Political obligation as a moral necessity

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CHAPTER 1 THE PROBLEM OF POLITICAL OBLIGATION: AN INTRODUCTION

1. INTRODUCTION

Imagine that a musicians' state exists in a huge music hall. All "citizens" have a position in the orchestra; some are violinists, some are trumpeters, some are percussionists, and so forth. All members of the orchestra are free to play whatever and whenever they want and, as a consequence, the music hall is filled by cacophony: no one can hear herself playing and the noise is intolerable. This chaos makes the "citizens" realize that *something* is needed, such as a schedule a decision procedure for determining what the orchestra will play, and the establishment of a system of sanctions to penalize those who do not abide by the schedule and the decisions. Let us call this *something* the Conductor. The Conductor might be a particular musician, a committee of musicians, or in whatever form, but it certainly satisfies a set of qualifications, which is, say, decided by all the people equally and freely in regard to what it should be and should do, where the boundary of its authority lies, and everyone has an equal chance to be part of the Conductor or has a say in rectifying its mistakes, etc.

Should all of these musicians respect this mechanism of the Conductor and follow its directives? Even if, at times, the directives issued cannot satisfy every musician's preferences, or even go against the preferences of some of them, should they still comply with the Conductor's directives because, in general, the collective compliance saves everyone from the unbearable chaos? It might even be the case that some musicians have a strong desire to play solo, or systematically oppose the Conductor's rules or, even dispute the existence of the Conductor as such. Suppose some of these opponents decide to find a rare corner to play solo, while some other musicians decide to leave the hall altogether to join another one; some baby musicians are also born into this hall—are they bound by the Conductor's rules?

Intuitively, my answers to all these questions are positive, because if the Conductor is doing a reasonably decent job guarding these musicians from unbearable chaos and functions in accordance with the role that its creators

set for it, it seems that they have an obligation to generally follow the Conductor's directives. What is more, such an obligation at least has the potential to be a moral one, if failing to fulfill it would cause unnecessary harm to others' freedom or status as equals.

By analogy, in the arena of politics, especially the practice of law, people also seem to bear an obligation to follow the directives of the Conductor which usually presents itself in the form of a state, consisting of an integrated legal system and other political institutions. The aim of this book is to defend such an obligation to comply with the law and to support the state—an obligation that is conventionally referred to as "political obligation" or "the moral obligation to obey the law." Apparently, for a state and a legal system to be followed and respected as a requirement of morality, they have to satisfy conditions very similar to those the Conductor should satisfy to discharge its task. The features a state should possess for it to deserve people's obedience are based on the conditions of political legitimacy, whereas the justification for political obligation concerns the *source* of such a moral obligation, presuming that the state and the law to be obeyed are reasonably just or legitimate. To avoid ambiguities in the analogy between the musicians' state and a real political state, several points need to be clarified: First, the obligation to follow the Conductor may not be a moral obligation, while what I intend to address by political obligation has essential bearings in our moral lives. That is why a plausible justification for it must articulate why it is a *moral* obligation. Second, the obligation to obey the Conductor and the state appears to rest upon the *function* that they play in the music state example and our political realities. Nevertheless, this does not have to be the case, since such an obligation may also be the result of convention, such as promise. Third, in our imagined musicians' state, a state exists within the walls of a music hall, and people act according to the rules and commands of the Conductor of their exclusive state. However, such a particular relationship of a people to a state or the identification of a state as the state of a group of people is not self-evident. In other words, the boundaries of a state cannot be taken for granted as the reason for people's subjection to a specific state without further justification, nor can it simply be conceived as what defines the particular jurisdiction that a state has over a certain range of people.

All of these points calling for elaborations will be covered in later chapters. In this introductory chapter, I aim to consider just one question, namely, what exactly is the problem of political obligation about? Or, what is the investigation and justification of political obligation about? I have to emphasize at the outset of this book that my exploration is an attempt to defend political obligation by offering normative justifications instead of an analysis of the concept. Moreover, the normative justification will rest upon a stipulated definition of the concept of political obligation, which can be stated as the following:

> *Political* obligation is the *moral obligation* to obey the law and support reasonably just political institutions.

