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Special Ties and Natural Duties

I

Philosophical accounts of what we owe the state can be divided into two classes: theories of acquired obligation and theories of natural duty. Theories of acquired obligation are more familiar in political philosophy: our obligation to the state is said to be based on consent[1] or, using the principle of fair play, on the willing receipt of benefits from others' cooperation.[2] The theory that we have a *natural* duty to support the laws and institutions of a just state—the theory that the requirement of obedience is not contingent on anything we have said or done—is less well known and the literature discussing it much less extensive.

This is surprising because, at first glance, the idea of natural duty promises a better account of our moral relation to the law. The law does not predicate its demand for compliance on any contingency such as consent or receipt of benefits. Though few citizens comply with all the

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1. Arguments basing political obligation on agreement are of course as old as the *Crito*. The classic exposition of the theory of tacit consent is John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), II, paras. 87–89, 119–22 (pp. 323–25, 347–49). For a modern discussion, see Leslie Green, *The Authority of the State* (Oxford: Clarendon Press, 1988), chap. 6.

2. The principle of fair play is defended in H.L.A. Hart, "Are There Any Natural Rights?" in *Theories of Rights*, ed. Jeremy Waldron (Oxford: Oxford University Press, 1984), p. 85. See also John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), pp. 108–14, 342–50; and George Klosko, "The Obligation to Contribute to Discretionary Public Goods," *Political Studies* 37 (1990): 196–214.

laws all the time, those who think there is a moral requirement of obedience usually think that because they believe the laws roughly represent the just demands of life in society.[3] Even those who express their *philosophical* view in terms of acquired obligation tend to push it in the direction of natural duty. Either they assimilate an individual's receipt of benefits from a system (for the purposes of the principle of fair play) to his being treated justly by the system,[4] or, if they adopt the consent approach, they turn tacit consent into hypothetical consent, defining a just system as one from which, hypothetically, consent would not be withheld.[5] Philosophers toy with something *like* the theory of natural duty in almost all their thought about what people owe to the state.

It is odd, then, that there has been so little in the way of *direct* discussion of the natural duty idea. A version of it was propounded in John Rawls's book *A Theory of Justice*,[6] but it has not received the discussion that other parts of the book have generated. I suspect this is because the theory is thought to be subject to some rather quick and devastating objections. In this article, I will say what those objections are and show how they can be dealt with. The point is not simply to rebut them. I want to develop an account that responds adequately to philosophical concerns about this way of characterizing what we owe to the state.

II

To understand the objections, we need a formulation of the theory. John Rawls states it in the following terms:

> From the standpoint of justice as fairness, a fundamental natural duty is the duty of justice. This duty requires us to support and to comply with just institutions that exist and apply to us. It also constrains us to further just arrangements not yet established, at least when this can be done without too much cost to ourselves. Thus if the basic structure of society is just, or as just as it is reasonable to expect in the circumstances, everyone has a natural duty to do his part in the existing

3. See Tom Tyler, *Why People Obey the Law* (New Haven: Yale University Press, 1990).

4. See A. John Simmons, *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979), pp. 109–14.

5. See Hanna Pitkin, "Obligation and Consent," *American Political Science Review* 59 (1965): 996; and 60 (1966): 39, 44.

6. Rawls, *A Theory of Justice*, pp. 114–17, 333–37.

scheme. Each is bound to these institutions independent of his voluntary acts, performative or otherwise.[7]

Notice that Rawls uses the phrase "just, or as just as it is reasonable to expect in the circumstances." No state in the world is perfectly just; many are egregiously unjust. However, in this article I will discuss only the duties we owe to *just* political institutions. Though this makes the discussion a bit artificial, it is important for the purposes of exposition.[8] Rawls's critics have denied that the natural duty theory would work to bind people even to institutions that *were* perfectly just. If we can rebut these criticisms and develop a plausible account for the ideal case, then—perhaps in subsequent articles—we can see what follows from this theory about duties that are owed to states that fall short of what justice requires.[9]

Let us take the passage from Rawls quoted above as a fair summary of the theory. What are the difficulties that stand in the way of its acceptance? There are, as I see it, two related objections.

The "Special Allegiance" Objection

The first objection is that a theory basing the requirement of obedience simply on the quality of legal and political institutions is unable to explain the special character of a person's allegiance to the particular society in which he lives.[10] I may concede that I am bound to the government of my country insofar as it is just. But what makes it *my* country? Most of us think that is an important aspect of political obligation, for we do not think of ourselves as bound simply to *any* government that happens to be just. The objection is that the natural duty theory cannot explain the moral force of "*my* country" in this regard.

7. Ibid., p. 115.

8. See ibid., pp. 8–9, for this order of exposition.

9. One important topic that Rawls does address concerns the tension between social justice as a substantive standard and justice in the distribution of political power. If people disagree in good faith about what justice requires, then their operation of a just system of political choice may require some of them to put up with policies whose justice they dispute. See ibid., pp. 195–201, 221–34.

10. See, for example, Ronald Dworkin, *Law's Empire* (Cambridge, Mass.: Harvard University Press, 1986), p. 193: "That duty . . . does not provide a good explanation of legitimacy, because it does not tie political obligation sufficiently tightly to the particular community to which those who have the obligation belong; it does not show why Britons have a special duty to support the institutions of Britain."

Suppose two countries, say, New Zealand and France, have legal systems that are just.[11] The Rawlsian theory certainly requires the citizens of New Zealand to support New Zealand institutions and requires the citizens of France to support French institutions. So far, so good. However, exactly the same reasoning also requires a Frenchman to support New Zealand institutions and a New Zealander to support French institutions. Since what Rawls postulates is a duty to support just institutions *as such*, his approach does not establish anything special about the relation between the New Zealander and New Zealand. It seems incapable of capturing the particularity or intimacy of that political relationship.

Theories of consent, by contrast, are in much better shape on this issue. They have no difficulty explaining what is distinctive about a New Zealander's obligations to New Zealand and a Frenchman's obligations to France. In each case, the obligation derives from a promise made to the government or to the other citizens of the country in question. The New Zealander has agreed with his fellow citizens, explicitly or tacitly, to abide by their laws, and he has made no such agreement with the French. That is why his moral situation is special with regard to the laws of New Zealand. The same is true of arguments based on the principle of fair play. A person living in New Zealand has received the benefits of life lived by others in accordance with New Zealand law; he therefore has an obligation to do his part in the particular scheme of cooperation from which he has benefited. However, he has received few if any benefits from the law-abidingness of Frenchmen; so he acquires in fairness no obligation to support or obey their laws.

