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Minimal Justice and Obligation to Obey the Law

Many accounts of political obligation assume a baseline level of fairness and justice. In “Justice, Deviance, and the Dark Ghetto,” Tommie Shelby examines the nature of obligation in states that fail to meet this minimal justice condition. His case study is the United States, a system that he believes is minimally just for most people but fails for members of the black urban underclass. He argues that members of the ghetto poor have a diminished obligation to obey the law because they do not receive enough benefits to incur such obligations. While they are still morally bound by their natural duties — for example, refraining from murder or working to promote just systems, they are not bound by civic obligations, which include paying taxes and arise by virtue of them being “citizens” as opposed to just “moral persons” (144). Shelby derives his argument from a fair play account of political obligation, which stipulates that fair distribution of benefits is a necessary condition for political obligation. People who are clearly being deprived of their fair share do not meet this condition, and thus do not incur reciprocal obligations to the system.

If we accept Shelby’s argument that the unfairly *disadvantaged* members of society have diminished obligation to obey the law, what does that imply for those who are unfairly *advantaged*? In this essay, I will consider whether one’s obligation to obey the law should depend on how justly one is treated. **I will argue that in states that are minimally just for**

some but not all members of society, even those treated *justly* have diminished obligation to obey the law provided their disobedience credibly serves to support more just institutions.

The fair play account of political obligation specifies that a scheme must distribute benefits and burdens “reasonably fairly” in order to incur obligations (Klosko 203). However, the word “fairness” can be construed in multiple ways. A society can be unfair overall, but still be fair to some individuals in the sense that they are getting at least the baseline level of benefits. Thus, our definition of “fairness” depends on whether we are viewing it through the individual lens or the societal lens. If we prioritize individual fairness, we get the *individual account* of political obligation: if you are given at least your fair share as an individual, you are fully obligated to obey the law; if not, you are not fully obligated. For the sake of the paper, assume that unjustly advantaged people are treated “fairly” as individuals, even if in some sense they are treated more than fairly. To that end, those whose requirements have barely been met and those whose have been vastly overcompensated have equal obligations, because one cannot incur more than full obligation to obey the law. If we discount the individual and instead prioritize fairness for the whole society, we get the *overall account* of political obligation: you are only fully obligated to systems that are fair on balance, regardless of whether the conditions are met for you as an individual. It appears that the advantaged group has two conflicting duties: a duty to resist unjust institutions and a duty to obey the laws of a state that gives them at least their fair share of benefits. One recommends deviating from the law; the other recommends upholding it. Thus, how we interpret political obligation depends on our definition of fairness.

If we force ourselves to pick one of those two definitions, we get an account that is either too restrictive or too lenient. On the individual-only account, advantaged members of society are still obligated to unjust systems because they are getting at least their fair share. However, this

obligation prevents them from taking social responsibility. Consider a society where the rich receive an income supplement funded directly from excessive taxes on the poor. Suppose the rich already had their basic fairness needs met before the income supplement. It would be perverse to argue that the rich are even *more* obligated to the system after receiving the income supplement, because their extra benefits are stemming directly from injustice. Thus, we cannot let the individual contract be the sole determinant of political obligation. On the other hand, the overall-only account runs into its own problems. On that model, if minimal justice is met for most but not all people, even advantaged members are not obligated because the overall society is not minimally just for everyone. However, this account is too lenient, as it seems to allow advantaged members of society to free-ride off a system that already unfairly benefits them. Strategic members of the advantaged group might cite the overall justice condition as an excuse to disobey the law, even if the law provides them with *more* than their fair share of benefits. Thus, both the individual-only and the group-only models fail to capture the complexity of injustice.

We need an account of obligation that affirms the importance of individual contracts, while ensuring that these contracts are not trapping the advantaged group into supporting a scheme that exploits others. Thus, we consider the following hybrid: In unjust systems, advantaged members are only exempt from laws that *directly* exploit others. On this model, the advantaged do not have an obligation to obey certain laws — and in fact have a pro tanto obligation *not* to obey those laws — if their compliance would force them to take unfair advantage of others. For example, nineteenth-century fugitive slave laws in the United States were clearly exploitative, as they forced third parties to uphold the unjust institution of slavery by returning fugitive slaves to their masters. It would be unreasonable to say that white citizens

had an obligation to obey this law simply because they were individually treated justly in the society. In fact, due to the immorality of the exploitation, they would have a *pro tanto* obligation to *disobey* the fugitive slave laws. Because law enforcement often makes it costly to break the rules, their duty to disobey is *pro tanto* instead of absolute. Nevertheless, if members of the advantaged group willingly take on the cost of disobeying a blatantly unjust law, we know for certain that they are combating the overall injustice of their society. We no longer need to worry about free riders who might break the law for personal gain, not caring whether their actions reduce the overall unfairness they used to justify their disobedience in the first place.