The problem of political obligation is about whether there *is* such a general moral obligation among the people of a reasonably legitimate state. This stipulation drives us to clarify the concept of political obligation by elaborating on these points indicated by the italics: First, since it is a *moral* obligation, a plausible justification must be able to provide a moral source that gives rise to moral obligations. Second, as political obligation is categorized as a sort of moral *obligation*, legitimate questions may be raised such as why it is called an obligation and why it is not a duty—that is to say, if there is a sustainable categorial distinction between these two concepts. Third, if *political* obligation is categorized as a specific moral obligation, then in what sense or to what extent does this moral obligation turn out to be *political*? Finally, the problem of political obligation is about whether people *are* in fact under such a moral obligation in a descriptive sense rather than whether people *ideally or prescriptively* should be under this obligation for certain moral or practical concerns.

Some scholars, most notoriously philosophical anarchists, believe that political obligation can be factual only insofar as every single member of a state has voluntarily expressed his or her subjection and commitment to the law. Nevertheless, the voluntary expression can only be an ideal, which cannot be obtained in the practice of politics and law. Consequently, political obligation would be an ideal that, in reality, is not realized among the people of any state. Hence, even if people *should* incur political obligation based on

considerations such as a state's essential role in securing their survival, harmony, prosperity, and other kinds of well-being, it is still unjustifiable to say that there *is* a political obligation imposed on people unless they have agreed to be subjected to a polity. This voluntarist requirement appears unnecessarily demanding to be a binding condition for political obligation to be non-ideal or real. Additionally, this over-demandingness follows from a misplaced correlation of political obligation and legitimacy, as well as a misconceived conception of legitimacy. I will address this problem at length in Chapter 2.

For now, we need to explain why the dichotomy of ideal political obligation and factual political obligation does not hold and the reason resulting in the division of people's factually under political obligation and people's prescriptively under it. It is claimed that legitimacy and political obligation are different aspects of the same problem, meaning that if political obligation is justified, the state involved would be proved to be legitimate. The reverse also holds: as long as a state has legitimacy, its people are under a general political obligation. Moreover, legitimacy is a property that a state either has or does not have, which is to say that legitimacy is an all-or-nothing concept. To obtain legitimacy, a state has to be entrusted with the consent of all people. Unfortunately, in a non-ideal respect, no state has legitimacy at all for lack of a unanimous consent, which means that there is no general political obligation even though people should be bound by such a moral obligation. Therefore, factual political obligation and prescriptive political obligation are divided because of the stress of consent as a necessary condition for states' actual possession of legitimacy. As we can see from this logic of philosophical anarchism, the distinction of the two senses of "political obligation" essentially falls on claims of, to list a few, the correlation of political obligation and legitimacy, the all-or-nothing idea of legitimacy, the voluntarism of political obligation, and the compulsorily consensual conception of legitimacy. Every claim of the listed, nonetheless, is highly questionable, and I will explicitly argue against all these mentioned propositions about political obligation at different places in the following chapters. The rejection of these propositions will have strong implication for the negation of the rest propositions about legitimacy that philosophical anarchism maintains as well. However, at this phase, what I would like to

point out is that since political obligation is categorized as a moral obligation, the distinction of two senses becomes trivial, and this is because it does not make a substantive difference to the claim that people should be bound by a moral obligation or people are under this moral obligation. Take the moral obligation of not lying as an example. If not lying is justified as a moral obligation, people should not only incur this obligation but also are in fact restrained by it. Whether they accept such an obligation does not affect the validity of the requirement of not lying as a moral directive. Or, we can say that a person being bound by the moral obligation of not lying is tantamount to her actually under this obligation. The same is also true when it comes to obligations that are usually deemed as voluntarily incurred. If A makes a promise to B to φ, then A incurs a promissory moral obligation to φ. Not only should A be bound by a general obligation to respect promises but she is also factually under this obligation. This moral obligation to keep one's promises demands A to respect her specific promise to B to φ. A, like anyone else, is morally obligated to always keep her promise, and the promise that A actually makes merely specifies or triggers the general obligation binding on every person and confirms the relationship of the parties as the obligation-bearer and the right-holder. It is also a problem originated in the distinction of obligation and duty and concerns a significant issue of particularizing a general duty as well. In the case of promissory obligation, people's voluntary actions, namely making a promise, particularize such a general obligation, but such voluntariness is not necessary for a general obligation to embrace particularity. A familiar case is family members' obligation to care for each other, in which while no voluntary action has been performed, the special relationship as members of the same family particularizes the general obligation entailed by such a relationship. The current discussion about the particularizing political obligation will be developed in more detail in Chapter 4.

Thus, in terms of moral obligations, to which category I contend that political obligation belongs, there is no genuine inconsistency between the so-called factual and prescriptive political obligation. If we can justify that to be subjected to a just political condition and to obey the law should be conceived as a moral directive, political obligation is not merely a moral obligation to which, ideally, we should be bound. Rather, it is more

importantly a binding moral mandate for us in reality. In the following part of this chapter, then, I will consider the other three crucial features of political obligation: namely *moral* obligation, *obligation*, and *political* obligation.

