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Political Obligation and the Natural Duties of Justice

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In *A Theory of Justice*, John Rawls bases moral requirements functionally equivalent to political obligations on the “natural duties of justice,” especially the natural duty “to support and to further just institutions.”<sup>1</sup> His arguments for this position are sketchy, and as I will attempt to show, unsatisfactory. Despite its apparent intuitive clarity, a natural political duty is not able to support central aspects of the state. This criticism of Rawls’s view raises questions about the overall claim that political obligations are moral requirements we have simply because we are human beings, rather than because of our relationships with particular states.

In *Theory of Justice*, Rawls obviously needs a reason why citizens are required to obey the laws of their states. However, in Section I, I criticize his claim that the natural duty to support just institutions can account for this. Either, as we will see, this duty will not be sufficiently strong to serve as a political obligation, or if it will, it will not be a “natural” duty.

In Section II, I attempt to develop an alternative to Rawls’s view, from the

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1. J. Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard Univ. Press, 1971), p. 334; similarly, p. 115. This work is cited hereafter as *TJ*, in the text. A valuable discussion of Rawls’s view of the natural duties of justice and political obligation is A. J. Simmons, *Moral Principles and Political Obligations* (Princeton: Princeton Univ. Press, 1979), Chap. 6. Throughout this paper, I use the term “political obligation” in a broad sense, in reference to any moral requirement to obey the law, whether or not generated by voluntary action; see Simmons, *Moral Principles*, Chap. 2. Because of the close relationship between political obligations and obligations to obey the laws of one’s state, I regard these notions as basically interchangeable.

standpoint of the representative individuals in the original position. My main argument here is that a version of the principle of fairness, which Rawls explicitly rejects in *Theory of Justice*, is able to fill the gap in his political theory. As I view this, the principle of fairness centers upon the generation of moral requirements from the sacrifices of other people that are necessary for the joint production of benefits.<sup>2</sup> In his 1964 paper, “Legal Obligation and the Duty of Fair Play,” Rawls argued for a view of political obligation rooted in the principle of fairness (or “fair play”).<sup>3</sup> Along with H.L.A. Hart’s “Are There Any Natural Rights?” this paper was influential in calling attention to a fairness theory’s possibilities.<sup>4</sup> However, in *Theory of Justice*, Rawls argues that the principle cannot account for the obligations of most citizens. In order for people to incur obligations to some cooperative scheme under the principle of fairness, they must *accept* benefits it provides. Because central benefits of government are public goods and so not “accepted” by recipients, the principle cannot account for their political obligations.<sup>5</sup> However, as we will see below, the representative individuals would not endorse the requirement that benefits be accepted. A principle of fairness without this requirement is able to ground general obedience to the law without the problems of a natural duty to support just institutions.

In both his defense of the natural duties of justice and rejection of the principle of fairness, Rawls’s arguments are able to proceed because he does not develop them from the perspective of the original position. Throughout *A Theory of Justice*, Rawls connects his arguments from the original position with others developed through the method of reflective equilibrium (*TJ*, pp. 19–21, 46–53, 577–87). However, greater weight must be given to those from the original position: “in a contract theory arguments are made from the point of view of the original position” (*TJ*, p. 104). Proceeding from this perspective, I believe, the view of political

2. I refer to this as a version of the principle of fairness, because it does not require acceptance of benefits.

3. “Legal Obligation and the Duty of Fair Play,” in *Law and Philosophy*, ed. S. Hook (New York: New York Univ. Press, 1964).

4. *Philosophical Review* 64 (1955); for the principle of fairness and political obligation, see G. Klosko, *The Principle of Fairness and Political Obligation* (Savage, Md.: Rowman and Littlefield, 1992); Simmons, *Moral Principles*, Chap. 5.

5. *TJ*, pp. 113–14, 336–37, 343–44; Rawls believes that office holders and other people who take advantage of opportunities offered by the political system have political obligations through the principle of fairness (*TJ*, p. 114, 344).

obligation Rawls *should* endorse in *Theory of Justice* as consistent with his premises and overall theoretical perspective is a variant of the principle of fairness.

The wider implications of this paper are damaging to a natural duty view of political obligation. Rawls's defense of such a view is the most influential in the literature. Showing that his account is severely flawed and that a natural duty to obey the law is not supported by his influential method of justifying moral principles should weaken the attraction this view has had for recent theorists.<sup>6</sup> For reasons we will see below, it seems doubtful that a natural duty view can support the state's central functions—which must be the main focus of any theory of political obligation. The central role essential state benefits *should* play in Rawls's political theory supports the general claim that political obligations stem ultimately from receipt of such benefits provided by the efforts of one's fellow citizens, rather than from moral requirements binding on all human beings.

## I

In *Theory of Justice*, having rejected the principle of fairness, Rawls argues for a moral requirement to obey the law based on the natural duties of justice. Rawls defines obligations narrowly, as moral requirements incurred through voluntary actions (*TJ*, p. 113). Natural duties, unlike obligations, apply without regard to voluntary actions.<sup>7</sup> They also hold for persons generally, as opposed to specific groups, for example, individuals cooperating together in particular social arrangements (*TJ*, p. 115). Natural duties are owed by all individuals to all individuals, regardless of differentiating characteristics.

