Iowa Research Online
The University of Iowa's Institutional Repository

University of Iowa
Iowa Research Online

Theses and Dissertations

Summer 2014

A utilitarian account of political obligation

Brian Collins
University of Iowa

Copyright 2014 Brian Collins

This dissertation is available at Iowa Research Online: https://ir.uiowa.edu/etd/1307

Recommended Citation
Collins, Brian. "A utilitarian account of political obligation." PhD (Doctor of Philosophy) thesis, University of Iowa, 2014. https://ir.uiowa.edu/etd/1307.

Follow this and additional works at: https://ir.uiowa.edu/etd

Part of the Philosophy Commons

A UTILITARIAN ACCOUNT OF POLITICAL OBLIGATION

by

Brian Collins

A thesis submitted in partial fulfillment
of the requirements for the Doctor of
Philosophy degree in Philosophy
in the Graduate College of
The University of Iowa

August 2014

Thesis Supervisors: Professor Diane Jeske
Professor Richard Fumerton

Copyright by

BRIAN COLLINS

2014

All Rights Reserved

Graduate College
The University of Iowa
Iowa City, Iowa

CERTIFICATE OF APPROVAL

PH.D. THESIS

This is to certify that the Ph.D. thesis of

Brian Collins

has been approved by the Examining Committee
for the thesis requirement for the Doctor of Philosophy
degree in Philosophy at the August 2014 graduation.

Thesis Committee: ___________________________
Diane Jeske, Thesis Supervisor

____
Richard Fumerton, Thesis Supervisor

____
Ali Hasan

____
Jovana Davidovic

____
David Cunning

The problems here are, of course, familiar ones to any student of utilitarianism… act-utilitarianism appears to be unable to provide any account of *obligation* at all… [T]he act-utilitarian view will not provide a moral bond which could be associated with, for instance, the idea of citizenship… The conclusion to which we are pushed… is, I believe that the kind of account of political obligation we are seeking is not available to the utilitarian.

A. John Simmons, *Moral Principles and Political Obligation*

ACKNOWLEDGMENTS

I would like to thank my family, friends, colleagues, and teachers for all of their support throughout this process. Special thanks needs to be given to Diane Jeske and Richard Fumerton who helped me work and think through this dissertation. I appreciate all the time and energy you both spent reading through drafts and meeting with me. Special thanks also needs to be extended to my undergrad professors who encouraged and supported my pursuit of a graduate degree - Geoffrey Gorham, Gordon Marino, Charles Taliaferro, and Anthony Rudd. Last, but not least, my family deserves special appreciation for all of their support, *especially* my amazing wife Katie. Thank you for all of the emotional support you have given me over the past five years!

ABSTRACT

One of the core issues in contemporary political philosophy is concerned with 'political obligation.' Stated in an overly simplified way, the question being asked when one investigates political obligation is, "What, if anything, do citizens owe to their government and how are these obligations generated if they do exist?" The majority of political philosophers investigating this issue agree that a political obligation is a *moral* requirement to act in certain ways concerning political matters (e.g., a moral requirement to obey the laws and support one's country). Despite this agreement about the general nature of what is being searched for, a broad division has arisen between political obligation theorists - there are some who take political obligations to actually exist ("defenders of political obligation") and there are some who take there to be no general political obligation ("philosophical anarchists"). While there is debate within the camp defending political obligation about what it is that generates the obligations, the common core of all "defender theories" is the fundamental idea that one has a moral requirement(s) to support and obey the political institutions of one's country. Despite utilitarianism's status as one of the major ethical theories, historically, it has largely been dismissed by theorists concerned with political obligation. Within the contemporary debate it is generally accepted that utilitarianism cannot adequately accommodate a robust theory of political obligation.

The overarching objective of this dissertation is to challenge this general dismissal of a utilitarian account and to build upon the two accounts that have been developed (R.M. Hare's and Rolf Sartorius') in offering a robust utilitarian theory of

political obligation that can be considered a competitor to the other contemporary theories (i.e., theories of consent, gratitude, fair play or fairness, membership or association, and natural duty). However, as this utilitarian account of political obligation develops, the possibility will also emerge for a non-antagonistic relationship between the utilitarian theory on offer and the contemporary political obligation debate. The moral reasons posited by the traditional theories of political obligation (i.e., consent, fair play, gratitude, associative, and natural duty) can be included in and accommodated by my utilitarian account. The utilitarian account of political obligation can accept that there are many types of reasons explaining why broad expectations concerning individual and group behavior are created, and each type of reason can be understood as supporting the utilitarian claim that there are moral reasons for following the laws and supporting legitimate political authorities.

Taken all together, my arguments will take the form of a three tiered response to the prevailing opinion that *any* utilitarian attempt to account for political obligations is doomed. The first tier contends that the utilitarian *can* consistently claim that there are moral reasons to follow the law. This is not a particularly strong claim, but it is one that has been denied by the vast majority of political theorists. The second tier of my argument addresses this apparent issue by contending that even the traditional deontological accounts of political obligation are not offering more than this. Lastly, it is contended that, given the contingent features of humans (i.e., intellectual fallibility, selfish biases, and the way moral education is tied to rules), the strength of the utilitarian political obligations is comparable to other accounts' analyses of the obligations.

TABLE OF CONTENTS

INTRODUCTION 1

Why Political Obligation Matters 8

CHAPTER 1 OBLIGATION AND THE PROBLEM OF POLITICAL OBLIGATION 11

1.1 Philosophical Anarchism 12
1.2 Obligation 19
1.3 Political Obligation 31
1.4 Distinguishing Political Concepts 37
1.5 Derivative vs. Non-derivative Theories 39

CHAPTER 2 THEORIES OF POLITICAL OBLIGATION 54

2.1 The Prominent Dismissal of a Utilitarian Account 55
2.2 Consent Theories 59
2.2.1 Whose Consent? 64
2.2.2 What Counts As Consent? 67
2.2.3 Adaptations to the Consent Theory 74
2.3 Gratitude Theories 90
2.4 Theories of Fair Play 94
2.5 Associative Theories 100
2.6 Natural Duty Theories 105
2.7 Pluralistic Theories 107

CHAPTER 3 VARIETIES OF UTILITARIANISM 110

3.1 Consequentialism and Utilitarianism 111
3.2 Rule vs. Act Utilitarianism 114
3.3 Utilitarian Attempts to Account for Political Obligation 125
3.3.1 Hume 125
3.3.2 Bentham, Mill, and Sidgwick 129
3.3.3 Hare 132
3.3.4 Sartorius 144

CHAPTER 4 MORAL JUSTIFICATION OF THE STATE AND STATE LEGITIMACY 155

4.1 Justification and Legitimacy, Utilitarian and Non-Utilitarian Approaches 156
4.1.1 Hume and Bentham on "Legitimacy" and "Authority" 156
4.1.2 Initial Conceptual Distinctions 158

4.1.3 Distinguishing Between Justification and Legitimacy 161
4.1.4 Conceptually Linking Justification and Legitimacy 169
4.2 Raz's Normal Justification Thesis..180

CHAPTER 5 A UTILITARIAN ACCOUNT OF POLITICAL OBLIGATION........208

5.1 Simmons' Philosophical Anarchism...209
5.2 Consolidating the Non-Utilitarian Insights..215
5.2.1 Descriptive vs. Normative...215
5.2.2 The Function of Political Legitimacy 223
5.2.3 Accepting Authority 234
5.3 The Utilitarian Moral Responsibility Concerning Political Matters..............244
5.4 Reply to Objections...261
5.5 Conclusion 273

BIBLIOGRAPHY 276

INTRODUCTION

In Plato's dialogue *Crito*, Socrates engages and discusses the possibility of escaping from prison and his impending death sentence with his friend Crito.[1] During the course of this discussion Socrates defends his decision to *stay* in prison and accept his death sentence. This dialogue, with Socrates' explicit appeal to an obligation he has to Athens and its citizens, is one of, if not *the*, earliest philosophical discussions of 'political obligation.' Within the relatively brief dialogue, Socrates offers at least three different types of reasons or grounds for his obligations to the state. The first reason offered contends that citizens owe a debt of gratitude to their state:

> Did we [the state and the "laws"] not give you life in the first place? Was it not through us that your father married your mother and begot you?… Are you not grateful to those of us laws which were instituted for this end [education], for requiring your father to give you a cultural and physical education?… We have brought you into the world and reared you and educated you, and given you and all your fellow citizens a share in all the good things at our disposal. (Plato, 2005, p. 35-36)[2]

The claim being made here is that citizens owe their obedience to the state because of everything the state has provided them (e.g., birth, education, etc.). This type of argument hints at the contemporary "gratitude accounts" of political obligation.[3]

Socrates next contends that his continued residence in the state constitutes an agreement to obey its directives:

---

[1] For a critical discussion of Socrates/Plato's arguments see Woozley (1979). In this brief introduction I do not intend to be making any controversial interpretive claims, I am merely presenting Plato's dialogue to introduce the idea that citizens may owe something to their state and to help situate my project into the historical landscape.

[2] *Crito*, 50d-51d

[3] These contemporary accounts will be discussed in more detail in Chapter 2.

> We [the state and the "laws"] openly proclaim this principle, that any Athenian, on attaining to manhood and seeing for himself the political organization of the state and us its laws, is permitted, if he is not satisfied with us, to take his property and go away wherever he likes. If any of you chooses to go to one of our colonies, supposing that he should not be satisfied with us and the state, or to emigrate to any other country, not one of us laws hinders or prevents him from going away wherever he likes, without any loss of property. On the other hand, if any one of you stands his ground when he can see how we administer justice and the rest of our public organization, we hold that by so doing he has in fact undertaken to do anything that we tell him. (Plato, 2005, p. 36-37)[4]

This type of argument roughly mirrors the social contract and consent theories that were very common during the Early Modern period and continue to be prevalent in the contemporary political obligation debate.

Lastly, Socrates seems to contend that there would be overwhelming disutility if the laws were taken to have no force and were able to be disregarded by individual citizens:

> We [the state and the "laws"] invite you to consider what good you will do to yourself or your friends if you commit this breach of faith and stain your conscience… It seems clear that if you do this thing, neither you nor any of your friends will be the better for it or be more upright or have a cleaner conscience here in this world, nor will it be better for you when you reach the next. (Plato, 2005, p. 38-39)[5]

This contention, very roughly, gets at the fundamental idea which my utilitarian account of political obligation will be developing and defending. None of the arguments is fully developed by Socrates, or Plato, but they do provide a precursor (like many of the ideas in Plato's dialogues) for the modern and contemporary debates.

---

[4] *Crito*, 51d-e

[5] *Crito*, 53-54b

This ancient sketch of political obligation in many ways matches the common contemporary intuition that citizens owe some obedience to their respective state or that one is tied to his or her government and fellow citizens in a special way. This vague idea of "patriotism" can be found in contemporary popular culture books, films, and media. This idea of political obligation is also frequently alluded to by politicians as varied as Thomas Jefferson, Abraham Lincoln, George W. Bush, and Barack Obama. Unfortunately, Plato's sketchy "arguments," the wide-ranging deference to "citizens' obligations" in political rhetoric, and the general population's imprecise grasp of the concept does little to illuminate the nature and scope of our special political ties. The following chapters will be a *philosophical* investigation of this common, yet vague, idea of political obligation.

Within the philosophical debate concerning 'political obligation,' the majority of contemporary political philosophers agree that political obligation is a moral requirement to act in certain ways concerning political matters (e.g., obeying the laws of one's country). Despite this general agreement, there are many questions that have not received a consensus, such as: Do such political obligations actually exist? If so, how does one acquire a political obligation? To whom is the obligation owed? What does this obligation require one to do? These questions are deeply intertwined and the positions taken by various philosophers have been extremely diverse. Roughly, however, there are two primary divisions within the debate. The first is focused on the question of whether such political obligations actually exist. This divides political philosophers into two general groups: (1) those who take political obligations to exist in a prevalent and

meaningful way and (2) 'philosophical anarchists' who take there to be no general political obligation. The second primary division concerns the *grounding* of such political obligations, if they do exist. In the contemporary debate there have emerged six general divisions concerning the grounding of political obligation that the majority of theories fit into: consent theories, gratitude theories, theories of fair play or fairness, membership or associative theories, natural duty theories, and pluralistic theories.

Sorting through these competing theories in order to arrive at the correct analysis of political obligation is one primary objective of the current project, but I also intend to focus the investigation further by starting from a utilitarian foundation.[6] Historically, utilitarianism has largely been dismissed by advocates of political obligation, and utilitarians have predominantly rejected and avoided discussing political obligation because they do not think such things as 'obligations' actually exist. However, my central objective is to break from this historical avoidance by most utilitarians and to provide a utilitarian account of political obligation that shows that the utilitarian can offer an account of the moral requirements citizens have for acting in certain ways towards their respective legitimate political authority.[7]

In the first chapter I lay the conceptual groundwork for the rest of the project by discussing the debate between philosophical anarchists and those theorists who take

[6] A more highly specified utilitarian theory which I take to be relevant to the positive account of political obligation will be further developed in the third chapter. Until then, it will be sufficient to understand utilitarianism in a quite general way - as the view that morally *right action* is that action(s) which produces the most value.

[7] It should be noted that much of the terminology common in the political obligation debate (e.g., 'rights,' 'obligation,' 'duty') will feel extremely uncomfortable within a utilitarian discussion of the topic. Somewhat unfortunately, this tension is unavoidable as the contemporary debate, with its prominent deontological proponents and ideas, are laid out for examination. As the project progresses I will offer utilitarian translations of these terms or will simply substitute more comfortable language that can explain the same fundamental ideas.

political obligation to exist. I also spend some time making conceptual distinctions and exploring the particularly important concepts 'obligation' and '*political* obligation' in greater depth. I conclude this first chapter by exploring the crucial distinction, which has been missed or ignored by most theorists, between derivative and non-derivative theories of political obligation. The goal of this first chapter, and the distinctions, divisions, and clarifications made therein, is to explicitly begin carving out conceptual space for my utilitarian account of political obligation.

In the second chapter I begin by reviewing the prominent dismissal of utilitarianism in this particular field of political philosophy. In the subsequent sections I examine and evaluate the types of historical and contemporary theories that *have* garnered attention - theories of consent, gratitude, fair play or fairness, membership or association, natural duty, and pluralistic theories. The goal of this chapter is to illuminate some of the common intuitions concerning political obligations and the corresponding strengths of certain influential accounts. At the same time, weaknesses of each theory will be discussed that will ultimately inform my utilitarian account in addition to the widespread objections facing any utilitarian account of political obligation.

The third chapter focuses on the utilitarian aspect of my positive account with an examination of the distinctions between (1) consequentialism and utilitarianism, and (2) rule and act-utilitarianism. Following this examination I spend the remainder of the chapter exploring the limited number of utilitarian accounts that *have* been offered regarding political obligation (i.e., the proto-utilitarian - Hume, the classical utilitarians - Bentham, Mill, Sidgwick, and the contemporary accounts - Hare and Sartorius). This

examination places an emphasis on the strengths and weaknesses of each account thereby helping to solidify the foundation for my positive account.

In the fourth chapter I examine some concepts that are intimately tied to political obligation - authority, moral justification, and legitimacy. I begin by briefly examining the traditional utilitarian accounts of authority and political legitimacy, and I discuss again why these are problematic if a theory wishes to accommodate the idea of political obligation. In response to these problems with the traditional utilitarian accounts, I examine some accounts offered by non-utilitarian theorists and co-opt some components of their theories for use as conceptual resources in bolstering my utilitarian theory. Much of the attention will be given to Joseph Raz's account of authority and legitimacy, which holds unique promise for use in a political utilitarian theory. The goal with this chapter is to lay the immediate foundation for the utilitarian account of political obligation offered in Chapter 5.

The fifth and final chapter directly addresses the overarching objective of this dissertation: challenging the general dismissal of a utilitarian account of political obligation. By building upon Hare and Sartorius' accounts with the non-utilitarian insights gleaned from the previous chapters, this chapter is able to flesh out the utilitarian reasons for following laws and supporting the relevant legitimate political authority. The goal of this chapter, and the project as a whole, is to offer a robust utilitarian theory of political obligation that may be considered a competitor to the other contemporary theories (i.e., theories of consent, gratitude, fair play or fairness, membership or association, and natural duty) in the political obligation debate.

Overall, I take my project to be offering a three part response to the prevailing opinion that *any* utilitarian attempt to account for "political obligations" is bound to fail. The first part of the argument contends that the utilitarian *can* consistently claim that there are *moral reasons* for following the law. This is a fairly weak claim, but one that is nonetheless denied by most contemporary political theorists. The second part of the argument is intended to strengthen the claim and addresses this apparent issue by contending that even the traditional deontological accounts of political obligation are not offering more than this. Lastly, my argument contends that, given the contingent features of humans (i.e., intellectual fallibility, selfish biases, and the way moral education is tied to rules), the strength of utilitarian political obligations is comparable to the strength of political obligations on the analyses of competing accounts. No theorists allege that legal directives ought to *always* be followed, all things considered, and consequently no analysis of political obligation is *necessarily* stronger than the utilitarian analysis. In the end it must come down to an empirical question of how one ought to act, all-things-considered (which must include the relevant political obligations).

As the utilitarian account of political obligation is developed, the interesting possibility will begin to emerge that the moral reasons posited by the traditional theories of political obligation (i.e., consent, fair play, gratitude, associative, and natural duty) that support the claim that individuals have an obligation to follow the laws of their relevant political authority can be *included* in my utilitarian account. If it is accepted that the moral principles motivating each of these theories are *derivable* from the principle of utility then they are not to be viewed as necessary *competitors* to the utilitarian account,

instead, each could be seen as supporting the many moral reasons individuals have for following laws and supporting legitimate political authorities. Of course, many (or most) proponents of the traditional theories will not accept the claim that the moral principles grounding their preferred theory are derived from the utilitarian principle, but it is an interesting possibility as it opens a door for a non-antagonistic relationship between the utilitarian theory on offer here and the contemporary political obligation debate.

Why Political Obligation Matters

Before beginning the first chapter I would like to briefly address how this analytic and theoretical project pertains to our everyday interactions with other people, animals, and the environment around us; that is, why it is practically important. To summarize my thoughts: the existence of political obligations, and a corresponding belief that such obligations exist, affects everyone's behavior either through an individual's acknowledgment of the obligations or through others' response to an individual's breaking of the obligations. Without a formalized and precise (and correct!) account of what these obligations actually are, people's behavior can be affected by misguided beliefs. As is the goal with all ethical theorizing, this account of political obligation is intended to investigate, and subsequently inform, how we ought and ought not act. While the utilitarian account I will be offering in this work will not explicate *particular* laws which *particular* citizens of a *particular* state have obligations to obey, I will be offering an account of the moral grounds for these obligations and a theoretical guide for evaluating whether one has moral reasons for obeying or supporting his or her state in certain ways. The theoretical account of political obligation offered here will provide the

ethical grounds that support considerations of how individuals ought to act within their political society.

While the practical scope of this theory of political obligation is limited by the fact that it is a conceptual analysis and highly theoretical in nature, this does not trivialize the importance of such a theory. Again, this type of investigation is intended to supply the conceptual resources needed to explain the existence of particular moral reasons and why individuals ought to act in certain ways. As a part of his theory of political obligation and authority, Harry Beran offers a very nice explanation and defense of the importance of these analytic and practically limited theories:

> [T]he limited scope does not trivialize it [the theory]. Let P be someone who lives in a given state but is not under political obligation to it. What difference does this absence of political obligation make to the justification of political action? If one is under political obligation then there is a (not necessarily conclusive) reason for obeying the law. Hence there is one reason for obeying the law, for those who are under political obligation, which does not hold for P. Hence P may be morally justified in disobeying the law in some cases where those who are under political obligation would not be. For example, assume that there is a law against doing *X* and there are no moral reasons for or against doing *X* independent of the possible political obligation to do *X*. (Regrettably states do sometimes ban actions which are not morally wrong.) Then those who are under political obligation have a moral reason against doing *X*, no moral reason for doing *X*, and, therefore, ought, morally speaking, not to do *X*. On the other hand, P is not under political obligation, and, therefore, it is morally indifferent whether P does *X* or not. (Beran, 1977, p. 269)

A formalized theory of political obligation is able to provide resources for considering and determining the morally relevant factors when deciding how one ought to act. This framework for practical deliberations is one vitally important contribution that theories of political obligation, including my own, are able to offer.

John Horton asks a similar question concerning the importance of political obligations in his book, *Political Obligation*. In connection with the above reasons I have sketched, Horton claims that, “Political obligation matters: it is important that we understand ourselves as members of a polity with corresponding obligations” (Horton, 2010, p. 193). This idea does not merely contain the descriptive claim that our self-conceptions are inextricably tied to some society but also the normative claim that we ought to embrace the idea that, (1) “we share a collective fate,” (2) that the state is valuable and indispensable, and (3) that we have the ability and duty to sustain them (Horton, 2010, 194-195). He importantly notes that this does not mean we ought to “sanctify the state,” but it does mean that we cannot do without the state and that “it is hard to see how any viable, worthwhile, collective, political life is possible without acknowledging some political obligations” (Horton, 2010, p. 195).

This is but a brief sketch of the motivations for offering this account of political obligation and of the reasons why such an account is important. A strong account of the moral reasons created by humans’ social nature and practical need for a political authority is a necessary precursor for an informed deliberation about how one ought to act within these political societies.

CHAPTER 1
OBLIGATION AND THE PROBLEM OF *POLITICAL* OBLIGATION

This first chapter will be primarily concerned with laying the conceptual groundwork for the rest of the project. I will begin in section one by explaining the primary theoretical division between political philosophers concerning 'political obligation,' i.e., between (i) those who take political obligations to exist in a prevalent (i.e., for most citizens in a significant number of states) and meaningful way and (ii) 'philosophical anarchists' who take there to be no general political obligations.[8] Once this theoretical divide has been laid out I will explain where I see my utilitarian account fitting into the philosophical landscape. In section two I will explain how 'obligation' is understood by those in the debate and explore how a utilitarian can make sense of these 'obligations.' This general investigation of 'obligations' will be followed by sharpening the focus onto '*political* obligation' and specifying the desiderata for an acceptable account. In the fourth section I will clarify and make some further distinctions between the related, yet distinct, concepts: political obligation, legal obligation, political legitimacy, authority, and law. The final section will explore the crucial distinction, which has been missed or ignored by most theorists, between derivative and non-derivative theories of political obligation. My intention with this chapter, and the distinctions, divisions, and clarifications made therein, is to explicitly clarify where I envision my final utilitarian account of political obligation fitting into the debate.

---

[8] Describing political obligations as "general" is extremely problematic at this early stage in the investigation; however, many political theorists use this terminology and I will follow suit during the first three sections of this chapter. In the fifth section I will address the problem explicitly and offer several theoretical distinctions in order to clarify debate concerning the concept "political obligation."

1.1 Philosophical Anarchism

The question, "Do political obligations exist?" divides political philosophers into two general groups: (1) those who answer "yes" to the question and take political obligations to exist in a prevalent and meaningful way and (2) 'philosophical anarchists' who answer "no" to the question and take there to be no general political obligations. Those political philosophers who take there to be political obligations are further divided by what they believe grounds these political obligations.[9] To look past these divisions for now, the common core of all "defenses of political obligation" is the fundamental idea that one has "a moral requirement[s] to support and comply with the political institutions of one's country" (Simmons, 1979, p. 29).[10]

Alternatively, philosophical anarchists believe that there are no political obligations because they are committed to the claim that all, or virtually all, existing states are illegitimate (Simmons, 2001, p. 103).[11] This view differs from the more colloquial anti-government 'political anarchism' in that the philosophical anarchist's commitment to state illegitimacy does not "entail a strong moral imperative to oppose or

---

[9] I will investigate this question further and examine some of the prominent answers that have been proposed as the grounds of political obligations in the second chapter.

[10] For the purposes of this project I will not address the question of to *whom* these political obligations are owed, if they do exist. There is an independent debate about this issue and in this dissertation I will use terms concerning political institutions noncommittally to refer to whatever or whoever it is to which these obligations are owed (e.g., fellow citizens, political officials, an abstract political entity, etc.).

[11] A. John Simmons notes that the philosophical anarchist, in addition to this negative claim, is also committed, often times only indirectly or implicitly, to a positive "vision of the good social life" (Simmons, 2001, p. 102). This vision is of an "autonomous, noncoercive, productive interaction among equals, liberated from and without need for distinctly political institutions, such as formal legal systems or governments or the state" (Ibid.).

eliminate states" (Simmons, 2001, p. 104).[12] Instead, state illegitimacy for the philosophical anarchist only entails *the lack* of moral obligation to obedience, compliance, or support for states (Simmons, 2001, p. 104).[13] It is this relation between state illegitimacy and moral imperative which brings the philosophical anarchist into the center of the debate concerning political obligation. Quite simply, the philosophical anarchist's position is that there are no general political obligations. For most philosophical anarchists this denial of the existence of political obligations stems from an acceptance of what may be called the "traditional view" of state or government legitimacy. On this traditional understanding,

> [L]egitimacy consists in a certain, normally limited kind of authority or right to make binding law and state policy. State legitimacy or authority is viewed as the logical correlate of the obligation of citizens to obey the law and to in other ways support the state, that is, to the obligation that is usually referred to as political obligation. (Simmons, 2001, p. 106)

With most philosophical anarchists accepting this traditional correlativity view, and also holding the view that all (or virtually all) existing states are illegitimate, the theoretical upshot is that all (or virtually all) people have no general obligation to follow laws as such.[14] At first glance, the claim that people don't have an obligation to follow laws may

---

[12] For the purposes of this project I am not concerned with the semantic dispute concerning whether 'philosophical anarchism' is *really* a form of 'anarchism' (i.e., akin to what I have called 'political anarchism') (cf. Miller (1984) & Gans (1992)). When I use the term 'anarchism,' I follow Simmons in his locating of "the essence of anarchism in its thesis of state illegitimacy" (Simmons, 2001, p. 114).

[13] In this section I do not intend to be using 'state' in any controversial way. In the way I am using the term, one could substitute 'government,' 'political society,' or many other equally vague terms describing a type of political organization. This vagueness in my use is intentional as I wish to describe a *general* account of philosophical anarchism, of which many different varieties are possible and which may each define 'state' differently.

[14] Again, this way of describing political obligation as being "general" and pertaining to laws "as such" is common in the literature concerning political obligation. Section 5 will address the problems caused by this practice and attempt to clarify the goals of the debate.

appear extremely radical because it seems to entail the we don't have an obligation to refrain from stealing, murdering, general disobedience, etc., since there are laws prohibiting these actions and the philosophical anarchist believes we don't have an obligation to follow the dictates of laws.[15] However, this extremely radical account of the actions people are permitted in doing is not one that the philosophical anarchist is forced to accept. Despite their belief that there are no political obligations, the philosophical anarchist can still insist that people are bound by *nonpolitical* moral obligations which may exactly correspond to legal imperatives issued by the illegitimate state (Simmons, 2001, p. 107). The individual may still have a moral obligation, which is equivalent to an existing legal imperative, but the obligation does not arise *because the law exists*. This is one further way that the philosophical anarchist can distinguish themselves from political anarchism and other radical views concerning an individual's relationship to, and within, a state.

There are two additional general distinctions that can be made in differentiating between competing theories of philosophical anarchism. The first is between *a priori* and *a posteriori* forms of philosophical anarchism. The *a priori* theorist maintains that *all possible* states are illegitimate because some essential feature of "being a state," is inconsistent with some necessary condition for legitimacy (Simmons, 2001, p. 105).[16] The *a priori* philosophical anarchist argues that this conceptual inconsistency makes it impossible for something to be a state while simultaneously being legitimate. The *a*

---

[15] Cf. Senor, 1987.

[16] R.P. Wolff (1970) is one example of an *a priori* philosophical anarchist. Wolff argues that, "the authority that states must exercise in order to be states is inconsistent with the autonomy of individuals that any legitimate state would have to respect" (Simmons, 2001, p. 105).

posteriori theorist also maintains that all existing states are illegitimate, but not because of any conceptual inconsistency between statehood and legitimacy. The *a posteriori* philosophical anarchist deems states to be illegitimate because of some contingent characteristic that inhibits them from fulfilling the ideal conditions for legitimacy.[17] There is nothing in this *a posteriori* anarchism that makes state legitimacy, and corresponding political obligation, impossible; it is simply that the political societies we find existing today do not measure up to the *a posteriori* anarchist's ideal for legitimacy.

A second general distinction between differing types of philosophical anarchism is between "weak" and "strong" forms of the theory:

> Weak anarchism is the view that there are no general political obligations, that all (or, at least, virtually all) subjects of all states are at moral liberty to (i.e., possess a privilege or permission right to) treat laws as nonbinding and governments as nonauthoritative. What we call strong anarchism also accepts this minimum moral content of judgments of state illegitimacy, but strong anarchists hold in addition that a states's illegitimacy further entails a moral obligation or duty to oppose and, so far as it is within our power, eliminate the state. (Simmons, 2001, p. 107)

The weak anarchist maintains that state illegitimacy only entails that no obligations are generated for individuals when the illegitimate state issues commands. The strong anarchist also holds that state illegitimacy entails this lack of political obligation, but in addition the strong anarchist believes that illegitimacy entails positive obligations requiring one to oppose the illegitimate state. However, this strong anarchism can come

---

[17] John Horton, 2010, makes a distinction between "positive" and "negative" philosophical anarchism. The "positive" form offers a conceptual argument against the legitimacy of any possible state, just as Simmons' *a priori* anarchism does, with the "negative" form concluding that there is no political obligation from the failure of all attempts to justify such an obligation. Simmons argues that this "'negative' anarchism plainly needs more careful definition, after which it will approach my [Simmons'] a posteriori anarchism" (Simmons, 2001, p. 105). Simmons thinks that a more careful definition is needed because some sketch of what an acceptable account *would* look like is needed in order to justifiably conclude that no attempt has succeeded.

in many different forms depending on how strong the opposition obligation is taken to be. At one end of the spectrum, where the opposition obligation generated by state illegitimacy is extremely weak and easily outweighed by other obligations, strong philosophical anarchism may be virtually indistinguishable in practice from weak anarchism. At the other end of the spectrum, where the opposition obligation generated by state illegitimacy is extremely strong and outweighs many other obligations, strong philosophical anarchism may be virtually indistinguishable in practice from *political* anarchism.

One prominent philosophical anarchist, A. John Simmons, adopts a form of weak *a posteriori* anarchism and argues against *a priori* anarchism and the types of strong anarchism that take the opposition obligation to be of significant weight. Simmons argues against *a priori* anarchism, specifically Wolff's version, first by attacking the theory's *a priori* denial of state legitimacy and second by questioning its assertion that individual autonomy ought to always be preserved:

> In the first place, he himself [Wolff] admits that government by consent would be legitimate (*In Defense of Anarchism*, p. 68-70); it would just not reconcile authority and autonomy in the way he wants. So he is not, on his own terms, entitled to the conclusion that there can be no legitimate state. All he can claim is that we ought to preserve our autonomy at all costs and avoid creating legitimate states. But even this more limited conclusion seems false (as well as odd). For surely it is not true that we have a "primary obligation" (p. 18) to preserve our autonomy (in Wolff's sense of the word). We sacrifice some of our autonomy every time we make any kind of promise and every time we put ourselves in the hands of a surgeon, lawyer, or accountant. Wolff admits that this may sometimes be rational (p. 15). But, as a result of this admission, he has no arguments left which will yield the general conclusion that there is no kind of

> government which it would be morally acceptable to create. (Simmons, 1987, p. 269)[18]

The *a priori* anarchist seems hard pressed to assert that it is conceptually impossible for there to be *de jure* authority; Wolff himself admits that a state would be legitimate, and thus have *de jure* authority, if it were consented to by its citizens. If the *a priori* anarchist is not making this claim about conceptual possibility then they must instead be making a moral claim about whether citizens ought to give their consent (or do any action that would create a legitimate state). Wolff, at least, seems to be making this sort of claim because he believes that individual autonomy should be preserved. Consenting to a state, and thus giving it *de jure* authority, would violate individual autonomy and thus must not be done. However, this moral claim seems unreasonable because in order to remain consistent it must be applied in any situation where one could make a promise, sign a contract, or enter into any sort of arrangement. This sort of moral claim, that one has a primary obligation to preserve his or her individual autonomy and thus must not enter into any sorts of contracts or make any promises, seems unreasonable.[19]

In addition to rejecting *a priori* anarchism, Simmons also rejects the forms of strong anarchism that take the opposition obligation to be of significant weight (relative to other moral considerations). Simmons contends that the philosophical anarchist ought to accept that:

---

[18] Cf. Frankfurt (1973) & Horton (2010, p.126-129).

[19] My primary purpose in examining Wolff's account is not to criticize *his particular* theory; I only wish to use his account as a representative for *a priori* anarchistic theories in general. I don't make any claim to have considered all the possibilities open to the *a priori* anarchist and it is entirely possible that Wolff could reply to the problems I raise. My point is simply that *a priori* anarchism lacks some clarity in the explication of the theory and everyone in the political obligation debate must address these issues concerning the fundamental goals of the debate.

> [T]here may be good moral reasons not to oppose or disrupt at least some kinds of illegitimate states, reasons that outweigh any right or obligation of opposition… The illegitimacy of a state (and the absence of binding political obligations that it entails) is just one moral factor among many bearing on how persons in that state should (or are permitted to) act. Even illegitimate states, for instance, may have virtues, unaffected by the defects that undermine their legitimacy, that are relevant considerations in determining how we ought to act with respect to those states, and the refusal to do what the law requires is, at least in most (even illegitimate) states, often wrong on independent moral grounds (i.e., the conduct would be wrong even were it not legally forbidden). (Simmons, 2001, p. 109)

In opposition to the strong philosophical anarchist and the political anarchist, Simmons is contending that the illegitimacy of the state is simply *one of many* moral reasons that must be considered with respect to what one ought to do. According to political anarchism and the stronger forms of strong philosophical anarchism, the illegitimacy of the state, with its corresponding opposition obligation, strongly overrides other moral reasons. Simmons is arguing that this theoretical commitment entails absurd conclusions for how individuals ought to act.[20]

I am in agreement with the conclusions reached by Simmons and others who argue against *a priori* and the stronger forms of strong philosophical anarchism. I also agree with Simmons that weak *a posteriori* anarchism is the most plausible form of philosophical anarchism; however, I *do not* agree that weak *a posteriori* philosophical anarchism is the correct conclusion concerning the question of political obligations. Consequently, the vast majority of this dissertation will focus on arguing against *a posteriori* philosophical anarchism by offering a positive utilitarian account of the

---

[20] I will discuss ‘obligation,’ as well as Simmons’ understanding of the concept, further in the following section.

grounds for political obligation. In the course of responding to some of his critics Simmons describes three natural strategies for arguing against *a posteriori* anarchism:

> (1) argue for a new ground of political obligation (a previously unarticulated moral principle), not yet considered by the anarchist in his rejection of possible accounts of political obligation and legitimacy; (2) attack the anarchist's specific objections to a particular account, either by arguing that he has somehow misunderstood the moral principle at issue, or by challenging his empirical claims about the nature of existing political societies; or (3) attack the anarchist's conclusion, claiming that it (or what it entails) is so implausible that we must pursue a new account of obligation or authority (or perhaps that it is so implausible that at least one of the anarchist's arguments must be flawed). (Simmons, 1987, p. 270)[21]

My utilitarian account will constitute a form of the second strategy of argument. In the course of developing my positive utilitarian account I will address the objections often raised against a utilitarian grounded political obligation and offer arguments in order to support the contention that a substantial number of states and citizens meet this utilitarian requirement for political obligation.

1.2 Obligation

With this initial sketch of the fundamental division between "defenders of political obligation" and "philosophical anarchists," we are now in a position to further investigate the concept 'political obligation.' In this section I will begin by exploring the more general and foundational concept of 'obligation' and how it is understood by those in the debate. While this preliminary analysis is important for any account of political obligation, it is especially important for a *utilitarian* account because it is not

---

[21] The idea of "arguing for a new ground of political obligation" is another example of a common notion in political philosophy that is in need of further refinement. Section 5 of this chapter will provide conceptual distinctions intended to provide such refinement.

immediately evident how a utilitarian is able to make sense of 'obligations' in a way that is consistent with his or her other theoretical commitments.

In the first chapter of *Moral Principles and Political Obligations*, A. John Simmons lays out a preliminary sketch of 'obligation':

> [A]n obligation is a *requirement*... Obligations are limitations on our freedom, impositions on our will, which must be discharged regardless of our inclinations. (Simmons, 1979, p. 7)

This initial sketch makes obligations appear to be extremely strong moral constraints that can be tied to a person. However, Simmons is quick to point out that an obligation may not be as strong a bind as it first seems:

> [T]o say that an obligation (or a duty) is a requirement is not to say, as it might at first seem, that the existence of an obligation establishes an absolute moral claim on our action, or that obligations override all other sorts of moral considerations. (Simmons, 1979, p. 7)

This distinction between 'obligations' and other sorts of moral considerations has been overlooked in the history of moral philosophy but has gathered quite a bit of attention in the past half century.[22] Many examples have been offered in order to demonstrate that there is a distinction between "X has an *obligation* to do A" and "X *ought* to do A" or "A is the *right* thing for X to do" (Simmons, 1979, p. 8).[23] The vast majority of these examples come in the form of thought experiments where one is presented with a moral dilemma of fulfilling an obligation (e.g., keeping a promise) or bringing about another seemingly valuable state of affairs (e.g., saving one or more people's lives). These are all

---

[22] See: Brandt 1964, Feinberg 1961, Hart 1958, Lemmon 1962, Rawls 1971/1999, and Whiteley 1952-53.

[23] Unless otherwise noted, my use of the word "ought" will always be referring to the "moral sense of ought."

intended to show that 'obligation,' 'ought,' and 'right' are not synonyms and that "X has an obligation to do A" does not entail that "X ought to do A" or that "A is right for X to do" (Simmons, 1979, p. 8).[24] For these reasons Simmons rephrases his description of 'obligation':

> When we tell a person that he has an obligation (or a duty) to do A, we are normally informing him that he stands in a certain relation to another person (or persons) and that there is a good reason (of a special sort) for him to do A. But when we tell him that he ought to do A, we are characteristically giving him *advice*,[25] and telling him that the strongest reasons there are for his acting favor doing A. (Simmons, 1979, p. 9)

Simmons' conclusion is that an 'obligation' is a special sort of requirement or reason for a person (X) to act in a certain way (A). It is not an "all things considered reason" to do A, but it does play a role in the determination or judgment of what X morally ought to do (or what is right for X to do).[26] Another way of stating this conclusion is to say that obligations are *prima facie* reasons for one to act a certain way.[27] These *prima facie* reasons are always defeasible if there are stronger *prima facie* reasons. The *prima facie* reason(s) that outweighs all other *prima facie* reasons is then simply the all things considered reason(s).

---

[24] A similar sort of thought experiment can be constructed in which one has *conflicting* obligations. The intended conclusion remains the same; having an obligation does not entail that one ought to fulfill it or that it is right to fulfill it and vice versa (i.e., there is no entailment from obligation to right or ought) (Simmons, 1979, p. 8-9).

[25] Here Simmons references Feinberg, 1961, p. 275-77.

[26] I use the phrase "all things considered reason" to denote "an agent's overall balance of reasons" (Jeske, 2008, p. 6). To put it differently, an all things considered reason or judgment is a way of "saying that when all reasons for action (or inaction) are considered, A has the weightiest reasons favoring it" (Simmons, 1979, p. 10).

[27] This terminology of '*prima facie* reasons' comes from W.D. Ross (1930), as well as many contemporary ethicists. I do not intend for it to be controversial or strictly attached to any precise usage; I intend it only to denote a reason that is defeasible. This usage is loosely in line with Beran's (1972) distinction between "a reason for action," which correspond with talk of "obligations," and "conclusive reason for action," which correspond with unqualified ought statements.

This distinction between 'obligations' and other sorts of moral considerations has been taken even further by Richard Brandt, H.L.A. Hart, John Rawls, and others. These scholars draw a distinction between the seemingly closely related concepts 'obligation' and 'duty.' In addition to the distinction between these two concepts, 'duty' has been further divided. 'Positional duties' are tasks or requirements that are intimately connected with a particular role or office. For example, a person may come to have a duty to teach children math by becoming a teacher. This duty is acquired *because* the individual takes the position of "teacher." These positional duties "are requirements which must be met in order to fill some position successfully" (Simmons, 1979, p. 13). In contrast to these positional duties, which are tied to specific roles and offices, are 'natural duties' that apply to all irrespective of any role or office that the individual may occupy. These natural duties are more commonly seen as the "moral duties" when compared with positional duties. Rawls' famous list of natural duties from *A Theory of Justice* includes the duty of mutual aid, the duty of non-maleficence, and the duty of justice (Rawls, 1999, p. 98-99). Each person always owes these moral duties to all other persons. After listing these natural duties Rawls goes on to explain how these are distinct from obligations and positional duties:

> Now in contrast with obligations, it is characteristic of natural duties that they apply to us without regard to our voluntary acts. Moreover, they have no necessary connection with institutions or social practices; their content is not, in general, defined by the rules of these arrangements. Thus we have a natural duty not to be cruel, and a duty to help another, whether or not we have committed ourselves to these actions… A further feature of natural duties is that they hold between persons irrespective of their institutional relationships; they obtain between all as equal moral persons. In this sense the natural duties are owed not only to definite individuals… but to persons generally. (Rawls, 1999, p. 98-99)

This explanation provides a nice sketch of natural duties by distinguishing them from the institutionally regulated positional duties and voluntary obligations. Through this brief analysis of the concept 'duty,' we are now in a position to continue investigating 'obligation.'

Simmons, following Hart's lead, differentiates duties (natural and positional) from obligations, which are moral requirements satisfying the following four conditions:

> 1. An obligation is a moral requirement generated by the performance of some voluntary act (or omission)…
> 2. An obligation is owed by a specific person (the "obligor") to a specific person or persons (the "obligee[s]")…
> 3. For every obligation generated a correlative right is simultaneously generated…
> 4. It is the nature of the transaction or relationships into which the obligor and obligee enter, not the nature of the required act, which renders the act obligatory…(Simmons, 1979, p. 14-15)

A bit more should be said to explain and situate each of these conditions into the discussion thus far. The first condition, specifying that obligations are only generated by voluntary actions (or omission of actions), stems from the idea that an involuntary movement does not influence the moral responsibility of an agent. To illustrate this idea, imagine that two people are having a conversation while sitting at a small table in a cafe. During the course of this conversation one of the people goes into a massive seizure during which their hand collides with the other person's face. The idea that involuntary movements do not incur moral responsibility to the individual purports to explain why the person experiencing the seizure is not held morally responsible for the strike to the other person's face. This commonsensical idea is the grounds for Simmons' restriction of actions which generate obligations to those that are voluntary. It must also be noted that

even when an action *is* voluntary, it need not be the *voluntary undertaking of an obligation* in order to generate an obligation. While this is a common way of incurring an obligation, such as when one makes a promise, it is not the only way. For example, a person (A) may incur an obligation to repay (in some way) another individual (B) if A voluntarily walks into B's house and inadvertently breaks a vase sitting on a table near the door. This first condition is also one of the primary features of obligations that distinguish them from duties; obligations are *generated* through voluntary action and duties are simply requirements or responsibilities one *has*. However, these can be closely related in many examples of positional duties people have. When one voluntarily enters into some sort of institutional position or social role with certain positional duties attached to it, he or she is then "in a position of having an *obligation* to perform the duties of that position" (Simmons, 1979, p. 14).

The second and fourth conditions that Simmons specifies for obligations further distinguish obligations from duties. The second condition highlights the difference that while moral duties are owed by all people to all people, obligations are owed by specific individuals to specific individuals or groups. The fourth condition specifies that it is the *nature of the relationship* that is entered into which makes obligations moral requirements. This differs from duties because it is the *nature of the act* that makes something a duty. In addition to obligations being content independent, i.e., the conceptual detachment between an obligation and the nature of the act that the obligation

refers to, obligations are not necessarily tied to "the character of the expected consequences of performing" the act that one is obliged to do[28] (Sartorius, 1975, p. 85).[29]

The third condition laid down by Simmons spells out the logical relation of obligations to another moral concept: 'rights.' Here Simmons follows Hart and others "in accepting the logical correlativity of rights and obligations; the existence of an obligation entails the existence of a corresponding right" (Simmons, 1979, p. 14-15).[30] When an obligation is generated it simultaneously results in a corresponding right for the other party. If person A promises to do X for person B, A now has an obligation to do X for B and B has a right to have X done by A. This logical relation to rights also brings another distinction between obligations and duties. The rights correlated with obligations "are rights which are held against a specific person, and are rights to a specific performance or forbearance" (Simmons, 1979, p. 15). The rights correlating to duties are held *against all* people and *held by all* people.[31]

These differences between obligations and duties, in conjunction with the fact that most political philosophers are interested in questions concerning political *obligations,* may make it seem as though an examination of positional and natural duties should be off the table. However, despite the distinctions that have been drawn between obligations

---

[28] As will become evident shortly, my utilitarian account of 'obligations' will differ from this as it *will* tie the expected consequences to the act that one is obliged to do.

[29] C.f. Whitely, 1952-53, p. 95.

[30] The idea of "rights" is another concept that is often uncomfortable or even incoherent within a utilitarian framework. At this point I am not trying to make any controversial metaphysical or metaethical claims about "what rights are," I am simply trying to accommodate the terminology commonly used within the political obligation debate.

[31] Hart (1955) refers to the types of rights correlated with obligations as "special rights," and those with duties as "general rights."

and duties, I agree with Simmons that *both* need to be considered when giving an account of political obligation:

> [T]he problem of political obligation concerns moral requirements to act in certain ways in matters political, and duties are just as much "moral requirements" as obligations. To presume that the moral bonds in which we are interested are "obligations" (in our specialized sense), would appear to beg some important questions. (Simmons, 1979, p. 12)

At this early stage in the investigation, I will use "political obligation" to indicate the general concept "political moral requirements." Through the course of this dissertation I will be investigating whether there are such political moral requirements, and if there are, whether they are best understood as 'obligations,' 'duties,' or some other type of moral requirement.

While this account of obligation and its distinctiveness from 'duty,' 'ought,' and 'right,' sets the stage for most political philosophers interested in political obligation and for deontologist ethicists generally, it also poses the first road block for any utilitarian who wants to discuss *political* obligation. It has often been claimed, and many utilitarians have been happy to accept such a claim, that utilitarianism is not able to offer a coherent account of 'obligation.' The essence of the claim can be found in two famous passages from W.D. Ross' *The Right and the Good*:

> Suppose… that the fulfillment of a promise to A would produce 1,000 units of good for him, but that by doing some other act I could produce 1,001 units of good for B, to whom I have made no promise, the other consequences of the two acts being of equal value; should we really think it… our duty to do the second act and not the first? I think not. We should, I fancy, hold that only a much greater disparity of value between the total consequences would justify us in failing to discharge our *prima facie* duty to A. After all, a promise is a promise, and is not to be treated

> so lightly as the theory we are examining would imply. (Ross, 1930, p. 35)[32]
>
> It is plain, I think, that in our normal thought we consider that the fact that we have made a promise is in itself sufficient to create a duty of keeping it, the sense of duty resting on remembrance of the past promise and not on thoughts of the future consequences of its fulfillment. (Ross, 1930, p. 37)[33]

The claim is that the utilitarian is not able to account for the moral importance of obligations (e.g., promises), in part because no "*essentially forward looking* consequentialist view of moral obligation can account for the existence of those obligations… the reasons for the existence of which are to be found in *chiefly retrospective* considerations" (Sartorius, 1975, p. 82).

Two general strategies for responding to these objections have been offered by utilitarian theorists. The first strategy is pursued by Rolf Sartorius (1975) when he argues that obligations do exist because of *past* occurrences, but denies that obligations are *moral* requirements. With this account Sartorius is severing any *necessary* connection between one's obligations and what is the 'right' action or what one morally 'ought' to do. In other words, "The grounds for the existence of an obligation… are one thing; the reasons for fulfilling an obligation quite another" (Sartorius, 1975, p. 93). Sartorius agrees with the deontological conception that obligations exist because of *past* actions, but he denies that these obligations are necessarily morally relevant. Sartorius argues that:

---

[32] It should be noted that Ross is one example of a philosopher who did not make the distinction between 'obligation' and 'duty.' In this passage I am taking his use of the term "duty" to be in line with Simmons and Hart's use of "obligation."

[33] These passages from Ross have been reproduced from Sartorius, 1975, p. 81-82.

> [T]here are obligations that give rise to no corresponding moral obligations, and that the existence of an obligation thus cannot support the assertion that one ought (even *ceteris paribus*) to fulfill that obligation. In order for the existence of an obligation to provide a morally acceptable reason for acting so as to fulfill that obligation, it must be shown either that doing so will have some good consequences or that failing to do so will have some bad consequences. (Sartorius, 1975, p. 89)

Sartorius argues for this position because he thinks it is clear that a person can incur an obligation to perform an immoral action. For example, one can accept certain jobs, positions in institutions, or social roles that include positional duties that are morally objectionable (e.g., prison guard at a Nazi death camp). Sartorius contends that this person *will* have an obligation to perform the objectionable positional duties; however, this person *does not* have a *moral* obligation to perform the actions (and in most cases probably has a moral obligation *not* to perform the actions).

The second sort of utilitarian response also lines up with the deontological conception that obligations exist because of *past* actions, but it departs from Sartorius' view in that it contends all obligations *are* morally relevant.[34] This position is supported by the claim that obligations (e.g., promises) necessarily create new expectations (in the obligor, obligee, etc.) such that the fulfillment or disappointment of these expectations must be taken into account in a utilitarian's calculations. Jan Narveson describes this moral relevance of obligations in terms of promises:

> If we ask… "Why do we have a *prima facie* obligation to keep promises?" the answer is evident. When I promise you to do something, I do so because you are interested in the performance of it, and by promising you that I'll do it, I have led you to expect that I will do it in a way that you would not have expected me to do it if I hadn't promised. Consequently,

---

[34] Jan Narveson (1967) is one example of a utilitarian who offers this sort of defense.

> if I default, it is more serious than if I hadn't promised, because this expectation is then disappointed. (Narveson, 1967, p. 192-193)[35]

By creating expectations concerning future action (or inaction), obligations can be seen as quite relevant for a utilitarian's moral considerations. I take this idea to be correct and also to effectively refute Sartorius' claim that obligations are not necessarily morally relevant. Obligations *are* morally relevant in utilitarian calculations, just as *all* facts are which influence the net value of the consequences resulting from an action. Surely the fulfillment or disappointment of an expectation will affect the net value of consequences on any reasonable theory of value.

I take this second strategy to be the more attractive and defensible route for utilitarians in their response to the deontological objection. However, in defending his account, Sartorius explicitly objects to this sort of response:

> While it is of course typically the case that a promise creates new expectations in the promisee (and perhaps others), it is surely not necessarily true. Suppose that A has promised B to do X, where X is something B believes A would be strongly inclined to do anyway. A has incurred, because of his promise, an obligation to do X, but in such a situation there is no difficulty in assuming that B's expectations have not changed. Being as there are not new expectations, there are no new utilities to consider with regard to disappointed expectations, and we are thus left with what I am taking to be the original problem of how an essentially forward-looking normative theory is to account for the existence of obligations the reasons for which seem to lie primarily in prior circumstances. (Sartorius, 1975, p. 83)

In order to save the "expectation account," the necessary connection between obligations and expectations must be defended. Fortunately, I believe this can be done fairly easily. Even in the above example offered by Sartorius, I take it that there *are* expectations

---

[35] This passage has been reproduced from Sartorius, 1975, p. 82.

which have been created. Sartorius focuses only on B and his or her lack of expectations because of the belief that A would do X anyway, but this is to ignore countless other people who may come to have expectations because of A's promise. Anyone witnessing this promise, or even hearing about this promise, may come to have an expectation about A's future actions, and A will almost certainly come to have some sort of expectation about his or her own future actions. Even if it is the case that A believes he or she would have done X regardless of their promising to do it, if the situation arose where they were seriously contemplating *not* doing X, it would be quite strange for them to not then consider their promise to be at least one additional reason in favor of doing X. This seems to show that the promising did create *some* sort of expectation. This idea could be applied to B as well; even though B's expectation was already that A would do X before A's promising, if A were *not* to do X, then B could legitimately complain that A *promised* to do X. This again seems to show that the promise did create additional expectations by adding to a pre-existing one. If one *could* think of a case where it appeared as though an obligation was generated while *no* expectations were created, I think it would be reasonable for the defender of the "expectation account" to claim that something else may have been generated but that it wasn't an obligation.

In light of all this, I believe that the utilitarian *can* offer a coherent account of "obligation" by adopting Simmons' account (the four conditions listed above), with the additional explicit condition that an obligation generates an expectation(s). Obligations can then be seen as morally relevant, important, valuable, etc., on a utilitarian theory because they create new utility to consider by creating expectations.

1.3 Political Obligation

With this sketch of 'obligation' laid out, it is now possible to narrow the focus of the investigation onto *political* obligation. Simmons again provides a helpful starting point:

> [A] political obligation is a moral requirement to support and comply with the political institutions of one's country of residence. (Simmons, 1979, p. 29)

In attempting to flesh out this approximation, some political philosophers have offered desiderata for a satisfying and complete theoretical account of political obligation. In this section I will survey and evaluate some of these suggestions. In particular, there are five desiderata I wish to examine:

1. The requirement that a theory of political obligation make sense of the general intuition that, "most citizens are in some way bound to support and comply with their political authorities (at least in reasonably just states)" (Simmons, 1979, p. 38).
2. The requirement that a theory of political obligation tell us how we ought to act, all things considered.
3. The "particularity requirement": political obligations are "moral requirements which bind an individual to one *particular* political community, set of political institutions, etc." (Simmons, 1979, p. 31).
4. The requirement that there is one and only one grounding of political obligation.
5. The requirement that political obligation be universal or be a moral requirement that applies to *everyone* in a political community.[36]

Crudely, I will accept numbers 1 & 3 and reject numbers 2, 4, & 5, but each needs explanation and further specification.

All adequate accounts of political obligation must make sense of the intuition that individuals are tied to their government and fellow citizens in a special way. A political theorist can offer an account of political obligation with a positive conclusion in which

[36] All of these desiderata are reproduced from Simmons, 1979, p. 29-38.

they would be claiming that the intuition is based on, or at least *should* be based on, whatever it is that they believe grounds the obligation. Alternatively, one can offer a negative conclusion (i.e., philosophical anarchism), but they must offer some sort of error theory and explain away the intuition (e.g., based on a false belief(s), conceptual confusion, etc.). Either of these strategies would fulfill the first desiderata by explaining and making sense of the common intuition.

In the previous section, the distinction between obligations and what is the right action or what one ought to do was discussed; these distinctions are important again in this examination of a specifically political obligation and the proposed second desideratum. If obligations, understood generally, are not equivalent to judgments of what is the right action or what one ought to do, then a particular class of obligations cannot be equivalent to these other sorts of judgments. This is *not* to say that certain obligations or a particular class of them does not sometimes *correspond* with an all things considered reason for acting, but this is not the same as saying they are equivalent. I agree with Simmons' rejection of this second proposed desideratum:

> In specifying our political obligations, we do not answer the questions "how ought we to act, all things considered in matters political?", or even the more limited question "ought we to obey the law?"… Our political obligations will certainly be consideration of how we ought to act within a political community. But a conclusion about these obligations alone will not *be* a determination of how we ought to act all things considered. (Simmons, 1975, p. 30)

The rejection of this requirement for an adequate theory of political obligation should also not be taken as an indication that these political theories lack practical application or

consequences. The discussion in the Introduction on "why political obligation matters" and how these theories should and do affect our actions was intended to make this clear.