2. POLITICAL OBLIGATION AS A MORAL OBLIGATION

The key issue of political obligation is that if there is a general moral obligation to obey the law, where does this moral obligation stem from? Like all other moral obligations, political obligation should have a justified moral source. It could be grounded on a specific moral principle, such as the principle of fairness, which roughly indicates that disobeying the law amounts to treating other people unfairly—which is morally wrong. Alternatively, the moral source of political obligation could originate in a natural duty for a person to be morally conscientious, along the line of the duty to foster the relationship of parenthood, and the duty of loyalty to friends or, arguably, to one's fellow-citizens of a state. In addition to political obligation with a single source, there could be a plurality of moral sources.

Curiously, this crucial problem of moral source has been overlooked or even ignored by some supporters of political obligation. For instance, some attempt to categorize political obligation as a sort of positional obligation or role obligation, which means that such an obligation is generated by having roles that do not necessarily carry moral weight. Suppose that Adam has joined a football club that requires its members to wear professional football boots on the pitch. No other kinds of shoes are allowed. Adam's role, position, or identity as a member of the club has incurred him the obligation to wear football boots only, while non-members are not under such an obligation. The obligation entailed by membership does not have any moral implications. Likewise, political obligation is believed to be a positional obligation—most commonly, an obligation entailed by the citizenship or membership of a given political community. As a citizen, one is obligated to act in accordance with the rules that one's political community has issued, regardless of the nature of the obligation. Or, we may refer to A. John Simmons's view of political obligation as a positional obligation: "[t]he existence of a positional duty is a morally *neutral* fact …, [it] never establishes

(by itself) a moral requirement."[1] Therefore, to obey the law of a state is not an essentially moral requirement.

This morally neutral approach to political obligation seems to me fraught with critical vulnerabilities. Without probing into the specific arguments of morally neutral theories at this stage, two flaws that might be fatal to those theories are detectable.

First, the membership of an institute, organization, state, or other entity can give rise to obligations. The obligation to obey the law is thus a specific entailment of the membership of a state. There is no special restraint on the form of those organizations to generate obligations; hence, a legitimate state or a reasonably just legal system cannot distinguish itself from morally wicked organizations such as drug cartels, gangs, or dictatorships in terms of how the obligations of obedience are generated. Political obligation, according to this view, could be contrary to morality; as such, the obligation would be systematically overruled in our moral reasoning. The problem is that this account of political obligation renders political obligation trivial and redundant. For instance, based on the morally neutral approach, people are obligated to obey the law of the Nazi regime. However, for a morally conscientious person, the considerations to respect the morally vicious legal system should always be outweighed by his or her valid moral concerns. As a consequence, the so-called morally neutral political obligation is consistently overruled by morality. I will come to this point with a detailed discussion on specific membership theories in Chapter 5.

The second obvious flaw lies in the lack of an ultimate ground for the obligation to be binding on us. Normally, membership is not something people acquire for no reason or by no means; it is rather obtained through people's agreement, promise, or other expressive actions. Thus, even if the fact of membership entails an obligation of obedience, there might be other factors that are ultimately grounding such an obligation instead of membership. Adam's obligation to wear football boots when on the pitch does not stem from his membership of the club but rather from his promises or agreement that he has made when he joins the club. Hence, his

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[1] A. John Simmons, *Moral Principles and Political Obligations,* Princeton University Press 1979, p. 21.

obligation to follow the club's rules in the end should be attributed to his consenting to do so. Political obligation entailed by citizenship may similarly rest upon a ground independent of the position or identity. For instance, it might be incurred by people's promises to obey the law when they voluntarily join a political community. The fairness principle also can be employed to establish citizenship as a moral requirement. Inasmuch as people would inevitably benefit from the social cooperation that their states offer, and the social cooperation cannot be maintained without political institutions, people's compliance of the law is embedded in the moral requirement of acting fairly. Under this framework, citizenship should not be the ultimate ground of political obligation. Rather, it is the moral principle of fairness that genuinely generates an obligation not to take advantage of others' sacrifices. Therefore, the dependence on deeper sources for people's membership may pose such a threat to the membership approach, that the package of obligations implied by a person's membership does not arise out of the membership per se but rather out of the way that a person obtains the membership. Or, we may say that membership is merely a middle ground in terms of the source of the sorts of obligation.