Several of Rawls's natural duties are familiar, intuitively clear moral principles. These include the duty of mutual aid, "the duty of helping another when he is in need or jeopardy, provided that one can do so without exces-

6. Three examples are Simmons, *Moral Principles*, Chap. 8; J. Waldron, "Special Ties and Natural Duties," *Philosophy & Public Affairs* 22, no. 1 (Winter 1993); and L. Green, *The Authority of the State* (Oxford: Oxford Univ. Press, 1988), Chap. 9.

7. Rawls appears to assume the conventional distinction between obligations and so-called "positional duties," moral requirements attached to specific positions, statuses, or offices (see *TJ*, p. 113; on duties, see R. Brandt, "The Concepts of Obligation and Duty," *Mind* 73 [1964]; Simmons, *Moral Principles*, Chap. 1). Thus he apparently believes in duties of two kinds: positional and natural. But because the former are often assumed through voluntary actions (e.g., those of a husband by marrying), Rawls does not give them much attention.

sive risk or loss to oneself" (*TJ*, p. 114); the duty not to harm or injure others (*TJ*, p. 114); and the duty to show others the respect due to them as moral beings (*TJ*, p. 337).<sup>8</sup> However, the status of the natural duties in Rawls's theory does not rest on their being familiar or intuitively clear, but on the fact that they would be adopted by the representative individuals in the original position. Because the representative individuals are motivated less by benevolence than by the desire to advance their rational self-interest, the natural duties must be shown to be in their interest. For many this is easily demonstrated. For instance, the overall benefits of a general rule of mutual aid clearly outweigh its costs. The gains to the person in need far outweigh the costs to those who help him, while it is almost as likely that one will be a beneficiary some time as a benefactor (*TJ*, p. 338). Similarly, the benefits of living in a society in which individuals treat each other with mutual respect outweigh the costs of having to show others respect (*TJ*, pp. 337–38). Important to Rawls in these cases are the intangible effects on one's sense of self-worth of living by rules that affirm one's value as a moral person (*TJ*, pp. 337–39).

The reasoning behind these natural duties and some others Rawls mentions is on the whole persuasive, and so the lack of detailed discussion is not clearly felt. But the situation is more complex when we turn to the natural duty to support and to further just institutions, which is not intuitively clear. This is presented as follows: "From the standpoint of the theory of justice, the most important natural duty is that to support and to further just institutions. This duty has two parts: first, we are to comply with and to do our share in just institutions when they exist and apply to us; and second, we are to assist in the establishment of just arrangements when they do not exist, at least when this can be done with little cost to ourselves" (*TJ*, p. 334; similarly, p. 115). For ease of reference, we can refer to the first part, which is our primary concern, as the "natural political duty." I do not include the duty to help establish just institutions in the natural political duty. The two duties together can be referred to as the "political duties." On the whole, the second duty will be of little concern, though I will discuss it briefly below.

Because the natural political duty is not a familiar moral principle, we require a convincing account of exactly what it entails and why the representative individuals would adopt it. But Rawls does not explain

8. Additional natural duties are discussed in *TJ*, Sec. 51.

these matters. The lack of a detailed account makes his view difficult to construe, while as we shall see, there are problems with the points he does make.

In spite of apparent differences, the two political duties are like other natural duties in being owed to individuals rather than to institutions. Rawls subscribes to methodological individualism, and so views an institution as reducible to a number of roles, defined by rules, in accordance with which their occupants behave (*TJ*, p. 55). The most plausible construal is that we are to support and comply with the requirements of the individuals whose rule-governed behavior constitutes just institutions because this will benefit everyone alike (and so us), on the model of the other natural duties.<sup>9</sup> However, because of the limited benevolence Rawls ascribes to human nature, the representative individuals will adopt the political duties only if the costs of supporting other people in these respects are outweighed by benefits. We can call this the “benefit condition.”

The requirement that the political duties satisfy the benefit condition raises an important question concerning their force. As presented by Rawls, a number of natural duties are qualified by explicit limits on their force. The duty of mutual aid is to help others when they are in need, “provided that one can do so without excessive risk or loss to oneself” (*TJ*, p. 114). The duty to bring about a great good holds “only if we can do so relatively easily” (*TJ*, p. 117). The second political duty, the duty to help establish just institutions, is similarly qualified (see above, p. 254; also *TJ*, p. 115). It is interesting that in both passages in which it is presented (pp. 334, 115), this duty is explicitly qualified in regard to cost, while the duty to comply with existing institutions is not.<sup>10</sup> But Rawls provides no explanation. At one point he appears to indicate that all natural duties are so qualified (see *TJ*, p. 117). But we cannot say for certain what his position is, and I will leave this question open. For ease of reference, we can refer to a natural duty or other moral principle that is qualified in regard to cost as a

9. It appears that, though Rawls’s discussion is in terms of just institutions, this can be translated as just *governments*. The natural political duty plays a role in Rawls’s theory functionally equivalent to that of political obligations in traditional theories. Thus in more familiar terms, “to comply with and to do our share in just institutions” is to comply with the requirements of just governments, generally to obey the law. But in discussing the natural political duty, I will generally retain Rawls’s language.

