a fair play duty to do more than their fellow citizens *are morally required to do* (as we see below).

[31] Leslie Green has expressed some doubt that a fair play obligation to X includes an obligation to its necessary means (Y) as well. He is right to doubt that a separate *freestanding* obligation is created, but if Y is a component of X then it is obligatory (Leslie Green, "Review: The Principle of Fairness and Political Obligation", Ethics, Vol. 104 (1994), p392-394).

[32] Lefkowitz broadly follows Wellman, allowing that no discretion is permissible (Lefkowitz, 2007). Dagger replaces discretion with "self-restraint" and the state stands in as necessary to protect the rule of law as the indispensable good (Dagger, 2018; esp. p39-40, p66-67, p186). Dagger's view is both broader and less specific and he could reasonably be considered to adopt both types of whole-state approach discussed here. Note that in his earlier approach to fair play Klosko argued that even trivial disobedience is unfair because, if it were generalized, it would damage the habit of legal compliance which, he claims, underpins the rule of law (Klosko, 1992, p101-107). This is part of what he calls the "indirect argument". Notably, it plays a more limited role in his later work (see Klosko, 2005, p9 & p102-103).

1.2. The Partial-State View

The second approach to fair play in the political context focusses upon those aspects of the state which can be seen as a discrete cooperative enterprise for the purpose of fair play. The most prominent example of this is the approach taken by George Klosko, who bases his model upon a division between certain presumptively beneficial goods, and the rest of the actions and demands of the state.[33] A principle of fair play will cover *some* laws; e.g. those which help to secure indispensable public goods like personal safety and protection (i.e. national defence and a policing & justice system), a safe and secure environment, protection from health hazards and disasters. It also covers support for some additional public goods which are not themselves indispensable, but which are necessary parts of the delivery of the presumptively beneficial goods (e.g. some communications infrastructure is required for the provision of reasonable public safety.[34]

Overall, this translates into compliance with many criminal and civil laws, some tax demands and support in other limited fashion. This is far from the standard model's desiderata of obedience to all the laws and demands of the state. So, in turn, Klosko reaches for two other political principles (in this case a natural duty of charity and a second fair play principle to supply the common good, which is dependent upon the existing community established by his main principle of fair play) to justify comprehensive political obligations.[35] Because the partial-state approach admits that fair play cannot function as a unary support for a comprehensive political obligation to obey all the laws of a state, it requires additional support from other political principles.

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[33] Klosko, 1992; 2005; 2019.

[34] Over time Klosko has reduced the size and importance of such "discretionary goods". This is because in part the specific discretionary goods provided is not fixed; e.g. which roads, or national educational provision does a functioning police force require? Compare for example, Klosko, 1992, p85-99 with Klosko, 2005, p102-105 & Klosko, 2020, p71

[35] Klosko, 2020 (see also Klosko, 2005, for a different variation of a duty to provide the common good as a quasi-utilitarian principle). For similar approaches, combining fair play with other principles with the aim of achieving a general obligation to obey all the laws of the state, see Gans, 1992, Wolff, 1995, Knowles 2010, p57-58, p130-138, p165-168, p207 n.35 (for combining principles, see p68-70 & p75). Although he is arguing against the idea of fair play as a political principle, Michael Huemer also makes a similar point by analogy. He imagines a lifeboat where in addition to (usefully) bailing out water, passengers are also required to pray to Poseidon, flagellate themselves and pay fees to other passengers. Huemer, 2013, p86-100 (esp. p87-92).

This partial-state view means that there is a division between what may be advanced (by a state or its agents) as a *putative* fair cooperative scheme and what is *actually* morally binding. Recall the lifeboat example above, if it became apparent that instead of rowing in shifts for 24 hours a day, the passengers would safely reach land with only half that amount of effort (perhaps only rowing at night and early morning and staying under cover from the sun during the day), then that is what is (i.e. becomes) morally binding for that cooperative scheme. Alternatively, we can imagine a Klosko-style public goods example; if a state demands £20,000 of taxes per person in total but the amount which is actually required to produce its indispensable nonexcludable public goods is only half of that, then what is owed and morally required is in fact only £10,000.

This point is important when we consider how citizens ought to respond to unjust fair play schemes. Just because a political authority makes a demand of a group of people to deliver some good, that does not entail that the demand constitutes the shape or boundaries of the scheme. People can be bound to support the cooperative production of certain public goods which is organised in a just and moral manner but not that which is unjust or immoral. For example, a local police force may be well run, but a national security service may be profoundly unjust. In which case although both may claim support grounded by a fair contribution towards the public good of safety and security, but only the former has a legitimate moral claim.

Moreover, the boundaries of a fair play scheme may also change over time. While people often encounter established fair cooperative schemes, they can also arise or grow up around people. We see this clearly with examples of smaller scale fair play schemes, from monthly lunch clubs to volunteer rescue groups. People see what is required and agree to form a cooperative scheme – or the need for a necessary good requires them to do so. And the same applies on a national scale (e.g. a settler colony which grows into a small political society over generations).

If an organic *genesis* of a cooperative scheme is plausible, so is an organic *evolution*. In voluntary schemes, people can simply agree to change the rules. For nonvoluntary schemes, if the nature of the production of the public goods whose supply underpins the existence of the scheme changes, then so too would the fair play scheme. For example, a

state which once operated an onerous military conscription scheme while it was threatened by aggressive neighbours, will no longer be able to justify this when relations with their neighbours improve.

I am sympathetic to the partial approach of Klosko and others. However, I think that the reality is even more fragmentary than any extant (standard) model of political obligation. Consider for example that people visiting a country will have to (and often happily do) abide by a system of traffic regulations that could by itself be considered a fair cooperative scheme. But that does not make them members of a wider scheme providing indispensable public goods. Further, their obedience to criminal laws may be taken as willing acceptance of the benefits and membership in a cooperative scheme to provide public security, but they are hardly engaged in providing a stable society in a wider (and longer term) sense as might obligate obedience to (some parts of) the civil law. They are not paying taxes to provide public goods.

My partial approach is congruent with Rawls's later understanding of fair play as applying to a sub-group of citizens (see section 3, below). Moreover, this is surely Thoreau's important insight, that one's obligation to the state holds in part where what is demanded is moral, but that it lapses where it is engaged in wicked actions (Thoreau happily payed his highway tax but refused the poll tax because the US permitted slavery in Southern states and had recently declared war with Mexico).[36]

So, we have a fragmented view as to what the fair play support of a range of public goods might be in a state, which might then break down into a plural view with more than one fair cooperative scheme in a state. Some will be voluntary such as a scheme of traffic regulations and some will be non-voluntary such as those which are tied to a presumptively beneficial good (or for the discharge of a natural duty.[37]

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[36] Thoreau, "Civil Disobedience", in: Nancy Rosenblum (ed.), *Thoreau Political Writings*, Cambridge: Cambridge University Press, 1996, p1-21). See Ch. 6, n. 5 for more detail.

[37] I am arguing here that the state's fair play claims upon citizens is best represented by several distinct fair schemes. Might it rather be just one complex scheme which encompasses all the different presumptively beneficial goods, and voluntarily accepted goods, all provided by a state? Is it then a question of description? It might, and at this stage of my exposition there is little difference between the two ways of describing a partial and plural set of political duties. However, as I will go on to show, the single scheme view will increasingly fail to do justice to the more complex fair play duties which follow from this principle in the

Each scheme may ground a political obligation to obey the law, or it may justify actions which involve disobedience to the law. Further, these different fair play schemes may change over time in their normative claims, as the facts and circumstances around each scheme change. This is some distance from a more standard model of fair play in political society. Moreover, I think the reality is more complex still.

2. Different Fair Cooperative Schemes Which are Part of the State

Thus far we have seen how fair play is more partial and plural in the political context than is widely imagined. That is, it can apply to a range of different cooperative schemes in the political context. For example, that portion of a tax system which produces certain indispensable and nonexcludable public goods. Or a set of traffic regulations which road users agree to when they set out to drive or cycle. Or laws which permit and enable a state to protect people from the political peril of being in the state of nature.

However, the state may also be a locus for fair cooperative schemes built upon other nonvoluntary moral goals. To understand this better I have developed a new analytical model which separates out two important components of fair play in cooperative enterprises. This is to help illuminate how other theories sometimes miss important features of fair play as a political principle and how it makes normative demands upon people in the wider contestatory approach. My main claim is:

- **All fair cooperative enterprises are composed of two distinct normative components. These act as rules or guides which determine each enterprise's overall shape and scope. I call these: (i) the determining factor and (ii) the contribution factor.**

political sphere. For it is the detail of what people are, or are not, required to do by their fair play political obligations which is at issue.

Take the first element, the determining factor. This identifies which people are members, why they are part of that scheme and to what goal or purpose their contributions aim. Consider for example expressly voluntary schemes of fair play (we might say 'Nozickean' schemes); such as contributions towards a regular games night, or the rules of a lending library. In these cases, members consent to join and in turn agree to a certain form of cooperation and contribution. Here the determining factor is consent and that consent helps to identify who the members are, and their duties. Consider schemes which aim at producing certain presumptively beneficial goods. Here the determining factor can be described as something like necessary acceptance. So, we see that the nature of the goods and the efficacy of the scheme's provision will determine the members and their overall goal. And, for cooperative schemes oriented around a natural duty (e.g. Wellman's samaritanism) the determining factor will focus upon what is required to achieve that goal.

Take the second element, the contribution factor. This indicates the fair contribution required by each member towards the goal of the cooperative practice – what each person must do to discharge that duty. Importantly, as I will argue below, the contribution factor governs how strong or weighty the moral reasons grounded by the principle of fair play are in the same context.

As to what is itself a fair distribution, this will of course, vary with circumstances, however it seems plausible to have a distribution that is equal *as a default or baseline* and subject to additional adjustments as regards other substantive moral requirements (e.g. adjusting a tax payment system according to income and wealth differentials amongst other concerns).[38] Here we encounter Horton's criticism that this risks deferring any fair play duties until a suitable pattern of fair (just) distribution can be agreed, and the worry that this may be ultimately unresolvable.[39] The partial and plural approach taken here goes some way to addressing this concern, however, in that it is generally more straightforward (though not always) to identify reasonably fair distribution for specific limited fair schemes, such as traffic laws or protection from specifically political peril, than for larger complex schemes.

[38] A full depiction of this would require a reasonably complete theory of what constitutes a just distribution of public goods in a society in this regard. This would take us too far from our main investigation here.
[39] Note 10 above.

At this point we might refer back to the idea of involving a political mechanism of reasonable (or democratic) deliberation (section 1.1. above). Above, I argued that this was inappropriate when it came to ascertaining the overall shape and scope of the scheme itself. This is fixed by the moral principles in play in the determining factor. However, some representative deliberative mechanism could be useful in helping to settle and clarify what the just participation towards the goal of that fair play scheme is for individual members (the contribution factor).[40]

Highlighting the determining factor helps us to see a fuller range of the possible different fair cooperative schemes that apply on the national political scale. While much of the literature has focussed upon those which are based upon the provision of certain public goods, there are also other kinds. A typology would, I think, include at least four different types. Each will typically only ground political obligations which are partial, rather than comprehensive. Each may also overlap in terms of which state directives they justify, in some cases reinforcing the normative claim to obey. In some other cases, they may conflict in terms of what they require. Each may also overlap in terms of who are members.

1. Schemes based upon a clear form of consent, likely tacit consent. Such as a system of insurance and regulations for operating vehicles, some public transit systems, or a volunteer military or police service. We can call these Nozickean fair play enterprises.[41]

2. Schemes based upon (i.e. using my model, "determined by") the production of some indispensable nonexcludable public goods (following Klosko, goods which are presumptively beneficial). As noted, these may comprise different fair schemes

[40] Of course, speaking generally, some fair cooperative schemes may by their nature make clear what a fair contribution is. For example, straightforward consent-determined schemes, such as a monthly team shared lunch; or those which require simple compliance, such as traffic regulations. The idea of public deliberation may be particularly useful as regards larger schemes in the political realm.

[41] Although I have argued strongly for a partial-state view, there is one way in which a whole-state view might be possible in some future political society. This is if the determining factor entailed that the boundaries of the scheme matched onto the boundaries of the state. The most plausible way in which this might happen would be for near-universal express consent to such a fair cooperative scheme. Such a (hypothetical) idea is a fair play extension of a reformist consent account of political obligation (Beran, 1987). Instead of consenting directly to obey the state, citizens consent to be part of the state-as-cooperative-entity.

within the state. For example, people may be said to have a duty of fair play to cooperate nationally with a reasonably just and well-run system of criminal justice that has as its goal the safety and security of the population. Or support for an organised volunteer fire service scheme. Or a state public health programme.

3. Schemes based upon an important good secured by the state for other people. This is the model advanced by Wellman and Lefkowitz. The determining feature may be described as a natural duty to provide that benefit or reach that goal – a duty which applies to everyone. That specific natural duty is what sets the fair cooperative practice's scope. In addition to Wellman's samaritan duty (or Lefkowitz's duty to support basic rights), a number of the other natural duties I have discussed could – in this way – justify fair play schemes. For example, the expanded samaritan duty which applies not just to specifically political peril but to help people in need more broadly as advanced by Knowles; or a natural duty of justice.[42] These are advanced under the orthodox approach as grounds for political obligation, but I think that they are also determining factors for fair cooperative political schemes. Other natural duties which might also function to determine fair cooperative schemes underpinning political duties could include a strict duty of charity.[43] Or one based around a non-instrumental environmental ethic.[44]

   Might the provision of Klosko-style presumptively beneficial benefits be considered in the second category, as instead a natural duty justification for a fair play scheme? In the literature the (long-running) debate upon this has – to an extent – become bogged down in definitional questions concerning the acceptance of such benefits and what psychological conditions might be required.[45] If instead we were to think of the necessary provision of such goods as a manifestation of the natural duty of necessity and common good (Chapter 3) then that problem might resolve itself, especially since such goods are required not merely by the citizen

[42] See Chapter 3.
[43] Arneson discusses charity (including "Good Samaritan" duties) and fair play (Arneson, 1982, p629-631), although he is concerned to define the shape of a national fair play scheme and sees a duty of charity as possible limits to its scope. I agree, but I think instead it be a candidate to define a fair cooperative scheme.
[44] See Chapter 3.
[45] For example: Simmons, 2001, p27-42; Simmons, 1993, p251-260; Klosko, "Fairness Obligations and Non-acceptance of Benefits", Political Studies, Vol. 62 (2014), p159-171; Renzo, "Fairness, self-deception and political obligation", Philosophical Studies, Vol. 169 (2014), p467–488.

upon whose duties we may be interested but also by other citizens for an acceptable life. In this way, the presumptively beneficial goods justification for fair play obligations at a state level us supported by a natural duty of the common good, to be considered alongside a samaritan duty, a justice duty, a protection from harm duty (for example) as the determining factor of a state-level fair cooperative scheme. This would, I think, be an interesting response to the (ongoing) criticism of Klosko-style public goods defence of fair play political obligations.

4. Schemes based upon other non-voluntary political principles. Which ones? One suggestion is that an associative political principle (Chapter 4) could constitute a determining factor which maintains that for some people, their home community or political state ought to be seen as a scheme of fair play. Here the determining factor also applies to everyone for whom the associative duty applies. The goal could be similar to that of a natural duty, that is, supporting important aspects of their community or political state.[46] One might imagine that the national narrative in such a political community reflecting the normative claim with a "we all pull together" theme, as opposed to (say) one of individual competition.

What we see here is that the principle of fair play tends to act, in the political context, in a *symbiotic manner* with other different moral principles. Whether it is express consent, the acceptance of certain indispensable public goods, a natural duty, or an associative principle. This diversity, I suspect, also applies more broadly to all fair cooperative schemes. Recall the lifeboat example; imagine there are also several people who were injured amongst the shipwreck survivors and they need a routine of care (e.g. administering drugs, changing dressings to keep them dry, support in rough weather). That would constitute a second cooperative project in addition to rowing. If the rowing scheme has a determining factor of necessary goods, the care scheme is determined by a natural duty of rescue or care.

[46] One worry here might be that this has the potential to reintroduce the idea of a whole-state scheme which is based upon (for example) an associative goal of flourishing. But recall from our discussion at the start of the chapter, even in this case it will not be close to a scheme that applies to all state demands. Moreover, as we saw in Chapter 4, what the associative principle demands of citizens is support for the state and citizens, not obedience.

Recall that with fair play schemes determined by presumptively beneficial goods, those goods must be worth the effort (i.e. the fair contribution). A corollary here for fair play schemes which are non-voluntary and determined by a natural duty or some other moral principle, is one of reasonableness. In a sense too they must be 'worth the costs of production', in that the burdens of the scheme are appropriate to the moral weight or importance of the benefits. They must also be constrained to a degree. Just as the provision of some presumptively beneficial public goods, such as personal security, could be expanded to become all encompassing, so the possible demands of some natural duties – mediated through fair play – also need to be balanced and limited, in view of the other competing moral and non-moral requirements of citizens.

A modern complex political society, providing a range of public goods and touching upon a diverse range of interests, may in some circumstances, have functioning fair play schemes from all four categories variously obligating its citizens: voluntary schemes, those which apply in virtue of a number of presumptively beneficial public goods, those which shape the discharge of several natural duties, those which shape the associative duties of citizens. This entails a potentially wide range of different moral reasons bearing upon those citizens. This is not something which we normally see within the narrow focus of the orthodox methodology. Moreover, since we now have different fair play schemes oriented around different aspects of state demands, there is the possibility that they might conflict as regards what they require of their members.

Example – the Dutiful Officer

> Susan is obligated by fair play to serve in the army (national service) and pay taxes for the military forces in her state. This is to secure the indispensable public good of national peace and security. Unfortunately, her new government plans to wage an aggressive war upon a neighbouring state. Susan believes (reasonably and correctly) that this endeavour which will cost resources her state does not have, damage its economy, and risks destabilising its political structure. She is also therefore obligated under a different national-level fair play scheme, to pursue action against the war. This second scheme has a determining factor of a natural

duty of samaritanism (narrowly drawn). Susan is similarly also obligated under a third fair play scheme with a determining factor of a natural duty to avoid unnecessary harm as the conflict will certainly endanger many of her fellow citizens alongside the lives of others.[47] These fair play political duties also apply, ceteris paribus, to her fellow citizens. Depending upon the circumstances she (and they) may also have a duty to oppose the war under a fair play scheme to provide the (original) public goods of defence and security if these might be put in jeopardy by plans for truly reckless military adventurism. This last point is an example of how a fair play scheme may evolve away what is required in one instance to another, regardless of the stipulations of the state. Depending upon the context, these contesting political duties may weaken the obligation to support the military, or even obligate civil disobedience against military service and tax under-declaration.[48] (Note also that beyond the four political principles of fair play outlined here, there may be several natural duties and/or an associative which apply directly to provide reasons in this kind of scenario).

Notice that the goals of these national-level cooperative practices (determined by specific public goods or natural duties etc..) may not in themselves identify the required specific fair contributions to a fine-grained degree. This lack of specificity may leave some room for alternate contributions. This is a result of the sometimes thinly defined (we might say 'high level') nature of the goal of some particularly large and widespread cooperative enterprises; i.e. what is required to provide a certain nonexcludable public good. In contrast however to principles of natural duty and political association, the specification gap for political fair play will often not be large. This is because the content of a fair contribution is often limited, to a degree, by the definition of the scheme.[49]

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[47] Are the second and third fair play schemes in this example two separate schemes or one with two different determining factors? While the latter is not an impossibility, in this case I think it is two different fair schemes because they have differences in the scope of what applies determined by whether it is a samaritan or a harm duty. In this case the samaritan duty applies to the threat of political instability to the state, whereas harm applies more broadly to the wider harms of armed conflict. Note that this illustrates the complexity of practical reasoning around one's fair play political obligations.

[48] They may also obligate acts which are neither for or against but orthogonal to the law, such as involvement in or support of legal anti-war protests and campaigns.