The objection may seem wrongheaded inasmuch as it neglects an important phrase in the Rawlsian formula quoted earlier: the duty is "to support and to comply with just institutions that exist and *apply to us*."

11. I shall use New Zealand and France as examples throughout this article because they satisfy the following conditions: (1) neither society is so egregiously unjust that it would strain credibility to use it as a paradigm for the purposes of this argument; (2) they are distant enough from one another that there is no question of their really being part of one big society (as France and Britain are part of the European Community); (3) there are relatively few cases where New Zealand courts have to make decisions about the rights of people living in France and vice versa; but (4) there are things that the citizens of the one country can do to promote or undermine justice in the institutions of the other. If France and New Zealand are thought bad examples, any other pair of countries satisfying these conditions will do, though condition (4) was dramatically illustrated for this pair in the *Rainbow Warrior* affair, when operatives of the French state blew up and destroyed a vessel lying at anchor in Auckland harbor in July 1985.

Maybe French law does not "apply" to New Zealanders, so the difficulty does not really arise. On this account, what is special about my relation to my own country is that its laws are the only ones that apply to me. But the insertion of a phrase is not an answer to a philosophical objection. And anyway, all this maneuver achieves is the opening up of the Rawlsian theory to a second challenge.

The "Application" Objection

The second objection is that the theory fails to explain how a particular institution comes to be the one to which individuals owe obedience and support. The theory assumes that in most cases there simply *is* an institutional structure in society that "applies to us," and that if it is just, we have a duty to support it. But the notion of an institution's "applying" to a person needs elucidation.

Is "application" simply a matter of the institution's purporting to address the individual's situation or his claims? If the answer is yes, there may be all sorts of institutions that "apply" to him. An insurgent movement may appoint "officials" and enact "laws" to "apply" to all the members of the society whose government they are trying to overthrow. Do we want to say that the only thing that determines whether people are bound to such an organization is the justice of its demands? Do we really want to abandon all interest in whether they have agreed to submit themselves to its jurisdiction or whether they have brought themselves under its auspices in some other way, for example, by the acceptance of benefits?[12]

The Rawlsian theory offers no account, or a plainly inadequate account, of the existence of political and legal institutions. The problem is that if we try to articulate a satisfactory account of "application," we tend to end up abandoning what is distinctive about the natural duty account. The temptation is to say that an institution "applies" to me only if I have voluntarily brought myself under its auspices, or to impose some other similar condition (such as receipt of benefits) on any inference from the justice of the institution to a duty of obedience.[13] But then we are back with *acquired* political obligation. The theory of natural duty fails to pro-

12. The objection is put forward by A. John Simmons. See Simmons, *Moral Principles*, pp. 147–52. I will discuss Simmons' version of the objection in more detail in Section VII.

13. See ibid., p. 151, for Simmons' notion of "strong" application.

vide a real alternative to the traditional Lockean approach. That is the second objection.

III

Though the two objections are connected, I shall answer them one at a time, because I think that is the best way to highlight the neglected strengths as well as the notorious weaknesses of the natural duty approach. I will begin with the objection about special allegiance.

It is not in dispute that the citizens of one country may have *some* duty or obligation to the institutions and laws of another (at least when those institutions and laws are just).

A first example is obvious enough. A New Zealander visiting France is morally bound to obey just provisions of French law, even though they may be different from the provisions of New Zealand law. He should drive on the right side of the road, he should not evade occupancy tax in hotel rooms, he should answer questions put to him by members of the *gendarmerie* even though he might have no obligation to answer such questions if they were posed by a constable in New Zealand.

The idea that two *different* sets of laws might both be just should not require much explanation. For some cases, like the rule of the road, justice does not dictate the particular substance of the rule. The right-hand rule and the left-hand rule are equally just; what matters is that one rule is settled upon. Other cases—for example, those concerning taxes and commercial law—may involve fragments of different systems, each of which, taken as a whole, satisfies the same principles of justice. Thus, for example, a consumption tax may be calibrated to achieve the same distributive effect overall as an earned income tax. A negative income tax may have the same effect as a carefully administered welfare system. Still other cases may involve the application of similar background principles to diverse local conditions, or the integration of local customs, traditions, and ways of doing things into the wider fabric of justice.

It is no objection to the natural duty theory that it requires the New Zealander visiting France to obey French law and vice versa. However, it is no advantage either. Theories of acquired obligation can explain this as well (if they can explain anything). By choosing to enter France (when he could have gone elsewhere or stayed at home) the New Zealander makes a clear, though implicit, decision to abide by French laws,

if only for a short period of time. The New Zealander must know that this is the condition under which his visa was issued, the condition under which the French officials have admitted him, and the condition under which the French people have authorized tourism and immigration arrangements. Or, if the consent theory is rejected, the principle of fair play can explain the tourist's obligation. Sojourning in France, he enjoys the benefits of its social, legal, and economic arrangements, and so for the time being he ought to cooperate in the production of those benefits. This case, then, does not indicate any difference of explanatory power between theories of natural duty and theories of acquired obligation.

A second case is easier for the natural duty theory to explain than its rivals. There are things a Frenchman could do *in France* that would undermine the laws and institutions of New Zealand. We need not play with hypotheticals: a real-life example comes to mind. In 1985, French officials conspired to arrange a terrorist attack by their agents on a ship, the *Rainbow Warrior*, belonging to the Greenpeace organization. The vessel was used by Greenpeace to harass the French in their conduct of nuclear weapons tests in the South Pacific. It was bombed by agents of the French military, operating covertly in New Zealand, while it lay in Auckland harbor. Owing to their Clouseau-like incompetence, the French operatives immediately responsible were apprehended by the New Zealand police and eventually pleaded guilty to charges of manslaughter (for one Greenpeace activist had died in the attack). But it is not the attack itself that is the focus of my example; it is what happened afterwards. During the investigation of the attack, French officials were unhelpful to the New Zealand police, and it is widely believed that they urged their operatives to perjure themselves in the New Zealand courts. Once the saboteurs were convicted, the French persuaded the British and American governments to put economic pressure on New Zealand to secure their release. Thus in various ways officials of the French government living and working in France conspired to undermine the operation of the criminal justice system in New Zealand.[14]

Now we do not need anything like a duty to uphold just institutions to explain the wrongness of the bombing or of the conspiracy to mount the attack. That can be understood quite independently of any duty or obli-

14. There are excellent accounts in Richard Shears and Isobelle Gidley, *The Rainbow Warrior Affair* (London: Unwin, 1986); and John Dyson, *Sink the Rainbow: An Enquiry into the "Greenpeace Affair"* (London: Victor Gollancz, 1986).

gation to uphold particular laws. It would be wrong whether there were legal institutions in New Zealand or not.[15]

But many would say it was also wrong of the French officials subsequently to obstruct the investigation of the *Rainbow Warrior* affair, to counsel their operatives to perjure themselves, and to interfere with their punishment. That thought *does* seem best captured by the claim that if the criminal justice system of a country is fair, everyone everywhere has a duty not to obstruct it, whether they owe any particular allegiance to that system and live under its laws or not. In this case, obstructing justice in New Zealand was both a possibility and a temptation. The French had a lot to lose if justice were allowed to run its course.