10. Simmons, for one, appears to attach the cost qualifier to both political duties (*Moral Principles*, p. 193; also see p. 154); Waldron does not discuss the question of costs in his recent article, “Special Ties.”

“weak duty” or a “weak principle,” and to one that is not so qualified as a “strong” duty or principle.

For Rawls to argue that the natural political duty is a weak duty would raise severe problems. The requirements of complying with and doing our share in just institutions are often onerous. Central burdens of citizenship include requirements to obey the law, to pay taxes, to provide military service under circumstances that could cost one his life. Impinging in serious ways on many aspects of individuals' lives, these requirements go well beyond what can be demanded by weak principles. Because the representative individuals can be presumed to know this, if the natural political duty is to require obeying the law, it must be a strong principle, to be complied with even if this greatly inconveniences or harms the subject. It is perhaps reasoning such as this that leads Rawls to formulate the natural political duty without the cost qualifier included in the duty to help establish just institutions. But as we have also seen, there is some reason to believe the cost qualifier applies here as well.

Arguing that the natural political duty is a strong principle, however, raises a different set of problems. It is far more difficult to justify a strong principle in the original position. Offhand, it seems that an overall duty of civility and promoting justice is intuitively acceptable and can be adopted in the original position. We are all better off if everyone behaves at a higher level. Because general adherence to this principle would benefit everyone, the representative individuals would adopt it. Rawls apparently assimilates the duty to support just institutions to this overall duty to be just. However, the general duty can be assumed only if it is not overly costly. Because of the limited benevolence of human nature, we cannot expect people to make onerous sacrifices for the sake of some loose conception of the general good (see *TJ*, pp. 177–78). A strong duty cannot simply be assumed as intuitively clear or readily accepted by the representative individuals. While Rawls's natural duties generally coincide with moral requirements that are often viewed as binding on everyone, they are not sufficiently strong to demand that people sacrifice their lives. Other things being equal, for Smith to risk his life to come to the aid of a stranger, or in order to show him respect, would be supererogatory action, well beyond the call of natural duty.<sup>11</sup> This is consistent with Rawls's discussion. Of supererogatory

11. See J. O. Urmson, “Saints and Heroes,” in *Essays in Moral Philosophy*, ed. A. I. Melden (Seattle: Univ. of Washington Press, 1958).

actions—benevolence, mercy, and heroism—he says that, though it is good to do them, “it is not one’s duty or obligation.” “For while we have a natural duty to bring about a great good, say if we can do so relatively easily, we are released from this duty when the cost to ourselves is considerable” (*TJ*, p. 117). However, if strong principles cannot be justified as extensions of natural duties, the question necessarily arises how they can be justified. In particular, we must ask why the representative individuals would endorse a strong natural political duty if this requires substantial risk or loss.

In keeping with the central tradition of liberal political theory, we can justify a strong natural political duty by imagining circumstances in which it does not hold. I will argue here from the standpoint of the representative individuals, taking into account their goals and what they can be presumed to know about society. My aim is to present a plausible moral principle they would be likely to accept.

In the original position, the representative individuals possess basic information about how societies function (*TJ*, pp. 137–38). Thus they know they require certain services provided by government as a necessary condition for satisfactory lives (but on this, see below, pp. 266–67). In order for a system of rights and liberties to exist, society must be stable and orderly; the individual citizen must be free from coercive interference, and the populace safe from foreign aggressors. Similarly, a functioning property system requires law and order. The need for these and other attributes of society are basic assumptions of liberal political theory and major features of the representative individuals’ social knowledge.

Though Rawls does not discuss these points in the context of political obligations, he clearly assumes them. This is seen in his discussion of liberty of conscience, which is limited, “everyone agrees, by the common interest in public order and security.” The reasoning for this limitation is as follows:

This follows once the maintenance of public order is understood as a necessary condition for everyone’s achieving his ends whatever they are. . . . The government’s right to maintain public order and security is an enabling right, a right which the government must have if it is to carry out its duty of impartially supporting the conditions necessary for everyone’s pursuit of his interests and living up to his obligations as he understands them. (*TJ*, pp. 212–13)

Along similar lines, Rawls notes the need for conscription, when the defense of the system of liberties as a whole is at stake, though this is a severe



infringement on liberty (*TJ*, p. 380). Thus we can assume that the representative individuals are aware of the overriding need to maintain public order and security.<sup>12</sup>

Rawls is not unusual in viewing the state and its benefits as indispensable. Like traditional theorists he also believes these benefits require general political obligations, binding on all or nearly all members of society.<sup>13</sup> Order and security rest on general obedience to the law. Rawls breaks with traditional theorists, however, in lacking confidence in familiar arguments for political obligations.<sup>14</sup> His recourse to the natural political duty is apparently in recognition of two basic facts: (a) that maintenance of the state and provision of its indispensable benefits requires general compliance with its laws; and (b) that traditional arguments for political obligations do not hold. If we attribute similar reasoning to the representative individuals, we can see why they would endorse the natural political duty. But as we have also seen, a weak natural political duty does not meet their needs.