[49] See Greenawalt, 1987, p140. For examples of arguments which overstate the problem of specificity, see Jiafeng Zhu, "Fairness, Political Obligation and the Justificatory Gap", Journal of Moral Philosophy, Vol. 12 (2015), p290-312 & Patrick Durning, Two Problems with Deriving a Duty to Obey the Law from the Principle of Fairness, Public Affairs Quarterly, Vol. 17 (2003), p253-264. In both cases, their error arises because they conceive of fair play as being predominantly about proportionate reciprocity for a benefit

The contestatory approach has moved some distance from the standard model of political obligation. Several different state-level fair play schemes can operate at the same time, grounding indispensable public goods or the discharge of natural duties. These may conflict, providing moral reasons which can support, or undermine, each other as regards compliance with state directives. Although much more fragmented and plural than the standard model, thus far I think that the contestatory approach is a truer view of the actual operation of the principle of fair play as regards citizens' political obligations.

3. Different Fair Play Enterprises in the Political Arena

Almost all scholarly philosophical discussion of fair play as a political principle tends to assume that the state, or rather the laws and other demands of the state, constitutes the sole arena of political obligation (whether on a whole or partial basis). On one hand this focus seems understandable, it is how this area of philosophical exploration began, with Hart and Rawls, and it is often how states present themselves to citizens, especially as regards collective action (taxes, vaccination programmes). Yet at the same time, examples in the same literature usually begin with different kinds of smaller, specific schemes, like leaky lifeboats, community water rationing, or building a sea wall.[50] In the main, these instances of collective action are proposed as reasonably unexceptional cases of binding fair play obligations. The universe of putative fair play schemes, small and large, is of course vast. However, some of these other cooperative schemes also make normative claims which interact with the demands of *political society*.

Notably Rawls, in his later depiction of fair play, saw it not as grounding a general obligation to everyone, but applying instead to a particular sub-set of citizens. Those who, to use his particular euphemism, are better placed or situated, by which we might take it to

(allowing for a wider range of plausible responses) rather than fair (often equal) contribution towards a cooperative goal.

[50] Respectively: Huemer, 2013, p87 et al; Klosko, "Presumptive Benefit, Fairness, and Political Obligation", Philosophy & Public Affairs, Vol. 16 (1987), p241-259; Mokrosińska, 2012, p105.

mean richer and endowed with a greater share of private goods.[51] They are more able to secure beneficial public positions and to "take advantage" of the political system to advance their aims.[52] This is, I think, a good example of a "sub-state" cooperative system of fair play.

Rawls claimed that the members of this particular cooperative practice would be bound to support the existing just constitution and arrangements of the state because it is the cause of their success. Their fair play political obligations would be in addition to those from the natural duty of justice, binding members twice and more strongly to the laws and directives of their state.[53]

While I agree that this kind of group could have additional political obligations, I am doubtful of this last point. While the idea that a sub-set of privileged citizens who have benefitted from the existing arrangements in a larger society are duty-bound to support those same arrangements might seem 'fair' (i.e., just), that need not apply to the specific fair play obligations of this privileged group. Recall that fair play involves obligations to fellow members in pursuit of a particular goal. I think that this will be contingent upon the local circumstances. In some circumstances a sub-state fair play scheme may provide additional reasons in support of those established by a Rawlsian natural duty, in others they may not.[54]

To speculate as regards Rawls's view, I think it is more accurate to say that members of this sub-state scheme will have *additional* political duties. Perhaps their goal involves supporting people working in the same industry. Or charitable assistance towards some group in society (though not the poorest). This is of course not what Rawls intended.[55] However these are distinct political principles, and it is quite possible that the particular obligations justified by one (a sub-state scheme of fair play) will not match neatly onto those justified by a second principle (a Rawlsian natural duty of justice).

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[51] Rawls, 1999, p100 & p302.
[52] Rawls, 1999, p100, p302, p308, p330. Specifically, Rawls notes running for and gaining public office as an example.
[53] Rawls, 1999, p100, p303, p308
[54] That is not to deny they may have reasons from justice to support the state.
[55] Rawls does use the term "noblesse oblige" as regard this group at one point, perhaps intending to demonstrate that they would be bound by additional obligations to a just state; i.e. to *existing* political obligations (Rawls, 1999, p100). This is instructive as it helps us to see that such a fair play scheme might involve additional political obligations but not necessarily in support of existing obligations owed to the state.

Rawls's depiction of this fair cooperative scheme is illuminating because it helps us to see how such sub-state schemes can arise and make normative claims upon citizens in the political sphere. I think that, depending on the circumstances, a number of such schemes can and do create fair play political obligations for citizens. These may justify obedience to the law (or some laws), undermine obedience, or ground a duty to disobey.

This category of sub-state fair play schemes has been largely overlooked in thinking about political obligations, but it is important as regards how the principle of fair play operates in the political sphere. A number of such schemes will bear upon citizens. Recall our two-stage model of fair play; sub-state schemes are fair cooperative enterprises which have different determining factors and which demand different contributions from members (who in many respects will overlap with or form a sub-set of a state's citizens).

Of course, most small cooperative groups will not impinge upon the political arena to any degree at all, e.g. a sports club or lift-share scheme. But a national trade union may well have immediate and long-term political goals and a membership in the millions, as do many political parties, some environmental movements, and human rights campaigns. Most large established churches are concerned not just with the superlunary but also with the temporal needs of their members. Regions within nations may also have differing cooperative goals, as might established cultural and diaspora groups.[56]

To answer this question, it is helpful to draw upon a distinction made by Michael Walzer in a discussion of civil disobedience. Here Walzer identifies groups which are "primary" in scope, which means they act on the level of wider society, and those which are smaller and "secondary" in scale.[57] The groups Walzer thinks have genuine claims to motivate civil disobedience are restricted to those which operate or aim to operate on the larger scale –

[56] Supra-state cooperative schemes may also exist which affect people's political obligations. Although unlike obligations based upon the associative principle it may be harder to identify quite what the identity relations are here and to what extent belonging to such groups (e.g. wider ethnic identities, larger diaspora groups, religions (as opposed to locally established churches) and arguably the human race as regards action to tackle environmental or other trans-border issues) genuinely constitutes fair cooperation in the sense discussed here.
[57] Walzer, *Obligations. Essays on Disobedience, War, and Citizenship*, Cambridge MA: Harvard University Press, 1970; esp. p10-11.

which means primary associations and also, importantly, secondary associations with "claims to primacy" in one area or another.[58]

Although Walzer is concerned with duties based upon consent and civil disobedience, I think this distinction is helpful more broadly as regards other sources of obligation – in this case fair play – and for both obedience and disobedience.[59] And it helps to identify sub-state groups which specifically or deliberately aim at affecting the political obligations of cooperating members. Fair play obligations from such primary cooperative enterprises are sometimes specifically aimed at affecting some citizens' response to specific laws (e.g., where a trade union asks its members to strike in defiance of a prohibiting law). Whereas the fair play duties of smaller secondary groups (e.g., a sports club) are less likely to cut across the law (or those groups are often keen to avoid conflict and will amend their rules and practices accordingly).[60]

If we recall the example of the military reservist officer above. We can imagine that Susan is also obligated by the principle of fair play as a member of an established national peace-movement that rejects all military service. This organisation does not condemn the payment of taxes (where such goes towards military forces), but all its members agree to refuse to serve in any military (even in an administrative capacity). In this case, Susan has fair play political obligations which pull in opposite directions. If she refuses to serve, she will be free riding on the efforts of her fellow citizens to secure safety. If she serves, she will be free riding on the efforts of her fellow peace campaigners.

And of course, Susan's position is further complicated by the obligations we have examined in Chapters 3 & 4. Note that Susan's obligations under fair play are not connected to whether her actual efforts will have any impact upon the aims of either

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[58] Ibid. We are interested here really in sub-state groups (secondary groups) which make moral claims regarding obligations on a primary scale (which may conflict with state directives) on a partial basis. As Walzer notes, a secondary association with a claim to primacy on every area of the national level is one which likely has a revolutionary ambition.

[59] Also, other political principles. For example, it applies to the different sub- and super- state associations which are potential grounds of associative obligations in political society (Chapter 4). Further, in some circumstances the members of a group which has a particular claim of justice, or a specific good in a society (in virtue of a natural duty) might have political obligations – again oriented for or potentially against state directives. Groups of citizens may also be a locus for duties based upon gratitude.

[60] That is not to say that obligations generated through fair play on a small scale will never impact upon a citizen's choice of action when faced with the law, but this is likely to be less often and less concrete.

scheme. Further, even if she decides in the end to (conscientiously) refuse her military service it does not necessarily follow that she is disinterested in the actual public good of defence.[61]

We can imagine other examples, where fair play operates to bind the members of larger associations (or those which claim to have an impact on a political scale). Trade unions asking members to illegally withdraw their labour or picket workplaces, churches which may ask members to pay funds towards campaigns of civil disobedience, environmental groups which organise boycotts or recommend public or political action, professional bodies or colleges and community organisations etc… All these institutions may instantiate or develop cooperative schemes which in turn generate obligations on the basis of fair play. In some cases, they may generate more than one. For example, being a cooperative member of Susan's peace movement may entail a fair play duty to engage in volunteer activity and collective civil disobedience alongside avoiding military service.

If we accept the idea that some secondary associations, those with scale and/or ambition on a primary scale (upon some area at a national level, e.g. as regards the provision of a public good or state directive), can create obligations based upon their operation as systems of fair play – how might we judge any *competing* obligations which would are justified by these groups? For example, between a state which justifies a specific directive on the grounds of the cooperative production of a presumptively beneficial good, and an environmental organisation which justifies a competing obligation, also on the basis of the fair cooperative efforts of its members. As we consider and balance our political duties, one important feature is the relative strength of the competing fair play obligations.

[61] I am assuming here that Susan is nevertheless moderately accepting of the establishment of state defence in a relatively orthodox form. If she were deeply committed to pacifism altogether then that may obviate her initial duty of fair play as regards state defence (on the role of alternative preferences in fair play, see Klosko, 2005, p70-74).

4. The Strength of Fair Play Political Obligations

What affects the weight of the specific obligations this principle generates? One possible candidate is the relative importance of the goal of the cooperative enterprise, of the good being provided. Simply, if it is more important, do the obligations carry more weight? A second possible candidate is the contribution required of each participant as part of the cooperative enterprise (as Rawls puts it, our fair share of cooperative labours).[62] If the contributions of members are sizeable, are the corresponding obligations also burdensome?

Taking the first candidate, it seems, at first sight, plausible that the most important or valuable goods produced by a cooperative system of fair play will compel contribution with the most stringent obligations. Fair contributions (i.e. political obligations) to a scheme producing an essential good – like public security or drinkable water – are surely more important than for some more trivial good? This is the view of George Klosko who addresses the question of the weight of fair play obligations as part of a discussion on whether they are enforceable by the state.

> It seems, then, that there is a rough correspondence between the force of the obligation to obey a given law and the benefits that law provides society, assessed in terms of generalised consequences.[63]

To get to this view, Klosko argues that the public goods which his national-level cooperative scheme of fair play support are sufficiently important that the consequences of their absence would be very harmful. Although an individual's support (or lack of support) for such schemes may be of no actual consequence towards the provision of such goods, if such a lack of support was generalised the harmful consequences would be serious. Thus, conformity to these laws is of sufficient importance as to justify state enforcement. In turn. the state's liberty to coerce is based loosely upon a Millian harm justification.[64]

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[62] Rawls, 1999, p96

[63] Klosko, 1992, p100. And more broadly: Klosko, 1992, p46-48 & p99-107; Klosko 2005, p86-87. See also: Klosko, "The Moral Force of Political Obligations", The American Political Science Review, Vol. 84 (1990), p1235-1250. Klosko does however emphasise that his view is not to be taken as endorsing a utilitarian or consequentialist approach to the question of the law's moral force (Klosko, 1992, p100, n.19 & n.20).

[64] Klosko, 1992, p46-47. Interestingly Klosko's generalised consequences argument is not the same as his original indispensable public goods justification for political obligation. It is a fair play argument but the

Klosko's account is a valid argument which restates why a particular fair play scheme may bind without express consent (contra Nozick). It is however not an argument which establishes anything about the relative *strength* of the individual's obligation as part of such a scheme. It is instead an argument for the importance of collective action by citizens to address these kinds of collective risks by providing important public goods. Put another way, it is an argument for the importance that "we" do something, but not for the importance of "your" contribution. The same could also be said of the natural duty grounded schemes of fair play like Wellman's. The goal is morally important, but it does not go the extra step to explain what the weight of the fair contributions ought to be.

Klosko argues that because the consequences of the non-provision of such public goods would be very bad, that the importance of compliance with the requirements of the cooperative scheme's requirements (in this case, obeying the law) is high. And hence the force of the obligations, strong. But this only follows from a generalised noncompliance, not from any specific instances of legal disobedience. The principle of fair play is not predicated upon specific individual consequences of action but is a theory about the *distribution* of contributions towards a collective goal. It is animated by an intuition of fairness, that relies in part for its force upon a simple or basic principle of equality (at least initially or as a baseline, being of course subject to other factors as I note above).[65]

One way of seeing this is to note the fair play normative demand is of the form: do Y as your fair contribution to Z. If Z is obligatory, the strength of your obligation is set. And Y

justification for the cooperative enterprise is different. Instead of an agent's presumptive acceptance of indispensable and nonexcludable goods, we have the avoidance of wider bad consequences to other people from their absence. This is close to using a natural duty to avoid harm as a basis for a fair lay scheme.

[65] Klosko's argument based upon the possible consequences of generalised disobedience is different from an earlier mistaken criticism of fair play that involves a confusion over the role of consequences. M. B. E. Smith argued that fair play only applies only if disobedience harms or disadvantages other participants in the cooperative enterprise (Smith, 1973, p955-7). This is plainly incorrect; if a willing participant accepts the benefits of cooperation but refuses to contribute, they do wrong even if enterprise is completely unaffected and/or no-one is harmed or inconvenienced. Their wrong is to take unfair advantage of the efforts of others. For a discussion and rebuttal of Smith's view, see Dagger, 1997, p70-71 (see also Klosko, 1992, p60 n.34). More recently, Wellman gets close to making the same mistake as Smith when, in a discussion on whether fair play could ground a duty to vote he appears to claim that the reason why fair play can (ex hypothesi) ground a duty to pay taxes or attend jury duty is because failing to do so leaves others with: "more than their fair share of the *burden*." (Wellman, 2005, p60, emphasis in the original).

is its strength – which is useful in balancing the fair play political obligation against other moral reasons. It is also, in that case, measures the wrong of free riding.

It can be helpful here to recall the two-stage model I developed earlier. This neatly separates out the determining factor (which includes the reason for collective action), and the contribution factor, which constitutes the fair contribution towards the cooperative endeavour required by members of a fair play venture. There cannot be a correlation between the importance of the determining factor of a scheme of fair play and the weight of its obligations. That is because the individual contributions are not connected to the success or failure of that goal. If they were, then they would not be obligations of fair play but obligations based upon the consequences.

It is I argue here the second feature of fair play – the contribution factor, which indicates the weight of the political obligation in context. The determining feature of a scheme of fair play indicates the importance of the *collective* enterprise, but the *individual* duty of every member is just to pay their due regardless of the implications of that contribution to the collective goal.[66] And the contribution factor for members is itself dictated by the overall requirements of the goal (e.g. producing the public good, discharging to a reasonable extent the natural duty) mediated through a principle of equality.

This idea may seem counterintuitive. Surely the more important a collective goal, the weightier our obligations towards it will be? However, in accurately assessing our response to these kinds of examples, it is helpful to isolate the principles which generate obligations. If free riding on a specific fair scheme will potentially harm or jeopardise an essential public good then that is of course a strong reason to not do so. But in this case the moral force is based upon the consequences of the act as well as any importance of equal contribution between my fellow members. And for an important goal, such an instrumental reason may well be weightier than a fair play reason.

[66] Of course, this is not to say that other factors cannot apply. For example, if for some reason, not playing one's role in a scheme might directly harm someone else, that is a separate and strong reason to comply – but not a reason grounded by fair play.

Our intuitions in these examples may be unreliable, because we naturally think of all the ways in which a public good is important and the ways in which not supporting it is bad; e.g. it might risk a valuable goal, or be disrespectful for others, especially if they think it is an important scheme. These are all reasons we feel that it would be more morally wrong to free ride on an important cooperative scheme than a less important one. But these are based upon our perception of other moral concerns. It is of course the case that often more than one principle applies for and against in consideration of a particular act. But to understand the weight of fair play we should imagine that there will be no impact whatsoever upon the resulting good. The production of this good is to be considered guaranteed (fair play has no consequentialist aspect).

Example – Moonbase Alpha

> Some years into the future, the first large inhabited moonbase is established. Possibly the most critical machinery on the base is the oxygen generator, towards the running costs of which everyone makes a contribution of 10 lunar dollars a month. Another fair play venture prominent on Moonbase Alpha is the monthly pizza night. Here a mixed range of pizzas is delivered by supply shuttle to the base from a quality terrestrial pizzeria. Although expensive, this is considered important because of the otherwise terrible food on the base. Pizza night is expensive, at 150 lunar dollars a month. For members, is contributing to the pizza night more morally stringent than the oxygen generator? No impact will be had on either – the management company cannot turn off the generator and the pizza night order is made many months in advance. Even though the former is obviously a more important enterprise, free riding on pizza night is much more financially significant. If free riding is an arrogation of a benefit, then it is much more serious on pizza night, and I am going to posit that one's fellow Lunarians will be rightly much angrier at the shirking reprobate with pizza in their hand.

In our moonbase example, by clearly isolating the specific claims I hope it is easier to see that it is not necessarily counter-intuitive that one might have a relatively modest minor moral duty of fair play to contribute towards a major collective goal (and vice versa). This is

particularly important in cases when citizens are reasoning whether they have political obligations to obey the law or to commit civil disobedience.

This is not to discount the importance of the goal of a cooperative scheme, but that moral weight does not pass through to the fair contribution. Consider for example national defence. This is an indispensable public good, but the stringency of your actual political duty to support it is based upon the fair contributions it requires. To return to our military reservist example, imagine that Susan is weighing up her duties to obey with her duties to disobey based upon her membership of a peace group. Although national defence is clearly important, it may demand little of fellow citizens (e.g., only a small proportion of tax revenues and a short period of service). And that a campaign group opposed to military expenditure and aiming for a peaceful world, may require considerable financial and personal commitments to take action from its members (of course in other circumstances, it may not). In this case her fair play duties – owed horizontally to other people in the same scheme on the basis of her fair contribution – may well be significantly weaker than her duties to her fellow peace group members. In turn, that may support civil disobedience such as refusing to agree to a military draft or refusing to pay a portion of taxes.

Of course, as I noted above, other fair play principles to other cooperative schemes (both pro and contra obedience) as well as other political principles, might also apply as regards Susan's practical political reasoning. But the more general point which emerges from our discussion is that fair play duties owed to sub-state cooperative schemes may be more stringent than fair play duties owed to the state for important public goods, such as peace, security and the stable rule of law. And perhaps this ought not to be entirely surprising. Because in the history of principled disobedience involving organised groups of people, from universal suffrage to civil rights to anti-war and environmental campaigns, the duties to one's fellow members – duties which often involve breaking the law – are often reported as being extremely weighty indeed.

5. Unjust Fair Play Schemes and Civil Disobedience

Putatively fair cooperative enterprises can be unfair in their distribution to members of benefits or burdens, or they may be internally just amongst the members but result in (deliberate or accidental) harm or disbenefit externally.[67] As regards the first instance, it is, I think, difficult for any large cooperative schemes to be perfectly fair, and thus questions of distributional justice will be subject to reasonable disagreement. Nevertheless, with that qualification, it seems evident that anyone subject to a cooperative scheme which is clearly unfair is released from their duties to fellow members. People for whom the scheme does not present a fair distribution are simply no longer members of the scheme.[68] They may receive benefits without owing any fair play obligations (although they may as a result incur other obligations, for example, from justice or gratitude). Here we can see that a putative fair cooperative scheme and an actual fair scheme come apart, with only the latter able to ground duties of fair play.

