

Lecture Notes - "Is There a Prima Facie Obligation to Obey the Law?" - MBE Smith

- Some preliminaries:
 - Let's clarify the question: What does Smith mean in asking if there is an *obligation* to obey the law?
 - He could be asking for any particular law whether someone has an obligation to do what it requires.
 - This isn't the most interesting question, though. Of course there are some laws that *everyone* has a specific obligation to obey: laws against murder, rape, etc. The obligation to obey these laws corresponds to one's moral obligations.
 - He could be asking in general whether someone has an obligation to obey the laws of the country in which she lives or finds herself.
 - This is the more interesting question: **"Is the moral relation of any government to its citizens such that the citizens have an obligation to do certain things merely because they are legally required to do them?"**
 - Now, what does it mean for an obligation to be *prima facie*?
 - This simply means that the obligation is assumed to hold on first appearances.
 - It means that S has a moral reason to do X which is such that, unless he has a moral reason not to do X at least as strong as his reason to do X, S's failure to do X is wrong.
 - *Prima facie* obligations can be overridden by stronger moral reasons, but they don't go away completely...they leave a kind of moral residue.
 - For example, if you promise your friend that you will meet her for dinner but then fail to show up for dinner because you had to rush your roommate to the hospital, you've got a good moral reason that overrides your obligation to meet your friend, but you still have such an obligation. You owe your friend an apology for not showing up, for example, and should feel some remorse for failing to fulfill your obligation.
 - Central Question: **"Is the moral relation of any government to its citizens such that the citizens have a prima facie obligation to do certain things merely because they are legally required to do them?"**
 - **THESIS:** Citizens have no generic prima facie obligation to obey all of the laws of their government.
 - **Argument:**
 - Smith considers and rejects three groups of arguments that aim to defend a generic prima facie obligation to obey the law.
 - Arguments that appeal to the benefits of cooperation that the law insures.
 - Arguments that appeal to the implicit consent or promise of the governed.
 - Arguments that appeal to utility or the general good.
 - In each case, the arguments are found wanting and so, Smith concludes, it's likely no such prima facie obligation to obey the law exists.
 - One last preliminary: Recall our discussions earlier in the semester of the distinction between being obliged and being obligated.

- Hart argued that obligations exist only when social rules exist, which make certain kinds of behavior standard.
 - “Obligation” statements serve to apply these general social rules to particular persons thereby calling attention to the fact that they fall under the standard.
 - So, we can think of Smith’s question this way: does there exist a social rule to the effect that everyone *prima facie* ought to obey the law?
 - On what grounds could we argue for the existence of such a rule? How could we defend it? What would be the source of this moral obligation?
- **Group 1: Cooperative Benefits Insured by Law**
- First Argument: The Argument from Gratitude
 - All governments confer substantial benefits to their subjects (of course, some more than others). When a person accepts benefits from another, they thereby incur a debt of gratitude. Obedience to the laws is the best way to express that gratitude to one’s government.
 - Objections:
 - If someone confers benefits on me without any consideration of whether I want those benefits (if someone gives me a gift without any consideration of whether it’s something I would like) and does this to advance some purpose other than my welfare, do I really have an obligation to be grateful?
 - Even assuming I do have an obligation of gratitude to the government...
 - Obedience may not be the best way of expressing it.
 - And, if it is, it may not be required of me. It may be enough to send a thank you note or pay my taxes...
- Second Argument: **The Argument from Fair Play (Rawls and Hart)**
 - **Hart:** When we engage in a cooperative enterprise according to rules, we each accept a restriction on our own individual liberty. Those who submit to such a restriction when it is required for cooperation have a right to demand similar submission from the others who have benefited from their obedience.
 - The obligation to obey the laws according to the fair play account is due not to the government but to the cooperating members of society, and they have a correlative moral right to obedience.
 - **Rawls:** Duty of Fair Play
 - Only certain kinds of cooperative practices give rise to obligations of fair play.
 - Success depends on near universal obedience to the rules
 - Obedience to the rules involves some sacrifice (restricts liberty)
 - The enterprise is a just one
 - Argument: If a person benefits from participating in such an enterprise and if he intends to continue receiving its benefits, he *acts unfairly* when he refuses to obey its rules.
 - The obedience of the others makes the benefits possible. You’re essentially a free-rider if you do not submit.
 - Legal systems are complex practices of the kind that give rise to obligations of fair play.
 - Those who benefit from such legal systems thus have a *prima facie* obligation to obey the laws.
 - Objections:

