

POLITICAL OBLIGATION

Exam Strategies: Make sure to tailor your answer to the question! Focus on one or two theories, instead of surveying them all, and make sure that they are relevant. Be precise and detailed and offer reflections on the twists in the question.

My own position: *The non-voluntarist fair play theory by Klosko is the most convincing transactional theory of PO (prima facie), however I do not see how it could give us more than a minimal state. Accounts that justify PO try to give us additional reasons to obey the law. But this does not mean that if all those accounts fail, we would have no reason to obey the law – there can still be good moral reasons to do so.*

Additional “Flair” I could bring into an essay.

- Within benefit theory, do all benefit from the state? Do all people benefit equally? This seems to have implications for what people owe the state.
- Political obligation does not need to work all the time, e.g. there might be unjust or reprehensible laws. Political obligation is only one consideration amongst many to consider. What could those other considerations be? Harm on other people, duties toward others, like future generations.

DEFINITIONS AND CLARIFICATIONS

- › What is political obligation?
 - > They are **moral** obligations of citizens to support and comply with the requirement of their political authorities, i.e. the law of one’s country. They are moral and not legal obligations, for otherwise there would be an infinite regress (there would always have to be another law that says to obey the law...)
 - > Features of obligation of obedience include (Klosko 2019)
 - Gives **prima facie reasons**, i.e. is not absolute and can be overridden by other moral considerations
 - **Comprehensively applicable**, i.e. obligates citizens to obey all laws
 - **General**, i.e. obligates every citizen to follow the law.
 - **Particular**, i.e. generates obligations to one’s own country
 - **Content-independent**, i.e. does not depend on the moral quality of laws, but rather simply because it is the law.
 - > Why does it matter?
 - It is a big deal, because we require some kind of justification for political obligation, if it gives the state significant authority over its citizens – e.g. deciding on laws regarding clothes that are allowed to be worn, minimum wages, rent prices...
 - Political obligation restricts individual autonomy, something commonly seen as inherently valuable. “*The right to command, and correlatively, the right to be obeyed, conflicts with the refusal to be ruled that lies at the heart of autonomy*” (Wolff 1970)
The question is thus: **Can this restriction be explained and justified?**
- › What are key questions in the debate around political obligations?
 - > To **whom** is this obligation owed?
 - > **What** is this obligation an obligation to do?
 - > **How** does one come under such an obligation?
- › What is **the difference between obligations and duties?**
 - > Duties are owed to all persons unconditionally – they are not generated through a specific performance
 - > Obligations are additional requirement which we may choose to incur to individual persons – they are thus voluntary and are owed only to particular people. It is a moral requirement generated by performance of some voluntary act or omission (Simmons 1981)

- › **Note: distinguish between political legitimacy** – a state’s right to coerce its constituents – and **political obligation**, which are citizen’s moral obligation to obey the laws of their state. They are related, but not exactly the same. The right to coerce seems to be more situated in the Fair Play Theory debate.
 - > Legitimacy is necessary for obligation (Green). One might argue that there is no moral obligation to obey an illegitimate legal system. Would this still be content-independent? Not really but recall that political obligation gives prima facie reasons and can be overridden by other moral reasons.
 - > As Simmons (1981) states, political obligations **do not establish absolute moral claims** - they are not a conclusive reason to act in a certain way but **merely a good reason** to do so. They should rather be understood as only one sort of consideration that we need to make in determining how we ought to act in a political community.

TRANSACTIONAL ACCOUNTS OF POLITICAL OBLIGATION

CONSENT THEORY

Basic idea: **Citizens have political obligations because they have freely consented to the state’s rule.**

- › Attractive normative features of consent theory: We often do create obligations through consent, e.g. through promises or contracts; it respects autonomy because the obligation derives from my autonomous decision and will.
- › What are types of consent?
 - > Express consent
 - > Tacit consent
 - > Hypothetical consent
- › **Descriptive flaw** of consent theory: Historically inaccurate to say that citizens have consented to obey the law – thus the theory fails the generality criterion.
- › **Normative flaw** of consent theory: Consent has to be freely given for it to be morally binding, and it is only freely given if one has an outside option, to choose something else. But with regards to statehood, this is not always the case.
 - > Leaving the state is very costly, much of what is previous in life cannot be taken with oneself (family, friends, a particular culture, or language) (Simmons 1979)

Consent theory is not convincing. This leaves us to consider theories that explain how obligations can arise independent of consent.