These two drawbacks demonstrate the vulnerabilities that any morally neutral attempt to justify political obligation might encounter. Therefore, the only way of defining political obligation to the interest of my exploration is the one as an essentially moral demand. As I will demonstrate, political obligation is (morally) necessary for people to discharge their prior moral obligations and live peacefully together with others. Or, we can say that because a set of political institutions, including a constitution and a legal system, is necessary to maintain our moral lives and assure that we act morally, especially in the public sphere, when we incur such an intrinsic moral obligation to obey the law and support them. Political obligation conceived in this way is primarily a matter for ethics or moral philosophy to deal with, as it concerns people's actions and interpersonal relationship with other people who live in the same state. The primary argument for political obligation as a moral obligation, then, is to determine the source or the reason for considering compliance of the law and the support of a political institution as a moral requirement. I will offer such a justification in Chapter 3.

3. POLITICAL OBLIGATION AS AN OBLIGATION

3.1 Prima Facie obligations

Since political obligation is a sort of moral obligation, its justification should not be sought in just any moral source. Rather, it should be a moral source strong enough to establish an obligation. We may have sound moral reasons to obey the law. For instance, most of the actions that our legal system requires us to perform are in accordance with the requirements of morality and every person would be better off if the law is obeyed in general. Such a consideration could provide us with a good reason to obey the law, but it does not constitute an *obligation* that is compulsory and pre-emptive. However, political obligation in no way indicates that it is a conclusion of how people should act all things considered, because as a moral obligation, political obligation could be outweighed by other moral obligations. Both proponents and skeptics of political obligation agree that such an obligation does not entail that people ought to act as the law requires whenever a law is applicable. To take the speed-limit law as an example, even if we are under an obligation to obey the law in general and thus to respect the speed limit, one is justified by other moral concerns to exceed that limit on specific occasions—as, for instance, Adam does when he rushes to the hospital because his wife sitting next to him is about to give birth to their baby. Distinguishing political obligation as a moral obligation to obey the law from a conclusive moral requirement to obey may lead us to conceive of political obligation as a merely *prima facie* obligation. However, this term, first introduced by David Ross, has brought us more confusion than clarification, especially when it is applied to political obligation.

We have already canvassed the flawed view that political obligation need not be a moral obligation. By prefixing the qualification "prima facie" we relax the requirement of political obligation, up to the point of depriving it of the status of being an obligation at all. For example, M.B.E. Smith uses the phrase "prima facie obligation to obey the law" in the sense that people have a prima facie obligation to obey the law if and only if there is a moral *reason*-X for them to obey the law. Unless they have a moral reason-Y not to obey the law, and moral reason-Y is at least as strong as moral reason-X,

their failure to obey the law is morally wrong.[2] According to Smith's definition, a prima facie obligation amounts to a reason that has not been overridden. This definition contains two mistakes.

Firstly, if a moral reason-X is a moral *ought* for people to do certain things, it seems that whether there exists a competing moral reason-Y against doing so cannot undermine the validity of moral reason-X. Rather, if a person fails to comply with moral reason-X and eo ipso commits a moral wrong, this implies a deontic status for moral reason-X, which should therefore be characterized as a moral obligation. Thus, following Stephen Darwall and Derek Parfit, when we say someone ought to do something, we mean that she is under a moral obligation and that it would be distinctively morally wrong for her not to do it. We do not mean by this expression that "she would be acting against the balance of moral reasons."[3]

The second mistake, which is related to the first, concerns Smith's way of defining political obligation as a moral reason of obedience. This definition assumes that we can reduce moral obligation to a moral reason with the appearance of not being overridden. However, a moral reason, on the one hand, can only be categorized by referring to a moral obligation, yet a moral obligation, on the other, is defined as a moral reason that has not been overridden. The circular way of definition would cause the suspicion of self-reference, and we may see the point through an example.

Suppose that Adam is a wealthy man. If he donates a small portion of his wealth to a foundation that provides life necessities to children in poor countries, these children would be significantly better off. This being the case, we may say that Adam has a moral reason ("reason-X") to aid those poor children. However, if Adam does not have as strong a moral reason ("reason–Y") not to donate his money, is he morally *obligated* to donate? Is he violating a moral obligation if he simply enjoys accumulating personal wealth? I believe that even though Adam has a moral reason that has not been overridden by other moral considerations ("reason-X"), this does not

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2 See M. B. E. Smith, "Is There a Prima Facie Obligation to Obey the Law?" *Yale Law Journal*, Vol. 82 (1973): 951.