Theories of acquired political obligation cannot explain why it was wrong of them to do this. Not even the most diluted theory of tacit consent is going to yield the conclusion that the officials in Paris had made an implicit promise not to undermine the criminal justice system of a small country on the other side of the world. And no argument from fair play can be made either, for it is unlikely that they ever received benefits from the operation of New Zealand law.[16] The only principle that explains our thought on the matter is one that holds that everyone everywhere has a duty not to undermine just institutions, even when those institutions have nothing directly to do with them.

Let us try a hypothetical example. Suppose a rich playboy with a taste for anarchy contrives to corrupt the judiciary of a foreign country for the sheer fun of it. He bribes the judges to return false verdicts in an array of cases that have nothing to do with him, so that later he can expose yet another legal system as rotten. Surely this action is wrong. But again, the only explanation of its wrongness is that the rich anarchist has violated a duty he has not to undermine the administration of justice—*anywhere*. Neither consent theory nor the principle of fair play can explain what is wrong with his gratuitous interference.

There are two points to be made about the argument so far. First, I assume that proponents of consent and fair play theories share our in-

15. To put it another way, the idea of natural law suffices to explain why it is wrong to blow up a ship with the danger of loss of life. See Locke, *Two Treatises*, II, para. 9 (pp. 272–73), for the claim that the magistrates of one country may rely on natural law if they wish to punish aliens.

16. However, the French police would have received normal cooperation from the New Zealand police in the past in homicide and antiterrorist inquiries, so that the withdrawal of cooperation in the *Rainbow Warrior* case might be seen as a failure of reciprocity.

tuitions about these cases. Since their own theories cannot explain them, they will have to admit that there *is* a duty of the kind Rawls mentions—a duty that applies to everyone with regard to just institutions everywhere. That is not a fatal admission. Their view need not be that consent or fair play is the only principle operating in the area. The first objection is not that there is no such thing as a natural duty to support just institutions, but rather that such a duty cannot by itself account for the special character of political obligation.

Secondly, if there *is* a natural duty that explains why it is wrong for a French official to obstruct justice in New Zealand and wrong for an anarchist to undermine a legal system for the sheer fun of it, presumably the very same duty also holds between an individual and the laws and institutions of his *own* country. Once again, this is not incompatible with theories of consent or fair play. Maybe there are many layers to the moral issue of what one owes to the state.[17]

IV

What can the proponent of natural duty say about the difference between a Frenchman's relation to the just institutions of New Zealand and a New Zealander's relation to those institutions?

I want to develop my account of this difference in several stages: (A) I shall first identify two relations in which an individual may stand to a given principle of justice P_1. (B) Corresponding to that distinction, I shall define two relations in which an individual might stand to an institution administering P_1. Stages (A) and (B) are both abstract: we are to consider the idea of an individual's relation to a principle, and then the idea of an individual's relation to an institution administering that principle. The idea of an institution's administering P_1 includes the idea of certain individuals' being required by further principles—P_2, P_3, and so on—to behave in a certain way with regard to the administration of P_1. For example, if P_1 is "To each according to his need," the other principles may comprise requirements such as "Administer P_1 impartially" (addressed

17. Rawls argues that at least some citizens and officials have an obligation to the laws and institutions of their society based on the principle of fairness in addition to the normal bond of natural duty: see Rawls, *A Theory of Justice*, pp. 336–50. For a critique of this "two-tier" approach, see Green, *The Authority of the State*, pp. 244–46.

to an official) and "Do not demand more than you need" (addressed to a subject of the institution in question).

At a third stage, (C), I want to shift the discussion from the abstract specification of principles and institutions to their concrete realization.[18] It is all very well to outline the variety of rules that *would* be required for the administration of P_1 by an institution; but we still have to deal with the question of which organizations are *in fact* entitled to occupy that institutional role, that is, which organizations are *in fact* entitled to demand our participation, compliance, and support in their administration of a principle like P_1. As we address this question—as we move from stage (B) to stage (C)—we will also be moving from our attempt to deal with the first objection to our attempt to deal with the second.

(A) Let us begin with a cute example. Hobbes has five children and one cake. He decides that the fair way to divide the cake is to give each child an equal share: "To each an equal amount of cake" is his principle. A neighbor's child, called Calvin, is watching these proceedings from across the fence. Astutely, Calvin points out to Hobbes that the principle "To each an equal amount of cake" entitles him (Calvin) to a slice as well. Hobbes responds that Calvin has misunderstood the principle. The formulation is elliptical, and the principle it abbreviates is not "To each and every one in the world (or even, to each and every one in the neighborhood) an equal amount of cake," but rather "To each *of Hobbes's children* an equal amount of cake." The principle is intended to be limited in its application.

Now Calvin may complain that this is a bad principle to work with inasmuch as it rests on an arbitrary distinction between Hobbes's children and other kids in the neighborhood. Such a complaint may be justified in certain circumstances, but it is not always justified. Hobbes may know for a fact that his neighbor has already served cake to the children on the far side of the fence, so that Calvin does not need any of the cake that Hobbes is now serving to his brood. There may even be a rule in the neighborhood, born out of long experience with incidents like this: "Each parent is to serve his own cake to his own kids."

18. Rawls notes that an institution may be thought of in two ways: "first as an abstract object, that is as a possible form of conduct expressed by a system of rules; and second, as the realization in the thought and conduct of certain persons at a certain time and place of the actions specified by those rules" (Rawls, *A Theory of Justice*, p. 55).

A principle of distributive justice may thus have a limited application: I shall call such principles "range-limited." In the case we have been discussing, Calvin turns out not to be within the range of Hobbes's principle. He is an *outsider* so far as Hobbes's distribution of cake is concerned. 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.[19]

I hope it is clear where we are heading: I am going to argue that a New Zealander's special relation to the legal institutions of New Zealand is largely captured by the fact that he is an insider with regard to the set of range-limited principles administered by those institutions. However, this account will only work—for Rawls's theory of a natural duty to support *just* institutions—if it is possible for the principles administered by the legal institutions of a country to be both just and limited in their range.