For example, imagine a state which is manifestly racist in its policing and justice systems, where a majority white community receives the indispensable public good of security, law and order, but a minority black community is routinely harassed and subject to unjust arrest. Members of the black community no longer owe any duties of fair play to support the police or justice system. In that sense they are no longer members of the scheme. They may still receive benefits from it, they may still on many occasions be grateful for the actions of the police, but they owe no fair play duties. And of course, they may have other moral reasons, such as from a natural duty, to support some policing in some way.

Notice that those who are still beneficiaries of this system, who do receive a just allocation of the public good of security, law and order, are now in the position of being in a fair play scheme which is externally unjust. It benefits members but harms and disbenefits those who are not.[69] In the example of the racist police and justice system, it may directly harm

[67] Delmas refers to the latter instance as harmful; Dagger as corrupt and wicked (Delmas, 2018, p111-112; Dagger, 2018, p58 & p60).
[68] That is, morally. Of course, practically, politically or psychologically they may still choose to affirm membership of a particular scheme, especially if they see other benefits from membership. But they owe no fair play duties.
[69] More broadly as regards externally unjust schemes, harm need not I think be one that applies to people directly. It could for example be needless damage to an important environmental or cultural resource.

and victimise members of the black community. It also stops them from providing their own similar public goods.

For members of the externally harmful yet internally just scheme, there are strong reasons to implement a fair scheme which includes those who are excluded, harmed and in need of the indispensable public good denied them. However, initially at least these reasons are *not duties of fair play*. They are other duties, typically natural duties, which will require people to address the injustice. The treatment of the black community is manifestly unjust and harmful and so – straightforwardly – a natural duty of justice and also a broader one of samaritanism will ground a duty to address this, to help people and bring about a more just state of affairs.[70] These political duties may provide strong moral reasons to protest, campaign, assist people and if necessary, undertake civil disobedience.[71] They may be stronger than the duty of fair play to support the extant scheme.

Notably, that if the current programme of policing and justice is salvageable, then these other political duties may also require the *reformation* of the existing fair cooperative scheme. It is thus likely that the same determining factors which help define the existing scheme to provide policing, law and order will also require provision of that indispensable public good to the community who are being denied this. Here our two-part general model of fair play helps to show that the same moral grounds for the existing fair play duty require its reform and extension to cover a community in need.

In section 1.2, I noted how fair play schemes in the political sphere may evolve. Here we see an example of how a natural duty may push the evolution of an unjust fair play scheme to make it more just. In fact, in this example, we can think of three such natural duties: (i) a natural duty of justice, (ii) an expanded samaritan duty and (iii) a duty of necessity to provide the indispensable good of security, law and order to people. Together these form the determining factor for the extant fair play scheme and *also* the grounds for its reform (evolution).

[70] See Chapter 3; other natural duties may also apply depending upon the circumstances.
[71] See Chapter 6 for an extended discussion of civil disobedience.

Thus, we might conceive of the position the existing members of the internally fair, externally unjust cooperative scheme as being under a number of different sets of obligations, all of which may be considered political in that they pertain to their obedience to the state or the possibility of disobedience.

(1) A fair play obligation to support the existing provision of policing law and order.[72]

(2) An obligation to directly address the pressing injustice affecting the black community, grounded by one or more natural duties (e.g. justice or broad samaritanism).

(3) An obligation to reform the existing cooperative scheme (or if necessary establish a new just scheme), so that it provides the public good to all communities. This may

[72] That entails a fair play duty to support a cooperative scheme which although internally just, has a harmful impact. I do think this is possible and that there is, as it were, honour among thieves. It is thus meaningful to talk of free riding or taking unfair advantage of the contributions of people engaged in a practice which is to a degree externally harmful. For instance, many of the activities of otherwise (reasonably) just states have harmful side effects in that they exclude people beyond their territories from benefits or treat other people harshly. Are there limits? Yes, if we recall the two-part model of fair play I introduced above, we note that it is governed by the determining principle and that principle itself has a moral ambit that extends beyond the fair play scheme. If the injustice or harm of a scheme in which such a principle is employed is considerable, then it will approach and then exceed the extent to which that initial moral principle may be said to be *reasonably employed* as underpinning the fair play scheme. So, only *some* thieves. An example: if a natural duty of samaritanism is the determining factor for a fair cooperative scheme which ends up putting many people in peril then it is a misuse of that natural duty; i.e. not an appropriate way to discharge that duty and it cannot ground the moral force of that particular fair play scheme. And so, the scheme cannot have a moral claim upon members. This is not I think a consequentialist assessment, for that also is not how one normally considers the operation of many natural duties (i.e. in considering the moral pull of a natural duty of justice one does not normally seek to maximise justice or trade-off across a number of sufficiently just possible actions). That goes for natural duties which are determining factors. As regards a determining factor of consent, the limits to what is often considered appropriate to consent to or promise apply here. Thus, promises which incur minor disbenefits are widely considered permissible if overridable by other moral reasons. But those which are more immoral are not, and so any consent to be a member of a putative harmful fair play scheme is null. As regards fair play schemes determined by presumptively beneficial goods, a scheme which is externally unjust beyond a threshold is one which is not 'worth' the cost of contribution. This is because any contributions directly implicate the citizen in a (serious, profound) injustice; in a sense, they 'cost' too much. Finally, as regards associative determining factors, these principles also come with moral limits. Although the above suggestion is novel and follows from my two-part model of fair play as a principle, it does mean I agree with some others who have also argued that fair play can bind in situations where the scheme is morally wrong to a degree (for some who hold this view, see Cullity, 1995, p19 and Greenawalt, 1989, p132-3). Note that here I disagree with Delmas who argues members have duties of fair play to resist oppression and reform unjust schemes. Whereas I argue reasons to reform are based upon natural duties not fair play. Only once any reform is underway might fair play duties apply, in that as the costs of a reforming scheme (if any) become part of the cooperatively shared burdens (and duty (1) in our example above). The reason Delmas's position is confused is because she maintains a whole-state view and elides a broad concept of fairness generally, with the more specific duties of fair play (Delmas, 2018, p108-135 and 224. For an approach to fair play which makes the same confused elision as Delmas, see Avia Pasternak, "Fair Play and Wrongful Benefits", Journal of Moral Philosophy, Vol. 14 (2017), p515-534).

be grounded by those same principles (typically but not exclusively natural duties) which constitute the determining factor of the existing scheme.

While the fair play obligations from (1) fall only upon the white community, the natural duties from (2) and (3) fall on both communities. Although they will likely be born more heavily by a more privileged community, and a community with more resources, as is common with many natural duties. Although I have not mentioned it explicitly, it is entirely possible that associative obligations will also pull in this direction.

Then we should include the pull of other sub-state fair play schemes in the state which make a claim on citizens as regards their compliance in this situation.

(4) A fair play duty to both address the injustice and to reform the existing scheme. This is owed by the members of those other play sub-state groups which have a moral claim and are acting upon the situation. The sub-state cooperative groups may be within one or other community or overlap with both. For example, an established community association, civil liberties campaign, church congregation, or a related trade union. Some of these groups may have a strong interest in remedying this injustice and reforming or creating a police and justice service which is internally fair and also externally just.

The content of all these duties will be different. In this case, the content of (1) will mostly involve legal obedience, whereas (2 through 4) may well require quite strong efforts to address a striking injustice and (depending upon the context) permit or require civil disobedience. The strength will vary too. From the preceding discussion of the strength of fair play duties we saw that this relates to the fair distribution of costs, and in schemes with many members all contributing, this may be quite light. However, for those with fewer members, such as the sub-state cooperative groups of (4), fair play duties may be quite weighty. From Chapter 3 we saw that a key feature of natural duties is that their strength is context dependent and can also potentially be quite weighty.

In other words, in our example, the fair play duties to support the existing policing and justice system may be relatively light, especially if they are spread widely. The duties to directly combat the injustice and to reform the scheme and provide honest and impartial policing may be strong, especially in the case of serious injustice.[73] If and when they conflict, over for example a Thoreau-style local tax strike, or a programme of targeted civil disobedience, the balance will move to supporting disobedience.

6. Conclusion.

In contrast with the standard model, the contestatory view of fair play reveals how citizens' actual political obligations are plural, partial and contestatory. In many contemporary states citizens are (non-voluntarily) members of a number of distinct fair cooperative systems which overlap as regards what they may require of their members. The analytical division of fair play into two components I introduced also reveals the extent to which the moral demands of other political principles (e.g. natural duties), are symbiotically extended through to the goals of many fair cooperative enterprises. The moral landscape which surrounds the citizen appears ever more thickly overgrown with different possible partial political obligations. And in many cases, these fair play political obligations may permit or direct citizens to disobey the law.

[73] Interestingly in this example, we see that the same natural duties may ground different political obligations depending upon whether they apply directly or provide the determining factor for a scheme fair play. In the former instance, they apply in response to a pressing injustice in society and may (in this example) ground civil disobedience. In the latter, they apply as part of a collective goal of securing a just environment and may apply in favour of obedience to the law (for the national level scheme) or possibly against (for the sub-state scheme fighting injustice).

Interregnum

It is a *task* to come to see the world as it is.

Iris Murdoch.[1]

Into the Woods

Thus far we have seen that the standard model of political obligation does not work to accurately represent the political duties of citizens. And what is most interesting is why these models fail. In the orthodox methodology, a key way of assessing the success, or not, of models of political obligation is to see if there are substantial lacunae as regards who is bound (the question of universality), and what is demanded by the state (the question of comprehensiveness).[2] Here, for each of the three groups of political principles examined, significant areas are left uncovered. However, I have also demonstrated another, often overlooked, reason for the failure of each political principle under the standard approach. It is not that any specific principle fails to bind citizens in some areas, *but rather, that it obligates more than is commonly thought.* In these cases, the same political principle may obligate the same citizens to disobey the law of the same state.

I have argued that this applies to all three political principles, fair play, natural duty and political association. Each grounds a range of additional political obligations beyond those preferred by the standard model. Each may, as the particular context determines, provide

[1] Iris Murdoch, *The Sovereignty of Good*, London: Routledge and Kegan Paul, 1991 [1970], p91 (emphasis in the original).

[2] On the former, see Simmons, 1979, p35-37, p55-56; on the latter, see Klosko, 1995, p11-12, p100, p102. For both, see Knowles, 2010, p66-70 and Wolff, 1995. There are other assessments (other 'success criteria') which have been advanced. One prominent example is particularity, but others have been suggested, for example, generality of people obligated, or fit with relevant widely held intuitions. Margaret Gilbert suggests 11 desiderata which a maximally adequate theory would meet, while recognising that an "adequate" theory may not meet them all (Gilbert, 2006, p43-53).

moral reasons which support compliance with the law, or undercut compliance, or require disobedience to the state. It is thus, very much a *contestatory* theory.

While throughout I have emphasised the role of context and circumstances, I do think that in many contemporary well-functioning democratic states, a justification for compliance with the bulk of current laws will – in most circumstances – fall within the ambit of the political principles I have surveyed here. There are going to be some gaps where this justification is undercut, for example as regards unjust laws, or where state action prejudices a particular community, or risks a common good. Grounds for obedience may be weakened, or they may fail altogether. And in some cases, people's political obligation will require disobedience.

These moral reasons, flowing from political principles, all apply in the political realm as regard the directives of the state. They all will vary in terms of strength or weight according to the criteria which I have examined and the political context and circumstance, as will the extent of their normative coverage. They are all political obligations.[3] There is no special status to those which apply in support of the state's directives.

Of course, moral reasons do differ when they are based upon different political principles, but that in itself is not an objection to my wider perspective, in that I have employed those principles which are – at least initially – considered plausible candidates. And where they have failed, the normatively significant fact is that is that they still bind in different ways.

Further, this state of affairs may also apply to some other principles which I have not discussed thus far. One example is the political principle of gratitude. Now this is not widely considered a plausible ground of a political obligation.[4] However if we are freed

[3] I follow John Horton's approach here: "…the use of 'political' in political obligation refers exclusively to whatever obligations are owed to the polity by its members." (Horton, 2010, p13). From the examples I have used throughout it is, I hope, clear that as context and circumstances vary, citizens may have political obligations which require them to disobey the state. For an alternative idea (which I think is doubtful) that specifically 'political' obligations also need to engage all citizens jointly and enable their cooperation and mutual relations as rights-holders to create a kind of social entity (thus for example, ruling out consent as a ground for political obligation), see Mokrosińska, 2012 (esp. p5-9).

[4] For a thorough criticism, see Simmons, 1979, p160-190; Christopher Wellman, "Gratitude as a Virtue", Pacific Philosophical Quarterly, Vol. 80 (1999), p284-300; Klosko, "Political Obligation and Gratitude", Philosophy & Public Affairs, Vol. 18 (1989), p352-358; Klosko, "Four Arguments against Political Obligations from Gratitude", Public Affairs Quarterly, Vol. 5 (1991), p33-48. For a more sympathetic

from the orthodox target, and able to consider, in a wider sense, the way in which gratitude might operate in a political context, it could be added to the political principles I have included as a potential ground of some (partial, plural) duties to comply with the law in some cases – and in others, to disobey the law.[5] It will not apply to some people and as regards some state directives but that does not distinguish it from other political principles such as natural duty. To speculate briefly, political duties grounded by gratitude could apply more broadly and stringently to those who have benefitted more, for example refugees and asylum seekers, or citizens who owe their lives to the healthcare systems of a state (although assessing the degree of benefit requires engaging with a series of problems, some of which are familiar to those who attempt a utilitarian analysis in similar situations).[6]

While the idea of political obligations based upon gratitude would appear to be too restricted and particularistic for use as a ground in the standard model, it might here justify some interesting partial political obligations. For example, a group of refugees who have clearly benefitted from the help of one state, may have a duty based upon gratitude to oppose that same state's policy of expanding heavily polluting power generation. This might support civil disobedience which aims to raise awareness of the harm that policy will do in the short and medium term; or even frustrating such an expansion. Moreover, their (all thing considered) political obligations in this case may be more stringent than those of citizens who lack such a debt of gratitude.

Encompassing a wide range of political principles, this is a comprehensively plural and fractured picture of political obligations.[7] The moral reasons grounded by these principles

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response, see Knowles, "Gratitude and Good Government", Res Publica, Vol. 8 (2002), p1-20 & Knowles, 2010, p138-144. For a robust presentation, which is a touchstone of recent political philosophical discussion of the idea of gratitude as a ground of political obligations, see A. D. M. Walker, "Political Obligation and the Argument from Gratitude," Philosophy & Public Affairs, Vol. 17 (1988), p191-211 & Walker, "Obligations of Gratitude and Political Obligation", Philosophy and Public Affairs, Vol. 18 (1989), p359-364 (the latter replying to Klosko, 1989).

[5] Walker observes briefly that gratitude might justify noncompliance to laws in some cases and form part of a theory of civil disobedience he goes no further (Walker, 1988, p210). Candice Delmas rejects the idea that gratitude may be a ground of principled disobedience, though she does not say why (Delmas, 2018, p11).

[6] For an argument that gratitude is well suited in this regard see Jason D'Cruz, "Displacement and Gratitude: Accounting for the Political Obligation of Refugees", Ethics & Global Politics, Vol. 7 (2014), p1-17.

[7] How wide a range of potential principles? On one hand, given how the context affects the application of political principles, there will always be potential for novel principles/moral reasons to apply in some cases. On the other, given how many common circumstances are relatively familiar, we can say that the principles included here cover much of the main normative terrain. To paraphrase from Rawls when discussing a similar question around the ambit of natural duties – even if there is actually no limit on the range of political duties, it is still possible to form a conception which is *approximately complete*. (Rawls, 1999, p299).

bear upon each other differently according to the context. For example, a natural duty of justice may directly support some just structures in a strong way (a just police force), and others less so, or partially (an unjust tax system). Then, that same natural duty of justice, functioning as the determining principle of a fair cooperative scheme, may underpin an additional fair play duty to support the broad public good of a just legal system (including, in turn, compliance with some laws it did not directly support by itself). Imagine then, some of those laws are enforced in such a way as to penalise a specific community; that same principle may count against obedience. Further, if acts of civil disobedience of those (unjust) laws would lead to considerably more injustice it might count against disobedience.[8] It might instead recommend some alternative ameliorative action (e.g. reforming political campaigning) which maintains legal compliance.

Moreover, members of the unjustly treated community may have a weak (national) associative duty to comply with the law and a stronger (in this specific case) associative duty to disobey laws when they penalise fellow community members. And further still, members of that community may also be bound by other natural duties such as those to provide for the common good and/or support basic rights, alongside additional duties of fair play and association, to obey or not as the political context varies. The weight of these different moral reasons will itself vary according to the laws and circumstances.

The citizen then, in the face of the directives of the state is presented with a thicket of prospective moral obligations, derived from a number of established political principles interacting with the political context and each other. Some of these duties may be weak, some may be strong. Some may permit discretion as to how and when they can be discharged, some will, in a specific instance, form a perfect duty.[9] Together the different principles combine to form a *normative matrix* which applies in the political context. In many political circumstances, such as those far less complicated than the example sketched just above, an all-things-considered direction to follow will be clear. But in some other cases,

[8] This is not to import a strict principle of consequentialism here but to observe that an act which attempts to resolve some minor injustice, but which would clearly lead to a much greater one, will often tend to be outweighed for a range of reasons in much public practical reasoning (for a good example, see David Wiggins, *Ethics: Twelve Lectures on the Philosophy of Morality*, London: Penguin Books, 2008, p250-251).
[9] Here I disagree with the approach of Delmas who argues that when political principles ground a duty to disobey it is only an imperfect obligation (Delmas, 2018, p18, although many of her examples seem to indicate stronger perfect duties). As I hope is clear, in some cases the contestatory theory may ground a duty to disobey which is perfect and/or weighty.

less so. The contestatory approach allows us to take a more nuanced view as to how and when our political obligation requires obedience to the state's directives. To a reasonable degree, it helps us see the outlines of our practical political reasoning in these more difficult cases. As such, it is a much more *politically useful* approach than more standard theories.

1. A Clearer Picture of Political Obligations

If nothing else, I hope that the foregoing has demonstrated just how little traditional models of political obligation genuinely have to say as regards the actual political obligations of citizens. For, *even if I am wrong in my critical assessment* of the different political principles, that they are partial and incomplete when employed in a traditional model of political obligation, this radically plural picture still applies.

To see this, imagine that the necessity to provide the common good really does ground a universally applicable and fully comprehensive political duty (i.e. almost every citizen and almost every law in a state). It would also, according to this contestatory theory, ground additional moral reasons which (may) undermine that duty in some circumstances, or even outweigh it. In addition, the other political principles (other natural duties, association, fair play etc..) would also ground moral reasons which would apply as regards those laws – in some contexts supporting compliance with the law, in others, undermining them and permitting or requiring disobedience. For it to be otherwise, two states of affairs would need to pertain:

(1) A standard model of political obligations would have to succeed on its own terms (i.e. with a traditional set of success criteria) to ground a universal and comprehensive set of political obligations from one political principle (or alternatively several, together).

(2) The political principle(s) grounding that obligation would have to support no further significant political duties either for or against complying with the laws. And also, that all other political principles would have to not ground any significant

> political duties either for or against the laws (regardless of their ability to ground any universal or comprehensive political obligation). Both prohibitions would need to apply in almost all circumstances.[10]

These are presented as negative claims. As negative claims, both are necessary conditions for any standard model of political obligation to represent a valid and informative picture of the political duties of citizens. Their reverse (as positive claims), i.e., (1*) no successful standard model, (2*) a manifold of different political duties, constitute the positive claims of the previous chapters. Note that, as positive claims, only the second premise is a necessary and sufficient condition for my contestatory theory. The first is also important, however, in that it provides a fuller depiction of the normative matrix which applies to the citizens of a state.[11]

Thus, in our example from the common good just above, the contestatory theory claims that both the common good and (many) other political principles ground a wide range of distinctive, overlapping and often competing political duties. It is the defeasibility which is almost universally presented as a feature of the political obligation of many standard models which commits these models to this thoroughly plural and partial and contestatory position. Moreover, this is what is really significant in illuminating the different moral reasons which bear upon citizens.