The reasoning underlying a strong natural political duty rests on the general need for essential state benefits, which must be provided by cooperative efforts that are general.<sup>15</sup> In the passage on liberty of conscience quoted above, Rawls twice notes that public order is necessary for *everyone*. Many state benefits are public goods—and in many cases not only nonexcludable but unavoidable and so must be received. In order to prevent people from benefiting from receipt of these goods as free-riders, a suitable principle of obligation should apply to all (or virtually all) individuals in a given territory, as all receive the benefits, whether or not they accept them or consent to government.<sup>16</sup> In his discussion of public goods,

12. The importance of order and security supplied by the state is a prominent theme in several of Rawls's later writings, esp. "The Basic Liberties and Their Priority," in *Liberty, Equality, and Law: Selected Tanner Lectures on Moral Philosophy*, ed. S. MacMurrin (Cambridge: Cambridge Univ. Press, 1982); this is now reprinted in Rawls, *Political Liberalism* (New York: Columbia Univ. Press, 1993); "Justice as Fairness: Political not Metaphysical," *Philosophy & Public Affairs* 14, no. 3 (Summer 1985); "The Domain of the Political and Overlapping Consensus," *New York University Law Review* 64 (1989).

13. On the requirement of generality, see Simmons, *Moral Principles*, pp. 55–56.

14. Recent theorists who also question the traditional arguments include Simmons, *Moral Principles*; Green, *Authority of the State*; and J. Raz, *The Authority of Law* (Oxford: Oxford Univ. Press, 1979), Chap. 12.

15. This contention is qualified below.

16. The nature of the benefits in question ensures that virtually all people within a given territory benefit greatly from their receipt, whether or not they accept them or consent. Because of the importance of individual liberty, the burden of proof should be upon the state to show that each person benefits to the requisite extent; if it cannot do this in regard to a specific

in Section 42, Rawls notes that people have a tendency to avoid contributing their shares. And so collective agreements must be imposed in regard to “essential public goods”; binding rules must be implemented and enforced by the state (*TJ*, pp. 267–68).

To the extent that Rawls presents an explicit defense of the natural political duty, in Section 51, he argues along these lines. He obviously assumes the need for essential public goods and general obedience to the laws of the just institutions through which they are supplied. The question, then, is how to defend the requirement to comply. He notes that the representative individuals might wish to ground this on specific voluntary actions, e.g., accepting benefits from or making certain promises to the institutions. Though at first sight this might seem to accord with the contractarian character of justice as fairness, considerations of generality tell against it: “[T]here is every reason for the parties to secure the stability of just institutions, and the easiest and most direct way to do this is to accept the requirement to support and to comply with them irrespective of one’s voluntary acts” (*TJ*, p. 336). Accordingly, Rawls makes the requirement to support just government a duty, pertaining to all persons, rather than an obligation, incurred by voluntary actions.

With Rawls’s grounding the obligation to obey the law on a duty (in this sense) I have no quarrel. But the additional step of making it a *natural* duty is questionable. Natural duties differ from obligations not only in not being self-assumed through voluntary acts, but also in not being owed by or to specific individuals. Consider the obligation generated by a promise. This is an obligation strictly speaking. If Green makes a promise to Black, her action generates a moral requirement that she rather than other people owes, and is owed to Black and not to other people. Or if Green stands in a particular institutional relationship to Black and White—for instance, they are members of a cooperative scheme providing and accepting common benefits—her obligation (under the principle of fairness) will be owed by her (and other members of the scheme) but not by nonmembers, and owed only to other scheme-members. In contrast, the natural duties to respect other people and to come to other people’s aid are owed by all moral beings to all other moral beings: “they hold between persons irrespective of their

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person, then she will not have political obligations. But for public goods such as national defense and law and order, this should be relatively easy to demonstrate in the vast majority of cases. For discussion of the burden of proof for these benefits and how it can be met, see Klosko, *Principle of Fairness*, pp. 48–57.

institutional relationships; they obtain between all as equal moral persons” (*TJ*, p. 115). I quote Rawls in regard to the recipients of natural duties: “[T]he natural duties are owed not only to definite individuals, say to those cooperating together in a particular social arrangement, but to persons generally. This feature in particular suggests the propriety of the adjective ‘natural’” (*TJ*, p. 115).

If natural duties are interpreted in this way, it is unlikely that a suitably strong political duty can also be “natural.” We can refer to a strong duty to support and comply with just institutions as the *strong political duty*. Because this is a strong principle, weighty considerations are required for it to apply. We have located these in the state’s supply of indispensable benefits. The strong political duty, then, is not owed to people or governments generally, but only to those that provide a subject with essential services. It is possible that Rawls wishes to qualify the natural political duty he presents along similar lines. According to him, this holds in regard to just institutions that “apply to us,” though he does not explain what this means.<sup>17</sup> But whatever it means exactly, this obviously distinguishes the particular set of institutions one should support from the general class of just institutions. However, limiting the natural political duty in this way does not overcome the problems we have seen. This does not clear up the natural political duty’s problems if it is construed as a weak principle, unless the fact that it binds only for certain just institutions somehow increases its force in regard to them. Rawls does not explore these connections. If the natural political duty is construed as a strong principle, limiting it this way does not overcome problems with its status, because it is not clear how such a limited political duty can still be “natural” in the relevant sense. For instance, if the only governments that “apply” to Green are those that supply her with essential benefits, then her duty to support just governments is owed to these, rather than to governments generally.