While an adequate theory of political obligation need not tell us how we ought to act all things considered, Simmons has argued, and I am in agreement with him for the most part, that a political obligation must be one that ties an individual to one *particular* political community. This desideratum rules out any theory that binds individuals to many different governments simultaneously (e.g., all *de facto* governments, or all just governments, etc.) (Simmons, 1979, p. 31). Simmons argues that a theory of political obligation must specify a *special* obligation that an individual has to his or her government:

> [T]here are two sorts of positional duties which seem to be very closely related to political obligation, insofar as they are institutional requirements which concern obedience to law and citizenship. First, we have the "legal obligations" imposed by the legal system operative within the state. These "legal obligations" are positional duties attached to the position of "person within the domain of the state"… Second, we have the so-called "duties of citizenship," positional duties attached to the position of "citizen" within some state. A citizens's "legal obligations" may be among these duties, as may be voting in elections, defending the country against invasion, reporting shirkers, and so on… The significance of these positional duties to an account of political obligation becomes apparent when we see that these positional duties may be believed to have *moral* weight, or indeed, to simply *be* moral requirements of a special sort… And these sorts of moral constraints would seem to be precisely what we are looking for in giving an account of political obligation. (Simmons, 1979, p. 16-17)

If Simmons is correct in his assessment of the intimate tie between citizenship and political obligations, then it is evident that an adequate theory of political obligation must meet the particularity requirement. Simmons argues for this particularization further by sketching an example:

> [I]magine that I am living under an unjust government in a country at war with another, justly governed, country. Could we seriously maintain that my "political obligation" consists in *opposing* the efforts of my own country, in favor of a country with which I may have no significant relations whatever. While we may believe that I have a duty to oppose my country, this is surely ill-described as my "political obligation." (Simmons, 1979, p. 32)

This example highlights the intuition that there are special relations between individuals and governments which they are tied to in a close way. If these close ties create special moral requirements, then it seems as though this is what we are looking for, and what most political theorists have been interested in, when investigating political obligation.

While I agree with Simmons that it is this special moral requirement created for individuals by *particular* political entities that is of primary interest, I think that a distinction between "political obligation" and, for lack of a better term, "political duty" may be a valuable ethical distinction to make. If the particularity requirement is too forcefully pushed on any theory attempting to describe moral requirements created by political entities, then many important moral requirements may be downplayed or even dismissed simply because they are not strictly political *obligations*. Simmons purports to not dismiss any sort of moral requirements in his investigation, but he seems to be doing exactly this by restricting moral requirements which apply to all people or tie individuals to all governments (i.e., natural duties). While I see my project aligned with Simmons' in that it is concerned with political *obligation*, I think it is important to express that the particularity requirement does not apply to *all* political moral responsibilities. This is especially evident if one considers again Simmons' example of an individual living under an unjust government that is at war with a justly governed country or countries. While

the individual may not have political obligations to the justly governed country(ies), it would be illegitimate to immediately deny that the individual may have moral responsibilities that were created by certain actions of the justly governed country(ies). In effect, if the particularity requirement is taken to be more far reaching than it ought to be, a comprehensive ethical/political theory (which must include an account of political *obligation*) may detrimentally downplay one's moral responsibilities to other polities. In other words, there may be a *type* of moral requirement that is not the primary one binding individuals to political entities that nonetheless does bind individuals to all governments whose dictates promote justice, happiness, well-being, etc.

While an adequate theory of political obligation needs to be between individuals and *particular* political communities, it need not necessarily have a singular ground. I follow Simmons in his rejection of the fourth proposed desideratum. The recent trend by political philosophers in exploring "mixed accounts" of political obligation departs from the historical tradition of singularly grounded accounts (e.g., consent as the *one and only* ground), but it is supported by the idea that, "a *presumption* in favor of singularity seems, in the absence of special argument, unwarranted" (Simmons, 1975, p. 35). General obligations can be generated in many different ways and it is not immediately clear why the generation of *political* obligation could not also be multiply realized.

In similar fashion to the rejection of the fourth proposed desideratum, I am also going to reject the fifth proposal. An adequate account of political obligation need not be universal or be a moral requirement that applies to *everyone* in a political community. Just as general obligations tie *individuals* to other individuals or groups of individuals, a

specific variety of obligation (i.e., political obligation) must be understood as doing the same. Unless an argument is offered in support of the idea that a political obligation is vastly different from other sorts of obligation in that it applies universally, it must be assumed to bind individually just as other obligations do. This is not to say that specific accounts of political obligation must be rejected because they claim that the obligation applies to everyone in a political community; it is simply that this cannot be a desideratum for all theories. Specific accounts which make this universal claim will have to offer an argument in order to support it and then must be evaluated on the individual merits of such arguments.

By taking stock of the conclusions from this section it is possible to see the kind of account of political philosophy that this investigation will be concerned with producing. First, the account needs to make sense of the common intuition that most people are morally bound to support their reasonably just government by either offering an account and ground for such an intuition or by explaining why the intuition is mistaken. Second, the account should not produce all things considered judgments concerning action. Political obligations are one among many moral requirements and reasons that figure into how an individual ought to act, all things considered. Third, the account of political obligation must be one that ties individuals to *particular* political communities. However, this requirement must be accompanied by the explicit recognition that political obligations may not be the only moral requirements created by political entities. There may be types of moral requirements, that are not the primary ones binding individuals to political entities (i.e., political obligations), that nonetheless

do bind individuals to all governments of a certain type (e.g., ones whose dictates promote justice, happiness, well-being, etc). Finally, the account need not necessarily be singularly grounded or universally apply to everyone in a political community.

1.4 Distinguishing Political Concepts

In contrast to those political philosophers who attempt to meet these (and sometimes other) desiderata in offering conceptual analyses of political obligation, others offer more "linguistic" or "conceptual" accounts. These theorists take the question, "Do political obligations exist, and if so, what grounds them?" to be conceptually confused in some way. Since I have put these related questions forth as the fundamental guiding questions of the investigation I will briefly sketch the position and explain why I take it to be mistaken.

In her article "Obligation and Consent," Hanna Pitkin argues that it is conceptually confused to ask why we have an obligation to comply with and support our government:

> Now the same line of reasoning can be applied to the question "why does even a legitimate government, a valid law, a genuine authority ever obligate me to obey?" As with promises… we may say that this is what "legitimate government," "valid law," "genuine authority" mean. It is part of the concept, the meaning of "authority," that those subject to it are required to obey, that it has a right to command. It is part of the concept, the meaning of "law," that those to whom it is applicable are obligated to obey it. As with promises, so with authority, government, and law: there is a prima facie obligation involved in each, and normally you must perform it. (Pitkin, 1966, p. 48)[37]

Just as a promise simply means that a certain individual has generated an obligation to do (or not do) a certain action, a valid law or legitimate government or genuine authority

---

[37] Reproduced from Simmons, 1979, p. 39.

simply means that individuals have obligations to the government or authority.[38] However, this does not lead to the conclusion that questions about political obligations are conceptually confused. For example, the *meaning* of "valid law" is not simply "an obligation to follow said valid law;" this is circular. The meaning of "valid law" must in some way refer to the *creation* or *content* of the law in order to explain the validity and law-ness. If this eventual definition refers to the creator of the law in some way, as most positivistic accounts of law do, now an explanation of the legitimacy of the creator will need to be given. Ultimately an account of authority will need to be given as an explanation for the legitimacy of the lawmaker, the validity of the law, and the obligatoriness of the required action. Alternatively, if the eventual definition of "valid law" refers to the content of the imperative, as natural-law or anti-positivist accounts of law do, then an explanation is needed in order to pick out what it is about the nature of the content concerning the required/forbidden action which makes it obligatory. Neither of these illuminate a conceptual confusion in asking about political obligations; instead, it highlights the *conceptual connectedness* of political obligation, law, legal obligation, political legitimacy, and political authority. While I deny that there is a conceptual confusion lurking in questions about political obligation, I agree with the idea that there is an intimate connection between the previously listed concepts. An adequate answer to the question of whether political obligation exists cannot be given without referring to laws, legitimacy of a government, and authority.

[38] Cf. MacDonald (1951) & McPherson (1967).

1.5 Derivative vs. Non-derivative Theories

This brief examination of linguistic/conceptual accounts and the connectedness of different political and moral concepts highlights the need to make one last distinction between different types of theories concerning political obligation. This final distinction which must be made is between *derivative* and *non-derivative* theories. A *derivative* theory of political obligation claims that the obligation a citizen has to his or her state derives from, or is grounded in, some more fundamental moral principle.[39]

To illustrate this idea of a moral principle being derivative, consider the following example. A person (P) comes upon an individual who has had some sort of accident and has injured him or herself. This person (P) may have a duty (moral requirement) to provide aid to the injured person; however, this duty would be *derivative* because it derives from, or is grounded in, the more fundamental duty to provide aid to those in need. In terms of moral *principles,* it is not a fundamental moral principle that *this* person must provide aid to *this* particular injured person.[40] Instead, it seems to be that everyone has a more general moral duty to provide aid to those in need and the particular circumstances that this person finds him or herself in simply grounds this general duty into an actionable prescription. Some ethical theories, such as Rossian deontology, will classify this general moral duty as fundamental (i.e., not in need of further explanation)

---

[39] In this sketch of the distinction I am not concerned with the metaphysical question concerning *what moral principles are* (e.g., moral laws, rules, relations between universals, dispositions, etc.). See, e.g., Robinson 2008 & 2011. My interest with moral principles is in distinguishing between different types of moral principles (derivative and non-derivative) and using this distinction to classify theories of political obligation. This distinction between different types of moral principles seems to me to be neutral concerning the metaphysical status of the principles.

[40] Moral principles seem to be universal in nature (i.e., they do not refer to *particular* people, places, or times), but this does not exclude the possibility that there are quite specific moral principles. For an interesting account of "hedged" moral principles that can permit of exceptions see Väyrynen (2009).

while others, such as consequentialism and Kantian deontology, will classify this general principle as still derivative on a more fundamental principle (e.g., derived from "one ought to perform the action that would maximize value," or "act only on maxims which can be willed to be universal laws").[41]

Consider a second example illustrating moral principles deriving from others. Imagine I were to promise someone that I would read through his or her paper and provide comments. I would then have an obligation to read the paper and provide comments but not because there is a fundamental moral principle stating that I am obliged to "read through X's paper and provide comments." The obligation would be derived from the more fundamental moral principle to keep promises in conjunction with the fact that I have made this specific promise.

This distinction between derivative and non-derivative moral principles can be defined as such:

> A moral principle is *non-derivative* if and only if it is not grounded in, or does not stand in need of justification from, some other moral principle. Any moral principle that is not non-derivative is a *derivative* moral principle.[42]

Non-derivative moral principles are fundamental in that it is their intrinsic nature that justifies it as a moral requirement. Derivative moral principles are grounded in some non-derivative, fundamental principle, in conjunction with the occurrence of prior events and an individual's causal and epistemic position. With these principles (either non-derivative or derivative) and the morally relevant contingent features of a situation (e.g.,

---

[41] Consequentialism and divine command theory would be the paradigm examples of "monistic" theories about fundamental or non-derivative moral principles. A Rossian deontology would be the paradigm example of a "pluralistic" theory about fundamental/non-derivative moral principles.

[42] This definition has been adapted from Jeske's (2008) distinction between "fundamental and derivative reasons" (p. 11).

the occurrence of prior events and an individual's causal and epistemic position), agent and action specific prescriptions can then be derived.

In one of Rawls' earliest publications he offers one of the only, albeit very brief, sketches getting at this distinction and describing what a non-derivative political or legal obligation would look like:

> [A] moral principle such that when we find ourselves subject to an existing system of rules satisfying the definition of a legal system, we have an obligation to obey the law; and such a principle might be final, and not in need of explanation, in the way in which the principles of justice or of promising and the like are final. (Rawls, 1964, p. 4)

Just prior to this passage, Rawls explains that he takes there to be a moral obligation to obey the law and that this obligation rests on some general moral principle. It is this idea of political obligations "resting on" general moral principles which I am intending to pick out with the term "derivative." Likewise, Rawls' description of a principle that is "final" is that which I am intending to pick out with the term "non-derivative."[43]

This distinction between derivative and non-derivative moral principles plays out in the debate regarding political obligation by distinguishing between derivative and non-derivative theories. A non-derivative theory holds that political obligations are fundamental moral requirements that exist because of the intrinsic nature of the relationship between citizens and their respective states. Alternatively, a derivative

---

[43] A similar distinction has been put forth in the philosophy of science in order to help define "scientific or natural laws." The distinction made there is between derivative and fundamental laws: "A statement will be called a derivative law if it is of universal character and follows from some fundamental laws. The concept of fundamental law… should satisfy a certain condition of non-limitation of scope… [and whose predicates are] purely qualitative, in character; in other words, if a statement of its meaning does not require reference to any one particular object or spatio-temporal location" (Hempel & Oppenheim, 1989, p. 161-162). Just as the distinction is made in the field of ethics, a *non-derivative* law or principle is one that is fundamental and a *derivative* law or principle is one that is grounded in or follows from some fundamental law or principle in conjunction with some contingent facts that specify or tie the fundamental laws/principles to individual events.

theory holds that political obligations are grounded in the intrinsic nature of some fundamental moral principle such as consent, fair play, gratitude, or a principle of utility, in conjunction with specific historical, causal, and epistemic facts about the individual to whom the obligation applies.

One reason that this is a critical distinction to make is that it clarifies the aim of any theory concerning political obligation. For example, if we return to Wolff's *a priori* anarchist theory which maintains that *all possible* states are illegitimate because some essential feature of "being a state" is inconsistent with some necessary condition for legitimacy, the need for the derivative/non-derivative distinction starts to become clear.[44] The *a priori* philosophical anarchist seems to be contending that there is a conceptual inconsistency which makes it impossible for something to be a state while simultaneously being legitimate. This *a priori* claim also seems to be the stronger of the two forms of philosophical anarchism that were discussed earlier (*a priori* and *a posteriori*). However, as has already been covered in 1.1, Wolff seems to admit that there isn't this *conceptual* inconsistency because he accepts that a state in which every citizen had consented to would be legitimate.[45] If the *a priori* anarchist is not making a claim about the

---

[44] Again, my primary purpose in examining Wolff's account is not to criticize *his particular* theory; I only wish to use his account as a representative for *a priori* anarchistic theories in general. I don't make any claim to have considered all the possibilities open to the *a priori* anarchist and it is entirely possible that Wolff could reply to the problems I raise. My point is simply that *a priori* anarchism lacks some clarity in the explication of the theory and everyone in the political obligation debate must address these issues concerning the fundamental goals of the debate.

[45] It may be that Wolff is only claiming that consent would create *de facto* authority and that it would still be morally illegitimate and consequently not *de jure* authority. One way to make sense of this claim that consent can create *de facto* but not *de jure* authority is if consent/promises/contracts are binding only when it is a morally acceptable action which is consented/promised/contracted (e.g., a "promise" to murder someone would *not* be binding, and thus not a real promise, because the act would be immoral). Read this way, Wolff would be claiming that a government which had the "consent" of all its citizens would be a *de facto* authority because everyone would *accept* the government's directives, but it would not have *de jure* authority because individuals cannot bind themselves to give up their autonomy and thus cannot give real consent.

conceptual inconsistency of conditions required for political obligations to arise then it would seem that they are making no stronger of a claim than the *a posteriori* anarchist. When viewed through the lens of the derivative/non-derivative distinction, the *a priori* anarchist initially appears to be claiming that *both* derivative and non-derivative theories of political obligation are conceptually inconsistent. However, upon closer inspection they seem to be willing to allow for the possibility of some derivative forms of political obligation (e.g., consent). If it turns out that their claim is only that there are no *non-derivative* political obligations then the view seems to lose any distinctiveness as almost no one contends that there exists a fundamental moral principle(s) concerning political obligation, that is, one not derived from any other moral principle.

In addition to clarifying the aim of theories concerned with political obligation, this distinction helps to further shape the account that one offers and the types of arguments that can be levied against other accounts. Unfortunately, very few theorists explicitly make this distinction. This failure is problematic because it creates a lack of clarity in any attempt to give an account of political obligation because it is unclear what is being asked for. If one is looking for an account founded on the intrinsic nature of the relationship between citizen and state then this must be clearly stated and an argument against derivative theories must be offered. If one is *not* looking for a non-derivative account then this too should be explicitly specified because it narrows the field of justifiable objections that one can offer against competing derivative theories. For example, if it is clear that a theorist takes a certain derivative account of political obligation to be correct, then it is unacceptable for that theorist to argue that competing

derivative accounts are problematic because they do not point to a special, fundamental moral relationship that exists between citizens and their countries (i.e., they are not *non-derivative* accounts). This sort of argument would only be legitimate if one were willing to accept that political obligations are *non-derivative* moral principles. However, it is very rare to find any theorist in the literature contending that there exists a fundamental moral principle(s) concerning political obligation, that is, one not derived from any other moral principle.[46]

In addition to the dialectic confusion which the *a priori* anarchistic theories have caused for the political obligation debate, the way with which the remaining members in the debate (both defenders of political obligation and *a posteriori* anarchists) often frame things may be causing even greater confusion. It is extremely common to find political philosophers describing political obligations as "general" and as "special moral bonds between citizen and state" that arise "because the law exists." For example, here are a few from the better known sources and/or most recent in the literature:

> [I]t is likely true that most of us living in reasonably just societies believe that there is a *general* moral duty to comply with the requirements of valid domestic law. (Wellman & Simmons, 2005, p. 98) (italics added)

> Many people feel, I think, that they are *tied in a special way to their government*, not just by "bonds of affection," but by *moral* bonds. (Simmons, 1979, p. 3) (italics added)

> Here is the question: when you break the law, do you do something that is morally wrong?… is it morally wrong to break the law just because it is the law? (Knowles, 2010, p. 4)

---

[46] It seems that a non-derivative theory of political obligation would have to hold that there is a *sui generis* obligation/duty that exists between and binds individuals to their respective state. This sort of theory would resemble theories of special obligation between intimates (friends, families, etc.). See, e.g., Horton's associative theory (2006, 2007, 2010).

> A moral duty to obey the law would be a duty to do as the law requires *because* it is required by valid law (or because of what its being valid law implies), a duty to obey *the law as such.* (Wellman & Simmons, 2005, p. 95) (italics added)

Despite the common occurrence of these descriptions, it is not immediately clear what theorists mean by these phrases. For example, when the description "general" is applied to political obligation the intention could be to pick out obligations *generally*, meaning, not a specific type of obligation such as *political* obligations or obligations pertaining to *promises* or any other *specified* obligation. However, this use would seem to be counterproductive because it would be broadening the scope of political obligations to simply include any and all obligations. It would seem that almost no theorist would want to call all obligations a type of political obligation because it would dilute and distort the idea of what counts as "political" beyond recognition. Alternatively, "general" could be used to pick out a feature of political obligation in which citizens have obligations to follow laws *as such*, or in other words, citizens have political obligations *simply because laws exist*. In this sense the political obligations would be "general" in that they would exist wherever a law existed. This notion of generality seems to fit closely with the common assumption within the debate that accounts of political obligation must accommodate the idea that legal demands generate obligations for (if not all) most people in most states. Simmons is explicit about this when he writes, "Insofar as an account fails this test of generality [i.e., applying to most people in most states], it fails to fill the role in political theory which an account of political obligation has been thought to fill by most political theorists" (Simmons, 1979, p. 56). This way of using the term "general" to mean that political obligations apply to most people in most states seems to be the way

that most theorists are using the term;[47] however, this seemingly common idea is problematic in that it implies a necessary connection between the mere existence of a law and an obligation to obey it. This claim that laws necessarily generate obligations is somewhat empty and unsatisfying because it does not answer the more fundamental and important question concerning *why* this is the case; i.e., what is it about the nature of law that necessarily connects it to obligation?

Far from being a clear requirement for theories of political obligation, this common assumption that political obligations must be "general" seems to conceptually tie these sorts of obligations to accounts of the nature of law and authority. For some, this idea that one must first offer an account of law and political authority *before* an account of political obligation (i.e., obligations pertaining to said laws and political entities) can be developed may seem obvious, but it is one that is rarely acknowledged within the political obligation debate. In fact, as I argued in the previous section, this prominent assumption that there should be something about laws that makes them obligation generating should be seen as a push for theories of political obligation to reflect on the *conceptual connection* between one's analysis of "valid law," "legitimate government," and political obligation.

Despite the prevalence of the assumption that laws necessarily generate obligations, it is especially problematic for theories concerning political obligation because it overlooks the distinction between *legal* obligations and *moral* obligations. This distinction, common within positivistic accounts of law, contends that an individual

---

[47] Cf. Walton (2013), particularly section 5. I agree with Walton's contention that Simmons does not motivate or effectively argue for the claim that political obligations must be "general," that is, apply to most people in most states.

has a *legal* obligation when he or she is subject to a certain law and this is generated simply because the law exists. This is a very weak claim because the legal obligation is simply a way of re-describing to whom the law applies.[48] These legal requirements are internal to the normative system that is law. However, these requirements are just one type of "institutional," "positional," or "conventional" requirement which are also internal to many other normative systems (Wellman & Simmons, 2005, p. 93). These "positional requirements" are considered weak because their existence "is a simple function of what is required by the rules or conventions according to which the institutions or organizations operate" and can be completely independent, and in some cases opposed to, *moral* requirements (Wellman & Simmons, 2005, p. 93). To claim that legal obligations, or any other positional requirement, are *moral* obligations is a much stronger claim which would require an argument.[49] It is precisely this stronger claim (or denial of the claim) that is the focus of the political obligation debate (i.e., do individuals have moral obligations to obey and support their government?).

This specific lack of clarity problem arises for Simmons' *a posteriori* anarchism, for example, whenever he talks about "*general* political obligations" or "*special* moral bonds" between citizen and state. This way of talking about political obligation makes it seem as though Simmons is looking for a non-derivative theory in which citizens have general obligations to follow laws as such, or in other words, citizens have political obligations simply because laws exist. This special moral relationship between a state

[48] Cf. H.L.A. Hart (2012), particularly chapter 8, section 2.

[49] David Enoch (2011) makes a similar point when he argues that it is invalid to make the inference, "A has a legal reason to *Φ;* therefore, A has a reason to *Φ*" (Enoch, 2011, p. 17). He argues that it remains an open question whether practice-qualified reasons, such as "legal-reasons," "etiquette-reasons," etc., are real, unqualified, normative, justifying reasons.

and its citizens would constitute a fundamental moral principle that would include certain moral requirements (i.e., political obligations). Without making the derivative/non-derivative distinction, this way of discussing the problem of political obligation makes it seem as though Simmons believes that political obligations exist because of the intrinsic nature of the relationship between citizen and state. In spite of this seeming theoretical commitment, Simmons *denies* that the nature of the citizen/state relationship can be the fundamental grounds for political obligations. Simmons rejects non-derivative theories because he takes any general description of the relationship between a state and its citizens to be incomplete. In order to specify what a "state" is one must explain how it acquired its legitimacy and authority. Simmons understands this further specification to be an account of the *grounds* for political obligation and thus a rejection of non-derivative theories:

> [W]hen we ask "Why are we obligated to obey this legitimate government with genuine authority?" The answer to the question is not "because that's what 'legitimate government with genuine authority' means." There is a simple answer, and it refers to the ground of the obligation in question--for example, "you are obligated because you've done X," where 'X' may be "accepted certain benefits," or "contracted with the government," etc. (Simmons, 1979, p. 42)

Despite his talk of "*general* political obligations" and "*special* moral bonds," it is clear that Simmons understands political obligation as a *derivative* moral principle grounded in

a fundamental principle (e.g., consent, gratitude, etc.).[50] One consequence of his failure to make the derivative/non-derivative distinction is that some of his later arguments against derivative theories, which are in opposition to his own, are inconsistent with his own commitments to a derivative theory. This will be most obvious during the examination in Chapter 2 of his (and other anti-utilitarian political theorists') arguments against utilitarian accounts of political obligation.

While I hope it has become evident why the distinction between derivative and non-derivative principles must be made explicit and why a clear position must be taken in one's theory on political obligation, there are further ambiguities and complications which arise in the specification of what counts as a "moral principle."[51] While a full development of these specifications would take us far afield, I will begin to outline some

---

[50] Further evidence that Simmons does not accept a non-derivative account of political obligation is his discussion of *external justification* in his work, "External Justifications and Institutional Roles." He writes, "We are morally obligated to perform our institutionally assigned 'obligations' only when this is required by a moral rule (or principle) that is not itself a rule of the institution in question. Institutions, in short, are not normatively independent, and the existence of an institutional "obligation" is, considered by itself, a morally neutral fact. Institutional obligations acquire moral force only by being required by external moral rules" (Simmons, 2001, p. 96). He explains that, "Voluntarist analyses of institutional obligations are attempts to explain how a moral requirement to perform institutionally imposed tasks can be *grounded* or *justified*" (Simmons, 2001, p. 97). Simmons even goes on to argue that nonvoluntarist theories of obligation rely on external justification as the required action or institutional role must be "reflectively acceptable" and this amounts to, "the need for external justification of even noncontractual institutional obligations" (Simmons, 2001, p. 96). This discussion of external justification *grounding* and *justifying* obligations seems to fit precisely into my characterization of derivative and non-derivative moral principles.

[51] It has been brought to my attention that some legal philosophers, specifically legal positivists, may see no motivating reasons for implementing this distinction into the political obligation debate. My push for clarification in the *type* of obligation that political obligation theories are proposing, the legal positivist may respond, is unnecessary because it is clear that there are *legal* obligations and this is all that needs to be considered when investigating the nature of law and legal systems (the question of *moral* obligation is a separate question). My response to this contention is that it is precisely the question of *moral* obligation which is at issue in the political obligation debate. If the legal positivist is only interested in legal obligation (and *de facto* authority) then they are not engaging in the political philosophy debate concerning *political obligation*. Additionally, whether or not the theorist explicitly says that she is interested in the question of moral obligation, she *ought* to be interested in it because most legal theorists implicitly address moral questions when concepts such as 'authority' and 'legitimacy' are discussed.

of the options available as well as some preliminary difficulties that arise for certain possibilities.

In specifying what is to count as a "moral principle," one could count analytic truths about ethical concepts as "moral principles" or this term could be restricted to normative truths.[52] One way of understanding the linguistic/conceptual accounts from the previous section is as an attempt to provide a non-derivative theory of political obligation which takes analytic ethical truths to be the fundamental moral principles. In addition to the problems with these sorts of accounts, which were explored in the previous section, there is another issue facing any theory that attempts to restrict "moral principles" to analytic truths about ethical concepts. Using the terminology in this way forces one to deny that certain figures and ethical theories hold any fundamental moral principles. For example, W.D. Ross, G.E. Moore, non-cognitivists, and any other figure or theory which denies that an analysis of goodness and/or rightness can be given would be denied any ethical foundation. Put slightly differently, anyone who held that there are no interesting analytic truths concerning goodness and/or rightness would have to be understood as not holding any fundamental moral principles. This result is unacceptable because it is clear, or should be clear, that Ross, Moore, etc. *do* have fundamental moral principles; they are simply normative principles instead of metaethical. For this reason it seems that "moral principle" should be limited to normative truths. A *non-derivative* moral principle or theory would then be a true normative proposition that does not rely on

[52] Here I am taking metaethics to be the investigation of analytic truths concerning ethical concepts, if there are any such truths, and normative ethics to be the investigation of synthetic necessary and/or contingent truths concerning ethical concepts. The field of applied ethics would fit into this picture as a type of normative ethics which investigated the subject matter with a greater degree of specificity.

any other normative truth. Any normative truth that is not non-derivative would then be *derivative*, that is, its truth does rely on the truth of some other normative proposition.

It seems clear that the term "moral principle" applies most naturally to true *normative* propositions and that certain theories (e.g., Rossian, Moorean, non-cognitivist, etc.) can only accept normative principles as their non-derivative foundations. Regarding the question of political obligation I will call these sorts of theories *Non-derivative Normative Theories*. However, a question remains for the theorist who *does* believe that there are interesting and informative analytic ethical truths. While these theorists can certainly hold that some normative truths are more fundamental than others (i.e., some normative truths can be derived from other more general normative truths), it is difficult to see how these fundamental normative truths could be labeled "non-derivative." Unless one holds that there is a disconnect between analytic ethical truths and normative truths it seems as though the normative truths would have to be *derived* in some way from the analytic truths. This seems to be in tension with the conclusion just reached about the term "moral principle" applying only to normative truths. In order to ease this tension we will need an additional term to describe a moral principle (i.e., normative truth) that is non-derivative (i.e., its truth does not rely on the truth of any other *normative* truth) but which *is* derived from an *analytic* ethical truth. I will call this sort of principle or theory *Non-foundational Non-derivative Normative Theories* because they *do* rely on the truth of a foundational analytic ethical truth but are also not derived from any other normative principle.

These specifications of the derivative/non-derivative distinction are obviously in need of further examination in order to arrive at an analysis that is fully applicable to moral theories and theories of political obligation in particular. Nonetheless, the application of this rough distinction to competing accounts of political obligation will provide a way of clarifying the fundamental goals of the field. The utilitarian account of political obligation that will be offered in the following chapters will be unquestionably a *derivative* theory. This fact should not be seen as a *prima facie* limitation to my theory or viewed as weakening the concept 'political obligation.' In fact, the vast majority of accounts that have been offered during the history of political philosophy are forms of derivative theories (e.g., Plato, Hobbes, Locke, Rousseau, Hart, Simmons, etc.).[53] All of these figures offer accounts of political obligation that are derived from and grounded in a different, fundamental moral principle. The failure of these influential theorists to make the distinction between derivative and non-derivative theories has muddied the debate surrounding political obligation for centuries.

This failure has also led to further confusion with regards to the widely accepted "content-independence" feature of political obligations. The content-independence feature stipulates that the moral requirement to obey the law is based on the content-independent reason *that it is the law* (Klosko, 2011, p. 498-499). Without the derivative/non-derivative distinction, this feature can, and has, appeared troubling to many theorists. The derivative/non-derivative distinction is able to dissolve many of these troubles. If one adopts a derivative theory of political obligation, such as the utilitarian theory I will

[53] Non-derivative theories will be discussed further in Chapter 2 during the examination of Associative and Natural Duty theories.

be offering, and makes explicit which moral principles are derivative and which are non-derivative, then it can be consistently contended that there *are* content-independent moral reasons to obey the law because it is the law but also that the content *is* limited in certain ways because the moral force of the law derives from some more fundamental moral principle grounding the legitimacy and authority of the state which makes such laws. While moral reasons to do (or not do) X can exist because a law concerning X exists, the fact that a dictate qualifies as a 'law' *derives* from the moral determination of the legitimacy and authority of the state.

The upshot of the preceding two sections is that any complete theory of political obligation must account for the conceptual connectedness of 'political obligation,' 'law,' 'legal obligation,' 'political legitimacy,' and 'political authority.' The ways in which these concepts will be connected in a specific theory will depend on whether the theorist takes political obligation to be a non-derivative or fundamental moral principle based on the intrinsic nature of the relationship between citizen and state; or, a derivative moral principle grounded in some other more fundamental principle. A part of my point in these sections has been that questions about political obligation should be understood in terms of a more general theory of ethics and law.[54] Without a grasp of this foundational distinction between derivative and non-derivative theories there will be conceptual confusion lurking in any question one asks about "political obligations."

---

[54] David Enoch has recently (2011) made similar claims in his response to the related, yet more restricted, question concerning normativity (reason-giving) and the law.

CHAPTER 2
THEORIES OF POLITICAL OBLIGATION

With the distinctions made and the portrait sketched of the philosophical landscape from Chapter 1, we are now in a position to examine some prominent accounts and arguments in the debate surrounding political obligation. This second chapter will review the striking dismissal of utilitarianism in this particular field and survey some theories of political obligation that have been offered. In the first section I will describe the predominant dismissal of any and all utilitarian accounts of political obligation. In addition to being descriptive, this section will also be influential in shaping the utilitarian account which I will offer later in the dissertation. These widespread objections to a utilitarian account will serve as the first hurdles that my account will have to overcome. The subsequent sections will then be an examination and evaluation of the types of historical and contemporary theories which *have* garnered attention - theories of consent, gratitude, fair play or fairness, membership or association, and natural duty (sections 2.2 - 2.6 respectively). The final section will explore pluralistic accounts - theories contending that political obligations are (or can be) grounded in multiple sources. The goal of this chapter is to illuminate some of the common intuitions concerning political obligations and the corresponding strengths of certain influential accounts. At the same time, weaknesses of each theory will be discussed which will ultimately inform my utilitarian account. As is the goal for any comprehensive theory, the positive account that I will eventually offer will attempt to accommodate as many of the rival theories' strengths as possible while avoiding the downsides.

2.1 The Prominent Dismissal of a Utilitarian Account

Despite utilitarianism's status as one of the major ethical theories, historically it has largely been dismissed by theorists concerned with political obligation. In this section I will describe the structural objections posed by anti-utilitarian theorists as well as the common avoidance of the topic by utilitarian theorists.

Part of the reason that there are very few utilitarian accounts of political obligation is that utilitarians themselves predominantly reject and avoid any discussion of the topic. As was discussed in the previous chapter (1.2), this is partially because many utilitarians do not think such things as 'obligations' actually exist. One striking example of this avoidance is found (or more precisely, *not found*) in the writings of the "classical utilitarians" (Bentham, Mill, and Sidgwick). None of these figures offered much, if anything, to elaborate on Hume's rough utilitarian sketch of political allegiance.[55] The general theme motivating their avoidance of an extended examination, and similarly motivating many contemporary utilitarians, seems to be their acceptance of the principle of utility.[56] When crudely applied to political behavior this principle seems to succinctly prescribes obedience to government "*so long as the probable mischiefs of obedience are less than the probable mischiefs of resistance*" (Bentham, 1977, p. 444). The idea that one ought to follow the dictates of his or her government only when it maximizes utility, in conjunction with the common utilitarian preference to focus on right action and what individuals ought to do leaves the majority of utilitarians remaining silent on issues of

---

[55] Hume's account will be discussed in the third chapter's investigation of the sparse attempts that have been made by utilitarians to account for political obligation.

[56] Actions are right insofar as they promote/produce/maximize happiness and wrong insofar as they promote/produce unhappiness (i.e., wrong insofar as they *do not maximize happiness*).

"obligations" and "political obligations." However, as was established in the previous chapter, utilitarians have at least two options for offering an account of obligations which is consistent with their other ethical commitments.[57] These options should make it clear that the common rejection and avoidance by many utilitarians in talking about obligations in ethical discourse is not evidence that utilitarianism has some theoretical feature limiting it from offering an account of political obligation. An acceptance of the principle of utility does not restrict one from also accepting "obligations" into their moral discourse. The common avoidance by historical and contemporary utilitarians should only be seen as a preference for discussing what ethical agents "ought" to do, and what is the "right" action, over "obligations" agents have.[58]

In addition to the widespread silence on the subject from utilitarians, some anti-utilitarian theorists argue that the utilitarian *must* remain silent on issues concerning political obligations. Utilitarians, with their theoretical conviction that the right action is the one(s) which maximizes utility (i.e., the principle of utility) seem to have no need, and no possibility of, a general account of political obligation as the consequences of obedience and resistance vary from case to case (Simmons, 1979, p. 47).[59] Simmons explains this tension:

---

[57] (1) Follow Sartorius in arguing that obligations (e.g. promises) exist because of past occurrences, but deny that obligations are *moral* requirements; or (2) follow Narveson in arguing that obligations exist because of past occurrences and that they *are* morally relevant because they necessarily create new expectations (in the obligor, obligee, etc.) which are relevant to utilitarian calculations.

[58] I do not mean to imply that this "preference" is not an important indication of theoretical priorities, I mean only that this preference, and corresponding theoretical priorities, should not be viewed as a factor that excludes the utilitarian from the political obligation debate.

[59] The problems associated with this way of describing political obligations as "general" will be discussed shortly.

> There will be no particularized political bonds on this model [act-utilitarianism]; at best, it seems, obligations will be to comply when doing so is optimific. The act-utilitarian might, of course, defend supporting and complying with our political institutions as a useful rule of thumb… But the act-utilitarian has not, of course, provided an account of political obligation by making this move. Where the general happiness can obviously be served by disregarding the rule of thumb, we must do so, for the rule has no prescriptive force independent of the principle of utility… act-utilitarianism appears to be unable to provide any account of *obligation* at all. (Simmons, 1979, p. 48-49)[60]

The essence of the objection is that utilitarianism is conceptually ill-equipped to offer an account of political obligation because it cannot offer an account of obligation generally. By endorsing the principle of utility, the utilitarian restricts him or herself from making any general claim about how one ought to act concerning political matters. But this objection proceeds too quickly; as was demonstrated in the first chapter the utilitarian *is* able to offer an account of obligation. An individual can be said to be "obligated" when an action of theirs has generated expectation(s) in others. It is true that the utilitarian cannot make any claims about how individuals *always* ought to act concerning political matters, *all things considered*; but this requirement would be asking too much from any theory. Even most non-utilitarian theorists whose ethical focus *is* on obligations are also uncomfortable with making universal claims about how individuals ought to act all things considered.[61] More commonly it is maintained that individuals can have competing obligations and that the action that ought to be done is the one corresponding to the stronger or weightier obligation. As long as a utilitarian is able to offer an account of obligations then they seem to be able to take a similar position as non-utilitarians -

[60] The distinction between act and rule utilitarianism will be explored in Chapter 3.

[61] It seems that only radical Kantians wish to maintain that there are certain action types which ought to always or never be done (all things considered).

obligations are factors in moral deliberation but can be outweighed by other factors (which may include other obligations). What an individual ought to do, all things considered, must be established on a case-by-case basis.[62]

As was also discussed in the previous chapter, it is not clear what the description of "general" is supposed to add to the concept of political obligation or to the objection posed for utilitarians. If it is only intended to pick out obligations *generally*, meaning not a specific type of obligation such as political obligations or obligations pertaining to promises, then this objection can be answered by utilitarians with the account of obligations previously described. The utilitarian account of obligations is generic enough to meet this demand for a theory of "general obligations." Alternatively, if "general" is intended to pick out a non-derivative principle of political obligation in which citizens have obligations to follow laws *as such*, or in other words, citizens have political obligations simply because laws exist, then it is not clear that this objection is a specific problem for utilitarianism. As was discussed in 1.5, very few contemporary theories, and even fewer historical theories of political obligation accept that there are fundamental moral principle(s) concerning political obligation (that is, not derived from any other moral principle). For example, Plato, Hobbes, Locke, Rousseau, Hart, and Simmons are all taken to have offered accounts of political obligation, but each of these differing accounts is a *derivative* theory because the "political obligation" that is offered is derived

---

[62] This likening of the utilitarian position to obligation theories has been resisted by Ross and other intuitionists and deontologists. It has been claimed that utilitarianism is not able to account for the *stringency* of obligations; i.e., "Obligations do not seem to give way in the face of very slight possible utility gains, yet act-utilitarianism seems committed to such a consequence" (Simmons, 1979, p. 49). Once again however, this objection does not seem to apply uniquely to utilitarianism. Any theory in which obligations can be outweighed by competing moral factors is one in which the stringency of obligations has been weakened.

from and grounded in a different, fundamental moral principle. Unless one is willing to deny that Locke (or some other similarly regarded political theorist) is the quintessential example of a philosopher who offered a theory of political obligation, then the description "general" cannot be used as a way to describe a non-derivative principle of political obligation. Regardless of who *is* willing to make this concession, it is clear that Simmons, who is one of the primary critics of a utilitarian account, does not wish to restrict theories of political obligation to non-derivative theories, and thus, he cannot be using the term "general" to make this restriction. Simmons' acceptance of a derivative theory of political obligation makes the objection that utilitarianism is unable to give a "general" prescription for political behavior an illegitimate one for him to contend.

Despite all that has been said, virtually all political philosophers are in agreement that a utilitarian ethic cannot be the grounds for political obligation. This prevailing and informal consensus is one that I will be arguing against in the remaining chapters. In the following sections of the current chapter I will explore the different types of pluralistic theories and the five distinct individual bases that *have* garnered attention: consent, gratitude, fair play or fairness, membership or association, and natural duty.

2.2 Consent Theories

The most prominent theory of political obligation has been one grounded in consent and has it roots in the social contract tradition of Hobbes, Locke, Rousseau, and Kant.[63] This type of theory, in its various forms, understands political obligation as

---

[63] Hobbes is included on this list of social contract theorists because historically he has been labeled as such and has influenced some contemporary theories; however, it is not clear, and is in fact doubtful, whether his "contract theory" is even coherent. Glaucon, from Plato's *Republic*, could also be included in this list as a "proto-social contract theorist."

arising from the consent of the governed. Or, as Simmons explains, a 'consent theory' is "any theory of political obligation which maintains that the political obligations of citizens are grounded in their personal performance of a voluntary act which is the deliberate undertaking of an obligation" (Simmons, 1979, p. 57). Locke presents the "classic" formulation of the theory in his *Second Treatise of Government*:

> Men being, as has been said, by nature all free, equal, and independent, no one can be put out of the estate, and subjected to the political power of another, *without his own consent*. The only way whereby any one divests himself of his natural liberty, and puts on the bonds of civil society is by agreeing with other men to join and unite into a community… When any number of men have so consented to make on community or government, they are thereby presently incorporated, and make one body politic, wherein the majority have a right to act and conclude the rest… And thus every man, *by consenting with others to make one body politic under one government, puts himself under an obligation to every one of that society* to submit to the determination of the majority, and to be concluded by it. (Locke, 2003, p. 141-142) (§95 & §97) (emphasis added)

At its core, this type of consent theory can be understood as a type of voluntarist theory which explains political obligation (and typically also political authority) with reference to a freely chosen, voluntary act of commitment which morally binds one to his or her polity (Horton, 2010, p. 19).[64] The primary strength of this theory is its simplicity; political obligation relies on the straightforward act of consenting just as other obligations, such as promises, rely on basic deliberate actions. However, there are many specifications that must be made in order to cash out this theory, and theoretical obstacles and objections facing each form of specification.

---

[64] Again, I do not intend to take up the question of to *whom* these political obligations are owed, if they do exist. Unless otherwise noted, I use the terms "state," "polity," and "government," noncommittally to refer to whatever or whoever it is that these obligations are owed (e.g., fellow citizens, political officials, an abstract political entity, etc.).

In Simmons' discussion of consent theories he specifies four central theses that he takes to be characteristically advanced by all forms of the theory:

1. *Man is naturally free.*
2. *Man gives up his natural freedom (and is bound by obligations) only by voluntarily giving a "clear sign" that he desires to do so.*
3. *The method of consent protects the citizen from injury by the state.*
4. *The state is an instrument for serving the interests of its citizens.* (Simmons, 1979, p. 62-68)

The first thesis is evident from the outset in Locke's classic formulation of the theory above. Rousseau, Hobbes, and Kant's social contracts also share this idea, that "man is born free;" however, it is not immediately evident what is meant by this. Simmons believes, and I am in agreement with him on this, that what is meant by "freedom" in these classic consent theories is not that, "there are no obstacles to the fulfillment of [man's] desires; nor… that there are no *moral* constraints on his actions," but instead that there is a natural right, held by all rational agents, to act without being coerced (Simmons, 1979, p. 62). The only limiting factor on this natural right to freedom seems to be the natural duty each person has, which corresponds to the natural right of freedom in every other person. In other words, each person has a right to take any action as long as the action does not violate the right to freedom of another individual.[65] This idea, that "man is born free," lays the groundwork for consent theories by establishing how a

[65] It is worth noting that during Simmons' discussion of this first thesis of the consent tradition he acknowledges that, "Consent theory recognized a distinction between two sorts of moral bonds, the natural and the 'special,' and denied that political obligation could be *natural*. The 'special' obligations are those which arise from an individual's voluntarily entering some 'special relationship or transaction'" (Simmons, 1979, p. 63). This distinction between "natural" and "special" is closely tied to the non-derivative/ derivative distinction I made in 1.5. This explicit recognition of the distinction by Simmons, coupled with his later acceptance of the consent account of political obligation, may be the most obvious condemnation of his argument against utilitarian theories' inability to provide a "general" (taken as "non-derivative") account.

legitimate (coercive) government can come into existence. One acquires political obligations only after consent has been given in order to create the polity.[66]

The second thesis has already been anticipated in the first thesis and the voluntarist account of obligation sketched in Chapter 1. A necessary condition for an obligation to be generated is that an individual act voluntarily in binding him or herself. Consent theorists are concerned with such obligations when considering the types of political bonds involved in political obligations, and thus require a voluntary action to obligate one to a polity. In addition, some consent theorists not only require that the binding action be voluntary but also that the individual be deliberate in his or her undertaking. In other words, "an individual cannot become obligated unless he intentionally performs an obligation-generating act with a clear understanding of its significance" (Simmons, 1979, p. 64). However, this addition is troublesome because it is not clear how many people explicitly perform actions with the belief that they are binding themselves to the state. This issue will be taken up momentarily when we consider *what counts as* consent and the express/implicit distinction that has arisen in connection to this question.

The third thesis, that consent protects citizens from injury by the state, is possibly the main motivator for those who advance a consent theory. The idea is that if consent is necessary in creating a legitimate government and also in creating obligations to that government, then individuals are protected from unjust and tyrannical rule because they are free to withhold consent and thus withhold the circumstances in which political

[66] The question of *whose* consent must be given will be considered shortly.

obligations could arise (Simmons, 1979, p. 65-66). However, this seemingly straightforward idea appears to be somewhat problematic, at least as it has been taken in the classical accounts. On Locke, Hobbes, and Kant's accounts a tension arises because they attempt to limit the power of personal consent by advocating "inalienable rights" which individuals cannot give up even through consent. The idea that one cannot, for example, enter oneself into slavery or give up his or her right to resist assault through consent because these would be "injuries" to the individual is problematic on a consent theory because it appears to be paternalistic in its assumption and enforcement of an objective account of the good and what constitutes "harm."

This tension connects to the fourth thesis that the state is an instrument for serving the interests of its citizens. The original motivation for consent theory seems to be the liberal idea that individuals can only be bound by their own actions, and conversely, cannot be bound by the decisions of others. On the consent theory, government can only become legitimate and authoritative when individuals consent to having a coercive body in place and bind themselves to it. Presumably, a rational agent will not consent to a government that does not serve his or her interests. Simmons echoes this idea when he writes:

> The state's authority is "given" to it by its citizens, who decide both whether the state will serve their interests, and how to balance freedom within the state against benefits provided. Neither the state nor any person is free to decide what is in the interest of another. Only by giving his consent, and so indicating that he finds the government to be such that it will serve his interests to become a citizen, does a man become one who can be rightfully governed. (Simmons, 1979, p. 68)

In its attempt to save individuals from being unwillingly bound to unjust and tyrannical rule the consent theorist is forced to also accept that individuals are not bound to a (hypothetical) utopian political community without that individuals' consent. It is this theoretical commitment, which seems to be dismissive of any objective value in government independent of consent, which creates the tension with "inalienable rights." The idea of inalienable rights seems to put restrictions on the power of consent, but without further argument it is not clear why a utopian government, say for example, one which only protected the inalienable rights of individuals living within its domain, would need the consent of such individuals in order to be authoritative and why those individuals would not have a duty or obligation to follow the dictates of that government. All of this is simply to say that there is going to be tension in any consent theory that includes inalienable rights. Of course, everything which has just been discussed concerning consent is entirely too vague because it is not clear what constitutes "consent" and who needs to "give it" in order for a government to be legitimate and authoritative and for political obligations to arise for individuals. We will move on to these issues associated with consent theory presently.

2.2.1 Whose Consent?

The first question we will examine is: "whose consent is necessary in order to create a legitimate and authoritative government and political obligations to this government?" One answer, and probably the answer which fits most naturally with the foundational motivations of consent theory, is that it is the *personal* consent of individuals which creates political obligations for each by creating a legitimate

government to rule over the group. I say that this "fits most naturally" because the idea of consent seems to necessarily include *an individual* who is giving his or her permission/agreement/endorsement/acceptance/etc. (i.e., a consentor). Since this seems to be the most natural way of talking about consent, this is the way in which I was describing everything in the preceding paragraphs. However, it is not the only way of understanding whose consent is necessary in creating a government and political obligations.

A second approach can be understood as saying that the *historical* consent of the first generation in a polity is acceptable (Simmons, 1979, p. 60). This approach would not deny that it is individuals who are doing the consenting in creating a government, but they would deny that the consent of individuals *currently* living in a state is necessary for the government to be legitimate and authoritative and for the current citizens to have political obligations.[67] The motivation for this position seems to be to avoid the looming problem facing consent theory, that very few current "citizens" have expressly consented to their state, which will be examined in the remainder of this section. By taking historical consent as the type necessary for the creation of legitimate states and political obligations, one is able to avoid the worry that current citizens have not consented. However, this approach faces at least one sizable objection:

> The obvious difficulty is that only in very special circumstances can the consent of one individual bind some other individual (even if this latter individual is a descendant of the former). Such circumstances arise when the person who gives consent has been *authorized* by another to act for him on the matter. And clearly the descendants of the "original

[67] Simmons takes Richard Hooker to have explicitly endorsed this view and he finds hints of this view in Hobbes and Rousseau's works (Simmons, 1979, p. 60).

> contractors" could not have authorized the making of an original contract! (Simmons, 1979, p. 60)[68]

If one is concerned with consent, and its ability to allow for individuals to control the political obligations they incur and influence the forms of government that become legitimate and authoritative, then this second approach does not seem to be promising.

A third approach can be understood as saying that it is the *majority* consent of citizens that establishes the legitimacy of a government. This approach has arisen because of the apparent problem for consent theory that unanimous consent seems to be necessary in order to establish the legitimacy of a government. It appears as though unanimity is required because:

> [T]he consent theorist's position on governmental legitimacy has normally been that legitimacy depends on the consent of the governed. A government has authority only over those citizens who have granted that authority through their consent, and only a government which has authority over all of its citizens is legitimate. Thus, a legitimate government must have the unanimous consent of its citizens. (Simmons, 1979, p. 71)[69]

The issue with requiring unanimous consent is that it "makes the government's legitimacy or illegitimacy turn implausibly on the possibility of *one* citizen refusing to give his consent" (Simmons, 1979, p. 71). The approach of requiring only majority consent in the establishment of a legitimate and authoritative government appears to avoid the problem associated with unanimous consent; however, this position creates a new tension with the original motivations of the consent theory. If majority consent is

[68] Cf. Locke §118.

[69] This is the case as long as the consent theorist, as most do, denies that political authority can derive from anything other than consent and that authority can be relativized to particular individuals (Simmons, 1979, p. 71).

sufficient to establish the legitimacy of a government, then it is presumably also sufficient to establish political obligations for all those individuals the government claims authority over, regardless of whether each individual gave his or her consent. But this is opposed to one of the fundamental ideas of consent theory, "namely, that no man can be bound to any government except by his personal consent" (Simmons, 1979, p. 72). This tension leads some of the classical contract theorists (Hobbes, Locke, and Rousseau) to introduce the idea of "tacit consent through residence" (Simmons, 1979, p. 73). This idea leads us into the next question aimed at clarifying consent theories - what constitutes or counts as consent?

2.2.2 What Counts As Consent?

In considering this question I will only be concerned with the "strict sense" of consent. This "strict sense" is to be distinguished primarily from another fairly common sense of consent which is synonymous with "promise."[70] The reason I am making this specification is to make clear the distinction between obligations of promises which refer to the promisor's *own actions* and obligations of consent which refer to the consentor's permission/agreement/endorsement/acceptance of the *action of another* (Simmons, 1979, p. 76-77). Following Simmons, when speaking of "consent" or "consenting" I will mean: a suitable expression of an individual's (the "consentor") intention to enter into a transaction which involves the assuming of a special obligation not to interfere with the exercise of another's action within an area which the consentor is normally free to act

[70] For example, if one were to say, "Mr. Smiley has graciously consented to speak at the award dinner, 'consented' means here precisely 'promised' or 'agreed'" (Simmons, 1979, p. 76).

(Simmons, 1979, p. 77).[71] This act of consenting must also be intentional and voluntary. One cannot consent to something unintentionally nor can consent be coerced (Simmons, 1979, p. 77). And like other obligation generating actions, consent can be given in multiple ways - "Words, gestures, and lack of response are all suitable methods in appropriate contexts" (Simmons, 1979, p. 77). While most agree that express consent, i.e. consent given verbally, in writing, or any other deliberate action, is at least *a* sufficient ground for obligations, the more controversial question has been with the types of actions or inaction that should count as "tacit consent."

While the classical discussions of tacit consent (e.g., Hobbes and Locke) have faced fierce objections and also created interpretive disputes about what the theorists intended, the idea that there is such a thing as tacit consent and that it is capable of creating obligations for individuals is far less controversial. Simmons offers this fairly straightforward example:

> Chairman Jones stands at the close of the company's board meeting and announces, "There will be a meeting of the board at which attendance will be mandatory next Tuesday at 8:00, rather than at our usual Thursday time. Any objections?" The board members remain silent. In remaining silent and inactive, they have all tacitly consented to the chairman's proposal to make a schedule change (assuming, of course, that none of the members is asleep, or failed to hear, etc.). (Simmons, 1979, p. 79-80)

From this example we can see how tacit consent differs from express consent. While express consent is explicit and actively given by some sign such as verbal or written words, tacit consent is given by intentionally and voluntarily by *not* taking a certain

---

[71] I consider my meaning to be in line with Simmons' here despite his note that he takes promising to be primarily concerned with undertaking an obligation and consenting to be primarily concerned with the granting of a special right. As I understand rights to have a reciprocal nature with obligations and duties (meaning that talk of rights is simply a way of referring to obligations and duties from another perspective), which Simmons seems to also accept, I do not see the need for this differentiation.

action(s). In the above example, the board members all give their consent by remaining silent and *not raising an objection to the schedule change*. It should be obvious however, that silence cannot always be considered as constituting consent. The parenthetical comment in the above example, which specifies that the board members were all awake, paying attention, etc. hints at this restriction.

Simmons clarifies these restrictions by laying out three additional conditions for when non-action can be taken as a sign of tacit consent generally and two additional conditions for tacit consent in the political realm:

1. The situation must be such that it is perfectly clear that consent is appropriate and that the individual is aware of this. This includes the requirement that the potential consentor be awake and aware of what is happening.
2. There must be a definite period of reasonable duration when objections or expressions of dissent are invited or clearly appropriate, and the acceptable means of expressing this dissent must be understood by or made known to the potential consentor.
3. The point at which expressions of dissent are no longer acceptable must be obvious or made clear in some way to the potential consentor.
4. The means acceptable for indicating dissent must be reasonable and reasonably easily performed.
5. The consequences of dissent cannot be extremely detrimental to the potential consentor. (Simmons, 1979, p. 80-81)[72]

Despite the looseness and informality of the time constraint condition in the previous board meeting example, it is clear that all of the conditions are met by the board members. If any of these five conditions are not met, then an individual's silence, or non-action of some other kind, cannot be understood as a sign of consent. Some examples of

---

[72] It should be stressed that the issue of tacit consent is extremely difficult and complex. There seems to be a quite broad continuum of cases ranging from obvious examples of consent to examples of where it is not at all clear whether a non-action should be counted as consent. While I take Simmons' conditions to be useful for discussing consent, I do not believe they constitute an adequate analysis. I do not wish to take any firm stance on which inactions do, and which do not count as tacit consent.

these conditions not being met are - (1) if the potential consentor is not paying attention in some way (e.g., being asleep) or if the person asking for consent is unclear that this is what is being asked for; (2) if the person asking for consent moves forward without providing any time for a potential consentor to object; (3) if there are no temporal constraints put into place by the person asking for consent, either explicitly or through customary conversational devices; (4) if the person asking for consent requires a difficult physical or intellectual task in order for the potential consentor to object; (5) if the person asking for consent requires the potential consentor to perform a significant physical, financial, or psychological injury to his or herself in order to object. As is the case with all of these conditions, there can be some extremely difficult cases in which it is not clear whether the condition has been met. This is probably one of the primary reasons that consent theorists who heavily employ tacit consent have been so often and fiercely attacked with objections. Still, in using these conditions to restrict the inactions that can be taken as tacit consent, Simmons is able to preserve the essential motivations of consent theory by maintaining intentionality and voluntariness even in tacit consent.