3 Stephen Darwall, "What Are Moral Reasons?" *unpublished*; Derek Parfit, *On What Matters (Volume 1)*, Oxford University Press 2011, pp. 165-9.

mean that he is under a moral obligation to donate his money. It may be the case that the moral reason to donate fails to be a valid moral requirement if, for instance, the duty of rescue or good Samaritanism fails to ground such a moral obligation and there exists no genuine conflict between *moral* reasons.

Ross actually makes it explicit with the introduction of a prima facie duty, which "is in fact *not* a duty, but something related in a special way to duty."[4] According to Ross, when a person is in a situation to decide what to do, in which more than one prima facie duties have a claim on her, she has to study the situation to form the considered opinion that one of the prima facie duties has greater strength than any others. Moreover, she is bound to do this prima facie duty, which is her "duty *sans phrase* in the situation."[5] However, not all prima facie duties are genuine moral duties, some of them merely resemble moral duties, or, as Philip Stratton-Lake's interpretation states, prima facie duty should be understood as "features that give us genuine (not merely apparent) moral reason to do certain actions."[6] Yet, a prima facie obligation or a reason to obey the law does not suffice to establish a political obligation with regard to its preemptive force binding on people's actions. In other words, unless there are *genuine* moral obligations in conflict with our political obligation, it is morally wrong for us not to obey the law. The only valuable point captured by the expression "prima facie political obligation" is that political obligation is not decisive in every situation. Nevertheless, this lack of decisiveness should not be understood as a proof that political obligation is not a genuine obligation. As I pointed out in the case in which Adam is exceeding the speed limit to ensure the health of his wife and baby, political obligation is outweighed in the specific circumstances by his obligation entailed by his roles as a father and husband. However, even though political obligation is outweighed, it is still a genuine moral obligation instead of an apparent one. Therefore, it makes better sense if we define political obligation as a *pro tanto* obligation to obey the law

4 See W. D. Ross, *The Right and The Good*, Clarendon Press 2002, p. 20.

5 See W. D. Ross, *The Right and The Good*, Clarendon Press 2002, p. 19

6 Philip Stratton-Lake, "Introduction," in W. D. Ross, *The Right and The Good*, Clarendon Press 2002, p. xxxiv.

to demonstrate the feature that an obligation is not necessarily overriding.[7]

In sum, a plausible justification for political obligation must be able to establish it as a genuine moral obligation, even if it can be overridden in specific circumstances by weightier moral obligations. Hence, political obligation does not have to be what people ought to obey, all things considered. I will therefore discard the term "prima facie".

3.2 Duty and Obligation

In addition to the abandonment of "prima facie," I would like to question one interpretation of the distinction between duty and obligation as two independent concepts in the discussion of political obligation. It is believed that H. L. A Hart introduces such a distinction in his influential article "Are

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[7] John Searle argues that although prima facie obligation is supposed to describe the situation where conflicting obligations exist, it fails to grasp how obligations can conflict, since the premise of conflicting obligations is that *all* of the obligations involved are genuine; see John Searle, *Reason in Action*, The MIT Press 2001, p. 31. Searle takes a strong stand against "prima facie obligation" in different places. For instance, he remarks that "'[p]rima facie' is an epistemic sentence modifier rather than a predicate of obligation types and could not possibly be an appropriate term for describing the phenomenon of conflicting obligations, where one is overridden by another. The theory of 'prima facie obligations' is worse than bad philosophy, it is bad grammar." See *Reason in Action*, The MIT Press 2001, p. 195. In an earlier article specifically on prima facie obligations, Searle explores two distinctions that may make sense of this idea, namely prima facie vs. actual obligations and prima facie vs. absolute obligations. However, both sorts of distinction fail to depict the situation of conflicting obligations, and "the terminology of '*prima facie* obligations' has survived in philosophy not in spite of but because of its ambiguity." See John Searle, "*Prima Facie* Obligations," in *Practical Reasoning*, edited by Joseph Raz, Oxford University Press 1978, p. 88. Philip Pettit and Robert Goodin also avoid using "prima facie obligation." Instead, they turn to the term "non-conclusive obligation," and state the following: "Non-conclusive duties are sometimes described as prima facie. We avoid this way of speaking. A prima facie obligation suggests, not a call which would be conclusive if other things were equal, but a call which as things are appears (at least on first reckoning) to be conclusive. The difference is that between a potentially conclusive duty—our notion—and an apparently conclusive one." Philip Pettit and Robert Goodin, "The Possibility of Special Duties," The *Canadian Journal of Philosophy*, Vol. 16 (1986): 655.