Perhaps though the defeasibility of the standard model is intended to work differently to how I have employed it in my analysis. Perhaps only serious injustice or emergencies might outweigh political obligation. That is after all how it is often presented in the literature, that a particular standard model could not be taken to ground political duties in a dictatorship,

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[10] Perhaps a defender of the more orthodox approach might argue that I have overstated the claims and importance of standard models of political obligation. That all they modestly claim is to provide one moral reason for obedience to state directives. But this will not do, for these theories are almost always presented as answers to more fundamental questions such as: "why should we obey the law?". And it would be disingenuous to then step back from these kinds of claims and present a standard theory as a simple exposition of one possible reason for obeying some laws on some occasions. Moreover, even if that is done, the contestatory theory here straightforwardly aims to present a more unified and usefully descriptive theory of political obligations.

[11] If all the other moral reasons supplied by all the political principles applying in this case, all acted so as to reinforce obedience to the state's laws, then the final picture would *appear* less plural. However, that picture would still contain a variation in the obligatory strength accorded to different laws in this particular circumstance, which makes the contestatory theory nevertheless a more informative ('thicker') representation of the normative demands upon citizens in a particular state than standard theories.

or more particularly, when someone is injured, and the speed limit hampers a swift trip to hospital. In this case the political obligation is generally taken to be strong or weighty and only overridable in cases where an even more weighty moral reason applies. In turn, the mass of opposing plurality of moral reasons will only impinge upon a citizen's justified obedience to the law in some (presumably, hopefully) rare occasions.

However, that is not how we experience the law and it also does not follow from a full understanding of the political principles. As regards the former, it is commonplace to note that laws vary in their stringency (some strong, some so lightly they barely hold at all). As regards the latter, in previous chapters I have outlined how the bonds of different political principles vary according to context and circumstance. In short, laws vary in their strength and so do the moral reasons for or against obedience.[12]

As I noted in chapter 1, even early formal presentations of this issue, such as the *Crito*, are friendly towards the idea of many different moral reasons bearing upon the question of obedience. Perhaps the most manifold multiple principle model in the current philosophical literature is one advanced by Jonathan Wolff, where he speculates that different laws may have different grounds (sometimes several, he cites three different kinds of justification), and that these grounds apply variably as regards laws and different groups of people.[13]

The contestatory theory of this thesis goes considerably further than Wolff's model. Notably: by including a wider range of political principles; by identifying broad political duties with different moral ambits grounded by each principle (e.g. different natural duties, different schemes of fair play); by acknowledging that different principles of the same kind can be potential moral antagonists to each other; by including the impact of a multiplicity of political entities upon citizens' political duties (i.e. how "non-standard" political communities may affect our political obligations); by foregrounding how much the political context determines which principles may apply; and ultimately with a full description of

[12] Note that, in making the point that the contestatory theory offers a much better description of our political obligations even if a standard model works. I am, in a sense, accusing the standard model of 'bad faith'. That is, standard models are already contestatory but fail to realise it.
[13] Wolff, 1995, esp. p19-20.

how the moral reasons which flow from political principles may possess varying valency as regards questions of compliance with the demands of the state.

In this sense, the contestatory theory perhaps resembles a multiple principle model *ne plus ultra*. One which is maximally plural and inclusive of political duties – which incorporates political duties which ground a diverse range of political obligations, including obedience, and also disobedience.

Chapter 6
Political Obligations and Civil Disobedience

Wheels must turn steadily, but cannot turn untended.
There must be men to tend them, men as steady as the wheels upon their axles,
Sane men, obedient men, stable in contentment.

Aldous Huxley.[1]

Summary

The contestatory theory includes a wide range of political principles and foregrounds the results of context-sensitive practical political reasoning. As circumstances change, the same set of political principles may recommend obedience to the law, permission to disobey or even make disobedience a duty. In this chapter I argue that this moral picture of our political obligations is not well served by the conception of civil disobedience which is common in contemporary philosophical thought.

More specifically, philosophical theorising on civil disobedience has become fixed with responding to Rawls's influential definition and schema, which in turn has encouraged a methodological splintering of the idea of civil disobedience. This is problematic for both scholarship and the actual practice of people who choose to disobey. Instead of following in that well-worn path that starts with Rawls, I will be guided by a consideration of the role of civil disobedience: *what it is for*. And it is my contention that civil disobedience, in any morally important sense, is a designator of an important kind of law-breaking which is permissible. As such, it identifies disobedience which is either exculpatory or excusatory.

[1] Aldous Huxley, *Brave New World*, London: Random House, 2007 [1932]; p36.

Further, as such it plays an important practical role in the public realm as a shield to protect civil disobedients from the power of the state.

Here, I develop a new inclusive model of civil disobedience which fits that role, and which is made politically useful through its connection to those political principles which are illuminated by the contestatory theory of political obligation.

1. Obedience and Disobedience

In October 2018, three environmental protestors received extended prison sentences after taking part in an action to block trucks carrying equipment from entering a new shale gas drilling site in the North of England. They climbed on top of the trucks, halting the convoy for four days. Two weeks later, their sentences were quashed by the Court of Appeal. In his judgment, the Lord Chief Justice, Lord Burnett of Maldon, called the sentences "manifestly excessive".[2] The actions of these people, of those who helped them, their wider campaign and the statement of the appeal judges, are all part of a long tradition of civil disobedience in defence of environmental issues in the UK. Notable examples include: the mass trespass in the Peak District in 1932 to defend a right of access to the countryside; the occupation of planned highway sites in the 1990s; the trampling of test fields of genetically modified crops; or the recent campaign to defend neighbourhood street trees in Sheffield from municipal felling.

More broadly, civil disobedience has flourished in many places across a vast terrain of issues: the campaign of the suffragettes to secure votes for women; the sit-down factory occupations in the early 20th Century which built the labour movement; the salt march in India; the mass poll tax refusal in the 1980s in the UK; the groups who, today, illegally leave out caches of water and blankets to stop undocumented migrants crossing the US-Mexico border from dying in the desert.[3] Sometimes it involves groups of people, for

[2] Sentences of 15, 16 and 16 months respectively. https://www.theguardian.com/environment/2018/oct/17 court-quashes-excessive-sentences-of-fracking-protesters (accessed 7 July 2021).
[3] For example, the Arizona-based group, No More Deaths (www.nomoredeaths.org).

example, the US Civil Rights campaigns of the 1960s, and sometimes a lone citizen; such as Elin Ersson who in 2018, boarded a plane in Gothenburg but refused to take her seat so as to halt the deportation of an Afghan asylum seeker on the same flight.[4]

In each instance, the disobedient citizen is making a claim: that their act is morally correct, and in this case the state is wrong. *This is the principle job of a claim of civil disobedience*; it establishes moral permissibility in the face of legal injunction and the (often) weighty social, economic, and physical pressure to comply. Moreover, it has, since Thoreau, been that specific term – civil disobedience – which is widely used by principled disobedient citizens.[5] From that claim of moral permissibility, follow other more contingent claims, such as diminished penalty and punishment, social acceptance of the act, and a reform in law or public practice.

So, the disobedient citizen reaches for the title of civil disobedience as a shield to protect themselves, to claim that they are morally justified. Just as the gods may vindicate Antigone (or mankind thank Prometheus), so the disobedient is justified in their acts by the judgment of morality.[6] This is echoed in Thoreau's encouragement to resist unjust laws "cost what it may".[7] The principled and disobedient citizen claims this moral and political shelter in the

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[4] Ersson ultimately received a modest fine (judgement by court of appeal; 6 November 2019).

[5] Thoreau, 1996, p1-21. Thoreau's essay first appeared under the title; *Civil Disobedience*, in a collection published in 1866, four years after his death. It was originally entitled in print, *Resistance to Civil Government*, and was based upon his 1848 lectures in Concord: *The Rights and Duties of the Individual in Relation to Government*. As I hope will be clear in what follows, both early titles are indicative of the role of civil disobedience in practice. The actual term "civil disobedience" never appears in his original essay although it is clear Thoreau was, in part, engaged in responding to William Paley's ideas on the duties of "civil obedience" (Thoreau, 1996, p4-5). Hence the revised title is apt. Paley's views were well-known at the time and his work on the curriculum when Thoreau studied at Harvard (1833-1837). He rejected Lockean consent as a ground for political obligation and advanced instead a form of common good ("public expediency") which resolves into a rough utilitarian calculation. Interestingly, Paley also suggested that disobedience (his term is 'resistance') to the state, instead of obedience, might in some cases be a duty. See Paley, *The Principles of Moral and Political Philosophy*, Indianapolis: Liberty Fund, 2002 [1785]; p299 & p307; more broadly on both obedience and resistance: p291-311. Thus, the term "civil" we inherit from Thoreau refers here to the political locus of civil disobedience rather than any sense in which it must be orderly, or oriented to the preservation of a civic community. In fact, Thoreau himself appeared quite happy to countenance uncivil (in the sense of violent) action in the service of important moral issues. For example, in his public and unqualified support of Captain John Brown, who recruited and led an armed militia against slavers in the 1850s ("A Plea for Captain John Brown" & "The Last Days of John Brown"; in Thoreau, 1996, p137-167 & p163-169).

[6] For the interpretation that Antigone and Creon are both partly correct and partly wrong, even though it is Antigone who generally receives our approval; see L. A. MacKay, "Antigone, Coriolanus, and Hegel", Transactions and Proceedings of the American Philological Association, Vol. 93 (1962), p166-174. For a fascinating account of early instances of civil disobedience, see David Daube, *Civil Disobedience in Antiquity*, Edinburgh: Edinburgh University Press, 1972.

[7] Thoreau, 1996, p5.

face of the overwhelming power and strength of the state in opposition. This protection is, today, routinely claimed by civil disobedients in many jurisdictions. For example, the representatives of the struggle for democracy in Hong Kong in 2014 claimed that their unlawful protest was justified because it was civil disobedience.[8]

And we see how important that shield is when we also see how governments describe disobedient citizens when they wish to diminish their claim. Often, they deliberately eschew the term civil disobedient preferring instead terms like "radical", "activist", "anarchist", "domestic terrorist", "saboteur", or "criminal". The intention here is to remove the aegis of civil disobedience and instead to present the disobeying citizens as engaged in some more threatening or dangerous form of defiance.

Examples here are legion, to pick just four: (i) In 2013, following the leaking of secret information on the vast extent of the US domestic surveillance programs by Edward Snowden, the question of whether this could be properly classed as one of civil disobedience was widely disputed in the press.[9] (ii) In a public statement on Taiwan's Sunflower movement's 2014 student occupation of civic buildings and illegal rallies, the (then) President Ma Ying-jeou explicitly criticised the movement for being not civil disobedience.[10] (iii) In 2016, environmental activists turned off the valves to an oil pipeline, briefly halting the flow of oil from Canada to the US. Subsequently, 84 representatives of the US Congress wrote to the Attorney General referring to this as sabotage and asking if this kind of act could be treated as terrorism.[11] (iv) In 2020, counter-terrorism police in the UK placed the climate change civil disobedience group, Extinction Rebellion on a list of extremist ideologies and issued guidance recommending that people consider reporting

[8] William Smith, "The Ethics of (Un)Civil Resistance", Ethics & International Affairs, Vol. 33 (2019) p363-373; p371 & Shen Yang, "In the Name of the Law: Legal Frames and the Ending of the Occupy Movement in Hong Kong", Law & Social Inquiry, Vol. 44 (2019), p468-490.
[9] For a review and discussion, see Erin Pineda, "Civil Disobedience and Punishment: (Mis)reading Justification and Strategy from SNCC to Snowden", History of the Present, Vol. 5 (2015), 1–30.
[10] Lin Liang-sheng and Jonathan Chin, "Sunflower movement not civil disobedience, Ma says", Taipai Times, http://www.taipeitimes.com/News/taiwan/archives/2017/04/21/2003669135 (accessed 7 July 2021).
[11] Timothy Gardner, "U.S. lawmakers ask DOJ if terrorism law covers pipeline activists", Reuters, https://www.reuters.com/article/us-usa-pipelines-activism-idUSKBN1CS2XY (accessed 7 July 2021).

those who they know are closely involved to the authorities (following public attention, this guidance was subsequently rescinded).[12]

In such cases, the motive of the disobedient citizen is impugned, and public peril is foreshadowed. Such (re)labelling often goes hand-in-hand with state action aimed at forestalling civil disobedience such as: public vilification, harsh policing, severe legal penalties, overzealous public surveillance and pre-emptive arrest and detention.

The broader point is that, although states may support some public expressions of dissent, they are generally very quick to stamp down on actual civil disobedience. In contrast, juries, judges, press and the wider public regularly (although certainly not always) recognise merit in acts of civil disobedience. In the UK for example, it is often considered morally praiseworthy and deserving of leniency and exception. A good example of this response is in the following statement by Lord Hoffman, who served as a Law Lord from 1995 to 2009, which is worth quoting in full:

> My Lords, civil disobedience on conscientious grounds has a long and honourable history in this country. People who break the law to affirm their belief in the injustice of a law or government action are sometimes vindicated by history. The suffragettes are an example which comes immediately to mind. It is the mark of a civilised community that it can accommodate protests and demonstrations of this kind. But there are conventions which are generally accepted by the law-breakers on one side and the law-enforcers on the other. The protesters behave with a sense of proportion and do not cause excessive damage or inconvenience. And they vouch the sincerity of their beliefs by accepting the penalties imposed by the law. The police and prosecutors, on the other hand, behave with restraint and the magistrates impose sentences which take the conscientious motives of the protesters into account. The conditional discharges ordered by the magistrates in

[12] Vikram Dodd and Jamie Grierson, "Terrorism police list Extinction Rebellion as extremist ideology", The Guardian, Jan 2020, https://www.theguardian.com/uk-news/2020/jan/10/xr-extinction-rebellion-listed-extremist-ideology-police-prevent-scheme-guidance (accessed 7 July 2020).

> the cases which came before them exemplifies their sensitivity to these conventions.[13]

Two points here are worth noting: first that this established legal view applies regardless of the justification of the case in hand. Civil disobedients may be vindicated by history but they may also be mistaken. Second, that in responding to the claim that an act is justified civil disobedience, courts – and in many cases the wider public – tend to consider *both* the merits of the cause as well as the nature of the approach and disobedient act. That is, their judgment is sensitive to the context and circumstances of the act of disobedience.

2. The Disappointment of Theory

Now, when we move from historical and current examples of disobedience to political philosophy, we find that most of the attention, over the last 50 years, has involved a "splintering" of this moral claim of justification and protection into various narrow and restricted categories of permitted behaviour (and related argument about each).

The methodological splintering of civil disobedience in the theoretical literature dates, at least, from the influential Rawlsian model. Here, civil disobedience is considered exclusively a public act of communicative protest with the aim of persuading people to change an unjust law. It is always nonviolent, conducted with a general fidelity to the law by people who willingly accept their punishment; ideally as a last resort, with fair notice given, and performed in cooperation with all similarly situated groups of people.[14] It works as a dramatic public address, an appeal to a society's shared conception of justice, in a near-

[13] Lord Hoffman, in *R v Jones (Margaret)* [2006] UKHL 16, para. 89. Amongst the legal fraternity dealing with cases of civil disobedience in the UK, this statement has come to be known as "Hoffman's Obiter". It reflects a more general, if informal and not without exception, precedent, to avoid custodial sentences in cases of civil disobedience even if the defendant has prior convictions in similar circumstances (Kevin Blowe, Coordinator of the Network for Police Monitoring (Netpol), personal correspondence via email: 9 Oct. 2018). For a similar view, also in the House of Lords, see *Sepet (FC) and Another (FC) (Appellants) v. Secretary of State for the Home Department (Respondent)* [2003] UKHL 15, paras 32-34 (in this case referring to Dworkin). For a US example, see Kimberly Brownlee, *Conscience and Conviction: The Case for Civil Disobedience*, Oxford: Oxford University Press, 2012; p158-159.

[14] Rawls, "The Justification of Civil Disobedience", in: H. A. Bedau, ed., *Civil Disobedience: Theory and Practice*, (New York: Pegasus, 1969), p240-255. More fully developed in: Rawls, 1999, sections 53 & 55-59.

just state.[15] The act is intended to emphatically illustrate how the law in question does not follow from or contradicts this consensus. Confronted with a mismatch between the shared sense of justice, and the practice of the law, it is hoped that any injustice is rectified by one's fellow citizens.

Rawls's view of civil disobedience has been hugely influential and is still regularly used as a starting point (often a counterpoint) for critical reflection upon the theory of political disobedience.[16] Despite this foundational role in the philosophical theory, it is important to keep in mind that Rawls is approaching the subject from a different angle to most subsequent theorists. In particular, he is concerned with the degree to which, under his specific model of political obligation, and his theory of justice, citizens are required to obey an unjust law and when they are right to disobey. This falls under non-ideal theory and more specifically what Rawls calls partial compliance.[17]

The solution developed by Rawls is to split civil disobedience off from other forms of potentially justified disobedience and assign it a special role as a kind of political speech. Hence it is carefully hedged in with restrictions. Moreover, civil disobedience may also only be justified if it addresses certain kinds of serious injustice, ideally those concerned with equal liberty and fair equality of opportunity (i.e. the first principle, and part of the second principle of his theory of justice, notably excluding many questions of economic justice).[18]

The result is a surprisingly narrow definition, and much of what is otherwise widely considered civil disobedience and claimed as such by citizens is here classified as resistance, militant action, obstruction, or conscientious refusal. Notably for example, under his own schema, in a near-just state where the laws under question matched the public's shared conception of justice, any disobedience that aimed at making the state *more just* according to

[15] Although Rawls cites the US Civil Rights movement as a part inspiration for his model it is doubtful whether it is appropriate to describe the US during the time of many "Jim Crow" laws as near just, given the extreme oppression under which many people struggled. See David Lyons, "Moral Judgment, Historical Reality, and Civil Disobedience", Philosophy & Public Affairs, Vol. 27 (1998), p31-49.
[16] As Hugo Adam Bedau puts it: "…the most influential contemporary philosophical discussion on civil disobedience". In: Bedau (ed), *Civil Disobedience in Focus*, London: Routledge, 1991, p4 & p6-12.
[17] On partial compliance and non-ideal theory, see Rawls, 1999, p8, 212-213, 216-217, 308-309.
[18] Rawls, 1999, p326-327.

Rawls's conception would likely fall outside of civil disobedience, perhaps classifying its actors as resistors or militants.[19]

It is also a mismatch for paradigmatic historic acts of civil disobedience; not just Thoreau's tax resistance but also, for example, the Underground Railroad which rescued slaves in the US in the 19th century; the illegal sit-down strikes that characterised the labour movement in the first half of the 20th century; the violent dissent of the suffragettes in the UK, or Gandhi's campaign of disobedience in India.[20] And it is a mismatch with much of what has more recently been both classed and claimed as civil disobedience. In these cases, as I note below, Rawls deploys other descriptive terms such as resistance or conscientious refusal.