We can make sense of limiting a natural political duty to institutions that “apply” to us from the representative individuals’ point of view. Because supporting a given government could be costly and so requires strong justificatory considerations, the only governments an individual should support are those that supply him with essential benefits.<sup>18</sup> Unless the

17. See Simmons, *Moral Principles*, Chap. 6; also Waldron, “Special Ties.”

18. Though Rawls probably believes that the state that “applies” to a person is the one in which he resides or of which he is a citizen, if we interpret “applying” to one in reference to the supply of essential benefits, then it is possible that under certain circumstances, other states

costs of supporting a government can be justified on some other basis, it follows that a suitably strong natural political duty is not “owed to persons generally,” and so is not a “natural” duty.

Similar points hold in regard to the strong political duty’s bearers. Natural duties such as mutual respect and mutual aid are owed by all individuals without regard to voluntary actions or institutional relationships. Presumably, this too is an important reason for the appellation “natural.” But according to the line of argument developed here, the strong political duty is generated by the receipt of benefits and so owed only by recipients.

It appears, then, that far from being a moral requirement owed by everyone to everyone, a workable political duty is owed by recipients of essential state benefits to their fellow citizens who provide them. In moving illicitly from the fact that the natural political duty does not rest on voluntary actions—and so is a duty—to the fact that it is a natural duty, Rawls appears to be trying to avoid a dilemma. If the natural political duty is a strong principle, as is clearly necessary for his political theory, then it must be rooted in the receipt of indispensable benefits from the state. But the consequence here is that it is not held by everyone in regard to everyone. A weak principle, on the other hand, may be general in the relevant sense. This appears to be true of Rawls’s second political duty. The duty to help create institutions that do not yet exist can bind everyone. It pertains to all poten-

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could also “apply” to one. For example, if citizens of Belgium receive indispensable benefits from France, then they will have obligations to the citizens of France to help supply them. The clearest cases in which (what we can call) transnational political obligations are generated in this way is when the assistance of country A is necessary for the survival of inhabitants of country B. The most likely threat is international aggression; another possibility is severe environmental damage. It appears, however, that the necessary conditions for the generation of fairness obligations will rarely be met. If citizens of country A wish to impose obligations upon citizens of B, then they must demonstrate that the benefits they supply are indispensable, and so that citizens of B cannot lead bearable lives without them. I do not rule out the possibility of such situations. One possible recent example that received much attention concerned New Zealand’s refusal to allow naval vessels carrying nuclear weapons to use its harbors, in the mid-1980s, while it was enjoying the protection of the Western allies’ nuclear umbrella. To show that New Zealand’s conduct violated its transnational political obligations, proponents of the Western allies would have had to demonstrate that the people of New Zealand could not have survived without their nuclear protection. Obviously I cannot discuss the details of this situation here. But it would appear that the heavy burden of proof would be difficult to meet. Because the international situation affects people’s lives less directly than domestic factors, outside of situations of actual or imminent war and overwhelming environmental hazards, it seems that transnational obligations justified on this basis would be rare. I am grateful to the editors of *Philosophy & Public Affairs* for raising this point.

tial just institutions and cannot rest on benefits received from them. Thus the second political duty can be properly regarded as a natural duty. But this does not salvage the natural status of the natural political duty. The dilemma, then, is that a workable political duty must be either strong and not natural, or weak and possibly natural, but not able to fulfill its essential political role.

The fact that a workable political duty must be strong and not natural while the duty to help create just institutions is weak but natural indicates that these two political duties differ in important respects and so should also be justified differently.<sup>19</sup> Rawls does not seem to be aware of these differences, though the fact that he explicitly attaches a cost qualifier to the second duty but not to the first might suggest some discomfort with lumping them together. We have seen that Rawls attempts to assimilate the two political duties to other duties we have simply as moral beings. To the extent that he develops an argument for the natural political duty, this is based on extending the class of natural duties. But while this might work for the duty to establish just institutions, we have seen problems with defending strong duties in this way. Rawls's difficulties suggest that a moral requirement to support the state's central functions must have some other basis. As we have seen, this seems to lie in the receipt of essential benefits from the state. This conclusion receives additional support from other arguments developed from the point of view of the representative individuals, to which we now turn.