There Any Natural Rights?" While Hart does distinguish moral duty from moral obligation, the distinction has a marginal part, and the basis for it is remarkably different from what Hart's followers, e.g. John Rawls and Simmons, claim it to be. "Obligations", according to Hart, are owed to special persons, arising out of specific relationships between parties rather than the character of the actions to be done. As to how obligations are incurred, Hart does not rule out the possibility of involuntarily incurred obligations, as he merely states that obligations *may be* voluntarily incurred.[8] However, the distinction of obligation and duty in Rawls's and Simmons's arguments is drawn by the criterion of voluntariness, inasmuch as obligations can only be generated by "the performance of some voluntary act."[9] By contrast, duties are incurred involuntarily. This is particularly clear in the case of natural duties, such as the duty not to kill or harm, which are conceived as duties universally binding on all people. Or, it might make better sense if we say that regarding natural duties, the question of whether they are incurred voluntarily or involuntarily does not apply, as they are duties valid to all people simply in virtue of being human beings. But if we accept the distinction at the outset of our argument, the candidate for a convincing political obligation theory is confined to justifications with a voluntary basis. Political obligation can only be incurred by voluntary transactions or relationships, and the task of justifying political obligation is to gather and present the evidence to prove the existence of those voluntary acts, for instance, to provide the evidence that people actually promised to obey the law.

The deeper reason for their endorsing the distinction in the debate of political obligation is because they believe that such a moral obligation holds between particular parties, meaning that specific people owe it to special subjects. One striking feature of political obligation is that the citizens of a certain state owe this obligation either to their state or to fellow citizens. As such, the validity of political obligation is limited by the boundaries of a

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[8] H. L. A. Hart, "Are There Any Natural Rights?" *The Philosophical Review*, Vol. 64, No. 2 (1955): 179.

[9] A. John Simmons, *Moral Principles and Political Obligations,* Princeton University Press 1979, p. 14.

state. However, as I will argue later, the requirement of a particular obligation with specified subjects does not entail the requirement of voluntariness, and if voluntariness fails to be the criterion for drawing the line between obligation and duty, it becomes pointless to try to determine whether political *obligation* or the *duty* of obedience is the right term. An obvious example is the obligation between parents and children. For instance, parents bear the obligation to raise and educate their own children, and children are under the obligation to obey their parents. Whereas the obligation arises out of the particular relationship between parents and children, we do not say that parents or children incur those obligations by voluntarily establishing a particular relationship. It is perfectly possible that a special obligation can arise from an involuntary source: therefore, to avoid the acceptance of restraints of political obligation for no reason, obligation and duty will be used in the same sense. In Chapter 4, I will develop the sketchy argument presented here to illustrate why the particular feature of political obligation should not be understood as a requirement of voluntarism and how we shall explain and accommodate this feature in our justification.

Another reason for abandoning the distinction of duty and obligation is that an obligation cannot exist independently of a duty, or moral obligation cannot be *sui generis*. Take the paradigm of obligation—promissory obligation—as an example. If A promises to give one hundred dollars to B, A incurs a voluntary obligation to do so. As Hart argues, an obligation is created not "because the promised action has itself any particular moral quality" but because the relationship between the parties is established by the voluntary transaction.[10] We may admit that A's promise does establish a special relationship between A and B. Yet if we are to claim that A is under a moral obligation to perform the promised act, where does the source of this moral obligation lie? Does the normativity of the moral obligation arise from A's promise, or is it because there is a pre-existing moral *duty*, requiring us to always respect our promise? I believe it is because everyone is under a moral duty to fulfill his or her promise, and A's promise merely specifies

[10] H. L. A. Hart, "Are There Any Natural Rights?" *The Philosophical Review*, Vol. 64, No. 2 (1955): 184.

such a universal moral duty and identifies the parties of the moral duty. However, the obligation's validity cannot exist without the moral duty to respect our promises, which means that the promise just particularizes the general duty. Voluntary transactions cannot create moral obligations *ex nihilo,* without further referring to a pre-existing duty. I will defend this point from a general point concerning the dependence of obligation on duty in Chapter 4.