Rawls himself acknowledges his own definition is "more restricted" than some employed by others at the time.[21] Nevertheless it has subsequently come to occupy a central role in philosophical discussion of civil disobedience – one which continues to shape the theoretical discussion to this day.[22]

3. A Brief Historical Detour

Why did Rawls adopt this particular, and particularly narrow, model of civil disobedience? A range of alternative definitions were present in the literature and in use at the same time. For example, the historian Howard Zinn's broad view of civil disobedience: "the deliberate,

[19] For Rawls's ranking of less-than-ideal conceptions of justice, see Rawls, 1999, p107. Rawls notes that if the political appeal of civil disobedience fails, "forceful resistance" may be the next step (ibid, p322).
[20] On the sit-down strikes of the 1930s, see Michael Walzer, "Civil Disobedience and Corporate Authority", in Walzer, 1970, p24-45). For Gandhi's views on civil disobedience in particular, see Mohandas K. Gandhi, *Non-Violent Resistance*, New York: Schocken, 1961.
[21] Rawls, 1999, p320, n. 19; p322, n. 22; p323.
[22] For good summaries of some subsequent critical response to Rawls here, see Candice Delmas, "Civil Disobedience", Philosophy Compass, Vol 11 (2016), p681-691; William Scheuerman, *Civil Disobedience*, Cambridge: Polity, 2018; Bedau, 1991.

discriminate violation of law for a vital social purpose."[23] Or Michael Walzer: "Obeying this law is inconsistent with *our* moral convictions".[24]

Beyond that, the actual practice of civil disobedience at the time seemed to stretch well beyond the limits of a Rawlsian communicative appeal-to-the-majority model. From the tax resistance of the 1960s, to the activists who personally intervened to block nuclear tests, to the anti-Vietnam war activists who burned draft files and then went on the run to avoid arrest and prison.[25]

Rawls claims he takes his view of civil disobedience from a previous (1961) definition by Hugo Bedau.[26]

> Anyone commits an act of civil disobedience if and only if he acts illegally, publicly, nonviolently, and conscientiously with the intent to frustrate (one of) the laws, policies, or decisions of his government.[27]

But if Rawls begins with Bedau, he straight-away stipulates that civil disobedience is expressly a speech act, a communicative appeal to the majority of the state. Bedau's statement of civil disobedience is not communicative at all, instead it describes an act which is designed to impede the operation of a law or policy. Although his definition

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[23] Zinn, H. *Disobedience and democracy: Nine fallacies of law and order*, Cambridge MA.: South End Press, 2002 [1968]; p119. Rawls acknowledges Zinn at: Rawls, 1999, p320, n19 and p322, n.22.
[24] Walzer, 1970, p4 (emphasis in the original, which pertains to his view of the communal origins behind a duty to disobey. NB: this quote (and chapter) was originally published as: Walzer, "The Obligation to Disobey", Ethics, Vol. 77 (1967), p163-175, p163). Other *broad* definitions in the literature, which predate or are roughly contemporary with the Rawlsian definition include: Kent Greenawalt, "A Contextual Approach to Disobedience", Columbia Law Review, Vol. 70 (1970), p48-80; Richard A. Wasserstrom, "Disobeying the Law", The Journal of Philosophy, Vol. 58 (1961), p641-653; Ronald Dworkin, "On Not Prosecuting Civil Disobedience," The New York Review of Books, June 6, 1968, p14-21, reprinted in: Harris, *Civil Disobedience*, Lanham MD: University Press of America, 1989, p213-230; Rex Martin, "Civil Disobedience", Ethics, Vol. 80 (1970), p123-139; Leslie J. Macfarlane, "Justifying Political Disobedience", Ethics, Vol. 79 (1968), p24-55; Stuart M. Brown, Jr., "Civil Disobedience", The Journal of Philosophy, Vol. 58 (1961), p669-681 (Brown does include some restrictions such as openness, nonviolence but it is still far broader the later Rawlsian model); Delbert Smith, "The Legitimacy of Civil Disobedience as a Legal Concept", Fordham Law Review, Vol 36 (1968), p707-730; Bertrand Russell, "Civil Disobedience", New Statesman, Feb. 17, 1961.
[25] On tax refusal in the US in the 1960s, see Bedau, 1969, p119-121. On anti-nuclear action, see ibid, p122-3 & p146-152. A good example of civil disobedience in opposition to the Vietnam War, is that of Father Daniel Berrigan who, along with others, burned draft files and went on the run, eluding the authorities, and a prison sentence, for months (Shawn Peters, *The Catonsville Nine*, Oxford: Oxford University Press, 2012).
[26] Rawls, 1999, p320; n.19. Bedau, "On Civil Disobedience," The Journal of Philosophy, Vol. 58 (1961), p653–665.
[27] Bedau, 1961, p661.

shares with Rawls's a commitment to publicity and non-violence, it is much broader. In fact, under Bedau's original view, civil disobedience can be practiced legitimately without any intention of fostering a change in policy – it is sufficient that it aims to halt the application of an unjust law (even to oneself).[28] Unlike Rawls's view it can aim at both large scale systemic change ("peaceable revolution") or address minor injustices.[29] And it is paradigmatically, not political protest but an act aimed at frustrating or thwarting a particular unjust law.

This is very much civil disobedience in the vein of Gandhi and Thoreau, resistance more than persuasion ("be a counter friction to stop the machine").[30] And it is striking that Bedau draws many of his examples from contemporaneous anti-war protests.

Interestingly, it was only *after* the publication of Rawls's views on civil disobedience that Bedau shifted his published views. In 1970 he extends his definition by including the additional possible goal of protesting, as well as obstructing, an unjust law or policy; acknowledging that this is broader than his previous definition.[31] And by 1972 he distinguishes civil disobedience from conscientious objection, where the latter aims to frustrate the law through noncompliance and the former aims to protest to society at large and inspire legal change.[32] Twenty years on, perhaps as a reflection of the hegemonic position of the Rawlsian statement of civil disobedience, Bedau's position is in line with that of Rawls. Civil disobedience is to: "frustrate and then change the law itself, by making an *appeal to conscience*…" and to achieve that goal it is also an "exercise in *public* moral education…".[33] In the same chapter, Bedau notes the enormous influence of the Rawlsian view of – so great that it would appear to have influenced his perspective as well.

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[28] Bedau, 1961, p658
[29] Bedau, 1961, p658-660
[30] Thoreau, 1996, p9. Note this also means that here I disagree with Rawls as to the degree to which Bedau's (early) concept of civil disobedience is *much* narrower than that of Thoreau's (see note 26, above).
[31] Bedau, "Civil Disobedience and Personal Responsibility for Injustice", The Monist, Vol. 54 (1970), p517-535; see p518-9; p531, p535. For his change see p519 n.4.
[32] Bedau, "Review: Civil Disobedience: Conscience, Tactics, and the Law. by Carl Cohen", The Journal of Philosophy, Vol. 69 (1972), p179-186; p181, n. 3.
[33] Bedau, 1991; p6-7 emphasis in the original. Bedau's views of Thoreau's status as a civil disobedient also changed; in his earlier (1961) work he describes Thoreau's acts as indirect civil disobedience (while commenting that Thoreau's views on violence in this context have been superseded by those of Gandhi), whereas in his later work he considers that Thoreau's approach is perhaps more like a (Rawlsian) conscientious refuser than a civilly disobedient (compare, Bedau, 1961, p656 n.4, p657, p659; with Bedau, 1991, p6 & bottom p7-top p8)

In adopting a narrow and communicative definition of civil disobedience as essentially a form of illegal protest aimed at the majority and its conscience, Rawls did notably follow (at least) two contemporary philosophers: Marshall Cohen and Carl Cohen.[34] Both advanced similar views, and both did so in part in an attempt to tighten-up or refine the definition and usage of civil disobedience so as to defend it from attack. Throughout the 1960s, there was widespread civil disobedience in the US, much of which in support of the Civil Rights movement and in opposition to the Vietnam war. There was also widespread violent public disorder (often opposing racist policies).[35] Accordingly, there was a general national concern about questions of public order, including civil disobedience.[36] For example, in 1968, the US Supreme Court Justice, Abe Fortas, penned a short best-selling book which was critical of much contemporary civil disobedience, especially indirect civil disobedience (i.e. where in opposing one particular law or policy, people break unrelated laws, such as trespass).[37] At the time in the US, a number of theorists were responding to what they saw as an establishment backlash against the practice of civil disobedience. The dramatic public impact of the Civil Rights movement of the 1960s was, I think, an inspiration for philosophers and others keen to demonstrate the validity of civil disobedience at a time when it was threatened.

Rawls adopted the same approach as Marshall Cohen and Carl Cohen in reaching for a definition of civil disobedience which was expressly communicative, as well as more tightly defined and constrained (e.g. public, accepting of punishment, peaceful).[38] Thus, the constrained communicative model of civil disobedience, which today dominates much of the centre of philosophical debate on the issue, dates from its presentation as a defence of

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[34] M. Cohen, "Civil Disobedience in a Constitutional Democracy", The Massachusetts Review, Vol. 10 (1969), p211-226 (in revised form as: Cohen, "Liberalism and Disobedience", Philosophy & Public Affairs, Vol. 1, 1972, p283-384). C. Cohen, *Civil Disobedience: Conscience, Tactics, and the Law,* New York: Columbia University Press, 1971 (this being a development of his views, previously published in *The Nation* magazine and elsewhere (1964 – 1970). For a full listing, see Bedau, 1972, p179, n.1). To the former, Rawls acknowledges a debt (Rawls, 1999, p320, n.20).

[35] For example, in the summer of 1967, there were more than 150 riots in separate cities across the US. Public concern was so great that a special Presidential Commission (The Kerner Commission) was established in July 1967 to examine the causes of widespread rioting and how it could be prevented.

[36] See M. Cohen, 1972, p283.

[37] A. Fortas, *Concerning Dissent and Civil Disobedience*, New York: The American Library, 1968.

[38] Carl Cohen changed his views on the permissibility of violence, between writing in The Nation and his book (Cohen, 1971, p24)

the legitimacy of civil disobedience in the US through the late 1960s.[39] The idea being that this definition must have seemed much less threatening than other broad contemporaneous approaches.[40]

Rawls is of course not alone in using the Civil Rights movement as an inspiration; he cites in particular the "nonviolent direct action" recommended in Martin Luther King's Letter from Birmingham City Jail.[41] Here the connection with civil disobedience conceived as a public appeal to the sense of justice of a majority appears clear. King's ideas were expressly designed to create a spectacular public tension so as to appeal to the conscience of the country.[42] However the US Civil Rights movement was a very specific campaign conducted under very specific circumstances at the time and it is not at all clear that it is a suitable model for, or paradigm case of, civil disobedience.

Moreover, although it is viewed with acclaim now, the idea that the US Civil Rights victory was secured through an exercise in moral persuasion is historically questionable. Despite its (literally) spectacular impact, at the time the civil rights cause – and its actions – was also

[39] Confusion around the genesis of the Rawls/Cohen communicative model of civil disobedience still abounds in the literature. To give a recent example, Ten-Herng Lai writes: "According to the Bedau (1961) definition that gained significant influence through John Rawls's a Theory of Justice (1999), civil disobedience consists of...". This is simply incorrect, Bedau's early definition is, as I note above, quite different to that of Rawls (Lai, "Justifying Uncivil Disobedience", Oxford Studies in Political Philosophy Vol 5 (2019), p90-114; p90).

[40] Jennifer Welchman has suggested a different reason as to why the Rawlsian model of civil disobedience quickly became canon. That is, an interest at that time in *indirect* disobedience conducted against racial segregation, against the military draft, and student protests in campus (this last often by students from the same middle-class background as the academics). By reframing civil disobedience as a symbolic act of protest against unjust laws, then disobeying a different law, even if ineffective in remedying the injustice, can be legitimate as a form of a public address (e.g. if it draws attention to the wrong). This is something which followed in large part from a narrow focus on issues (civil rights, Vietnam, campus politics) rather than, say, family planning, animal welfare, economic inequality, labour rights – some of which may be quite susceptible to direct disobedience. Thus, in the late-1960s and 1970s, what was previously considered only one form of civil disobedience became its exemplar. See Jennifer Welchman, "Is ecosabotage civil disobedience?", Philosophy & Geography, Vol. 4 (2001), p97-107. This seems a plausible additional historical explanation and I would add it to my own theory (i.e. a defence in the face of strong public and official opposition), as explanation as to why this particular conception gained swift acceptance in the literature.

[41] Rawls, 1999, p320. Martin Luther King, Jr., *Letter from Birmingham City Jail*, [1963], in: Bedau, 1991, p68-84.

[42] For example, prior to the 1963 campaign in Birmingham, Alabama, the Civil Rights movement had protested for nearly a year in Albany, Georgia. Here they had encountered comparatively little violence and achieved little success. For Birmingham they developed a new approach; choosing locations where they were confident the authorities would react with violence, recruiting and training students to protest and aiming for mass arrests to clog the prisons. The resulting images of schoolchildren on the front line of protests, being subdued with high pressure hoses and attack dogs shocked the country.

quite unpopular publicly through the 1960s.[43] It is likely that in addition to protests and television coverage, what ultimately forced the passage of reforming legislation in the US (specifically the Civil Rights Act 1964 and the Voting Rights Act 1965) was a series of bombings and riots in many cities through 1963, followed by the change in political atmosphere after the assassination of president Kennedy in November of that year. Regardless of the historical merits of using the Civil Rights movement (or a notable part of it) as a model, it is perhaps inevitable that basing a definition upon one significant case which existed in response to specific circumstances of injustice, and which adopted specific tactics, risks excluding other instances of civil disobedience. Of course, Rawls does allow that other forms of principled disobedience may be justified. But these do not have the important value of civil disobedience as practised, and required, by many citizens, including notably, the claim to reduced punishment.[44]

4. The Splintering of Civil Disobedience

For Rawls, the realm of principled and potentially justified disobedience to the state falls into several categories:

1. Civil Disobedience. An act of public speech, a communicative appeal to the conscience of the majority in a near-just state to correct a seriously unjust law or policy. It is narrowly defined and permissible under a range of constraints (e.g. peacefully, publicly, cooperatively, as a last resort, submitting to punishment).

2. Conscientious refusal/conscientious evasion. Unlike civil disobedience, this does not appeal directly to a shared sense of justice, nor is it necessarily communicative or public. Its justification must be congruent with the principles of justice in a society (even if motivated by religious of personal conviction).[45]

[43] For example: Ta-Nehisi Coates, "Civil-Rights Protests Have Never Been Popular", The Atlantic, Oct 3, 2017, https://www.theatlantic.com/politics/archive/2017/10/colin-kaepernick/541845/
[44] For the idea that the courts should be lenient on civil disobedients, see Rawls, 1999, p339.
[45] Rawls, 1999, p324-325; and more broadly, sections 56 & 58.

3. Resistance (various forms of). A broad category which covers a range of principled disobedience and does not necessarily exclude using force. It has limited goals, like civil disobedience.[46]

4. Militant action. Disobedience which denies the state's basic justice and has a broader radical or revolutionary goal. Tactics include acts of disruption and an attempt to galvanise people to achieve change.[47]

Rawls acknowledges that sharp distinctions between civil disobedience and conscientious refusal may not be possible.[48] He has less to say about the concepts of resistance and militant obstruction; at some points he appears to consider them part of the same wider dissent but he is also specific about the radical goal of the militant.[49] What is clear is that in the Rawlsian model, a great deal of principled and potentially justified action against the law, sits outside of civil disobedience. In contrast to Rawls's relatively detailed definition of civil disobedience, here it is unclear to what extent how and to what extent such actions may be justified or receive protection from legal sanction.

Since its publication, the Rawlsian model has come to occupy central ground in the field. Theorist after theorist has lifted it out of its context and subjected it to criticism. Yet the Rawlsian model is idiosyncratic for two reasons: first, it is deeply reliant upon a particular local historical example and context – the US Civil Rights campaign of the late 1960s. Second, it was designed specifically for integration within Rawls's own theory of justice. As such, and given its avowed narrowness, it is not a good fit for civil disobedience as widely, commonly practised and as claimed by disobedient citizens (then and now).

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[46] Rawls, 1999, p322. At least three kinds of resistance are specifically named: militant, organised & forcible (p309, p319, p322-3).
[47] Rawls, 1999, p322-323.
[48] Rawls, 1999, p326.
[49] Rawls, 1999, p319 for a brief discussion. Thus, an alternative characterisation to mine could be constructed with points 3 & 4 placed together. Note also that although Rawls uses examples which emphasise a more private and personal act of disobedience to illustrate category 2, it is – as defined – an extremely broad category. For example, if we consider disobedient action which aims to challenge and change laws which are unjust but nevertheless congruent with a shared sense of justice in a near just state (in a sense acting to *improve* the justice of the state) this could be considered *both* as conscientious refusal and resistance.

To that extent, much of the criticism aimed at the Rawlsian model – and there has been a sprawling tide over the last 50 years – is misaimed. Much of it has focussed upon whether Rawls is correct to argue that civil disobedience must be non-violent, or public, or require acceptance of state punishment, or whether his definition fits contemporary examples of (putative) civil disobedience. But these examples take place in a genuinely nonideal setting in comparison to the Rawlsian near-just context. The result of this theoretical disconnect, of lifting a theory like the Rawlsian model of civil disobedience, out of its specific context, is that it involves a splintering of a concept which in a real-world political philosophy has a defined and established history of being used, whole.

Moreover, despite the often-critical stance of the Rawlsian model of civil disobedience (public, nonviolent etc..) the bulk of subsequent philosophical development of civil disobedience has in fact relied upon the core structure of his approach; viz: (i) a restricted definition and (ii) a splitting of different categories of potentially justified disobedience.[50]

For example, Kimberley Brownlee's recent model of civil disobedience. Like Rawls and his contemporaries, her work is animated by a concern that civil disobedience is in need of protection:

> In many judges' eyes, civil disobedience is indistinguishable from ordinary offending; and in many other judges' eyes, it is more serious than ordinary offending.[51]

[50] It is also still common, although not universal, to follow Rawls in defining civil disobedience as primarily a form of political communication, even amongst critics who reject much of his approach. For example: Piero Moraro, "Violent disobedience and willingness to accept punishment", Essays in Philosophy Vol. 8, Iss. 2 (2007): Art. 6. & Robin Celikates, "Democratizing civil disobedience", Philosophy and Social Criticism, Vol. 42 (2016), p982–994, p985 (hereafter 2016a). However, I do not restrict my criticism to that criterion. As I argue below, the deeper problem is that this, and other, restrictive criteria generally abound, leading to a profusion of different models.

[51] Brownlee, 2012, p6. I do not share Brownlee's intuition that civil disobedience is in general poorly thought of. The legal cases she adduces are few and her intuition contradicted by cases she cites with the opposite view (compare for example: p157 & p209-210 with; p159, & p180-181). It is also worth noting that Brownlee's worst cases of anti-civil disobedience legal judgments come from the US where there is, I suspect, less of a settled view on the merits of civil disobedience than with the judiciary in the UK. Further, the two theorists she cites as advocates of a critical view (Joseph Raz & Jeremy Horder) are not generally so. Instead, in the works cited, they express opposition to the idea of a *legal right* protecting civil disobedience, not that it may be necessary, valuable or even obligatory (Brownlee, 2012, p5-6, n.5 & n.6; compare with Raz, 2009, Ch. 14 & Horder, *Excusing Crime*, Oxford: Oxford University Press, 2007, Ch 5; esp., p224, n.128). Brownlee does cite other evidence, although it is anecdotal from a field crowded with examples. And indeed, Brownlee herself observes that: '"civil disobedience' has developed as a more positive term that many people happily

Brownlee's project involves a demonstration that certain forms of suitably constrained civil disobedience are in general more deserving of protection than conscientious objection. This defence relies upon civil disobedience – as she sees it – possessing certain characteristics which demonstrate sincere moral conviction: consistency, universality, non-evasion and dialogic effort.[52] In turn, she develops a case for a moral right protecting suitably conscientious civil disobedience upon a principle of humanism – that a society has a duty to respect the deep moral commitments which are partly constitutive of human nature.[53] And notably, that such deep moral convictions are themselves non-evasive and communicative. In turn, this protects a right to a sphere of autonomous action which includes conscientious civil disobedience.

In one sense, Brownlee's model of civil disobedience is less constrained than the Rawlsian view. It may include acts which are to a degree violent, or covert, and there is no requirement to submit to the state for punishment. However, demonstrating a sufficiently conscientious moral commitment imposes other constraints. For example, one must be non-evasive, and act with the goal of achieving a lasting change in the law.[54] Most significant however is the commitment to a sincere dialogue. This requirement is similar but much stronger than the Rawlsian communicative view, in that it requires a sustained attempt at a two-way engagement characterised by, inter alia, reciprocity, fairness and equality and a recognition of both party's rights and duties.[55]

Just as with the Rawlsian model, Brownlee's conception of civil disobedience is included as just one of a number of categories of principled disobedience. These are:

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apply to their own protests" (Brownlee, 2012, p24 n.18). My own view, as someone who has extensive professional experience working with groups both practicing and defending civil disobedience, is that while legal, governmental and public perceptions of civil disobedience vary, it is nevertheless well established as both a positive label and claim for protection.

[52] Brownlee, 2012, p160 & Brownlee "Reply to Critics", Criminal Law and Philosophy, Vol. 10 (2016), p721-739; p722.

[53] Brownlee, 2012, p7, 120, 145-6, 193 & Brownlee, 2016, p730.

[54] Brownlee, 2012, p148.