## II

The strong political duty developed in the last section can be summarized roughly as follows: all people who receive essential benefits from institutions should support and comply with the institutions—even if this is costly to themselves.<sup>20</sup> The strong political duty appears to be similar to the principle of fairness as presented by Hart in 1955: “[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

19. I am grateful to the readers for *Philosophy & Public Affairs* for this suggestion.

20. Because of the benefit condition, the benefits in question must also outweigh their costs.

submission.”<sup>21</sup> For Hart, as for the strong political duty, what is central to the obligations in question is the receipt of benefits from the joint efforts of other people, with those who receive the benefits incurring obligations to accept restrictions similar to those borne by the others. Because fairness obligations require doing what is necessary to provide the benefits in question, unlike natural duties and like the strong political duty, they generally bind without immediate regard to costs of compliance, as long as benefits outweigh costs. However, because they are obligations of *fairness*, they bind only participants in just (or fair) schemes. Thus Rawls’s limitation of the principle in this regard can be retained and I will assume that it holds in the following discussion.<sup>22</sup>

Rawls formulates the principle of fairness in his 1964 article 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, cooperates. 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.<sup>23</sup>

21. Hart, “Are There Any Natural Rights?” p. 185.

22. For discussion of this requirement in regard to the principle of fairness, see Klosko, *Principle of Fairness*, Chap. 3. Though grounding a strong political duty on these considerations severs the inherent limitation to just institutions encountered in Rawls’s natural political duties, a similar limitation can also be seen to flow from more general considerations bearing on political obligations. Very briefly, a principle of political obligation is a single moral principle that exists in a context of other principles, with which it interacts. Because political obligations are generally viewed as *prima facie* obligations, they hold only as long as other things are equal. Under unusual circumstances, they can be overridden, and ordinarily will be by the requirement not to support or participate in injustice. For discussion of these limitations of political obligations, see Klosko, *Principle of Fairness*, pp. 120–25.

23. Rawls, “Legal Obligation,” pp. 9–10; similar formulations are found in *TJ*, pp. 111–12, 342–43. In subsequent discussion, I will assume that the requirement that the institutions in question be just is met.

The strong political duty is similar to the principle of fairness in these two formulations. In each case obligations to support institutions that supply benefits are generated by their receipt. Thus one must wonder why Rawls rejects the principle in *Theory of Justice*, especially because his alternative is both vague and ridden with flaws. Reasons of philosophical economy also support retention of the principle. Rawls believes that all *other* obligations are rooted in the principle of fairness (*TJ*, pp. 113–14). But all other obligations are obligations strictly speaking, grounded on voluntary actions. Similar voluntary actions cannot be identified in regard to the principle of fairness.

The problem of course is that Rawls requires recipients of benefits to accept them for obligations to be generated. Because most recipients of state benefits do not accept them, Rawls argues that the principle of fairness is not able to create general political obligations and so rejects it. Whether this criticism of the principle is convincing is a question I will avoid here.<sup>24</sup> In reference to *Theory of Justice*, we must ask whether it would be accepted by the representative individuals.

We have seen that the representative individuals believe in the need for a state, and that this requires general obedience to the law. Under these circumstances, when they confront the question of how the costs of supporting essential state services should be distributed, they will obviously decide that everyone who benefits—i.e., everyone in a given society—should contribute to their provision. *Everyone* should support and comply with just institutions; everyone should obey the law.

It will be hard for the representative individuals to justify exceptions to a general requirement. To allow a given individual, Grey, to enjoy essential services without cooperating would be to create an unjustified inequality, an injustice, as in Rawls's view injustices are "simply, inequalities that are not to the benefit of all" members of society (*TJ*, p. 62).<sup>25</sup> An important concern throughout *Theory of Justice* is presenting moral principles that can be publicly acknowledged and generate their own support (*TJ*, pp. 138, 177–83). Thus the burdens associated with services supplied by govern-

24. See Klosko, *Principle of Fairness*, Chap. 2.

25. In keeping with the discussion in note 16, I believe that exceptions should be made for those individuals who do not benefit from receipt of the goods in question, or who benefit so much less than other individuals as to constitute unjust treatment in their regard. The presence of these factors would enable these individuals effectively to respond to the charge of unjustified exceptions. Once again, however, because of the nature of the public goods in question, such individuals should be extremely rare.

ment X should be distributed without unjustifiable exceptions. Rawls believes that Grey's belief that others are not providing their fair shares will make him less likely to do his (*TJ*, pp. 240, 336). A principle of general sacrifice, each contributing a fair share of what is needed for essential goods, will have the desired social effects, and also reinforce the X-ites' sense of self-worth. Of course, if there are significant morally relevant differences between Grey and other X-ites, e.g., if he is unfit physically for the rigors of military service, he need not be required to serve. But because the veil of ignorance will eliminate knowledge of exactly who possesses such characteristics, the representative individuals will decide that everyone who benefits from essential public goods should be required to do his part in providing them—with exceptional cases to be dealt with accordingly.<sup>26</sup>

In actuality, as Rawls notes in his presentation of the principle of fairness, because the supply of essential public goods depends on large scale but not universal cooperation, the representative individuals should choose a modified principle of general cooperation. Because universal cooperation is not necessary, all should be bound to cooperate, with advantages of justifiable noncooperation distributed through some fair mechanism, as for example through a draft lottery. This sort of principle is preferable to other alternatives. Once again, the mode of distribution should be able to be accepted publicly. Moreover, because the veil of ignorance prevents the representative individuals from knowing if, in the absence of a fair mechanism, they would be successful free-riders or ordained to bear the burdens of cooperation without any possibility of relief, they should attempt to minimize their burdens by spreading the advantages of justifiable noncooperation as widely as possible throughout society.<sup>27</sup>

As things stand in *Theory of Justice*, Rawls would reject this line of argument, because he holds that benefits supplied by cooperative schemes must be accepted for fairness obligations to be generated. However, from the point of view of the representative individuals, this condition is not defensible, and Rawls make no attempt to defend it.<sup>28</sup> The representative

26. I assume that the principles of distribution adopted here must be consistent with Rawls's two principles of justice, and that this condition is satisfied.