It is exactly for this reason that Simmons proposes limiting consent to its strict sense and also requiring that the preceding conditions be met in order to consider any inaction as a form of tacit consent. Many historical consent theories have not made these restrictions and have consequently been criticized for extending their notion of tacit consent far beyond that which should be considered as an expression of consent. Locke's consent theory, which is possibly the most famous classical account, is one example of these theories criticized for the looseness of its ascription of tacit consent. Locke writes:

> The difficulty is, what ought to be looked upon as tacit consent, and how far it binds, *i.e.* how far any one shall be looked on to have consented, and thereby submitted to any government, where he has made no expressions of it at all. And to this I say, that every man, that hath any possessions, or enjoyment of any part of the dominions of any government, doth thereby give his tacit consent, and is as far forth obliged to obedience to the laws of that government, during such enjoyment, as any one under it; whether this his possession be of land, to him and his heirs for ever, or a lodging only for a week; or whether it be barely traveling freely on the highway; and, in effect, it reaches as far as the very being of any one within the territories of that government. (Locke, 2003, p. 152-153) (§119)

It is clear from this account of tacit consent that Locke is not concerned with the actual intentions of the consentor. In fact, most times that an individual is "simply within the territory of a government" it is *not* an intentional and voluntary expression of that individual's permission/agreement/endorsement/acceptance of the government's authority. Putting aside the interpretive controversies which arise surrounding Locke's view, his seeming disregard for the actual intentions of the consentor does highlight the need for two additional distinctions.

The first distinction that needs to be made is between actions which are "signs of consent" and actions which "imply consent" (Simmons, 1979, p. 88). All genuine acts of consent are "signs of consent" because the context in which they are performed (including relevant conventions) legitimizes the action as an expression of the consentor's intention to consent (Simmons, 1979, p. 88). This is to be contrasted with actions that "imply consent" in that they are not intentional expressions of consent but are still related to consent in some important way. Simmons spells out three ways in which he envisions an action implying consent - (1) the action may lead others to conclude that the actor would have consented if the appropriate conditions would have arisen (e.g., if the

potential consentor would have been asked); (2) the action may rationally commit the actor to consenting (i.e., it would be irrational to withhold consent given the actor's preceding action(s)); (3) the action morally binds the actor in a similar fashion as consenting would (e.g., joining a baseball game is not exactly one giving his or her consent to be governed by the umpire but the action binds one in a similar fashion as the actual consent would) (Simmons, 1979, p. 89). If one's analysis of tacit consent includes actions which bind individuals without their intention of expressing consent (i.e., actions which imply consent), then individuals may be morally bound to their governments but this not because they have accepted certain obligations through consent. Even if the previous actions of an individual (e.g., accepting welfare from the government) make certain future actions morally required (e.g., following the laws of that government) this seems to be clearly not the generation of an obligation from *consent* but from some other morally relevant feature of the actions and resulting obligations (e.g., gratitude or fair play). While these obligations may be generated by actions which imply consent and which may rationally commit one to consenting or morally bind one to the same actions that consenting would, they cannot be said to be generated through consent or "consented to" because of the absence of intentionality on the actor's part.

The second distinction is closely related to consent implying acts. In addition to the "strict sense of consent" which I have focused my discussion on, there seems to also be an "attitudinal sense of consent" (Simmons, 1979, p. 93). This attitudinal sense of consent is one of, "merely having an attitude of approval or dedication" towards a certain

state of affairs (Simmons, 1979, p. 93).[73] This sense of consent is closely related to consent implying acts because it is often the case that actions performed in response to one's attitude of approval tend to fit the three previous descriptions of acts that imply consent. In many, if not most cases, when an individual expresses approval it will lead others to the conclusion that they would consent if the appropriate conditions arose, they are usually rationally committed to consenting, and the expression of approval tends to morally bind that individual in similar ways that consenting would have. While these are all closely related to the strict sense of consent, strictly speaking they are not *expressions of consent*. The types of actions which are most clearly consent are those that are the intentional and voluntary permission/agreement/endorsement/acceptance to the action(s) of another and which generate obligations for the consentor.

Even with this highly specified sense of tacit consent, the problem that still remains for consent theories is that very few individuals have ever given express or genuine tacit consent to the government's authority. The simplicity and allure of consent theories as the ground of political obligations seems to be countered with consent theorists being forced to admit that there are very few individuals who actually have political obligations. This has prompted many consent theorists to modify their accounts in order to save consent as the ground for the political obligation that so many intuitively believe exists.

---

[73] Simmons gives the example of voting as an action which is most times merely an expression of "attitudinal consent" and not a "sign of consent" (Simmons, 1979, p. 93). Most times when people vote they are simply expressing their approval for a certain candidate or ballot measure (or at least approval relative to the other choices, including the choice to refrain from voting) and not intentionally creating and accepting an obligation to the candidate or government.

2.2.3 Adaptations to the Consent Theory

One seemingly natural way that consent theory could be adapted in response to the problem parallels the way in which social contract theories have been adapted in response to objections contending that no actual social contract was ever created. Just as contract theorists have shifted from *actual* to *hypothetical* contracts, consent theorists would seem to be able to do the same. John Rawls offers one of the most famous formulations of the hypothetical contract in his *A Theory of Justice*. In his sketch of how a conception of justice that will guide the relevant social institutions is to be arrived at, he writes:

> My aim is to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant. In order to do this we are not to think of the original contract as one to enter a particular society or to set up a particular from of government. Rather, the guiding idea is that the principles of justice for the basic structure of society are the object of the original agreement. They are the principles that [hypothetical] free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association. (Rawls, 1999, p. 10)

Rawls' hypothetical contract is intended to establish what rational and self-interested people *would* agree to in setting up social institutions (e.g., government) if they were unaware of particular personal preferences (i.e., placed behind a veil of ignorance). This makes the fact that an actual social contract was never established in the forming of a society a moot point because the hypothetical contract is enough.

It may appear as though the consent theorist could adapt his or her theory to rely on hypothetical consent in a similar fashion to the way that Rawls adapts his contract theory to rely on hypothetical contracts. However, this strategy does not seem open to

consent theory in the same way that it is open to contract theory. Rawls' objective was to offer a way of evaluating the legitimacy and authority of social institutions which was completely distinct from *actual* contracts and consent, while the consent theorist is looking for a way of establishing what it is that makes a government legitimate and authoritative (i.e., consent). The reason that consent theory doesn't seem to be in a position to admit of hypothetical consent is that the initial motivation for the theory was to protect individuals from being bound to governments unwillingly. Hypothetical consent doesn't have to be *given* in the way that actual consent does. Hypothetical consent, while it would seemingly still be based on features of the individual, is *assumed* of the individual as opposed to being a *voluntary expression* of actual consent.[74] This hypothetical consent would seemingly be assumed because of some action(s) of the individual earlier labeled as "implying consent." As was established in that discussion, these sorts of actions that imply consent are not strong enough for a full-fledged consent theory because they lack intentionality on the actor's part.

A second way in which consent theory has been adapted in order to meet the criticism that very few have actually consented is to stipulate conditions and create "choice situations" in which individuals are given an opportunity to consent or dissent, either explicitly or tacitly. Plato presents one example of a choice situation in the *Crito* when he describes the decision each man had to make when he came of age:

> [A]ny Athenian, on attaining to manhood and seeing for himself the political organization of the state and us its laws, is permitted, if he is not satisfied with us, to take his property and go away wherever he likes, if any of you chooses to go to one of our colonies, supposing that he should

[74] In Rawls' hypothetical contract the features of the individual that are focused on are rationality and self-interest.

> not be satisfied with us and the state, or to emigrate to any other country, not one of us laws hinders or prevents him from going away wherever he likes, without any loss of property. On the other hand, if any one of you stands his ground when he can see how we administer justice and the rest of our public organization, we hold that by so doing he has in fact undertaken to do anything that we tell him. (51d-e)

By explicitly forcing citizens to make a decision when they reach the age/maturity required for genuine consenting, the state seems to be guaranteed that any person remaining in their territories has consented and thus has political obligations to the state. However, this idea that residence could be a taken as a sign of tacit consent has faced abundant criticism. Hume, in possibly the first instance of this argument, asks, "can it be asserted that the people, who in their hearts abhor his [the current dictator's] treason, have tacitly consented to his authority, and promised him allegiance, merely because, from necessity, they live under his dominion?" (Hume, 2012, p. 119). Hume's contention is that people may be forced, for prudential reasons, to live under a government they have contempt for and to which they would not consent if it were possible. However, Hume's argument seems to disregard the choice situation response that was just discussed. A similar, but more pointed form of the argument contends that mere residence, even in a state with a formalized choice situation, can never constitute tacit consent because it is always possible for self-professed revolutionaries, spies, anarchists, etc. to intentionally take residence within a state, and to say that they are consenting to the rule of the government is absurd (Simmons, 1979, p. 97).

Despite the initial plausibility and strength that this argument may seem to have, if we recall the distinction previously made between the strict sense and the attitudinal sense of consent the argument loses all of its force. If a state were to actually have a well

defined choice situation, in which one's maintaining residence met all of the previously discussed conditions for genuine tacit consent, then it seems as though the revolutionaries, spies, and anarchists who stayed in the territories *would* be giving their consent to be governed but would still not agree with the government's actions. This would constitute the opposite of "attitudinal consent" in that they would have an attitude of disapproval towards the government. Nevertheless, just as one can approve of something without actually consenting to it, one can also disapprove of something while also consenting to it. An easily imaginable example of this sort of situation is a group of children deciding on a game to play. When a decision is finally made there may be some in the group who are disappointed with the outcome but who still join the game. Those children would have an attitude of disapproval towards the game that was picked, but are still consenting to play the game with the others.[75]

All of this seems to indicate that there could be instances of genuine tacit consent (e.g., maintaining residence) that bind individuals to a particular government if there were a well defined choice situation. The pressing issue for the consent theorist then becomes offering an account of a *well defined* choice situation. Harry Beran is one consent theorist who has attempted to offer such an account. Beran offers three ways in which individuals can legitimately dissent: "secession, migration, or a public declaration that they are not accepting membership in the state in whose territory they are living" (Beran, 1977, p. 266). Beran does not explicitly argue for the first option, secession, but he notes that it is an option which has been completely neglected by

---

[75] Cf. Harry Beran's (1977) distinction between the statements "'A *agrees with* the constitution' and 'A *agrees to obey* the constitution'" (Beran, 1977, p. 265).

contemporary philosophers and which needs further examination. One problem that immediately arises for this type of dissent is that individuals wishing to secede must either request the permission of the government for their independent claim of a certain section of territory, or be prepared to fight in order to keep the new land/state for which they did not ask the government's permission for secession. Both of theses choices are problematic, but the second is especially concerning. Being forced to wage a war against the government one wishes to withhold his or her consent from seems to violate the 4th and/or 5th conditions on consent discussed earlier (i.e., the means acceptable for indicating dissent here are unreasonable and/or the consequences of the dissent are potentially extremely detrimental). Entering a war which one can foresee losing is not a live option for that individual and thus cannot be the only acceptable way for someone to withhold his or her consent. The other choice, asking permission to secede from the government, is also problematic because the government is extremely likely to decline the request. This leaves the individual in the undesirable position of being without an option for dissenting aside from entering a war with the state. Shortly we will examine how Beran attempts to avoid this situation by offering a third option (i.e., public declaration) as an alternative, but first we must investigate whether simply leaving (i.e., migration) is a viable alternative to seceding.

The second option Beran offers for withholding consent and avoiding political obligations is migration. The first problem that this option encounters is that there is no inhabitable unclaimed land left on Earth for an individual to migrate to, so, they are forced to choose some state to reside in and consent to. A second problem is that even

this does not seem like a possibility for some individuals. Hume famously offers one objection pushing this idea:

> Can we seriously say, that a poor peasant or artisan 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, 2012, p. 118)

The objection seems to be that certain individuals (e.g., peasants and artisans) cannot leave their current country and thus do not voluntarily and intentionally give their consent by staying. The reason they cannot leave is not that the government is coercing them to stay, it is that option that has been given for dissenting (i.e., migrating) is simply too much to ask of these poorest individuals. To put this in the terms of the fifth condition on consent - the consequences of dissent would be extremely detrimental to the poor and ignorant individuals. The detrimental consequences of leaving one's country of residence seems to legitimately exclude this from even being a practical possibility for poor and ignorant individuals. Beran attempts to accommodate the problems with his first and second options by offering a third option for withholding consent.

Beran grants that individuals who are unable to migrate because they are too poor and intellectually ill-equipped and also unable to secede, either because there is no uninhabited land or the government denies their request to secede territory and the consequences of waging war would be extremely detrimental, must be able to avoid political obligation by "declaring publicly and to the appropriate officials that they are not accepting membership in the state" (Beran, 1977, p. 269). This public declaration of

dissent would be a last resort for individuals to withhold their consent and remain politically free from obligations. This option seems to be an interesting and principled solution to the problems associated with tacit consent, but there is still at least one issue that arises. For consent theorists who wish to use this account as the foundation for their claim that a majority of citizens *do* have political obligations because they have given their tacit consent, this "public declaration" option for dissent must be known by the citizens. If the citizens are aware of the option then their failure to make such a declaration would be a sign of consent; however, this does not seem to be a real option in most countries and if it is an option then almost no one is aware of it. This is problematic for the defenders of political obligation because the lack of this option, or at least the lack of awareness that this is an option, results in most people having *not* voluntarily given their tacit consent and thus not having political obligations. Some theorists will not be troubled by this philosophical anarchism, but some will find this worrisome and will thus have to deal with the fact that most governments do not explicitly offer this way out of political obligation for individuals wishing to withhold consent.

Even if one is happy to accept the resulting philosophical anarchism, there are still obstacles facing this consent theory and Beran's claim that, "consent is a necessary condition of political obligation and authority" (Beran, 1977, p. 270). It is one thing for tacit consent to be accepted as being on a par with express consent and acknowledged as *a* ground for political obligation, but it is a much stronger claim to say that they are *necessary* for political obligation. The subsequent discussion of competing theories of political obligation in sections 2.3 - 2.7 can be viewed as explicit denials of the claim that

consent is a necessary condition for political obligations. The heart of the problem seems to be that just as general obligations can be generated from multiple sources, it seems that *political* obligations could arise from pluralistic grounds as well. But this is not a unique problem for consent theory. Any account of political obligation which wishes to restrict the grounds of such obligations to a single source needs to consider this objection. Bypassing this issue for now, we must move on to examine another way in which consent theory has been adapted in order to meet objections.

A third way in which consent theory has been adapted is by widening the scope of actions that count as genuine consent. One example of this strategy has already been examined in 2.2b with Locke's "tacit consent through residence." But Locke is not alone is his attempt to expand the concept of consent to include mere residence; other historical and even some contemporary philosophers have also attempted to make this illegitimate maneuver.[76] There are others who have also maintained similar positions on this theme that more action types ought to count as consenting. Margaret Gilbert has argued that "joint commitments" are a primary source of political obligations and Mark Murphy has argued that "surrender of judgement" is a kind of consent. I will discuss each of these accounts in turn as both are seemingly presented as adaptations to the traditional consent theory through a broadening of the concept of "consent."

Gilbert contends that an expression of one's willingness to participate in "joint commitments" is sufficient in generating obligations, including political obligations, for the individuals. She offers an example of two people going for a walk together to

[76] For an additional historical example see Rousseau, (1997) *Social Contract* IV.ii, and for a contemporary example see Ross (1930), p. 27.

illustrate joint commitments and how they generate obligations. Gilbert describes a number of dialogue scenarios in which two people jointly commit to going for a walk together (e.g., asking someone to go on a walk and them accepting the invitation). She emphasizes that each individual's commitment to taking part in this social group of two brings certain obligations with it (e.g., each person cannot leave without indicating where they are going and why they are leaving the social group). In Gilbert's words, "When two people are out on a walk together, each is understood to be under a certain constraint. This constraint can only be removed by mutual accord" (Gilbert, 1993, p. 123). This social grouping by mutual commitment creates constraints or obligations on each person's behavior. As Gilbert understands these "joint commitments," all that is necessary in the establishment of these social groupings is "that the relevant parties mutually express their readiness to be so committed, in conditions of common knowledge" (Gilbert, 1993, p. 123). There may not seem to be anything objectionable about this account so far and the examples of individuals jointly committing to go for a walk seem fairly straightforward; however, the idea of "joint commitment" does not seem to broaden the notion of consent in any significant way. It seems as though the individuals in the walking examples are simply consenting to engage in a fairly loosely governed activity, which nonetheless carries certain general behavioral expectations for the participants. At this point there seems to be nothing that is significantly different between Gilbert's theory and other traditional consent accounts. When she describes joint commitments as "*the* fundamental social concept" which function to "establish a set of obligations and entitlements between individual persons to establish a special 'tie' or

'bond' between them," a traditional consent theorist may accept all of this but simply substitute "consent" for "joint commitments" (Gilbert, 1993, p. 124). Having said this, on closer examination the differences and her attempt to broaden the scope of consent becomes evident; unfortunately for her, the strategy she uses seems to undermine her account as a legitimate *consent* theory.

Early in the explication of her theory Gilbert states that, "obligations attach to group membership" (Gilbert, 1993, p. 122). This seems harmless when it appears because a traditional consent theorist would say the same thing - obligations attach to group membership and individuals become members by giving their consent. But as her account unfolds it becomes clear that she is departing from a traditional consent theory in that she denies that these joint commitments (and the corresponding obligations) need to necessarily arise voluntarily:

> [A]n understanding of joint commitment and a readiness to be jointly committed are necessary if one is to accrue political obligations… One can, however, fulfill these conditions without prior deliberation or decision, and if one has deliberated, one may have had little choice but to incur them. (Gilbert, 2006, p. 290)

This idea that one can become non-voluntarily jointly committed is echoed again when she is explicitly comparing her theory to traditional consent theory and even expanded to cover cases in which individuals are coerced:

> [F]ar as I can see, coercive circumstances do not preclude political obligations in the sense delineated here. Coercive circumstances need not prevent me from entering into a joint commitment. If I am a party to such a commitment I am obligated and that is that. That is not to say that I may not subsequently have good reason to break my commitment and violate my obligation. I may or I may not. But the obligation is as real as the commitment is, and commitment can be full and complete in coercive conditions. (Gilbert, 1993, p. 129-130)

Gilbert attempts to motivate her account with an appeal to an imaginary story of two individuals going for coffee a few times after a regularly scheduled meeting that they both attend. She contends that once this routine is continued for a sufficient number of times a tacit understanding of the joint commitment is established. While this account offers an interesting explanation of what it is that makes one a member of a group, it seems to clearly not be a *consent* theory. Gilbert describes the account as an "actual contract theory of political obligation," but there does not seem to be any *actual* consenting, and thus no actual contracting, necessarily involved in the generation of the obligations (Gilbert, 1993, p. 129). As was the case with Locke's attempt to expand consent to include mere residence, Gilbert's joint commitment account seems to be grasping an interesting way in which individuals can become members of a group and thus incur positional duties associated with the role they occupy, but which can then only be illegitimately labeled as a *consent* or *contract* theory of political obligation.

Murphy also attempts to broaden consent by including "the surrender of one's judgement" as an action that counts as consenting. Murphy starts by defining and distinguishing between a "determination" and a "minimally acceptable determination-candidate" concerning moral requirements. He explains that minimally acceptable determination candidates are agent-independent (i.e., objective) and defines them as such:

> With regard to moral requirements M, and agent S, and a set of circumstances C, d is a minimally acceptable determination-candidate of M for S in C if d is a plan of action such that if S successfully followed d in C then it would be false that S violated any member of M in C. (Murphy, 1997, p. 119)

In contrast to these agent-independent aspects of moral requirements, Murphy highlights and defines an additional agent-dependent (i.e., subjective) aspect of moral requirements - deliberations:

> With regard to a set of moral requirements M, an agent S, and a set of circumstances C, d is S's determination of M for C if S judges that adhering to d is the way for S to fulfill M in C. (Murphy, 1997, p. 119)

With these two definitions in place Murphy specifies the agent-dependent moral requirement that will ultimately ground his consent account:

> [G]iven set of moral requirements M, agent S, and set of circumstances C, then if d is S's determination of M for C, and d is a minimally acceptable determination-candidate of M for S in C, then S is morally required to act in accordance with d. (Murphy, 1997, p. 120)

Murphy uses an example to illustrate this interaction between minimally acceptable determination-candidates and an individual's determination to also begin the transition from individual moral requirements to the collective political sphere. Murphy describes the moral requirement to "assist those who are in great need," and more specifically, "feed and shelter the homeless" (Murphy, 1997, p. 124). Of course there are additional determinations that need to be made in order to fulfill this moral requirement, such as *how* one is going to feed and shelter the homeless. Murphy also uses this example to highlight the fact that some moral requirements are such that they can be better realized if multiple individuals engage in cooperative and coordinated action. This becomes a further restriction on which determinations an individual can come to in fulfilling the moral requirement because now *the group* must come to one determination. This is usually accomplished by establishing a set of rules which guide how determinations are to be agreed upon or by recognizing a person who will make the ultimate determination

or by establishing a set of rules which guide how this person is to be decided upon (Murphy, 1997, p. 125).

This introduction of rules and the constraints they place on how groups will make decisions concerning minimally acceptable determination-candidates is a springboard for Murphy to talk about the ways in which individuals could treat these rules. He writes:

> Consider two persons, A and B, who take part in a cooperative scheme to realize a morally choiceworthy goal. Person A treats the rules of the scheme in the following way. She knows that other persons in the cooperative scheme are likely to comply with the rules, for whatever reason. Given that other persons in the scheme are following the rules, the course of action that would be most likely to be effective in achieving the morally choiceworthy goal would be to follow the rules. Person A therefore follows the rules. Person B, on the other hand, treats the rules in a different way. Instead of calculating each time the effect that her obeying the rules would have given others' compliance, she has accepted the rules of the scheme as her own determinations. Instead of treating them as determinations issued by an outsider, to be obeyed or disobeyed as her calculations dictate, she treats them *as her own.* (Murphy, 1997, p. 126)

This description of person B's acceptance of the rules "as her own" is what Murphy calls "consent in the acceptance sense" (Murphy, 1997, p. 126). This acceptance or allowance of another's practical judgments to take the place of her own is that which Murphy is most interested in for his "refurbished consent account." These cases of consent in the acceptance sense are also what Murphy calls "surrender of judgment." It is this acceptance consent and surrender of judgment which ground Murphy's consent account of political authority and obligation. When cooperative action is required in order to fulfill agent-independent moral demands, individuals must surrender their judgment to an individual (the leader/ruler) or to a set of rules in order to coordinate the determination

that is to be reached concerning the general moral principle.[77] This surrender of judgment is what allows for the moral demand to be achieved, but it also puts an *agent-dependent* moral requirement on each individual "to act according to those minimally acceptable determinations issued by the political authority to whom one consents" (Murphy, 1997, p. 131). In other words, each individual has a moral obligation to follow the determinations of the government (i.e., laws, dictates, etc.). On Murphy's account, the government makes legitimate laws concerning the coordinated and cooperative activities of all citizens when it is a political *authority*; and a government becomes authoritative when individuals surrender their judgment (i.e., give their consent in the acceptance sense) to the determinations made by the government (which must, of course, be one of the minimally acceptable determination-candidates).

I find Murphy's attempt to adapt the traditional consent theory by including "surrender of judgment" as a type of consent uniquely promising; however, multiple issues arise for this approach. One of the first is that it appears to leave the task of making "determinations" between the "minimally acceptable determination-candidates" as an arbitrary moral decision. This is troubling because Murphy gives no indication that these determinations are not made in *all* cases of moral reasoning. It seems as if he takes the job of the moral agent, at least in the majority of cases, to be that of making concrete determinations for one's actions from the minimally acceptable determination-candidates relevant to the specific situation. It seems as if it does not matter *which* of the acceptable candidates is chosen, simply that it be one of them. Murphy attempts to head-off this

[77] Murphy draws a similarity between his acceptance notion of consent, when it is a set of rules that one is accepting, and Hart's "internal point of view." (see Hart, 2012, p. 55-56)

objection by making a distinction between two types of indeterminacy - "indeterminacy of indifference" and "indeterminacy without indifference." Cases of indeterminacy of indifference arise when there is *no reason* to prefer or choose one candidate over another (i.e., the reasons for both are either the same or are of the same strength) (Murphy, 1997, p. 121). Murphy claims that his account of making determinations from the minimally acceptable determination candidates is not this sort of indeterminacy; instead, it is indeterminacy without indifference:

> Instead of there being no reason to prefer d to e or e to d, there could be a reason to take d to be superior to e and a reason to take e to be superior to d. This result seems particularly likely to occur in cases in which one is attempting to satisfy distinct moral requirements… it is not an arbitrary matter which one of these I judge to be the way to fulfill the moral requirements binding upon me, for there is a reason to judge the former better (it better fulfills the requirement to [do action type or duty x]) and a distinct reason to judge the latter better (it better fulfills the requirement to [do action type or duty y]). (Murphy, 1997, p. 122)

However, this strategy of differentiating between types of reasons in order to avoid arbitrariness is problematic. By focusing on *difference in type* of the reasons the moral agent is still left in a state of indeterminacy between which of the differing reasons to act upon. At this point in the moral reasoning process it seems that the *strength* of the differing reasons needs to be considered in order to make a rational determination. If one of the candidates has stronger moral reasons supporting it then there seems to be no indeterminacy because the candidates are not *equally* acceptable. Alternatively, if Murphy argues that the competing moral reasons are incommensurable then any decision between the two seems to be completely arbitrary.

A second issue that Murphy's surrender of judgment account of consent faces is his claim that the acceptance of another's determinations as one's own "does not entail that one accepts the other's judgements into one's theoretical as well as one's practical reasoning" (Murphy, 1997, p. 126). I will not exhaustively examine this issue here, but will return to it in Chapters 5 when I am developing my positive account. In essence, Murphy is claiming that when one is not doing practical reasoning (i.e., reasoning about action) she need not accept the authoritative judgment/rule. It is difficult to understand how one could use the authoritative judgment/rule as *one's own* (i.e., used, as opposed to merely mentioned, as premises in practical reasoning) if she didn't already accept the judgement/rule prior to the practical reasoning.[78] While I find Murphy's adaptation of the traditional consent theory to be interesting and having great promise, these issues will need to be addressed.

The initial appeal of consent theory is undeniable, but as has been demonstrated time and time again the traditional consent theory has the limitation of being forced to accept that the vast majority of people do not have obligations generated from consent, because most have not consented, and the various adaptations of consent theory have problematic aspects which reduce their appeal. The path forward is clear though for those still interested in pursuing a viable consent theory - offer a conception of consent that is strong enough to be legitimately described as *consent* and which is an action most people have in fact engaged in.

---

[78] Murphy even states that the acceptance of authoritative judgments/rules does not "exclude the possibility of a filter-type mechanism at work in specifying which determinations I accept and which I do not" (Murphy, 1997, p. 141 [note 20]). Again, it is not at all clear what this "filter-type mechanism" would be and how it would function in allowing one to temporarily suspend one's acceptance of a judgement/rule while simultaneously keeping it as "one's own."

2.3 Gratitude Theories

A second theory of political obligation that appears in the contemporary debate is one grounded in gratitude. This idea stems from the common notion that obligations can be generated when one person (A) benefits another (B). Some common examples are A helping B by jumpstarting her car or simply holding the elevator for her. The idea is that B owes something to A even if it is simply a "thank you." Similarly, the idea with political obligations is that individuals *owe* certain things to a government that has benefitted them. This idea dates back to at least Plato's *Crito* when Socrates contends that one of the reasons he must not escape from his sentence was his obligation of gratitude to Athens. Yet despite this very early historical appearance of the theory, it has not received focused attention until relatively recently.[79]

The basis for the gratitude theory can be found in A.D.M. Walker's first sketch of the argument from gratitude:

1. The person who benefits from *X* has an obligation of gratitude not to act contrary to *X*'s interests.
2. Every citizen has received benefits from the state.
3. Every citizen has an obligation of gratitude not to act in ways that are contrary to the state's interests.
4. Noncompliance with the law is contrary to the state's interests.
5. Every citizen has an obligation of gratitude to comply with the law. (Walker, 1988, p. 205)

The primary strength of this theory is that it can easily explain the common intuition that a citizen who is denied *all* benefits from his or her government has no political obligation to said government. If an individual, or group of individuals, is systematically excluded

[79] It may be more precise to say that the *underpinnings* of the gratitude theory (instead of the theory itself) can be found in Plato's *Crito* because Socrates does not appear to be claiming (as contemporary gratitude theorists are) that a citizen's political obligation is solely, or even primarily, grounded in gratitude.

from all state benefits it seems that they would owe nothing to the government, even if there were some other fact from their history that did tie them to the government. Simmons offers an example to illustrate this idea:

> Imagine a fur trapper whose home lies in some desolate province of an otherwise civilized and politically organized nation. Because of limited resources available to the government, the government is never able to extend any of the benefits it provides for its other citizens to this isolated corner of its domain. Police forces do not operate there, the armed forces do not protect it from invasion, and in general the government leaves the area completely on its own. Can we seriously maintain that the trapper is bound to support and comply with the government of the state, simply because he lives within the recognized boundaries of the state? Is he bound to comply with the country's gun control laws, or to fight in the armed forces when the call goes out for able-bodied men? Surely not. (Simmons, 1979, p. 159)

This example seems to indicate that mere residence, as in Locke's tacit consent account, is not enough to generate political obligations; instead, it seems that it is the receipt of benefits found in *most cases* of residency that is actually supporting the intuition that residents owe something to the government. All of this suggests that the receipt of benefits and corresponding gratitude is relevant to political obligation.

Despite these intuitively appealing features, this type of theory has been attacked on multiple fronts. One criticism that has been leveled is that obligations of gratitude apply between individuals but not between an individual and an *institution* (e.g., a state). Simmons elaborates:

> I feel uncomfortable about attempts to move a principle of gratitude from the realm of interpersonal relations into the realm of benefits provided by institutions… And that is because I think that the *reasons* for which a benefit is granted are so crucial to considerations of gratitude. Where a group of persons is concerned, there is very seldom anything like a reason, common to all of them, for which the benefit was provided… The general point that I am trying to make is that there may be something illegitimate

> about an attempt to apply the principle of gratitude to benefits received from (sets of) institutions, such as governments, and perhaps even to those received from groups of persons, such as governors. (Simmons, 1979, p. 187-88)

Part of Simmons' discomfort is based on the fact that there is negligible effort or sacrifice on the part of government and rarely, if ever, is there a common motive in the distribution of benefits. Simmons argues that a debt of gratitude is created only when the benefactor makes some special effort or sacrifice, or incurs some loss in providing the benefit (Simmons, 1979, p. 170). This argument relies on examples where benefits are provided but the "benefactor's" actions are not voluntarily done in order to provide the benefit.[80] The same sort of argument can be accomplished by giving examples of inanimate objects benefiting an individual (e.g., a tree falling on a bear which is about to attack a hiker). It would very strange to say that the hiker (i.e., the beneficiary) *owed a debt of gratitude* to the inanimate object simply because it played a causal role in something which benefited the individual. Relatedly, Simmons argues that the motives and reasons for action on the part of the benefactor are crucially important in evaluating whether gratitude is owed. Specifically, Simmons argues that benefit must be intentional, voluntary, and not provided for purely reasons of self-interest (Simmons, 1979, p. 171-172). Institutions, because of their makeup as composites of groups of individuals, are rarely (if ever) able to act with these motives and thus not able to provide benefits which create a debt of

[80] Simmons gives the examples of (1) a mugger being scared away by an individual walking past the alley in which the mugging was going on, and (2) being late for a flight, which ends up crashing, simply because the taxi driver was late. Simmons argues that we may be *grateful* that the individual walked past the alley or that the taxi driver was late but that this should be distinguished from *owing them a debt of gratitude* (Simmons, 1979, p. 170-171).

gratitude. While there may be obligations of gratitude to *certain individuals* in government, there does not seem to be a general *political* obligation.[81]

Walker responds to this criticism by arguing that obligations of gratitude are not only created by pure motives of goodwill. It seems obvious, he argues, that an individual acting from mixed motives of self-interest and goodwill would still owed a debt of gratitude (Walker, 1988, p. 208). This allowance for mixed motives also fits with the intuition that someone who sacrifices *more* would be owed more gratitude from the beneficiary. If a person acts from some self-interest and some goodwill then that individual would be owed less gratitude because they also benefited from the action and thus sacrificed less than someone would have who was only acting from goodwill. This idea can be applied to institutions (e.g. governments) by thinking of the individuals who make up the institution as the "mixture" which must be taken into account when evaluating the strength of the obligation owed. Benefits to citizens that are created from a greater proportion of goodwill on the governors' part generate stronger obligations, and benefits that are created from self-interest generate weak or no obligations.

A second source of objection to the gratitude theory admits that these sorts of obligations exist but contends that they are "too weak to function as prima facie political obligations in the usual sense" (Klosko, 1989, p. 355). The weakness of these obligations would allow them to be easily overridden, and thus would not require following laws and supporting the state on most occasions. It has been argued that this very weak sort of

[81] Again, I wish to stress that I have not taken up the question of to *whom* these political obligations are owed, if they do exist. This particular objection leveled against the gratitude theory may simply be a strong reason against accepting that political obligations can be owed to abstract political entities (institutions). If a gratitude theorist were to contend that obligations of gratitude could only be owed to individuals (e.g., fellow citizens, political officials, etc.) then this objection would not apply.

obligation does not fit with the traditional understanding of political obligations, which are thought to sometimes carry very heavy burdens such as requiring citizens to pay large taxes and serve in the military (Klosko, 1989, p. 357).[82]

While it may be possible to respond to the "institution criticism" and show that obligations of gratitude can be generated between individuals and institutions, and that it is possible for them to be strong enough to qualify as political obligations, this falls short of a theory in which political obligations are solely or primarily of this variety. Just as most theorists admit that it is *possible* for political obligations to arise through individual consent, this is not equivalent to the claim that consent is the only way for these obligations to be generated, nor that these sorts of obligations actually exist. Similarly, political obligation theorists can admit that it is possible for debts of gratitude to be political obligations while denying that this is generally the case or that these sort of political obligations actually exist.

2.4 Theories of Fair Play

A third theory of political obligation, which is also hinted at in Plato's *Crito* and has recently received more focused attention, is the theory of fair play. In H.L.A. Hart's classic formulation of the theory, he writes:

> [W]hen a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission. (Hart, 1955, p. 185)

---

[82] Walker responds to Klosko's attack by highlighting the distinction between the *content* of an obligation (i.e., what must be done to discharge it) and the *stringency* of an obligation (i.e., the weight of the obligation in relation to other considerations) (Walker, 1989, p. 360). Walker argues that the content of obligations is sometimes diffuse but that the stringency of obligations is variable and not generally weak in obligations of gratitude. In support of this he sites Hume, Kant, and Plato/Socrates's weighty regard for gratitude.

John Rawls further built upon this sketch of the duty or obligation pertaining to the fair and reciprocal interactions between members of a group in his early writings:

> The principle of fair play may be defined as follows. Suppose there is a mutually beneficial and just scheme of social cooperation, and that the advantages it yields can only be obtained if everyone, or nearly everyone, cooperate. Suppose further that cooperation requires a certain sacrifice from each person, or at least involves a certain restriction of his liberty. Suppose finally that the benefits produced by cooperation are, up to a certain point, free: that is, the scheme of cooperation is unstable in the sense that if any one person knows that all (or nearly all) of the others will continue to do their part, he will still be able to share a gain from the scheme even if he does not do his part. Under these conditions a person who has accepted the benefits of the scheme is bound by a duty of fair play to do his part and not to take advantage of the free benefits by not cooperating. (Rawls, 1964, p. 9-10)[83]

The fundamental idea is that an individual who benefits from others' sacrifice in any joint enterprise has a moral obligation to sacrifice the same thing(s), or a comparable sacrifice for comparable benefits, in order to offer the same benefit to the other members. If this sacrifice is not made then the individual is acting wrongly by "free riding" (accepting benefits while not doing one's part in the enterprise to repay for the benefit received).

The strength of this theory seems to be its ability to avoid problems associated with the gratitude and consent accounts while being able to include and explain intuitively appealing aspects of each (e.g., the connection between obligation and "hypothetical consent," and also the seeming importance of "consent implying acts"). It is able to avoid the "institution problem" of the gratitude theory because it *does not* say one has an obligation *to an institution*, only an obligation to play one's role in the

---

[83] Rawls later (in *A Theory of Justice*) abandoned this fair play account and argued for a "natural duty of justice" (see 2.6 below).

institution because others have done the same. It also avoids the problems of the consent theory because it can provide a robust account of the fairness of reciprocating after one has received benefits that does not employ the notion of implicit consent.

In response to this type of theory critics have presented three main criticisms. The first objection contends that the principle of fair play is an unacceptable moral principle because it allows for a group to place an individual under an obligation by conferring a benefit on them. This seems to be possible if a rule-guided system is set up that confers benefits to everyone in a certain geographical area and everyone else does their part in fulfilling their role. By the principle of fair play, it seems that if I lived in this geographical area then even I would be obligated to participate regardless of whether I consented to the system or not. Robert Nozick famously offered this sort of objection in his *Anarchy, State, and Utopia*. To spell out the details of the objection Nozick depicts a thought experiment in which a neighborhood group sets up a public address system for public entertainment and institutes a system of rules for the operation of the endeavor. A list is created which specifies who is responsible for running the entertainment system each day. After having sketched this "cooperative scheme," Nozick asks if an individual is obligated to run the system when their assigned day arrives. Nozick's answer is that the individual *surely does not* have an obligation to participate, even if the individual has benefitted from the entertainment system (Nozick, 1974, p. 90-95). Nozick contends that an individual is only obligated to participate if she has given her consent to be bound by the rules of the system. The typical response to Nozick's objection has been to deny that the principle of fair play would require the person to participate in operating the

entertainment system either because (1) the benefits the individual received were of little value (relative to the cost of giving up a full day to operate the system),[84] or (2) the passive receipt of the benefits does not show that the individual is a *participant* in the system.[85]

Closely connected to the first, the second objection contends that the principle of fair play only pertains to joint enterprises where the benefits can be refused by individuals who wish to opt out. The idea behind this objection is that there is a difference between merely *receiving* and voluntarily *accepting* a benefit. Simmons explains that in order to accept a benefit one "must either 1) have tried to get (and succeeded in getting the benefit), or 2) have taken the benefit willingly and knowingly" (Simmons, 1979, p. 129). This distinction between receiving and accepting benefits allows Simmons to reject Nozick's objections because all of Nozick's examples rely on individuals who seem to have merely *received* benefits but not accepted them. With this Simmons is denying (in accord with Nozick) that payment can be demanded after a benefit has been forced on an individual. However, he is also denying (in opposition to Nozick) that the principle of fair play would require this because, he claims, it is necessary for the individual to *accept* the benefits before any obligation of fairness can arise. While Simmons has managed to strengthen the fair play account with his responses to Nozick's objections, he goes on to reject obligations of fair play as grounding political obligations. He accomplishes this by making another distinction between "readily available benefits" which are fairly accessible and can thus be pursued

---

[84] See, e.g., Klosko (2004).

[85] See, e.g., Simmons (1979, p. 120-122) & Dagger (1997, p. 69-70).

and *accepted*, and “open benefits” which can only be avoided through considerable inconvenience.[86] Simmons explains how this distinction restricts fair play from grounding general political obligations:

> Many benefits yielded by cooperative schemes (in fact most benefits, I should think) are “open” in this way… benefits of government, which we have spoken of frequently, are mostly of this sort. The benefits of the rule of law, protection by the armed forces, pollution control, etc., can be avoided only by emigration. (Simmons, 1979, p. 130)[87]

As Simmons explains, most of the benefits provided by the state are of the sort that cannot be avoided without considerable inconvenience (e.g., military protection, police protection and public order, pollution control, etc.), and thus everyone receives the benefit without a viable option to deny the benefit and commonly without *accepting* the benefit in the relevant sense as to create an obligation of fair play (Simmons, 1979, p. 129-30).[88]

---

[86] Similarly, Richard Arneson (1982) argues for a distinction between *private* and *public* goods. *Purely* public goods (e.g., systems of national defense), Arneson argues, cannot be voluntarily accepted because, short of emigrating, it is not possible to voluntarily reject the good (Arneson, 1982, p. 618-619). However, instead of rejecting the principle of fairness, as Simmons does, Arneson argues for a revised principle of fairness: “[W]here a scheme of cooperation is established that supplies a collective benefit that is worth its cost to each recipient, where the burdens of cooperation are fairly divided, where it is unfeasible to attract voluntary compliance to the scheme via supplementary private benefits, and where the collective benefit is either voluntarily accepted or such that voluntary acceptance of it is impossible, those who contribute their assigned fair share of the costs of the scheme have a right, against the remaining beneficiaries, that they should also pay their fair share. A moral obligation to contribute attaches to all beneficiaries in these circumstances, and it is legitimate to employ minimal coercion as needed to secure compliance with this obligation (so long as the cost of coercion does not tip the balance of costs and benefits adversely)” (Arneson, 1982, p. 623). This revised principle discards any reliance on “tacit consent” while preserving the contention that there can be instances when “accepting or even simply receiving the benefits of a cooperative scheme can sometimes obligate an individual to contribute to the support of the scheme, even though the individual has not actually consented to it” (Arneson, 1982, p. 623).

[87] Again, Cf. Arneson’s (1982) distinction between *private* and *public* goods.

[88] However, Simmons is not making the claim that it is impossible to accept open benefits, simply that open benefits are not *normally* accepted willingly and knowingly.

One response to Simmons' objections, offered by Klosko - a leading contemporary advocate of the theory of fair play - is to deny that obligations must be incurred voluntarily. Instead, Klosko contends that three conditions must be met:

> Goods supplied must be (i) worth the recipients' effort in providing them; (ii) "presumptively beneficial;" and (iii) have benefits and burdens that are fairly distributed. (Klosko, 1992, p. 39)[89]

To my knowledge Simmons has not responded to Klosko but I anticipate that he would simply reiterate his denial that obligations can be incurred involuntarily. It may be that in a utopian-like society, individuals would have a *duty* to support and comply with the government providing indispensable public goods, but Simmons could accept all of this while still denying that *obligations* were created involuntarily or even that these duties actually exist anywhere.

The third objection, raised by M.B.E. Smith, contends that the principle of fair play would only pertain when fulfilling one's role directly causes some benefit or harm. Since states are not small joint enterprises, it is likely that there will be many cases when a person's obedience or disobedience to the rules neither harms nor deprives someone of a benefit. Therefore, the objection concludes, fair play cannot ground a *general* political obligation. However, this argument has received fatal responses. The essence of the response is deontological in nature and holds that regardless of an individual's causal efficacy in supporting the continuation of the enterprise it is still *wrong* to not do one's part. Simmons writes, "by failing to do his part, the individual *takes advantage* of others, who act in good faith. Whether or not my cooperation is necessary for benefitting other

---

[89] In Klosko's most recent book he strengthens the condition that goods be "presumptively beneficial" by requiring that goods be "indispensable for satisfactory lives" (Klosko, 2005, p. 6).

members, it is not fair for me, as a participant in the scheme, to decide not to do my part when the others do theirs" (Simmons, 1979, p. 107).[90]

2.5 Associative Theories

A fourth theory of political obligation is grounded in membership or association. The basic tenant of an associative theory is that political obligation is generated by being a member of a group; there are certain obligations which are tied simply to membership. This type of obligation does not follow from any voluntary action but is a type of *non-voluntary* obligation that one is born with. Ronald Dworkin, one of the first and most well known theorists to endorse an associative theory, described these non-voluntary obligations by comparing them to other "special obligations" individuals have to intimates: "Political association, like family and friendship and other forms of association more local and intimate, is in itself pregnant of obligation" (Dworkin, 1986, p. 206).[91] John Horton, a more contemporary theorist endorsing the associative theory, elaborates on Dworkin's sketch:

> My [Horton's] claim is that a polity is, like the family, a relationship into which we are mostly born: and that the obligations which are constitutive of the relationship do not stand in need of moral justification in terms of a set of basic moral principles or some comprehensive moral theory. Furthermore, both the family and the political community figure prominently in our sense of who we are: our self-identity and our understanding of our place in the world. (Horton, 1992, p. 150-51)[92]

---

[90] Cf. Dagger, 1997, p. 71.

[91] There may be a disanalogy between the type of associative relationships between family members and between friends. While they both may be "pregnant with obligation," friendships are certainly not *born into*. Whether this disanalogy would be detrimental to Dworkin's theory is uncertain, but this may explain why John Horton, one of the most recent leading figures in field of associative theories, focuses solely on *familial* relationships.

[92] It should be noted that because of its seeming failure as a "consent theory," some scholars have reinterpreted Margaret Gilbert's theory of "joint commitments" to also be an associative theory of political obligations (see, e.g., Simmons 1996, Dagger 2000, and Horton 2006).

The primary strength of this theory is that it is able to explain the common intuition that we have political obligations by highlighting another common intuition: we have obligations that have not been voluntarily acquired (e.g., familial and friendship obligations). This common intuition about obligations to intimates seems to rely on a sort of "no-man's-land obligation" which has not been created by being explicitly chosen (i.e., not voluntarily) but which also doesn't go against our will (i.e., not involuntary). This type of non-voluntarist obligation also fits with another intuition that commonly grounds the particularity requirement of political obligation - the intuition that individuals have an obligation to obey the laws and support the government because it is *their* government.[93] The obligation "grows out of the sense of *identity* that members of a polity commonly share… this is *my* polity, and I find myself thinking of its concerns as something that *we* members share" (Dagger, 2010, 4.4).

This theory, like the other candidates, has received considerable criticism. A primary objection, and one that *has* been adequately responded to, is the claim that the associative theory conflates the *sense* of obligation (*felt* obligations) with obligation itself (*real* obligations).[94] The critic objects that simply because many people feel or believe that they have a political obligation does not necessarily make it the case that they do. The response has been that defenders of associative political obligations are not committed to denying that error is possible and people may be mistaken about whether or not they have certain obligations. This "sense of obligation" or the common intuition that

---

[93] See 1.3

[94] See, e.g., Simmons, 1996.

political obligations exist is a "starting point, but the argument for associative obligations does not simply *assume* that just because people believe something it *must* therefore be true" (Horton, 2006, p. 431). Essentially the response is that the sense of obligation is not conflated with a real obligation, it simply provides the philosophical motivation for investigating what, if anything, generates the obligation.

The second main objection has been that the theory's analogy between the family and political institutions is not apt. It seems fairly evident that members of modern states lack the close and intimate relationships that family members typically have. This idea is spelled out by Diane Jeske when she discusses the intimate relationship between friends:

> [I]t is significant that, in ordinary discourse, we make distinctions between mere neighbors, mere roommates, or mere colleagues, and *friends*… Neighbors can refrain from becoming intimate with one another; that is, they have control over whether they become friends. Of course, the gradual process of becoming intimate is such that a person, if they do not reflect upon their actions, may suddenly realize that they are friends with someone. Nonetheless, unreflective choices are still choices… Now consider the political context. We are thrust into the "relationship" of compatriot, just as we are thrust into the relationship of neighbor or roommate. (Jeske, 2001, p. 206)

Jeske takes a similar position concerning obligations between family members; the intimacy which creates the special obligations is not biologically fundamental she argues, it must be developed through interactions, a shared history, and voluntary choices (Jeske, 2001, p. 201). Jeske's conclusion is that the sort of intimate relationships which give rise to special obligations are "chosen," by which she means they are nurtured, fostered, and voluntarily participated in; most relationships between citizens of a polity are not of this

sort and thus cannot create special political obligations.[95] This analogy between fellow citizens and family members is also objectionable for many scholars because it seems to allow for a strong familial paternalism in the role of the government.[96]

A third objection, closely related to the first, contends that even if the analogy between family and political institutions is good, there would still be no political obligation arising simply from mere membership. This is because, the critic claims, there is no general obligation to one's biological family. If a person has an awful family, then they probably do not have any obligations to them simply because they are biologically related. If there are obligations to parents and siblings, which many of the critics don't want to deny, it seems to be grounded in something other than mere membership. The same goes for political obligations, the objection concludes. Dagger sums up the objection when he writes:

> [The problem is] membership is not confined to groups or associations that are decent, fair or morally praiseworthy… All families have members, but some families are so abusive or dysfunctional that some of their members presumably have no obligation to abide by family rules. The same is certainly true of political societies. If the character of a polity is such that some or even many of its 'members' are routinely exploited and oppressed, it is difficult to see how they are under an obligation to obey its laws. (Dagger, 2000, p. 110)[97]

---

[95] I agree with Jeske's conclusion that "special obligations to intimates" do not exist between the vast majority of citizens in modern states and thus cannot ground a general theory of political obligation. However, I do not agree with her contention that "expectations" are neither necessary nor sufficient to create these (or any) obligations (see 1.2 for my discussion of "obligations") (see Jeske, 2001, p. 200).

[96] After accepting that political relationships are different from "face to face" ones like those between friends, neighbors, colleagues, families, etc., Horton's response to this objection seems to be to simply contend that, "they [political relations] are certainly not ethically negligible, having enough substance commonly to figure in our ordinary moral reasoning and practical deliberation" (Horton, 2006, p. 442, n. 8). While it may be true, and I am tempted to agree, that political relationships are ethically relevant, this is far from supporting the associative obligation theorist's claim that these relations generate special obligations like those often found between family members.

[97] Reproduced from Horton, 2006, p. 436.

One does not acquire a political obligation by simply being born into a state regardless of its character and actions. If political obligations do exist they seem to be generated by or grounded in something other than mere membership. Horton's response has been to show that this criticism applies equally to voluntary commitments and thus associative obligations face no *special* problem. Horton argues that whether one *promises* to do something immoral or one is simply *born into* an immoral polity, which requires immoral actions from its citizens, the problem seems equally troubling. Horton concludes:

> [A]lthough voluntarily assumed obligation can be rendered void or overridden in a wide variety of circumstance, there appears to be no comparable inclination to want to deny that voluntary commitments can ever generate moral obligations… It is unclear, therefore, why the fact that some associations may not be 'decent, fair or morally praiseworthy' should undermine or trivialize the significance of associative obligations *in general* any more than it does voluntarily assumed obligations. (Horton, 2006, p. 437)

However, there *does* seem to be a significant difference; while voluntarist theories of political obligation are derivative, i.e., the obligation is grounded in some fundamental moral principle (e.g. consent), the associative theorist is claiming that the relationship between citizen and state *is* fundamental and "pregnant of obligation." The trouble for the associative theory seems to be that voluntarist theories of obligation are able to label some obligations as morally blameworthy (because the individual ought not have consented to, promised, or joined, etc. the immoral activity) while the associative theorist does not have the conceptual tools to make these distinctions (because they take membership to be non-voluntary *and* morally fundamental).

2.6 Natural Duty Theories

The fifth, and final, contemporary monistic theory of political obligation contends that political "obligation" is not an *obligation* but a natural *duty*. The first to specifically argue for this type of theory was Rawls in his monumental work, *A Theory of Justice*. Departing from his earlier position that political obligations are generated out of the considerations of fairness (fair play), Rawls highlights a distinction between obligations and duties. Obligations are acquired voluntarily, such as when one makes a promise or signs a contract, while duties apply to us even without a voluntary act. Rawls then argues that we have a natural duty of justice, which "requires us to support and comply with just institutions that exist and apply to us," and this takes the place of "political *obligation*" (Rawls, 1999, p. 99). He explains that:

> [T]here are several ways in which one may be bound to political institutions. For the most part the natural duty of justice is the more fundamental, since it binds citizens generally and requires no voluntary acts in order to apply. (Rawls, 1999, p. 100)

The main strength of this type of theory is that it avoids the problems associated with consent theories while also avoiding the problems of the associative theories. Rawls' motivation behind this transition from his fair play account of political obligation to a natural duty account seems to be the idea that not enough people have *accepted* benefits from their government to ground a broad political obligation. This lack of individuals with political obligations can seem quite troubling if the government is one which promotes justice. This transition makes it possible for Rawls to claim that individuals

still have a duty to support just states, and work to bring about more justice, even if they have not explicitly accepted any benefits from such a government.[98]

The primary criticism of natural duty theories has been that they seem to conflict with the 'particularity requirement.' A natural duty theory doesn't seem to be able to make the distinction between an individual's obligation to his or her particular political institution and any other just institution because a natural duty of justice requires one to support and comply with just institutions *generally*. Having to hold that one is equally obligated to a just government on the other side of the world as she is to her own just government, is unintuitive and even unpalatable for some critics.

Contemporary defenders of the natural duty account have typically responded by attempting to show that *there is* something special about the relationship between individuals and their own country which makes their political duty stronger to their own polity over others to which they do not belong. Jeremy Waldron argues for a distinction between *insiders* and *outsiders* with regards to government action concerning distributive justice and the corresponding duties to said government. Waldron writes:

> Formally, an individual is within the range of a given principle P_1 (and thus an *insider* with regard to that principle) just in case he figures in the set of persons (or any of the sets of persons), referred to in the fullest statement of P_1, to whose conduct, claims, and/or interests the requirements of P_1 are supposed to apply. Substantively, an individual is within the range of a principle if it is part of the point and justification of the principle to deal with his conduct, claims, and interests along with those of any other persons it deals with. (Waldron, 1993, p. 13)

---

[98] Even if an individual has *only* been "harmed" by the government (e.g., if the individual had immense amounts of land, money, and other resources and the government needed to confiscate some of these in order to redistribute resources justly) Rawls seems to be committed to saying that the individual has a natural duty to support and comply with the just state.

Waldron's claim is that principles of distributive justice are "range-limited" in their application and thus limit who is an insider and who owes special duties of justice to the system. Wisely, Waldron immediately addresses the question of what *justifies* limiting the range of principles concerning distributive justice. Following Kant he argues that we have a duty to leave the state of nature and form states of distributive legal justice with those individuals we are "side-by-side" with. This state is practically limited in its scope at its outset by the geography and constitution of the individuals who are involved, but which can be extended in the future by the same Kantian principle. For the time being though, the range is limited and creates *insiders* and *outsiders* (Waldron, 1993, p. 14-15).[99] The critic's response to this limiting of the scope for natural duties has been to argue that the "range-limitations" implicitly rely on ideas and arguments from *other* theories of political obligation. For example, it seems that the only reason individuals would owe *their* government any more than an equally just government whose laws don't "apply" to them is that they *consented/promised* something, or owe *gratitude* for the benefits received, or have accepted the benefits and thus have an obligation of *fair play*. This is not to say that a theorist needs to disabuse his or her theory of these other sorts of obligations, simply that the political moral requirements of the theory are not solely based on the natural duty of justice.

2.7 Pluralistic Theories

Due to the highly contested nature concerning the grounding of political obligations some theorists have called for a pluralistic theory. With every theory facing

---

[99] Cf. Wellman 2005.

strong criticisms, and no defense receiving unanimous or even majority support amongst political philosophers, many theorists have explicitly or implicitly begun to mold multiple theories together in order to provide an acceptable account of the moral relationship between individual citizens and their respective political institutions. This approach is attractive for multiple reasons: first, it allows for a theory to account for the vast differences between different types of governments and their respective relationships with vastly differing populations;[100] second, the strengths and weaknesses of the other theories can presumably be accommodated and avoided respectively; third, it provides one final option for avoiding philosophical anarchism if all of the monistic theories fail.[101]

The primary disadvantage to a pluralistic theory seems to be that its quickly becomes *much* more complex than any monistic theory. This is worrisome because it is not at all immediately obvious how the competing monistic principles could be combined in a coherent and non-*ad hoc* fashion. Horton sums up this worry when he writes:

> One issue is that it has to be shown that different reasons can be made to hang together in a coherent overall account: it is not enough to collect together a miscellany of principles and arguments that are merely *ad hoc*, and perhaps rest on conflicting ethical or metaphysical assumptions. (Horton, 2010, p. 136)

This is not to say that this cannot be done, simply that it has yet to be done convincingly. My utilitarian account in Chapter 5 will in part be an attempt to offer such an account.