SERVICE CONCEPTION

- › The role of authorities is to serve the governed by enabling them to act better on the reasons that already apply to them.
- › This plausibly applies to the state given its power and resources. *Maybe this is what makes the state so unique?*

BENEFIT THEORY (OR GRATITUDE THEORY)

Basic idea: **In virtue of living in a state with its laws, citizens gain many benefits, and this receipt of benefits grounds obligations to obey the law.** One should be grateful that the state does something for oneself and be nice in return.

- › Obj.: Some are net contributors, not net beneficiaries of the state – consider a billionaire. He should not be grateful or obliged to participate in a cooperative scheme for taxing him because overall he does not gain from the state
 - > Resp.: His wealth is thanks to law and order. Billionaire has acquired his wealth thanks to smooth operations in the markets in his country. Beneficiary of presumptive and basic goods.

FAIR PLAY THEORY

Basic idea: **Those who benefit from others' cooperative efforts have an obligation to cooperate as well – it is wrong to free ride.** Hence, those who submit to restrictions have a right to you also submitting to them.

“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.” (Hart 1955). Thus, the principle of fairness intends to show that non-cooperators also have obligations to cooperate. The upshot of this when applied to the state is that citizens have to do their fair share in maintaining the mutually beneficial cooperative scheme by the law that is the state.

“We are not to gain from the cooperative labours of others without doing our fair share” (Rawls 1999)

- › **Distinction between excludable vs. non-excludable goods:**
 - > Some excludable goods, e.g. wells, can only be enjoyed if citizens actively pursue the benefits. They can choose not to receive the benefits, and so not incur the obligation – this means they can decide for themselves whether to bear the costs of the scheme.
 - > But some goods are non-excludable, and once provided, benefit everyone (regardless of whether they would have wanted it or not), public goods examples include national defence, prevention of pollution, roads ... But this means that people cannot choose whether or not to receive benefits, and hence it would be implausible to think they incurred obligations
 - Thus, it seems that the fair play principle only respects our autonomy if we can choose whether to receive the benefits and consequently incur the obligation

From this, we get the following version of Fair Play Theory:

- › **Voluntarist** Fair Play: Says one must actively accept benefits in order to be obligated
 - > Challenge is to explain how citizen actively accept the benefits provided by the law, even though many of the goods provided by the state are non-excludable.
- › **“Benefit-foisting” objection (Nozick):** Says that it is wrong to think that fair play would require one to cooperate (see public address system example) – because the **passive receipt is not enough** to show that one is a participant in cooperative practice, or because the benefits are of relatively little value.
 - > Resp. 1: Persuasiveness of objection depends on the triviality of the benefits produced by the cooperative schemes in his examples. Fair play theory would not require one to operate in the public address system if the benefits are of relatively little value. The fair play principle does hold when the benefits produced are valuable or important (Klosko)
 - > Resp. 2: passive receipt of benefits is not enough to show that one is a *participant* in a cooperative practice (Dagger 1997)

From Klosko's response, we get:

- › **Non-voluntarist** Fair Play: Claims that **one can have obligations to contribute to cooperative schemes even when one has not voluntarily accepted the benefits** (Klosko)
 - > Three conditions need to be met for the principle of fairness to generate obligations to contribute to nonexcludable schemes:
 - i. Benefits must outweigh costs
 - ii. **“Presumptively beneficial” good:** individuals can reasonably be expected to want this good, whatever their values or conception of the good are. “Goods that are essential to living a decent life”. The meaning of this is similar to Rawls's primary goods, i.e. “things that every man is presumed to want”
 - iii. Fair scheme, e.g. fair distribution of benefits and burdens
- › However, this would only give us a minimal state, which only includes presumptively beneficial goods.