This model is promising, but it might seem too restrictive to account for the legal system as a whole. We cannot trace all injustice back to a subset of unjust laws, because in reality, all laws contribute to the overall system. In societies that are partially unjust, certain laws may *indirectly* exploit others. For example, the burdens of taxation may be distributed fairly, but the benefits of the money may be used to indirectly support unfair policies. If we limit the exemption to explicitly unjust laws, we are failing to recognize the ways that unfairness can arise from the overall system. Thus, we need to widen the scope of justifiable disobedience.

Our previous model justified the exceptions for exploitative laws on the grounds that disobeying them would automatically lead to more just institutions. However, one can support just institutions in other ways besides disobeying blatantly unjust laws. For example, an advantaged citizen could stop paying her taxes on the grounds that the tax revenue is used to fund unjust institutions. However, to exempt herself from that obligation, she would have to make a credible case that her action is truly intended to promote more just institutions, and that it has a good chance of achieving that goal. Thus, we arrive at a new model based on Rawls' political theory: In unjust systems, advantaged members can only exempt themselves from laws

if by doing so they have the intent and reasonable possibility of outcome of supporting more just institutions.

On this account, the advantaged can only sacrifice individual fairness if by doing so they are promoting overall fairness. In other words, the natural duty to support just institutions can override the reciprocal duty to fulfill one's civic obligations. So why do the *motivations* behind disobedience matter for the advantaged, but not for the disadvantaged? Simply put, the disadvantaged are not receiving enough benefits to incur obligations in the first place. That explains why the individual-overall distinction does not matter for Shelby's case study of the black urban underclass, because he can make a convincing argument that society is unfair to them on both accounts. In contrast, the advantaged have civic obligations to obey the law based on their individual contracts, so they need sufficient reason to break them. Thus, the *intent* behind their disobedience matters. For example, an advantaged citizen might refuse to serve jury duty because she genuinely intends to protest the judicial system, or she might skip it because it is inconvenient for her. Her disobedience would be much more justified in the former case than in the latter. Of course, such motivations are difficult to determine, because it is easy to hide one's self-serving intentions behind a guise of promoting justice. Nevertheless, intent in the abstract can separate those who are breaking the law with altruistic aims from those who are simply taking advantage of a loophole.

Besides the intent behind the action, we also need to consider its outcome. No matter how well-intentioned, an act of disobedience that has no reasonable chance of impact does not merit the "Rawlsian natural duty" justification necessary to override individual civic obligations. We use this distinction to explain how Thoreau was justified in refusing to pay his taxes to protest a

system of chattel slavery,¹ while a lower-profile citizen may not have been justified in doing the same. Because Thoreau was an influential writer and thinker, he could reasonably expect that his disobedience would have an impact on others and force them to re-evaluate their stance on slavery. However, if an ordinary white citizen decided not to pay his taxes to protest slavery, he would probably not have enough foreseeable impact to justify him shirking his civic duties, even if his intentions were as good as Thoreau's. Thus, by adding the conditions of intent and reasonable possibility of success, we have ensured that disobedience actually achieves its purpose of supporting more just institutions.

Using the Rawlsian natural duty to support just institutions, we have integrated the individual and overall accounts of fairness in a way that prevents people from either being too restricted by their individual contracts or too free to disobey for their own convenience. While the disadvantaged can shirk their fair play obligations to obey the law because they themselves are not being treated fairly, the advantaged cannot rely on this reason. The advantaged can only shirk their fair play obligations to unjust systems if by doing so, they are *actively supporting* just institutions. Thus, we can reconcile the importance of individual contracts with the need to improve the overall balance of fairness in society.

¹ This example was introduced in the lecture notes for Class 8.