---

[100] See, e.g., Jonathan Wolff (2000).

[101] In addition to Jonathan Wolff, Klosko also argues explicitly for the pluralistic theory (in which the principle of fairness/fair play plays a central role). While Wolff argues that we should reject the assumption that all citizens have the same type or strength of obligations (Wolff, 2000, p. 182), Klosko argues that citizens do have the same obligations but that they are generated in different ways (Klosko, 2005, p. 3).

My primary goal is to argue that the utilitarian can offer a compelling response to the questions of political obligation, i.e., there are utilitarian reasons that explain and ground the moral requirements citizens have to support and comply with their polity. But in order to offer a *complete* account of what individuals ought to do in a political environment, it seems the concepts of "consent," "gratitude," "fair play," and even "natural duty" will have to figure into the utilitarian calculations. As this utilitarian account of political obligation develops, the possibility will emerge for a non-antagonistic relationship between the utilitarian theory on offer and the contemporary political obligation debate. The moral reasons posited by the traditional theories of political obligation can be included in and accommodated by my utilitarian account. The utilitarian account of political obligation can accept that there are many varied reasons explaining why broad expectations concerning individual and group behavior are created, and each type of reason can be understood as supporting the utilitarian claim that there are moral reasons for following the laws and supporting legitimate political authorities. By arguing that these principles fit together derivatively within a utilitarian theory, I hope to demonstrate that a plurality of derivative moral principles grounding political obligations is not *ad hoc* but a coherent ethical account of contingent moral truths concerning human societies.

CHAPTER 3
VARIETIES OF UTILITARIANISM

In Chapter 1 the philosophical landscape that surrounds the political obligation debate was examined, and in Chapter 2 the prominent accounts of political obligation were explored in greater detail as well as the common dismissal of any utilitarian attempts to offer such an account. With this groundwork in place, the utilitarian account of "obligation" from Chapter 1, and replies to the general objections to a utilitarian account of political obligation from Chapter 2, we are now in a position to begin sketching the foundation of the positive account that will be developed in Chapter 5. This third chapter will accomplish the task by laying out the type of utilitarianism my positive account will be concerned with and examine the few utilitarian accounts of political obligation that have been offered. In the first section I will briefly examine the distinction between consequentialism and utilitarianism. In the second section I will then describe the distinction between rule and act-utilitarianism and argue that act-utilitarianism is in a better position to account for political obligation and a superior theory generally. In the third section I will then examine the limited number of utilitarian accounts that have been offered regarding political obligation. This examination will also include an emphasis on the strengths and weaknesses of each account that will help to solidify the foundation for my positive account.

3.1 Consequentialism and Utilitarianism

In its most general form, consequentialism is the view that normative properties depend only on consequences (Sinnott-Armstrong, 2012).[102] The paradigm example of a consequentialist theory is the classic utilitarianism of Jeremy Bentham, John Stuart Mill, and Henry Sidgwick. Classic utilitarianism is consequentialist in nature because it takes moral rightness to depend only on the consequences of an action. This reduction of all morally relevant normative features to the consequences of an action is the defining feature of consequentialism. While this relation between consequentialism and utilitarianism is familiar to those who have studied ethics, this relation does not immediately clarify the *distinction* between these two theories.

One possibility for the distinction is that the utilitarian theory is more complex and more specified than consequentialism. As the classical utilitarians developed and built their theories up from the very general form of consequentialism presented above, they amassed a fairly complex assortment of other theoretical commitments. The following list has been characterized as a set of distinct claims that the classical utilitarians accepted and that together formed their "utilitarianism":

- Consequentialism = whether an act is morally right depends only on *consequences* (as opposed to the circumstances or the intrinsic nature of the act or anything that happens before the act).[103]

---

[102] This way of formulating consequentialism assumes a distinction between *normative properties* and *value*. Intrinsic value (goodness) is not understood to depend on consequences while normative properties (rightness) *are* determined by consequences.

[103] It must be noted that it is possible for a consequentialist or utilitarian to resist this parenthetical claim that the intrinsic nature of an act does not play a role in determining the rightness/wrongness of performing that act by contending that a logical consequence of performing act X is that "an act of X type has been performed." This logical consequence can have positive or negative value and must therefore be included into the utilitarian calculation. This possibility allows the utilitarian to taken the intrinsic nature of act types into account in a round about way.

- Actual Consequentialism = whether an act is morally right depends only on the *actual* consequences (as opposed to foreseen, foreseeable, intended, or likely consequences).
- Direct Consequentialism = whether an act is morally right depends only on the consequences of *that act itself* (as opposed to the consequences of the agent's motive, of a rule or practice that covers other acts of the same kind, and so on).
- Evaluative Consequentialism = moral rightness depends only on the *value* of the consequences (as opposed to non-evaluative features of the consequences).
- Hedonism = the value of the consequences depends only on the *pleasures* and *pains* in the consequences (as opposed to other goods, such as freedom, knowledge, life, and so on).
- Maximizing Consequentialism = moral rightness depends only on which consequences are *best* (as opposed to merely satisfactory or an improvement over the status quo).
- Aggregative Consequentialism = which consequences are best is some function of the values of *parts* of those consequences (as opposed to rankings of whole worlds or sets of consequences).
- Total Consequentialism = moral rightness depends only on the *total* net good in the consequences (as opposed to the average net good per person).
- Universal Consequentialism = moral rightness depends on the consequences for *all* people or sentient beings (as opposed to only the individual agent, members of the individual's society, present people, or any other limited group).
- Equal Consideration = in determining moral rightness, benefits to one person matter *just as much* as similar benefits to any other person (= all who count count equally).
- Agent-neutrality = whether some consequences are better than others does not depend on whether the consequences are evaluated from the perspective of the agent (as opposed to an observer).

(Sinnott-Armstrong, 2012, section 1)[104]

This list of classical utilitarian commitments demonstrates the complexity of the utilitarian theory and shows that utilitarianism in not *merely* consequentialism. However, this distinction is not illuminating. If consequentialism is to be considered a satisfying

---

[104] This list of classical utilitarian claims is neither interpretively nor theoretically uncontroversial. Still, I present it in order to *sketch* a picture of possible formulations of utilitarianism.

independent ethical theory it too must add further specification. For example, a robust consequentialism will have to specify which consequences are relevant (e.g., actual, probable, possible, etc.), what things have intrinsic value (e.g., hedonism vs. pluralism), how the value of the consequences are to be calculated (e.g., net value, average, etc.), as well as many other clarifications pertaining to the relation between consequences and normativity. If consequentialism must also add complexity to qualify as an acceptable ethical theory then the level of complexity/specification cannot be the principled distinction between a robust consequentialism and utilitarianism.

Walter Sinnott-Armstrong seems to propose that the distinction between consequentialism and utilitarianism was created by theorists following the classical utilitarians, who accepted some, *but not all*, of the above classical utilitarian commitments.[105] The label "consequentialist" seems to have been adopted in order to highlight these differences and distance themselves from objections leveled against the classic theories (Sinnott-Armstrong, 2012, section 2). However, this explanation does not uniformly apply to the entire field of ethics as there are still a significant number of theorists who refer to themselves as "utilitarians" but who do not accept "classical utilitarianism." Despite the disagreement and lack of consistency in terminological distinctions, I have chosen to adopt the *utilitarian* label (as opposed to a consequentialist label) for my account of political obligation because the most prominent attempts in offering a utilitarian account of political obligation explicitly use the label "utilitarianism" (i.e., Hare and Sartorius), and because of the prevalence of "utilitarian"

---

[105] Cf. Driver (2009).

terminology in the political obligation debate. In no way do I wish to tie myself or my account to the commitments of the classical utilitarians. I adopt this label simply to position myself within the ongoing debate and standard terminology.[106]

3.2 Rule vs. Act Utilitarianism

Put simply, utilitarianism is "the doctrine that the rightness of actions is to be judged by their consequences" (Smart, 1956, p. 344).[107] This general formulation of utilitarianism has received countless specifications during its complex history; however, some core theoretical components have remained the same:

> (1) A consequence component, according to which rightness is tied in some way to the production of good consequences.
> (2) A value component, according to which the goodness or badness of consequences is to be evaluated by means of some standard of intrinsic goodness.
> (3) A range component, according to which it is, say, acts' consequences as affecting everyone and not merely the agent that are relevant to determining rightness.
> (4) A principle of utility, according to which one should seek to maximize that which the standard of goodness identifies as intrinsically good.[108]
> (R.G. Frey, quoted in Miller, 1987, p. 531)

---

[106] For another brief description of the distinction between consequentialism and utilitarianism see Slote & Pettit (1984). Their discussion isolates utilitarianism from consequentialism by limiting moral value to the subjective states of individuals (e.g., pleasure, well-being, happiness, etc.). Utilitarianism is then set up as a maximizing theory of the sum of individual "utilities." On their distinction, consequentialism holds that a right action is optimific while utilitarianism further specifies that optimific means maximizing the sum of individual utilities. My response above appears to equally apply to this attempt at a distinction. To be considered a robust ethical theory, consequentialism must also specify what counts as "optimific;" there does not seem to be a principled reason for limiting utilitarianism's value theory to the subjective states of individuals.

[107] This is not an unproblematic way of describing utilitarianism because "judging" implies an individual making a determination or the subjective act of categorizing. A more precise, or less problematic way of generally describing utilitarianism would be as "the doctrine which holds that the rightness and wrongness of actions is solely a function of their consequences."

[108] This phrasing of the fourth theoretical component is also lacking preciseness. It is not simply the intrinsic value of consequences that should be maximized, but the *net value* of consequences.

These core theoretical components are all quite general and in need of further specification. This has resulted in numerous different versions of the utilitarian and consequentialist theories. The focus of this section will be on only the first of these core components and two forms (specifications) of utilitarianism: act and rule.

Act-utilitarianism specifies that *each action* is to be judged by its consequences. A general statement of this act-utilitarian view would be:

> Act X is right if and only if the doing of X would have consequences at least as good as the consequences of performing any alternative act open to the agent. (Sartorius, 1975, p. 12)

This version of utilitarianism maintains that the consequences of *each and every action* are relevant in the determination of the right action. In order to determine what the right action is in a particular situation, the utility of a particular action's consequences must be compared to the utilities of the other possible actions and their consequences. This view is in direct opposition to moral theories that understand some actions as being always right or wrong (e.g., lying or killing as *always* being wrong). For the act-utilitarian, these moral principles or rules cannot be absolute; they seem to merely be useful rules of thumb:

> [W]e [act-utilitarians] test individual actions by their consequences, and general rules, like 'keep promises', are mere rules of thumb which we use only to avoid the necessity of estimating the probable consequences of our actions at every step. The rightness or wrongness of keeping a promise on a particular occasion depends only on the goodness or badness of the consequences of keeping or of breaking the promise on that particular occasion… To put it shortly, rules do not matter, save *per accidens* as rules

> of thumb and as *de facto* social institutions with which the utilitarian has to reckon when estimating consequences. (Smart, 1956, p. 344)[109]

This sort of moral view and requirement that each and every action be evaluated on the value of its consequences has received countless objections. Many of these objections have come in the form of counterexamples that are intended to disincline one from labeling a utility maximizing action as the "right" action (e.g., the Fat Man Trolley Problem,[110] the Transplant Scenario,[111] The Voting Problem,[112] etc.). In addition to these objections there is also the problem facing act-utilitarianism, which was discussed in 1.2 and 2.1 as it pertains directly to the political obligation debate, that it does not seem to be able to provide an account of 'obligation.' By endorsing the principle of utility and focusing on the consequences of each individual act, the utilitarian restricts him or herself from making any general claim about how one ought to act. This seems to leave any general moral requirement concerning how individuals ought to act towards other

---

[109] Again, in describing utilitarians as "*testing* actions by their consequences" it is implied that there is essentially a subjective act of categorizing, when in reality, utilitarians are more fundamentally interested in consequences *determining* or *being the sole function of* rightness and wrongness.

[110] Fat Man Trolley Problem: A runaway train is speeding towards five people on the track. You are standing on a bridge over the tracks and there is also a fat man standing next to the edge of the bridge. If you push him off the bridge he will land on the tracks, stropping the train and saving the five people, but it will kill the fat man. Should you push the fat man? See, e.g., Thompson 1976.

[111] Transplant Scenario: "Imagine that each of five patients in a hospital will die without an organ transplant. The patient in Room 1 needs a heart, the patient in Room 2 needs a liver, the patient in Room 3 needs a kidney, and so on. The person in Room 6 is in the hospital for routine tests. Luckily (for them, not for him!), his tissue is compatible with the other five patients, and a specialist is available to transplant his organs into the other five. This operation would save their lives, while killing the "donor". There is no other way to save any of the other five patients" (Sinnott-Armstrong, 2012, section 5). See also, e.g., Foot 1966, Thomson 1976, Carritt 1947, and McCloskey 1965.

[112] The Voting Problem: "It seems that voting cannot be analysed at all in terms of the concept of rational behavior because, in any large electorate, voting seems to be a highly *irrational* activity. This is so because the probability that one's own vote should actually decide the election is virtually nil. Thus, even if the election is concerned with extremely important issues, and even if the costs of voting, in terms of time and inconvenience, are actually quite small, any cost-and-benefit calculus will come out very clearly *against* voting. Yet, many people do vote, and do not seem to feel at all that they engage in an irrational activity" (Harsanyi, 1980, p. 129). Cf. Kagen 2011.

individuals, groups, or political institutions as mere rules of thumb that can be overridden fairly easily. For these (and other) reasons, many theorists with utilitarian inclinations have developed a form of utilitarianism that includes rules as *more than* mere rules of thumb: rule-utilitarianism.

Rule-utilitarianism attempts to respond to the objections by raising the status of the act-utilitarian's "secondary rules" or "rules of thumb" in order to provide a *general* prescription for action. In brief, rule-utilitarianism maintains that:

> Act X is right if and only if the doing of X is in accord with a set of moral rules the general acceptance of which would have consequences at least as good as the general acceptance of any alternative set of rules. (Sartorius, 1975, p. 12)

For rule-utilitarianism the consequences of each and every action do not need to be considered in the determination of the rightness or wrongness of the action; instead, only the consequences of adopting a certain set of rules needs consideration and then the right action is that which is in accordance with the maximizing set of rules. This form of utilitarianism is a type of *indirect* consequentialism. This is in contrast to *direct* consequentialism which holds that the normative properties of an action "depend only on the consequences of that very thing" (Sinnott-Armstrong, 2012, section 5).[113] In opposition to this, the *indirect* consequentialist or utilitarian, "holds that the moral qualities of something depend on the consequences of something else" (Sinnott-Armstrong, 2012, section 5). Rule-utilitarianism is one type of an indirect theory because

[113] Many forms of act-utilitarianism which are considered normative theories (as opposed to metaethical theories) are examples of direct consequentialism as the normative properties, "of an act depend [directly] on the consequences of that act" (Sinnott-Armstrong, 2012, section 5).

it takes the moral rightness and wrongness of acts to be indirectly dependent on the consequences of adopting the rule, not on the direct consequences of the action itself:

> [T]he right-ness of an action is not to be tested by evaluating its consequences but only by considering whether or not it falls under a certain rule. Whether the rule is to be considered an acceptable moral rule, is, however, to be decided by considering the consequences of adopting the rule. Broadly, then, actions are to be tested by rules and rules by consequences. (Smart, 1956, p. 344-345)[114]

The indirectness of rule-utilitarianism allows for it to avoid the unpleasant conclusions which are pushed onto the act-utilitarian by the previously mentioned counterexamples (e.g., prescribing that the fat man ought to get pushed in front of the trolley, that the surgeon ought to harvest the innocent person's organs, that the vast majority of people ought not vote, etc.). To see how rule-utilitarianism seems to be able to avoid these conclusions consider one possible response to the Transplant Scenario:

> Suppose people generally accepted a rule that allows a doctor to transplant organs from a healthy person without consent when the doctor believes that this transplant will maximize utility. Widely accepting this rule would lead to many transplants that do not maximize utility, since doctors (like most people) are prone to errors in predicting consequences and weighing utilities. Moreover, if the rule is publicly known, then patients will fear that they might be used as organ sources, so they would be less likely to go to a doctor when they need one. The medical profession depends on trust that this public rule would undermine. For such reasons, some rule utilitarians conclude that it would not maximize utility for people generally to accept a rule that allows doctors to transplant organs from unwilling donors. (Sinnott-Armstrong, 2012, section 5)

---

[114] Just as act-utilitarianism can, and has, taken many different forms depending on the specifications made by the theorist, rule-utilitarianism varies as well. For example, as rules seem to be abstract entities, they cannot (apart from logical consequences) have consequences. In light of this, theories such as "obedience," "acceptance," "public acceptance rule-consequentialism/utilitarianism," etc. have been developed (Sinnott-Armstrong, 2012, section 5).

By making the rightness and wrongness of acts indirectly dependent on the consequences of an accepted *rule*, the rule-utilitarian seems to be able to deny that individuals ought to perform some of the unsavory actions prescribed by act-utilitarianism.

While this version of utilitarianism also seems to be able to avoid the problem of not being able to maintain that people should obey their political institutions, it has faced the harsh, and in my opinion fatal, criticism that it is not a viable alternative to act-utilitarianism. In short, rule-utilitarianism faces a dilemma when confronted with cases where utility would be maximized by *breaking* one of the rules justified under rule-utilitarianism. If the rule-utilitarian accepts that the violation of the rule would be the correct action then their theory has collapsed back into act-utilitarianism, but if they deny that it would be right to violate the rule then the theory seems to be irrationally (i.e., in conflict with utilitarian foundations) obsessed with rules. The essence of the objection is that, “either rule-utilitarianism collapses back into act-utilitarianism or it engages in a kind of ‘rule-worship,’ which appears to be utilitarianly unjustified” (Horton, 2010, p. 58). To examine this objection more closely let’s take a look at a specific example of a rule concerning lying:

> Consider a rule that rule-consequentialism purports to favor — e.g., “don't lie”. Now suppose an agent is in some situation where lying would definitely produce more good than not lying. If rule-consequentialism selects rules on the basis of their expected good, rule-consequentialism seems driven to admit that compliance with the rule “don't lie except in cases like this” is better than compliance with the simpler “don't lie”. This point generalizes. In other words, for every situation where compliance with some rule would not produce the greatest expected good, rule-consequentialism seems driven to favor instead compliance with some amended rule that does not miss out on producing the greatest expected good in the case at hand. But if rule-consequentialism operates this way,

> then in practice it will end up requiring the very same acts that act-consequentialism requires. (Hooker, 2011, section 8)[115]

If the rule-utilitarian's rules can always be modified to create a rule that would have better consequences, then there seems to be no principled distinction between act and rule-utilitarianism.

One response to this objection has been to make the distinction between evaluating sets of rules on the expected good of most people *complying* with them and the expected good of most people *accepting* them (Hooker, 2011, section 6). By making this distinction the rule-utilitarian is attempting to avoid the collapse back into act-utilitarianism by denying that rules should be evaluated based on the consequences of people *complying* with them. If rules were evaluated only on the consequences of people complying with them, then this would be a move back towards evaluating the rightness and wrongness of acts on the direct consequences of those acts (i.e., the consequences of people actually complying with the rule and performing the act). Alternatively, if the sets of rules are ranked by the consequences of the rules being *accepted*, then there will be consequences *in addition to* those of compliance. For example, the rule-utilitarian argues that reassurance, further incentives, and the teaching of new rules and generational transitions all have consequences that should be included when calculating which set of rules maximize value (Hooker, 2011, section 6.2). Shelly Kagen writes, "once embedded, rules can have an impact on results that is independent of their impact on acts: it might be, say, that merely thinking about a set of rules reassures people, and so

---

[115] Cf. Lyons 1965.

contributes to happiness" (Kagen, 2000, p. 139).[116] This strategy of evaluating sets of rules on the consequences of those rules being *accepted* has ramifications for and limits the types of rules that can be included in the set. By considering those consequences that go beyond compliance, such as simplicity, ease, assurance others will follow them, etc., the rule-utilitarian is pushed to favor a code of rules that is limited in number, fairly uncomplicated, easily teachable, and not too demanding (Hooker, 2011, section 6). This puts the rule-utilitarian in a position to deny that his or her theory collapses back into act-utilitarianism because they are evaluating the rightness and wrongness of acts on the indirect consequences of rule *acceptance*. Brad Hooker summarizes this defense against the collapse objection:

> [R]ule-consequentialism's claim is that bringing about widespread acceptance of a simpler code, even if acceptance of that code does sometimes lead people to do acts with sub-optimal consequences, has higher expected value in the long run than bringing about widespread acceptance of a much more complicated and demanding code. Because rule-consequentialism favors this simpler and less demanding code, rule-consequentialism implies that an act can be morally wrong though that act maximizes expected good. Because rule-consequentialism implies this, rule-consequentialism escapes collapse into practical equivalence to act-consequentialism. (Hooker, 2011, section 8)

While this sort of response to the collapse objection may *seem* to save rule-utilitarianism, it fails to acknowledge another distinction between various types of utilitarianism and consequentialism.

If this response is understood as a rejection of the idea that the rightness and wrongness of actions corresponds to the maximization of value, then the rule-utilitarian is

---

[116] Cf. Hooker (2011), Sidgwick (1981, p. 405-406), Lyons (1965, p. 140), and Kagan (1998, p. 227-234).

departing from the fundamental utilitarian commitment to the feature that makes right acts right and wrong acts wrong. Hooker, at least, remains consistent in this departure from the maximization commitment when he writes:

> [D]oes [the] theory contain such a commitment [to maximization]? No, rule-consequentialism is essentially the conjunction of two claims: (1) that rules are to be selected solely in terms of their consequences and (2) that these rules determine which kinds of acts are morally wrong. This is really all there is to the theory — in particular, there is not some third component consisting in or entailing an overarching commitment to maximize expected good. (Hooker, 2011, section 8)

So, if the rule-utilitarian is willing to remain consistent in their departure from the fundamental utilitarian commitment, is this still problematic? Yes, this is still a problem for the rule-utilitarian because they are escaping the objection that their theory collapses into act-utilitarianism by adopting a theory *that is consistent with act-utilitarianism.* It is here that the additional distinction appears which the rule-utilitarian seems to be missing with the proposed response to the collapse objection. This crucial distinction is between *full* and *partial* rule-utilitarianism (Hooker, 2011, section 4). *Full* rule-utilitarianism accepts rule-utilitarian principles for all three components of the theory: "(1) their thesis about what makes acts morally wrong, (2) their thesis about the procedure agents should use to make their moral decisions, and (3) their thesis about the conditions under which moral sanctions such as blame, guilt, and praise are appropriate" (Hooker, 2011, section 4):

> [F]ull rule-consequentialism claims that an act is morally wrong if and only if it is forbidden by rules justified by their consequences. It also claims that agents should do their moral decision-making in terms of rules justified by their consequences. And it claims that the conditions under which moral sanctions should be applied are determined by rules justified by their consequences. (Hooker, 2011, section 4)

While the full rule-utilitarian accepts rule based principles for all three components (1. metaethical; 2. decision procedure; 3. praise/blame criteria), the proposed response to the collapse objection abandons the metaethical rule based commitment. It is this abandonment that saves the theory from collapsing into act-utilitarianism. However, this move also weakens the theory into a form of partial rule-utilitarianism. This is problematic for any rule-utilitarian who takes his or her theory to be in competition with, and an alternative to, act-utilitarianism, because partial rule-utilitarianism is *consistent* with act-utilitarianism. In fact, most act-utilitarians accept something like rule-utilitarianism as their normative *decision procedure* because of various problems associated with trying to calculate the consequences for each and every action (and all possible alternatives).[117] The upshot of all this is that the original dilemma seems to be reestablished; either rule-utilitarianism collapses into act-utilitarianism or it abandons the fundamental utilitarian principle of maximizing value and then is not a genuine *utilitarian* alternative to act-utilitarianism (in fact, it is merely a normative decision procedure that act-utilitarians can accept as part of their ethical framework).[118]

This collapse objection against rule-utilitarianism is not new, and the fundamentals of my argument against the proposed response have been present in the literature since the first formalized objections against rule-utilitarianism. In J.C.C Smart's classic article "Extreme and Restricted Utilitarianism," he succinctly explains the

---

[117] Hooker goes so far as to say that, "no serious philosopher nowadays defends this [act-utilitarian] decision procedure" (i.e., "On each occasion, an agent should decide what to do by calculating which act would produce the most good") (Hooker, 2011, section 4).

[118] If the rule-utilitarian accepts that their theory abandons the fundamental utilitarian commitment, then the status of the theory seems to either be (1) a normative theory (i.e., decision procedure) which is not in conflict with act-utilitarianism, or (2) an implausible rule-worshiping metaethical theory.

oddity of this "rule-worship" if one is concerned with maximizing the value of consequences:

> This doctrine [rule-utilitarianism] is possibly a good account of how the modern unreflective twentieth century Englishman often thinks about morality, but surely it is monstrous as an account of how it is most rational to think about morality. Suppose that there is a rule *R* and that in 99% of cases the best possible results are obtained by acting in accordance with *R*. Then clearly *R* is a useful rule of thumb; if we have not time or are not impartial enough to assess the consequences of an action it is an extremely good bet that the thing to do is to act in accordance with *R*. But is it not monstrous to suppose that if we *have* worked out the consequences and if we have perfect faith in the impartiality of our calculations, and if we *know* that in this instance to break *R* will have better results than to keep it, we should nevertheless obey the rule? Is it not to erect *R* into a sort of idol if we keep it when breaking it will prevent, say, some avoidable misery? Is not this a form of superstitious rule-worship (easily explicable psychologically) and not the rational thought of a philosopher? (Smart, 1956, p. 348-349)

While Smart is forceful with his claim that it is irrational to stick with a rule even when it is known that more good would come from breaking the rule, he does admit that rules *are* extremely useful and can be very good guides for action when time is limited or one suspects a bias in his or her calculations. His position demonstrates two of the points from my argument, (1) erecting rules as universal claims about how individuals ought to act all-things-considered goes against the fundamental utilitarian commitment to maximize value, and (2) rule-utilitarianism can be adopted as a *decision procedure* by an act-utilitarian.

Rule-utilitarianism seems to either collapse into act-utilitarianism, or be endorsing an implausible doctrine of rule-worship, or, to escape these fates, must be weakened so much as to no longer be a viable alternative to act-utilitarianism as a theory of normative

properties. It is for these reasons that I take act-utilitarianism to be in a better position to account for political obligation and a superior theory generally.

3.3 Utilitarian Attempts to Account for Political Obligation

As has been mentioned numerous times thus far, there are *very few* utilitarian or consequentialist accounts of political obligation. With this section I will examine the most prominent theories that have been offered. This section will serve two primary purposes for my utilitarian account in Chapter 5: first, these previous accounts will provide a foundation and inspiration for my account; second, the problems facing these previous accounts will provide the initial hurdles that my account will have to overcome if it is to push the conversation and debate about utilitarian political obligation forward.

3.3.1 Hume

David Hume was one of the first, if not *the* first, to sketch a roughly utilitarian account of political obligation. For Hume, the concept of "political obligation" or "allegiance to government" is intimately connected to virtue because it is a character trait that is approved of (i.e., produces approbation). This virtue, as well as the other artificial and natural virtues,[119] is grounded in the sentiments and roughly utilitarian in nature (i.e., utility is approved of and disutility disapproved of).[120] Hume offered this account as an

---

[119] In *A Treatise of Human Nature* (THN) Hume distinguishes between "*natural* virtues--those qualities native to or embedded in human nature, such as benevolence, generosity, moderation, and meekness--and *artificial* virtues, such as justice, which are acquired only through a public agreement" (Hume, 1998, p. 35).

[120] "In all determinations of morality, this circumstance of public utility is ever principally in view; and wherever disputes arise, either in philosophy or common life, concerning the bounds of duty, the question cannot, by any means, be decided with greater certainty, than by ascertaining, on any side, the true interests of mankind" (Hume, 1998, p. 81) (*Enquiry Concerning the Principles of Morals* [EPM] Section II, Part 2).

alternative to the social contract theory of Hobbes, Locke, and others, of which he was a fierce critic. Horton explains this criticism as well as the resulting alternative:

> Among the more important of his criticisms of social contract theories was his recognition that the basis of the obligation to keep the contract cannot itself be contractual. For Hume, the obligation that we have to keep our promises, of which the social contract is only one example, in turn rests upon an obligation to promote the general interest (and ultimately upon self-interest). Hence, he argues that reference to a social contract is redundant, because we can base our obligation to government directly on our duty to promote the general interest, without recourse to an, in any case almost entirely fictional, social contract. (Horton, 2010, p. 55-56)

Hume rejects the contract theory of political authority and obligation because he understands promises and contacts to be completely artificial (i.e., not intelligible before a human convention establishes them) and lacking the direct or immediate sentimental foundation that makes something a moral virtue, vice, obligation, etc. (Hume, 2003, p. 368). Hume believed that the fundamental quality that gives rise to the moral sentiment of approbation was "public utility" or the "general interest." This sentiment towards utility, coupled with an intense self-interest leads people to set up societies and governments in order to "change their situation, and render the observance of justice the immediate interest… and inforce the dictates of equity thro' the whole society" (Hume, 2003, p. 383). This proto-utilitarian view concerning the justification of government then leads Hume to offer his loosely utilitarian account of political obligation or "allegiance to government."

In his *Treatise*, "Of the Original Contract," and *Enquiry*, Hume argues that the source of our civil duty or allegiance to government (i.e., political obligation) is the public utility and general interest that the existence of a government is able to produce.

This allegiance is an artificial virtue grounded on the human convention of government and law:

> [M]en *invented* the three fundamental laws of nature, when they observ'd the necessity of society to their mutual subsistence, and found, that 'twas impossible to maintain any correspondence together, without some restraint on their natural appetites… So far, therefore, our *civil* duties are connected with our *natural*, that the former are invented chiefly for the sake of the latter; and that the principal object of government is to constrain men to observe the laws of nature. (Hume, 1998, p. 387) (THN Book III, Part II, Section VIII)[121]

> The case is precisely the same with the political or civil duty of *allegiance* as with the natural duties of justice and fidelity. Our primary instincts lead us either to indulge ourselves in unlimited freedom, or to seek dominion over others; and it is reflection only which engages us to sacrifice such strong passions to the interests of peace and public order. A small degree of experience and observation suffices to teach us, that society cannot possibly be maintained without the authority of magistrates, and that this authority must soon fall into contempt where exact obedience is not paid to it. The observation of these general and obvious interests is that source of all allegiance, and of that moral obligation which we attribute to it. (Hume, 2012, p. 120)[122]

> It is evident, that, if government were totally useless, it never could have place, and that the SOLE foundation of the Duty of ALLEGIANCE is the *advantage*, which it procures to society, by preserving peace and order among mankind. (Hume, 1998, p. 99) (EPM Section IV)

This obligation that we owe to the government is "invented" in order to secure the existence of civilized society and the government which, in most cases, is necessary to

---

[121] These "laws of nature" (1. the stability of possession; 2. transfer of property by consent; 3. performance of promises) are in fact Hume's rules of property and promise which government is able to uphold. This terminology is interesting because Hume did not believe that these laws/rules were strictly "natural" (Hume, 2003, p. 385) (Cohon, 2010, section 1).

[122] It should be noted that Hume's use of "natural" to describe the virtues justice and fidelity in this excerpt is not the same as his use of the term when he distinguishes between "natural" and "artificial" virtues.

ensure the interests of each individual.[123] On Hume's view, this virtue of allegiance was a "device, historically evolved, to protect people against the exigencies of the human condition and aimed at securing the benefits of a stable political order" (Horton, 2010, p. 56).

This account of political obligation/allegiance may sound like a form of rule-utilitarianism as it seems to prescribe a strict rule of allegiance to uphold the political order even when a particular instance of breaking this rule would seem to maximize value.[124] This interpretive question about whether Hume's proto-utilitarianism was of the act or rule variety has and still does attract attention from Hume scholars. Some argue that he accepted some form of rule-utilitarianism while others argue that he accepted a very conservative form of act-utilitarianism and his discussion of rules should fall under the category of "rules of thumb," necessary only because of the practical concerns of human weakness.[125] Either way, if Hume was a type of rule-utilitarian or if he simply held the very conservative view that, "the disutilities of disobedience in particular cases are great enough to justify disobedience in only the most extreme political nightmares," Jeremy Bentham departed from Hume's proto-theory in offering the first systematic account of utilitarianism.

---

[123] What I mean by obligations to government being "invented" is simply that they do not exist prior to human convention (i.e., opposed to the Lockean notion of "natural"). Hume thinks we ultimately *do* owe the government allegiance and that it isn't just wool pulled over our eyes.

[124] See, e.g., Harrison (1952) and Rawls (1955).

[125] See, e.g., Horton (2010), Simmons (1979), and Hardin (2007).

3.3.2 Bentham, Mill, and Sidgwick

While Hume's proto-utilitarian theory was significantly expanded upon by the founding/classical utilitarian theorists (Bentham, Mill, Sidgwick), his account of political obligation/allegiance was *not* expounded upon.[126]

Jeremy Bentham followed Hume's lead in attacking the social contract theory, seemingly offering the same arguments Hume developed, and picking up the utilitarian theme that Hume's moral theory presented. However, where Hume was satisfied to either give rules a prominent theoretical role or hold a conservative line by taking *existing* institutions as deserving our utilitarian obedience,[127] Bentham was a radical reformer always focusing attention on the "utility" of institutions, norms, etc. (Horton, 2010, p. 56). In this spirit of focusing on direct utility, Bentham offered a very short and simple act-utilitarian account of political obligation:

> [W]hy *subjects* should obey Kings as long as they so conduct themselves [i.e., abstaining from all such measures as tend to the unhappiness of their subjects], and no longer; why they should obey in short *so long as the probably mischiefs of obedience are less than the probably mischiefs of resistance:* why, in a word, taking the whole body together, it is their *duty* to obey, just so long as it is their *interest*, and no longer. (Bentham, 1977, p. 444)

As the first to offer a systematic account of utilitarianism, Bentham set something of a precedent for other utilitarians with this overly simplified account of how individuals are to consider their duties to government. This extreme form of act-utilitarianism with its

---

[126] Some theorists may wish to contend that Hume should not be a considered utilitarian because he would not take the maximizing utilitarian principle as the *fundamental normative moral principle.* I would be fine with this because my goal here is not to argue for a controversial historical reading of Hume. My purpose is simply to highlight the "utilitarian aspects" of Hume's theory and how these are connected to his idea of "allegiance to government."

[127] This disjunction represents the two leading positions in the interpretive debate about Hume's "utilitarianism" briefly discussed in the previous section.

single focus on the direct utility of actions is the target of the many criticisms of utilitarianism claiming it cannot offer an account of obligations and thus cannot offer anything concerning *political* obligation.[128]

John Stuart Mill departed theoretically from Bentham on several key details of his utilitarianism in order to avoid the sorts of objections facing an extreme act-utilitarianism. One specific instance of this is Mill's inclusion of "secondary principles" of obligation into his ethical theory. Similar to Hume's "rule of allegiance," Mill argues that these secondary principles are adopted in order to help individuals apply the first and fundamental principle of morality (i.e., utility) (Mill, 1985, Vol. X) (*Utilitarianism* [U] Ch. 2, paragraph 24-25). But just as there is interpretive debate about how Hume understood the connection between the principle of utility and his rule of thumb, there is a similar debate in Mill scholarship. It is not clear how Mill thought these secondary principles were connected to the fundamental principle of utility.[129] In his work *On Liberty*, Mill does claim that men can be legitimately subjected and compelled by laws to forgo and perform certain actions in order to maximize utility for the society as a whole:

> I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being. Those interests, I contend, authorise the subjection

[128] See 1.2 and 2.1.

[129] Some argue that Mill's inclusion of secondary principles is one piece of evidence that Mill should be read as a rule-utilitarian (see, e.g., Urmson 1953). While others (e.g., Brink 2013) argue that these secondary principles, even though they are more than rules of thumb, are not inconsistent with act-utilitarianism. Mill summarizes his position on secondary principles and behavior regulation: "I do not mean to assert that the promotion of happiness should be itself the end of all actions, or even all rules of action. It is the justification, and ought to be the controller, of all ends, but it is not itself the sole end. There are many virtuous actions, and even virtuous modes of action (though the cases are, I think, less frequent than is often supposed) by which happiness in the particular instance is sacrificed, more pain being produced than pleasure. But conduct of which this can be truly asserted, admits of justification only because it can be shown that on the whole more happiness will exist in the world, if feelings are cultivated which will make people, in certain cases, regardless of happiness" (Mill, 1985, Vol. VIII, p. 952) (*A System of Logic* VI.xii.7).

> of individual spontaneity to external control, only in respect to those actions of each, which concern the interest of other people… There are also many positive acts for the benefit of others, which he may rightfully be compelled to perform; such as… to bear his fair share in the common defence, or in any other joint work necessary to the interest of the society of which he enjoys the protections. (Mill, 2012, p. 14) (*On Liberty* [OL] Ch. 1)

However, just as with Hume's rule of allegiance, it is entirely unclear how this very general rule to obey the state guiding individuals' behavior is supposed to fit within the utilitarian framework. Unfortunately, Mill did not say anything further in defense or explanation of this moral responsibility to society, government, and laws.

Henry Sidgwick, who many take as having produced the culminating work of classical utilitarian theory with *The Methods of Ethics*, does devote one chapter to discussing the problems associated with the question of "the moral obligations of obedience to Law" (Sidgwick, 1981, p. 295) (*The Methods of Ethics* [ME] Book III, Ch. VI). While he explores (1) how a rightful lawmaker (i.e., legitimate authority) is to be distinguished, and (2), the limits of this authority's power (i.e., are there acts that cannot be commanded), Sidgwick does not offer an account of his own. At the end of his examination he writes:

> In the face of all this difference of opinion, it seems idle to maintain that there's a clear and precise first principle of order that the common reason and conscience of mankind sees intuitively to be true. No doubt there's a vague general habit of obedience to laws (even bad ones), which can fairly claim the universal *consensus* of civilised society; but when we try to state an explicit principle corresponding to this habit, the *consensus* seems to vanish and we are drawn into controversies that seem to have no solution except what the utilitarian method offers. (Sidgwick, 1981, p. 302-303)

Sidgwick's explicit refusal to defend a principle of political obligation, followed by the statement that the solution to the controversy lies in the utilitarian method, leaves one to

assume that his account would resemble the other utilitarian accounts preceding his (i.e., Hume, Bentham, Mill). Having already seen the shortcomings of these partial accounts, Sidgwick's discussion does not seem to offer anything of substance for the utilitarian account.

This avoidance and/or lack of clarity by these prominent utilitarians has played a role in the critics' claim that utilitarianism cannot provide an account of political obligation. However, there have been two fairly recent and sophisticated attempts, by Rolf Sartorius in 1975 and R.M. Hare in 1976, to provide a utilitarian grounding for political obligation.

3.3.3 Hare

R.M. Hare's attempt to offer one of the *very few* utilitarian accounts of political obligation was ambitiously put forth as a chapter in an edited book of Social and Political Philosophy. In this and the following subsection I will detail R.M. Hare's and Rolf Sartorius' accounts, the two most prominent contemporary utilitarian attempts at a theory of political obligation, and examine the objections that most political theorists take to have been fatal blows to these, and any, systematic utilitarian account.

Hare defines political obligations as "the *moral* obligations that lie upon us because we are citizens (*politai*) of a state with laws" (Hare, 1976, p. 2). With this definition Hare makes clear that he understands political obligation as a *sub-species* of moral obligation and not as an independent species of obligation alongside moral obligations (Hare, 1976, p. 1-2). He goes on to frame his investigation with the question: "Does the fact that I am a citizen of the United Kingdom [or any other country] lay upon

me moral obligations which I should not have if I were not?" (Hare, 1976, p. 2). This question, as has been discussed in the previous chapters, is one that most people answer in the affirmative and most take these political obligations to include obligations to obey the laws, support and defend the country, take part in the political process, etc. (Hare, 1976, p. 2). Hare notes that the traditional consent theory doesn't seem equipped to support this intuition because, "the social contract is a fiction to which no reality corresponds" (Hare, 1976, p. 3). He takes this as his jumping off point, but instead of pursuing a hypothetical contract theory as others have done (e.g., Rawls), Hare starts "directly from the logical properties of the moral concepts" (Hare, 1976, p. 3). With his prescriptivism[130] as a foundation, Hare explains:

> [T]o ask what obligations I have as citizen is to ask for a universal prescription applicable to all people who are citizens of a country in circumstances just like those in which I find myself. That is to say, I have to ask - as in *any* case when faced with a question about what I morally ought to do - 'What universal principle of action can I accept for cases just like this, disregarding the fact that I occupy that place in the situation that I do (i.e. giving no preferential weight to my own interest just because they are mine)?' This will lead me to give equal weight to the equal interests of every individual affected by my actions, and thus to accept the principle which will in all most promote those interests. Thus I am led to a form of utilitarianism. (Hare, 1976, p. 3)[131]

From this prescriptivist and utilitarian foundation Hare thinks that the requirements commonly thought to be a part of political obligation (i.e., one ought to obey the law,

[130] Hare's prescriptivism is a non-cognitivist ethical theory that holds moral judgments to be a type of prescription similar to imperatives. For example, Hare understands the moral judgment "killing is wrong" to mean roughly "do not kill." (See Hare 1952 & 1963)

[131] It is controversial whether Hare's (original) prescriptivism is consistent with this utilitarianism. My goal is not to argue for a controversial historical reading of Hare, but simply to focus on the utilitarian *aspects* of his view and the role these play in his account of political obligation.

support one's country, etc.) are strong candidates for general principles that we have good reason to follow.

As a utilitarian, Hare grounds these obligations on the principle of utility but, along Humean lines, he also endorses the practical necessity of using general principles instead of conducting utility calculations before each and every action. Due to practical considerations such as a lack of time to make specific calculations, self-interested biases, and the need for simplicity in moral education, Hare argues that it is, "not only useful but necessary to have some simple, general and more or less unbreakable principles" (Hare, 1976, p. 4).[132] This idea, that following "general principles" can sometimes maximize utility, roughly corresponds to a version of indirect utilitarianism (*psychological* indirect utilitarianism); i.e., "It may be more productive of utility, at least in some circumstance, if people act on a motive other than that of maximizing utility itself. In such circumstances, utility will be maximized indirectly, as a consequence of pursuing some other aim" (Horton, 2010, p. 59). With this indirect utilitarianism Hare contends that, "we ought to obey the law" is one of these general principles that should be inculcated in people in order to maximize utility indirectly. Hare holds this view because he takes "it as obvious that the general interests of people in society will be promoted by having *some* laws regulating property and the distribution of goods" (Hare, 1976, p. 5). Despite this strong assumption concerning the value of a legal system, Hare attempts to remain neutral between *types* of legal systems that a society ought to enact. He writes, "almost

---

[132] Citing almost exactly the same considerations as Hume, Hare argues that it is impracticable and dangerous to ask the universal-prescription question for each and every action; "impracticable, because we are unlikely to have either the time or the information, and dangerous, because we shall almost inevitably cheat, and cook up the case until we can reach a conclusion palatable to ourselves" (Hare, 1976, p. 4).

any system of laws that has much chance of getting adopted is likely to promote them [the general interests] better than having no laws at all" (Hare, 1976, p. 5). So Hare assumes that anarchy is not typically able to promote the general interests of a society, but he also acknowledges that legal systems can be *too restrictive* and fail to maximize value for a society.

With the stage setting in place Hare explains how he sees laws *adding* to the utilitarian obligation to perform and refrain from certain actions. He argues that the enactment of some laws *add to* the utilitarian obligation, "not because the mere enactment by the town meeting of a law lays any moral obligation on me directly, but because it alters the conditions under which I am asking my moral question" (Hare, 1976, p. 6). The conditions are altered, Hare argues, because the impact of one's action or inaction is increased as people are acting in a coordinated fashion due in part to the coerciveness of the law.[133] In explaining this claim that laws *add* to the moral reasons one has for doing or refraining from certain actions, Hare discusses three different types of reasons for performing an action: prudential, moral (not related to the existence of law), and moral (related to the existence of law). Hare focuses his discussion on the third group because they pertain specifically to political obligations (i.e., obligations that arise

[133] To illustrate this altering of the conditions in which the moral question is asked Hare describes a primitive society on a desert island. Hare contends that there will be moral duties, prior to any law, to such things as hygiene (e.g., delousing oneself). However, the general interests can be maximized by enacting hygiene laws in order to coerce and coordinate action. Hare writes, "We saw that even without any laws I had some obligation to observe cleanly habits. But the enactment of hygiene laws adds to this obligation… Primarily by bringing it about that observance of hygiene by me has more chance of achieving its purpose, because other people, who would not of their own accord observe hygiene, are being coerced into doing so… if there is an enforced law that makes nearly all the others, from fear of the penalty, delouse themselves, *my* delousing or not delousing myself makes a much bigger difference to the hygiene of people in general… thus my obligation to do so (because it is in the general interest) will be much greater than it would be if there were no law" (Hare, 1976, p. 6).

because one is subject to a polity). Under this subset of reasons (moral reasons related to the existence of the law) Hare lists four specific reasons for action:

1. Because there is an enforced law X, resulting in the general behavior of following X, an individual's failure to follow X will harm people's interests more than if there were no law.
2. An individual's breaking of the law will result in more resources having to be used in the enforcement of the law.
3. An individual's breaking of the law "may encourage people to break those or other laws, thereby rendering a little more likely (*a*) the removal of the benefits to society which come from the existence of those particular laws, and (*b*) the breakdown of the rule of law altogether, which would do great harm to the interest of nearly everybody."
4. An individual's breaking of the law "shall be taking advantage of those who keep it out of law-abidingness although they would like to do what it forbids, and thus harming them by frustrating their desire not to be taken advantage of."
   (Hare, 1976, p. 7 & 11)[134]

Of this list of moral reasons that are related to the existence of the law, Hare takes the first to be primary and the second and third as subsidiary. However, Hare *does* take these auxiliary reasons to be important and highlights how they "have the important property that [except for 3a] they might survive even if the law in question were a bad or unnecessary one whose existence did not promote the general interest" (Hare, 1976, p. 7). This is an important feature of Hare's account because it closes the door on the objection often leveled against utilitarian theories that they prescribe action only when the consequences are optimific and that laws do not operate like this; they demand obedience in *all* situations. Hare avoids this objection by incorporating moral reasons into his utilitarian account that apply even when a law is not optimific. The fourth moral reason

[134] Hare's list of reasons refer specifically to his desert island example and the hygiene/delousing laws. I have taken these references out and, except where specifically quoted, have paraphrased the reasons to achieve a more general character (See Hare, 1976, p. 7 & 11 for the original wording).

offered by Hare is developed in response to another common objection. I will discuss this further as I examine the objections that have been raised against his account. Before getting into the criticisms of Hare's theory and the responses available to him, it is important to emphasize his general conclusion because it is succinctly stated and provides a clear outline for other utilitarian accounts. Hare writes:

> The question is… whether, given the existence of this institution [the state] and its constitutive laws, there is in general a moral obligation to abstain from breaking them. According to the utilitarian there will be, if breaking them is in general likely to harm the interests of people in society. (Hare, 1976, p. 8)

The general conclusion Hare offers is that there *are* general reasons for obeying the law that are grounded in a utilitarian theory.

In his book *Political Obligation*, John Horton offers the most well-known criticisms against Hare's account of political obligation. The general flavor of Horton's criticisms are (1) that low levels of non-compliance with the law do not threaten the benefits of having laws, and (2), a *particular* obligation between an individual and his or her polity is not established (Horton, 2010, p. 62). I will use the remainder of this subsection to work through Horton's specific criticisms and explore possible responses that are available to Hare.

Horton's first, and recurring, criticism of Hare's account is that it does not establish an obligation of citizens to a *particular* state, in other words, it violates the particularity requirement.[135] With his focus on the obligation to follow the law, Hare seems to blur the distinction between *political obligations* which are thought to be

---

[135] See 1.3

between an individual and a particular state, and *legal obligations* which are thought to pertain to anyone (citizen, alien, tourist, etc.) under the jurisdiction of the law.

Horton's second criticism focuses on the universalization of moral principles for action in Hare's prescriptivism. Horton claims that the scope of Hare's utilitarian obligations is unclear because it is not specified how similar the conditions have to be in order to allow the universal principle to apply to citizens in other polities (Horton, 2010, p. 65). While a citizen in a liberal democratic society may be able to reasonably make the universal prescription that citizens ought to follow the laws, it is much less clear whether this prescription could or should apply to those living in illiberal, undemocratic, and even totalitarian states (Horton, 2010, p. 65).

Horton's third criticism focuses on the strength or status of the general principle to follow the law. Horton writes:

> Hare concedes that there may be occasions when the law should be broken, but how are such occasions to be identified unless some judgement is made about situations in which the law should not be obeyed? It is natural to assume that such judgements will be made according to utilitarian criteria. The status of the principle would then appear to be more that of a rule of thumb, a guide to conduct or a summary of experience, but no more. (Horton, 2010, p. 65)

This objection is a familiar one raised against utilitarian theories; any rule that is introduced as part of the utilitarian theory must be justified on utilitarian grounds or it is merely a rule of thumb. If it is merely a rule of thumb then it is not in a position to fill the role that political theorists are concerned with when they investigate political obligation.

Horton's fourth criticism alleges that Hare's example of hygiene laws in a desert island society is disanalogous to the vast majority of laws found in polities. First, Horton argues, crime is not contagious in the same way as typhus. Consequently, "it is a very special and unusual feature of this [Hare's hygiene law] example that the cost of not observing the law is likely to be literally contagious," as opposed to metaphorically contagious in the way that crime may be (Horton, 2010, p. 66). Horton contends that, "even quite high levels of law breaking often do not lead to the complete breakdown of the rule of law," and thus, a failure to follow the law would *not* lead to a general breakdown of law (Horton, 2010, p. 67):

> The net effect of one instance of law breaking will almost always be negligible in the context of the preservation and maintenance of a system of law and order. (Horton, 2010, p. 67)

As this is a fairly common criticism against utilitarianism, Hare responded to it directly.

Hare admits that a single crime, such as theft, could never be as "contagious" as a diseased person who disregards hygiene laws might be. There are many conceivable circumstances in which a law could be broken and the criminal would secure an advantage and seemingly no comparable disadvantage, for the criminal or for anyone else, would occur.[136] Hare summarizes the forcefulness of the objection when he writes, "Utility is therefore increased by this [lawbreaking] action which most of us would condemn; and so utilitarianism seems to be at odds with received opinion" (Hare, 1976, p. 9). In response Hare argues that his utilitarianism, which is grounded on prescriptivism, is in a unique position to respond to the objection. He explains that the

[136] Cf. Lyons 1965.

universal-prescriptive question tied to his ethical theory has the advantage of including a universal desire into its calculation which escapes most utilitarians who are concerned only with present pleasures and pains (Hare, 1976, p. 9). Hare writes:

> It is not difficult to understand why few of us are prepared to prescribe universally that people, and therefore that we ourselves, should be imposed upon, even without our knowledge, in this way [e.g. theft]. The 'disutility' involved, which escapes the net of utilitarianisms couched in terms of present pleasures or pains, is that of having a desire frustrated which nearly all of us have, namely the desire not to be taken advantage of, even unknown to us. (Hare, 1976, p. 9)

This "desire to not be taken advantage of" leads Hare to positing his fourth reason for obeying the law.[137] Horton, in turn, responds directly to Hare's defense.

Horton argues that this "desire to not be taken advantage of" is an independent moral principle disguised as a "desire" in Hare's utilitarian theory. Horton takes this "desire" to simply be the independent moral requirement of fairness. If a person's position is not worsened by another's crime, and the person doesn't even know about the crime, then it does not seem that any harm has occurred (as would be the case if a *real* desire were frustrated). Horton continues, "if it is permissible to posit the desire not to be taken advantage of, then it is presumably also legitimate to represent many other non-utilitarian moral commitments as desires" (Horton, 2010, p. 68). He takes this to be an effective *modus tollens* against this sort of strategy, and adds that even if this tactic *is* employed, the resulting theory seems to lose any utilitarian distinctiveness. While I agree with Horton on this criticism that the desire to not be taken advantage is not a good utilitarian reason for obeying the law, I believe that there *are* responses available to Hare

[137] An individual's breaking of the law "shall be taking advantage of those who keep it out of law-abidingness although they would like to do what it forbids, and thus harming them by frustrating their desire not to be taken advantage of." (Hare, 1976, p. 11)

and/or other utilitarian theories (e.g., my own positive account) with regards to the other criticisms.[138]

Concerning Horton's first criticism that Hare's account violates the particularity requirement, Horton is correct that Hare's account does not adequately distinguish between *political* obligations and general *legal* obligations. While this is a weakness of Hare's brief account, it is a problem which Hare had the resources to address. Hare could have argued, as I intend to in Chapter 5, that the utilitarian moral reasons on offer for following the law (excluding number 4) are *stronger* for citizens (and probably also permanent residents), than they are for temporary residents and visitors. This is not to say that temporary residents and visitors *don't* have moral reasons to follow the laws of the country where they are currently. They may have these moral reasons, however, those moral reasons are stronger for the citizens and permanent residents of the country. While there may be many different reasons why Hare did not address this issue, one may be that he shared the intuition that the particularity requirement can be too restrictive.[139] If we focus too narrowly on our particular country when we are considering political created moral responsibilities we may miss a vast number of responsibilities we have to *other polities*.

---

[138] While I think that the "desire to not be taken advantage of" may be a real desire that could be accounted for within a coherent and distinctively utilitarian theory, I *do not* think that it constitutes a good/strong utilitarian reason to follow the law. If we take the desire in the extreme form which Hare presents it, i.e., a desire to not be taken advantage of *even when it does not harm anyone* (other than frustrating the desire) *and even when no one knows about the breach*, then the desire (if it is not simply an independent moral principle masquerading as a desire) would seemingly be outweighed by desires even within the individual with the desire in question. If the "desire to not be taken advantage of" is outweighed in virtually every single extreme case (i.e., when no one is harmed and no one knows of the breach) then the avoidance of frustrating this desire is not a good/strong reason for following the law.

[139] See the brief discussion of "political duties" in 1.3.

Horton's second criticism is perhaps the weakest of the barrage. He contends that the scope of Hare's utilitarian obligations is unclear because it is not specified how similar the conditions must be in order to universalize the general principle. This seems to simply be a request/demand for a more comprehensive theory. It is not surprising that Hare's brief account does not include, for example, a theory of legitimate authority. I will attempt to remedy this shortcoming with my comprehensive account in Chapter 5. However, this criticism is related to another point that Horton makes concerning Hare's first and primary moral reason for following the law.[140] Horton claims that the primary moral reason Hare provides for following the law, "depends upon the law's being effective, not merely in the sense that it is generally observed, but in the further sense that it will actually prevent typhus [or whatever it is intended to prevent]" (Horton, 2010, p. 66). His point is that a law which did not achieve its intended purpose would not provide a good utilitarian reason for obeying it (Horton, 2010, p. 66-67). While Hare's examples which use only one specific law invite this sort of criticism, this problem *is* something that can be remedied with a more comprehensive account. No utilitarian theorist who is interested in providing an account of political obligation should be focusing on individual laws in order to justify a legal *system*, because individual laws are open to just this sort of criticism. Instead, a complete account should provide a theory of legitimate political authority in order to establish legitimate legal systems. From here it is then possible to ask the question of whether individuals have moral reasons to follow the dictates of these legitimate legal systems generally. Even if a specific law within a legitimate legal system

[140] Hare's primary moral reason for following the law: Because there is an enforced law X, resulting in the general behavior of following X, an individual's failure to follow X will harm people's interests more than if there were no law.

pertains to an action/inaction that there are already moral reasons for doing/refraining from, or if the law does not succeed in accomplishing its purpose, a positive account of political obligation will contend (and hopefully demonstrate) that the law *adds* to the moral reasons to perform/refrain from the action.