[55] Brownlee, 2012 (esp. p9, 17-19, 42-46, 217-222) and Brownlee, 2016, p722-729.

1. Civil disobedience. An act performed for the purpose of communicating condemnation of state practice and which may, in addition, be done to avoid complicity in such.[56]

2. Assistive disobedience. An act performed in order to help alleviate suffering, but which is, in addition, performed in such a way as to be communicative.[57]

3. Personal disobedience. Principled disobedience which is not communicative (includes traditional conscientious objection). This is less deserving of legal protection than civil disobedience.[58]

4. Radical protest.[59]

The methodological splintering of civil disobedience which we see with both Rawls and Brownlee has become common throughout the literature since Rawls's advanced his approach. In addition to the different categories noted above, a host of others have been advanced. Examples include: democratic disobedience,[60] direct action,[61] public disobedience,[62] political resistance,[63] radical disobedience,[64] environmental disobedience

[56] Brownlee, 2012, p25-26.
[57] Brownlee, 2012, p24-7, 28, 150.
[58] Brownlee, 2012, p16, p27-9, p46, p149-151, p170-4.
[59] Brownlee, 2012, p16, p24.
[60] Daniel Markovits, "Democratic Disobedience", The Yale Law Journal, Vol. 114 (2005), p1897-1952. Markovits intends his approach to include acts which aim not just at remedying injustices but also the (inevitable) defects in a democratic process caused through the influence of special interests or policy exclusion via a form of legislative inertia. For a deliberative democratic approach, see William Smith, "Civil Disobedience and the Public Sphere", The Journal of Political Philosophy: Vol. 19 (2011), p145-166.
[61] This has been recently advanced as a specifically disruptive mode of action, often coercive and inclusive of the use of force (e.g. William Smith, "Disruptive Democracy: The Ethics of Direct Action", Raisons Politiques, Vol 69 (2018), p13-27). Such views however ignore its historical lineage stretching back through the US civil rights movement to the labour movement of the early 20th Century. They also neglect its use amongst various organisations to describe action which may be legal.
[62] David Lefkowitz, "On a moral right to civil disobedience", Ethics Vol. 117 (2007), p202-233. This is intended to sit under his broader category of "principled disobedience" (p204-5, n. 4).
[63] Scheuerman, 2018, p4-5. See also: Delmas, "Political Resistance: A Matter of Fairness", Law and Philosophy, Vol 33 (2014), p465-488 & Delmas, 2018.
[64] Alan Carter, "In Defence of Radical Disobedience", Journal of Applied Philosophy, Vol.15 (1998), p29-47. The name refers, in the main, to principled disobedience with broad goal. In this case, tackling the political and economic forces which threaten long-term environmental harm.

(including variations such as ecosabotage),[65] civil law-breaking,[66] hacktivism and electronic resistance,[67] whistleblowing,[68] conscientious wrongdoing,[69] civil resistance,[70] coercive disobedience,[71] uncivil disobedience,[72] political disobedience.[73]

As a result, the post-Rawlsian landscape of civil disobedience includes an untidy woodpile of disobedient categories. What they all (or almost all) have in common is that each possesses characteristics which are supposed to make it distinct from civil disobedience. And thus, each also includes a view of civil disobedience and how it is different from (say) political or democratic disobedience, for example, in terms of particular goal, or communicative intent, or tolerance of nonviolence.

Further, in addition to all these different terms, there is wide variation across different models of (specifically) civil disobedience, with little agreement in terms of its basic aspects:

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[65] Ned Hettinger, "Environmental Disobedience", in Dale Jamieson, ed., *A Companion to Environmental Philosophy*, Oxford: Blackwell Publishers, 2001, p498-509. Peter List, "Some Philosophical Assessments of Environmental Disobedience", Royal Institute of Philosophy Supplement, Vol. 36 (1994), p183-198. On ecosabotage more specifically, see Michael Martin, "Ecosabotage and Civil Disobedience", Environmental Ethics, Volume 12 (1990), p291-310 & Thomas Young, "The Morality of Ecosabotage", Environmental Values, Vol. 10 (2001), p385-393.

[66] Stellan Vinthagen coined this to describe the "civility-focused" approach of Tony Milligan which constrains civil disobedience with reference to a range of civil norms (Vinthagen, "Book Review", Peace Review, Vol. 27 (2015), p528-531 & Milligan, *Civil Disobedience: Protest, Justification and the Law*, London: Bloomsbury 2013.

[67] Delmas, "Is hacktivism the new civil disobedience?" Raisons Politiques, Vol 69 (2018), p63-81. For a discussion of the link between more radical electronic disobedience and civil disobedience, see Molly Sauter, *The Coming Swarm – DDOS Actions, Hacktivism and Civil Disobedience on the Internet*, London: Bloomsbury, 2014.

[68] Daniele Santoro & Manohar Kumar, *Speaking Truth to Power - A Theory of Whistleblowing*, Berlin: Springer, 2018, Ch. 6; Delmas, "The Ethics of Government Whistleblowing", Social Theory and Practice, Vol. 41 (2015), p77-105; Brownlee, "The civil disobedience of Edward Snowden: A reply to William Scheuerman", Philosophy and Social Criticism, Vol. 42 (2016); p965–970.

[69] Martin, 1990. An umbrella term to include both civil disobedience alongside illegal acts outside of its standard definition (e.g. which are not public, or address certain issues; in his examples, ecological damage).

[70] Erica Chenoweth and Maria J. Stephan, *Why Civil Resistance Works: The Strategic Logic of Nonviolent Conflict*, New York: Columbia University Press, 2011. See also Smith, 2019 & Simon Caney, "Responding to Global Injustice: On the Right of Resistance", Social Philosophy and Policy, Vol. 32 (2015), p51-73. As noted, Rawls also employs several variations of principled "resistance".

[71] Guy Aitchison, "Domination and Disobedience: Protest, Coercion and the Limits of an Appeal to Justice", Perspectives on Politics, Vol. 16 (2018), p666-679. Aitchison also uses "coercive resistance" for similar illegal forms of activity, e.g. Aitchison, "Coercion, resistance and the radical side of non-violent action", Raisons Politiques, Vol 69 (2018), p45-61.

[72] For example, Delmas, 2018; Lai, 2019. This is commonly thought to outline a broad range of potentially justified disobedience which sits alongside a civil disobedience (however compare: N. P. Adams, "Uncivil Disobedience: Political Commitment and Violence", Res Publica, Vol. 24 (2018), p475-491 who aims to expand the notion of what is civil disobedience).

[73] Bernard Harcourt, "Political Disobedience", Critical Inquiry, Vol. 39 (2012), p33-55. Who intends this to capture disobedience distinctive in its opposition to existing societal structures rather than specific laws (his example being the Occupy Movement of 2011). Compare with Markovits, 2005, p1898, n.2. Who, instead, has a broader view in mind.

its scope, goal, method and relationship to other political acts.[74] Most are broader than the Rawlsian model, but most also retain some of its narrowness or constraints.[75] For example, one of the most deliberately unrestricted of recent models, that of Robin Celikates, eschews criteria such as nonviolence, openness and publicity, limited goals, and the necessity of accepting punishment. However, he still conceives of civil disobedience as fundamentally a "collective act of protest", albeit with the sense of protest conceived broadly.[76] Moreover also one which must still aim towards reforming a particular law, policy or institution.

One odd outcome of this splintering is (just as we saw with the Rawlsian model above) a sharp disconnection with historical cases, often those which are publicly considered paradigm examples.[77] An additional problem is that this definitional prolixity restricts and distorts the conceptual space available for discussing contemporary civil disobedience. The subject of analysis is more limited than its actual practice, the debate becomes clogged with different forms of disobedience, and much engagement with different views is restricted to definitional debate rather than moral and political inquiry.

Unfortunately, along the way, in the effort to define civil disobedience and then distinguish it from other types of principled disobedience, philosophers have lost sight of the moral and political role of civil disobedience. For as I noted at the start – civil disobedience in its normatively significant sense has a distinctive function. It identifies disobedient acts which

[74] For surveys of the philosophical landscape of civil disobedience since Rawls, see Delmas, 2016 & Scheuerman 2018.
[75] Notably, both William Scheuerman and Kimberley Brownlee have explored alternatives to providing a sharp definition. Scheuerman argues civil disobedience is, to use W. B. Gallie's term, an "essentially contested concept" (Çiğdem, Scheuerman, Delmas, et al. "Theorizing the Politics of Protest: Contemporary Debates on Civil Disobedience", Contemporary Political Theory, Vol. 19 (2020), p513-546). Brownlee, has developed a paradigm case approach (Brownlee, "Features of a Paradigm Case of Civil Disobedience." Res Publica, Vol. 10 (2004), p337-351). These are useful avenues, insofar as they illustrate the breadth of historical and current usage, however both still retain a relatively constrained view (Brownlee more so than Scheuerman).
[76] Celikates, 2016a (esp. p985-6) & Celikates, "Rethinking Civil Disobedience as a Practice of Contestation—Beyond the Liberal Paradigm", Constellations, Vol. 23 (2016), p37-45 (esp. p39).
[77] As is often admitted. For example, David Lefkowitz acknowledges his conception of civil disobedience is not "historically accurate" as it has Thoreau as a conscientious objector and Gandhi as a revolutionary (Lefkowitz 2007, p204-205, n.4). Or, Joseph Raz, who after outlining his own classification, which he takes to be a fairly standard view, breezily asserts: "No claim is here made that they represent the ordinary meaning of the defined terms" (Raz, 2009, p264). Yet presumably these same definitions are intended to be both informed by reference to actual and historical examples (or related thought experiments) and potentially also to illuminate such. Of course, political theory may cut across established practice, but it is not wholly divorced from it. Otherwise, one might wonder, why discuss civil disobedience at all?

are morally justified, and it acts as a shield for people from the power of the state in opposition. This is the moral point of a theory of civil disobedience.

There is however a potentially more serious problem with the constrained view and its splintering into different types of disobedience – it risks a more widespread acceptance in the public realm that "proper" or "acceptable" civil disobedience comes with a strict range of restrictions (e.g. on how it must be conducted, or which issues it may address). And this may limit what protection it offers civil disobedients in pursuit of just causes. For example, a requirement to engage in a dialogue may weaken or limit a defence of civil disobedience for acts which aim to obstruct an unjust law or policy rather than persuade the state to change it (for example, the occupation of social housing scheduled for clearance). Or the requirement to have as a goal a change in law, excludes action which aims mainly to remedy an injustice, or which aims at changing a culture or habits of oppression. And a requirement that actors must surrender to the authorities and submit to punishment may restrict civil disobedience to those wealthy and powerful who are able to withstand legal and financial penalty.[78]

This problem should be considered in the context I noted at the start, with many governments anxious to label civil disobedients with terms such as radical or activist when their activity might disrupt the smooth running of the state. Some of these have pejorative connotations in themselves, but they are also terms which are not associated with the historical protection of civil disobedience.[79]

Note that the potential harm towards people engaging in principled illegal action, who are in need of protection from the state, need not fall at the point of judgment or sentencing but may take the form of an increasingly antipathetic political environment for anyone considering or planning civil disobedience. This is a point largely overlooked in contemporary philosophical consideration of civil disobedience, which in considering official responses to civil disobedience, focuses upon questions of reactive punishment

[78] See Ch. 6 note 98 below, and accompanying text.
[79] Michael Walzer raises a related (although to my mind much less pressing) concern about a narrow definition: "it virtually invites militants of various sorts to move beyond the bounds of civility altogether" (Walzer, 1970, p25).

and/or penalty, and not how states routinely may, and often actually do, act to pre-empt civil disobedients.[80]

Examples of government action aimed at restricting any civil disobedience include, inter alia: intrusive public surveillance, threats of harsh penalty, the creation of a hostile media environment, provision of ineffectual alternatives, pre-emptive arrest and detention.[81] And there is evidence that the policing of any public dissent and protest – including civil disobedience – is becoming increasingly militarised, and repressive, even in otherwise tolerant democratic states.[82] These current and future deterrent tactics are made easier if the sphere of what can be properly considered civil disobedience is fractured and narrowed. The risk is that the ongoing splintering and dividing of the concept may damage the integrity of the shield under which civil disobedients may shelter. We should perhaps keep in mind that that many of those who choose to challenge the authority of the state in this way do so at great personal risk – in some instances and countries, civil disobedients actually put their lives on the line. It is the professional experience of the author, working with organisations involved in civil disobedience, that states are increasingly sophisticated at preventing and deterring all forms of dissent. People who engage thoughtfully and reasonably in civil disobedience need all the help they can get.

Perhaps though I worry too much on this. Political philosophy, after all, is often accused of a lack of much genuine political impact. That may be the case, but even then, there is a further (scholarly) problem: It is hard to see what of *any moral importance* turns on all this careful subdivision, particularly since much of what is, ex hypothesi, outside of civil disobedience, is still often viewed as being morally permissible.

[80] One notable exception here is William Smith, "Policing Civil Disobedience", Political Studies, Vol. 60 (2012), p826-842.
[81] To give one example, on 13 April 2009, in Nottingham, police arrested 114 people in advance of a proposed climate change action at a coal-fired power station on a number of conspiracy charges.
[82] For an excellent survey, see Lesley J. Wood, *Crisis and Control: The Militarization of Protest Policing*, London: Pluto Press, 2014.

5. The Contestatory Approach – Civil Disobedience as a Moral and Political Shield.

Instead of an approach based upon refining and splintering of a Rawlsian (largely communicative) model, let me suggest a broader and more inclusive idea of civil disobedience, one which can embrace the environmental activist, the whistleblower, the radical campaigner for justice, the noncompliant jury member and many others.[83] What I am concerned to do here is mark out clear territory for morally justified disobedience and a concomitant protection from punishment, interference and social and political pressure to comply. This is the territory which the contestatory model of political obligations maps out when the all-things-considered resolution of competing moral reasons does not match with legal compliance. Importantly, as noted, this model corresponds with how civil disobedience functions in practice. It has three levels:

First level.

This model begins with what is morally justified for the citizen in the state, hence it follows in the first place from the demands of the contestatory model of political obligation discussed throughout. This model of political obligation is based around the demands of a set of political principles (natural duties, fairness, political association etc..). The obligations of citizens, and moral reasons, whether for or against compliance with the law, follow from a *reasonable resolution of a citizen's political principles in context*.

Recall that, according to my contestatory model, the personal experience of a citizen's political obligations is more complex (or more clearly and openly complex) than under the orthodox approach. The same political principles which may, according to the circumstances, require conformity with the law may also – if the circumstances change – permit or require disobedience. This is because of distinct features which the contestatory

[83] Of course, while an instance of civil disobedience might also be one of activism, protest or campaigning, the reverse need not be true. These may all also be carried out legally, as part of an authorised event, political lobby, or consumer boycott for example.

approach brings to the fore (although I argue that it is present in all plausible theories of political obligation, albeit largely unacknowledged).[84]

The first feature is specificity. This applies to all political principles (to varying degrees).[85] As each principle provides moral reasons which map onto the directives of the state, there is a gap between the moral reasons in abstract and the real directives of the state. For example, in Chapters 3 & 4, we saw clearly how the same political principles which can require compliance with a state directive may also – in different circumstances – require disobedience to an unjust law.

The second feature is diversity (I have also referred to this feature as the multiplicity of political entities, for example, Chapter 4). For citizens, in addition to the state, there is a diversity of political entities which, depending upon the circumstances, also make normative claims upon citizens in virtue of the same political principles. Some are sub-state, some are larger than the state. And as I have noted (particularly in Chapters 4 & 5), many of these claims can be considered political obligations.

In addition to the features of specificity and diversity/multiplicity of political entities, we should remember that the full contestatory picture also involves many different political principles – which may overlap or conflict. It is in this sense *radically plural*. The result is a context-specific set of diverse political duties. Combined, these make citizens' actual political obligations less certain, but also less certainly oriented towards obedience.

These features: specificity, diversity and a plurality of principles are seen throughout the contestatory model. Finally we can also add a fourth consideration – the strength of these political duties. This fills-in the normative picture of the demands of citizenship and helps determine whether obedience or disobedience is required when different normative reasons pull in different directions. Recall that in Chapter 5 we saw that, in contrast to the widely accepted view in the literature, the strength of fair play duties is determined not by the

[84] Elsewhere I have also referred to these features as problems. They are *problems* inasmuch as in the orthodox approach to political obligation they mitigate against a single broad comprehensive political obligation. They are *features* for the contestatory approach because their presence determines the shape of the particular political obligation a citizen possesses.
[85] Including those I have not discussed in any depth, such as gratitude. Even consent will have a specificity gap if the consent is to anything other than obey the law (e.g. to support or maintain allegiance to the state).

importance of the goal of the cooperative scheme but by the specific contribution required. The strength of natural duties (including necessity and utility) varies from weak to extremely strong (Chapter 3), and the strength of associative duties is connected both to the nature of the association as well as the particular associative connection (Chapter 4).

Given this radically plural and contestatory vision of citizens' political obligations, the best model of civil disobedience which follows is not going to be narrow and restricted but broad and catholic. And as it may be disobedience, which is a final requirement of one's political principles, the question of how to provide the protection brought by a claim of civil disobedience also leads to the broad model described here.[86]

The permissibility, or obligation, of an act of civil disobedience is derived from a consideration of these factors upon the particular political principles which apply in the context (just as in different circumstances these factors may make a claim of obedience upon us). This is the first level in the contestatory model of civil disobedience. It is, straightforwardly, an act of disobedience which is, in the political context, morally correct. It is not restricted to a predetermined set of acts (e.g. non-violent, communicative, collective, submissive), although in practice many of these features may be tactically useful, or morally required as a result of the practical political reasoning. The tactics are appropriate and proportionate to the issue at hand. Note also, that in order to be principled in this way civil disobedience needs also to be a *knowing and deliberate* act. To make a claim of civil disobedience is to speak both about the moral status of an act (i.e. permissible) and to protection from the power of the state and society (even if the latter may be refused for other reasons).[87]

Describing civil disobedience this way entails that – for the citizen – both obedience and disobedience are ineluctably sensitive to the political context. As the context changes, the

[86] It is of course not impossible that another broad model of civil disobedience might also support the contestatory theory of political obligations. This is a question of good fit rather than logical entailment, just as one might note that the Rawlsian concept of civil disobedience is a good fit for his wider theory, even if others could be imagined.

[87] One cannot therefore accidentally do civil disobedience except perhaps under some rare and unusual circumstances (e.g. perhaps a group of citizens planning to disobey an unjust law in the near future, find themselves in breach of a different legal prohibition (of which they were unaware) which outlaws any conspiracy to break that first law. A situation loosely analogous to some Gettier examples employed in epistemology).

set of political principles which applies, and what they morally require, will vary (see the next section below on this value relative approach). I think that this idea harks back to a broader view of civil disobedience which predates the Rawlsian theory.[88] It is an approach which is very much anchored in actual practice, a real-world political philosophy of civil disobedience – although it is also applicable as ideal theory. It is notably catholic as regards the kinds of acts which may be morally permitted (or required) when faced with an unjust demand by the state. As a claim it has exculpatory power, the actor ought to be considered free from moral stain or punishment.

Second level.

This is a broad model, and it does not require civil disobedients to aim for legal or policy change, nor need their actions be communicative or open and public (even if in practice they often are). Importantly however, they may be *mistaken*. The person planning to disobey the law believes that they are morally correct but is wrong. The four features which the contestatory approach illuminates (specificity, diversity, multiple principles and the strength of the different moral reasons) when applied in context in this particular case, require – morally – obedience to the law.

This marks the second level of this model. Here the actor *reasonably believes* they are acting on the proper direction of political principles in context, but they are incorrect. This claim of civil disobedience may not be morally justified (all things considered), but it nevertheless possesses some excusatory power; the actor is wrong but is deserving of leniency. The agent has a principled motivation but are mistaken in their reasoning.

They may have misjudged the context or the principles which apply. Although in many cases a precise determination will be difficult to obtain, we can often distinguish between justified and unjustified civil disobedience in practice. For example, a picket outside a school in the mistaken belief that the curriculum is wicked. Or a public whistleblower who leaks information which they think is important, but which is innocuous, or even false.