Many recent discussions of social justice presuppose such limitations as a matter of course.[20] John Rawls's theory, for example, is presented as "a reasonable conception of justice for the basic structure of society conceived for the time being as a closed system isolated from other societies."[21] On that approach we could settle what was just for New Zealand and New Zealanders without saying anything about the resources or inhabitants of any other country.

However, the assumption that justice may be confined within the borders of a single society is unsatisfactory. There are vast disparities of

19. I am simplifying a bit here. Of course P_1 need not refer to an individual A by name in order for him to be within its range. Usually what it will do is use some phrase like "every citizen" and A will be within the range of the principle just in case he satisfies that description.

20. Some even *define* justice meta-ethically in terms of *local* understandings. This, I take it, is Michael Walzer's approach in *Spheres of Justice: A Defense of Pluralism and Equality* (Oxford: Basil Blackwell, 1983): "Every substantive account of distributive justice is a local account" (p. 314) and "The very phrase 'communal wealth' would lose its meaning if all resources and all products were globally common."

21. Rawls, *A Theory of Justice*, p. 8.

wealth between the inhabitants of different countries. The poorest person in New Zealand is considerably better off than most people in Bangladesh, and one feels uneasy about making a passionate case in the name of justice for enhancing the well-being of the former while putting completely to one side all claims that might be made on the Bangladeshis' behalf. Certainly, if we are to use range-limited principles, we must have an argument *justifying* our use of them, and that argument, at least, should not simply treat the Bangladeshis as though they did not exist.

The best candidate in our tradition for such an argument is found in the political theory of Immanuel Kant. Like other contractarians, Kant thought of the state as an arrangement into which people enter for the resolution of conflict and the establishment of a secure system of property. However, 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."[22] 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."[23] 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.[24] 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."[25]

22. Immanuel Kant, *The Metaphysical Elements of Justice*, trans. John Ladd (Indianapolis: Bobbs-Merrill, 1965), sec. 42, p. 71.
23. Ibid., sec. 44, p. 76.
24. Ibid., sec. 6, p. 60.
25. Ibid., sec. 8, p. 65.

Now, although Kant acknowledges that in principle all humans share the earth,[26] 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. Throughout the rest of this article, I shall use the notion of "a territory" to refer to any area within which conflicts must be settled if *any* stable system of resource use is to be possible among the inhabitants.

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 re-thought, 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.

V

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 that I need for the remainder of the argument. I move now to the second stage of the argument, to consider the administration of principles by institutions.

(B) Principles cannot conduct distributions by themselves: they must be administered by working institutions. What would an institution L have to be like in order to administer a range-limited principle of distributive justice P_1? What demands would L have to make on the behavior of those who were insiders and on the behavior of those who were outsiders with regard to P_1?

26. Kant writes elsewhere of "that *right to the earth's surface* which the human race shares in common," a cosmopolitan right that establishes the basis of a "universal community": Immanuel Kant, *Perpetual Peace: A Philosophical Sketch*, in *Kant's Political Writings*, ed. Hans Reiss (Cambridge: Cambridge University Press, 1970), pp. 106–8.

The first demand made by L would be, of course, the demand of justice embodied in P_1 itself. Suppose P_1 is limited in its range to the interests of A and B: it dictates that a certain fund of resources be divided equally between them. Then P_1 requires of A that he not take more than an equal share. For A to accept P_1 is for A to accept that requirement, and for L to administer P_1 is for L to supervise and enforce it.

Secondly, L will have to require that A and B *accept* its supervision in this regard. Suppose A and B disagree about the interpretation of P_1 or about what counts as an equal share. A third person, C, may come along and offer an opinion. A or B or both may turn on C and say that it is none of her business; in some contexts that may be an apt reply. Suppose, however, that C is a functionary of L and acting in her official capacity. If A and B accept L's supervision, this changes the picture for them. To accept L's supervision is to say (among other things) that it is for officials of L to arbitrate disputes about the application of P_1. Their determination is to be accepted, if any third party's determination is. No doubt there are also other aspects of A's and B's accepting supervision by L. In general, if P_1 is to be administered by L, then those who are insiders with regard to P_1 are morally required to abide by the following principle, P_2: "Accept the supervision of L with regard to the implementation of P_1."

Like P_1, P_2 will be a range-limited principle. Since it is the point of L to administer P_1 (perhaps among other principles), A and B mark themselves as insiders in relation to L by accepting P_2. In general, a person is an insider in relation to an institution if and only if it is part of the point of that institution to do justice to some claim of his among all the claims with which it deals.[27] So, for example, a New Zealand resident is an insider in relation to the fiscal and welfare institutions of New Zealand, for it is part of the point of those institutions to do justice to his claims to income and assistance along with all the other claims that they address. The aim of the institutions is to determine what burdens it is fair to impose, and what benefits it is fair to confer, on this person and on others in New Zealand in the course of that overall enterprise.[28]

27. See note 19 above.

28. What about the situation where a French company is temporarily doing business in New Zealand, or where a New Zealander has a claim against some property or person in France? We develop rules of private international law to determine (sometimes arbitrarily but not unjustifiably) which forum is competent to determine such issues. If it is a New Zealand court and it makes its determination justly, then the French party *is* bound in justice to accept the determination, and that is a requirement—like P_2—on a par with a

A third demand that will have to be made if P_1 is to be administered effectively by L is this: that both insiders and outsiders refrain from attacking or sabotaging L in its attempts to put P_1 into operation. Even the most just institution is vulnerable to human interference, whether that is motivated by greed or some other antisocial impulse. In order to operate, an institution administering P_1 will have to promulgate or otherwise get accepted a third principle, P_3: "Do not undermine the administration of P_1 by L."

Unlike P_1 and P_2, P_3 will be a principle of unlimited range. It will address anyone and everyone whose actions might possibly affect the administration of P_1. Those whose conduct with regard to L is constrained only by this third principle may be called outsiders in relation to the institution L.[29]

P_3 is entirely consequentialist in conception. The claim made in its behalf will be that everyone should recognize that there is value in justice being done, even when they are not those among whom it is being done in this particular instance. For that reason, they should refrain from interfering with it.[30] Suppose, as before, that L has put into effect a just distribution between A and B regarding a certain fund of resources. A

New Zealander's duty to accept the just determinations of local courts. The only thing that distinguishes the French party from a New Zealander in this respect is that special circumstances have to arise before French claims are adjudicated in New Zealand courts, whereas for New Zealanders such adjudications are (properly) a matter of course.