As for political obligation, a plausible justification does need to explain the feature of particularity, which designates that a person owes political obligation merely to *her* state. However, it is groundless for us to equalize such a feature with a compulsorily voluntarist basis. We cannot arbitrarily exclude the possibility that the particular relationship in political obligation may be a universal moral duty embedded in or applied to particular contexts. If everyone is under a duty to obey the law of his or her state, the remaining problem is not to establish an obligation of another category; rather, it is to identify which state can be conceived as his or her state. This is the task tackled in Chapter 4. To sum up the argument in this section, I stress that political obligation should not be understood as a prima facie obligation, which is not a genuine characterization of moral obligation. While the only justifiable sort of political obligation is a genuine moral obligation, we need not confine it to a voluntarist basis or accept the distinction of duty and obligation.

4. HOW POLITICAL IS POLITICAL OBLIGATION?

So far I have addressed what it means for political obligation to be (1) an *obligation* that is (2) of a *moral* nature. The last preliminary issue to be considered concerns in which sense and to which extent is political obligation *political*? My answer to this question is simple: it is political because political obligation is a moral obligation to be subject to a political condition and to support political institutions. Alternatively, we may say that it is a moral obligation involved with our attitudes toward politics and political institutions, and for the sake of briefness, my viewpoint of political obligation may be concluded as a moral obligation *about* politics.

To understand political obligation as an obligation about politics, I intend to differentiate it from the views that take it as an obligation *of* politics,

to politics, or *in* politics. To start with the most common view, political obligation is believed to be political because it is the obligation pertinent to the existence of political institutions or grounding the legitimacy of a state and its legal system. Hence, it is the moral obligation *of* politics. Political legitimacy or legitimate political authority is conceived as a moral right to rule, to issue directives, and to guide people's actions. Inasmuch as legitimacy is a sort of right and every right has a correlative obligation, political obligation is conceived as the obligation correlative to (the right that is) political legitimacy. In other words, the ultimate end of justifying political obligation is to establish political legitimacy through the conceptual linkage of rights and obligations. Moreover, based on this understanding of the moral obligation to obey, it is an obligation internal to the justification of political legitimacy, and it is intrinsically political. Nevertheless, this view is problematic, because it is an extremely hard yet crucial step to take in identifying the correlative obligation of legitimacy as the moral obligation to obey the law is. Even if we concede the conceptual correlation of rights and obligations, without the identification of the content of the involved right and obligation we cannot arrive at the conclusion that the two poles of the correlation happen to be the right as political legitimacy and the obligation as political obligation. I will offer a thorough discussion of why political obligation is not an obligation *of* politics in this sense in Chapter 2.

Secondly, political obligation is not the moral obligation *to* politics or to participate in politics. An Aristotelian view attacks contemporary political obligation theories for confining it to what they call "civil obligation," whereas political obligation is a wider concept that includes a plurality of obligations in addition to the obligation to obey and support the state and government. According to this view, a polity is not a coincidental collection of individuals; it is a "reasonably stable organization of men and women who live and have every intention of continuing to live together."[11] Moreover, for the sake of the polity, they are obligated to be actively interested in and to participate in politics, to keep a critical eye on political

[11] Bhikhu Parekh, "A Misconceived Discourse on Political Obligation," *Political Studies* XLI (1993): 239.

activities of the government, to resist the abuse of political power and injustice, and so forth. In extreme circumstances, citizens may have a moral obligation to disobey the law and resist the state, exactly as a demand of their political obligation to ensure the maintenance of the collective interests of the polity. Thus, political obligation is an obligation to the polity and to politics.

My objection to this wider conception of political obligation consists of three points: First, there is no genuine conflict between the way that I define political obligation and this wider conception, because the latter *cannot exist without* a general obligation to obey and support the state. Second, as I have noted, political obligation should be conceived as a moral obligation, and what genuinely matters is the normative justification for such an obligation. The Aristotelian view overlooks the *moral* aspect of the obligation. In other words, the wider conception of political obligation as a collection of specific obligations to a polity does not require those obligations to be moral, as it is dubious to claim that people are under a *moral* obligation to vote, to demonstrate, or to be active in political affairs. At best, people are merely under a positional obligation to do so, which follows from people's roles as citizens of a state. Nevertheless, what I concentrate on is whether a general political condition—states, governments, and legal systems included—is inherent in our moral life. Third, political obligation in this wider conception essentially rests upon ideas such as citizenship, collective interests, and polities. Nonetheless, the identification of those ideas per se is highly questionable. For instance, the criterion for the acquirement of citizenship is extremely difficult to articulate—should it be obtained by taking oaths, signing agreements, or is it merely something born with? If the scope of citizenship is difficult to determine, the domain of the subjects of those obligations to the polity remains undetermined. To conclude briefly, I do not deny that there might exist several obligations that people should discharge *qua* citizens, but this problem differs from the one I take on, as it is not moral, nor should we confine the subject of this obligation to citizens at the very beginning.