27. This line of argument is supported by the generally conservative character of Rawls's reasoning throughout *TJ*.

28. One possible justification for this requirement is that "acceptance" of public goods indicates the subject's belief that he benefits sufficiently from state services to justify the imposition of political obligations. For discussion of how public goods can be "accepted," see



individuals have good reasons to reject the claim that “acceptance” or “nonacceptance” of essential state services creates morally relevant differences between individuals and so justifies differences in their burdens. Because essential public goods are provided to all alike, they are not ordinarily pursued or otherwise “accepted.” But because they are indispensable to everyone, all individuals can be presumed to benefit greatly from their receipt, regardless of their voluntary actions in reference to them. Thus even if some individual, White, declares that he would prefer not to receive the benefits of national defense and law and order, he will continue to receive them, while the representative individuals would question the rationality of his professed desire not to. If White could be placed in a hypothetical situation in which he could somehow choose whether or not to accept these goods at the cost society requires, he would choose them, in all but the most unusual circumstances.

The possibility remains that White might reject the goods in question because he objects to the form in which society supplies them. Part of the cost of certain public goods is being prevented from pursuing other means of providing them. Perhaps White cares deeply about individual liberty and would prefer to receive protection by joining a mutual protective association, of the kind Robert Nozick discusses in *Anarchy, State, and Utopia*.<sup>29</sup> Holding strong preferences of this sort, White might not regard state supply of national defense and law and order as benefits and so would object to being required to pay for them. Though this possibility cannot be ruled out entirely, it strikes me as untenable from the point of view of the original position, as Rawls describes it. First, Rawls assumes the need for national defense (e.g., *TJ*, p. 380), and it is not clear that this can be supplied by any arrangement other than a traditional state. It should also be noted that the form in which indispensable public goods are supplied is not arbitrary. It is chosen by fair democratic procedures, of the kind outlined in Part II of *Theory of Justice*. More directly to the point, the questions at issue in this section are how Rawls does and should uphold obligations to support just political institutions. Aside from assuming that these institutions will resemble those in existing constitutional democracies, he shows relatively little interest in their nature. Though Rawls mentions the possibility of

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Simmons, *Moral Principles*, pp. 118–36. However, in accordance with the discussion in note 16, above, I do not believe that acceptance of essential benefits is necessary for this reason in the vast majority of cases.

29. R. Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), Part I.

alternative institutional arrangements (p. 201), he does not seriously consider them. In choosing their preferred principles, the representative individuals are of course influenced by “the general facts about human society” available to them behind the veil of ignorance (p. 137). Obviously, as these facts are varied, different moral principles will be selected. Though Rawls avoids detailed defense of the particular range of facts he provides, these are closely akin to those that justify existing constitutional democracies. Thus he argues that “essential public goods” must be supplied by the state (pp. 267–68). He describes the state as exercising “a final and coercive authority over a certain territory” (p. 222), which is closely akin to Weber’s classic definition. One could object that Rawls does not *demonstrate* that the representative individuals will believe that essential public goods cannot be supplied through other suitable mechanisms. His failure to pursue this possibility suggests the same institutional conservatism that prevents him from seriously considering the abolition of the nuclear family (see pp. 511–12, 74) or of private ownership of the means of production (see pp. 270–74). It seems that the possibility of alternative means of providing essential public goods would receive similarly short shrift from the representative individuals, on the basis of the facts about society they are supplied with. Though the possibility of different general facts cannot be ruled out, *Theory of Justice* would be a very different work if Rawls had explored this possibility and its implications in detail. Thus in response to White’s objection to the form in which essential public goods are supplied, the representative individuals will respond that this is the only alternative to nonsupply. According to the general facts of human society as they understand them, law and order, national defense and other essential public goods must be supplied by a state, as is the case in all existing constitutional democracies.<sup>30</sup>

30. The possibility remains that White might believe a state’s monopoly of legitimate force is inherently unjust, in which case his objection would not be to not benefitting from state provision but to being forced to comply with unjust institutions. Though the complexities of this subject cannot be discussed here, it seems that White would have a difficult time supporting this claim, if state monopoly is in fact necessary for the provision of essential benefits.