Horton's third criticism alleges that the general principle to follow the law must merely be a rule of thumb and cannot provide a robust account of political obligation. Hare's response to this objection would most likely be:

> [I]n practice it is not only useful but necessary to have some simple, general and more or less unbreakable principles, both for the purposes of moral education and self-education (i.e. character-formation), and to keep us from special pleadings and other errors when in situations of ignorance or stress. (Hare, 1976, p. 4)

It is clear that Hare only thought these general principles were of *practical* necessity. As was discussed in 3.2, most act-utilitarians accept some type of indirect utilitarianism as their decision procedure. This acceptance does nothing to weaken their theoretical (metaethical) commitment to "rightness" being tied to the maximization of value. It seems that a utilitarian account of political obligation must only establish that there are moral reasons to support and follow the laws of one's government. This would seem to establish the "robust" account that political obligation theorists are looking for. The question of what individuals within that system *believe* or what *decision procedure* they ought to employ is a separate question. Hare's account seems to pretty clearly make this distinction while Horton's objection seems to miss it.

3.3.4 Sartorius

While Hare's account provides a brief but systematic utilitarian theory of political obligation and the moral reasons one has to follow laws, Rolf Sartorius attempted to offer a more complete account in a detailed, book length account of utilitarianism's connection to a wide array of political and legal theories. While I will be focusing on his account of political obligation, I will bring in the other aspects of his political philosophy and ethical theory where it is helpful in explaining his account or responding to objections.

Sartorius uses the common arguments leveled against utilitarian attempts to account for political obligation as his starting point. Summing up these objections, he writes:

> [T]he claim is that the members of a community must be able to rely upon their fellows fulfilling their social *obligations*. The contention is that such obligations are based upon the acceptance of general social norms of a sort which can have no place in an act-utilitarian ethic. For the act-utilitarian it has been claimed, social rules can have the status only of rules of thumb. (Sartorius, 1975, p. 2)

Sartorius responds to this familiar objection by constructing an account that contends that the act-utilitarian is able to elevate the status of some "mere rules of thumb" to a "social norm." These social norms, which are backed by sanctions, are much more than *mere* rules of thumb because "their character and modes of participation in their support permit them both to provide reasons for action and to redirect human behavior into channels it would not otherwise take" (Sartorius, 1975, p. 53).

Sartorius begins by examining one specific type of social norm, *legal rules*. He explains that he does not think it can be "seriously maintained that the act-utilitarian could have no other conception of a legal rule than that of a rule of thumb" (Sartorius,

1975, p. 54). First, because some legal rules (i.e., laws) are not even prescriptive (e.g., power conferring and constitutive rules) and thus could not be rules of thumb (Sartorius, 1975, p. 54). Sartorius argues that there is no reason why act-utilitarians could not support the adoption and existence of such laws, and therefore, that legal rules must not be *mere* rules of thumb for act-utilitarians.[141] In addition, Sartorius argues that even laws which *are* prescriptive need not be mere rules of thumb. He argues that it is perfectly coherent for an act-utilitarian to support the establishment of a complex legal system with many legal rules and institutional roles as a means of controlling and guiding the behavior of individuals in the society in order to maximize utility/value. This complex system may put individuals in quite different institutional roles which require quite different consequences to be considered as they calculate what they ought to do within the role they occupy (Sartorius, 1975, p. 56). Sartorius writes:

> It is thus no wonder that the decision which ought to be reached (on act-utilitarian grounds) by the occupant of a given office need not mirror or reflect the decision reached (on act-utilitarian grounds) by one who is playing a very different institutional role. Perhaps the cop on the beat had no choice but to make the arrest, but this does not imply that the prosecutor ought to prosecute… No more difficult, in theory, is the case of an individual who ought to break the law, but who also ought to be arrested, prosecuted, found guilty by a jury, sentenced to a jail term by a judge, refused pardon, and then who ought to attempt to jump bail and escape punishment, even though he has no grounds for believing that the legal system ought to be changed in any way. (Sartorius, 1975, p. 56)[142]

---

[141] This argument concerning non-prescriptive rules does not carry much significance for the political obligation debate; it simply demonstrates that the act-utilitarian is not committed to saying *all* rules are mere rules of thumb. The next argument concerning *prescriptive rules* is the one that does the heavy lifting for Sartorius' account of political obligation.

[142] Sartorius' description of the cop as having "no choice" is unfortunate. A more precise way of describing the situation would be that it is possible that the "right" action for the cop is to make the arrest and that this does not imply that it is "right" for the prosecutor to prosecute (i.e., it is consistent that the right action for the prosecutor is to not press charges).

Sartorius understands this rationale for the establishment of a legal system to be similar to Hume's explanation for the origins of government.[143] Along these Humean lines, Sartorius' position is that an act-utilitarian can coherently accept, and even themselves establish, a system of legal norms/rules that will guide "behavior into desirable directions that it would not otherwise take" (Sartorius, 1975, p. 57). Sartorius moves from this examination of the utilitarian acceptance of *legal norms* to a consideration of *moral rules*. His general argument is that a utilitarian acceptance of moral rules is sufficiently analogous to the theoretically justified acceptance of legal rules which he just demonstrated.

In his argument that the act-utilitarian can give an account of social moral norms that are analogous to the legal norms, Sartorius accepts that act-utilitarianism cannot function as a decision procedure for each and every action choice. In other words, he accepts that, "conventional morality ought to contain at least some rules which prohibit direct appeals to utility" (Sartorius, 1975, p. 60). However, unlike utilitarianism's opponents, Sartorius believes that this is not fatal for act-utilitarianism. In arguing that the act-utilitarian ought to accept such moral rules Sartorius fills out the Humean argument that moral rules are practically necessary for moral education. Sartorius draws the connection between moral judgment/condemnation and social sanctioning in arguing that moral judgement *as* social sanctioning closely resembles legal sanctions (Sartorius,

[143] See 3.3a

1975, p. 61-62).[144] In teaching children right from wrong we use hard and fast rules (e.g., *never* steal) because teaching children the act-utilitarian principle itself would be disastrous (as it is usually also disastrous for adults to use the act-utilitarian principle as their decision procedure). Not only would children be bad at doing the calculations but the rules used in moral education in part teach the children what has value and what ought to figure into the calculations. Without first grasping what has value, "the child could make no sense out of the principle that one is to do that which is likely to have the best consequences" (Sartorius, 1975, p. 62). We have here a close analogy to legal sanctions, Sartorius argues; as children grow up and learn about value and moral normativity they may reach a point where they are able to reason on occasion that they ought to break a moral norm (e.g., they ought to steal X *on this occasion*). However, it may be the case that if caught, this person ought to be sanctioned in order to teach others and also to discourage rampant rule breaking. Just as with legal rules, it is perfectly consistent that a person ought to do Y *and* that others ought to punish him or her for doing Y. The complex system of moral education and moral rules includes these various roles which each require the individual to consider different consequences in their utilitarian calculations. Sartorius contends that both types of norms, legal and moral, "which bar direct appeals to utility, could be sustained by the members of a society on act-utilitarian grounds" (Sartorius, 1975, p. 63).

---

[144] Sartorius writes, "[There is a] learning context in which the child begins to acquire whatever it is that he will be expected to exercise upon reaching moral maturity. In Western societies, at least, it appears correct to claim that it is conventional moral norms which are impressed upon the child by family, peers, school, and church. And it is here that the social sanction bears its closest resemblance to the legal sanction; not only parents, but also teachers and sometimes other will have the license to physically punish deviation from the norms which they are attempting to inculcate" (Sartorius, 1975, p. 61-62).

At this point Sartorius considers a possible objection to his account thus far. He explains that a critic may accept that these moral rules may be needed for the moral education of children but deny that these rules are anything more than rules of thumb when only considering *adult* moral agents. The idea behind this denial is that, "once being taught conventional norms as a child, one may be able to resist appealing to them as an adult" (Sartorius, 1975, p. 64). Sartorius responds to this objection by denying the plausibility of this implicit assumption:

> [T]his assumption is highly dubious; on the hypothesis that the conventional rules are (among other things) reliable rules of thumb, it may be virtually impossible for an adult to make the sort of psychological adjustments which would be required for him to be able to view them as *only* rules of thumb… I may believe myself justified in breaking a promise on direct utilitarian grounds, for instance, I may realize that I will experience feelings of guilt if I do, and that undesirable consequence may tip the scales back in favor of the promise being kept. (Sartorius, 1975, p. 64)

However, there will no doubt be cases where the slight disutility associated with feelings of guilt will *not* outweigh the value of breaking the rule, but these negative emotions *will* be predictable consequences in a society that relies on firm rules in its moral education of the youth. In act-utilitarian calculations *all* consequences require consideration and these will be one type of fairly predictable consequences in societies that teach values and normativity as Sartorius has described. If we find ourselves in these circumstances, as Sartorius thinks we will, the only question that remains for the act-utilitarian is whether we should seek to rid ourselves of this rule-directed conscience (Sartorius, 1975, p. 65). Sartorius thinks that the answer to this question is obviously "no." While feelings of guilt are undesirable consequences, this doesn't mean that they ought to be eliminated. He

argues that the analogy to legal rules and sanctions is very strong here; legal sanctions are undesirable consequences as well, but this does not mean that they should be eliminated. In fact, "it is only because they have the character of consequences to be avoided that legal sanctions can serve to channel behavior into directions that it would otherwise not take" (Sartorius, 1975, p. 65). Analogously, moral rules, and the undesirable consequences associated with them, have positive value because they redirect behavior in ways that have better consequences than not having rules would.[145] Here again Sartorius picks up Hume's line of argument and highlights the familiar human failings associated with lack of information, fallibility of judgment, bias, etc., and insists that these may be present even in a society of ideally moral act-utilitarians. His conclusion or final response to this sort of objection is that, "it is reasonable for adult act-utilitarians to continue to enforce some of those norms which they have been taught as children" (Sartorius, 1975, p. 65).[146]

Getting back to his larger argument that moral norms (which are *more than* mere rules of thumb) can be accepted on act-utilitarian grounds, Sartorius argues that *conventions* play a substantial role in the utilitarian calculations and establishment of

---

[145] Sartorius does note, "Correlative to these forms of negative response are forms of positive reinforcement, the social significance of which should not be underestimated. The emphasis here upon blame rather than praise, punishment rather than reward, and guilt rather than heightened self-esteem, is due to the fact that I have taken the prohibitions of the criminal law as the model in terms of which to present the general analysis… [however] I also believe that prescriptive norms, backed by various forms of social sanction play the most central role--legally and morally--in our social lives" (Sartorius, 1975, p. 67). He also suggests that the, "challenging of others [simply calling behavior into question]… is much more frequent than the blaming of them--this, in part, because it is more often justified--but it has, at least in part, the same function as blame itself" (Sartorius, 1975, p. 68).

[146] Sartorius briefly argues that this is *rational* because it is supported by a peculiar rational ability: "Far from being absurd or paradoxical, we have here a merely a particularly important instance of a peculiarly rational ability which can be described in highly general terms: A rational decision-maker, on the basis of a choice criterion C, makes choices at a given time which will render more or less eligible certain other choices which, at that time, he can predict he will have to make on the basis of C at a later time" (Sartorius, 1975, p. 66).

legal and moral rules. The consequences of an individual's actions, Sartorius contends, will often depend on others' behavior which may also depend upon the individual's behavior. Consequently, individuals must "act upon the basis of expectations about how others will behave, which in turn will be based upon [the individual's] beliefs about how they expect [the individual] to behave" (Sartorius, 1975, p. 69). As groups of people live together these modes of behavior and expectations arise naturally and give rise to *conventions*. In addition to the naturally arising conventions that help to coordinate behavior, these modes can be established more artificially through the creation of rules or norms with sanctions attached to their violation (e.g., the creation of a legal system). Sartorius explains how this idea of conventions and coordinating behavior fits into his account:

> The social norms which bar direct appeals to utility in the institution and maintenance of which I have claimed the act-utilitarian can consistently participate have the status of conventions in that… good consequences would typically not be produced by any given individual conforming to them unless others were doing so as well… it is for this reason that they function as *reasons for action*. For although it is only the act-utilitarian principle itself which has the status of prescriptive moral principle, in virtue of it more *specific norms may serve as reasons for action in that their existence as systems of expectations implies that failure to conform to them will produce the disutilities associated with the disappointment of those expectations*. (Sartorius, 1975, p. 70)

Just as Hume argued for the establishment of government in order to coordinate behavior in productive ways and maximize utility, Sartorius is also arguing for the practical necessity of conventions and rules that serve as legitimate act-utilitarian reasons for action.

Sartorius' account does *not* deny that moral rules can and do function as reliable moral rules of thumb, his conclusion is that they can be much more than this as, "their character and modes of participation in their support permit them both to provide reasons for action and to redirect human behavior into channels it would not otherwise take in a manner which is impossible for mere summary rules" (Sartorius, 1975, p. 53). The act-utilitarian must, when making utilitarian calculations, take into account how others are behaving and how they will behave in response to his or her action. These considerations rely on conventions and Sartorius points out that his proposed social moral norms fit right into an act-utilitarian framework as such. Thus, his conclusion is that:

> The act-utilitarian is therefore in fact able to give an account of social norms which bar direct appeals to utility as more than mere rules of thumb in a two fold sense. Firstly, they perform the central function of directing human behavior into channels that it would otherwise not take by restructuring the sets of considerations of consequences of which utilitarian moral agents must take account. Secondly, they provide reasons for action in that their conventional acceptance is tantamount to the existence of systems of warranted expectations the disappointment of which is a disutility attaching to standard or normal cases of their violation. (Sartorius, 1975, p. 70-71)

While this account offered by Sartorius has been the most comprehensive, ambitious, and prominent of the utilitarian attempts on offer, it has faced harsh criticism.

Simmons offers two prominent criticisms of Sartorius' theory. The first "serious difficulty" that Simmons pushes is with Sartorius' account of rights and obligations. Recall from 1.2 that Sartorius contends that obligations do exist because of *past* occurrences, but denies that obligations are *moral* requirements. Sartorius agrees with the deontological conception that obligations exist because of *past* actions, but he denies that these obligations are necessarily morally relevant. In other words, "The grounds for

the existence of an obligation… are one thing; the reasons for fulfilling an obligation quite another" (Sartorius, 1975, p. 93). I agree with Simmons' criticism here, and as was argued in 1.3, I do not think Sartorius' utilitarian strategy is the correct path. It is extremely strange to say that one has an obligation to do or not do X and that this does not imply that he or she has a moral reason to do or not do X. This does not square with the ordinary conception, nor the vast majority of conceptual analyses, of "obligation." Sartorius contends that, "In order for the existence of an obligation to provide a morally acceptable reason for acting so as to fulfill that obligation, it must be shown either that doing so will have some good consequences or that failing to do so will have some bad consequences" (Sartorius, 1975, p. 89). However, if one's account of obligations is necessarily tied to expectations, as Narveson and my account do, then obligations *do create* moral reasons that can fit with the ordinary notion of obligation.

Simmons' second criticism contends that the moral rules/norms of Sartorius' act-utilitarian account are not strong enough moral bonds to fill the role that political obligation theorists seek:

> [W]hile the act of adopting the rule may be one an act-utilitarian should perform, this "adoption" does not confer on the rules (or norms) any new prescriptive force. It merely alters the consequences of disobedience in such a way as to place heavier weight on the side of obedience… But this reasonable assumption is not necessarily borne out in particular cases; where it is not, and where social sanctions are ineffective, the "obligation" to obey the rule can be seen not to constitute a firm bond of the sort we want. (Simmons, 1979, p. 51)

I take this objection to be essentially the "rule of thumb" objection rephrased. The claim seems to be that "political obligations" for the utilitarian would be nothing more than rules of thumb. This objection is one that I believe Sartorius can, and does, respond to.

Sartorius does not deny that in particular cases the utilitarian calculations will favor breaking the rule/norm, nor does he deny that on occasion it will be the *right action* (i.e., utility maximizing) for one to break a rule. What he is arguing is that social creatures like humans are in need of ways for coordinating behavior (i.e., conventions and rules/laws/norms). These "arrangements" can take quite complex forms, "in which a system of social sanctions based on shared social norms may act as a sort of feedback mechanism which can radically restructure the sets of considerations of consequences of which the act-utilitarian must take account" (Sartorius, 1975, p. 67). What Sartorius does not explicitly say is that the "adoption" of these rules *does* confer prescriptive force. The way in which an act-utilitarian "adopts" a norm is to *predictably act in accordance with the prescribed course of action or restraint.* When enough individuals are acting in certain predictable ways the consequences of obedience and disobedience are altered, as Simmons notes, but what he fails to grasp is that *this alteration* does confer prescriptive force because maximizing the value of consequences is the only thing that has prescriptive force on the act-utilitarian theory.

This response brings us to one last criticism which we will examine. The objection, which Sartorius attributes to D.H. Hodgson and John Rawls, asserts that the moral norms that Sartorius is arguing for could not be rationally and justifiably *established* in any society on utilitarian grounds. Sartorius elaborates on Hodgson's argument:

> His [Hodgson's] claim is that a community of rational act-utilitarians would find themselves in a predicament analogous to that of rational egoists in a Hobbesian state of nature: They would recognize the need for conventional rules, and the desirability of the redirection which their

> existence would give to human behavior, but they could not consistently create or sustain them. (Sartorius, 1975, p. 71)

It does not seem as though anyone could escape the Hobbesian state of nature because the very "contracts" necessary to set up a governing body are not valid nor rational in the state of nature. Similarly, Hodgson argues, a society of act-utilitarians could not establish norms. Sartorius responds to this objection by leaning on the dual nature of the moral rules he believes act-utilitarians can accept; not only are these rules conventional norms which direct behavior and give reasons for action, they also have the "independent status of a reliable rule of thumb" (Sartorius, 1975, p. 72). The norms that are also reliable rules of thumb would be in a position to be followed by act-utilitarians and "adopted." After some time these naturally arising conventions and expectations would create social norms and put the society in a position to establish further rules in order to direct behavior. Sartorius argues that, "once those expectations are present, they provide the required sorts of reasons for action, those associated with the disutilities consequent upon the failure to satisfy warranted expectations" (Sartorius, 1975, p. 72). So while legal and moral norms may only arise very slowly and tediously at first for primitive societies of act-utilitarians, they do not seem to be *impossible* to initially establish like contracts are in Hobbes' state of nature.

CHAPTER 4
MORAL JUSTIFICATION OF THE STATE AND STATE LEGITIMACY

Up to this point we have investigated and discussed "obligation" and "*political* obligation" (Chapter 1), the leading and competing theories of political obligation (including philosophical anarchism) (Chapter 2), and some controversies and debates within utilitarian theory generally as well as the limited number of utilitarian accounts on offer which attempt to deal with the idea of political obligation (Chapter 3). As we have seen, it is generally accepted that utilitarianism cannot adequately accommodate a robust theory of political obligation which theorists seek. One of the reasons for this general dismissal has been the fact that neither of the most detailed and systematic utilitarian accounts, which have been offered, have received a recent and thorough defense. Hare's account was merely a sketch and did not concern itself with many of the details necessary for competing with more complete accounts. In contrast, Sartorius *did* attempt to offer a comprehensive utilitarian political theory. Unfortunately, his general framework has not received a rigorous defense, from Sartorius himself nor other utilitarian theorists, in the face of objections. In this chapter I will begin to build upon the foundation sketched in the previous chapter. In the first section I will briefly examine the traditional utilitarian accounts of authority and political legitimacy and discuss again why these are problematic if a theory wishes to accommodate the idea of political obligation. In response to these problems associated with the traditional utilitarian account I will examine some accounts offered by non-utilitarian theorists to see if there are any conceptual resources that could be adopted in bolstering a utilitarian theory. In the

second section I will focus my investigation on one particular account of authority that I believe holds unique promise for the political utilitarian theory I am developing - Joseph Raz's account of authority and legitimacy. My intention with this investigation is to lay the foundation for the utilitarian account of political obligation that I will offer in Chapter 5. This account will use the insights gleaned from Hare and Sartorius' works, this chapter's investigation of authority, justification, and legitimacy, and other theoretical resources available to a utilitarian political theory.

4.1 Justification and Legitimacy, Utilitarian and Non-Utilitarian Approaches

In this first section I will briefly sketch the traditional utilitarian accounts of authority and legitimacy and examine some initially problematic aspects that have been raised against such accounts. I will then examine some conceptual distinctions that are relevant to the contemporary debate and explore some non-utilitarian theorists' accounts to see if there are any conceptual resources that a utilitarian could co-opt in bolstering their account of authority, justification, and legitimacy.

4.1.1 Hume and Bentham on "Legitimacy" and "Authority"

Hume's proto-utilitarian account and Bentham's utilitarian account of political legitimacy/authority begin with a rejection of the traditional Lockean social contract theory and consent as the grounds for legitimacy/authority. In opposition, their theories ground the legitimacy of political authority directly on a principle of utility. Stated simply, if the laws enacted by a particular state maximize utility, then that state has legitimate political authority. This account of legitimacy is a moralized one, tying

legitimacy to maximization of utility (Peter, 2014, section 3.2).[147] However, one problem with this sort of account, for anyone who is sympathetic to the idea that political authority and legitimacy create a corresponding duty or obligation, is that it is seemingly incompatible with the idea of political obligation. When applied to political behavior the principle of utility succinctly prescribes obedience to government only when doing so will maximize utility.[148] As the consequences of obedience, and resistance, vary from case to case, there seems to be no need and no possibility of a general account of political obligation.[149] This traditional utilitarian account is also problematic for some theorists because it is not willing to accept any distinction between the moral *justification* of an authority (*de jure* authority) and the *legitimacy* of that power.[150]

Many political theorists, in line with Hume and Bentham, understand the justification of a state's authority and its legitimacy to be equivalent; however, some resist this conceptual condensing. With this disagreement in mind we will begin by

---

[147] An interesting historical connection to this rejection of Locke's voluntarism and endorsement of a morally laden account of legitimacy is Schneewind's (1998) contention that Christian Thomasius, a student of Pufendorf and contemporary of Locke, offered a rationalist account of political legitimacy, which was a theoretical precursor for Hume and Bentham's utilitarian accounts.

[148] A second common objection against this sort of account is that it allows for the restriction of individual rights and liberty if such restrictions maximize overall utility. In his contemporary defense of a utilitarian principle of legitimacy, Ken Binmore attempts to avoid this type of objection by arguing for a non-teleological form of utilitarianism in which the "*process* used by the citizens of a polity to agree on a common policy is given priority" over an *a priori* good that is taken for granted and the maximization of which can outweigh individual rights and liberty in both the polity's dictates and the process for establishing these dictates (Binmore, 1998, p. 107). This is essentially Rawls' "original position theory," but Binmore replaces the veil of ignorance with a philosopher-king "who acts only on the basis of a mandate he receives from the citizens he rules," but who enforces rationality and non-partiality in these mandates (Binmore, 1998, p. 107-108).

[149] See 2.1 for more on this common dismissal of a utilitarian account of political obligation.

[150] Another way of describing this potentially problematic aspect of the traditional utilitarian account of legitimacy and authority is to say that it does not allow for the possibility that a *de facto* authority could be politically legitimate without being morally justified.

examining these conceptual issues that arise around the idea of political authority and political legitimacy.

4.1.2 Initial Conceptual Distinctions

Starting with the idea of "authority," it is important to distinguish between *theoretical* and *practical* authority. A theoretical authority is typically taken to be expert in some intellectual area of inquiry, which "operate[s] primarily by giving advice to the layman, which advice the layman is free to take or not" (Christiano, 2012, section 1.1). These intellectual judgments and advice of theoretical authorities provide *reasons for belief.* Alternatively, a practical authority is typically taken to be an entity with power that gives *reasons for action.* Most political theorists take political authority to be a species of *practical* authority because political authorities are understood as issuing "directives that give people reasons for action and not reason for belief" (Christiano, 2012, section 1.1).[151]

In general terms, *justifying* a political (practical) authority, or any act, strategy, practice, arrangement, institution, etc., "typically involves showing it to be prudentially rational, morally acceptable, or both" (Simmons, 2001, p. 123). In abstract terms, "justifying the state" would be to show that "some realizable type of state is on balance morally permissible (or ideal) and that it is rationally preferable to all feasible nonstate alternatives" (Simmons, 2001, p. 126).[152] This abstract justification of "the state" (over *a*

---

[151] This view is typically accompanied by the view that it is "the function of political authorities to get people to act in certain ways so as to solve various collective action problems such as a variety of different types of coordination problems, assurance problems and free rider problems" (Christiano, 2012, section 1.1). Acting in accordance with this function, a political authority's directives are understood to give people reasons for action in achieving these ends.

[152] Cf. Schmidtz, 1996.

priori anarchism) can be distinguished from the question of whether a *particular existing* state functions in the morally desirable ways that abstractly justify political authority. This distinct way of evaluating political power has become known as the *legitimacy* of a state.

Both political authority and legitimacy can be further distinguished as either a *normative* or a *descriptive* (non-normative) notion. Understood normatively, to say that a state has political authority is to say that the relationship between the state and its citizens is morally acceptable or justified (Christiano, 2012, section 1). When a state reaches the normative benchmarks of justification it is also said to have *de jure* authority. Understood descriptively, to say that a state has authority is to say something about people's beliefs concerning the state:

> [T]o say that the state has authority in the descriptive sense is to say that the state maintains public order and that it issues commands and makes rules that are generally obeyed by subjects because many of them (or some important subset of them such as the officials of the state) think of it as having authority in the normative sense [e.g., Hart, 2012]. (Christiano, 2012, section 1)

This type of effective political power and description of citizens' attitudes and beliefs about the state is also referred to as *de facto* authority.[153] Most theorists also want to distinguish *de facto* authority from mere political power:

---

[153] It should be noted that not all political theorists accept this idea that *de facto* authority describes citizens' attitudes or beliefs about the state. For example, for "both Thomas Hobbes and John Austin, political authority in the *de facto* sense simply amounts to the capacity of a person or group of persons to maintain public order and secure the obedience of most people by issuing commands backed by sanctions [i.e., effective political power]. Subjects need not think of the authority as a legitimate authority, on this account" (Christiano, 2012, section 1). In fact, the distinction between *de jure* and *de facto* authority is not even accepted by all. Again, one of the most famous examples is Hobbes' insistence, "that any entity capable of performing the function of *de facto* authority is necessarily justified and deserves the obedience of the *de facto* subjects" (Christiano, 2012, section 1).

> [Political power] is concerned with the state's or any agent's ability to get others to act in ways that they desire even when the subject does not want to do what the agent wants him to do. Political power does not require any kind of pro attitude toward the agent on the part of the subject, nor does it require that the state is actually successful at securing public order. It operates completely in the realm of threats and offers. (Christiano, 2012, section 1)

Again, this distinction is not accepted by all political theorists, but it *is* one that is accepted by most. The common idea is that political investigations are concerned with more than mere brute power and that evaluative distinctions can be made between states which are justified, effective, and both or neither.

Closely tied to the normative understanding of political authority, “the normative concept of political legitimacy refers to some benchmark of acceptability or justification of political power or authority” (Peter, 2014, section 1). In other words, when political legitimacy is understood normatively it is understood as describing a political power that *ought* to be supported. Some take this normative legitimacy as justifying a state’s use of coercive power and as *creating* political authority and a corresponding obligation or duty to obey its commands.[154] Others theorists have proposed a narrower view of legitimacy which, instead of creating political authority, serves to morally justify already existing political authority; that is, it transforms *de facto* authority into *de jure* authority and in doing so gives the political authority the ability to create political obligations (Peter, 2014, section 1).[155] In opposition to both views, some theorists take the justification of political authority and a political institution’s legitimacy to be entirely conceptually

---

[154] See, e.g., Rawls (1993).

[155] See, e.g., Raz (1986).

distinct.[156] Alternatively, the *descriptive* conception of political legitimacy "refers to people's beliefs about political authority and, sometimes, political obligations" (Peter, 2014, section 1). The sociologist/philosopher, Max Weber, was possibly the most historically influential theorist to defend the descriptive view of legitimacy. According to Weber's account, the basis for a political institution's legitimacy is the beliefs of individuals living under that institution. Weber grouped these "legitimizing beliefs" into three categories - "People may have faith in a particular political or social order because it has been there for a long time (tradition), because they have faith in the rulers (charisma), or because they trust its legality—specifically the rationality of the rule of law" (Peter, 2014, section 1).[157] Charles Taylor offered a similar account in which legitimacy "is meant to designate the beliefs and attitudes that members have toward the society they make up. The society has legitimacy when members so understand and value it that they are willing to assume the disciplines and burdens which membership entails" (Taylor, 1994, p. 58).[158] With this sketch of the theoretical options concerning the relationship and/or distinction between justification and legitimacy, we are now in a position to examine these possibilities and how each influences one's account of *political obligation*.

4.1.3 Distinguishing Between Justification and Legitimacy

First, we will examine why it is that someone would wish to make a distinction between moral justification and legitimacy. Why wouldn't a theorist who accepts that

---

[156] See, e.g., Simmons (2001).

[157] In connection to these categories Peter cites Weber's essay "Politics as a Vocation" (1918) and book, *The Theory of Social and Economic Organization* (1964).

[158] Quote reproduced from Simmons, 2001, p. 132.

there is a type of state that is morally justified also agree that a particular existing state meeting these justification standards ought to be accepted by individuals living under its authority and, consequently, understand it as being "legitimate"? One reason that an individual may object to this conceptual linking of justification and legitimacy is if she denied the possibility of a morally justified state. In other words, if the theorist were an *a priori* philosophical anarchist, then she would have a strong reason for resisting the conceptual tie between justification and legitimacy.[159] If *a priori* anarchists were to accept the conceptual tie, then they would seemingly lose the possibility of offering *any* evaluation of existing political institutions. Even as they deny the moral justification of all possible states, it seems that they would not want to also deny the possibility of making *any* evaluations (e.g., a certain political institution is *better than*, in some sense, another political institution). Another reason that an individual may object to the conceptual linking of justification and legitimacy is if she wanted to allow for the abstract possibility of a morally justified state but wished to deny that this would be sufficient in creating political obligation for individual citizens. This distinction would require normative conditions, in addition to those required for justification, for state legitimacy and political obligations to arise. Simmons describes this "Lockean" view as one in which,

> [T]he general quality or virtues of a state (i.e., those features of it appealed to in its justification) are one thing; the nature of its rights over any particular subject (i.e., that in which its legitimacy with respect to that subject consists) are quite another thing. The legitimacy of a state with respect to you and the state's other moral qualities are simply independent variables, in the same way that the right of some business to provide

[159] See 1.1 for discussion of *a priori* philosophical anarchism.

> services to you and to bill you for them is independent of that business's efficiency or generosity or usefulness. It can be on balance a good thing that such a business was created and continues to exist, and its relationship with willing clients can be morally exemplary, without the business thereby coming to have a right to have *you* as a client. (Simmons, 2001, p. 136)[160]

This distinction between the abstract justification of the state and a particular state's legitimacy, or right to impose duties and use coercive power, relies on additional normative conditions that ground legitimacy (in this case, consent). The analogy to a business seems to nicely illustrate the idea of justification and legitimacy being distinct. A particular business's existence may be morally justified, but, "no matter how virtuous or how useful to its willing clients, can [it] acquire, simply by its virtue or usefulness, the right to insist on participation in its enterprises by unwilling free persons" (Simmons, 2001, p. 136). On this account, a state's *legitimacy* "is its exclusive right to impose new duties on subjects by initiating legally binding directives, to have those directives obeyed, and to coerce noncompliers" (Simmons, 2001, p. 137). On the particular account described by Simmons, the political obligations of each particular citizen are acquired after they have done their part in giving the state legitimacy (i.e., the right to impose duties). In this particular case, the legitimacy creator is consent, but one could contend that instead of consent it is some other normative condition, such as the acceptance of benefits from the state, which gives it legitimacy (i.e., a principle of fairness or gratitude).

On this view it is the legitimacy, and specifically the legitimizing actions of individuals (e.g., consent), which create the moral requirement to obey and support the

[160] Whether this is an accurate reading of Locke is besides the point for my purposes. This seems to be a viable position to take on the question of justification and legitimacy and is thus one that needs consideration, regardless of who does or did hold it.

state (i.e., political obligations). This is an interesting and controversial idea because it may seem to some that, at first glance, a moral requirement to obey and support a state should track the *moral justification* of the state and not some additional normative component. With this in mind Simmons presents two possible positions for the "Lockean" account concerning the significance of a state's justification. On the first, "a state's being of a kind that is justified gives us moral reasons to refrain from undermining it and will typically give us moral reason to positively support that state" (Simmons, 2001, p. 137). However, this would be a very general moral requirement applicable to all moral agents (i.e., a moral requirement to "promote just states") and Simmons is quick to point out that this justification, "cannot ground any special moral relationship between it [a morally justified state] and you [an individual]… providing none of those states with any special right to impose on you additional duties" (Simmons, 2001, p. 137). This idea fits with Simmons' "particularity requirement" for accounts of political obligation, but it is somewhat of an odd position. It is unclear what a particular morally justified state would look like if not one which ensured a morally valuable existence for a society through its laws and coercive power to enforce those laws. In fact, it seems that it may even be unintelligible for the existence of a particular state to be morally justified while simultaneously lacking the moral right to impose duties on its subjects. How would the state ensure the conditions (whatever they may be) that it takes for the state to be morally justified? Could it be that a morally justified state could acquire and maintain its moral authority by imposing mere practical reasons for action on its subjects? This would seem to be more of a *de facto* authority rather than a *de jure* authority.

This may simply be pointing out that the analogy between a state and a business is not apt. In terms of a business, non-participation by individuals who are uninterested in the services provided does not constitute an *active* effort to undermine the business. Alternatively, it seems that if "non-participation" in the activities of a state includes *disobeying* or *breaking the law*, then it is reasonable to categorize this non-participation as an active effort to undermine the institution. The "Lockean" may respond by contending that in this case the morally justified state has a pragmatically justified right to use coercive force against those breaking its laws but that this does not correspond to any *moral* responsibility for an individual who is unwilling to legitimize the state and "meaningfully interact" with the institution (Simmons, 2001, p. 137). Again however, this sort of "pragmatic justification" seems more like *de facto* authority rather than morally justified (*de jure*) authority. On first examination the idea that there is a conceptual distinction between justification and legitimacy seems to be conceptually clear and somewhat intuitive, but if pushed, this idea that there can be particular states whose existence is morally justified while simultaneously lacking legitimacy appears implausible and it may well be unintelligible.

The second possible "Lockean" position presented by Simmons would "maintain that while we ought not undermine the institutional arrangements of others if they do us (and others) no harm, the mere justifiability of an arrangement need not give us any moral reason at all to support that arrangement" (Simmons, 2001, p. 138). This position takes a "stricter line" on justification as it claims that the moral justification of a state provides *no* moral reasons to support that state. This position seems even more

implausible than the first. I can understand the claim that individuals have a *stronger* moral responsibility to refrain from harming others (i.e., negative duties) than they do to actively benefit others (i.e., positive duties), but to claim that there are *only* negative moral responsibilities seems radically implausible. Additionally, if the moral justification of a state provides *no* moral reason to obey and support it, then I have lost a grasp on how "moral justification" is even tied to morality.

Simmons does briefly consider the objections I have been raising against this "Lockean" distinction between justification and legitimacy. In summarizing the objections, Simmons writes:

> [T]his talk of a hard distinction between the virtues or the moral quality of a state and the state's relations with individual subjects, we might say, is highly artificial. For surely the state's "moral quality" simply consists in or is largely constituted by the sum of its morally significant relations with individual subjects. Beneficial states are beneficial precisely by creating or distributing benefits to their subjects. (Simmons, 2001, p. 139)

Simmons responds by arguing that this objection proceeds too quickly. He claims that simply "From the fact that good states provide benefits for subjects (and treat subjects well in other ways) it does not follow that those states have with any particular subject the kind of morally significant relationship that could ground a state's right to impose duties" (Simmons, 2001, p. 139). He continues by claiming that, invariably, just and beneficial states fail to provide benefit and treat *every subject* justly (Simmons, 2001, p. 139). In essence his claim is that states are morally justified if they are "on balance good things" (Simmons, 2001, p. 139). With this account it is possible to deny that *every* subject of a justified state has a political obligation and instead claim that it is only those individuals who fulfill some additional normative requirement (e.g., consent, accepting

benefits, etc.) have a moral requirement to obey and support the state. But this again seems to be conflating an abstract and theoretical understanding of what it would take for *some* state to be morally superior to *no* state (i.e., justifying the existence of *a* state) with the question of whether there is any particular existing state that meets these theoretical requirements. If there *is* some particular state that is morally justified, it seems that it could only have achieved this through the legitimate use of coercive power to create and maintain a morally valuable society. It does not seem that there could be a particular existing state that is morally justified but not legitimate. What would be morally valuable about a state that had no legitimate power to uphold a morally valuable society? Simmons even goes so far as to deny that the moral justification of a morally *ideal* state (not simply one that was "on balance a good thing") would ground a right to coerce. Again, this appears to be an extremely implausible position as it seems to lose any connection between "moral justification," morality, and moral reasons for action generally.

With this dismissal of the possibility that a particular existing state could be morally justified without being legitimate, there remains only one other possibility to consider. The second possibility resulting from the justification/legitimacy distinction would be a state that is legitimate but not justified. However, this possibility is only intelligible if one understands legitimacy as an *exclusively* descriptive concept (non-normative). A serious problem with an exclusively descriptive account of legitimacy is that it disregards *how* the subjects came to have the beliefs and/or attitudes that ground the legitimacy. A state that coerced individuals through immoral actions into having

feelings of loyalty or believing that the state had rightful authority intuitively seems like it would not create the legitimacy of the state.[161] Simmons even agrees that this is a highly problematic account and summarizes the issue as such:

> On such accounts states could create or enhance their own legitimacy by indoctrination or mind control; or states might be legitimated solely by virtue of the extraordinary stupidity, immorality, imprudence, or misperceptions of their subject. Surely none of this is what any of us has in mind when we call a state or government "legitimate." (Simmons, 2001, p. 134)

What Simmons seems to miss is that this is especially problematic for the theorist who wishes to make the distinction between justification and legitimacy and tie political obligation to the *legitimating* actions. For the "Lockean," who also accepts an exclusively descriptive account of legitimacy, there arises the possibility that individuals could come to have moral obligations to a state (i.e., political obligations) whose existence is morally unjustified and which acted immorally in bringing about the subjects' beliefs/attitudes that legitimated its right to impose moral duties/obligations on subjects and coerce those who do not comply. This is not to say that there can be *no* descriptive component to plausible accounts of legitimacy, simply that an *exclusively* descriptive account (i.e., no normativity whatsoever) is highly problematic. The implausibility of an exclusively descriptive account of legitimacy is further compounded if one wishes to accept the "Lockean" distinction between justification and legitimacy. Just as the first possibility for the justification/legitimacy distinction was dismissed, the

[161] The psychological condition known as the "Stockholm Syndrome" in which a hostage bonds with, identifies with, or sympathizes with his or her captor is one example of such a case where positive attitudes and beliefs are created through the immoral actions of the "authority."

existence of a legitimate and unjustified state (the second possibility for the justification/ legitimacy distinction) is also an unviable possibility.

4.1.4 Conceptually Linking Justification and Legitimacy

In opposition to the "Lockean" distinction between moral justification and legitimacy, some theorists have argued for a conceptual *link* between these two concepts. Kant, for example, held that legitimacy functioned primarily to justify coercive political power and *create* political authority. This is in opposition to the "Lockean" view that legitimacy functions to justify a state's political authority (through the transfer of pre-existing political authority from individuals to the state). Simmons summarizes the "Kantian" position as such: All people possess an innate right to freedom and even posses "provisional property rights" (Simmons, 2001, p. 140).[162] These rights can only be upheld in a civil society and, consequently, "each person has an obligation to leave the state of nature and to accept membership in a civil society under coercive law" (Simmons, 2001, p. 140).[163] The moral necessity of the state, for the realization of freedom, rights, and justice, "entails an obligation to enter civil society and accept the duties society imposes" (Simmons, 2001, p. 140). This *justification* of the state also *legitimizes* "particular states by binding each of us to obedience to the laws of our own states" (Simmons, 2001, p. 140). Simmons goes on to attack this "Kantian" account, as well as Rawls' contemporary account which utilizes components of the Kantian link between justification and legitimacy.

---

[162] As with the "Lockean" position, whether this is an accurate reading of Kant is besides the point for my purposes. This seems to be a viable position to take on the question of justification and legitimacy and is thus one that needs consideration, regardless of who does or did hold it.

[163] Simmons cites Kant's *Metaphysics of Morals* (sections 15, 41, 42, 44, and unnumbered sections) in his summarization of the position.

Perhaps surprisingly, utilitarianism appears to align with the Kantian idea that "individuals have a moral obligation—an imperfect duty—to form a civil state" (Peter, 2010, section 2.2). In utilitarian terminology, helping to form a state is something individuals *ought to do* because it is practically necessary for maximizing utility. In Kantian terminology, forming a civil state is *an end that individuals ought to have* because the state (with its coercive political power) is a "necessary first step toward a moral order (the 'ethical commonwealth')" (Peter, 2010, section 2.2).[164] As there appears to be this somewhat surprising alignment between utilitarianism and the Kantian theory I will spend some time examining the "Kantian" position more closely and investigating whether there is an acceptable way, from within a utilitarian framework, of defending the position against Simmons' objections.

To begin, let's take a closer look at the Kantian position and some of the prominent contemporary theories that it has influenced. First, Kant seemed to accept Hume's objections to the contract theory and thus did not believe that the establishment of civil states was "contracted" in any actual historical event. However, Kant *did* hold a kind of contractarian view in which the social contract is invoked *hypothetically* as a way of testing whether a state is justified and legitimate. This criterion contends that "each law should be such that all individuals could have consented to it. The social contract, according to Kant, is thus a hypothetical thought experiment, meant to capture an idea of public reason. As such, it sets the standard for what counts as legitimate political authority" (Peter, 2010, section 2.2). As a *hypothetical* contract theorist, Kant "thought

[164] Peter cites Kant's *Theory and Practice* and *Perpetual Peace*.

of the state as an arrangement into which people enter for the resolution of conflict and the establishment of a secure system of property," and which is evaluated by public reason and the hypothetical thought experiment (i.e., what everyone would have consented to) (Waldron, 1993, p. 14). Where this Kantian position drastically departs from the Lockean social contract theory is in the idea that people are not morally free to choose to withhold from the establishment of a civil state. Everyone has a moral duty (imperfect) to do their part in establishing and supporting the state:

> Kant believed that morally it was not an open question whether we should enter into such arrangements or not: 'If you are so situated as to be unavoidably side by side with others, you ought to abandon the state of nature and enter, with all others, a juridical state of affairs, that is, a state of distributive legal justice' (Kant, *The Metaphysical Elements of Justice*, section 42). The reason has to do with the avoidance of the 'fighting' and 'wild violence' that will otherwise ensue among those who find themselves disputing possession of the same resources: 'Even if we imagine men to be ever so good natured and righteous before a public lawful state of society is established, individual men, nations, and states can never be certain that they are secure against violence from one another, because each will have his own right to do what seems just and good to him, entirely independent of the opinion of the others' (Ibid, section 44). The basic principle of morality so far as material resources are concerned is, in Kant's account, that people must act toward one another so that each external object can be used as someone's property (Ibid, section 6). If a stable system of resource use is to be made possible, then a person claiming possession or use of a resource 'must also be allowed to compel everyone else with whom he comes into conflict over the question of whether such an object is his to enter, together with him, a society under a civil constitution' (Ibid, section 8). (Waldron, 1993, p. 14)

The moral necessity of a state creates both this moral duty to establish and uphold the state and makes the state's justification and legitimacy inseparable. This "Kantian" theory, in line with my arguments from the previous subsection, can be understood as "asserting that there is a direct and obvious argument from the justification of a type of

state to the legitimacy of all tokens of that type" (Simmons, 2001, p. 142). Rawls is arguably the most influential contemporary theorist to argue for a position similar to this "Kantian" view. In *A Theory of Justice,* Rawls' hypothetical contract is intended to establish what rational and self-interested people *would* agree to in setting up social institutions.[165] Both justification and legitimacy are "grounded simply in showing that it *would be* reasonable for a particular set of persons to accept a particular form of political/ economic organization" (Simmons, 2001, p. 145) (emphasis added).

With this sketch of the "Kantian" account in place we can now examine some objections that have been leveled against it. Simmons is one theorist who explicitly argues that the "Kantian account leaves behind, unanswered, certain important questions and without warrant diminishes the force of certain forms of institutional evaluation" (Simmons, 2001, p. 145). Simmons' first objection to the "Kantian" theory is against its contention that the state is morally necessary. He asks, "why doesn't the Kantian say, with the Lockean, that our duties are just to treat others rightly, whether as members of some civil society or not, and that it is up to each of us to choose membership or nonmembership?" (Simmons, 2001, p. 145). Simmons admits that, as conditions exist presently, it may not be possible to "live outside of a state," but argues that it should be possible to choose whether one wants to accept *additional* moral obligations (i.e., political obligations) attached to *membership* of the state. He believes that this contention is strengthened by contemporary Kantians' attempts to appropriate the

[165] See 2.2c

ideal of Lockean political voluntarism.[166] Simmons takes this concern for the ideal of voluntarism as validating the Lockean claim that there is a distinction between justification and legitimacy (and that legitimacy is a voluntaristic concept). However, Simmons sees this as a "disingenuous" and an "illicit appropriation" because these contemporary Kantians are in no way interested "in restructuring political societies so as to make the choice of membership (or nonmembership) as voluntary at least as circumstance would permit" (Simmons, 2001, p. 146). Simmons writes:

> [I]t seems clear that contemporary Kantian and hypothetical contractarian political philosophies have illicitly appropriated the justificatory force of voluntarism while being (like Kant) in no real way motivated by it. Kantians think of institutional evaluation in terms of what ought to be chosen by people - that is, in terms of the moral quality of institutions, what makes those institutions good (virtuous, just etc.) - not in terms of people's actual choices. (Simmons, 2001, p. 147)

Simmons classifies these *hypothetical* contracts, or what *ought* to be chosen, as "impersonal sorts of moral evaluations" (Simmons, 2001, p. 147). Alternatively, he classifies *actual* contracts as "features of one's political history" as well as "direct and personal." This is critical for Simmons because he believes that "it seems appropriate to suggest that a state's authority over an individual ought to depend on some such personal transactions, given the coercive, very extensive, and often quite arbitrary sorts of direction and control that state authority involves" (Simmons, 2001, p. 147).

My response to this objection is that it seems to implausibly admit that there could be particular states which are *morally justified* (i.e., on balance morally superior to non-

---

[166] Simmons cites Rawls' claim that "a society satisfying the principles of justice as fairness comes as close as a society can to being a voluntary scheme" (Rawls, 1971, p. 13)(Cf. Rawls, 1993, p. 135-137 & 222) and Nagel's suggestion that the search for legitimacy is, "an attempt to realize some of the values of voluntary participation" (Nagel, 1991, p. 36) as examples of this "appropriation" (Simmons, 2001, p. 146).

state alternatives) but which lack the moral right to use coercive power in placing restrictions on individuals. It seems that it would be precisely these coercive restrictions (i.e., laws) which would be one necessary feature in distinguishing a state from a non-state and which would allow the state to create a state of affairs which is, on balance, morally superior to the non-state. Stated in another way, it does not seem that it would be possible for a particular state (a token of the type "abstractly morally justified") to be in a position to create an environment which is morally superior to a non-state alternative while lacking the moral right to use coercive power (i.e., without having some sort of legitimacy). This is in line with the Kantian idea that there is only one justificatory step - political authority can only be morally justified if there is some type of legitimacy (Peter, 2010, section 2.1). Peter elaborates on this Kantian idea that the main function of legitimacy is to justify coercive power:

> The civil state, according to Kant, establishes the rights necessary to secure equal freedom. Unlike for Locke and his contemporary followers, however, coercive power is not a secondary feature of the civil state, necessary to back up laws. According to Kant, coercion is part of the idea of rights. The thought can be explained as follows. Coercion is defined as a restriction of the freedom to pursue one's own ends. Any right of a person—independently of whether it is respected or has been violated—implies a restriction for others. Coercion, in this view, is thus not merely a means for the civil state to enforce rights as defenders of an authority-based concept of legitimacy claim. Instead, according to Kant, it is constitutive of the civil state. This understanding of rights links Kant's conception of legitimate political authority to the justification of coercion. (Peter, 2010, section 2.2)[167]

In line with this idea that it is legitimacy that morally justifies coercive power, my response to Simmons' objection is that morally sanctioned coercive power cannot be a

---

[167] Peter cites Kant's *Theory and Practice*, Part 2.

feature of a morally justified state without that state being legitimate. There seems to be only one justificatory step, a state must have the right to use coercive power *before* it can be a morally preferable alternative to a non-state.

Simmons would most likely reply that this linking of the personal and impersonal justification, while striking a middle ground, waters-down the dimensions of institutional evaluation (Simmons, 2001, p. 148). Simmons explains how the Kantian position seems to succumb to this "watering down" of institutional evaluation while the Lockean distinction is able to avoid it:

> Rather than in this way searching for a single compromise dimension of evaluation, located somewhere between impersonal justifications and personal legitimations, the Lockean acknowledges instead the moral importance of both of these kinds of evaluation. How we have actually freely lived and chosen, confused and unwise and unreflective though we may have been, has undeniable moral significance; and our actual political histories and choices thus seem deeply relevant to the evaluation of those political institutions under which we live… facts about the nature of an institution's actual relationship with particular individuals [should] be crucially relevant to our evaluation of its operation with respect to those individuals… The Lockean tries to emphasize the importance of both grounds of institutional evaluation. The Kantian, I think, in effect tries to make it seem that the former kind of evaluation - what I have been calling the state's "justification" - can without further argument give us the latter - what I have been calling the state's "legitimacy" with respect to particular persons. (Simmons, 2001, p. 148-149)

While Simmons admits that human institutions ought to be evaluated, in part, on the best possible terms acceptable to people (i.e., reflective hypothetical endorsement), he denies that this can be *all* there is to the evaluation of a state (Simmons, 2001, p. 148). His claim is that the Lockean position can utilize hypothetical consent in its account of *justification* while also respecting individuals' actual political histories with its account of *legitimacy*. I have been denying that this stark distinction is plausible because it leaves

open the possibility that a particular state exists which is morally justified but which does not have the consent of any of its members, and thus, is not legitimate. This would be for a state to be morally justified while simultaneously lacking the moral right to impose regulations on its members in an attempt to create and sustain itself as the type of state that would receive reflective hypothetical endorsement. In other words, this "morally justified" state would lack the moral right to act as the type of political authority which could be hypothetically consented to by its members.

Simmons argues that this linking or middle ground approach by the Kantians still *supposes* the moral necessity of the state (for the realization of freedom, rights, justice etc.) and that it is this supposition that is doing all the work in justifying and legitimating the state and opposing the Lockean distinction between the two. Simmons argues that the hypothetical contract depends heavily on the conception of "reasonableness" and that this idea of reasonable agreement ought to also apply to the question of whether there should be a state. Here Simmons seems to have the upper hand against the Kantian in contending that it is unreasonable to *presume* that the state is morally necessary. It seems entirely *possible* that certain small groups of individuals could very reasonably come to non-political solutions to social problems. Simmons elaborates:

> It is not obviously unreasonable (though it may be un- or anti- many other things) to prefer solitude and independence to cooperation. More importantly, it is surely not unreasonable to prefer more limited or less coercive small-scale forms of cooperation to states (and all that states involve). Too much moral content, then, seems to be built (without argument) into the contemporary Kantian conception of the reasonable. (Simmons, 2001, p. 151)

While I agree with Simmons that the Kantian cannot simply assume the moral necessity of the state, very few (if any) theorists do simply *assume* this necessity. Most provide an argument based on the need for institutional solutions to coordination problems, or the reduction of individual bias, or the need for upholding rights and justice.

In Chapter 5 I will make the utilitarian argument, in Sartorius-like fashion, that there is a *practical necessity* for the state and that while it may not be the case that everyone ought to always follow the law, everyone does have a moral reason for following the laws of the state he or she is in. This utilitarian account will also be able to accommodate the strengths of both the Lockean and the Kantian position. The Kantian hypothetical contract is able to work for the utilitarian because the moral justification/legitimacy of the state will ultimately be based on a specification of the principle of utility. This idea will be developed further in the following section as I explore Raz's account of authority and legitimacy, but the fundamental idea is that a justified and legitimate state is a satisficing political institution which *ought* to be endorsed (hypothetical consent) because of its ability to solve coordination problems and thus lead to increased utility over non-state solutions. The Lockean intuition that *actual* political histories should be acknowledged can also be appropriated by the utilitarian account. While the Kantian does not seem to be able to accommodate the idea that actual political histories are important, the utilitarian *is* able to as "facts about the nature of an institution's actual relationship with particular individuals" play a significant role in the sort of future actions (both on the part of the state and individual citizens) that will increase utility (Simmons, 2001, p. 149). Utilitarianism seems to have the advantage

here over a Kantian ethics that takes certain actions to be always right or wrong and bases questions of state justification on a certain ideal (reasonable hypothetical agreement). Alternatively, the utilitarian can contend that certain states ought to be endorsed (hypothetical consent) because of their ability to solve coordination problems and lead to increased utility over non-state solutions *while also contending* that the morally right action (for individuals or governments) is one which takes seriously the *actual circumstances* and *facts about political histories* as these influence the expectations and desires of the individuals involved and will ultimately influence the utilitarian calculations. In order for a state to be of the type which ought to be chosen over non-state alternatives, the state must have the moral right to use coercive power in creating and sustaining an environment that is better than non-state alternatives and which is also morally restricted in the use of its power by current and contingent circumstances which have effects on future consequences and the utilitarian calculations.

Simmons would most likely continue to contend that even if the arguments for the necessity of the state are granted, states can function without the *unanimous* participation of everyone living within a certain territory. He writes:

> While it may be more convenient for states to simply impose political duties on all within the territories they claim it would certainly be possible (and perhaps even optimific) for states to enforce fair rules that severely limit the political duties of unwilling subjects (as well as the political benefits they receive, while still protecting and doing justice for their willing citizens. (Simmons, 2001, p. 152)

This argument against the Kantian's hypothetical consent account of justification and legitimacy is also open to a response by the utilitarian. The utilitarian account, as it strives to accommodate components from both the Kantian and Lockean, can admit that

Simmons is correct in his contention that it is possible for a state to limit the scope of the laws and duties it imposes, and admit that in these circumstances this may be the right thing for the political institutions to do. However, this is going to be a contingent matter. In some circumstances the right thing for a state to do may be to enforce very restrictive and encompassing laws and duties. If the said state meets the specifications for justified and legitimate authority (to be discussed further in the following section), then those who are subject to its laws will have moral reasons/obligations to follow the laws. While the Kantian position seems to be too strong in its supposition that the state is *morally necessary*, Simmons' Lockean position seems to be equally too strong (at the opposite extreme) in its supposition that a morally justified state *can never* rightfully impose duties on individuals within its territory without the consent or willing acceptance of benefits from those individuals.