[88] See Ch. 6 notes 23 & 24 above, and accompanying text.

Alternatively, they may be correct as regards the all-things-considered injustice or harm of a particular policy or law but choose inappropriate or disproportionate acts of disobedience. Perhaps in protesting a relatively minor injustice, the civil disobedients knowingly cause excessive disruption to many people's lives.

Note that, as with the first level of justified civil disobedience, a determination here is also based upon a reasonable resolution of the particular political principles in context. This connection with a set of moral reasons, via political principles, distinguishes this approach from those which attempt a more throughgoing value neutral approach.[89] There, a disobedient act may be classed as civil disobedience solely in virtue of its possessing a range of characteristics (e.g. nonviolence, communicative intent, a goal of legal change). Whereas here it needs to fit with what it is reasonable to believe may be permitted or obligated by an all things considered resolution of our political duties.

For example, a neo-Nazi group disobeying the law to raise awareness of their racist ideology could not be classed as civil disobedience under this model (let alone justified).[90] Although, if a state were to harshly imprison people for (say) merely possessing neo-Nazi sympathies, then an illegal protest to highlight specifically that unjust treatment, by such a group, would be both civil disobedience and likely justified.

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[89] Dworkin, "Civil Disobedience and Nuclear Protests", in Dworkin, A Matter of Principle, Oxford: Clarendon, 1985, p104–16; p106. See also Lefkowitz, 2007, p205. Compare however, Zinn, 2002. Moreover, I am sceptical as to the degree to which any model of civil disobedience retains a purely classificatory, descriptive and value-free component. The term itself is evaluative and while one may go on to explore and assess its justification more fully, to name something civil disobedience is to make a normative judgment (e.g. Delmas, 2018, p22; Scheuerman, 2020, p519; cf. Raz, 2009, p265). We see this in the way in which it is often included, in a positive context, as part of the history of progressive social movements. And also when its definition is restricted to acts with certain characteristics which are considered to have a positive moral value, such as non-violence, openness and conscientiousness. In a sense, the definition includes (at least in most ordinary circumstances), an element or degree of moral approbation (see e.g., Bedau, 1969, p19; Bedau, Retribution and the Theory of Punishment, The Journal of Philosophy, Vol. 75, 1978, p601-620; p606; Harris, 1989, p7). For example, a model which stipulates a conscientious attempt at respectful communication, or which includes only passive non-violent activity is – in virtue of excluding acts which are often offensive – already making a statement about the justification of civil disobedience. For a specific argument against a value-neutral right to civil disobedience, see Tine Hindkjaer Madsen, "On a Belief-Relative Moral Right to Civil Disobedience", Res Publica, Vol. 25 (2019), p335-351. (As a conclusion, Madsen suggests applying a standard for theories of civil disobedience to exclude wicked causes and acts which violate weighty values and norms (p350). My concern with such a stipulation, in comparison to the approach here, is that it would be insufficiently context sensitive.)

[90] Compare: Brownlee, 2012.

This is not however to conflate a justification of civil disobedience with its definition. The first level of this model outlines an arena of morally justified disobedience to the state. The second level outlines an area of possible excuse, not exculpation. This second level is tied to these same political values and their normative valence through the idea of a reasonable belief.[91] However note that this connection is tied *loosely rather than tightly*. The idea of reasonable belief here is intended to be inclusive rather than exclusive. The aim is not to restrict the title of civil disobedience to only the most plausible candidates for justification, but to reject the most obviously immoral issues and inappropriate acts.

Assigning a loose and inclusive interpretation of reasonable belief is not mere stipulation but is animated by two reasons. First, there are instrumental and citizen-agency benefits of an accepting political climate for civil disobedience, some of which I note below. Second, many situations where different political principles conflict in sometimes complex circumstances involve an element of uncertainty or vagueness when it comes to finding a resolution. Given that in many situations, there may be doubt as to whether one ought to obey or disobey, and cognisant of the value of the practical shield of civil disobedience for (often) vulnerable citizens, in the face of the tremendous power of the state, it seems prudent to err on the side of generosity.

Third level.

This is the arena of acts which pretend to a claim of civil disobedience, but which fall far short. The act is not morally legitimate, nor could it be reasonably believed to be so. It is disobedience in the face of a clear and all-things-considered political obligation to obey. As with the second level above, this error not only includes morally unacceptable causes and aims, but it may include acts which, although they address unjust laws or policies, are themselves obviously inappropriate or cause a disproportionate amount of harm. For example, activists intent upon blocking the unnecessary clearance of an area of ecologically precious old-growth forest, hatch a plan to abduct the families of politicians so as to

[91] Of course, by implication, the third category of not-civil-disobedience is also connected to society's political principles.

forestall the planned commercial development. This category includes what we might call a failed claim of civil disobedience.

The Model.

Together, these categories of acts form a three-fold typology of civil disobedience.

1. Civil Disobedience (Justified). The agent has a reasonable belief, and the act is morally permissible following a reasonable resolution of the political principles in context. This delineates a class of principled illegal act which ought to be treated more leniently than other law breaking. It is a normative claim for protection from the power of the state for disobedience. In this case, exculpatory protection.

2. Civil Disobedience (Unjustified). The agent has a reasonable belief, but the test of reasonable resolution of the political principles is failed. This is also a class of principled illegal act which ought to be treated more leniently. It is a normative claim for protection from the power of the state for disobedience. In this case, excusatory protection.

3. Not Civil Disobedience. The test of "reasonable belief" not passed.

As noted, it may often be difficult to determine with a high degree of certainty whether a disobedient act is (all things considered) morally justified or not. Or, whether one has a reasonable belief rather than an unreasonable one. This reflects two different perspectives in civil disobedience as it is practiced: the civil disobedient and others (i.e. the state and citizens). Nevertheless, this broader contestatory model emphasises an important aspect of civil disobedience. That it is irreducibly normative. For the same combination of plural, contestatory political principles which determine the first category of justified civil disobedience is also important in determining the "reasonableness" of the reasonable belief

that separates the first two categories from the third.[92] There is no one-size-fits-all degree of reasonableness, instead it requires a judgment based upon the moral reasons and relevant context. If for example, the stakes are high, time is short and risks of harm low then a different assessment may be made than if civil disobedients embarked upon a relatively hasty and/or risky plan of action unnecessarily.

States should respond favourably to both (1) and (2) but not in the same way. Level (1) is morally correct and delineates an area of moral permissible acts. Punishment or penalty by the state is prima facie unjust, and there is accordingly no moral duty for civil disobedients to submit to it.[93] However it may be that circumstances are such that additional moral reasons will then count in favour of (some) penalty by the state, in which case they may also make surrender to the authorities the right act. Note however that these moral reasons do not apply ex post facto towards the moral permissibility of the civil disobedience, but only to the state's actions in response.

Example – Pipe it Down (Redux).

> Recall the example of a planned programme of natural gas extraction and pipeline construction, through wilderness and indigenous lands, in Chapter 4. Because there is a narrow window before construction begins, and the stakes are high for the local community, a wide range of civil disobedience could be reasonably believed to be permissible (category 2). This might include not just protest but also blockades, sit-ins, or civil disobedience at the state capital or the energy company headquarters. Would such civil disobedience also be justified? That will depend upon the specifics of the plans and the interests at stake. If, for example, the benefits are weak in comparison with the harm; if the local community is treated unjustly; if the environmental damage likely to be serious, then a wide range of civil disobedience

[92] As I argue in Chapter 2, this is also actually the case with both the standard model of political obligation and so-called philosophical anarchism, because both "approaches" ultimately depend upon a balancing of moral reasons.

[93] I am not convinced by Lefkowitz's proposal of non-censorious penalty rather than punishment for civil disobedients, as in practice it has the same impact upon the people concerned (Lefkowitz, 2007 & Lefkowitz, "In Defense of Penalizing Civil Disobedience", Res Publica Vol. 24 (2018), p273-289. See also Piero Moraro, "On (Not) Accepting the Punishment for Civil Disobedience", The Philosophical Quarterly, Vol. 68 (2018), p503-520 & Zinn, 2002: p27–31.

> will also be justified (category 1). On the other hand, if the timescale was extended to allow for extensive local deliberation, and the state demonstrated a genuine willingness to amend plans to address many of people's concerns, then the scope for both justified, and unjustified-but-reasonably-believed, civil disobedience narrows. In such circumstances, though some may be inclined to continue to fight to frustrate the plans it is more likely that illegal activity will fall outside of a reasonable conception of civil disobedience altogether.

In many cases there will often be an element of uncertainty as regards an all-things-considered resolution towards obedience, or disobedience. In practice, civil disobedients ought (and in fact do) expect that courts may disagree as to the moral rightness of their case and assign some punishment. One hopes that in many cases penalties will be light; and in many jurisdictions there is a long history of lenience and sensitivity towards punishing people engaged in civil disobedience.[94] However, in some cases citizens may welcome sanction for tactical reasons, for example, to have their day in court and challenge a law directly, or to publicly bear witness to an injustice, or to overwhelm local jails and courts and disrupt the official response to their actions. Further still, state approaches to civil disobedience are composed of much more than punishment after the fact, but include a cluster of policing and legal restrictions aimed at deterring, channelling, and restricting this kind of activity in advance. Here too, state restrictions ought to be sensitive toward claims of civil disobedience.

Level (2) involves acts which are not on balance morally justified, but nevertheless the state ought to exercise *some* leniency or outright exception as regards punishment. The principal reason for this, is the important role which civil disobedience plays in protecting people who are acting conscientiously when they break the law – and who may be morally correct to disobey. There are (at least) five additional reasons which recommend leniency as well. The first two lean heavily upon the instrumental value to the political community; the others upon responding to specific needs of citizens as they live a meaningful social and political life.

[94] See Ch. 6 notes 13 & 51. Lord Hoffman notes: "In deciding whether or not to impose punishment, the most important consideration would be whether it would do more harm than good." (*Sepet.* op cit. para 34).

First is a modest recognition of the historical fact that positive social and political change often requires some form of challenge to the law which in turn necessitates some form of civil disobedience. There is thus a value-to-society of civil disobedience as acts which aim at that moral correctness, and which also aim for or cause a concomitant change in law or public policy for the common good.[95] This follows from the inevitable fallibility of political judgment and provides a failsafe against unjust states or state action. Of course, fallibility and bias affect individuals as well as states – perhaps to a greater degree. I am not able here to make any argument as to whether one side or other is in general less likely to be fallible, or (more saliently) whether the costs or benefits of such fallibilities may in general favour one side or the other. What I would observe though, is that one side is *vastly* more powerful and able to influence the current and future lives of citizens to a tremendous degree. So, the state has a concomitant responsibility to look for instances where its laws and policies are – or may be – unjust, harmful or in need of improvement, and to tolerate reasonable challenge to such laws.

The second instrumental reason is that the practice of civil disobedience benefits citizens and states in ways which are not immediately translatable into better (more just, beneficial etc..) laws and policies. More specifically, the reasonable belief criteria, in many cases, helps to foster a responsible and thoughtful citizenry who aim to act morally. And that this considered disobedient action also helps the state to be more responsive and considered as regards its policies. While this would, one imagines, have a broad impact, the paradigm example is that this practice benefits the deliberative functioning of a democratic state.[96]

Third, punishment harms people. And although it is not always the case, civil disobedients are often members of a vulnerable group – particularly those challenging laws which reinforce a social or economic injustice. This may seem an obvious point, but it is often overlooked in the philosophical literature. For example, Lefkowitz's proposal that penalties to deter civil disobedients be set "high enough to impose a genuine sacrifice".[97] Or more egregiously, Andrew Sabl, who in recommending such punishments, opines: "Indeed, as

[95] This is a common justification. For example: Rawls, 1999, p336; Dworkin, 1968; p220; Zinn, 2002.
[96] For benefits as regards democratic functioning, see Markovits, 2005; Smith, 2011; Celikates, 2016a. For an expressly deliberative approach, see Jürgen Habermas, "Civil Disobedience: Litmus Test for the Democratic Constitutional State", Berkeley Journal of Sociology, Vol. 30 (1985), p95-116.
[97] Lefkowitz, 2007, p220 & Lefkowitz, 2017, p277.

often noted, they may *favour* the poor, who have less to lose than the rich from imprisonment and social disfavour".[98] These are clearly not the statements of anyone who has practiced civil disobedience. Nor someone who has any experience of prison time or poverty.

Fourth, we should observe that in responding positively to acts which are unjustified yet principled to a reasonable degree, the state respects citizens' autonomy in exercising their own judgment in a political context. A degree of independence of thought and action is psychologically necessary for people, especially as regards one's deep moral commitments. This idea is familiar from existing legal defences for conscientious objection and protections given to the expression of certain religious and other beliefs (e.g. Article 9 of the European Convention of Human Rights).[99]

Fifth, there is a role for civil disobedience as a form of communal political exercise which is horizontal and reflects a wider political role for the citizen than the (bare) minimum required by modern representative democracy. As Michael Walzer notes, this is often a group activity which relies upon a web of interconnecting moral commitments between members.[100] More broadly, civil disobedience is in many cases a social activity as well as a political one. Anyone who has spent any time with others working to achieve change through civil disobedience will recall the strength and value of the bonds built between people – bonds which are in many cases constitutive of the social and political lives of citizens.

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[98] Andrew Sabl, "Looking Forward to Justice: Rawlsian Civil Disobedience and its Non-Rawlsian Lessons", Journal of Political Philosophy, Vol. 9 (2001), p307-330; p323, emphasis in the original.

[99] Brownlee advances this as one of two defences for civil disobedience I noted above: a "demands-of-conviction defence" (Brownlee, 2012, p7, p159, p167-172). Although she argues it also has an additional instrumental justification because an exceptionless legal system would risk a general decline in legal compliance. I am doubtful of that justification.

[100] Walzer, 1970. Strictly, Walzer thinks it is *almost always* a group activity and that the sole individual is at great risk in opposing the state. I agree with his concern, however my approach both recognizes that people do practice civil disobedience by themselves and explicitly aims to defend a protected space for this (against the state). Arendt has probably the most fully communal view, where civil disobedients are necessarily part of a voluntary association (Arendt, "Civil Disobedience", in Arendt, *Crisis of the Republic*, New York: Harcourt Brace, 1972, p49-102). Although note that Arendt's perspective of civil disobedience is idiosyncratic in other ways, for example, that these groups ought to be formally incorporated as political institutions of the US government.

6. The Shape of Civil Disobedience in the Contestatory Approach

This broad three-fold model helps to illustrate morally important civil disobedience. That is, those acts wherein citizens may legitimately claim freedom from blame and excuse for their illegal actions. There are two limits. First, this model applies to *significant* disobedience. In what sense must it be significant? In one obvious way this excludes acts of trivial disobedience, where custom and circumstances dictates the matter is of minor importance, e.g., occasional harmless jaywalking or fleeting trespass.[101] This also applies to laws which are routinely breached and unenforced.

The second sense in which it needs to be significant is that the *claim* of civil disobedience is important. We see this in cases where there are no other common or readily available defences available, such as necessity, or duress of circumstances (common in many jurisdictions).[102] Although the precise boundaries may not be entirely sharp, we can get an idea of this from examples: the driver who breaks the speed limit carrying an injured passenger to hospital, or a supermarket worker who steals a loaf of bread for a starving child, are (within limits) able to claim this was necessary and avoid or mitigate prosecution. They are not likely to need the protection of a claim of civil disobedience. Whereas a government whistleblower, who is exposing corruption rather than trying to avert an imminent harm is unlikely to be able to claim a necessity defence in court – and therefore require the status of civil disobedient.[103]

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[101] This category overlaps with what Raz is getting at with his category of "occasional disobedience" but is not coterminous with that (Raz, 2009, p263).

[102] That is not to say that the civil disobedient may not claim that their actions are necessary, in the ordinary usage of the words, but rather that this may not function as a specific legal defence in the jurisdiction where they live. More broadly, in making a claim of civil disobedience the actors are reaching for a different form of protection, and also asserting their actions belong to a long tradition of morally justified disobedience. (There may be some cases where a civil disobedient also makes a formal legal claim of necessity).

[103] One example of a whistleblower who did claim a defence of necessity, is the case of Katherine Gun who worked at the UK Government Communications Headquarters (GCHQ). In February 2003, she leaked information to the press concerning a request by the US to assist with spying upon a number of diplomats currently sitting on the UN Security Council who were due to vote on a UN resolution regarding the proposed 2003 invasion of Iraq. When prosecuted, she offered a defence of necessity – which was in her case considered a risky defence (ultimately, on the day the case was dropped, possibly because prosecution may have required disclosing information the government wanted to keep secret. So, the defence of necessity was never tested). [**Disclosure**: At the time, the author was involved in work around that case and corresponding campaign, whilst employed at the UK Human Rights Organisation, Liberty.]

This first limit on civil disobedience is set by the significance of the law being disobeyed and the need for the defence of such a claim. The second limit excludes political disobedience which is sufficiently grave and radical as to deserve names such as armed revolt or civil war. Acts which are particularly violent, destabilising, or destructive. For example, a section of the population aims to seize control of the state through arms, or to assassinate dangerous politicians. Or, where public anger at deep systemic injustice spills into widespread looting and arson. The consequences of such acts are extremely hard to predict, can lead quickly to destabilising violence, and often very hazardous. There may be times when such acts are morally permissible, or even required, but they are often when the state itself is in jeopardy or in the hands of a tyranny. Moreover, because of the grave risks of such actions, moral justification is often only available in hindsight. Although the actors here may well believe themselves to be morally justified, they are not normally in a position to claim excuse or protection from the state (something they may be all too well aware of).

Note that it is not radical ambition or goal which rules this kind of grave political disobedience out, but the extreme nature of the tactics.[104] Acts with a radical ambition – but which eschew destabilising tactics – may still be classed as (appropriate) civil disobedient responses. For example, anti-globalisation protests, or the Estonian "Singing Revolution" of 1987-1991. Similarly, although the US Civil Rights movement of the 1960s is hailed as a paradigm example of the traditional view of civil disobedience, it also had wider radical ambitions for political and economic transformation.[105]

This wider contestatory model of civil disobedience applies then, as long as the act is significant, and as long as it is not grave and destabilising. It may include acts with radical

[104] Should such grave disobedience be included in category 3 of my model? I have considered it separately here because I wanted to emphasise that category 3 exemplified a failure of reasonable belief of correctness, and/or clearly inappropriate or disproportionate tactics. In the case above, the tactics may be appropriate, and the moral calculus correct, but it is the singularly risky and extreme nature of the actions which excludes it from the class of (mere) civil disobedience.

[105] This was present before the key events of the US Civil Rights campaigns. For example: "The thing to do is to get rid of the system and thereby create a moral balance within society" from the speech: "Love, Law, and Civil Disobedience", given in 1961 (Martin Luther King, *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.*, New York: Harper Collins, 1991, p43-53; p47). And this continued and (arguably) broadened after the 1964 Civil Rights Act was passed, to aim at radical change for all citizens. For example: "the movement must address itself to the question of restructuring the whole of American society" (King, "Where Do We Go from Here", in: King 1991, p245-252; p250).

ambition, and (potentially) acts such as disruption, blockades, sit-ins, land or building occupation, refusal to cooperate with authorities, property damage, or (in extremely rare cases), limited coercion. As with all aspects of civil disobedience here, this must be within the bounds of a reasonable assessment of the best response to the political principles which apply in the context. As an historical example, the campaign between 1912 and 1914, by members of the Women's Social and Political Union ("suffragettes") involved damage to a range of public and private property – including smashing windows, burning buildings, and even setting bombs. This is probably close to the outer edge of this central range of civil disobedience.

It is, I hope, clear by now that the contestatory approach involves a maximally expansive view of civil disobedience and may justify a wide range of disobedient acts. Any restriction (or exclusion) comes through its link to the political values of society (either directly or through the idea of a reasonable belief). Thus, it can exclude action by wicked groups or in pursuit of morally ugly aims (regardless of the gentleness of their actions).

Again, an assessment as to whether this is justified (i.e. exculpatory) civil disobedience, or civil disobedience which is unjustified but deserving of excuse, is determined in part on the relative merits of the issue – and not by prior definitional fiat. Thus, an answer to the question of whether an act of disobedience which damages property for example, is civil disobedience or mere vandalism, will be sensitive to an understanding of the cause, the political principles which are engaged, the context and likely consequences. And the same apples to other questions which often bedevil philosophical discussion of civil disobedience.