29. Insiders are of course also subject to P_3. Apart from grabbing more than he is entitled to under P_1, an insider might try to obstruct or undermine its administration in other ways for purely malicious reasons.

30. The situation is complicated somewhat by the fact that outsiders may sometimes justly demand to be treated as insiders. Suppose an outsider interferes with the local administration of P_1 because he wants to promote a principle of wider range—principle P_1*—that deals justly with his claims as well as those previously dealt with under P_1. The outsider in question may be a Bangladeshi and P_1* may be a principle of global redistribution. Perhaps in this case there is no moral basis for condemning his interference. Who, after all, is entitled to object if his interference is calculated to bring about the administration of P_1*? Certainly not those who are insiders with regard to P_1, for they have claims of justice only against one another, not against those whose interests are neglected in the administration of that principle. Still, P_3 applies to *some* acts of interference by such outsiders, namely, those that do not enhance the prospects for P_1's being replaced by P_1*. And it certainly applies to the actions of outsiders such as Frenchmen who do not have this special interest in the replacement of P_1 by a principle of wider range. (I assume here that both Frenchmen and New Zealanders are better off under the range-limited principles that are already being administered in their respective societies than they would be under any just principle of wider range.)

mischievous outsider, C, has it in mind to do something that will undermine or upset that distribution. Why should she refrain? Because her intervention may have an effect that is bad from a moral point of view, namely, that A gets more (or less) of the fund than he is entitled to (as against B). Though B's is the only claim that A's is balanced against in this distribution, the justice of A and B each getting his fair share can be recognized from an impersonal point of view, and the badness of that distribution's being upset can therefore be acknowledged even by someone who does not have a direct stake in the matter.[31] If A were to seize more than his fair share, that would be direct injustice; the moral requirement not to do that is precisely what the initial principle of justice, P_1, amounts to (so far as A is concerned). When C upsets the distribution between A and B, the *result* is injustice even though C's action is not itself a violation of P_1 in the way that a greedy encroachment by A would be. C's act is wrong because of its consequences.

I believe this distinction between insiders and outsiders explains much of the specialness of an individual's relation to the institutions of his own country, at least so far as moral requirement is concerned. It gives a reasonably clear sense to the Rawlsian formulation that a person owes support to just institutions that "apply to him." The laws of New Zealand do not purport to address conflicts involving the ordinary claims and rights of Frenchmen. So, no matter how just those laws are, the relation of most Frenchmen to them is at most an external relation: there are things they can do to undermine the legal system in New Zealand, but they are not bound internally to their determinations of justice.[32] By contrast, a New Zealander *does* have the special insider relation to the laws of his own country. They have been set up precisely to address the question of the rights and duties of someone in his position vis-à-vis his fellow New Zealanders. That is the sense in which they apply to him.

Notice that this answer to the first objection does not make specialness merely contingent. In his original formulation of the "special allegiance" objection, Ronald Dworkin considered the following response: "We can construct a practical contingent argument for the special duty. Britons

31. This helps to explain torts of interference with contractual relations. Though a contract between A and B creates purely *in personam* rights, C can wrong B by inciting A to violate these rights.

32. Except, that is, in the extraordinary case in which some property of his is governed by New Zealand courts for the purposes of some dispute, under private international law. See note 28 above.

have more opportunity to aid British institutions than those of other nations whose institutions they also think mainly just."[33] But, he goes on, "this practical argument fails to capture the intimacy of the special duty." Dworkin is right about that. However, the distinction I have developed is a distinction in principle. Though it does not flow from citizenship as such, it depends on the difference between being one of the parties in respect of whose interests a just institution is just, and being a person who is merely capable of interfering with a just institution in some way. It is a difference in the content and structure of the natural duty, not a difference that depends on contingent facts and opportunities.

I concede that there may be other elements of patriotic affect and allegiance that this account does not capture.[34] Though I have lived for years in the United States, I feel a fierce loyalty to New Zealand—and for its institutions as well as its sports teams!—a loyalty that has nothing to do with any special application to my interests of the principles of justice it administers. I suspect that, in the end, these ties must be explained by reference to the idea of *nation* rather than polity, and birth and acculturation rather than any juridical connection. Nation, birth, and allegiance in this sense are matters on which modern political philosophers have had embarrassingly little to say.[35] I am comforted, however, by the thought that theories of acquired obligation—theories based on consent or on the principle of fairness—have even less to say on these matters than theories of natural duty.

VI

An institution will be able to administer a range-limited principle of justice P_1 only if most of the people to whom it applies accept P_2 and only if

33. Dworkin, *Law's Empire*, p. 193.

34. This paragraph is in response to a criticism by Mark Johnson.

35. Recent communitarian discussions of patriotism and loyalty are all predicated on the idea that I owe something to the community that is currently making my life and the exercise of my rights possible. See, for example, Alasdair MacIntyre, *Is Patriotism a Virtue? The Lindley Lecture* (Lawrence: University of Kansas, 1984); and Charles Taylor, "Atomism," in his *Philosophy and the Human Sciences: Philosophical Papers 2* (Cambridge: Cambridge University Press, 1985). These accounts do not explore the idea of an allegiance that is more atavistic and that stands quite independently of the communal attachments I currently enjoy. The best recent account is Neil MacCormick, "Nation and Nationalism," in his *Legal Right and Social Democracy: Essays in Legal and Social Philosophy* (Oxford: Clarendon Press, 1982).

most others also accept P_3. But how do we establish that a given organization is to fill this role? If an organization simply announces that it wishes to fill the role of institutional administrator of P_1 and shows itself capable of doing so, is this sufficient to establish that insiders and outsiders (with regard to P_1) are actually bound to that organization by principles like P_2 and P_3, respectively? This leads us to stage (C) of the argument and to the nub of our discussion.

(C) The disconcerting thing about the theory of natural duty is that it envisages moral requirements binding us to a political organization (a would-be state) quite apart from our agreement to be so bound, and quite apart from any benefits the organization has conferred on us (not counting those benefits whose conferral follows from its being a just organization). We suddenly find ourselves faced with a body of people purporting to do justice in our territory. In order for them to pursue that aim, they must elicit a certain amount of compliance and support from us. The natural duty theory is that they are entitled to that compliance and support simply by virtue of the quality of organization that they have put together.

Is this acceptable? Are there any other conditions we should stipulate, apart from the requirement that the organization be just—in its own workings and in the principles it proposes to apply?