- > Unless we resort to an **indirect argument**: Many presumptive goods can only be provided or will be provided much more efficiently if **discretionary goods** are also provided – for example, roads for military defence, the infrastructure is necessary for a functioning society.
 - The idea here is that citizens have fair play obligations to the discretionary goods just as they have with presumptively beneficial goods – essentially expanding the notion of presumptive goods?
- > Objections to Non-Voluntarist Fair Play Theory
 - > **Normative problem**: People will disagree on the question of whether the discretionary goods are necessary for the presumptively beneficial goods
 - Resp.: **Klosko** says it would go through public agreement
 - But then what is the difference between that and democratic enactment?
 - > **Empirical problem**: States do a lot of things which we cannot justify via this argument, e.g. parks, planning permissions, protecting cultural heritage etc. There is no plausible way of arguing that these things are necessary according to Klosko’s argument.
 - > **Justificatory gap** between duty of fairness and political obligation (**Zhu 2015**). Insofar as fairness only demands that a beneficiary reciprocates, it cannot pre-empt the citizen’s liberty to reciprocate fairly in *other ways* than obeying the law.
 - I do not owe an identical contribution.
 - Example: My neighbours clean the communal walkways each Sunday, but I refuse in the scheme and rather bake cakes and distribute them. If the costs of doing are roughly equivalent with cleaning the walkways, I am not longer acting unfairly. But it goes to show that there are other ways to contribute to the cooperative scheme.
 - Hence, **the fact that I have a duty of fair play to my fellow citizens does not establish that this duty precisely requires my submission to the state’s coercive system.**
 - Although it would of course be difficult to determine how else I could fairly compensate those who have submitted themselves to this large-scale cooperation scheme that is the state.

ASIDE:

- > **Gilbert (2006)** argues that the members of a political society are obligated to uphold its political institutions by virtue of their membership in that society. That membership is a matter of **participation in a joint commitment** to accept together with the other members the political institutions in question. It has been termed a “nonvoluntarist contract theory”.

NATURAL DUTY THEORY

- > What are Natural Duties?
 - > Natural duties are duties people have, simply in virtue of their status as moral agents. For example, Rawls says that “*a fundamental natural duty is the duty of justice*. This duty of requires us to support and to comply with just institutions that exist and apply to us.
 - > Important: Natural Duties still provide us with an additional reason to obey the law because it is the law (it is not just because it just so happens to coincide with other moral reasons for why we should obey it)
- > Natural Duty Theory says that the **state has authority and citizens have obligations because this enables them to better fulfil duties that they already possess**. It grounds our duty to obey not in who we are, what we have done, or which benefits we have enjoyed, but rather either in:
 - i. the **moral importance of advancing some impartial moral good** or
 - ii. in some **moral duty thought to be owed by all persons to all others as moral equals**, regardless of roles, relationships or transactions (**Wellmann and Simmons 2005**)
 - > Two claims involved: **one empirical and one normative**.

Normatively, it says that we have enforceable duties toward one another (to respect each other, not to kill etc.).

Empirically, natural duty theory says that these duties can only best be fulfilled by having the state and to obey it.

- > **Dworkin 1986** argues: “*we have a duty to honour our responsibilities under social practices that define groups and attach special responsibilities to membership, but this natural duty holds only when certain other conditions are met or sustained*” – **reciprocity** is prominent among these other conditions

- > **Wellman (2005)** formulates a “**Samaritan account**” which says that each of us has a duty to obey the law because this obedience rescues our compatriots from the perils of the state of nature. For obedience to the law to qualify as a Samaritan duty however, it must be both i) **not unreasonably costly** and ii) **in fact necessary to rescue others from peril**. Political coercion is the only possible solution to the harmful circumstances of the state of nature.
 - > Thus, he would argue that if the state did not exist, we would have an obligation to create it, assuming that the state of nature is really “brutish, nasty and short”.
 Since natural duty theory is not grounded in things that other compatriots or the state has already done, but rather some other moral reason (that is not time-bound), it can make this claim that we should invent the state if it does not already exist.
 - > **Samaritan duties are natural duties**
 - > because they do not depend upon a previous transaction or a pre-existing association between the rescuer and the rescue. In this way however, the Samaritan account faces the same particularity objection as other natural duty theories.
 - > **Objection:** Why do political institutions have a greater claim to our obedience to them than say, famine relief organisations? Famine relief organisations also help to rescue others from peril
 - **Response** by **Wellman (2005)**: The crucial distinguishing feature of political peril is that it is fundamentally a coordination problem, because there is no way to eliminate the sources of this type of peril without coordinating people. This means that political coercion is the only possible solution to the harmful circumstances of the state of nature – and there is no way to ensure sufficient coordination without coordination. “*Thus, my state permissibly coerces me because uniform coercion within its borders is the only solution*”.