7. Practical Political Reasoning and Civil Disobedience

In this model there is a close correspondence between the correct all-things-considered position of a citizen's political obligations to obey the state, and the correct all-things-considered position of a citizen's permission to, or obligation to, commit an act of justified civil disobedience in the same context. They are essentially the same position – the

reasonable resolution of that citizen's political principles in context, as determined by their practical political reasoning.[106]

As I have stressed throughout the previous chapters, that resolution may permit legal disobedience or require it. In some cases, there may be other options which are not illegal – such as contributing to campaigns, political lobbies and legal protests aimed at changing unjust laws. And the personal cost of confronting the power of the state in a disobedient stance is sometimes great, which in turn may mitigate against the strength of the obligation to engage in civil disobedience in many circumstances.[107]

However, in other cases the citizen will not just be permitted to directly disobey but also obligated to disobey the law. Although the idea that people often *ought* to disobey the law when confronted with state injustice or dire need is not uncommon, it is unfortunately often merely glossed in theoretical consideration.[108] In contrast, this model is designed to highlight the wider range of political principles that determine when disobedience is permissible and when it might be obligatory.

For example, a whistleblower's claim to civil disobedience hangs on the reality of whether this specific leak causes public harm, or is beneficial, or exposes a grave injustice, or could (realistically) have been dealt with in some other manner etc... Consider the famous leak by Daniel Ellsberg in 1971, who released classified documents detailing a secret government analysis of the US war in Vietnam which revealed the extent of government deception about the genesis, purpose and (then) prognosis of the war as well as the illegal bombing of neighbouring countries ("The Pentagon Papers"). Ellsberg was charged with theft,

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[106] The list of political principles included in my model of contestatory political obligation here is not exhaustive. I have employed a set of common and plausible principles, but others may also apply, either as variations on those already used (e.g. a natural duty to safeguard regions of unspoiled natural environment for non-instrumental reasons), or novel (e.g. some form of aristocratic reason to support and create art of the highest merit).

[107] Hence in states which harshly penalise civil disobedience, it is more likely to be morally permitted than obligatory.

[108] For example, it is mentioned by both Thoreau and William Paley to whom he was responding in his essay (note 5 above). Some other examples include: Walzer, 1970; Wasserstrom, 1961, p653 (who relates it to prosecutions at the Nuremberg trials); Walker, 1988, p210; Raz, 2009, p264; Gans, 1992, p125; Horton, 2010, p190; Knowles, 2012, p171; Dworkin, 2011, p318; Wellman, 2005, p77-78; Carter, 1998, p45; Moraro, 2018, p512. Dorota Mokrosińska, provides somewhat more detail on how political obligation might require disobedience, based upon the experience of citizens of Poland during communist rule (Mokrosińska, 2012, p138, p147-148, p171, p179). Delmas puts an obligation to disobey more centre-stage, although overstates its omission from the literature (Delmas, 2018, p9).

conspiracy and espionage, and injunctions were obtained against publication. Yet in the end both the whistleblower and the newspapers were exonerated. Although in hindsight this may seem clearly the correct outcome, at the time the merits were hotly debated. The crime was grave, the war was ongoing and the risks to life plausible; yet the merits of the act of leaking the report were also considerable.

It is often claimed that civil disobedience requires some kind of "special" justification; the idea being that there is a general moral presumption in favour of legal compliance which must be overcome or outweighed.[109] But as I have argued, this is not an accurate depiction of the actual (complex) landscape of citizens' obligations in the political context. This is because civil disobedience relies upon the same set of political principles and contingent moral reasons as political obligation. None of these moral reasons, for or against obedience, is distinctively presumptive. The more accurate all-things-considered picture of the obligations of a citizen after these principles are taken into consideration will, in most contemporary states, resemble a patchwork of moral obligations. In many cases these will be oriented in favour of some state directives, in other cases, against the state's directives.

In short, whether one ought to obey, or not, is the result of the same practical political reasoning. That underscores my earlier critical response to philosophical anarchists (Chapter 2). And it is noteworthy for anarchists who claim a privileged perspective on civil disobedience. Here for example, is John Simmons explaining the philosophical anarchist's perspective:

> On the anarchist view, the most we can say is that civil disobedience will be justified precisely where the balance of moral reasons favours it and that there is no reason to suppose that this will not be a regular occurrence.[110]

[109] This claim is made by advocates of a standard model of political obligation, incorporating a prima facie duty to comply with all laws. For example: Rawls, 1999, p309-311 & p341; Dagger, 2018, p18; Bedau, 1969, p215; Raphael, 1990, p207; Peter Singer, *Practical Ethics*, Cambridge: Cambridge University Press, 2011, p302; Mokrosińska, 2012, p138. It is also made by some with philosophical anarchist views as part of their critique of models of political obligation: e.g. John Simmons, "Civil Disobedience and the Duty to Obey the Law", in; R G Frey and Christopher Heath Wellman (ed.), *The Blackwell Companion to Applied Ethics*, Oxford, Blackwell 2003, p50-61; esp: p50-51. And Michael Huemer appears to hold this view when he claims that absent general political obligation, disobedience would be justified far more often. (Huemer, 2013, p163).
[110] Simmons, 2003, p60.

This is precisely the same view that would apply even if there was (contra the philosophical anarchist) a state with a general political obligation for all people to support all laws (e.g. an imagined state with a tradition of consent for citizens).[111] For even then, people would still have to weigh up the merits of different moral reasons in favour of disobedience alongside those opposing (including in this example the weight of their consent to obey the state). Thus, advocates of a standard model of political obligation who appear to reject this kind of practical reasoning are mistaken.[112] Similarly, philosophical anarchists are equally mistaken to claim there is a distinctively anarchist approach to civil disobedience – as I have previously argued they are wrong to claim a distinctive approach to obedience (Chapter 2).

The contestatory approach to political obligation reveals a fully vivid and accurate picture of the actual moral obligations of citizens. This is because it includes the full range of political principles and emphasises the context-sensitive practical political reasoning, which is an inescapable fact of our shared political life. Central to this approach, to reasoning about civil disobedience – and our political duties more broadly – are the four features I mentioned above: specificity of duties, diversity of political entities, multiple political principles, and their relative strength or stringency.

To return to the example of public whistleblowing, this is the kind of reasoning which we see in recent historical examples, where it is claimed the weight of an injustice outweighs moral reasons against such leaking (e.g. an associative duty to support the state, predicted disutility or harm from such a leak). Practical political reasoning about civil disobedience is, obviously enough, complex, and involves careful judgement in the face of uncertainties. So, it is worth observing that *good* practical political reasoning may require certain skills and qualities. For example, in June 2013 Edward Snowden, a contractor for the US government intelligence services released, as a whistleblower, classified documents to certain newspapers (including The New York Times and The Guardian). This exposed the (then) vast extent of US spying on civilians. The newspapers were put under enormous pressure,

[111] See for example, Harry Beran's reformist account (Beran, 1987). This is also a model which is, to a degree, recognised by Simmons as an ideal (unrealised) ground for a general political obligation (Simmons, 1993).
[112] It is for this reason that John Horton is incorrect when he argues that one reason civil disobedients ought to accept punishment for their acts is because of the authority of the law (Horton, 2010, p190). If they are justified in their acts, then at that specific time, the legal demand is wrong. Of course, as I note above, they may choose to accept punishment for tactical reasons.

including threat of legal penalty, to not publish. In many respects in deciding whether to publish or not they were conducting the same kind of practical reasoning I have described here. At the time, the Editor of The New York Times was Jill Abramson, a very experienced journalist. In October of the same year, she was interviewed by the BBC about her decision to publish sensitive papers which the US government had claimed would risk lives. When asked how she made that decision, in the face of such official pressure she said:

> I would say without at all, um, wanting to come across as arrogant, that I have years and years of experience, as do many of the reporters who work for me in Washington where the intelligence agencies are located, in dealing with these stories and making very difficult decisions, where we weigh, you know – we balance, the need to inform the public against possible harm to national security. And we do that very seriously and soberly.[113]

There are two points to draw from this example. First, although Abramson is speaking in a personal capacity, she emphasises "we" several times. This illustrates how reasoning about whether to engage in civil disobedience, or not, is in many cases the product of joint or collective practical political reasoning. Second, is the obvious value of relevant experience and historical knowledge. That does not mean that only very experienced people can make these decisions well, but rather that this kind of substantive and valuable *political experience* needs to be retained and distributed in a society. For it is necessary if a political society is to be the kind of country where people make good – or we might say wise – decisions.

8. Benefits of this Broader Model

Notice that this theory is un-awkwardly inclusive of many different and paradigmatic historical examples of civil disobedience. For example: Thoreau's tax resistance is clearly civil disobedience. Gandhi practiced civil disobedience with a revolutionary goal. Similarly,

[113] BBC Newsnight (BBC2). First broadcast: 15 October 2013.

the peaceful sit-ins of the US Civil Rights movement and the programme of property damage by the suffragettes in the UK both fit within this category.

Second, this broader approach expands our conceptual space when theorising about civil disobedience. For example, instead of questioning whether whistleblowing is civil disobedience (e.g. did a whistleblower demonstrate a sufficient level of intent to sincerely communicate; or are their actions appropriately "civil" in accordance with a specific definition?), we can think of a particular act as *both* civil disobedience and whistleblowing.

This generalises; all acts of civil disobedience have various characteristics. For example, an act may be one of civil disobedience *and also* one of environmental activism, or radical dissent, or clandestine refusal, or nonviolence, or uncivil and shocking (rather than either/or).[114] This allows us, for example, to consider the role, use, limits and wider effects of disruptive actions such as property damage or violence within a broad frame of civil disobedience as a (possible) way of discharging our political duties.

This point addresses the concern that a broad approach risks losing some conceptual distinctions useful for analysis.[115] With this approach, they are not lost, they apply *in addition* to the principle, morally important, role of civil disobedience. And it is this context which determines our judgment about whether an act is a justified act of civil disobedience. Further, it may also help to shape the shield under which civil disobedients may shelter (e.g. where a claim of free speech is an additional defence).

This maximally plural contestatory approach, which integrates moral reasons from different political principles, which apply as regards questions of both obedience and civil disobedience, also provides a straightforward way of assessing the justification of an act of civil disobedience. Compare for example, the approach of some theorists who advance a theory of "democratic disobedience" (or democratic civil disobedience), when they

[114] This applies I think even to existing forms which have their own history of usage, such as direct action or conscientious objection. The latter is a notable example as it sometimes has official status in legislation (e.g., as regards a military draft). The prevailing view in the literature is that conscientious objection is separate from civil disobedience. For example, Brownlee, 2012; Delmas, 2016. Raz calls it the "traditional classification" (Raz, 2009, p263-4; Raz does note his categories may sometimes overlap). Though less common, some others in the literature have accepted conscientious objection as a form of civil disobedience, e.g. Harris, 1989, p14-15; Dworkin, 1968; Russell, 1961.
[115] For example, Scheuerman, 2018, p9.

consider those issues which are not directly connected to core liberal values (i.e. typically freedom and equality), for example environmental damage or unfettered corporate globalisation. Here, justificatory arguments are indirect and based upon the degree to which civil disobedience in these cases may repair a corresponding democratic deficit.[116] Whereas in the same cases, this plural & contestatory approach can appeal to moral reasons directly connected to the environmental harm, or the disbenefits of reckless globalisation, *as well as* repairing associated democratic failures. This may involve moral reasons from a range of political principles e.g. justice, samaritanism, the common good, association, fair play. Some of these principles may also be grounded in more than one political community. Further, the contestatory element emphasises the dynamic opposition of these moral reasons in assessing that justification. In turn, it requires close deliberation around the strength of these competing moral reasons in the public sphere.

Finally, and perhaps most importantly, this approach avoids risking the protection, which is afforded by a claim of civil disobedience in many jurisdictions through its established position in social, political, and legal practices and institutions. I noted that risk above in discussing the splintering of the definition common to much post-Rawlsian theorising on civil disobedience (section 4).

Many states already employ a range of powerful deterring tactics to stifle dissent. If for example, "genuine" civil disobedience is restricted to certain kinds of protest, or only realisable through limited forms of action, then that allows a state intent on restricting dissent, greater license to treat "non-civil disobedients" more harshly, and (importantly) also restrict their ability to plan, gather and act.

Moreover, to subdivide much of what I identify here as civil disobedience, into different categories such as 'direct action' or 'uncivil resistance' and then argue that these novel terms ought also to have some protection by society, government or the law is to create a political hostage to fortune – and an unnecessary one. In contrast, this model provides the

[116] Smith, 2011; Markovits, 2005, p1901, & p1950-51.

greatest protection for citizens who are contemplating civil disobedience, while still permitting a judgment about whether such acts are deserving of that shield.[117]

9. Conclusion

A peaceful trespass is not the same as a blockade, or graffitiing a building, different still from damaging equipment, and further removed from coercing public officials or the staff of a company. If a theory of civil disobedience is to be politically useful and if it is to illuminate when it may be right to break a law, then it must be alive to the differences between different acts of civil disobedience and the different issues they address.

The theory here is tied to the different political principles, which in part constitute the moral and political values of a society. From these, in context, we can determine the justifiability of an act of civil disobedience. Whether it is supported, or not, by (say) fair play or political association or a natural duty, and to what extent, is the bedrock of our practical political reasoning. And it is the contestatory theory of political obligations which, I have argued, provides the best depiction of these competing moral reasons.

This theory follows the history, and contemporary practice of civil disobedience as a *claim* of moral justification by citizens and as a *designator* of moral permissibility. As such, it is linked to the moral and political values of a society. This link is direct in terms of justified civil disobedience (exculpatory), but it is also present in the category of unjustified civil disobedience which may be reasonably believed to be justified (excusatory). And it is still relevant in judging the third category of acts which could not be reasonably believed to be justified.

[117] To this it may be objected that a broad definition of civil disobedience may encourage claims by inappropriate actors for dangerous acts and weaken its standing. In response however, this three-part model allows – what happens already – a judgment as to whether an act (e.g. one involving property damage) is appropriate or justified civil disobedience, which is based upon the associated moral reasons and context. This is an additional advantage to this approach.

This is in sharp contrast to the prevailing approach in the philosophical literature, where understanding such a claim and/or designation is often split between differently described modes of principled disobedience and also restricted to a form of civil disobedience which is only permitted insofar as it is appropriately civil, or communicative, or otherwise circumscribed. Such thin approaches may grant that civil disobedience is valuable for its benefit to society, or its practitioners, but omit or gloss both its deeper normative role and its historically important practical function as protection for principled citizens against the enormous power of their state.[118]

The result is a catholic and holistic model, rather than constrained and fractured. It reflects the dynamic balance between competing moral reasons which underscores the contestatory model of political obligations. And it is sensitive to the fact that practical political reasoning between these moral reasons is hard and often fails to deliver a clear or unambiguous final moral ought.

Finally, this theoretical model defends a broad application of civil disobedience's practical aegis, against a risk of narrowing, favoured by those who fear its transformative power. At its best, civil disobedience threatens the status quo – either in its call for change or in its direct action against state directives. Thus, even when it is recognised as beneficial, it is also seen as dangerous, potentially destabilising, or part of a slippery-slope to anarchy. Yet even a passing reflection on recent history ought to remind us that the deeper danger comes not from principled people when they disobey the state, but rather, when people fail to disobey in the face of unjust commands. My approach to civil disobedience aims to both reflect people's lived experience and hard political dilemmas – and to give them the resources they need – if and when they choose to take a stand.

[118] In 1967, Michael Walzer, describing the value of a communal understanding of civil disobedience wrote: "The heroic encounter between sovereign individual and sovereign state, if it ever took place, would be terrifyingly unequal." (Walzer, 1967, p174). Unfortunately, despite the communal and supportive nature of much civil disobedience, it is the individual who is singled out by the state to stand for their principled actions, and who faces personal penalty and punishment.

Chapter 7
Conclusion

And what costume shall the poor girl wear
To all tomorrow's parties
A hand-me-down dress from who knows where
To all tomorrow's parties
And where will she go, and what shall she do
When midnight comes around

The Velvet Underground.[1]

The End. And a Beginning.

In this work I have developed a radically plural theory of political obligations. It is one which attempts to show how a full range of political principles might apply – in a unified manner – to shape the political obligations of citizens.

I have made the following main claims. First, I have argued that all models of political obligation are – in virtue of their commitment to defeasibility and the prevalence of a range of plausible political principles – actually multiple principle theories. Second, that sceptical models of philosophical anarchism are also in fact the same kind of theory of political obligation as well. In both cases, a number of political principles underpin a range of moral reasons to ground compliance with state directives. In both cases, coverage of the full range of state directives may be less than comprehensive, the context will determine the range of laws and degree to which they are justified. Third, I have argued that the moral

[1] The Velvet Underground, "All Tomorrow's Parties", Scepter Records, New York, 1966.

valency of citizens' political obligations may be oriented towards compliance with state directives, or against such. In different cases, their political obligations may permit, or require, disobedience of the law.

Fourth, I have argued that this applies to three significant political principles: fair play, natural duty and political association. Each grounds a range of additional political obligations beyond those preferred by the standard model. As a result, citizens' political obligations are more partial, plural and contestatory than is commonly thought. Central to this claim are further arguments to the effect that each political principle functions in ways which the standard model tends to overlook. Here I emphasised the role of questions about the specificity of political duties, multiple relevant political entities, and the ways in which different political principles ground duties which intersect.

Fifth, I have advanced a picture of citizens' political obligations which resembles – not so much a neat, if defeasible, duty to comply – but a normative landscape populated with significant landmarks and also areas of treacherous or uncertain terrain. Sixth, I have claimed that much philosophical work on civil disobedience since Rawls has tended to overlook the important moral and political role of civil disobedience, and instead focused upon an increasingly fractured definitional debate. Seventh, I have advanced a new broad theory of civil disobedience.

1. Some Gaps and New Directions

To paraphrase Hanna Pitkin, there are many different questions of political obligation.[2] This study has placed the citizen at the centre and focused upon an examination of their political obligations. As a result, one notable omission is a consideration of the implications of this theory on the idea of political authority. The authority of the state and the political duties of its citizens are commonly thought to be bound together in various ways and so a full exploration of this is a possible line of research extending beyond this thesis. As the

[2] Pitkin, "Obligation and Consent – 1", American Political Science Review, Vol 59 (1965), p990-999; p990. Strictly she said a dozen.

contestatory theory is radically plural and the degree to which a state is able to issue directives which have a moral justification is concomitantly context dependent, I suspect that a similar contingent plurality might also apply, in some manner, as regards the authority of a state. This would make an interesting topic of research.

Another omission was an examination of the idea of content independence in political philosophy broadly. While I am obviously sceptical about its role as a mark of distinction between theories of political obligation and philosophical anarchism (Chapter 2), I also have doubts about its role in wider questions of political obligation and authority. This too would make an interesting piece of research. A third limitation of this work was in the depiction of a citizens' practical political reasoning. Again, space limited the degree to which this was possible. Given my preference for describing citizens as being in a moral landscape it would, I think, be a valuable line of research to consider in more detail how they could find their bearings – and make sound moral-political judgments when faced with difficult decisions around the demands of the state.

Finally, now that we have a broader and more catholic model of civil disobedience, another potentially fruitful area of investigation would be to examine in detail some specific areas of possible civil disobedience. For example, concerning pressing environmental challenges, or campaigns that aim to address radical inequality. In the light of the contestatory theory, what fine-grained normative requirements follow? For example, do my associative duties as a good citizen conflict with the demands of the state in these specific circumstances? Or, do I have a duty of fair play to fellow environmental campaigners in those circumstances? The challenge here is how to help people make good practical political decisions in complex circumstances.

I think that addressing that challenge will require employing some of the existing normative tools we have but weaving them together in a different manner than is standard. To draw inspiration from the epigraph at the start of this chapter; a new day deserves not a plain second-hand dress, but a multi-coloured patchwork wrought with threads and material from all the others.

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Epigraphs

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