To be as clear as possible in regard to White’s objection, we can distinguish three levels of arguments concerning political obligations in *Theory of Justice*. (1) First are Rawls’s own arguments. These proceed from his premises to his conclusions. To these, we can contrast (2), corrected versions of Rawls’s arguments. These retain his premises but have other conclusions, more properly derived from them. In this section, I attempt to correct Rawls’s arguments concerning political obligation, by pointing out the conclusions that actually follow from his premises. (3) A more radically corrected account of his arguments would correct

It could, perhaps, be objected that to impose obligations on White to contribute to a given essential service would be to violate his autonomy, if he did not wish to “accept” the service. This view is supported by the liberal belief that people are naturally free and can surrender their freedom to political authorities only through their own consent. Some such sentiment perhaps lies behind Rawls’s demand that individuals accept benefits before they incur fairness obligations.

But this line of argument would not be accepted by the representative individuals. Though Rawls is of course deeply concerned with preserving autonomy, he believes this is actually promoted by adherence to the moral principles chosen in the original position. To act autonomously is to act “from principles that we would consent to as free and equal rational beings” (*TJ*, p. 516). If the representative individuals would conclude that it is necessary for all individuals to do their parts in supporting state provision of essential public goods, then this would not impinge upon autonomy, even though it would limit the range of permissible behavior. As we have seen, concerns of public security must limit individuals’ freedom of conscience when this would pose a threat to society, and also justify the severe burdens of conscription. In addition, Rawls introduces moral principles (the natural duties of justice) similar to the requirement in question, without reference to whether individuals “accept” them or the benefits they make possible. As long as essential public goods cannot be provided through means other than general cooperation, obligations to support their provision will fall into the same class. Thus Rawls’s insistence on voluntary acceptance of benefits for the generation of fairness obligations does not rest well with basic features of his moral theory.

### III

In conclusion, it seems that the representative individuals would endorse a version of the principle of fairness, without requiring acceptance of benefits. Such a moral principle is able to ground general obedience to the law without the problems of a natural political duty.

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premises as well as conclusions. Full exploration of White’s objection would require replacing “the general facts about human society” Rawls actually presents with others he *might* wish to furnish the representative individuals. Obviously, in this paper, I cannot enter into discussion of the proper set of general facts that should obtain in the original position. But without raising this vexed question, one can object to radical revisions of Rawls’s arguments because, beyond a certain point, they cease to be *Rawls’s* arguments. I am grateful to the editors of *Philosophy & Public Affairs* for raising this issue.

As Rawls's presentation suggests, the primary attraction of a natural duty view is intuitive clarity. There are certain duties we appear to have to all other moral beings. Familiar instances Rawls discusses are mutual aid and the duty not to inflict unnecessary suffering. We can also include a natural duty to promote justice, which is readily extended to a related duty to support just governments. If the class of natural duties can be so extended, this appears an attractive way to establish general political obligations. But as we have seen, one reason the natural duties are intuitively clear is they are relatively inconsequential. As weak principles, they do not drastically impinge on personal liberty. But weak principles are not adequate bases for political obligations.

The problems with weak natural duties extend beyond Rawls's theory. For instance, in *Moral Principles and Political Obligations*, A. John Simmons criticizes familiar accounts of political obligation including both the principle of fairness and the natural duties of justice, as Rawls formulates them. In his concluding chapter, Simmons upholds nonparticularized moral requirements to support just governments: "We will normally have good reasons for obeying the law, and for supporting some types of governments of which our own may be one. But the reasons we have for obeying the law will be the *same* reasons we have for obeying the law when we are in foreign countries."<sup>31</sup> Because other moral principles would fill the gap left by political obligations, Simmons does not believe an absence of political obligations would create severe difficulties. One principle to which he appeals is a natural political duty, which he apparently regards as intuitively clear:

For instance . . . we have a duty to support and further just government, at least when this involves no great cost to ourselves (as well as a duty to fight injustice). Thus, if our government is just, we will have good reason to support it (and any other just government) even if we have no political obligations. And the other virtues which a government can possess will also be instanced occasionally, providing other reasons for supporting governments possessing them.<sup>32</sup>

Though I will not question the intuitive obviousness of a natural political duty, at this point the problems with Simmons's formulation should be

31. Simmons, *Moral Principles*, p. 194; his emphasis.

32. Simmons, *Moral Principles*, p. 193; Simmons provides little argument for the natural political duty, though it should be noted that he considers it as a moral principle in its own right rather than from the point of view of the original position (pp. 143–44).

apparent. A weak duty to support government will not uphold central state services. The consequences of jettisoning the traditional theories of political obligation are therefore more serious than Simmons believes.<sup>33</sup>

Both the principle of fairness as discussed in Section II and the strong political duty have the considerable advantage of being strong principles. Both support general requirements to obey the law, which in both cases stem from the receipt of indispensable benefits from the efforts of one's fellow citizens. In both cases the obligations in question are to contribute to supply of the benefits—more or less regardless of costs. I believe this set of notions is central to a workable theory of political obligation, rather than even an intuitively acceptable duty to support and comply with just institutions.

33. See also T. Senor, "What If There Are No Political Obligations?" *Philosophy & Public Affairs* 16, no. 3 (Summer 1987); and Simmons, "The Anarchist Position: A Reply to Klosko and Senor," *Philosophy & Public Affairs* 16, no. 3 (1987).