Summary of this lecture

• How John Rawls argues that we have an obligation to obey the law, whether or not we consent to it

• Why Natural Duty accounts of political obligation may not give us the kind of political obligation we are looking for

• What H. L. A. Hart, and others, see as being unfair about not obeying the law, and whether this provides a better source of political obligation.

• Why Robert Nozick and John Simmons rejected such 'fair play' accounts of political obligation?

• What alternatives are available if we do not accept the social contract, natural duty and fair play accounts of political obligation?
Previously...

• Political obligation is about finding a moral theory that gives us a reason to obey the universal, non-voluntary and coercive law of the land.

• Classical Social Contract Theory: we should obey the law because we have consented, actually and/or tacitly, to obey it as a solution to the problem of the ‘state of nature’ (either that we cannot live both morally and self-interestedly or that we cannot cooperate to satisfy our interests).

• Such theories either a) miss describe the universal, non-voluntary and coercive nature of laws and/or b) imply that people have consented when they manifestly have not done so.

• Rawls redefines the Social Contract in hypothetical terms, as a theory of justice for states, rather than a theory about what justifies states. So what does justify the state and give us our political obligations for Rawls?
From the standpoint of justice as fairness, a fundamental natural duty is the duty of justice. This duty requires us to support and to comply with just institutions that exist and apply to us. It also constrains us to further just arrangements not yet established, at least when this can be done without too much cost to ourselves” (ToJ 99)

NB: This duty also extends to institutions that are “as just as it is reasonable to expect in the circumstances”

Furthermore, “even though the principles of natural duty are derived from a contractarian point of view, they do not presuppose an act of consent, express or tacit, or indeed any voluntary act, in order to apply”

But why…?
John Rawls

• Natural Duties:
  1. "apply to us without regard to our voluntary acts"
  2. "have no necessary connection with institutions or social practices"
  3. "hold between persons irrespective of their institutional relationships" (ToJ 98-99)

• Natural duties are therefore 'natural' because they are owed to 'persons generally' rather than being the construct of social institutions - not divinely commanded or known via common sense.

• It would be ludicrous to say that I should not murder because I have promised not to murder or because it is illegal, this makes a mockery of our moral obligations not to murder! Not murdering is a natural duty
John Rawls

- We have a natural duty of justice because we would acknowledge its existence in the original position – when contemplating the principles of an ideal ‘well ordered’ society from a position of equality. Here’s why:
  - All rational agents have some conception of justice – “they understand the need for, and they are prepared to affirm, a characteristic set of principles for assigning basic rights and duties and for determining what they take to be the proper distribution of the benefits and burdens of social cooperation” (ToJ 5).
  - Individual Conceptions of justice include ‘Justice as Fairness’, utilitarianism, deontology, religious ethics and many other views.
  - Rawls’s principles of social justice (Justice as Fairness) do not replace these individual conceptions, they merely show how people can form a well ordered society. We still have to decide how to live within this society.
Now, we are to imagine that people have placed themselves in the original position and have already agreed that Justice as Fairness is the only principle of social justice for a well ordered society. However, they are still considering what principles they will use to govern their own personal actions.

If the individual adopts any principles that are not fully consistent with the duty of justice, such as utilitarianism, then they will sometimes act in ways that do not uphold the just institutions of this well ordered society.

However, in a well ordered society “(1) everyone accepts and knows that the others accept the same principles of [social] justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles” (ToJ 5).

Therefore, these two principles would produce an ‘incoherent conception of right’ (though not an inconsistent one) - so we have a natural duty of justice!
Rawls’s argument

- **P1** – Anyone who accepts a principle that is inconsistent with the duty of justice will sometimes fail to uphold just institutions that apply to them.
- **P2** – Everyone in a well ordered society accepts the same principles of justice, which are satisfied by the institutions of their society.
- **P3** – Therefore, anyone living in a well ordered society accepts the principles of justice that the institutions of their society satisfy.
- **P4** – Anyone who both lives in a well ordered society and accepts a principle that is inconsistent with the duty of justice will fail to uphold institutions that satisfy the principles that they accept that the institutions governing them should satisfy.
- **C** – Nobody living in a well ordered society could (coherently) accept a principle that is incompatible with the duty of justice.
Rawls’s argument

- This is a reductio ad absurdum - accepting P1 implies P4, but P4 is a premise that is 'incoherent', so rather than being forced to accept this premise we conclude that we have a duty of natural justice.

- The strongest forms of reductio involve contradictory premises, for instance ‘Anyone who both lives in a well ordered society and accepts a principle that is inconsistent with the duty of justice will fail to uphold institutions that they uphold’ - this is impossible, so nobody could ever live in a well ordered society and accept such a principle.

- However, Rawls accepts that such an inconsistency cannot be derived for the duty of justice. If it could then his principles of justice would already imply our obligation to uphold just institutions, so there would be no need for this duty. Hence he provides further arguments against P4.
John Rawls – 3 last points

• The Duty of Justice only extends to Liberal Democratic states (apparently all of these are as just as ‘might be reasonably expected in the circumstances’). But why is it incoherent not to uphold these institutions when they do not fully satisfy the principles of justice themselves?

• In all other states we only have a duty of justice to comply with the law where this would “assist in the establishment of just arrangements” (ToJ 334). Indeed we are specifically entitled to use civil disobedience as a means of promoting justice.