This examination of the "Kantian" linking of moral justification and state legitimacy has illuminated possibilities, somewhat surprisingly, for the utilitarian account being developed. Establishing a state, which can enact laws and solve coordination problems, is a moral obligation for individuals. In utilitarian terms, when groups of people are living in close proximity, aggregate utility can only be maximized when certain types of actions are coordinated and norms are established; thus, each individual, in so far as he or she can do something to bring it about, has a utilitarian obligation to maximize utility by taking part in forming a state.[168] This utilitarian adaptation seems to

---

[168] Jean Hampton seems to have a similar view: Political authority "is invented by a group of people who perceive that this kind of special authority is necessary for the collective solution of certain problems of interaction in their territory and whose process of state creation essentially involves designing the content and structure of that authority so that it meets what they take to be their needs" (Hampton, 1998, p. 77). Also see Buchanan 2002.

have the advantage over the Kantian framework in that it is able to make sense of the "Lockean" claim that *actual* interactions are also important in evaluating a state and what it can rightfully coerce individuals to do who are living in its territory. In the following section I will continue to explore accounts of authority and legitimacy for further conceptual resources to bolster my utilitarian account.

4.2 Raz's Normal Justification Thesis

As one of the most prominent contemporary legal, moral, and political philosophers, and one who offers a moralized account of authority, justification, and legitimacy, Joseph Raz seems to be a fairly obvious theorist to examine for ideas which are intuitive and compatible with a utilitarian framework. I take Raz's account of authority and legitimacy, as presented in his book *The Morality of Freedom*, to be closely connected to a utilitarian understanding of the hypothetical contract accounts discussed in the previous section. In this section I will first examine Raz's account; then I will argue that certain components of his theory provide a strong foundation for a utilitarian account; and I will conclude by considering and responding to some possible objections to this utilitarian adoption of Raz's non-utilitarian theory.

Raz begins his book by arguing that not every power amounts to an authority and that authority is *more than* justified use of coercive power. He uses an example of a neighbor threatening another neighbor in order to stop them from growing tall trees on the property line. Raz takes it to be clear that this use of power is not authoritative because it would imply that we would all have "authority" over almost everybody. Raz also denies that even if this use of power is justified (i.e., the individual has a

"justification-right" to make the threat) that it would be authoritative. An individual's justification-right does not imply any duty to obey (as a "claim-right" does), it merely means that no wrong is done in making the threat but that this is also compatible with the one being threatened having a right to resist (Raz, 1986, p. 24-25). Raz writes:

> The exercise of coercive or any other form of power is not exercise of authority unless it includes an appeal for compliance by the person(s) subject to the authority. That is why the typical exercise of authority is through giving instructions of one kind or another. But appeal to compliance makes sense precisely because it is an invocation of the duty to obey. (Raz, 1986, p. 25-26)

De facto authorities claim the right to impose such duties and are effective in their control, which requires a "high degree of acquiescence," but an authority is *de jure* or legitimate "only if and to the extent that their claim is justified and they are owed a duty of obedience" (Raz, 1986, p. 26).

Raz contrasts this account with, what he calls, the recognitional conception of authority which claims that, "to accept an utterance as authoritative is to regard it as a reason to believe that one has a reason to act as told" (Raz, 1986, p. 29). This conception takes practical authorities, and therefore political authorities, to be a special kind of theoretical authority as they affect reasons for belief but not reasons for action. Raz takes this recognitional conception to be fundamentally flawed because it, "leads to the no difference thesis, i.e. The view that authority does not change people's reasons for action" (Raz, 1986, p. 30). Raz argues that the "no difference thesis" must be rejected, and I agree with him on this point, because it fails "to explain the role of authority in the solution of co-ordination problems" (Raz, 1986, p. 30). It seems that solving coordination problems, that is, problems where the interest of the group is in coordinated

action (such as which side of the road people will drive on), is one primary task of practical and political authorities. When there are multiple, equally acceptable options for coordinating action (e.g., driving on the left or the right) then the authority designates the option to be followed. The best way to make sense of this kind of authoritative dictate is as a reason for action, and then authorities *do* affect the balance of reasons and the no difference thesis must be rejected.

In addition to being reasons for action, Raz, following Hart, contends that authoritative utterances are also content-independent. Raz explains this idea of "content-independence" when he writes:

> A reason is content-independent if there is no direct connection between the reason and the action for which it is a reason. The reason is in the apparently 'extraneous' fact that someone in authority has said so, and within certain limits his saying so would be reason for any number of actions, including (in typical cases) for contradictory ones. (Raz, 1986, p. 35)

For example, an authority may command or order someone to leave *or* to stay in a room. The reason for performing the particular action is *because the authority has commanded it to be done* (or not done).[169] In saying that authoritative commands are content-independent reasons, Raz is not saying that the command is arbitrary, or not based on any reasons; in fact, Raz takes authoritative commands to be importantly *dependent* on reasons which already apply to the subjects of the command. It is this idea that forms the first of three normative theses that constitute Raz's account of morally justified authority.

---

[169] Raz differentiates content-independent orders and commands from other content-independent reasons for action. He contends that orders and commands are different from promises and vows in that the latter are always reasons for a *particular* individual. He also contends that threats and offers are different in that they are reasons for *belief* that certain events will happen (or not happen), not reasons for *action* (Raz, 1986, p. 35-36).

Raz calls this first normative thesis the "dependence thesis" (DT). This thesis explains how authoritative commands are related to the preexisting reasons pertaining to its subjects and is also intended as a normative directive for authorities (i.e., how they ought to make laws):

> *[A]ll authoritative directives should be based on reasons which already independently apply to the subjects of the directives and are relevant to their action in the circumstances covered by the directive.* (Raz, 1986, p. 47)[170]

In his explanation of this thesis Raz offers an example of what he takes to be a, not untypical, contextualized functioning of authority. Raz asks his readers to consider a case in which two people take a dispute to an arbitrator to settle. Raz takes it that, as the authority, the arbitrator's decision in the case will be a reason for action for the disputants and that the arbitrator's decision, again as the authority, should be based on the reasons which already apply to the case and disputants (Raz, 1986, p. 41). Raz says that the decision is "meant to be based on the other reasons, to sum them up and to reflect their outcome" (Raz, 1986, p. 41). The order of the arbitrating authority becomes a reason for action that reflects the already applicable (dependent) reasons. Raz believes the DT leads directly to his second normative thesis - the "pre-emptive thesis" (PT).

Raz argues that the example of the arbitrator and disputants also highlights the second normative feature of his account - authoritative commands provide reasons for

---

[170] Raz makes clear, and I think it is important to point out, that this thesis does not entail what he calls the *no difference thesis*. Recall from earlier in this section, the *no difference thesis* asserts that "the exercise of authority should make no difference to what its subjects ought to do, for it ought to direct them to do what they ought to do in any event" (Raz, 1986, p. 48). In contrast to this, the dependence thesis allows for authority to make a difference in what its subjects ought to do by establishing conventions which *specify* courses of action that solve coordination problems and fulfill the subjects' preexisting *general* reasons.

action that *pre-empt* or displace the reasons they are dependent on. The PT claims that legitimate authorities create pre-emptive reasons for their subjects:

> *[T]he fact that an authority requires performance of an action is a reason for its performance which is not to be added to all other relevant reasons when assessing what to do, but should exclude and take the place of some of them.* (Raz, 1986, p. 46)

Raz takes the PT and the DT to be intimately connected; since "the arbitrator is meant to decide on the basis of certain reasons, the disputants are excluded from later relying on them" (Raz, 1986, p. 42). This "intimate connection" between the two theses, as well as the viability of the PT, will be explored in greater detail, and ultimately rejected, later in the section. For now I will focus on exploring the remainder of the work Raz does in supporting and motivating these two theses with some clarifying comments intended to remove possible misunderstandings.

First, Raz makes clear that with the DT he is *not* making the claim that authorities *always* act on the pre-existing reasons of its subjects, merely that they *should* act on these reasons (Raz, 1986, p. 47). He makes clear that his intention is to offer an account of legitimate authority through an exploration of the *ideal* exercise of authority. Despite the fact that real authorities fall short of this ideal, Raz believes that they must be understood through their ideal functioning (Raz, 1986, p. 47). Second, with the shortfalls of reality in mind, Raz makes clear that authoritative commands are not binding only if they "correctly reflect the reasons on which they depend" (Raz, 1986, p. 47). In clarifying what he takes the point and purpose of authorities to be, Raz reiterates that authorities create reasons for action, which are *pre-emptive*, and that this is only possible if "their determinations are binding even if mistaken" (Raz, 1986, p. 47). Third, Raz

reemphasizes that the DT *does not* entail the "no difference thesis." Authorities often do make a difference in the balance of reasons by solving coordination problems and making one course of action "the one that ought to be chosen" which was previously just an equally acceptable option among others. Relatedly, authorities are able to eliminate prisoner's dilemma type situations by coordinating action and changing the situation that individuals find themselves in. Fourthly, Raz clarifies that authoritative directives *can* be arrived at by the authority reflecting on the reasons which apply to its subjects and giving commands in direct accordance with these pre-existing reasons, but points out that this is not the only, nor always the best, way of meeting the dependence requirement (Raz, 1986, p. 51). Raz writes:

> Sometimes the best way to reach decisions which reflect the reasons which apply to the subjects is to adopt an indirect strategy and follow rules and considerations which do not themselves apply to the authority's subjects. Sometimes, in other words, one has to act for non-dependent reasons in order to maximize conformity to dependent reasons. (Raz, 1986, p. 51)

In the attempt to reflect the pre-existing dependent reasons in their directives, authorities may sometimes (or often) need to base commands on reasons which do not apply to the subjects but which will more reliably lead to the subjects following the dependent reasons. These clarifications are intended by Raz to solidify the DT and PT in preparation for the third normative thesis in his account.

While Raz's dependence thesis "is a moral thesis about the way authorities should use their power," the final thesis in the triad concerns how the legitimacy of authority is normally to be established. Aptly, he calls it the "normal justification thesis" (NJT):

> *[T]he normal way to establish that a person has authority over another person involves showing that the alleged subject is likely better to comply with reasons which apply to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly.* (Raz, 1986, p. 53)

Raz admits that there are obviously other reasons and grounds for recognizing an authority as legitimate and accepting its directives, but he insists that this is the *normal* way and that other reasons or grounds are "deviant" and do not necessarily track this normative account. Likening legitimate authoritative directives to advice, Raz argues that just as the *normal* reason for accepting a piece of advice (qua 'piece of advice') is that it is good information which will help one in acting correctly, similarly, an authority is legitimate if its directives make it more likely that the subjects following them will comply with reasons for action already applying to them. This ideal can be met to a greater or lesser degree, but for a *complete* (ideal) justification of authority, Raz contends that there cannot be any reasons *against* the acceptance of authority that defeat the necessary reasons for *accepting* the authoritative directive. Raz cites two examples of such reasons that may outweigh the claim to complete justification: 1) "there is another person or institution with *a better claim* to be recognized as an authority," and 2) in certain circumstances it may be more intrinsically desirable for individuals to conduct "their own life by their own lights" (Raz, 1986, p. 57) (emphasis added). In order for an authority to have complete justification there must be "justificatory considerations sufficient to outweigh such counter-reasons" (Raz, 1986, p. 57).

These theses, the NJT and the DT, are the primary normative forces in Raz's "service conception of authority" and are importantly interconnected:

> The dependence and the normal justification theses are mutually reinforcing. If the normal and primary way of justifying the legitimacy of an authority is that it is more likely to act successfully on the reasons which apply to its subjects then it is hard to resist the dependence thesis. It merely claims that authorities should do that which they were appointed to do. Conversely, if the dependence thesis is accepted then the case for the normal justification thesis becomes very strong. It merely states that the normal and primary justification of any authority has to establish that it is qualified to follow with some degree of success the principles which should govern the decisions of all authorities. Together the two theses present a comprehensive view of the nature and role of legitimate authority. They articulate the service conception of the function of authorities, that is, the view that their role and primary normal function is to serve the governed. (Raz, 1986, p. 55-56)

I take these two interconnected theses (the NJT and DT) to be strong candidates for adoption and integration into a broad utilitarian framework of ethical and political theories. I will continue to develop this idea at the end of this section by offering further motivation for accepting the theses and responding to possible objections (Razian and otherwise). This development will also continue into the following section and serve as one of the foundations in the culmination of my utilitarian account of political obligation (found in the fifth and final chapter). However, before this can be accomplished it is first necessary to examine how Raz applies this "service conception of authority" (SCA) to the *authority of states*.

In the early development of his SCA, Raz focuses on the relation between *individuals* who are authorities over other *individuals*. He anticipates that this will be concerning to some because political authorities are often not individuals and they govern *groups* of people. In response, Raz argues his account is able to accommodate this seeming difference in the relation between authority and subject. As far as political authorities almost always being composed of many individuals, each serving a role

within the political and governmental structure, Raz does not see this as problematic for his account. Roughly, he understands *the state* to be "the political organization of a society," *its government* as "the agent through which it acts," and *the law* as "the vehicle through which much of its power is exercised" (with the law "requiring," "permitting," "claiming," "authorizing," etc.) (Raz, 1986, p. 70). With this rough understanding of political structure it would be the government which would be eligible to fulfill the role of an authority over its citizens and its laws as the authoritative dictates. As Raz's SCA maintains that an authority is legitimate if its subjects, in following the authority's dictates, are more likely to "act successfully for the reasons which apply to [them] than if [they do] not subject [themselves] to its authority" (Raz, 1986, p. 71). This says nothing about *what kind of entity* the authority must be in order to meet these criteria. If a government, constituted by a *group* of individuals, makes laws that allow citizens to act according to the reasons which already apply to them, then it would be a legitimate political authority. Raz also does not see the fact that political authorities govern groups of people as problematic for his account. In fact, he believes his account of authority is able to explain group authority "on the basis of authority relations between individuals" (Raz, 1986, p. 71). Raz does not think that it can be claimed an authority is legitimate or an individual dictate is justified because it "serves the public interest" (Raz, 1986, p. 72). Instead, Raz takes politically authoritative directives to be justified by

considerations (reasons) that are binding on the individual subjects and not some abstract "public interest" (Raz, 1986, p. 72).[171]

This focus in Raz's account on the relation between a political authority and *individual* subjects sets up one of the more controversial aspects of his theory. While Raz does understand political authority as being *general*, because "Authority is based on reason and reasons are general, therefore authority is essentially general," he also thinks that the scope of the authority is extremely flexible (Raz, 1986, p. 73). Raz writes:

> [T]he thesis allows maximum flexibility in determining the scope of authority. It all depends on the person over whom authority is supposed to be exercised: his knowledge, strength of will, his reliability in various aspects of life, and on the government in question. These factors are relevant at two levels. First they determine whether an individual is better likely to conform to reason by following an authority or by following his own judgment independently of any authority. Second they determine under what circumstances he is likely to answer the first questions correctly. (Raz, 1986, p. 73)

Raz admits that this conclusion appears paradoxical; for it seems that good laws issued by a just government would apply to all citizens living under that government (Raz, 1986, p. 74). In other words, it seems that if political authority is essentially general, as Raz accepts, that *anyone* who is subject to *any part* of the authority would be subject to all of its directives. Raz argues that these doubts arise from a "failure to appreciate the many ways in which the communal character of political authorities affects their claim to legitimacy *vis-à-vis* each individual" (Raz, 1986, p. 74). Raz lists five reasons that are

[171] Raz does accept, in some circumstances, that "public schemes" can be justified even when they require individuals to sacrifice *more* than they have independent reason to sacrifice. He writes, "sometimes when we say that every person is only required to sacrifice a little we mean that the antecedently expected sacrifice is small, i.e. that the odds that he will have to sacrifice a lot are small. But [if] the scheme is a good one, and [if] it is only viable if some people sacrifice a lot, it is a justified scheme, even though one may be called upon, according to fair procedures, to contribute much more than the antecedently expected sacrifice. Reasoning along such lines is necessary to bridge the gap between the public and the private aspect of authority" (Raz, 1986, p. 72).

capable of establishing the legitimacy of an authority which are most common in the political context:

1. The authority is wiser and therefore better able to establish how the individual should act.
2. It has a steadier will less likely to be tainted by bias…
3. Direct individual action in an attempt to follow right reason is likely to be self-defeating. Individuals should follow an indirect strategy…
4. Deciding for oneself what to do causes anxiety, exhaustion, or involves costs in time or resources the avoidance of which by following authority does not have significant drawback, and is therefore justified…
5. The authority is in a better position to achieve (if its legitimacy is acknowledged) what the individual has reason to but is in no position to achieve. (Raz, 1986, p. 75)

These common reasons, which establish authoritative legitimacy, are fairly straightforward and line up with the NJT. When an authority's directives help a subject better act according to their reasons, then that authority is legitimate. However, Raz argues, as individuals' knowledge, skills, strength of character, etc. differ, so do their reasons for acknowledging the government's authority over him or herself on certain areas (Raz, 1986, p. 78). Raz emphasizes that this flexibility does not depend on how just the particular law may be, it is based on the particular reasons, expertise, etc. of each individual subject. He explains that "because of the bureaucratic necessity to generalize and disregard distinctions too fine for large-scale enforcement and administration, some people are able to do better if they refuse to acknowledge the authority of [some particular laws]" (Raz, 1986, p. 78). Raz's conclusion is that the authority of governments is piecemeal because it varies from individual to individual and, for most people, is narrower than the governments and laws claim (Raz, 1986, p. 80). This flexibility in the scope of authoritative directives plays a significant role in Raz's views

concerning political obligation. I will examine, and argue against, his views on political obligation shortly, but first I will address some of the disagreements between Raz and myself that I take to be more fundamental (and which ultimately lead to our disagreement about political obligations).

While I disagree with Raz's conclusion that the scope of a political authority is flexible (varies from individual to individual for each dictate), I agree with one of the intuitions which seems to be motivating (or contained in) the view - political directives (laws) seem to apply more strongly or weakly as reasons for action to some individuals (over others) in certain circumstances.[172] Where is the disagreement if it is not in the idea that the strength of legal normativity varies from individual to individual? It seems that the disagreement stems fundamentally from my disagreement with his pre-emptive thesis.[173] I will be using the remainder of this section to explore Raz's PT in greater detail, argue for a utilitarian adoption of the DT and NJT while simultaneously *rejecting* the PT, and respond to potential objections.

---

[172] Raz's example of the person with "wide and reliable knowledge of cars, as well as an unimpeachable moral character," seems to support my idea that Raz would agree with this very general intuition (Raz, 1986, p. 78). Raz writes, "He [the car person] may have no reason to acknowledge the authority of the government over him regarding the road worthiness of his car" (Raz, 1986, p. 78).

[173] It must be noted that *I do* agree with another feature of Raz's theory (which he sees as somehow related to his flexibility thesis). Raz offers a brief argument supporting the idea that *de facto* authority (effective power) is necessary but not sufficient for legitimate authority. Raz writes, "[T]o the extent that political authority is justified by its ability to co-ordinate the activities of large populations, the vindication of its claim to authority over any one individual may depend on its having legitimate authority over the population at large… It seems plausible to suppose that unless a person enjoys or is soon likely to acquire effective power in society he does not possess legitimate political authority over that society. He may deserve to have such authority. It may be better if he acquires it. He may even have a right to have it. But he does not as yet have it. One crucial condition which, in the case of political authorities governing sizeable [sic] societies, is necessary to establish their legitimacy, does not obtain. That is the ability to co-ordinate the actions of members of the society in cases in which they have reason to co-ordinate their actions, and the ability to do so better than they can. That ability requires effective power over them. It is itself required for the fulfillment of the task we usually associate with political authority. While effective power may be a necessary condition of political legitimacy it is not a sufficient condition… The wicked governments we have known throughout history are evidence of this" (Raz, 1986, p. 73-76).

Recall Raz's PT - "authoritative reasons are pre-emptive: *the fact that an authority requires performance of an action is a reason for its performance which is not to be added to all other relevant reasons when assessing what to do, but should exclude and take the place of some of them*" (Raz, 1986, p. 46). A legitimate authoritative directive, Raz contends, creates a reason for action for the subjects of the directive "which replaces the reason on the basis of which [the authority] was meant to decide" (Raz, 1986, p. 42). Raz argues that the service conception of authority (the DT and NJT) leads to the PT. Just as a rule relates to its justification, Raz argues, a legitimate authoritative directive has the same relation between its status as a reason for action and its justification. He offers the example of the social rule of introductions as an attempt to explain this idea:

> Consider the rule that, when being with one person and meeting another, one should introduce them to each other. The fact that this rule is a sound, valid or sensible rule is a reason for anyone to act in accordance with it. It is a sound rule because it facilitates social contact. But the fact that introducing people to each other in those circumstances facilitates social contacts is itself a reason for doing so. (Raz, 1986, p. 57-58)

This seeming "double reason" for social introductions prompts Raz to ask whether we have two independent reasons for introducing people, the reason that there is a sensible rule which requires it *and* the justifying reason for this rule (i.e., that it will facilitate social contacts)? Raz thinks that there are "clearly not" two independent reasons because "the reasons for the rule cannot be added to the rule itself as additional reasons… to do otherwise is to be guilty of double counting" (Raz, 1986, p. 58). He argues that the role of rules in practical reasoning is as a *mediator* between deeper-level considerations (Raz, 1986, p. 58). If they are taken as independent reasons to be counted alongside the deeper,

justifying reasons, then they would seem to be failing in performing their function. Raz concludes that since the bindingness of authoritative directives comes from the dependent reasons which the directives should be based on, then these underlying reasons must be "replaced rather than added to by those directives" (Raz, 1986, p. 59).

Raz takes the time to consider two related objections to the PT. The first alleges that the PT claims too much in its assertion that authoritative directives pre-emptively replace even those dependent reasons which *should have* been determining factors but which the authority *failed* to consider (Raz, 1986, p. 60). Raz argues that this objection fails because it fails to take into account the full generality of the NJT. He writes, "An authority is justified, according to the normal justification thesis, if it is more likely than its subjects to act correctly for the right reasons. That is how the subjects' reasons figure in the justification, both when they are correctly reflected in a particular directive and when they are not" (Raz, 1986, p. 61). His position seems to be that the purpose and advantage of accepting authoritative directives would be lost if it were open to challenge "every time it failed to reflect reason correctly" (Raz, 1986, p. 61). The second, closely related, objection Raz considers alleges that "in every case authoritative directives can be overridden or disregarded if they deviate much from the reasons which they are meant to reflect… [but] such a limitation defeats the pre-emption thesis since it requires every person in every case to consider the merits of the case before he can decide to accept an authoritative instruction" (Raz, 1986, p. 61). In his response to this objection Raz explains that he does not see this as a formal challenge to the PT (i.e., it does not claim that authoritative directives don't replace dependent reasons) but simply as a denial that

authoritative directives can serve a mediating role between practical reasoning and foundational reasons (Raz, 1986, p. 61). Raz argues that this objection fails because it confuses a *great mistake* with a *clear mistake*. He describes a *clear* mistake as one which is evident without having to even examine the process arrived at to reach the solution (e.g., a long addition problem consisting of only integers and reaching a solution which is a decimal). Alternatively, a *great* mistake is one which is not detectable without laboriously going through the entire process used to reach the solution (Raz, 1986, p. 62). Raz says that "even if legitimate authority is limited by the condition that its directives are not binding if clearly wrong… it can [still] play its mediating role. Establishing that something is clearly wrong does not require going through the underlying reasoning" (Raz, 1986, p. 62). While Raz is willing to allow that an authoritative directive may not be binding if it is clearly wrong, Raz also accepts that authoritative directives are not binding if they make any *jurisdictional* mistakes (i.e., mistakes concerning the extent of their authoritative jurisdiction). Mistakes that are neither clear nor jurisdictional, Raz contends, do not affect the binding force of authoritative directives because they are pre-empted by the mediating role of authority.

I believe the NJT and DT are strongly intuitive theses that are able to ground an account of justified and legitimate authority. It also seems fairly simple for a utilitarian account to adopt these ideas. Roughly, a utilitarian spin on these two theses (the DT and NJT) would resemble an indirect utilitarian doctrine in which political justification and legitimacy is based on the government's ability to maximize aggregate utility through legal directives (in other words, subjects are more likely to do what they ought to do if

they follow the authority's directives). However, in opposition to Raz, I believe objections similar to the ones he considers, which do *formally* challenge the PT, pose a larger problem for Raz than he admits or acknowledges. If Raz were to accept that *all* authoritative directives pre-emptively excluded subjects' other reasons for action, then he would have a consistent, and extremely Hobbesian, position. This type of account would deny that there is a distinction to be made between *de facto* and *de jure* authority as *any* directive offered by an effective power would be pre-emptively binding. This is a radical position and one that Raz obviously does not want to endorse.[174] Raz's project is explicitly about offering an account that explains what makes an authority *justified* and *legitimate*. Consequently, there appears to be tension and/or inconsistency in his account. In developing his account of justified and legitimate authority Raz must spell out the limits of authoritative power and in doing so he must offer an explanation of how an authority and its subjects are to establish the extent of the authoritative jurisdiction and, relatedly, when subjects ought to accept authoritative directives. In his responses to the above objections Raz claims to be placing limits on authority by excluding directives which are clear/obviously mistaken and those which make jurisdictional mistakes (i.e., ask for more than is justified). Theoretically this places limits on authorities, but actionably it says very little. Authorities are normatively required (by the DT and NJT) to act in ways which allow its subjects to better comply with pre-existing reasons, but the PT seems to restrict subjects' ability to determine when an authority is accomplishing these criteria and is justified and legitimate. The PT seems to *exclude* all pre-existing

---

[174] It is not even clear that Hobbes would want to endorse such a strong position as he does seem to offer rational advice to sovereign powers and place these sorts of "rational limits" on what ought to be commanded.

reasons once a directive is given and thus undercut the ability for subjects to justifiably question the authority. Raz's discussion of clear and jurisdictional mistakes limiting the bindingness of an authority's directives is his attempt to outline *de jure* use of authoritative power, but this does not do enough. The jurisdiction of a truly *political* authority would seem to be quite large and the PT seems to restrict almost all pre-existing reasons from being justifiably relied upon by subjects in questioning or even establishing the jurisdictional range of the authority.[175] It is also far from obvious what a "clear mistake" would look like in political settings. If neither of the limits Raz places on authority can actionably restrict the authority, then his account seems to slip into the realm of Hobbesian theories. Again, this is *not* where Raz wants his theory to go, and so he attempts to put in place additional ways which authoritative directives can be challenged. However, as I will attempt to show, these legitimate ways of challenging authority also seem to be ultimately barred by the PT.

It appears as though Raz may be aware of this tension within his account because he makes two very brief attempts to explain additional circumstances in which an authority's commands may be legitimately challenged. The first attempt appears immediately after he presents the example of the arbitrator. Raz writes:

> It is not that the arbitrator's word is an absolute reason which has to be obeyed come what may. It can be challenged and justifiably refused in certain circumstances. If for example, the arbitrator was bribed, or was drunk while considering the case, or if new evidence of great importance

---

[175] Margaret Martin pushes a similar objection concerning tension in Raz's account in her article "Raz's *The Morality of Freedom*: Two Models of Authority." She writes, "The tension between the pre-emption thesis and the normal justification thesis is apparent when one bears in mind that for Raz, only morally legitimate legal norms have pre-emptive force. Indeed, when explaining the pre-emptive thesis, he states that only legitimate directives provide us with reasons for action. Consequently, the *very act of determining whether the norm meets the normal justification standard undermines the pre-emptive force of the norm(s) in question*" (Martin, 2010, p. 68).

> unexpectedly turns up, each party may ignore the decision. (Raz, 1986, p. 42)[176]

This *seems* to be exactly the type of restriction on authority I am calling for so that Raz can avoid his theory becoming a Hobbesian theory. However, Raz's responses to the previous objections restrict the force of these seemingly straightforward challengeability conditions. To remain consistent with his previous responses Raz would have to hold that the arbitrator's directive is pre-emptively binding *even if* the arbitrator was drunk or bribed *if* the arbitrator met the NJT (i.e., if the arbitrator's directive allowed the disputants to better act on the pre-existing reasons). Even if "new evidence of great importance" turned up after the directive was issued it seems that Raz, to remain consistent with his earlier responses, would have to say that this new evidence is exactly the same as reasons an authority *should have* taken into account *but failed to do so*. Raz claims that as long as the authority meets the NJT then the directives pre-emptively exclude the dependent reasons, *even those dependent reasons which should have figured into the decision but were not in fact considered.* As a result of holding the PT there is tension in any attempt by Raz to place restrictions on the pre-emptive power of authoritative directives (as long as that authority satisfies the NJT).[177]

---

[176] Martin argues that the tension between the PT and NJT is even evident in Raz's example of the arbitrator as he implicitly references the PT, directly references the DT, but fails to mention the NJT (Martin, 2010, p. 70).

[177] Raz *attempts* to qualify the above quote concerning bribery, drunkenness, and new evidence when he writes, "Note that there is no reason for anyone to restrain their thoughts or their reflections on the reasons which apply to the case, nor are they necessarily debarred from criticizing the arbitrator for having ignored certain reasons or for having been mistaken about their significance. It is merely action for some of these reasons which is excluded" (Raz, 1986, p. 42). Again however, this qualification seems to be excluded by the PT. It seems that "reflecting on reasons" and "criticizing the arbitrator" are both actions which are performed and the *reasons for their performance* would be reasons which, on Raz's PT account, would be pre-emptively excluded. Subjects *do not* appear to be able to question authoritative directives because all the reasons which could justify performing the action of "challenging the directive" are pre-emptively excluded by the directive itself.

Raz's second attempt to include challengeability conditions is equally as problematic for his broader project of offering an account of political authority. Raz writes:

> Furthermore, authoritative directives are not beyond challenge. First, they may be designed not finally to determine what is to be done in certain circumstances but merely to determine what ought to be done on the basis of certain considerations. For example, a directive may determine that from the economic point of view a certain action is required. It will then replace economic considerations but no others… Even where an authoritative decision is meant finally to settle what is to be done it may be open to challenge on certain grounds, e.g. if an emergency occurs, or if the directive violates fundamental human rights or if the authority acted arbitrarily. (Raz, 1986, p. 46)

This limited sort of authoritative directive that restricts its pre-emptive scope to cover only a specified group of reasons (e.g., economic reasons) is an interesting idea and would be a valuable tool for authorities to have in controlling their power, but it does not seem to apply in the vast majority of cases concerning *political authority*. In most cases where governments are issuing laws, the dictate is intended to settle what ought, or more typically, what ought not be done (with certain exceptions usually being allowed). If political authorities are general in this non-reason specific sort of way, then it seems that even in cases of emergencies, authoritative directives that violate human rights, arbitrary directives, etc., any reason one has which would justify challenging or ignoring the dictate would be pre-emptively excluded as a legitimate reason for action on Raz's PT. This conclusion is unpalatable to me and should also be to Raz since he is explicit that his goal is to offer an account that explains the conditions necessary to make a *de facto*

authority a *legitimate* authority (*de jure*).[178] By arguing that there is a fundamental tension between the NJT and PT, and contending that it is the pre-emptive claim of the PT that is an unreasonable source of the tension, I am *not* claiming that people should never make a pre-commitment to accepting legal directives as a mediation in an indirect strategy to follow right reason. In chapter five I will actually be arguing that this approach will usually lead to better consequences. What I am objecting to in Raz's account is his strong claim that our fundamental reasons are pre-emptively excluded from practical reasoning (and possibly even replaced metaphysically) when an alleged authority gives a directive. There is a fundamental tension between his seemingly primary account of authority (the NJT and DT) and his pre-emptive thesis concerning authoritative reasons. In determining whether an authority and/or specific dictates are justified and legitimate (i.e., meet the NJT) the PT is undermined. While Raz takes legitimate authority and the bindingness of directives to be piecemeal and to vary from individual to individual there does not seem to be any way to reconcile his call to test the legitimacy of the authority afresh for each person (and for each directive) with his claim that the dependent reasons which this test would evaluate are pre-emptively excluded from consideration.

One may wonder, if authoritative dictates do not provide pre-emptive reasons for action than what do they do? I believe the answer to this question is that authoritative

---

[178] Martin also effectively and concisely responds to a possible initial objection against the "tension argument" I have been offering. She writes, "One might argue that the pre-emption thesis is a practical thesis while the normal justification thesis is merely theoretical. Because the theses operate on different planes, they cannot come into conflict. There are two obstacles to this interpretation. The first is textual. Raz explicitly identifies the tension (Raz, 1986, p. 46)… and offers various arguments in an attempt to diffuse it. Such arguments would not be required if the normal justification thesis was meant to be merely theoretical in nature. Indeed, Raz explicitly states that only legitimate directives give us reasons for action, thereby endowing the normal justification thesis with practical significance" (Martin, 2010, p. 65).

dictates are simply additional reasons for action that must be added to the dependent reasons for action which they should be reflecting (DT). The strength of these reasons will vary depending on how well the authority meets the NJT (i.e., how much more likely subjects are to comply with their pre-existing reasons for action if they accept the directives). In the development of his tripartite normative account, Raz considers, and rejects, this position concerning authoritative reasons. I will take this time to examine and respond to his rejection of this position.

Raz characterizes the position as one that holds "that whatever other reasons there may be for a certain action, its being required by the authority is an additional reason for its performance… This means no more than that the authoritative requirement is an additional factor" (Raz, 1986, p. 41). Raz takes this type of account to be too weak in its characterization of how authoritative directives factor into practical reasoning. This is where Raz uses the example of social norms/rules (discussed previously) to argue that a sound, valid, or sensible social rule does not function as *an additional reason* for an action but *replaces* the reasons that justify the rule (Raz, 1986, p. 57-58). Raz argues that there are "clearly not" two independent reasons because "the reasons for the rule cannot be added to the rule itself as additional reasons… to do otherwise is to be guilty of double counting" (Raz, 1986, p. 58). However, this objection to "double counting" does not seem to be problematic in the way Raz argues. In fact, it seems as though the idea that authoritative directives offer independent reasons for performing action (which must be *added* to dependent reasons) more closely matches common intuitions and explains

certain features of practical reasoning. If we take Raz's example of rules concerning social introductions I think we find this idea emerging.

Imagine a scenario in which the social rule of introducing people *fails* to fulfill its role in facilitating social contact (for example, if the individuals already know one another); it still seems as though there is *a reason* for making the introduction (prior to realizing that the individuals already know one another). The reason for making the introduction seems to be that the action typically facilitates social contact. In this case, as opposed to a more normal case where the introduction does facilitate social contact, the reason supporting making the introduction is outweighed by competing reasons but there still seems to be *a* reason which is independent of competing and justifying reasons. This appears to be even more obvious when considering authoritative directives (e.g. legal directives). Imagine a case in which an otherwise fully legitimate political authority makes a dictate which does not reflect any dependent reasons or is completely wrong about the reasons it believes are being reflected (e.g., an arbitrary law requiring that chewing gum only be watermelon flavored). As long as there is not too severe of a penalty for breaking this law then it seems as though the authoritative directive would be extremely easily outweighed by competing reasons but should also still be considered *a* reason to not make non-watermelon flavored gum. If it *is* a reason then legitimate authoritative directives cannot be pre-emptive reasons for action because in this case there are no dependent reasons for the directive to pre-empt. Raz may respond by claiming that this would be an example of a "clear mistake" and thus the directive is not binding (and not pre-emptively replacing any dependent reasons). However, this

response relies on the NJT and the PT being compatible and we have just seen that these two theses seem to be in tension with one another. The above example may even further highlight the tension between the two theses as the political authority in the example is imagined as being ideally justified/legitimate apart from this one big mistake. With this nearly ideal legitimacy, the directive would pre-emptively exclude all reasons that could be relied upon to challenge the dictate. As Raz takes authoritative directives to only be pre-emptively binding if they are morally justified (i.e., meet the NJT), it becomes very difficult to maintain the exclusionary relationship because in determining whether a directive is morally justified one must examine the dependent reasons that the directive is reflecting (Martin, 2010, p. 69). In other words, in determining what one ought to do it seems one must examine the reasons for action which the authoritative directive is supposed to pre-emptively replace.

Raz concludes this discussion concerning why he takes authoritative directives to *supplant* rather than *supplement* the dependent reasons by drawing a general conclusion. He explains that:

> If another's reasoning is usually better than mine, then comparing on each occasion our two sets of arguments may help me detect my mistake and mend my reasoning. It may help me more indirectly by alerting me to the fact that I may be wrong, and forcing me to reason again to double check my conclusion. But if neither is sufficient to bring my performance up to the level of the other person then my optimific course is to give his decision pre-emptive force. (Raz, 1986, p. 69)

I believe this way of framing the "general lesson" is actually the beginning of a concession in Raz's stance concerning the PT. In the quote above Raz is only talking about a *decision procedure* and not some stronger thesis in which authoritative directives

create metaphysically exclusionary reasons. I can agree with Raz that it may be the case people ought to often follow authoritative directives because they do a better job at reflecting pre-existing reasons for action while still denying that this makes the reasons exclusionary or pre-emptive. Just as the rule-utilitarian position was attacked in Chapter 3 for irrationally "worshiping rules," I am claiming that Raz's PT (if understood as claiming that pre-emptive reasons strongly exclude or replace dependent reasons) is equally guilty of an irrational worship of reasons created by authoritative directives. If an individual does not have the time or there are epistemological concerns about his or her ability to discover the pre-existing reasons for action then it is most likely the case that he or she ought to accept a legitimate authority's directive as binding and not attempt to make the calculations independently. However, if an individual (or group) has strong evidence that a directive is mistaken and/or does not reflect dependent reasons for action then it would be irrational to still accept the dictate simply because it was given by a legitimate authority. Relatedly, it seems incorrect to think that these mistaken directives could somehow create a reason for action that replaces the other reasons for action (*even reasons which it fails to consider or gives improper weight to*). For these reasons, it seems that authoritative directives can simply create a reason for action which *supplements* the dependent reasons it is intended to reflect.

Interestingly, in one of Raz's most recent works on authority ("The Problem of Authority: Revisiting the Service Conception") he seems to weaken his PT to the point of authoritative directives being merely another (weighty) reason for action. This is similar enough to the position I am arguing for that it provides very strong additional support for

my claim that the DT and NJT are inconsistent with the PT (as Raz originally presents it). I believe the seeming reversal in Raz's position warrants an extended quotation so that Raz's own (contradictory) voice is evident:

> Often we have more than one sufficient reason to do something. An authoritative directive may direct us to do something that we should do for independent reasons anyway… By law we must not murder, but we also have an independent reason not to murder, namely respect for human life… The law imposes a duty to pay tax as a way [to meet the cost of maintaining communal services]. Independently of the law, we do not have a reason to pay the precise sum we owe as tax. But once the law is there we have two reasons, we may want to say, to pay the sum that we owe as tax… One is our obligation to obey the law, the other our duty to contribute to the cost of community services. Ideally, we would refrain from killing exclusively out of respect for people's lives, and not at all out of respect for the law. Ideally, we should pay our tax because we owe it as our share towards the cost of community services, as well as because the law demands it. Is this consistent with the preemption thesis? A proper understanding of preemption removes any suspicion of a problem. A binding authoritative directive is not only a reason for behaving as it directs, but also an exclusionary reason, that is, a reason for not following (i.e., not acting for) reasons that conflict with the rule. That is how authoritative directives preempt. They exclude reliance on conflicting reasons, not all conflicting reasons, but those that the lawmaker was meant to consider before issuing the directive. These exclusionary reasons do not, of course, exclude relying on reasons for behaving in the same way as the directive requires. Think about it: authority improves our conformity with reason by overriding what we would do without it, when doing so would not conform with reason. So, assuming that it is entirely successful in its task, it need not and does not stop us from following the reasons on the winning side of an argument. It must, however, if it is to improve our conformity with reason, override our inclination to follow reasons on the losing side of the argument. Hence the preemption excludes only reasons that conflict with the authority's directive. So when an action is rightly required by authority (i.e., when there are conclusive reasons for it, independently of the authority's intervention), we may (in both senses) do

> as we are required either because we are so required, or for the reasons that justify the requirement, or both. (Raz, 2006, p. 1021-1022)[179]

This reconfiguration of the PT appears to be a significant concession on Raz's part essentially admitting that the original framing of the PT was incompatible with the DT and NJT (Martin, 2010, p. 70). This revised pre-emptive thesis contends that authoritative directives only pre-empt or exclude reasons which *conflict* with the directive. Dependent reasons (reasons which support the directive) are no longer replaced by the directive and can now be followed and acted upon. This revision is made by Raz, presumably, because of the tension which I was highlighting earlier - in determining whether an authority is legitimate the dependent reasons must be examined to see if the directives actually reflect the pre-existing reasons, but at the same time these dependent reasons are supposed to be pre-emptively excluded from consideration. This revision allows for one to consider, and even act upon, the reasons which support legitimate and justified directives. This is definitely an improvement over the first formulation of the PT, but it still appears to be too strong.

Even though Raz now seems to be claiming that authoritative directives create (at least one) additional reason for action, his continued insistence that the reasons pre-emptively exclude reasons which conflict with the directive is still too strong, and therefore, implausible. It seems entirely possible that in considering the dependent and conflicting reasons for creating some law an authority could still make a mistake by failing to consider (or give proper weight to) some conflicting reason(s) which it *should*

[179] Raz even goes so far as to say that, "legal rules constitute prima facie reasons for the conduct they prescribe" (Raz, 2006, p. 1023). This appears to be an explicit concession that legal directives are not strongly pre-emptive but are simply additional reasons which must be added to supporting reasons and weighed against competing reasons.

have or "was meant to consider before issuing the directive" (Raz, 2010, p. 1022). If this is possible then it seems that there needs to be additional room for challenging these types of mistaken directives. The conclusion to be drawn from this is that it is implausible to contend that reasons created by authoritative directives pre-emptively exclude conflicting reasons. Between the tension we see with the original PT and this lingering problem for the revised PT, it does not seem plausible to suppose that reasons created by authoritative directives pre-emptively exclude any class of reasons. Instead it seems that authoritative directives create reasons for action, which are simply additional reasons, that may tip the scale in favor of acting in certain ways (depending on the weight of the authority created reason and the weight of the conflicting reasons).

An account of justified and legitimate authority which *endorses* the DT and the NJT and which *rejects* the PT is still able to make sense of the intuitive idea contained in Raz's scope flexibility - political directives (laws) seem to apply more strongly or weakly as reasons for action to some individuals (over others) in certain circumstances. Instead of claiming that the scope of authority varies from individual to individual because certain reasons for action are pre-emptively excluded for some and not for others, the account which rejects the PT can simply contend that authoritative directives create (at least) one additional reason for action "which supplements, rather than supplants, the other reasons for and against that action" (Raz, 1986, p. 67). With all of the reasons for action available for consideration (none being pre-emptively excluded), the authoritative directive will vary from individual to individual not because it applies to some and not to other but because its weight will vary from individual to individual relative to the other

reasons which figure into the calculation (both supporting and conflicting reasons). This is far less radical than Raz's claim that a truly legitimate political authority could offer directives which were binding for some subjects and not for others, but it is still able to accommodate the intuitive idea that legal directives (even when legitimate) ought not be followed in all circumstances.[180]

[180] My disagreement with Raz's PT also appears to be the source of our disagreement on political obligations. Raz rejects the idea that there is a general obligation to follow the law (because of his position on the scope of authority being flexible) while I believe that quite often there is a general obligation to follow the law but that the reason for action is merely one among many other reasons for action which must be weighed against each other (as opposed to a pre-emptive reason which would seem to be an all things considered reason for action).

CHAPTER 5
A UTILITARIAN ACCOUNT OF POLITICAL OBLIGATION

We now have in place the foundation to support my positive utilitarian account of political obligation. In Chapter 1 the concepts "obligation" and "*political* obligation" were examined; in Chapter 2 the leading and competing theories of political obligation (including philosophical anarchism) were explored; in Chapter 3 utilitarianism was discussed in more detail (including some controversies and debates within utilitarian theory generally as well as the limited number of utilitarian accounts discussing political obligation); and in Chapter 4 the politically fundamental concepts "moral justification of the state" and "state legitimacy" were discussed. As we have seen, the question guiding investigations of political obligation is, "Do political obligations exist, and if so, how does one acquire such an obligation, or how is it generated, or what grounds it?" Within the contemporary debate it is generally accepted that utilitarianism cannot adequately accommodate a robust theory of political obligation that theorists seek. The overarching objective of this dissertation is to challenge this general dismissal of a utilitarian account and to build upon the two accounts that have been developed (Hare and Sartorius) to offer a robust utilitarian theory of political obligation that can be considered a competitor to the other contemporary theories (i.e., theories of consent, gratitude, fair play or fairness, membership or association, and natural duty). In this fifth and final chapter I will offer the utilitarian account of political obligation that these investigations have been building towards. In the first section I will briefly reflect on Simmons' philosophical anarchism as his works have been extremely influential in shaping the contemporary debate, and consequently, the form of my project. I will focus primarily on the ideas Simmons and I

agree about and the fundamental areas of disagreement. This examination of our disagreements will lead into the second section in which I will revisit the non-utilitarian insights gleaned from the previous chapters. Highlighted by a discussion of political authority, moral justification, and legitimacy, this section will provide the immediate platform on which my utilitarian account of political obligation (moral reasons for following the law and supporting one's government) will be built upon. Following the rough structure laid out by Hare and Sartorius, the third section will flesh out the utilitarian reasons for following laws and supporting the relevant legitimate political authority. In the fourth section I will take time to consider some of the objections that have been offered against utilitarian accounts generally and some that may be raised against my particular account. The final section will briefly bring together and summarize the project and my particular arguments.

5.1 Simmons' Philosophical Anarchism

As Simmons is an *a posteriori* philosophical anarchist, his conclusions are in opposition to my views on political obligation, but his evaluation of particular accounts and analysis of certain concepts does include many insights that I think must be included in a satisfying and complete theory. One theoretical consequence of being a philosophical anarchist is that Simmons must argue against *all* accounts of political obligation in defending his claim that there is no general political obligation. I agree with and have followed Simmons closely on many of these arguments and objections to particular accounts. With his clarity and conciseness in presenting the "problem of

political obligation," it is no accident that he is one of (maybe *the*) leading figure in the field.

One central idea that Simmons and I agree on is that many of the legal requirements that a liberal and effective state enacts are independently required by moral considerations (e.g., bans on murder, assault, etc.). Despite his belief that there are no political obligations, Simmons still insists that people are bound by *nonpolitical* moral obligations that may exactly correspond to legal imperatives issued by the illegitimate state (Simmons, 2001, p. 107). Simmons' position is that individuals can still have moral obligations to do or not do X, which are equivalent to an existing legal imperative requiring or forbidding X, but the obligation does not arise *because the law exists*. It is important to notice that Simmons' view here is similar to the ideas that support Raz's normal justification thesis (NJT)[181] and dependence thesis (DT).[182] Simmons' view is that we are all subject to moral obligations/duties and that this *may* be mirrored by legal directives, but this does not change the moral reasons for action relevant to 'political obligation.' Alternatively, Raz and I take pre-existing moral responsibilities to be what legal directives ought to take into account and reflect.[183] This normative dependence of legal directives reflecting subjects' pre-existing reasons for action reciprocally supports

---

[181] The NJT - "*[T]he normal way to establish that a person has authority over another person involves showing that the alleged subject is likely better to comply with reasons which apply to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly*" (Raz, 1986, p. 53).

[182] The DT - "*[A]ll authoritative directives should be based on reasons which already independently apply to the subjects of the directives and are relevant to their action in the circumstances covered by the directive*" (Raz, 1986, p. 47).

[183] Some laws will more directly reflect the pre-existing moral reasons (e.g., a law which forbids killing innocent humans) while some other laws will only indirectly reflect the pre-existing reasons (e.g., laws intended to solve coordination problems) by specifying a course of action that, if generally followed, will allow for a very general pre-existing reason (e.g., act in a coordinated fashion) to be acted upon.

the idea that an authority is legitimate if it accomplishes this goal better than subjects would on their own. The normatively reflective directive *creates* a moral reason for action (i.e., morally relevant consideration) that adds to the strength of the pre-existing reason for acting. If an individual ought not kill someone in a particular situation because of moral facts that are independent of any legal and political facts *and* there is a legal directive against killing, then there is an additional moral reason not to kill. The moral requirement not to kill in this situation would be partially determined by the fact that *a law exists* forbidding this type of action. To take an example of a legal requirement that is not as directly reflective of pre-existing moral reasons for action, consider traffic laws requiring motorists to drive on a particular side of the road. The directive is intended to coordinate behavior and specify how individuals ought to fulfill their pre-existing reasons to travel safely, efficiently, etc. In this case it appears to be even more clear that it is the directive that creates a moral reason for action.[184] The reason that motorist ought to drive on that particular side of the road seems to be because it was stipulated by a political power which is able to create and enforce this type of norm. The fundamental disagreement between Simmons and myself (and Raz) seems to concern the intuition that laws ought to reflect (depend on) the pre-existing reasons applying to the intended subjects of the directive and that the success or failure of this normative responsibility determines the legitimacy (or illegitimacy) of the authority. I take it that this ability and power to bring about a morally superior state of affairs by making directives is what legitimizes an authority. Simmons takes there to be an additional normative condition

[184] It should be noted, and emphasized, here that almost everyone accepts that laws and other political directives change the consequences of performing certain actions and that this is extremely important when considering the all-things-considered action that one ought to take.

necessary in legitimizing an authority - consent. Simmons writes, “Arrangements [e.g., states] can be good (or even ideal) of their kind without being entitled to our allegiance or support, and nonvoluntary imposition on us of those arrangements can wrong us” (Simmons, 2008, p. 41). Simmons believes that individual consent is necessary in establishing an authority as legitimate and capable of creating moral requirements for action. I take it that a “good,” and especially an *ideal* state would be owed certain things (e.g., a certain level of obedience and support) by the subjects of its authority.[185] As a state’s normative function is to create and uphold a state of affairs that is morally superior to non-state alternatives, an ideal instance of this “arrangement” would seem to undoubtedly create moral reasons for obeying and supporting such a power.

The initially agreeable idea that “good” states very often make laws requiring actions that are independently required by moral considerations (e.g., bans on murder, assault, etc.) turns out to be closely tied to one of the fundamental disagreements between Simmons and myself. Simmons seems to believe that there is a strong distinction between the moral reasons for acting and the grounds for a general political obligation (Simmons, 2001, p. 116). I do not take there to be such a strong distinction. There *are* certain actions that are required or forbidden simply by moral considerations absent any law that requires or forbids said action. However, this fact, along with any indication that people may not abide by such moral requirements seems to provide further reason for establishing a government that is able to enact and enforce laws requiring or forbidding such actions. The existence of these legal directives then seems to give subjects

---

[185] By using this term “owed,” I do not intend to be importing any deontological conceptions.

additional incentive and moral reasons to act in a moral manner (the way they morally ought to have acted even without this additional legal reason). The example above concerning killing illustrates this idea. Additionally, there are types of actions that do not automatically generate a moral responsibility for individuals to act in a *particular* way, but that do cause "coordination problems" for societies. The example above concerning traffic laws illustrates this idea. The increase in aggregate utility caused by coordinating these types of action (e.g., driving) also seems to provides further reason to establish a government and for that authority to enact laws which guide behavior. These types of coordinating legal directives even more clearly demonstrate an authority *creating* moral reasons for action. On the utilitarian account of political obligation offered in this chapter, these types of coordination laws can be understood as generating political obligation in the *primary* sense because subjects have a moral reason to act a certain way because there is a law requiring such action.[186] The account will also contend that laws that directly reflect a pre-existing moral requirement are also relevant to political obligations because the existence of the law creates *additional* moral reasons.[187]

In effect, this is all simply to deny Simmons' claim that there is a distinction between a moral reason for acting and the grounds for political obligation. Simmons'

---

[186] The moral reason created by the legal directive will carry more weight in moral calculations due to the lack of other direct moral reasons for doing (or refraining from) the relevant action. If, all-things-considered, the subject ought to do whatever it is that the law commands or forbids, it will be more accurate to say that this is in part *because* the laws commands or forbids it.

[187] The relative weight of these political obligations will be less than the "primary" political obligations because they are simply *adding* to the moral reasons for doing or refraining from some legally prescribed or forbidden action. It should also be noted that on the utilitarian account I am offering, these reasons for action that are created by legal directives and that *add* to pre-existing moral reasons should really be understood at restructuring or altering the weight of the pre-existing reasons. By altering the consequences of performing or refraining from certain actions, laws restructure the moral reasons that individuals have for acting in certain ways.

contention that there *is* a distinction between the moral reasons for acting and the grounds for a political obligation begs the question against a utilitarian account (and any other "monistic theory" concerning fundamental/non-derivative moral principles).[188] By assuming that there must be a distinction between moral reasons for action and the grounds of political obligation, Simmons is automatically ruling out any theory that ultimately grounds all moral reasons for action in one fundamental and non-derivative moral principle. On a utilitarian account of political obligation the grounding for the obligation is the maximization of utility, and it is also the only foundational/non-derivative moral principle. This question begging on Simmons' part is another demonstration of the need for an explicit recognition of the derivative/non-derivative distinction within the political obligation debate. This also reemphasizes the tension in Simmons' rejection of a "moralized account" of legitimacy.[189] By making the strong distinction between the moral justification of a state and state legitimacy Simmons is divorcing the moral reasons to obey the law (i.e., political obligations) from moral foundations (i.e., the moral justification of the lawmaker and laws).

As one of the leading figures in the political obligation debate, many of Simmons' analyses are spot on and are invaluable resources for any attempt to offer a complete and satisfying account of political obligation that naturally fits into the contemporary debate. However, his failure to recognize the importance of the distinction between derivative and non-derivative theories of political obligation and his contention that there is a strong distinction between the moral legitimacy of the state and state legitimacy (and similarly,

---

[188] See 1.5

[189] See 4.1c

moral reasons for action and the grounds of political obligations) creates a vast divide between his ultimate position and mine. Simmons' influential sketch of the political obligation debate's parameters will continue to shape how I present my positive account and many of the objections I will consider in the final section will be courtesy of him or from his perspective, but it is at this point in the project where I must part ways with Simmons and his outright dismissal of the utilitarian type of account I will defend.

5.2 Consolidating the Non-Utilitarian Insights

In Chapter 4 I examined a variety of theories and conceptual distinctions concerning "authority," "moral justification," and "legitimacy." I concluded the chapter by arguing for a utilitarian adaptation of Raz's NJT and DT. I envision these adapted theses providing the foundation for my account of political obligation to be formalized in the current chapter. In this section I will devote a little more attention to exploring and developing some of these insights on offer from non-utilitarian philosophers in order to fill out the theoretical foundation that will support my account of political obligation.

5.2.1 Descriptive vs. Normative

One of the crucial distinctions relevant to theories of authority and legitimacy concerns descriptivity and normativity. As was briefly explained in 4.1b, it is common for both political authority and legitimacy to be distinguished as either a *normative* or a *descriptive* (non-normative) notion. To say that a state has political authority, understood normatively, is to say that the relationship between the state and its citizens is morally acceptable or justified (Christiano, 2012, section 1). When a state reaches the normative benchmarks of justification, whatever they may be, it is said to have *de jure* authority.

Alternatively, to say that a state has authority, understood descriptively, is to say something about people's beliefs concerning the state and that the state's directives are "generally obeyed by subjects because many of them (or some important subset of them such as the officials of the state) think of it as having authority in the normative sense [e.g., Hart, 2012]" (Christiano, 2012, section 1). This type of effective political power and description of citizens' attitudes and beliefs about the state is also typically referred to as *de facto* authority. Similarly, "the normative concept of political *legitimacy* refers to some benchmark of acceptability or justification of political power or authority" (Peter, 2014, section 1)(emphasis added). Just as with the normative conception of authority, if the normative "conditions for legitimacy are not met, political institutions exercise power unjustifiably" (Peter, 2014, section 1). Alternatively, the *descriptive* conception of political legitimacy, "refers to people's beliefs about political authority and, sometimes, political obligations" (Peter, 2014, section 1). During the brief explanation of these distinctions in 4.1b there was one theoretical possibility that was not explored; the combining or "blending" of descriptive and normative elements into one's account of legitimacy and/or authority. I believe that a form of the blended theory is promising for a utilitarian political account (pertaining particularly to legitimacy) and aligns with the objections I was raising in 4.1c against the push to strongly distinguish between the moral justification of the state and state legitimacy (e.g., Simmons' "Lockean" account).