- Hart and Rawls are clearly onto an important moral phenomenon, but are legal systems really the kinds of things that give rise to obligations of fair play?
 - They normally arise in small, voluntary, cooperative enterprises. But in larger groups, if A's compliance with some particular rule would not benefit B and if his disobedience will not harm the community, it is difficult to see how fairness to B could dictate that A must comply.
 - On what grounds could B have a grievance against A in this case?
 - Generalizing on this point: Considerations of fairness show that when cooperation is perfect and when each member has benefited from the submission of every other, each member of an enterprise has a prima facie obligation to obey its rules when obedience benefits some other member or when disobedience harms the enterprise. In either of these cases, disobedience constitutes unfairness to some other member.
 - Legal systems are generally designed to cope with a substantial amount of disobedience; they are not instances of perfect (or even near perfect) cooperation. They many individuals can disobey the rules without harming or failing to benefit others.
 - For example, speed limits and traffic signs when no one else is about.
 - Furthermore, even if there is a prima facie obligation that arises out of fair play, it can be an obligation to obey every specific law, because some laws do not benefit anyone (or even harm some people)
 - Laws against homosexuality or birth control
 - So the prima facie obligation to obey the law cannot rest on an obligation of fair play.
- **Group 2: Implicit Consent or Promise**
 - Third Argument: Implicit Consent or Promise
 - It's rare that anyone explicitly consents to be governed by the laws of a nation (the exception are those who takes oaths of office or oaths of citizenship), so accounts normally appeal to implicit consent.
 - Subjects implicitly consent or promise to obey the laws by way of some act they undertake.
 - Locke, Plato, WD Ross: Continued residence in a country and/or appeal to the protection of it's laws constitutes implicit consent.
 - Not exactly clear what implicit consent is...consenting is a kind of speech act "I promise...." Or "I consent...." But speech acts are felicitous only in certain circumstances, when certain conditions obtain. If those conditions do not obtain, then one has not really made a promise or consented. We'd need an account of the conditions that must obtain for implicit promises or consents to be felicitous...we don't have one.
 - I could be living in the country without intending to consent to its laws...does this matter?
 - More specific version:
 - Plamenatz: One indirectly consents when one votes in an election
 - Even if you dislike the system or dislike the outcome, in freely voting in an election and knowing that by this process someone will be granted authority to rule, you voluntarily accede to that authority.

- One central objection: those who are eligible to vote are not taken to have a stronger prima facie obligation to obey the laws than those who are not so eligible.
- **Group 3: Utilitarian Arguments**
- Fourth Argument: Act-Utilitarian Argument
 - The common good can only be secured by the existence of government. The alternative is the state of nature (already this is suspect...). Government can't long last in the face of wide spread disobedience, so obedience supports the continued existence of government and, hence, always has good consequences. So, there is a prima facie obligation to obey the law.
 - The only plausible weak act-utilitarian principle is one that says you ought always to perform optimific acts (those whose consequences are better than the alternatives).
 - But we cannot derive from this an obligation to obey the law, for in any particular case it might be better not to obey.
- Fifth Argument: Rule-Utilitarian #1: What if everyone did what you're doing?
 - No one can have a right to do something unless everyone has a right to do it. Similarly, an act cannot be morally indifferent unless it would be morally indifferent if everyone did it. But, everyone's breaking the law is not a matter of moral indifference; for no government can survive in such a circumstance and, as we have already agreed, government is necessary for securing and maintaining the general good. Hence, since the consequences of general disobedience would be disastrous, each person subject to law has a prima facie obligation to obey it.
 - We will have to maintain, for example, that there is a prima facie obligation not to eat dinner at five o'clock, for if everyone did so, certain essential services could not be maintained.
 - We need to take care with our description of the act. But how to make it more specific?
 - Now one should break the law when following the law would be optimific?
 - Risk begging the question.
 - Also...we can't know for any society how often disobedience is optimific.
- Sixth Argument: "Obey the law" must be part of the set of the best possible rules for a society (RB Brandt)
 - Must it?
 - We would still have sanctions to enforce compliance
 - We also have other moral rules that would obligate and motivate behavior in accord with law.
 - An orgy of law breaking is unlikely to ensue w/o such a rule.