One obvious additional condition is that the organization be *capable* of doing justice in the territory and over the claims that it purports to address. No one, surely, is morally bound to support a lost cause; or if they are so bound, for example, by personal ties of promise or fealty, they are not bound to an ineffective organization merely by virtue of the just character of what it would do if it were not ineffective. This point applies to collapsing *anciens regimes* as well as to governments-in-exile, hopeless insurgencies, and so on.

Whether an organization is effective will depend partly on whether people are prepared to accept it. In our notation, that includes whether they accept and follow the principles such as P_2 and P_3 that are necessary for its operation. But there is no vicious circle here: I am not saying that one is bound to follow these principles only if the organization L is effective and that L is effective only if one follows these principles. The point is rather that a person must be assured that sufficient others are disposed to comply with the principles before he can reasonably think L

is effective and thus before he can reasonably think that he is bound to follow the principles. In some situations, this will generate collective action problems of a type familiar to students of Hobbes.[36] But often it will not. Most of us, when we awake to a consideration of these matters, find ourselves faced with an organization to which the people around us are already lending their support. The effectiveness condition, therefore, is usually already fulfilled for most societies under modern conditions.

But not always. Occasionally there is more than one organization purporting to do justice in a certain territory. I have in mind cases such as Northern Ireland, where in certain Catholic enclaves the IRA purports to administer rules of social conduct (knee-capping muggers, collecting funds to support "law enforcement," distributing welfare assistance, and so on) in a way that rivals the parallel, though much more highly organized, apparatus of the British state. Or consider a situation like that of modern Lebanon, where in certain areas there are several rival and apparently parallel state or proto-state apparatuses. In cases like these, if both rival organizations are in fact just,[37] does either of them have a claim of natural duty on us?

It is no good responding that it does not matter because if both are just their demands will coincide. We have already seen that that need not be the case. The organizations may make different and incompatible demands that nevertheless address all the main issues of justice in society adequately or nearly adequately. And of course each will need to raise money to fund the cost of *its* actually doing what justice requires. If we have a duty to support just institutions, does it follow that we have a duty to support *both* institutions in a case like this? That is a question about the duty of justice owed by insiders, that is, the persons in the territory patrolled by these rival institutions. We can also ask a similar question about the duties of outsiders. If there are two rival states or proto-states in a territory, do outsiders have a duty to refrain from interfering with both of them, or only one (which one?), or neither?

Clearly we need another condition to deal with these issues. I want to

36. See the excellent discussion in Jean Hampton, *Hobbes and the Social Contract Tradition* (Cambridge: Cambridge University Press, 1986), chap. 6. Hampton shows that these collective action problems are not Prisoner's Dilemmas.

37. I do not mean to suggest the truth of this hypothesis (about justice) in either the Irish or the Lebanese case, but simply to consider what would follow if it *were* true (and what does follow to the extent that it *is* true).

suggest that the natural duties come into play only where the organization in question passes not only tests of justice and effectiveness, but also a test of legitimacy. What must be established is that there is a good reason to recognize *this* organization, as opposed to any rival organization, as *the one* to do justice in the given territory or with regard to the claims that are at issue. To the extent that such reasons exist, the organization is "legitimate." Legitimacy, then, is an exclusive characteristic: only one organization may be legitimate with regard to a given set of claims or with regard to the issues of justice arising in a given territory.

The explication of the legitimacy requirement has three parts to it: (i) We must recall why it is important for there to be institutions doing justice. (ii) We must show why it is important for there to be only *one* such institution in a territory. (iii) We must indicate grounds on which it might be appropriate to favor the claims of one particular organization over those of its rivals.

(i) The first step takes us back to the Kantian theory we noted in Section IV. The setting up of political institutions, Kant argued, is the way to avoid or mitigate the disagreements and conflicts that will otherwise inevitably arise even among people attempting in good faith to follow the dictates of justice. Because the stakes are high, these conflicts always threaten to issue in violence. Such violence will involve death and suffering, and, as Thomas Hobbes famously pointed out, the anxiety and unpredictability that accompany it will make it difficult for anyone to pursue a decent life.[38] Political institutions are capable of making things better in this regard: they can mediate and arbitrate disputes, they can develop practices of impartiality, and they can collect together sufficient force to uphold their determinations. There is therefore a clear moral interest in their establishment.

(ii) The reasons for having political institutions are also reasons for ensuring, if possible, that there is just *one* in each territory. In *Anarchy, State and Utopia*, Robert Nozick imagined that some of the inhabitants of a territory might join one enforcement-and-arbitration organization and some might join another. The reasons that led people to join these

38. Thomas Hobbes, *Leviathan*, ed. Richard Tuck (Cambridge: Cambridge University Press, 1991), chap. 13, pp. 89–90.

organizations would, he said, also lead to fighting between them.[39] If anything, such violence will be worse than that of the Hobbesian "war of all against all," because the battles will be better organized. The moral interest in reducing such fighting provides a reason for all of us to join and support the same organization, and that gives each of us a reason to join and support whatever organization others are joining and supporting. Once again, this may involve collective action problems; but it need not, and even if it does, the problems are not necessarily intractable.[40]

There are other reasons too. Justice is partly a matter of cooperation. Though in most human situations (even those in which institutions are lacking) individuals can distinguish between just and unjust courses of action, they will often feel that things would go better from the point of view of justice, and that their own actions would make more of a difference, if they could be sure that others were following the same goals as they were. A single person contributing to charity, for example, may see his own donation as a drop in the ocean—worthwhile in itself, no doubt, but in the long run essentially futile in comparison to the magnitude of the problem. He may think that a problem like world poverty is adequately addressed only if all or almost all well-off people make an organized effort to do something about it. In other words, it may make a difference to what it is just for me to do whether I have the assurance that others are cooperating with me.[41] An institution with authority over a large number of people may help to provide this assurance. But usually that assurance can be provided only if the number of institutions addressing the problem that concerns me is limited (perhaps to one). Too great a plurality of institutions may dissolve the advantages of an assured scheme of cooperation and reintroduce the chaos of a number of cross-cutting initiatives, each of which seems futile in itself.

For some cases, the importance of singling out one organization to do justice in a given area stems paradoxically from the plurality of possible just schemes. The point is clearest in the case of simple coordination problems. A scheme that required motorists to drive on the left would be just. And so would a scheme that required motorists to drive on the right.

39. Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1984), pp. 12–17.

40. See Hampton, *Hobbes and the Social Contract Tradition.*

41. See Don Regan, *Utilitarianism and Cooperation* (Oxford: Clarendon Press, 1980) for an excellent detailed argument to this effect.