The general themes motivating a blended account are, first, the idea that an exclusively descriptive account of legitimacy (e.g., Weber's) neglects second order beliefs concerning legitimacy of the very subjects whose beliefs are understood as

establishing the legitimacy, and second, a strictly normative account is too abstract to account for actual and historical processes of legitimation (Peter, 2014, section 1). Exclusively descriptive theories seem to fail to take into account people's beliefs about what it is that makes the authority legitimate (i.e., *why* it is the subjects believe the authority is legitimate).[190] However, too narrow a focus on the normative conditions necessary for the justification of political institutions can detrimentally "neglect the historical actualization of the justificatory process" and be ill-equipped to examine existing states and governments (Peter, 2014, section 1).[191] One example of such a blended account is offered by David Beetham (1991). Beetham argues that the Weberian definition of legitimacy is inadequate because, first, "it misrepresents the relationship between beliefs and legitimacy; and, secondly, that it takes no account of those aspects of legitimacy that have little to do with beliefs at all" (Beetham, 1991, p. 11). Concerning the first part of the objection to the Weberian account Beetham writes:

> A given power relationship is not legitimate because people believe in its legitimacy, but because it can be *justified in terms of* their beliefs… When we seek to assess the legitimacy of a regime, a political system, or some other power relation, one thing we are doing is assessing how far it can be justified in terms of people's beliefs, how far it conforms to their values or standards, how far it satisfies the normative expectations they have of it.

---

[190] Exclusively descriptive accounts, if not carefully constructed, are also in danger of failing to even offer an analysis of legitimacy. This can be understood as the "perpetual stutter objection." If a descriptive theory defines a *legitimate* state as one whose subjects believe it to be *legitimate*, then it has failed to even define the concept. The analysis becomes a perpetual stutter as it attempts to use the concept within the definition of the very concept it is attempting to define: a *legitimate* state is one whose subjects believe it to be, believe it to be, believe it to be…

[191] It should be noted that the firm distinction between normative and descriptive accounts is a bit misleading as all normative theories are, or should be, blended in some sense. All normative theories presumably take contingent facts into account when investigating whether their particular analysis applies to existing states of affairs. The utilitarian account differs from this type of "blended account" in that it emphasizes that the descriptive beliefs of the subjects of a state partially determine what the state must do in order to be a legitimate political authority. On the utilitarian account, the descriptive component is more essential to the analysis than normative accounts.

> We are making an assessment of the degree of congruence, or lack of it, between a given system of power and the beliefs, values and expectations that provide its justification. We are not making a report on people's 'belief in its legitimacy'. (Beetham, 1991, p. 11)

This contention that an authority's legitimacy is established not by subjects' belief *that* the authority is legitimate, but *in terms of* the subjects beliefs and expectations of the authority, is able to offer an explanation of *why* people acknowledge the legitimacy of an authority, which the Weberian descriptive account is not able to do (Beetham, 1991, p. 10).[192]

Beetham's second objection to Weber's exclusively descriptive account of legitimacy is that it fails to recognize elements that have nothing to do with beliefs (Beetham, 1991, p. 12). Beetham argues that *legal validity*, that is, whether power is acquired and exercised within the law, is an important aspect of legitimacy that is independent of people's beliefs (Beetham, 1991, p. 12). He also argues that certain *actions* performed by subjects contribute to the legitimacy of an authority (e.g., entering into a contract with the authority, swearing an oath, voting, etc.) (Beetham, 1991, p. 12). Beetham contends that these types of actions are not important for legitimacy because they are evidence of the subjects' 'belief in legitimacy,' but because "they *confer* legitimacy; they contribute to making power legitimate" (Beetham, 1991, p. 12). Beetham concludes that it is to the extent which an authority acquires and exercises its

---

[192] Beetham uses the example of the first-past-the-post rules of the British electoral system to clarify his point about legitimacy being justified *in terms of* people's beliefs. He writes, "[T]he British electoral system, with its first-past-the-post rules determining who shall be elected in each constituency, is losing its legitimacy, and to an extent therefore also weakening that of the governments elected under it. This is not because of any shift in people's beliefs, but because the rules have increasingly delivered results that diverge, both regionally and nationally, from the proportion of votes cast, and hence from accepted notions about the representative purpose of elections in a democracy… the weakening of legitimacy took place before people publicly acknowledged it… [and] cannot be made intelligible in terms of a shift in people's beliefs about legitimacy or 'belief in legitimacy'" (Beetham, 1991, p. 11-12).

power, the correspondence between this exercise of power and its subjects' values and expectations, and the relation between these values/expectations and the actions of subjects that makes an authority legitimate. He writes, "Together these criteria provide grounds, not for a 'belief in legitimacy', but for those subject to power to support and cooperate with its holders; grounds, that is to say, not for belief, but for obligation" (Beetham, 1991, p. 13).[193] The correct account of legitimacy must move beyond mere descriptions of subjects' beliefs. Legitimacy is "more than legal validity;" it is concerned with "the normative standing of the power arrangements that the law validates" (Beetham, 1991, p. 13).[194]

I take this blended account of legitimacy to be perfectly suited for my utilitarian account of legitimacy (NJT + DT) as it places heavy importance on the normative standing of an authority's use of its power while also emphasizing the contextualized and contingent nature of legitimacy in particular cases. This works for a utilitarian account because, as with a theoretical account of legitimacy, the fundamental utilitarian principle (i.e. principle of utility) is normative and general (i.e., does not prescribe, in and of itself, any *particular* action) and particular applications of this general principle are intimately connected to contextualized and contingent facts pertaining to the specific situation.

---

[193] Beetham lists three social scientific questions that can and should be asked in determining whether an authority has legitimacy - "Is power valid in terms of the law? Is the law justifiable in terms of the beliefs and values established in the society? Is there demonstrable evidence of consent to the given relations of power?" (Beetham, 1991, p. 13).

[194] Jürgen Habermas (1979) is another theorist who has offered a type of blended account. Beetham acknowledges that his critique of purely descriptive and normative accounts is similar to Habermas' and cites this text: "I [Habermas] have discussed two concepts of legitimation, the empiricist and the normativist. One can be employed in the social sciences but is unsatisfactory because it abstracts from the systematic weight of grounds for validity; the other would be satisfactory in this regard but is untenable because of the metaphysical context in which it is embedded" (Habermas, 1979, p. 204). However, Beetham rejects Habermas' "developmental solution" because it "fails to give an account of the underlying structure and logic of legitimation general, which must for the necessary basis for an exploration of what is historically variable and specific" (Beetham, 1991, p. 15).

Utilitarianism, as a fundamental ethical theory, is perfectly suited to support the intuitively plausible claim that *particular* authorities can only have “legitimacy-in-context, rather than absolutely, independently or abstractly” (Beetham, 1991, p. 14).[195] The utilitarian theory, with its acknowledgment of the importance of contingent facts for moral judgments, provides the bridge needed to connect legitimacy-in-context to a foundational normative theory necessary for underpinning the criteria of evaluation. Ultimately, the idea behind a blended account of legitimacy is that different authorities will be legitimated in different ways relevant to the differing contexts. The legitimate exercise of political power is intimately tied to the conventions, values, and expectations of the particular society and state in question (Beetham, 1991, p. 14).

Some may attempt to object to my sketch of the blended theory, possibly even Beetham himself, by denying that the account on offer is “blended.” Support for this claim seems to be found in Beetham’s explicit statement that his account *is not* a work of normative political philosophy:

> Social scientists, unlike moral or political philosophers, are concerned with legitimacy in particular historical societies rather than universally; with legitimacy in given social contexts rather than independent of any particular context; with actual social relations rather than ideal ones… I [Beetham] am concerned with legitimacy as a problem for social science rather than for political philosophy. (Beetham, 1991, p. 6-7)

This passage makes it appear as though Beetham takes himself to be providing a strictly descriptive account of legitimacy meant to replace the standard, but inadequate, Weberian account which “encourages bad social science” (Beetham, 1991, p. 10). This may all be

---

[195] Of course everyone will admit that contingent features play a role in the legitimation of particular states, however, the utilitarian account wants to stress that these contingent features to play a more central role.

true; Beetham may not wish to be offering any type of normative account, but I take it that the sketch of the account I have provided *becomes* a blended theory when it is coupled with a utilitarian ethical framework.[196] On a utilitarian account, the normative aspect of legitimacy (i.e., what an authority ought to do or the conditions it must meet in order to be legitimate) is intimately interconnected with the descriptive component (i.e., people's values, standards, and expectations of a political authority). If a political authority were to completely disregard its citizens' wants, needs, expectations, and beliefs it would be impossible, in all but the most dysfunctional society consisting of severely ignorant and/or misinformed citizens, to succeed in helping the subjects act on the relevant reasons. In other words, a power (*de facto* authority) cannot become legitimate without accounting for facts pertinent to the situation (the subjects' values, beliefs, etc.). Normative legitimacy is tied in part to the normative expectations of its subjects. By acting and directing actions in response to the needs, desires, and beliefs of its subjects, a political power is able to wield *de jure* authority that is justified in terms of these same beliefs.

Quite bluntly, I think it is somewhat irrelevant whether Beetham accepts my co-option of his descriptive account of legitimacy because it is laden with morally justificatory reasons that explain *why* people have beliefs about states being legitimate. This is useful for my, or any other utilitarian account that contends that the actions an authority ought to do, and which establish its legitimacy, are dependent on conditional facts about the individuals who are affected by the actions and directives of the authority.

[196] What I am attempting to say here is that I do not intend to be offering an interpretation of Beetham's view; I only wish to co-opt his descriptive account of legitimacy which is laden with morally justificatory reasons which explain *why* people have beliefs about states being legitimate.

However, it seems that Beetham also ought to accept this utilitarian co-option and the resulting blended account of legitimacy for he admits that he is "interested in much more than legal validity [understood purely descriptively]; he… is interested in the normative standing of the power arrangements that the law validates" (Beetham, 1991, p. 13). Beetham sees this as distinct from the goals of the moral and political philosopher, but he ought not see it this way. If he is interested in the normative value of legitimacy, which he plainly seems to be, then he will ultimately need an ethical theory to ground his account of legitimacy. Utilitarianism is able to offer such a grounding with its universal criteria for 'right action' and necessary contextualization for particular applications of the general concept.

This connection between the normative and descriptive aspects of legitimacy also connects closely with the objections I raised in 4.1c against Simmons' strong distinction between the moral justification of the state and state legitimacy. I argued that in order for some *particular* state to be morally justified, the legitimate use of coercive power seems necessary for the creation and maintenance of the morally valuable society. During this argument I asked, "What would be morally valuable about a state that had no legitimate power to uphold a morally valuable society?" This question appears to be closely tied to the idea being pushed with the blended account - a political authority is legitimate in so far as it conforms with and is *justified* in terms of people's beliefs, standards, values, and expectations. I also argued that the second disjunct resulting from the strong distinction between justification and legitimacy (i.e., legitimate but not justified) is only possible if one understands legitimacy as an *exclusively* descriptive concept (non-normative). As we

have seen, purely descriptive accounts of legitimacy are problematic for many reasons and thus a blended account has been offered.[197] This blended account of legitimacy and the conceptual linking of justification and legitimacy appear to be mutually supportive.

5.2.2 The Function of Political Legitimacy

The arguments from the previous subsection, and their extensions in Chapter 4, contend that a "blended" account of legitimacy which includes both normative and descriptive components is the best way of understanding political legitimacy. The claim is that an authority's legitimate acquisition and exercise of power is highly dependent on its subjects' values, expectations, and normative beliefs concerning the authority. In this subsection I will continue to weave together the non-utilitarian theorists' insights that are being appropriated for my utilitarian account. I will begin by briefly rehashing the motivations for blending normative and descriptive components into an account of legitimacy. These motivations will then be discussed in connection with the normal justification thesis (NJT) and dependence thesis (DT) and this will lead into the larger discussion concerning the "function of legitimacy."

The general motivation for blending normative and descriptive components into the proposed utilitarian account of legitimacy stems from the problematic aspects of each when they are understood as independent and exclusive theories. Understanding legitimacy as a normative concept is initially appealing from my perspective as an ethicist and political philosopher. This normative understanding of legitimacy refers to

[197] Interestingly, the advocate of distinguishing between justification and legitimacy (e.g., Simmons) often ends up, explicitly or implicitly, endorsing a purely descriptive account of legitimacy. In Simmons' case, he seems to be contending that it is consent or accepting benefits that legitimizes an authority. This is purely descriptive in that it does not include normative notions like what an authority must do to warrant this consent/acceptance or that individuals ought to consent if an authority meets such and such conditions.

some benchmark of acceptability or moral justification of a political authority (Peter, 2010, section 1). This normative benchmark distinguishes *de jure* authority from *de facto* authority and provides a conceptual analysis of legitimacy. In this type of analysis, "power is legitimate where the rules governing it are justifiable according to rationally defensible normative principles. And as with any moral principles, these embody a universalizing claim" (Beetham, 1991, p. 5). This universal feature can be seen as problematic as it does not take into account any actual facts of the society or actual histories of the subjects.[198] Some political philosophers (e.g., Simmons) respond to this problem by offering a normative account of "authority" or "moral justification of the state" and tie legitimacy to something that *is* responsive to actual conditions (e.g., the consent of subjects). This is a move I have already argued against. The legitimacy of a particular state, if understood as establishing moral requirements for individuals subject to the authority, must track the moral justification of that *particular* state. The analysis of justification and legitimacy can (and should) still be normative in that it sets standards which authorities must meet in order to be justified or legitimate; however, when these concepts are applied to particular cases, descriptive features and contingent facts must be relied upon. The alternative seems to be an attempt to necessarily decouple the metaethical *analysis* of these concepts from normative *evaluation* and the application of the concepts to actually existing (or hypothetical) political institutions. This attempt appears doomed as the moral evaluation of power relations between political authorities

---

[198] Again, all normative theories presumably do take contingent facts into account when investigating whether their particular analysis applies to existing states of affairs. The utilitarian account differs in that it emphasizes that the descriptive beliefs of the subjects of a state partially determine what the state must do in order to be a legitimate political authority. On the utilitarian account, the descriptive component is more essential to the analysis than normative accounts.

and their subjects seems to be intimately tied to descriptive and contingent features of the subjects and the authorities. However, as was argued in the previous subsection, this is *not* to say that the descriptive component is all there is to an analysis of justification and legitimacy. The proposed solution to these problems facing accounts that understand legitimacy as a strictly normative or descriptive concept is the adoption of a *blended* theory.

I take Raz's NJT and DT to be closely related to this idea that legitimacy has both normative and descriptive components. Recall that the NJT holds that an authority is justified and legitimate if the subjects are likely to better comply with the reasons for action which apply independently from the directives if they accept the directives of the authority rather than trying to follow the reasons directly (Raz, 1986, p. 53). This is the standard that an authority must meet in order to justifiably and legitimately wield its authoritative power. As a standard and ideal it constitutes a normative understanding of what an authority must do in order to be legitimate. However, as a conceptual analysis it is a universal claim and does not allow any judgments of legitimacy to be made without taking into account the descriptive aspects of the particular case (i.e., the reasons for action which actually apply to the subjects). Raz accomplishes this bridging of the theoretical analysis and practical application through his DT - authorities ought to base directives on reasons that already independently apply to their subjects (Raz, 1986, p. 47). This is another normative thesis but it instructs authorities to consider certain descriptive features present in the circumstances in which they find themselves. In evaluating an existing, or hypothetical authority, one must consider these relevant

descriptive features in order to apply a theoretical and ideal normative notion of legitimacy.

This blending of normative and descriptive components into an account of legitimacy brings forth a fundamental question concerning the function of legitimacy in relation to the intertwined concepts of political authority, moral justification, and coercive power. Raz's position on this is that legitimacy is linked to the justification of political authority.[199] Raz takes authority to be a distinct concept from legitimacy and *political* authority to be special case of authority (Peter, 2014, section 2.1).[200] There can exist effective or *de facto* authority which is not legitimate (i.e., not justified). On Raz's view authority is effective "if it gets people to act on the reasons it generates" and the difference between *de facto* and legitimate authorities "is that the former [*de facto*] merely purports to change the reasons that apply to [its subjects], while legitimate authority actually has the capacity to change these reasons" (Peter, 2014, section 2.1).[201] For Raz, an authority is legitimate and has the capacity to alter its subjects' reasons for action if it meets the NJT. On Raz's normative "service conception," an authority "serves" its subjects by basing directives on dependent reasons and is thus justified in its exercise of power. In conjunction with Raz's pre-emptive thesis (PT), "It follows as a corollary of the normal justification thesis that a legitimate authority generates a duty to be obeyed" (Peter, 2014, section 2.1). Subjects ought to obey the directives of the

---

[199] This idea that legitimacy justifies political authority is also famously endorsed by Locke and developed by Simmons (see 4.1c).

[200] See 4.2

[201] Recall that for Raz, *authoritative* reasons are pre-emptive. This differentiates a *de facto* authority's threats (which do change the reasons for action, but not pre-emptively) from legitimate authoritative directives.

authority because the authority serves the subjects and in doing so its directives become pre-emptive reasons for action. I have already argued (4.2) that there is a fundamental tension between the PT and the NJT and thus I also reject this idea of a correlative duty to obey the authority. As I argued in 4.2, authoritative directives provide *additional* reason(s) (not pre-emptive) which must be added to the dependent reasons and, consequently, do not generate all-things-considered duties but simply create moral reasons for action.[202] Additionally, on Raz's normative theory of legitimacy, coercion is understood as a means and secondary reinforcement for an authority to achieve its primary normative end (Peter, 2014, section 2.1).[203] This is a second point of disagreement between Raz and myself as I take an authority's use of coercive power to be *included* in an evaluation of the moral justification of an authority.

This claim, that the question of whether an authority is morally justified is inseparable from the question of whether the use of coercive power is morally justified, is related to the second primary interpretation concerning the function of legitimacy. On this second understanding, "the main function of legitimacy is precisely to justify coercive power… Legitimacy, in this interpretation, is linked to the creation of political authority qua defining the permissible use of coercive power" (Peter, 2014, section

---

[202] Heidi Hurd (1999) also argues against the idea of politically created pre-emptive reasons for action. However, she ties this to the concept "practical authority" and thus rejects the dominant idea that political authority is a type of practical authority. I do not agree with Hurd that in order for an authoritative directive to be a reason for action it must be a pre-emptive reason for action.

[203] Cf. Green (1988).

2.2).[204] Arthur Ripstein has offered one of the recent arguments for this understanding of legitimacy and coercive power. In opposition to the "traditional" view, which contends that coercion is to be used by political authorities as a means to secure their primary goals, Ripstein argues that in understanding coercion as a secondary feature of authority we are likely to investigate the function of legitimacy by asking when the state is allowed to stop (or aid) subjects in doing things they would like to do (Ripstein, 2004, p. 10).[205] This, Ripstein contends, is the wrong question. The right way to approach the topic is not to view legal directives as prohibitions and restrictions *placed onto* the subjects, but as "reciprocal limits on what private parties may do to *one another*" (Ripstein, 2004, p. 10) (emphasis added). Ripstein writes:

> [W]e need to shift our focus. Instead of asking about the beleaguered individual in the face of the powerful state, we ask instead about how a plurality of separate persons with separate ends could be free to pursue their own ends, whatever they might be, to the full extent that is compatible with a like freedom for others. The pursuit of separate purposes, in turn, requires reciprocal limits on freedom that reflect the different ways in which separate persons interact. For the limits to be reciprocal, they must bind all in the same way. (Ripstein, 2004, p. 10-11)

---

[204] Both Hobbes and Rousseau have offered influential variations on this idea. On Hobbes' account, political authority does not exist in the state of nature and is only created by a social contract entered into in order to escape the state of nature and ensure self preservation (Peter, 2014, section 2.2). For Hobbes, the *legitimacy* of a political authority is based solely on the ability of the sovereign to protect its subjects; there is no difference between a merely *effective* authority and a *legitimate* authority (Peter, 2014, section 2.2). If a sovereign has been established, then its effective use of power to uphold peace legitimates the authority of the sovereign. On Rousseau's account, legitimacy "justifies the state's exercise of coercive power and creates an obligation to obey" (Peter, 2014, section 2.2). Rousseau contends that, "legitimacy arises from the democratic justification of the laws of the civil state" and that in this exercise of self governing, individuals do not lose any freedom which is a mark of illegitimate use of coercive power (Peter, 2014, section 2.2).

[205] Ripstein cites H.L.A. Hart as the most prominent contemporary advocate of this approach: "According to Hart, sanctions do not lie at the heart of any adequate conception of law, because the concept of a rule, the violation of which invites sanction, is conceptually prior to the concept of a sanction, and cannot be reduced to it. Instead, any adequate account of law must begin with the concept of a rule or norm. On Hart's understanding, law is a special sort of instrument, which shapes social behavior by formulating rules, and, where it is fair and effective to do so, backs those rules with sanctions" (Ripstein, 2004, p. 5).

Ripstein rejects the "traditional" approach to questions of legitimacy and authority which are primarily concerned with a state's authority (i.e., "the range of laws that states are entitled to make") and only secondarily concerned with coercion used to achieve compliance with such laws (Ripstein, 2004, p. 2). Alternatively, he contends that the appropriate starting point for political philosophy is questions concerning how people may legitimately be *forced* to act (Ripstein, 2004, p. 6).

Ripstein relies heavily on Kant's account of "rights," "freedom," and "authority" in making his argument that the creation of political authority is essentially linked to the moral permissibility of coercive power. While I reject most of Kant's account and terminology, I do agree with the fundamental idea that an authority's moral justification and legitimacy is inseparable from the question of whether the use of coercive power is morally justified. This somewhat surprising agreement between the Kantian account and my utilitarian theory (briefly discussed in 4.1d) revolves around the idea that individuals ought to help form a state because it is practically necessary for maximizing utility. In Kantian terminology, forming a civil state is *an end that individuals ought to have* because the state (with its coercive political power) is a "necessary first step toward a moral order (the 'ethical commonwealth')" (Peter, 2010, section 2.2).[206] A political authority is needed in order to make determinations, solve coordination problems, and provide assurance (through the threat and execution of coercive force) that individuals will follow legal norms. For Ripstein (and Kant) political authority is morally necessary for equal freedom between subjects to be realized. On the utilitarian theory, political

[206] Of course, my utilitarian account does not accept this idea in its Kantian form (i.e., that the state is an end, that is, an *ultimate goal or end*), but accepts what I take to be the heart of the idea - the state is practically necessary for moral interactions between individuals in close proximity.

authority is practically necessary for creating a state of affairs that is morally superior to the state of nature. This moral justification of the state is also what legitimates its authority, and inseparably, its use of coercive power.

Initially, this idea that the function of legitimacy is to justify coercive power may seem to be tied to the view, often labeled as "Hobbesian," that there is no distinction between an *effective* authority and a *legitimate* authority. While this is one possibility, it is in no way entailed by accepting the view that the function of legitimacy is to justify coercive power. Kant (and Ripstein) are able to recognize a difference between effective and legitimate authority by tying legitimacy to a standard of hypothetical consent. Similarly, my utilitarian theory is able to endorse a distinction between *de facto* and *de jure* authority through the normative standards of the NJT. It is possible for a political power to exist which claims to be a morally justified and legitimate authority but which merely rules through threats and does not serve its subjects interests with its directives. However, this type of state would not be legitimate as it does not meet the DT or the NJT, (and thus also fails to meet the utilitarian requirement).

This idea that legitimacy is essentially tied to the justified use of coercive power but is also distinguishable from merely effective or *de facto* power has also been taken up by Jean Hampton and Allen Buchanan. Hampton argues that individuals have rational and moral reasons to establish a state that has the power to resolve conflict and coordination problems (Hampton, 1997, p. 73). Rational reasons, "because these problems damage each person's ability to satisfy her own self-interested desires," and moral reasons "because these problems have a severe negative impact on the well-being

of other people" (Hampton, 1997, p. 73). Hampton combines the Razian idea of justification with the idea that coercive power is linked to legitimacy in claiming that as long as an authority is justified (by the NJT) and has the power to enforce its commands, it is able to create a morally superior and morally desirable state of affairs (compared to the state of nature) by securing cooperation and solving coordination problems (Hampton, 1997, p. 74-75).[207] Hampton's claim is that political authority is "invented by the people rather than derived from them… people don't have it naturally as individuals; rather, they have to create it in order to solve certain kinds of problems that would otherwise plague them were such an authority not present" (Hampton, 1997, p. 76).[208] This is importantly distinguished from an account that grounds the authority in some sort of explicit contract or consensual promise. Instead of transferring any sort of pre-existing political authority to the state, individuals invent this special type of authority. Hampton writes:

> [P]olitical authority doesn't preexist in each person but is actually *invented* by a group of people who perceive that this kind of special authority is necessary for the collective solution of certain problems of interaction in their territory and whose process of state creation essentially involves designing the content and structure of that authority so that it meets what they take to be their needs. (Hampton, 1997, p. 77)

The legitimacy of a political authority is essentially linked to its ability to use coercive force in solving coordination problems.

---

[207] It is interesting to note that Hampton seemingly accepts Raz's pre-emptive thesis (see Hampton, 1997, p. 74), but simultaneously seems to agree with my claim that authoritative commands can't pre-empt *all* reasons (or even *most* significant moral reasons). I take this to be a source of tension in her account.

[208] This is in opposition to the Lockean claim that political authority is *transferred* from the consenting parties to the state.

I hope that the connection between this idea and the Kantian idea that individuals have a moral duty to establish and support a state is evident. Why do people have a moral duty to establish and uphold a state that can serve the subjects' needs? In the utilitarian terms which my account favors, this is because solving coordination problems, enforcing cooperation, and encouraging actions which are optimific is something that ought to be sought and supported because it results in a state of affairs that is superior to those which do not have such an authoritative power in existence. This moralized understanding of legitimacy and linking it to the justification of coercive power has also been endorsed by Allen Buchanan (2002). According to Buchanan, "an entity has political legitimacy if and only if it is morally justified in wielding political power, where to wield political power is to attempt to exercise a monopoly, within a jurisdiction, in the making, application, and enforcement of laws" (Buchanan, 2002, p. 689). While I agree with Buchanan's moralized link between political legitimacy and justified use of coercive power, I disagree with his additional distinction between political legitimacy and political authority. This disagreement stems from his deontological understanding of obligations and rights. Buchanan claims that political *authority*, in addition to being politically legitimate, has the 'right' to be obeyed and subjects who do not obey therefore 'wrong' the authority. This deontological understanding of "rights" and "wronging" does not fit

into a utilitarian framework, but the idea that legitimacy is a moralized concept linked to the justification of coercive power *can* be co-opted.[209]

Thus far, this section has been an exploration of some theories of legitimacy on offer by non-utilitarian theorists. Through the exploration I have attempted to weave together and develop a blended account of political legitimacy that also contends that the function of legitimacy is to justify coercive power. The first claim is that an authority's legitimate acquisition and exercise of power is highly dependent on its subjects' values, expectations, and normative beliefs concerning the authority. The second claim is that these normative and descriptive benchmarks of legitimacy are inseparable from the question of whether the use of coercive power is morally justified. This is intended to fit together with my utilitarian account and my adoption of Raz's NJT. In linking the concepts of moral justification and legitimacy, an authority's claim to legitimacy must be established through the moral justifiability of its existence. This justifiability is essentially tied to the needs and expectations of those subject to the authority. In order to fulfill the role of coordinating and guiding behavior for which political authority is created, the authority must use its coercive power to establish and uphold norms. This service conception of the state holds that the state's ability to coordinate behavior makes

---

[209] Interestingly, Buchanan is dismissive of the idea the political *authority* is of much consequence for political philosophy generally. However, he admits it may be that the question of under "what conditions is an entity wielding political power perceived to be authoritative," *may* be of considerable importance (Buchanan, 2002, p. 694). He explains that the question of political authority may be of interest "if it is the case that only those entities that are regarded as authoritative are likely to govern effectively or if their being regarded as authoritative increases the fruits of coordinated cooperation by enhancing compliance. If it turns out that the perception of authoritativeness is necessary for effective government or for maximizing the benefits of rule-governed cooperation, and if we care about whether effective government or optimal cooperation are based on a warranted belief that the state is authoritative, then we also need to know the conditions under which a wielder of political power *is* authoritative" (Buchanan, 2002, p. 694-695). This is surprisingly close to the utilitarian position I am arguing for; if a political power is not perceived to be morally justified in its use of coercive force then it is highly unlikely that the entity will in fact be able to provide the sorts of benefits that it ought to and theoretically intends to provide.

it morally desirable and that this ability requires effective coercive power. A state which was not responsive to the needs of its subjects would not be morally justifiable or legitimate. But a state that did not have *de facto* authority (i.e., power) would not be able to execute the tasks necessary for coordinating actions. A vicious and powerful government that acted counter to the needs of its subjects would lack legitimacy just as a government which attempted to be responsive but was woefully ineffective would lack legitimacy. At this point it is important to ask what this account of political justification and legitimacy would look like in action. What would a society look like in which the government was powerful enough to coordinate the actions of its subjects in ways that correspond to the individuals' collective needs *and* where the subjects have moral reasons for supporting such a government? While all accounts of legitimacy and political obligation attempt to answer this question, one of particular interest to my utilitarian account is Mark Murphy's "surrender of judgment" account of political authority. In the following subsection I will explore this theory of authority and argue that some of its fundamental ideas help to tie together my utilitarian, blended account of justification and legitimacy.

5.2.3 Accepting Authority

Mark C. Murphy offers an analysis of authority that nicely presents the difference between mere political power and political *authority* in a way which ties together the blended and coercive account of authority and legitimacy I have been arguing for.[210] In

---

[210] See 2.2c for my previous discussion of Murphy's account in connection to the traditional consent theory. I see Murphy's overall motivation as promising for my utilitarian account because of its resemblance to indirect utilitarianism and also because of the government's ability to create new utilitarian moral considerations (i.e., altering the utility calculation) by enacting a law that people accept, and which consequently coordinates behavior.

this subsection I will examine Murphy's theory of political authority and argue that it helps to complete the utilitarian account of authority, justification, and legitimacy that will support my utilitarian account of political obligation.

In response to the problems plaguing explicit consent theories of authority (e.g., very few individuals have performed such explicit acts) and tacit consent theories of authority (e.g., things like mere residence do not seem to be plausibly called "consent") Murphy argues for an account based on the "surrender of judgment." Murphy explains that it is widely held that, "being subject to a political authority involves in some way a surrender of one's own judgment to the judgment of the political authority" (Murphy, 1997, p. 115).[211] However, the standard view is that the "requirement to surrender one's judgment comes from whatever makes political institutions genuinely authoritative in the first place," and Murphy's account contends that "it is the surrender of one's judgment… that makes political institutions practically authoritative" (Murphy, 1997, p. 115-116).

Murphy begins by making a distinction between agent-*independent* moral requirements and agent-*dependent* moral requirements. Agent-independent roughly translates as "objective," or a moral requirement which is independent of the judgments of individuals, and agent-dependent roughly translates as "subjective," or a moral requirement which *is* dependent on the judgments of individuals (Murphy, 1997, p. 117). The standard accounts of political authority (i.e., consent, fair play, gratitude, and natural duty) all rely on agent-*independent* moral principles while Murphy's account relies on an agent-*dependent* moral requirement. Murphy argues that, "moral principles that state

---

[211] See, e.g., Hart (1982), Friedman (1973), and Raz (1986).

agent-independent moral requirements are, in many cases, too general to yield concrete answers to the question of what is to be done in specific cases" (Murphy, 1997, p. 118). Given this generality with some moral principles, it is necessary for determinations to be made in order for the moral principle to provide a specific prescription for action. Along these lines Murphy offers definitions for "determination" and "minimally acceptable determination-candidate":

> With regard to set of moral requirements M, and agent S, and a set of circumstances C, d is a **minimally acceptable determination-candidate** of M for S in C if d is a plan of action such that if S successfully followed d in C then it would be false that S violated any member of M in C. (Murphy, 1997, p. 119)(emphasis added)

These minimally acceptable determination-candidates are agent-independent (objective) and set the parameters for acceptable determinations and actions. In contrast, determinations are agent-dependent:

> With regard to a set of moral requirements M, an agent S, and a set of circumstances C, d is S's **determination** of M for C if S judges that adhering to d is the way for S to fulfill M in C. (Murphy, 1997, p. 119) (emphasis added)

Determinations are an individual's judgment about how to fulfill the moral requirements relevant to the situation he or she is in, and minimally acceptable determination-candidates constitute the range of judgments which would actually fulfill the pertinent moral requirements (Murphy, 1997, p. 119).

With these definitions in place Murphy lays out the agent-dependent moral requirement which grounds his account of authority:

> [G]iven set of moral requirements M, agent S, and set of circumstances C, then if d is S's determination of M for C, and d is a minimally acceptable

> determination-candidate of M for S in C, then S is morally required to act in accordance with d. (Murphy, 1997, p. 120)

Murphy argues that this is a strong candidate to ground an account of political authority because it is implausible to contend that, "moral principles always uniquely determine a *single* minimally acceptable determination-candidate for an agent in concrete circumstances" (Murphy, 1997, p. 120-121) (emphasis added).[212] As moral principles are general, in order to act according to those principles one must make determinations concerning the specifics of the situation that one finds him or herself in (Murphy, 1997, p. 122). This feature of moral principles can become increasingly problematic when a moral requirement is best realized though cooperative and coordinated action. Coordinated action is more complicated as the determinations available to fulfill the moral requirement in these cases are restricted because it is now *the group* that must come to one determination. In the case of political authority, this is usually accomplished by establishing a set of rules that guide how determinations are to be agreed upon, or by recognizing a person who will make the ultimate determination, or by establishing a set of rules that guide how this person is to be decided upon (Murphy, 1997, p. 125).

This segue into coordinated group action and the emergence of rules to guide such action sets Murphy up to discuss how an individual might treat the rules of such a scheme. He explains that if an individual treats the rules *as his or her own*, not as determinations issued by another but as if they were her own determinations concerning how to fulfill the general moral principles pertaining to the situation, then they "consent

[212] If there was always a uniquely determined candidate then the agent-dependent principle would be "normatively superfluous" as the agent-independent principle could be directly referred to in each situation.

in the acceptance sense" by "surrendering judgment" (Murphy, 1997, p. 126).[213] In terms of creating political authority, when cooperative action is required in order to fulfill agent-independent moral demands, individuals must surrender their judgment to a state and government in order to coordinate the determination which is to be reached to meet the general moral principle. To summarize Murphy's account, a political entity is authoritative when individuals (subjects) consent, in the acceptance sense, by surrendering judgment to the entity in making determinations necessary to coordinate action and fulfill applicable moral requirements.

As was discussed in 2.2c, I take there to be multiple issues that arise for Murphy's account. However, I also take there to be valuable insights, so I will again discuss these issues and argue that they can be avoided by drastically restricting the scope and content of the account. The first issue facing Murphy's account is that it appears to leave the task of making determinations between the minimally acceptable determination-candidates as an arbitrary moral decision. Murphy attempts to head-off this objection by making a distinction between two types of indeterminacy - "indeterminacy of indifference" and "indeterminacy without indifference." Cases of indeterminacy of indifference arise when there is *no reason* to prefer or choose one candidate over another (Murphy, 1997, p. 121). Murphy claims that his account of making determinations from the minimally acceptable determination-candidates is not this sort of indeterminacy, instead, it is indeterminacy *without* indifference. He argues that instead of there being no reason to prefer one option over another, there are independent reasons that each could be taken to be superior

[213] Murphy distinguishes this form of consent from Simmons' "occurrence" and "attitudinal" senses of consent.

(Murphy, 1997, p. 122). For example, one may be judged superior because it better fulfills the requirement to do action type X while another may be judged superior because it better fulfills the requirement to do action type Y (Murphy, 1997, p. 122). Murphy argues that this "seems particularly likely to occur in cases in which one is attempting to satisfy distinct moral requirements" and that it is not an arbitrary matter which determination is chosen (Murphy, 1997, p. 121). This strategy of differentiating between types of reasons in order to avoid arbitrariness seems to be problematic. By focusing on the *difference in type* of reasons, the moral agent is still left in a state of indeterminacy between the differing reasons. It seems that the *strength* of the differing reasons must be considered in order to make a rational determination. If one of the determination-candidates has stronger moral reasons supporting it, then there seems to be no indeterminacy because the candidates are not *equally* acceptable. Alternatively, if Murphy argues that the competing moral reasons are incommensurable then any decision between the two seems to be completely arbitrary. From the utilitarian perspective this is not an issue, even initially. If there are multiple minimally acceptable determination-candidates then each is morally acceptable and it shouldn't matter if the decision is made arbitrarily. However, it is obvious that Murphy does take this to be a problem which needs to be addressed (and thus it is also obvious that he does not accept the utilitarian perspective). His commitment to a pluralistic theory of fundamental or non-derivative moral principles creates tension for him in having to say that deciding between distinct moral requirements is arbitrary. From the utilitarian perspective there is no tension because there are no distinct moral requirements which are completely divorced from the

fundamental moral principle - the principle of utility. This is a problematic aspect of Murphy's account that he has attempted to resolve but which still creates internal inconsistency between *his* commitments.

A second issue that Murphy's account faces is connected to his claim that the acceptance of another's determinations as one's own "does not entail that one accepts the other's judgements into one's theoretical as well as one's practical reasoning" (Murphy, 1997, p. 126). He seemingly includes this in his account because he does not want to accept that one who has given consent in the acceptance sense is bound to accept any and all commands issued by the authority. However, this attempt at avoiding the problem causes similar tensions as Raz's pre-emptive thesis (PT) does. It is difficult to understand how one could use the authoritative determination as *one's own* (i.e., used, as opposed to merely mentioned, as premises in practical reasoning) if she didn't already accept the determination prior to the practical reasoning. Murphy attempts to limit the scope of the acceptance by suggesting that it may be limited to "only those determinations issued that are both relevant to a certain coordination problem and minimally acceptable as solutions to it" (Murphy, 1997, p. 130). This is problematic though as this does not seem to be accepting the determinations *as one's own*. There is an intervening logical step in the reasoning, which Murphy denies can happen in the acceptance sense of consent. If one is going to limit the scope of his or her surrender of judgment then he or she must first reason that this particular determination meets the criteria (e.g., is relevant to the particular coordination problem or is a minimally acceptable solution) and *then* accept it "as one's own." However, this prior reasoning is exactly what Murphy *denies* is done

when one surrenders judgment. Just as Raz's PT creates tension for his account by eliminating all ways of evaluating authoritative directives, Murphy's attempt to limit the scope of acceptance is similarly problematic.[214]

These issues facing Murphy's account lead me to conclude that as a "refurbished *consent* theory" of political authority, it is implausible. In a footnote Murphy even admits that this type of "consent" is rarely deliberate.[215] This admission, in conjunction with the problems facing the internal consistency of the account, seems to highlight that this phenomenon of "surrendering judgment" should not be understood as a type of "consent." However, this does not mean that Murphy's account is all for nought. I believe that much can be co-opted from this account in explaining and describing the difference between a mere political power and a *de facto* authority. While Murphy focuses on the act of "accepting the determinations of a political power (ruler or rules) as one's own" to ground his refurbished consent account, this is also what creates the tension in his account. Instead of attempting to understand this in terms of "consenting," we can simply understand the acceptance of political determinations as the defining feature of political *authority*. This "acceptance" of a political power's directives appears to be enough to differentiate between a mere political power and a *de facto* authority. In focusing on the individual who accepts the directives as products of his or her own

---

[214] In one passage which demonstrates the close proximity between Murphy's acceptance sense of consent and Raz's PT, Murphy writes: "One consents to another in a certain sphere of conduct in the acceptance sense of consent when one allows the other's practical judgments to take the place of his or her own" (Murphy, 1997, p. 126). This is quite close to saying that the authority's judgments are taken as reasons for action which pre-empt the subject's pre-existing reasons (i.e., Raz's PT).

[215] "In ascribing reasons to persons who consent in the acceptance sense, I do not mean to say that all persons who consent do so deliberately… Indeed, I imagine that very few person consent in the acceptance sense in a totally deliberate fashion" (Murphy, 1997, p. 141 [footnote 21]).

deliberation, Murphy implicitly links authority with *legitimate* authority. By looking instead to the political entity's ability to coordinate action by getting subjects to accept and follow the directives, we have an initial distinction between a political power that only operates in the realm of threats and does not achieve any sort of public order and an authority that attempts to achieve some public order and fulfill the function for which it was created.

This distinction between mere political power and political authority also provides the foundation for the further distinction between *de facto* authority and morally justified and legitimate authority. This more modest position can be found within Murphy's account, but it is an aspect which he does not focus on. In Murphy's explanation of the different ways in which agents can treat the rules of a cooperative scheme, he writes that a person can comply with the rules of the scheme because she knows that others will be following the rules and that "the course of action that would be most likely to be effective in achieving the morally choiceworthy goal [coordinated action] would be to follow the rules," therefore, she follows the rules (Murphy, 1997, p. 126). Murphy disregards this type of acceptance because it does not meet his criteria of being accepted *as one's own* and thus does not fit his acceptance sense of consent. But as was just discussed, this can only be implausibly considered "consent." In fact, the above type of reasoned and practical acceptance appears to be all that is necessary to get a simple account of *de facto* authority off the ground. In accepting a directive or rule by complying with it, a person does everything they need to do in giving the political power *de facto authority*. An evil dictator with immense power would seem to have the same sort of ability to get

individuals to comply with his or her dictates, but his or her use of power is not authoritative. A *de facto* authority differs from a mere effective power in that the authority can be understood as being subject to the normative standards of justification and legitimacy. An evil dictator who is ruling through mere force and threats and who does not seek any cooperative ends through his or her rule cannot be evaluated on the normative standards of legitimacy because the type of political power they possess is not the type that can be morally justified and legitimate; that is, it is not *authority*. To accept or comply with the rules and directives of a collective political system because others are or will also follow the rules, thus making the directives/rules likely to achieve the morally choice-worthy goal of having coordinated action, is enough to give a political power authority. This is not to say that the individuals are consenting to the rule of the authority or that the authority is legitimate, it is simply enough to create a coercive political power that is in a position to fulfill the additional normative conditions which would make it a legitimate authority and morally justify its coercive power.[216] *De facto* authority is important and necessary for *de jure* authority because the *actions* of subjects are vitally important in justifying and legitimating the authority. Without the ability to coerce subjects, a political institution is not able to establish and uphold cooperative and

---

[216] In considering some possible objections to his refurbished consent theory, Murphy comes close to endorsing this weaker position. He explains: "even if it [the refurbished consent theory] were ultimately to fail as an account of political authority in present conditions, [it] may succeed as part of an account of why citizens *ought* to surrender their judgment in this way and thereby make their political institutions authoritative" (Murphy, 1997, p. 136). This is almost exactly what I am contending should be distilled from Murphy's original proposal. Understood in this way, "accepting" the directives of a political power explains how governing institutions (which ought to be created and upheld to sustain a morally superior state of affairs over the state of nature) become practically authoritative over subjects (Murphy, 1997, p. 137). The ideas of being *bound to comply* with directives and *accepting* the directives are reciprocal ideas; institutional authority depends on being accepted and being bound to comply depends on it being authoritative. This idea is also closely related to hypothetical consent theories (e.g., Kant, Rawls, Waldron, etc.). Very crudely, if a political power is doing what it ought to be doing then subjects would (and maybe even should) consent to its rule.

coordinated interactions within the society. If a political power is attempting to meet its political goals then the acceptance (compliance) of its directives bestows authority on the power and puts it in a position to accomplish the function it was created to do and achieve justification and legitimacy.

I take all of these insights from the non-utilitarian theorists' accounts of authority and legitimacy explored in this overarching section, ranging from acceptance and *de facto* authority to the descriptive/normative debate of legitimacy, to be ways of specifying the oversimplified political views of Hume and Bentham.[217] With these fundamental ideas in place we are finally ready to explore the idea of a utilitarian account of political obligation.

5.3 The Utilitarian Moral Responsibility Concerning Political Matters

In this section I will be outlining my positive utilitarian account of political obligation. Using the non-utilitarian political insights that have been explored in the previous sections and chapter as support, I will rely on Hare and Sartorius' accounts as the utilitarian framework to build upon. As we have seen, one reason that a utilitarian account of political obligation has been generally dismissed is that neither Hare nor Sartorius' theories (the most detailed and systematic utilitarian accounts to date) have received a recent and thorough defense. In this section I will begin to build this account and defense and in the subsequent section I will continue to flesh out the theory and strengthen it by responding to possible objections. The resulting account will outline the utilitarian moral responsibility concerning political matters which is in line with, and

[217] See 4.1a

responsive to, the traditional intuitions and motivations that give rise to the "problem of political obligation."

I will start with Hare's definition of "political obligation" as a way of delineating the topic. Following Hare, I will understand political obligations as "the *moral* obligations that lie upon us because we are citizens (*politai*) of a state with laws" (Hare, 1976, p. 2). The fundamental question guiding this account will be, "How can these moral obligations, if they exist, be grounded in a utilitarian ethic?" To begin, let's think about why a state may be, or ought to be, established.

In Chapter 4 I discussed the Kantian idea that, "each person has an obligation to leave the state of nature and to accept membership in a civil society under coercive law… and accept the duties society imposes" (Simmons, 2001, p. 140). I argued that utilitarianism seems to be aligned with this Kantian idea that there are moral reasons for establishing a civil state; in other words, helping to form a state is something individuals *have a moral reason to do* because it is practically necessary for maximizing utility. Kant explains this moral necessity for the state when he writes,

> If you are so situated as to be unavoidably side by side with others, you ought to abandon the state of nature and enter, with all others, a juridical state of affairs, that is, a state of distributive legal justice… Even if we imagine men to be ever so good natured and righteous before a public lawful state of society is established, individual men, nations, and states can never be certain that they are secure against violence from one another, because each will have his own right to do what seems just and good to him, entirely independent of the opinion of the others. (Kant, *The Metaphysical Elements of Justice*, section 42 & 44)[218]

---

[218] Reproduced from Waldron, 1993, p. 14.

Apart from the talk of "justice" and "rights," which are laden with Kantian theory not acceptable in a utilitarian framework, the fundamental idea is aligned with the application of utilitarian principles. In order to create a morally superior state of affairs, a state with coercive power must be established. Sartorius' utilitarian explanation of the practical necessity to form political associations is extremely similar to Kant's:

> Any group of individuals the members of which anticipate remaining in relationships of mutual dependency for any period of time will perceive that it is in their common interest to adopt a procedure for reaching and enforcing decisions which will effect their mutual well-being. They cannot rely solely upon conventional moral rules, not only because the social sanction will typically be too weak to counteract the pull of [selfish interests], but because even in a society of morally like-minded and unselfish individuals differences in particular cases would arise due to different opinions as to how shared principles applied to socially significant situations of fact. Within a society of act-utilitarians, for instance, much room for disagreement would exist due simply to the considerable uncertainty which surrounds the prediction of what the future consequences of our acts will be… There is not great problem, then, in explaining--at least in general outline--the need for government and the rule of law. (Sartorius, 1975, p. 96-97)

In brief, there is a practical need for the existence of a civil state with coercive power in order to coordinate behavior, alter the incentives for performing certain actions, and maximizing utility.

The *need* for government and laws seems to be quite evident, but on a utilitarian theory the problem of whether these rules and directives create a moral reason for action or ought to be followed in all cases is a more complex issue. According to the metaethical act-utilitarian analysis of right and wrong, the question of whether to follow the law in *this particular* circumstance is to be calculated for each and every action. However, for practical reasons this calculation cannot figure into individuals' decision

procedure each and every time. Influential factors such as a lack of time to make specific calculations, the presence of self-interested biases, and the need for simplicity in moral education makes it, "not only useful but necessary to have some simple, general and more or less unbreakable principles" (Hare, 1976, p. 4).[219] As discussed in Chapter 3, the general idea is that in order to maximize utility it is often necessary for individuals to rely on rules instead of performing calculations when deciding what ought to be done. This utilitarian account of political obligation will be contending that the general principle, "we ought to obey the law" is one of these rules guiding psychological decision procedures that should be inculcated in people in order to maximize utility. This question of when individuals should simply follow the rules and when it may be appropriate to do the calculation and possibly break the rule is extremely important and will be touched on again later in this section and in the following section. For now we will move on to investigate in what these "utilitarian obligations" to obey the law consist.

In Chapter 1 there were two options discussed for a utilitarian analysis of "obligation." Sartorius endorses one option, which holds that obligations exist because of *past* occurrences (in line with the deontological conception of obligations), but denies that obligations are *moral* requirements (in opposition to the deontological conception). Sartorius argues that, "there are obligations that give rise to no corresponding moral obligations, and that the existence of an obligation thus cannot support the assertion that one ought (even *ceteris paribus*) to fulfill that obligation" (Sartorius, 1975, p. 89). With

---

[219] Hare, following Hume, argues that it is impracticable and dangerous to use act-utilitarianism as a decision procedure; "impracticable, because we are unlikely to have either the time or the information, and dangerous, because we shall almost inevitably cheat, and cook up the case until we can reach a conclusion palatable to ourselves" (Hare, 1976, p. 4).

this account Sartorius severs any *necessary* connection between one's obligations and what is the 'right' action or what one morally 'ought' to do. In other words, "The grounds for the existence of an obligation… are one thing; the reasons for fulfilling an obligation quite another" (Sartorius, 1975, p. 93). I do not accept Sartorius' conception of obligations mainly because in a utilitarian system, all facts are potentially relevant to the moral calculation, including facts concerning "obligations."[220] I also believe the primary motivation for the account - severing any necessary connection between obligations and what morally ought to be done - can be accomplished with a less contentious analysis.

This second, less contentious utilitarian analysis also lines up with the deontological conception that obligations exist because of *past* actions, but it departs from Sartorius' view in that it contends all obligations *are* morally relevant. This position contends that obligations (e.g., obligations generated through the making of promises) necessarily create new expectations (in the obligor, obligee, etc.) which the fulfillment or disappointment of must be taken into account in a utilitarian's calculations.[221] With this account it is still possible to contend that there is no necessary connection between having an obligation and the fulfillment of the obligation being the right action. Simply because someone has an obligation X does not necessarily mean that he or she ought to fulfill X. What *is* entailed by an individual having an obligation X is that there exists an *expectation* that X will be fulfilled and must thus figure into the utilitarian calculation

---

[220] All facts are potentially relevant to the moral calculation *if they are causally or logically connected to the action in question*.

[221] Jan Narveson (1967) is one example of a utilitarian who offers this sort of analysis. See 1.2 for additional description of his account.

determining the ‘right’ action (i.e., what ought to be done). I take this to be a less contentious utilitarian analysis of obligation because, while it still departs from the deontological concept, it does not depart so far as to say that obligations are not necessarily morally relevant.

If the utilitarian conception of obligations concerns the expectations to do or not do certain actions, why would people have obligations to obey the law of their state? Following Hare, my account claims that laws *add* moral reasons for performing (or refraining from) certain actions to the existing moral reasons for performing or refraining from those same actions.[222] Additionally, in some cases laws can *create* moral reasons for performing (or refraining from) certain actions, where no moral reason existed prior to the legal directive, by specifying a type of action which will be the norm (e.g., cases where there are “coordination problems”). Legal directives add to the existing obligations or create new obligations because they alter the conditions under which subjects are asking their moral questions (Hare, 1976, p. 6). As certain norms are established the moral conditions of performing or refraining from certain actions are altered because the impact of one’s action or inaction is increased as people are acting in a coordinated fashion due in part to the coerciveness of the law. This idea that political authorities are altering the conditions under which moral questions are asked by establishing social norms (i.e., laws backed by coercive power) connects to Sartorius’ arguments that these social norms are more than mere rules of thumb.

---

[222] This is also a very Hobbesian idea that laws change the consequences associated with performing or not performing certain actions thus altering the considerations and calculations of rational agents. However, unlike Hobbes’ egoism, I take there to be many things that have value, are in fact valued by individuals, and deserve consideration in calculations concerning what ought to be done.

Social norms which are backed by sanctions and established by authoritative directives are much more than *mere* rules of thumb because "their character and modes of participation in their support permit them both to provide reasons for action and to redirect human behavior into channels it would not otherwise take" (Sartorius, 1975, p. 53). In line with the Kantian and utilitarian reasons for establishing a state with coercive power, I follow Sartorius in contending that individuals (even act-utilitarians) ought to support the establishment of a political authority and complex legal system as a means of controlling and guiding the behavior of individuals in the society in order to maximize utility/value. Act-utilitarians can coherently (and ought to) accept, and even themselves establish, a system of legal norms/rules that will guide "behavior into desirable directions that it would not otherwise take" (Sartorius, 1975, p. 57). It should be recalled from the earlier discussion of Sartorius' theory (3.3d) that these moral reasons supporting the existence of political authority, a complex legal system, and action guiding norms do not exclude the possibility, and in many cases even produce, conflicting utilitarian demands on citizens and state officials. Complex systems of law many times create different institutional roles that require quite different consequences to be considered in calculations determining what one ought to do (Sartorius, 1975, p. 56). For example, a situation may arise in which an individual ought to break a particular law, but this individual ought to also be arrested, prosecuted, and sentenced to serve time in prison (by the various officials in these institutional positions), *and* the individual ought to attempt escaping punishment (Sartorius, 1975, p. 56). All of this is possible even if the individual has no grounds for believing that the legal system ought to be changed in any way

(Sartorius, 1975, p. 56). All of these seeming utilitarian issues appear to arise because individuals have moral reasons to support the existence of a political authority and coercive laws *as well as* reasons in particular situations which are stronger than the reasons to follow the particular law(s). This is no problem for "utilitarian political obligations" though; individuals can have competing moral reasons for action that continue to exist (i.e., are relevant to utilitarian calculations) even if one of the moral reasons outweighs the competing reasons (or is a part of a group of reasons which outweigh others). With this in mind I think it would be useful to revisit Hare's account concerning the moral reasons for acting *because of the existence of the law*.

Hare argues for four specific reasons or obligations individuals have which exist because there is a law. Of these four I will be focusing on the first three. Individuals have a reason/obligation to follow the law:

1. Because there is an enforced law X, resulting in the general behavior of following X, an individual's failure to follow X will harm people's interests more than if there were no law.
2. An individual's breaking of the law will result in more resources having to be used in the enforcement of the law.
3. An individual's breaking of the law "may encourage people to break those or other laws, thereby rendering a little more likely (*a*) the removal of the benefits to society which come from the existence of those particular laws, and (*b*) the breakdown of the rule of law altogether, which would do great harm to the interest of nearly everybody."
   (Hare, 1976, p. 7 & 11)[223]

These three types of moral reason that are related to the existence of the law are reasons to do (or not do) the action that the law prescribes (or prohibits). The particularly

[223] It should be recalled that Hare's list of reasons refer specifically to his desert island example and the hygiene/delousing laws. I have taken these references out and, except where specifically quoted, have paraphrased the reasons to achieve a more general character (See Hare, 1976, p. 7 & 11 for the original wording).

important feature of these moral reasons is that they still exist and are relevant to utilitarian calculations even in circumstances where it may be the case that a law ought to be broken. Even in a situation where an individual ought to break a law in order to bring about better consequences, these reasons must figure into the calculation as *reasons not to break the law*. Following Hare, my contention is that, given the practical necessity of the state and its coercive and constitutive laws, there are general moral reasons/obligations to abstain from breaking them because breaking the law violates morally valuable expectations and thus is to be considered, in part, morally disvaluable (Hare, 1976, p. 8). These moral reasons/obligations arise from the psychological need for rules in coordinating and guiding behavior and for use in decision procedures. To explore this idea further we must return to Sartorius' arguments contending that social norms can be *moral* norms.