• Rawls does not only reject the notion that obligation is based on consent. He also attacks it “it is generally agreed that extorted promises are void ab initio. But similarly, unjust social arrangements are themselves a kind of extortion, even violence, and consent to them does not bind” (ToJ 343)
Rawls was the first, but is by no means the only, theorist of natural duty obligations in modern political philosophy…

Anna Stiltz – we have a natural duty not to unilaterally impose our will on others. Respecting this duty requires obedience to the (democratic) law because this omnilaterally imposes equal obligations on everybody.

Allen Buchanan – we have a natural duty to respect Human Rights. Respecting this duty does not only require respecting the rights of others, but also upholding institutions that protect them generally.

These principles all give us a general obligation to respect the law, but also place a natural limit on what kinds of law are respectable (just, democratic and rights respecting laws respectively)
Natural Duties and their Critics

• All theories of natural duty imply, as Rawls says, that these duties are not dependent upon our relationships to a particular institution.

• John Simmons argues that this is a universal weakness of such theories because our political obligations do depend on such relationships. We are only obliged to obey the law of our ‘own’ government (whether via residency or citizenship).

• For instance, France is a just, democratic and rights respecting state, why does the simple fact that I am neither a resident nor a citizen of France mean that I am not under a natural duty to obey its laws?

• Rawls doesn’t have much of a response to this (although he does believe we have an obligation to uphold the just institutions of other ‘peoples’).
• However, Stiltz and Buchanan can argue that we are not obliged to obey the law where disobedience would not present any threat to these just institutions, and would not involve the imposition of our will on others or the violation of a right respectively.

• Simmons has replied that it would at least be the case that other states could very easily make us obliged to obey their laws, and that this is a reductio of the Natural Duty argument.

• For instance, if France were to grant me citizenship, even against my will, or were to alter their laws such that my violation of them might threaten somebody else’s human rights, then would that then give me an obligation to obey these laws?
Fair Play

- Fairness = the ethical significance of relationships between people, both real (e.g. friendship, co-citizenship) and hypothetical (e.g. equality).

- Fair Play = the reciprocal obligation we have towards those who benefit us in some way. Either directly (via providing us with goods) or indirectly (by adhering to rules and principles that we benefit from).

- H. L. A. Hart has argued that Fair Play is the basis for Political Obligation. “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” (ATaNR 1955)
Fair Play

• Rawls started out his career advocating the principle of Fair Play as offering the best account of political obligation.

• However, he later came to the conclusion that it could only be applied to people who have agreed to cooperate – like the social contract obligation. He therefore retains the principle, as his principle of fairness, but only as an additional obligation on those holding public office.

• Robert Nozick famously rejects the principle of Fair Play. If we simply found ourselves in the position of having benefited from something we would not be under any obligation to provide that benefit to others (e.g. Having benefited from the entertainment of others via a public address system does not place me under any obligation to go up and do a turn myself if I don’t want to and never agreed to the deal)
Fair Play

- Simmons argued that there is an important difference between ‘receiving’ benefits and ‘accepting’ them.
- Whilst we might be obliged to reciprocate for benefits we received, but could have rejected, there is no obligation to reciprocate for 'public' goods that we could not have rejected (e.g. security, law and order) unless we explicitly accept them.
- Simmons believes that we are only obliged to reciprocate for the benefits that we receive where we perceive these as being provided via a genuinely cooperative enterprise.
- However, in the modern state people see themselves as tax paying consumers of government goods and services, not as genuine cooperators, so such a justification is no longer realistic.
• George Klosko has responded that these objections get the principle of Fair Play wrong by assuming that it depends upon the behaviour of the receiver, rather than the nature of the transaction (relationship).

• We are obliged to reciprocate for benefits received where 1) these are worth our while in paying for, 2) indispensable to living a satisfactory life and 3) where the benefits and burdens are equitably distributed.

• He gives the example of a pacifist who owes their security to the military actions of others. This person would never accept the good that they receive, but they are still obliged to pay for its provision so long as this is equitably distributed amongst those who benefit.

• Nozick’s public address system is simply “of relatively little value” and so does not require reciprocation (PFPO 38-39).
Other accounts of Political Obligation

• Political obligation is about finding a moral theory that gives us a reason to obey the universal, non-voluntary and coercive law of the land.

• Social Contract Theory, the Natural Duty of Justice and the principle of Fair Play all do this, albeit providing very different kinds of justification. However, they are all, in many ways, tailor made for the task.

• In fact any moral theory can, and has, been used to justify our obligation to obey the laws. Many of these accounts are a lot simpler.

• Utilitarianism justifies obeying the law because this increase the general utility, deontology justifies obeying the law because breaking it represents an immoral maxim. Virtue theories justify obeying the law because disobedience is intemperate etc…
Other accounts of Political Obligation

• Such theories all tend to suffer from the same weakness, unlike the three theories that we have studied so far, they make obedience to the law strictly conditional upon the morality of that law, so it is not universal.

• For instance, utilitarianism cannot be used to justify obedience to a law that is does not maximise general utility. (or can it?)

• This then raises the key question of why we have any need for a theory of political obligation at all. If we are already assuming that everybody is moral (remember that!) why not just let them all get on with being moral people. They could still form informal agreements to help them cooperate and get things done, but surely these wouldn’t have to be universal, non-voluntary and coercive laws. right…?
References

- Buchanan, Allan (2002) Political Legitimacy and Democracy, Ethics 112