But this plurality does not mean we can allow rival schemes to operate in the same territory. The problem of coordination here will not be solved unless one and only one is chosen. Though either would be just and though either would be better than no solution at all, common sense requires that one of them be rejected.

Now we cannot use coordination problems as a model for all issues of justice and political obligation.[42] But many of the issues of choice with regard to just institutions do have this character. Suppose we establish something like a Rawlsian difference principle as a fundamental criterion of economic justice.[43] There may still be choices to be made about the best institutional structures for achieving this: a negative income tax, for example, or some more familiar scheme of welfare support. Some of these choices are made on the basis of which structure is more likely to be just, given the contingent circumstances and history of each society. But some of them may simply be arbitrary: welfare scheme W together with fiscal scheme X may be every bit as just as welfare scheme Y together with fiscal scheme Z. It will matter that we settle on one combination, but it may not particularly matter which.

The example also illustrates another point about the need for a single scheme of justice. As Rawls has stressed, the institutions of a society operate as a single structure and, for the purposes of a theory of justice, have to be assessed as a whole.[44] It may not be possible to say that the taxation scheme of a society is just until we consider how it fits with the property system, the education system, the welfare system, and so on. Because justice is in this sense systematic, and because systematicity may depend on there being a unique set of interrelated institutions, it seems that any claim that justice can make on us presupposes the identification of one set of organized institutions as *the system* that makes a claim on us, if any system does.

(iii) The reasons for having a single scheme of justice in a society give us our best grip on the criteria for political legitimacy. To the extent that

42. See Leslie Green, "Law, Co-ordination and the Common Good," *Oxford Journal of Legal Studies* 3 (1983): 299–324.

43. The difference principle holds that inequalities of wealth and power are acceptable only if they redound to the benefit of the least favored group in society; see Rawls, *A Theory of Justice*, pp. 75–79.

44. Ibid., pp. 7, 170–71. See also John Rawls, "The Basic Structure as Subject," *American Philosophical Quarterly* 14 (1977): 159–65.

the underlying reason has to do with strategic choice in something like a coordination game, anything that establishes the salience of one system over others will be a reason for preferring it. In most cases, the fact that there *is* a state and that it is, for all practical purposes, dominant and unchallenged in a territory will be sufficient. This is the organization that deserves our support in the enterprise of doing justice if any organization does.

What if there is competition between two or more plausible contenders? How should we choose which to support? Since effectiveness is one of the conditions we have imposed, there may be reason to choose the more powerful contender. Alternatively (if this does not amount to the same thing), we may have reason to choose the organization with the greater popular support.

This criterion might seem to reintroduce the idea of government by consent—the very idea that natural duty theories are trying to replace. The idea seems to be that if most people in a territory agree that some organization L is *the* system to keep order and mete out justice in that territory, then their consent confers legitimacy on L and provides *me* with a basis for identifying L as the institution deserving of my support and allegiance.

However, this does not amount to a reintroduction of the consent theory of obligation (though it may help to explain why consent is so often appealed to in this context). For one thing, consent is being suggested here as one possible ground for legitimacy; it is not the only possible ground. The sheer existence of an institution as dominant and unchallenged may suffice to establish its salience, whether it is popularly supported or not. For another thing, the consent that establishes legitimacy in this sense affects the duties not only of those who give their consent but of outsiders too. Once a Frenchman has identified the institutions that are supported by the people of New Zealand, he is bound (as a matter of natural duty) to regard those institutions as the ones he must not attempt to subvert or undermine even though he himself has never agreed to support them.

In general, the use of consent in relation to legitimacy is quite different in its logic from its use as a direct ground of obligation.[45] In the latter

45. There is a more expansive discussion of this in Jeremy Waldron, "Theoretical Foundations of Liberalism," *Philosophical Quarterly* 37 (1987): 135–40.

case, consent is represented as a promise; in the former case, it is more like a permission or nomination. Few of us think that hypothetical promises can create real obligations; but we do often believe that hypothetical consent can confer real permissibility on what would otherwise be wrongful intrusions. A surgeon pondering whether to operate on an unconscious accident victim does not have to wait for actual consent; she can proceed on the basis of her best sense of what the accident victim would have agreed to if he had been conscious.

Also, consent in this context is not incompatible with majoritarianism, as it is in classic theories of social contract. One cannot be voted into a social contract, because there the image of consent is being used to explain individualized obligation and it is part of the logic of that image that one's own obligations can be generated only by one's own agreement. But if the consent of a community is being used to establish institutional salience, or to provide the assurance one needs for cooperative action, then the agreement of a majority of the inhabitants of a country may suffice. The advantage of the natural duty approach is that the *obligatoriness* of respecting an institution's demands of justice is secured independently of consent, as a matter of moral background. Consent is used here simply to establish which institutions may appropriately embody those demands.[46]

Indeed, for this latter purpose, propositions about *hypothetical* consent (even hypothetical majority consent) might be sufficient (though again they are not sufficient as direct grounds of obligation).[47] If a pair of rival institutional systems, L_1 and L_2, in a territory T are such that most of the people of T would clearly agree to be governed by L_1 rather than by L_2 if they were asked, and if almost everyone in T knows this about the two systems, then it seems that L_1 is clearly the salient choice as *the* system to which allegiance is owed on grounds of justice, if such allegiance is owed to any institutional system. That the people of T have not *actually* consented to L_1 is neither here nor there. They have a natural duty to support whatever institution can be identified as the appropriate one to

46. This use of consent is different again from its use within Rawlsian-style contractarianism. There the image of consent is deployed as a model-theoretic device for establishing what justice actually amounts to; it has no political or institutional significance, either with regard to obligation or with regard to legitimacy (in the sense I am discussing).

47. For the argument that hypothetical consent cannot generate actual obligation, see Ronald Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977), pp. 150–59.

do justice in their territory; and these hypothetical propositions about their consent (or the consent of most of them) are sufficient basis for that identification.

Popular consent may, finally, be relevant to institutional choice as an aspect of justice. In our models so far, we have imagined institutions administering substantive principles of social justice; we imagined that P_1 was something like "To each according to his need" or "To each equally" and that it applied to the distribution of material resources. But institutions will also have to address the distribution of political power. Most of us think that, in this regard, an institution is just only if it is democratic: that is, only if it proposes to settle disagreements about what justice requires by some form of voting among all the people who are subject to its jurisdiction. The idea of a natural duty to support just institutions may therefore involve the idea of a natural duty to support democratic institutions, institutions that embody regular appeals to popular consent. Even so, the requirement to support such a regime is based on the justice of its political system; it is not based directly on consent.