- > **Objections to Natural Duty Theory:**
 - > **Particularity Requirement:** Natural duty accounts cannot justify the particularity of the duty to obey the law – i.e. they can’t demonstrate why agents must obey the law of the state that claims jurisdiction over them rather than the law of some other states – or indeed other non-political institutions designed to make the world more just (**Simmons**). Why do I have to do my fair share to help others through obeying the law, and not through, say, sending money to famine relief?
 - **Link to Global Justice Topic** – what conditions need to be fulfilled for us to have duties to our own state and not to another?
 - > **Unjust laws:** what if the laws are not fully just?
 - **Rawls resp.:** We still have political obligations as long as our institutions and the law, overall, are reasonably just.
 - **Resp.:** Our obligations to obey the state would be overridden – they are not conclusive, but only good moral reasons to do something (or to not do something)
 - > **Harmless law-breaking:** There are many actions we can take that have little to no discernible effect on the state’s capacity to perform its functions (**Wellman 2005**)
 - **Resp.:** But our disobedient behaviour may trigger a culture of disobedience. Given that all bear the same duty to ensure that others securely enjoy their basic moral rights, no one is justified in disobeying the laws that apply to all.

SCEPTICISM ABOUT OBLIGATION: ANARCHISM

- › What is **philosophical anarchism**?
 - > Says that there is no special reason to obey the law *because it is the law*.
 - > Philosophical anarchists can still hold that individuals often have moral reasons to do that which the law would require them to do – e.g. agents have a moral duty to refrain from murder and theft, and to drive on the right side of the road when others do so. As long as there are moral reasons to behave in appropriate ways, disproving the existence of political obligation will not have excessively harmful effects.
 - There can still be general trust without a state. For example, in smaller communities trust exists because of social sanctions (Miller 2003)
 - > It differs from political anarchism in that it does not want to get rid of the state
 - > Wolff 1970: Obedience is not a matter of doing what someone tells you to do. It is a matter of doing something someone tells you to do because they tell you to do it.
 - Authority is the right to command, and correlatively, the right to be obeyed.
 - > Legitimate authority concerns the grounds and sources of moral obligation
- › What is **political anarchism**?
 - > Says that there is a moral obligation to *disobey the law*.

MAIN AUTHORS

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WELLMAN, CHRISTOPHER H. AND SIMMONS A. J., IS THERE A DUTY TO OBEY THE LAW? (2005) - [LINK](#)

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CIVIL DISOBEDIENCE

DEFINITIONS AND CLARIFICATIONS

- › What is Civil Disobedience?
 - > **Public and conscientious acts of law-breaking with the aim of bringing about a change in the law or policies of the government.** It is hence **distinct from other forms of law breaking** due to its grounding in conscientiousness and its intended public character. It is a political act, guided by political principles and not by group or self-interest.
 - > “a public, nonviolent, conscientious yet political act contrary to law usually” (Rawls)
 - CD aims to address the sense of justice of the majority and show that in one’s considered opinion the conditions of free cooperation are being violated.
- › “Civil”
 - > Relating to citizens and their interrelations with each other or with the state (Thoreau)
- › “Disobedience”
 - > **Intentional breaking of specific laws** (Adams 2018). This is distinct from protesting or campaigning, which is perfectly legal under certain regimes, and it is distinct from unintentional law-breaking
- › What is its aim?
 - > To make a majority or a society reconsider its decision, especially if it refuses to negotiate. It can be a way of forcing a community to confront a specific issue – e.g. breaking the law to attract attention to climate action (Extinction Rebellion)

RELATIONSHIP TO POLITICAL OBLIGATION

- › The logical possibility of CD requires something that citizens are disobedient towards – so it almost always presupposes the existence of a political obligation.
- › But even if we do not think there exists a general political obligation to obey the laws of one’s state, there can still be good reasons to not break it. So CD would still have to be justified.

IS IT A RIGHT OR A DUTY?

- › Arguments for CD being a right
 - > **Agents only have a right to civil disobedience in an illiberal regime** (Raz 1979)
 - Objection: there can be no right to perform a morally wrong action, since wrong actions are acts that we are morally required not to perform (Mackie 1978)
- › Argument for CD being a duty
 - > CD as a duty or moral requirement implies that citizens are acting wrongly when they are not disobeying the law – strong claim: citizens are morally required to disobey the law if the law conflict with their moral duties to others.
 - > Samaritan duties obligate us to act in a certain way to others, even in the absence of a state (Wellman 2005). These duties can be used to justify our obligation to the state – Raz 1988 argues that the better way of discharging our moral duties is to obey the state and that this is the source of political obligation
 - But if we accept these “service conceptions”, then our primary obligation is not to the state but to those duties – **obeying the law is only seen as instrumental!**

ROLE OF VIOLENCE

- › Some argue nonviolence is a necessary condition for CD and that it is only then justifiable
 - > Origins: Spiritual influences: “*it is wrong to use immoral means to attain moral ends*” (King)