Based on the contingent features of human psychology (i.e., intellectual limitations such as time restrictions and capacity, selfish biases, etc.) that Hume highlighted as the reasons for needing political authority, the utilitarian claim is that a government, legal system, and coercive power is practically necessary in creating a morally superior state of affairs. This moral requirement to create and support a justified and legitimate political authority grounds the idea that individuals have moral reasons to obey the directives of the authority. The job of political authorities is to anticipate and (re)direct the actions of it subjects which are uncoordinated, selfish, and/or often simply mistaken about what action ought to be taken. These authoritatively established and coercively enforced legal and social norms guide and coordinate activity by allowing the

subjects to anticipate the state's actions and the actions of others under the authority of the state, and this leads to coordinated behavior which, had the laws not existed, would not have been possible. Sartorius pushes a similar idea when he writes:

> In most general terms, the picture here is that of men deliberately creating a legal system (norms plus officials charged with their application) with the intent of putting others [other subjects] in the position of having to make second-order decisions about their behavior which will channel that behavior into desirable directions that it would not otherwise take… some men must be deterred from intentionally acting in a wrongful manner towards others… [and some] men will more often than not be mistaken about what will have the best consequences if they are left to judge matters by their own lights. (Sartorius, 1975, p. 57-58)

This combination of contingent facts about human psychology creates the need for political authority, coercive laws, and legal sanctions as a mechanism for directing behavior into morally superior avenues which could not be achieved without such a political power (Sartorius, 1975, p. 58).[224]

Sartorius accepts that act-utilitarianism cannot function as a decision procedure for each and every action choice and that, "conventional morality ought to contain at least some rules which prohibit direct appeals to utility" (Sartorius, 1975, p. 60). In order for these rules to be justified on utilitarian grounds however, it must be shown that, "(1) The rightness of various forms of participation in the support of such rules can be based on the act-utilitarian principle, and (2) The right to violate such rules when so doing would have the best consequences can be retained by the individual agent" (Sartorius, 1975, p. 60-61). In his argument supporting these two criteria Sartorius fills out the Humean

---

[224] In line with Sartorius, I believe the efficacy of coercive power and sanctions is not only found in the outcomes of "applying them to those who *fail* to fulfill their legal obligations," but also in considering "the manner in which they lead men to *fulfill* those obligations which they would otherwise, for whatever reasons, fail to fulfill" (Sartorius, 1975, p. 58).

argument that moral rules are practically necessary for *moral education*. The idea is that when teaching children right from wrong, absolute rules (e.g. *never* steal) are often the content which is taught (and also *ought* to be) because teaching children the act-utilitarian principle itself would be disastrous (as it is also usually disastrous for adults attempting to use the act-utilitarian principle as a decision procedure). Sartorius argues that this is not only because of the fallibility of children's' judgments, but also because these absolute rules help teach the children what has value and what ought to figure into the act-utilitarian calculations. Without a prior understanding of what has value, the utilitarian principle that one is to do that which is likely to have the best consequences would make no sense to a moral student (Sartorius, 1975, p. 62).[225]

This practical need for rules is not solely dependent on the optimific pedagogical techniques for teaching morality, but the fact that most people are taught morality through universal rules plays a significant role in explaining why moral rules play a role in conventional morality. In addition to the intellectual roadblocks facing most people in any attempt to complete an act-utilitarian calculation for any action, the mere fact that individuals *are* taught absolute moral rules will also often *influence* the calculations in ways which favor relying on the rules. The assumption that adults can simply stop appealing to the moral rules through which they learned right from wrong, is, as Sartorius

---

[225] Sartorius argues that there is a close analogy between the case of moral education and the complex legal systems discussed earlier. There may arise cases in which a moral student may reasons that he or she ought to break the rule *on this occasion*, while it may also be that if caught, the individual ought to be sanctioned in order to teach others and also to discourage rampant rule breaking. Just as with legal rules, it is perfectly consistent that a person ought to do X *and* that others ought to punish him or her for doing X. The complex system of moral education and moral rules includes these various roles which each require the individual to consider different consequences in their utilitarian calculations.

contends, "highly dubious" (Sartorius, 1975, p. 64).[226] As Sartorius argues, "on the hypothesis that the conventional rules are (among other things) reliable rules of thumb, it may be virtually impossible for an adult to make the sort of psychological adjustments which would be required for him to be able to view them as *only* rules of thumb" (Sartorius, 1975, p. 64). For example, in some particular situation one may be morally justified in breaking a promise or even killing someone on direct utilitarian grounds, but very often these (justified) transgressions against moral rules cause guilt, remorse, anxiety, and sanctioning (social, moral, and possibly legal) (Sartorius, 1975, p. 64). All of these negative emotions will be predictable consequences in a society that relies on firm and absolute rules in its moral education of the youth and in act-utilitarian calculations *all* relevant consequences require consideration. Additionally, if complex legal systems have been put into place then others may also be morally required to punish these rule transgressions in order to uphold others' adherence to the rule.

If moral education is best achieved through the teaching of absolute rules and this leads to adults continuing to rely on those rules, and negative emotions being felt when the rule ought to be broken, it must be asked whether "the adult act-utilitarian, insofar as he is able, should seek to rid himself of his rule-directed conscience[?]" (Sartorius, 1975, p. 65). Sartorius argues that the answer to this question is obviously "no." Simply because the typical emotions experienced from one's considering breaking, or actually breaking, moral rules are intrinsically undesirable, this doesn't mean that they ought to be

---

[226] This idea that adults do, and should, use moral rules to guide their behavior is closely tied to another idea which holds that in developing a moral decision procedure it may be the case that individuals ought to develop certain character traits (e.g., being a "truthful person") because these habits and traits will lead to overall maximization of value.

eliminated. I agree with this argument and also find his analogy here between moral rules and legal rules to be quite compelling. Just as these negative emotions associated with the breaking of moral rules is undesirable, legal sanctions associated with breaking the law are undesirable consequences as well, but this does not mean that they should be eliminated. In fact, "it is only because they have the character of consequences to be avoided that legal sanctions can serve to channel behavior into directions that it would otherwise not take" (Sartorius, 1975, p. 65).[227]

If we return to Hume's line of argument which highlights the familiar human failings associated with lack of information, fallibility of judgment, bias, etc., we can see that the undesirable consequences associated with moral rules can have positive value because they redirect behavior in ways that have better consequences than not having rules would (even in a society of ideally moral act-utilitarians). As groups of people live together, certain norms of behavior (and resulting expectations concerning future behavior) arise naturally (i.e., *conventions*). To supplement, expedite, and offer insurance that this coordinated behavior will develop and be maintained, political authorities are

---

[227] It is important to include a footnote from Chapter 3 here again that is particularly relevant to this idea of sanctions. After arguing that sanctions are practically useful in guiding behavior, Sartorius explains that positive reinforcement can also serve this directive function: "Correlative to these forms of negative response are forms of positive reinforcement, the social significance of which should not be underestimated. The emphasis here upon blame rater than praise, punishment rather than reward, and guilt rather than heightened self-esteem, is due to the fact that I have taken the prohibitions of the criminal law as the model in terms of which to present the general analysis… [however] I also believe that prescriptive norms, backed by various forms of social sanction play the most central role--legally and morally--in our social lives" (Sartorius, 1975, p. 67). He also suggests that the, "challenging of others [simply calling behavior into question]… is much more frequent than the blaming of them--this, in part, because it is more often justified--but it has, at least in part, the same function as blame itself" (Sartorius, 1975, p. 68). This idea is extremely important for my utilitarian account of political obligation because it rejects the assumption of psychological egoism and the view that this entails - that people can *only* be guided and motivated by threats and sanctions. I agree with Sartorius view that "under normal circumstances within a healthy polity, this is not the perception that men have of the foundation of their mutual expectations concerning obedience to law. With good reason, men believe that the basis for obedience to law represents more than the widespread fear of the effective wielding of coercive force by those in power, and they realize that where this is not the case, the situation is undesirable on a number of scores" (Sartorius, 1975, p. 99).

instituted which create rules/directives with sanctions attached to their violation (e.g., the creation of a legal system).[228] Sartorius summarizes the utilitarian account of political obligation I am arguing for when he writes:

> The social norms which bar direct appeals to utility in the institution and maintenance of which I have claimed the act-utilitarian can consistently participate have the status of conventions in that… good consequences would typically not be produced by any given individual conforming to them unless others were doing so as well… it is for this reason that they function as *reasons for action*. For although it is only the act-utilitarian principle itself which has the status of prescriptive moral principle, in virtue of it more *specific norms may serve as reasons for action in that their existence as systems of expectations implies that failure to conform to them will produce the disutilities associated with the disappointment of those expectations*. (Sartorius, 1975, p. 70)

The act-utilitarian is able to give an account of the general moral reasons individuals have to follow the law and support their state. Supporting the societal system of coordinated behavior is something that ought to be done in order to maximize value. These moral principles (e.g., follow the law) are derived from the fundamental act-utilitarian principle and provide moral reasons for action because they are tied to systems of expectations which guide behavior. Authoritative directives create utilitarian reasons for action, first, because they direct "behavior into channels that it would otherwise not take by restructuring the sets of considerations of consequences," and second, because "their conventional acceptance is tantamount to the existence of systems of warranted

---

[228] This is creation of political authority with coercive power is *rational* because it is supported by a peculiar rational ability: "Far from being absurd or paradoxical, we have here merely a particularly important instance of a peculiarly rational ability which can be described in highly general terms: A rational decision-maker, on the basis of a choice criterion C, makes choices at a given time which will render more or less eligible certain other choices which, at that time, he can predict he will have to make on the basis of C at a later time" (Sartorius, 1975, p. 66). In this system of coercive norms individuals must "act upon the basis of expectations about how others will behave, which in turn will be based upon [the individual's] beliefs about how they expect [the individual] to behave" (Sartorius, 1975, p. 69).

expectations the disappointment of which is a disutility" (Sartorius, 1975, p. 70-71).[229] Laws, and more generally - conventional moral rules, serve in guiding and coordinating behavior by (1) creating morally relevant expectations, (2) being reliable rules of thumb, and (3) serving an essential role in moral and citizenship education.

In the creation of a legitimate political authority, each subject retains the moral autonomy to calculate the utilities and disutilities of following (or not following) a conventional moral rule or legal directive in each circumstance, but the mere existence of the political authority and constitutive laws introduce moral reasons *against* doing such calculations and, more importantly, *against breaking such rules* even if the calculation is done. The use of rules in moral education and the need for an impartial coordinator of behavior gives weight to these societal expectations and moral reasons for action. In addition, the fallibility of human judgment creates additional need for expertly crafted

[229] Sartorius elaborates on this idea when he writes, "In those instances in which the exceptions to a generally reliable rule of thumb cannot be reliably identified, there are good reasons for giving them the status of legal norms back by sanctions, thus rendering attempts to identify exceptions to them less likely to appear as optimific on act-utilitarian grounds" (Sartorius, 1975, p. 107).

behavior guiding rules.[230] This is not to say that it is never morally justifiable to break the law, whether a particular law ought to be broken on a particular occasion will ultimately come down to the principle of utility. However, in justified and legitimate states there will always be moral reason(s) for obeying the law (or against breaking the law) that exist because the law exists. Under some, maybe many, conditions the right thing to do will be to disobey the law (or the conventional moral norm), but this does not diminish or eliminate the reasons for obeying the law. Where justified and legitimate political authority exist, the moral principle that subjects ought to obey the law will carry with it significant moral reason(s) for obeying the law which are based on societal expectations and coordinated action, which are ultimately based fundamentally on the principle of utility.[231] Whether one *ultimately* ought to obey the law however, will be an empirical question based on the relative strength of the reasons supporting and opposing

---

[230] There is a substantial debate in the literature surrounding the political obligation debate that focuses on whether democracy is necessary for the existence of political obligations. Fully addressing this topic is beyond the scope of this chapter but a brief comment can be made about it. Straightforwardly, the utilitarian can and should reject the claim that democracy is *necessary*. The form of government that will best maximize utility will vary depending on the circumstances (the nature of the citizens, the nature of societal relations, the state of international relations, etc.). However, if it turns out that the population fulfills a sufficient level of intelligence, has equal access to information, and generally wishes for legislation to promote the *common* good, then democracy/majority rule is a promising form of government for maximizing utility. First, because "it is perhaps the safest possible hedge against the abuse of political power," second, because "men take positive pleasure in their belief that what they think ought to be the case is the case," and third, because it is plausible that "the reliability of the group's decision under majority rule is *considerably greater* than the reliability of any randomly chosen individual member of the group" (Sartorius, 1975, p. 111-112). Assuming the average voter is more often correct in his or her judgment about what legislation ought to be passed, Condorcet's formula (a French mathematician) demonstrates that group reliability is greater than individual reliability: "Where it is assumed that each (or the average) voter is right in *v* of the cases, and wrong in *e* of the cases ($v + e = 1$), and *h* voters vote Yes, while *k* voter vote No, the probability that the *h* members are right is given by the formula: $v^{h-k} / v^{h-k} + e^{h-k}$" (Sartorius, 1975, p. 112). As the number of voters goes up, the reliability of the group increases dramatically. For example, according to the formula, if there are 10,000 voters, each voter has a 51% reliability rate, and the percent to carry the vote is 51%, the group reliability will be 99.97% (Sartorius, 1975, p. 112). Cf. Beetham's discussion (1991, p. 90) of the problem intrinsic to paternalistic theories.

[231] Cf. Sartorius, 1975, p. 109.

the action, but one significant reason for obeying the law will be that the law exists (and the corresponding expectations that accompany this fact).

As this utilitarian account of political obligation has developed, it has interestingly begun to open up the possibility for *inclusion* of the moral reasons posited by the traditional theories of political obligation (i.e., consent, fair play, gratitude, associative, and natural duty) that support the claim that individuals have an obligation to follow the laws of their relevant political authority. If it is accepted that the moral principles motivating each of these theories are *derivable* from the principle of utility then they are not to be viewed as necessary *competitors* to the utilitarian account, instead, each could be seen as supporting the many moral reasons individuals have for following laws and supporting legitimate political authorities. Of course, many (or most) proponents of the traditional theories will not accept the claim that the moral principles grounding their preferred theory are derived from the utilitarian principle, but it is an interesting possibility as it opens a door for a non-antagonistic relationship between the utilitarian theory on offer here and the contemporary political obligation debate. The utilitarian account of political obligation can accept that there are many varied reasons explaining why broad expectations concerning individual and group behavior are created; they can be created by consent, or a general belief that fairness and/or gratitude create reasons for action, or in a belief that simply being a member of a group carries responsibilities, or in a belief that there is a responsibility to support just states. As Sartorius describes the relationship, "The purpose of traditional theories of obligation, in other words, is to

explain how it is that obedience to law could be generally relied upon, as it admittedly must be, within a stable political community" (Sartorius, 1975, p. 109).

5.4 Reply to Objections

In order to continue filling out this utilitarian account of political obligation it will be helpful to consider some objections that have been raised against Hare and Sartorius' theories as well as some possible objections facing my new and more comprehensive utilitarian account. I will begin by offering responses to the relevant objections leveled against Hare's account and continue from there to offer responses to the relevant objections facing Sartorius' account. In my consideration of these objections I will use the unique resources contained within my utilitarian theory as material for my responses, or I will argue that these particular objections do not pertain to my version of the utilitarian account.

As was discussed in 3.3c, John Horton has offered the most well known criticisms against Hare's account of political obligation. To briefly summarize Horton's objections: first, Horton claims that Hare has violated the particularity requirement and thus his account is not of political obligation, but a more general obligation to obey the law (pertaining to everyone and every law). Additionally, Horton claims that these reasons do not specifically pertain to laws and political obligations because they also seem to apply generally as reasons to follow "good advice" that most people are also following. His second criticism is that Hare exaggerates the "contagiousness" of breaking the law with his examples of hygiene laws which prevent the spread of typhus. Horton explains that

not obeying *these* types of law would *literally* be contagious, but that most law-breaking is at best metaphorically contagious.

Concerning Horton's criticism that Hare's account violates the particularity requirement, Horton is correct that this is a weakness of Hare's brief account, but it is a problem that Hare (and I) have the resources to address. Hare could have argued, as I *am* arguing, that the utilitarian moral reasons on offer for following the law are *stronger* for citizens and permanent residents, than they are for temporary residents and visitors. If the moral reasons which citizens and permanent residents have for obeying the law and supporting their legitimate government are stronger than the moral reasons for, say, a traveller to follow the laws, then the utilitarian account *does not* fail to accommodate the particularity requirement. This is not to say that temporary residents and visitors *don't* have moral reasons to follow the laws of the country they are currently in, simply that there are a greater number or stronger moral reasons for the citizens and permanent residents of the country. As was just discussed in the previous section, the utilitarian account of political obligation takes there to be many varied reasons explaining why broad expectations concerning individual and group behavior are created. These expectations (i.e., moral reasons for following the law) can be brought about through consent (explicit or tacit), and/or they can be brought about by a widespread belief that fairness and/or gratitude create reasons for action (i.e., the voluntary acceptance of goods and services creates an expectation of "repayment"), and/or a widespread belief that simply being a member of a group carries responsibilities (e.g., a belief that *citizens of the US* ought to do or support X), and/or a widespread belief that there is a responsibility to

support just states. All of these are possible reasons why broad expectations can arise, and undoubtedly, these reasons will be more numerous when it concerns *citizens'* (or permanent residents') behavior towards their government and its constitutive laws when compared to temporary residents or visitors. The mere fact that most theorists in the political obligation debate take there to be a particularity requirement for theories of political obligation is strong evidence that the expectations for citizens and permanent residents to obey and support their respective legitimate government is higher than the expectations of non-permanent residents. Ultimately, the moral reasons for obeying and supporting a political authority will rest on the principle of utility, but if certain expectations exist, then there is utility in meeting the expectation and disutility in failing to meet it. Again, on the utilitarian account it will be a contingent question whether particular moral reasons (e.g., meeting a certain expectation) ought to be acted upon in particular circumstances, but this does not mean that it ceases to be a moral consideration if it is outweighed in a particular situation.

The particularity objection is a common one leveled against any utilitarian account of political obligation. My position is in direct opposition to this common claim that mere residence "within the claimed territories of a particular just state seems inadequate to 'particularize' any general duties of support and compliance to that one just state" (Simmons, 2001, p. 137). I am contending that one's status as a permanent resident (or citizen) *can* particularize certain expectations about how that individual

ought to relate to the political authority.[232] While there may be many reasons why Hare did not address this issue as I have, one possibility is that he shared my intuition that focusing too much on the particularity requirement can be overly restrictive.[233] If we focus too narrowly on our particular country when we are considering politically created moral responsibilities, we may miss a vast number of responsibilities we have to *other polities*. The response I have offered to the particularity objection can still accommodate this intuition. While there are moral reasons for all legitimate laws to be obeyed when an individual is subject to those laws (e.g., when he or she is visiting a particular country), there are unique moral reasons (expectations) that apply to the citizens and permanent residents ("insiders"). Ultimately, all of these moral reasons and principles will be grounded in the principle of utility, but there is room for a distinction between any general utilitarian reason to obey good laws and individuals' reasons for obeying the laws of their particular legitimate government (i.e., laws which were designed with the purpose of serving a group of "insiders"). I see this as a compromise or middle ground

---

[232] Jeremy Waldron offers an interesting argument for limiting the range of moral principles (e.g., political obligations) that seems able to also be co-opted for my utilitarian account. Waldron uses the Kantian argument for the moral necessity of the state to argue for "range-limited moral principles." I too have accepted this Kantian idea that the state is necessary (practically necessary for the utilitarian) in securing a morally superior state of affairs to the state of nature. In turn, I see Waldron's related range-limiting argument as useful for my response to the particularity objection. Waldron writes, "clearly those with whom I come into conflict will in the first instance be my near neighbors. Since no one can afford to wait until all possible conflicts arise so that all can be definitively settled at once, the Kantian approach implies that I should enter quickly into a form of society with those immediately adjacent to me, those with whose interests my resource use is likely to pose the most frequent and dangerous conflicts. These conflicts at any rate must be resolved quickly on the basis of just political and legal institutions, in order to avoid arbitrariness and violence… Certainly such resolutions are provisional. As the sphere of human interaction expands, further conflicts may arise, and the scope of the legal framework must be extended and if necessary rethought, according to the same Kantian principle. But in the meantime, it is important to find a just basis for settling those conflicts that are immediately unavoidable, a basis that is just between the parties to those conflicts. It seems, then, that principles of justice can be limited in their range, at least on a *pro tem* basis. This is sufficient to establish the distinction between *insiders* and *outsiders*" (Waldron, 1993, p. 15).

[233] See the brief discussion of "political duties" in 1.3.

between some natural-duty theorist's claim that the particularity requirement is not in fact a requirement and the opposing claim that theories of political obligation must *focus* on the particularity.

In the second criticism I will consider, Horton claims that the primary moral reason Hare provides for following the law, "depends upon the law's being effective, not merely in the sense that it is generally observed, but in the further sense that it will actually prevent typhus [or whatever it is intended to prevent]" (Horton, 2010, p. 66).[234] Horton's point seems to be that a law which did not achieve its intended purpose would not provide a good utilitarian reason for obeying it (Horton, 2010, p. 66-67). On the utilitarian account this is not necessarily correct. If there is a general expectation that subjects of political authority A will be following its directives, and failing to follow these directives will result in a disutility because it does not meet the expectations, then there is a moral reason to follow the directives, *regardless* of whether the directives will accomplish what they intend to accomplish. If a certain law is very poorly crafted and will not accomplish the goal it was intended to, then it may be that people ought not follow the law, but this does not entail that there is no reason in favor of following the law. Additionally, no utilitarian theorist who is interested in providing an account of political obligation should be focusing on individual laws in order to justify a legal *system* because individual laws are open to just this sort of criticism. Instead, a complete account should provide a theory of legitimate political authority in order to establish legitimate legal systems. From here it is then possible to ask the question of whether

---

[234] Hare's primary moral reason for following the law: Because there is an enforced law X, resulting in the general behavior of following X, an individual's failure to follow X will harm people's interests more than if there were no law.

individuals have moral reasons to follow the dictates of these legitimate legal systems generally. Even if a specific law within a legitimate legal system pertains to an action/ inaction which there are already moral reasons for doing/refraining from, or if the law does not succeed in accomplishing its purpose, a positive account of political obligation will contend (and hopefully demonstrate) that the law *adds* to the moral reasons to preform/refrain from the action. My extended discussion of justification and legitimacy was intended to meet this requirement for a robust utilitarian political theory. Recall my acceptance of Raz's service conception of authority and related theses (NJT and DT). On my utilitarian account, political justification and legitimacy is based on the state's ability to maximize aggregate utility through legal directives (in other words, subjects are more likely to do what they ought to do if they follow the authority's directives).[235]

A third criticism leveled by Horton is that for utilitarians the general principle to follow the law must merely be a rule of thumb (and thus cannot provide a strong enough account of political obligation). Following Sartorius', my response, and what I assume Hare's would also be, is that the moral principle supporting political obligation *can* be more than mere rules of thumb. As has been contended, rules are practically necessary "for the purposes of moral education and self-education (i.e. character-formation), and to keep us from special pleadings and other errors when in situations of ignorance or stress" (Hare, 1976, p. 4). As was discussed in 3.2, most act-utilitarians accept some type of indirect utilitarianism as their decision procedure (i.e., rule guided).[236] This

[235] See Chapter 4, particularly 4.2, for my discussion of justification, legitimacy, and Raz's SCA.

[236] It is important to emphasize here the distinction between a utilitarian's *metaethical analysis* of right and wrong and the *decision procedure* which ought to be adopted. It is absolutely coherent for an act-utilitarian to contend that the right action is the one(s) which maximizes value *and* that individuals ought to seldom (or even never) perform the relevant utility calculations.

acceptance does nothing to weaken their theoretical commitment to "rightness" being tied to the maximization of value. It seems that a utilitarian account of political obligation can only be expected to establish that there are moral reasons to support and follow the laws of one's government and that this would seem to establish the "robust" account that political obligation theorists are looking for.

Sartorius' primary critic has been Simmons. To briefly summarize his objection(s): Simmons claims that there will be cases in which act-utilitarians will *not* have a reason for obeying a social or legal norm; for example, when the sanctions tied to the norm are ineffective or when the positive utility of breaking the norm outweighs the negative. He admits that an act-utilitarian may be able to adopt Sartorius' norms, but argues that this is insufficient because this adoption would not confer any new prescriptive force on the norms, it would only alter the consequences of disobeying. And since these consequences can still be outweighed by other positive consequences of disobeying, the view doesn't provide the strong moral bond that political obligation requires (Simmons, 1979, p. 51).

The criticism contends that the moral rules/norms of Sartorius' act-utilitarian account are not strong enough moral bonds to fill the role that political obligation theorists seek because adopting the rules does not confer any prescriptive force to the rule, it merely alters the consequences associated with obeying or disobeying (Simmons, 1979, p. 51). Essentially, I take this objection to be the "rule of thumb" objection rephrased. The claim seems to be that utilitarian "political obligations" would be nothing more than rules of thumb. However, I believe this objection is one that Sartorius can, and

does, effectively respond to. Sartorius does not, and I am not, denying that there may be particular cases in which the utilitarian calculations will favor breaking the rule/norm and that on those occasions it will be the *right action* (i.e. utility maximizing) for one to break the rule. What is being denied is that political obligations are *mere* rules of thumb. As social creatures, humans need ways for coordinating behavior (i.e., conventions and rules/laws/norms) and these conventional and political structures can take quite complex forms "in which a system of social sanctions based on shared social norms may act as a sort of feedback mechanism which can radically restructure the sets of considerations of consequences of which the act-utilitarian must take account" (Sartorius, 1975, p. 67). This restructuring of considerations and consequences of behavior *does* confer prescriptive force to the rules because the way in which an act-utilitarian "adopts" a norm is to *act in accordance with the prescribed course of action or restraint* (or to adopt it as a psychological decision procedure which in turn would cause them to act in accordance with the norm). When a sufficient number of individuals in a society are acting in certain predictable ways the consequences of obedience and disobedience are altered and *this alteration* confers prescriptive force because maximizing the value of consequences is the only thing that has prescriptive force on the act-utilitarian theory.[237]

This objection also exposes, again, Simmons' failure to distinguish between derivative and non-derivative theories of political obligation.[238] Simmons' claim that the utilitarian account "doesn't provide the strong moral bond that political obligation requires" suggests that he is looking for a *non-derivative theory* in which citizens have

---

[237] That is, there are moral considerations which favor obeying the legal directives.

[238] See 1.5

general obligations to follow laws as such, or in other words, citizens have political obligations *simply* because laws exist (Simmons, 1979, p. 51). But Simmons is explicit in his *denial* that the nature of the citizen/state relationship can be the fundamental grounds for political obligations. He argues that political obligations, if they were to exist, would be grounded in a fundamental principle of consent and gratitude.[239] Additionally, even if these political obligations did exist, Simmons does not think that citizens should always follow the law, all things considered. Simmons' account does not provide any stronger of a moral bond between citizens and state than my utilitarian account does, but his failure to make the derivative/non-derivative distinction makes it appear as though this is a legitimate objection which he offers. This sort of argument would only be legitimate if Simmons were willing to accept that political obligations are *non-derivative* moral principles. It is clear that Simmons *does not* accept this, and it is very rare to find *any* theorist in the literature contending that there exists a fundamental moral principle(s) concerning political obligation, that is, one not derived from any other moral principle.[240]

At this point it is necessary to address some possible objections that opponents may raise against my utilitarian account of political obligation which have not been explicitly raised against Hare or Sartorius' theories. One objection that may be put forth

---

[239] Recall that a non-derivative theory holds that political obligations are fundamental moral requirements that exist because of the intrinsic nature of the relationship between citizens and their respective states. Alternatively, a derivative theory holds that political obligations are grounded in the intrinsic nature of some fundamental moral principle such as consent, fair play, gratitude, or a principle of utility, in conjunction with specific historical, causal, and epistemic facts about the individual to whom the obligation applies.

[240] It seems that a non-derivative theory of political obligation would have to hold that there is a *sui generis* obligation/duty that exists between and binds individuals to their respective state. This sort of theory would resemble theories of special obligation between intimates (friends, families, etc.). See, e.g., Horton's associative theory (2006, 2007, 2010).

by Simmons is that my account does not offer a "special" sort of obligation which depends on our special roles or relationships with the state (Simmons, 2008, p. 43). This criticism is quite similar to the particularity objection and can, I believe, be responded to in the same way. As there can be many varied reasons explaining why broad expectations concerning individual and group behavior are created, I have argued that the reasons will be greater in number and/or stronger for citizens and permanent residents than they will be for visitors. Simmons' reply may be that this is to ignore the distinction between moral reasons for action and the grounds for a general political obligation and that what I have presented is "less a case for a general political obligation than a list of often, though by no means always, operative reasons - of distinctly variable weight - for refraining from actively disrupting political life in just societies" (Simmons, 2001, p. 116). Simmons would take this to be an objection to my account because he believes his *a posteriori* philosophical anarchism can offer the same list of morally operative reasons for obeying the state without having to commit himself to the legitimacy of the state and the existence of political obligations. But as I have argued, this is simply to deny utilitarianism *generally*. The utilitarian does not accept that there is a distinction to be made between the moral reasons for acting and the grounds for obligations. This objection does nothing to advance the argument that utilitarianism cannot offer a theory *of political obligation*. As I have argued, the utilitarian *can* contend that there are moral reasons for obeying the legal directives of one's respective political authority. This "objection" also fails to recognize that it applies to *all* theories of political obligation equally. Unless one is willing to accept (and I don't know of anyone who is) some

extreme Kantian position which claims that individuals must *always* follow the directives of their state, *all things considered*, then their account will also be offering "mere moral reasons for obeying political directives which may often be, but not always operative reasons for acting."

A closely related objection may be that my account has not sufficiently demonstrated that most citizens are under these sorts of utilitarian political obligations. That is, it may be claimed that my account is a philosophical anarchistic account just like Simmons' in that it offers an analysis of political obligation but the relationships between existing political authorities and their subjects do not meet the criteria put forth. As my account relies heavily on contingent facts about the expectations concerning coordinated behavior and the reciprocal nature between the "ruler" and the "ruled" (i.e., between the political authority and its subjects), it is entirely possible that this could be the case. In fact, if it turned out that this were the case it would be okay because the foremost objective in offering this utilitarian account was to demonstrate that an interesting, coherent, and comprehensive utilitarian account was possible. Even if the empirical evidence was against my claim that many people actually have these types of political utilitarian reasons for obeying the law, my account would still have succeeded in the primary objective - offering a coherent and plausible utilitarian account. However, I don't believe that my utilitarian account fails to describe conditions which *do* exist fairly prominently. Additionally, in following the Kantian and Humean idea that the state is practically necessary for the existence of a morally superior state of affairs (over the state of nature) and components of Murphy's acceptance theory, my utilitarian account is able

to contend that even if most people do not have political obligations, *they ought to*. Individuals have a moral responsibility to maximize value/utility by creating and upholding a political authority by accepting the legal directives that guide and coordinate behavior.[241]

In this account I have been offering a type of indirect utilitarian decision procedure argument, based on the practical/psychological need for rules and coercive power to enforce such rules. The idea is that utility can be best promoted through the existence of political authorities with are in part constituted by legal systems and in which individuals "recognize a special obligation to the polities of which they are a member" (Horton, 2010, p. 62). Horton briefly discusses this and summarizes the view:

> While some of the particular acts that would be enjoined will not directly maximize utility, so the argument would run, overall utility could still be maximized indirectly through people meeting their political obligations to their own polity. (Horton, 2010, p. 62)

Based on the familiar intellectual failings, self-interested biases, and pedagogical techniques for moral education, this indirect approach seems to be a plausible strategy for a utilitarian. Horton even admits that an account in these terms "would appear to meet the structural requirements of a theory of political obligations - especially the particularity requirement" (Horton, 2010, p. 62). However, he argues that it is ultimately unacceptable because it "lacks persuasiveness from a utilitarian perspective" (Horton, 2010, p. 62). Horton contends, "The claim that overall utility will be maximized through such an account of political obligation - not merely that certain valuable good will be ensured - is likely to be an act of faith rather than based on genuine calculation of

---

[241] Cf. Murphy, 1997, p. 136-137.

consequences" (Horton, 2010, p. 62). My response to this objection is that the utilitarian account of political obligation need *not* contend that this system will always, or even does, actually maximize overall utility.[242] It is possible that a justified and legitimate state may fail to maximize utility by failing to coordinate actions *perfectly* and/or by failing to get its subjects to follow *all* of their pre-existing operative reasons for action. In other words, a political authority can still be legitimate (i.e., meet the NJT) and fail to be *ideal*. This, however, would not negate the claim that there exist significant moral reasons for obeying the legal directives and supporting the political authority. It may be that citizens and government officials *also* ought to work towards transforming the existing government in ways that would make it closer to the ideal, but this would not eliminate the fact that there still exists conventions, legal norms, and expectations which create reasons to obey the non-ideal authority.

5.5 Conclusion

In this fifth chapter I have attempted to articulate and defended an original utilitarian account of political obligation, or an account of the utilitarian moral responsibility concerning political matters, or an account of utilitarian moral reasons for obeying and supporting legitimate states. In forming this original and positive view I have relied on significant portions from previous utilitarian accounts (Hume, Hare, and

---

[242] I believe that another interesting idea, but one which I will not develop or defend in this project, is that political legitimacy can be evaluated by "satisficing act-utilitarian" standards. The rough idea being that on this satisficing utilitarian theory of legitimacy, in order for a political authority to be legitimate a certain "utility threshold" must be met as opposed to the standard act-utilitarian model in which it would only be the one or ones that *maximize* utility. This idea would seem to connect nicely with the Razian theories I have already co-opted for my utilitarian account (i.e., the NJT and DT). Just as Raz allows for an authority to be justified if its directives let its subjects *better act on their pre-existing reasons* than they would have without the authoritative directives, a satisficing utilitarian theory (restricted to normative *political* concepts) would allow for a utilitarian account of the same idea. For a more in-depth examination of "satisficing consequentialism" (not in connection with political concepts) see, e.g., Slote & Pettit (1984).

Sartorius) and built in non-utilitarian insights (Raz, Murphy, etc.) that were co-optable and useful in filling out the theory and strengthening the weaknesses of the previous accounts.

In the bigger picture of this project I have argued for a three part response to the prevailing opinion that *any* utilitarian attempt to account for "political obligations" is doomed. The first arm of the argument contends that the utilitarian *can* consistently claim that there are moral reasons to follow the law. This idea has been denied by most political theorists but is supported by the Humean and Sartorian claims that political authority is practically necessary because conventions/rules/norms, which are backed by force, can direct actions into channels it would not otherwise take by restructuring the consequences of obeying or disobeying (utilitarian reasons for action). At first this may not appear to be a very strong claim. In fact, it doesn't seem that anyone would deny that there are *some* reasons for following the laws. The second arm of my argument addresses this apparent issue by contending that even the traditional deontological accounts of political obligation are not offering more than this. By distinguishing between derivative and non-derivative theories of political obligation it is possible to see what type of moral principle each theory takes political obligations to be. Almost all theories on offer contend that political obligations are derived from some other, more fundamental moral principle. This acknowledgment of the prevalence of derivative theories puts a utilitarian theory on more of a level playing field. Even the vast majority of deontological theorists are only offering derivative theories of political obligation and thus the utilitarian theorist is not offering something inferior simply because they ultimately derive the particular

moral principle and obligation from the principle of utility. Lastly, it is contended that given the contingent features of humans (i.e., intellectual fallibility, selfish biases, and the way moral education is tied to rules), the strength of the utilitarian political obligations is comparable to other accounts' analyses of the obligations. No theorists allege that legal directives ought to *always* be followed, all things considered, and consequently no analysis of political obligation is *necessarily* stronger than the utilitarian analysis. In the end it must come down to an empirical question of how one ought to act, all-things-considered (which must include the relevant political obligations). This should be seen as a strength of the utilitarian account as it seems quite evident that questions about how individuals ought to treat the directives of political authorities which they are subject to should include considerations of the nature of the authority, how other members of the society are behaving, and the consequences of the individuals' obeying or disobeying.

BIBLIOGRAPHY

Alexander, Larry and Emily L. Sherwin (2008). “Law and Philosophy at Odds,” On Law and Philosophy in America, Francis J. Mootz, III (ed.), Cambridge: Cambridge University Press.

Arneson, Richard (1982). “The Principle of Fairness and Free-Rider Problems,” *Ethics*, 92: 616-33.

Beran, Harry (1977). “In Defense of the Consent Theory of Political Obligation and Authority,” Ethics, 87(3): 260-271.
—— (1972). “Ought, Obligation and Duty,” *Australasian Journal of Philosophy*, 50: 207-221.
—— (1987). *The Consent Theory of Political Obligation*, London: Croom Helm.

Bentham, Jeremy (1977). *A Comment on the Commentaries and A Fragment on Government*, J.H. Burns and H.L.A. Hart (ed.), Oxford, Clarendon Press.

Beetham, David (1991). *The Legitimation of Power*, Atlantic Highlands: Humanities Press International, Inc.

Binmore, Ken (1998). “A Utilitarian Theory of Political Legitimacy,” in *Economics, Values, and Organization*, Avner Ben-ner and Louis Putterman (eds.), Cambridge: Cambridge University Press.

Buchanan, Allen. (2002). “Political Legitimacy and Democracy.” *Ethics* 112(4): 689–719.
—— and Robert O. Keohane (2006). “The Legitimacy of Global Governance Institutions.” *Ethics and International Affairs* 20(4): 405–437.

Brandt, Richard (1964). “The Concepts of Obligation and Duty.” *Mind*, 73(291).

Brink, David (2013). *Mill’s Progressive Principles*, Oxford: Clarendon Press.

Carritt, E. F. (1947). *Ethical and Political Thinking*, Oxford: Oxford University Press.

Christiano, Tom (2012). "Authority", *The Stanford Encyclopedia of Philosophy (Spring 2012 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/spr2012/entries/authority/>.

Cohon, Rachel (2010). "Hume's Moral Philosophy," *The Stanford Encyclopedia of Philosophy* (Fall 2010 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2010/entries/hume-moral/>.

Dagger, Richard (1997). *Civic Virtues: Rights, Citizenship, and Republican Liberalism*, New York: Oxford University Press.
—— (2010). “Political Obligation,” *The Stanford Encyclopedia of Philosophy (Summer 2010 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/sum2010/entries/political-obligation/>.

Driver, Julia (2009). "The History of Utilitarianism," *The Stanford Encyclopedia of Philosophy (Summer 2009 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/sum2009/entries/utilitarianism-history/>.

Dworkin, Ronald (1986). *Law's Empire*, Cambridge, MA: Harvard University Press.

Edmundson, William (1998). “Legitimate Authority without Political Obligation,” *Law and Philosophy,* 17, (1998): 43-60.
—— (ed.) (1999). *The Duty to Obey the Law: Selected Philosophical Readings*, Lanham, Md: Rowman & Littlefield.

Enoch, David (2011). “Reason-Giving and the Law,” in *Oxford Studies in Philosophy of Law: Volume 1*, Leslie Green and Brian Leiter (eds.), Oxford: Oxford University Press.
—— (2012). “Authority and Reason-Giving,” *Philosophy and Phenomenological Research*.

Estlund, David M. (2008). *Democratic Authority*, Princeton: Princeton University Press.

Feinberg, Joel (1961). “Supererogation and Rules,” *Ethics*, 71(4).

Flathman, Richard E. (1972). *Political Obligation*, New York: Atheneum.

Foot, Phillipa (1967). “Abortion and the Doctrine of Double Effect,” *Oxford Review*, 5: 28–41.

Frankfurt, Harry G. (1973). “The Anarchism of Robert Paul Wolff,” *Political Theory*, 1(4): 405-414.

Friedman, R.B. (1973). “On the Concept of Authority in Political Philosophy,” in *Concepts in Social and Political Philosophy*, R.E. Flathman (ed.), New York: Macmillan.

Gans, Chaim (1992). *Philosophical Anarchism and Political Disobedience*, Cambridge: Cambridge University Press.

Gaus, Gerald (2011). *The Order of Public Reason*, Cambridge: Cambridge University Press.

Gauthier, David (1986). *Morals By Agreement*, Oxford: Oxford University Press.

Gilbert, Margaret (1993). “Group Membership and Political Obligation,” *The Monist*, 76: 119–31.
—— (2006). *A Theory of Political Obligation*, Oxford: Oxford University Press.

Goldman, Alan (1977). “Can a Utilitarian’s Support of Nonutilitarian Rules Vindicate Utilitarianism?” *Social Theory and Practice*, 4.

Goodin, Robert (1995). *Utilitarianism as a Public Philosophy*, Cambridge: Cambridge University Press.

Green, Leslie (2012). "Legal Obligation and Authority", *The Stanford Encyclopedia of Philosophy (Winter 2012 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/win2012/entries/legal-obligation/>.
—— (1990). “Consent and Community,” in *Political Obligation*, P. Harris (ed.), London: Routledge.
—— (1988). *The Authority of the State*. Oxford: Oxford University Press.

Greenawalt, Kent (1987). *Conflicts of Law and Morality*, Oxford: Oxford University Press.
—— (1999). “Legitimate Authority and the Duty to Obey” in William A. Edmundson (ed.), *The Duty to Obey the Law,* Lanham: Rowman and Littlefield.

Habermas, Jürgen (1979). *Communication and the Evolution of Society*, Boston: Beacon Press.

Hampton, Jean (1997). *Political Philosophy*, Boulder: Westview Press.

Hardin, Russell (2007). *David Hume: Moral and Political Theorist*, Oxford: Oxford Univeristy Press.

Hare, R. M. (1976). “Political Obligation,” in *Social Ends and Political Means*, T. Honderich (ed.), London: Routledge & Kegan Paul.
—— (1963). *Freedom and Reason*, Oxford: Clarendon.
—— (1952). *The Language of Morals*, Oxford: Clarendon.

Harris, Paul (ed.) (1990). *On Political Obligation*. London: Routledge.

Harrison, Jonathan (1952). “Utilitarianism, Universalization, and our Duty to be Just,” *Proceedings of the Aristotelian Society*, 53.

Harsanyi, John (1980). “Rule Utilitarianism, Rights, Obligations and the Theory of Rational Behavior,” *Theory and Decistion*, 12(2): 115-133.

Hart, H. L. A. (1955). “Are There Any Natural Rights?” *Philosophical Review*, 64.

––– (1958). “Legal and Moral Obligation,” in *Essays in Moral Philosophy,* A.I. Melden (ed.), Seattle: University of Washington Press.

––– (1982). *Essays on Bentham*, Oxford: Oxford University Press.

––– (2012 [1961]). *The Concept of Law*, Third Edition, Oxford: Oxford University Press.

Hempel, Carl G., and Oppenheim, Paul (1989). “Studies in the Logic of Explanation,” in *Readings in the Philosophy of Science*, Baruch A. Brody and Richard E. Grandy (eds.), New Jersey: Prentice Hall.

Hobbes, Thomas (1994). *Leviathan*, Edwin Curley (ed.), Indianapolis: Hackett Publishing Company.

Hodgson, D.H. (1967). *Consequences of Utilitarianism*, Oxford: Oxford University Press.

Hooker, Brad (2011) "Rule Consequentialism," *The Stanford Encyclopedia of Philosophy (Spring 2011 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/spr2011/entries/consequentialism-rule/>.

Horton, John (2010 [1992]). *Political Obligation*, Second Edition, London: Macmillan.

––– (2006/2007). “In Defense of Associative Political Obligations,” “Part One,” *Political Studies*, 54: 427–43; and “Part Two,” *Political Studies*, 55: 1–19.

Hume, David (2003 [1739]). *A Treatise of Human Nature*, Mineloa: Dover Publications, Inc.

––– (1998). *An Enquiry Concerning the Principles of Morals*, Tom L. Beauchamp (ed.), Oxford: Oxford University Press.

––– (2012 [1752]). “Of the Original Contract,” in *Readings in Political Philosophy: Theory and Applications*, Diane Jeske & Richard Fumerton (ed.), Buffalo: Broadview Press.

Huemer, Michael (2013). *The Problem of Political Authority: An Examination of the Right to Coerce and the Duty to Obey*. New York: Palgrave Macmillan.

Hurd, Heidi (1999). *Moral Combat*, Cambridge: Cambridge University Press.

Jeske, Diane (2008). *Rationality and Moral Theory: How Intimacy Generates Reasons*, New York: Routledge.

—— (2008). "Special Obligations", *The Stanford Encyclopedia of Philosophy*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2008/entries/special-obligations/>.

—— (2001). "Special Obligations and the Problem of Political Obligations," in *Readings in Political Philosophy: Theory and Applications*, Diane Jeske & Richard Fumerton (eds.), Buffalo: Broadview Press.

Kagan, Shelly (2011). "Do I Make a Difference?," *Philosophy & Public Affairs,* 39, no. 2.

—— (2000). "Evaluative Focal Points," in *Morality, Rules, and Consequences*, Brad Hooker, Elinor Mason, and Dale E. Miller (eds.), Lanham: Rowman & Littlefield Publishers.

—— (1998). *Normative Ethics*, Boulder: Westview Press.

Kant, Immanuel (1996). *The Cambridge Edition of the Works of Immanuel Kant: Practical Philosophy*, Mary J. Gregor (ed.), Cambridge: Cambridge University Press.

Klosko, George (1989). "Political Obligation and Gratitude," *Philosophy and Public Affairs*, 18: 352–58.

—— (1990). "Parfit's Moral Arithmetic and the Obligation to Obey the Law," *Canadian Journal of Philosophy*, 20(2), 191-214.

—— (1998). "Fixed Content of Political Obligations," *Political Studies*, 46(1): 53-67.

—— (2004 [1992]). *The Principle of Fairness and Political Obligation*, 2nd edition, Lanham: Rowman & Littlefield.

—— (2005). *Political Obligations*, Oxford: Oxford University Press.

—— (2011). "Are Political Obligations Content Independent?" *Political Theory*, 39(4): 498-523.

Knowles, Dudley (2010). *Political Obligation: A Critical Introduction*, London: Routledge.

Lemmon, E.J. (1962). "Moral Dilemmas," *The Philosophical Review*, 81(2).

Locke, John (2003). *Two Treatises of Government* and *A Letter Concerning Toleration*, New Haven: Yale University Press.

Lyons, David (1965). *Forms and Limits of Utilitarianism* (Oxford: Oxford University Press).

MacDonald, Margaret (1951). "The Language of Political Theory," in *Logic and Language*, A.G.N. Flew (ed.), Oxford: Clarendon Press.

Marmor, Andrei (2011). "The Nature of Law", *The Stanford Encyclopedia of Philosophy (Winter 2011 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/win2011/entries/lawphil-nature/>.

Martin, Margaret (2010). "Raz's *The Morality of Freedom*: Two Models of Authority," *Jurisprudence*, 1:1.

McCloskey, H. J. (1965). "A Non-Utilitarian Approach to Punishment," *Inquiry*, 8: 239–55.

McPherson, Thomas (1967). *Political Obligation*, London: Routledge & Kegan Paul.

Mill, John Stuart (2012). *On Liberty with The Subjection of Women and Chapters on Socialism*, Stefan Collini (ed.), Cambridge: Cambridge University Press.
––– (1985). *The Collected Works of John Stuart Mill* (33 vols.), John M. Robson (ed.), Toronto: University of Toronto Press, Accessed from http://oll.libertyfund.org/title/241/21464.

Miller, David (1984). *Anarchism*, London: J.M. Dent & Sons.
––– (ed.) (1987). *The Blackwell Encyclopaedia of Political Thought*. Oxford: Basil Blackwell.

Murphy, Mark (1997). "Surrender of Judgment and the Consent Theory of Political Obligation," *Law and Philosophy*, 16: 115–43; reprinted in Edmundson (ed.), *The Duty to Obey the Law*, Lanham, MD: Rowman & Littlefield, 1999.

Nagel, Thomas (1991). *Equality and Partiality*, New York: Oxford University Press.

Narveson, Jan (1967). *Morality and Utility*, Maryland, The Johns Hopkins Press.
––– (1971). "Promising, Expecting, and Utility," *Canadian Journal of Philosophy*, 1:2.

Nozick, Robert (1974). *Anarchy, State, and Utopia*, New York: Basic Books.

Parfit, Derek (1984). *Reasons and Persons*, Oxford: Oxford University Press.

Perry, Stephen (2013). “Political Authority and Political Obligation,” in *Oxford Studies in Philosophy of Law Vol. II*, Leslie Green and Brian Leiter (eds.), Oxford: Oxford University Press.

Peter, Fabienne (2014). “Political Legitimacy,” *The Stanford Encyclopedia of Philosophy (Spring 2014 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/spr2014/entries/legitimacy/>.

Pettit, Philip (1997). “The Consequentialist Perspective” in *Three Methods of Ethics*, M. Baron, P. Pettit, and M. Slote (eds.), Oxford: Blackwell.

Pitkin, Hanna (1965). “Obligation and Consent--I,” *American Political Science Review*, 59(4).
––– (1966). “Obligation and Consent--II,” *American Political Science Review*, 60(1).

Plato (2005). *The Collected Dialogues of Plato*, Edith Hamilton and Huntington Cairns (eds.), Princeton: Princeton University Press.

Prichard, H.A. (1949). *Moral Obligation: Essays and Lectures.* Oxford: Oxford University Press.

Railton, Peter (1984). "Alienation, Consequentialism, and the Demands of Morality," *Philosophy and Public Affairs* 13: 134-171.

Rawls, John (1955). “Two Concepts of Rules,” *Philosophical Review* 68.
––– (1964). “Legal Obligation and the Duty of Fair Play,” in *Law and Philosophy*, S. Hook (ed.), New York: New York University Press.
––– (1971; revised edition 1999). *A Theory of Justice*, Cambridge, MA: Harvard University Press.
––– (1993). *Political Liberalism*, New York: Columbia University Press.

Raz, Joseph (1986). *The Morality of Freedom*. Oxford: Oxford University Press.
––– (1999). “The Obligation to Obey: Revision and Tradition,” *Notre Dame Journal of Law, Ethics & Public Policy*, 1 (1984): 139–55; reprinted in W. A. Edmundson (ed.), *The Duty to Obey the Law*, Lanham, MD: Rowman & Littlefield, 1999.
––– (2006). “The Problem of Authority: Revisiting the Service Conception,” *Minnesota Law Review*, 90, p. 1003-1044.
––– (2009). *The Authority of Law: Second Edition*, Oxford: Oxford University Press.

Renzo, Massimo (2012). "Associative Responsibilities and Political Obligation," *The Philosophical Quarterly*, 62(246), 106-127.

Ripstein, Arthur (2004). “Authority and Coercion.” *Philosophy and Public Affairs* 32(1): 2–35.

Robinson, Luke (2008). “Moral Principles Are Not Moral Laws,” *Journal of Ethics and Social Philosophy*, 2(3).
—— (2011). “Moral Principles as Moral Dispositions,” *Philosophical Studies*, 156(2).

Ross, W.D. (1930). *The Right and the Good,* Oxford: Oxford University Press.

Rousseau, Jean-Jacques (1997). *The Social Contract and other later political writings*, Victor Gourevitch (ed.), Cambridge: Cambridge University Press.

Sartorius, Rolf (1975). *Individual Conduct and Social Norms*, Belmont, CA: Dickenson.
—— (1981). “Political Authority and Political Obligation,” *Virginia Law Review*, 67.

Scheffler, Samuel (2001). *Boundaries and Allegiances: Problems of Justice and Responsibility in Liberal Thought*, Oxford: Oxford University Press.

Schmidtz, David (1998). “Justifying the State,” in *For and Against the State*, John T. Sanders and Jan Narveson (eds.), Lanham: Rowman & Littlefield.

Schneewind, J. B. (1998). *The Invention of Autonomy*, Cambridge: Cambridge University Press.

Senor, Thomas (1987). “What If There Are No Political Obligations?” *Philosophy and Public Affairs*, 16: 260–68.

Sidgwick, Henry (1981 [1907]). *The Methods of Ethics*, Indianapolis: Hackett Publishing Co.

Simmons, A. John (1979). *Moral Principles and Political Obligations*, Princeton, NJ: Princeton University Press.
—— (1987). “The Anarchist Position: A Reply to Klosko and Senor,” *Philosophy & Public Affairs*, 16(3): 269-279.
—— (1996). “Associative Political Obligations,” *Ethics*, 106(2): 247-273.
—— (2001). *Justification and Legitimacy: Essays on Rights and Obligations*, Cambridge: Cambridge University Press.
—— (2008). *Political Philosophy*, New York: Oxford University Press.

Sinnott-Armstrong, Walter (2012). "Consequentialism," *The Stanford Encyclopedia of Philosophy (Winter 2012 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/win2012/entries/consequentialism/>.

Slote, Michael and Philip Pettit (1984). "Satisficing Consequentialism," *Proceedings of the Aristotelian Society*, 58: 139–63.

Smart, J.J.C. (1956). "Extreme and Restricted Utilitarianism," *The Philosophical Quarterly*, VI:25, p. 344-354.

Smith, M.B.E. (1973). "Is There a Prima Facie Obligation to Obey the Law?," *The Yale Law Journal*, 82(5): 950-976.

Steinberger, Peter (2002). "Political Obligations and Derivative Duties," *The Journal of Politics*, 64(2): 449-465

––– (2004). *The Idea of the State*, Cambridge: Cambridge University Press.

Taylor, Charles (1994). "Alternative Futures: Legitimacy, Identity, and Alienation in Late Twentieth Century Canada," in *Communitarianism: A New Public Ethics*, M. Daly (ed.), Belmont: Wadsworth.

Thomson, Judith Jarvis (1976). "Killing, Letting Die, and the Trolley Problem," *The Monist*, 59: 204–17.

Urmson, J.O. (1953). "An Interpretation of the Philosophy of J.S. Mill," reprinted in *Mill's Utilitarianism: Critical Essays*, ed. Lyons.

Waldron, Jeremy (1993). "Special Ties and Natural Duties," *Philosophy and Public Affairs*, 22: 3–30; reprinted in W. A. Edmundson (ed.), *The Duty to Obey the Law*, Lanham, MD: Rowman & Littlefield, 1999.

Walker, A. D. M. (1988). "Political Obligation and the Argument from Gratitude," *Philosophy and Public Affairs*, 17: 191–211.

––– (1989). "Obligations of Gratitude and Political Obligation," *Philosophy and Public Affairs*, 18: 359–64.

Walton, Kevin (2013). "The Particularities of Legitimacy: John Simmons on Political Obligation," *Ratio Juris*, 26(1).

Wellman, Christopher Heath (1997). "Associative Allegiances and Political Obligations," *Social Theory and Practice*, 23: 181–204.

––– (2004). "Political Obligation and the Particularity Requirement," *Legal Theory*, 10: 97-115.

––– and A. John Simmons (2005). *Is There a Duty to Obey the Law?* Cambridge: Cambridge University Press.

Whiteley, C.H. (1952-53). "On Duties," *Proceedings of the Aristotelian Society*, 53.

Windeknecht, Ryan Gabriel (2012). "Law Without Legitimacy or Justification? The Flawed
Foundations of Philosophical Anarchism," *Res Publica*, 18: 173-188.

Wolff, Jonathan (2000). "Political Obligation: A Pluralistic Approach," in *Pluralism: The Philosophy and Politics of Diversity*, M. Baghamrian and A. Ingram (eds.), London: Routledge.

Wolff, R.P. (1970). *In Defense of Anarchism*, New York: Harper & Row.

Woozley, A.D. (1979). *Law and Obedience: The Argument of Plato's Crito*, London: Duckworth.