VII

The position we have reached is that an organization that is just, effective, and legitimate (in the sense of being singled out as *the* salient organization for this territory) has *eo ipso* a claim on our allegiance. Though popular consent may be implicated in its justice, its effectiveness, or its legitimacy, the moral requirement that we support and obey such an organization is not itself based on any promise that we have made.

Despite the conditions we have imposed, someone might still balk at the general idea behind this position. Can an organization simply *impose* itself on us, morally, in this way?

There comes a point when the theorist of natural duty must stop treating this question as an objection and simply insist that the answer is yes. His affirmative answer is, after all, what distinguishes a theory of natural duty from theories of acquired political obligation.

To defend the answer, he will emphasize two considerations: first, the moral importance of justice; and second, the moral significance of the difficulties that attend the pursuit of justice without political institutions. We have rehearsed the second consideration already. The pursuit of jus-

tice often requires coordination, among those who are attempting to do justice and among the various spheres in which they are attempting to do it. Institutions are necessary for that coordination. Without them, there will be more injustice. So to the extent that the avoidance of injustice is a moral imperative, the establishment of coordinating institutions is a moral imperative.[48] In addition, there are the considerations about conflict that were also discussed earlier. The pursuit of justice in an institutional vacuum leads to conflict among persons who have different views about what justice requires, and that in turn issues in violence, suffering, and anxiety. These things are worth avoiding in themselves: they are additional evils (that is, evils over and above injustice itself) attendant on the conflicting efforts of a number of people to avoid the primary evils of injustice.

In all of this, the assumption of the natural duty approach is that the pursuit of justice is a moral imperative. This proposition is one that needs to be understood carefully. At the beginning of *A Theory of Justice*, Rawls writes: "Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust."[49] But the analogy is misleading. To say that *if* I propound a theory it is important that the theory be true is not the same as saying that it is important that I propound a true theory. From the point of view of truth, there may be no problem with silence or theoretical reticence. Analogously, Rawls seems to be saying in this passage that *if* we have social and political institutions, it is important that they be just. In fact, the importance of justice goes beyond this. It is morally imperative that the demands of justice be pursued *period*. If institutions are necessary for their pursuit, then it is morally imperative that such institutions

48. For a dissenting view, see Nozick, *Anarchy, State and Utopia*, chaps. 2–6. It is Nozick's contention in this part of the book that the moral force of constraints of right and justice does not translate automatically into a moral imperative of submission to and cooperation with whatever organization seems best positioned to uphold and enforce such rights. Nozick's position is based partly on his particular conception of rights as agent-relative side-constraints: that A has a right against B that B not attack him does not, on Nozick's account, provide any third party C with either a duty or a moral justification for restraining or helping to restrain B from attacking A. I am grateful to the Editors of *Philosophy & Public Affairs* for pressing this point.

49. Rawls, *A Theory of Justice*, p. 3.

be established. Our duty of justice is not satisfied by ensuring that whatever institutions we happen to have are just; it is satisfied only by our doing our part to establish just institutions. The point, once again, is the Kantian one. Because we are not to regard remaining in the state of nature as a permissible option, we may not say that whether we are bound to legal institutions is a matter of whether we happen to promise our cooperation. Our cooperation in establishing and sustaining political institutions that promote justice is morally required. That is the backbone of the natural duty position.

Once we see this, we see how to deal with an alleged counterexample put forward by A. John Simmons in articulating the second of our original objections—the "application" objection. Simmons asked us to imagine an organization simply arriving on the scene and announcing that it proposes to do justice.

> Imagine . . . that a group a benighted souls off in Montana organizes an "Institute for the Advancement of Philosophers," designed to help philosophers by disseminating papers, creating new job opportunities, offering special unemployment benefits, etc. Moreover, these benefits are distributed strictly according to the demands of justice; and they are made possible by the philosophers who pay "dues" to the Institute. . . . One day the Institute . . . decides to expand its operations eastward, and I receive in the mail a request that I pay my dues. Does this institution "apply to me"? There is a very weak sense in which we might say that it does; it is an institution for philosophers and I am a philosopher (of sorts). I may even stand to benefit from its operations in the future. But am I *duty-bound* to pay my dues, in accordance with the "rules" of the Institute?[50]

Simmons thinks the answer is no, irrespective of the justice of the Institute: "People cannot simply force institutions on me, no matter how just, and force on me a moral bond to do my part."[51]

The example is ambiguous, so far as the justice of the Institute is concerned. An institution can be just in two ways: (a) it can be just in the way it operates; and (b) it can be just in the sense that it is doing something that justice requires. Simmons stipulates that the Institute is just

50. Simmons, *Moral Principles*, p. 148.
51. Ibid.

in sense (a): comparing the charges it levies with the benefits it distributes, it deals fairly with the revenues it raises. But to establish that it is a just institution in a sense that would engage the Rawlsian principle, one has to show more than that. One has to show that it is just in raising the levy in the first place. That involves considering both the benefits it offers and the other purposes on which philosophers might want to spend their money. It involves showing that, as a matter of justice, it is imperative that people do what they can to support philosophers (over and above the general schemes of social support to which they are already contributing). Our readiness to agree with Simmons' verdict on the hypothetical stems, I suspect, from the belief that this cannot be shown. We think that a philosopher may fairly resist the Institute's demands by saying, "I concede that your organization is just so far as its internal workings are concerned. I even concede that helping philosophers is a nice thing to do. But I deny that it is important from the point of view of justice to offer philosophers this assistance, so I don't see that I am doing anything wrong in refusing your request for my support, at least so far as the natural duty theory is concerned."

Suppose the case were different. Suppose the benighted souls off in Montana were to set up an institute to give aid to the homeless. Suppose, moreover, that the founders of this institute were right in thinking that their organization is not only just in sense (a)—that is, with regard to its internal workings—but just also in sense (b). They believe that the homeless are entitled, as a matter of justice not charity, to much more than they are currently receiving under state welfare arrangements. If they were right about that—if it really *were* a demand of *justice* that they were responding to—then, assuming their institute was effective and not competing with any other organization to address this problem, the theory of natural duty *might* yield the conclusion that we are morally bound to support it. As soon as we became aware of the organization, of the true nature of the problem it was addressing, and of its position as the only organization in the country proposing to deal justly with homelessness, maybe we *would* be bound to send off our check for the amount it determined we should contribute. That conclusion might seem counterintuitive and certainly uncomfortable. But I wonder how much of this discomfort is due to our bad faith about justice, rather than to any specific difficulty about the duties that we owe to institutions.