Finally, political obligation is not the moral obligation *in* politics. This is relatively clear because moral obligation in politics concerns merely legislators, judges, officials, and other politicians, while political obligation is

imposed upon all people of a given state. Moral obligations in politics concern the professional ethics of the roles that politicians play, and one of the classical questions is as follows: Are judges under a moral obligation to judge in accordance with legislation, and should they stick to the principle "treating like cases alike"? As to the questions of whether officials are under the moral obligation to obey and support the government, the answer is obviously positive. We could build up such an obligation on a promissory or consensual basis, considering their voluntarily and expressively undertaking this obligation by accepting the position. The subject of political obligation is more general than that of moral obligations in politics, as it in the end involves the morality of how people should act in the public life and whether they are obligated to submit to the same set of public-enacted rules.

With the definition of political obligation as the moral obligation to obey the law and support the state, we have clarified the content of our concept. This concept gives our justification a clear target allowing us to steer clear of the tangled debate on the tag of "political obligation". Although the political obligation pursued in our exploration is slightly different from the traditional view as "obligation of politics". I still adopt this term to represent the targeting concept for three reasons. First, the arguments are either related to the traditional debate of political obligation or they are employed to illustrate why we should abandon some views of the traditional view. Second, while using political obligation in the sense of "obligation of politics," what they genuinely refer to is still the moral obligation to obey the law, so the content of their objective conception is on all fours with ours. Third, I think we are still justified in naming this obligation "political" obligation, as it is fundamentally an obligation regarding our actions under the political framework, requiring us to be subjected to a political condition, political institutions, and the law—though it is not necessarily owed to the polity or essentially involved in our political actions.

5. DESIDERATA

The last point to be canvassed in this chapter pertains to the desiderata to assess the justification for political obligation. As I have emphasized, the most significant criterion for a successful theory of political obligation is the

extent to which it is able to establish the obligation as a moral obligation, with a clarified moral source and a deontic argument in favor of its obligatory role. This is the substantive standard for any political obligation approach to achieve, and it is the core argument in my exploration. In this section, I would like to briefly consider the key formal desiderata for a plausible justification to satisfy. Fortunately, both proponents and skeptics of political obligation basically share a consensus on these formal desiderata.[12] Two of those desiderata are of primary significance: the requirements of generality and particularity. The reason that I limit myself to these two requirements is twofold. Firstly, they are acknowledged in most of the debates of political obligation. Secondly, failure to satisfy these two requirements has been diagnosed as the pathology of almost all contemporary political obligation theories. Two forms of justification have been employed to suit both of the requirements: either they start with a particular right-obligation relationship and then generalize such a special duty, or they justify political obligation on the basis of a general moral duty and then particularize the duty. The former method would face no question from the requirement of particularity, but it has to demonstrate how the special obligation can be generalized as binding on all the subject of a state. For instance, the consent theory chooses this form of justification, and its most fatal vulnerability also lies in the incapability of providing the proof that consent has been undertaken generally. The generality requirement would not post any challenge to the second form of justification, whose ground is already a universal moral duty. Nevertheless, how to particularize such a universal duty and satisfy the particularity requirement becomes

[12] For example, Leslie Green argues for five parameters for any argument to satisfy: morality, content-independent, bindingness, particularity, and universality. See Leslie Green, *The Authority of the State*, Oxford University Press 1988, pp. 225-8. George Klosko identifies five criteria: generality, the limited character of political obligation, the range of the obligation, particularity, and obligations to existing governments. See George Klosko, *The Principle of Fairness and Political Obligation*, Rowman & Littlefield 2004, pp. 3-6. Their criteria do not differentiate substantially with that of Simmons's—mainly, the requirement of generality and particularity. See A. John Simmons, *Moral Principles and Political Obligations,* Princeton University Press 1979, pp. 29-38.

troublesome. Hence, almost all the contemporary theories of political obligation are criticized for either not general enough, or not sufficiently particular.

To start with the requirement of generality. This requirement consists of two aspects: Firstly, political obligation should be imposed generally upon all or at least most of the people of a particular state; secondly, the subjects of this obligation are obligated to obey all or at least most of the laws of the given legal system. If political obligation is to be justified, the ground for this moral obligation should be binding generally on those who reside in a state. As we have noticed before, even skeptics, such as Simmons and Joseph Raz, admit that if a person has made explicit consent or promise to obey the law of her state, the consent or promise is capable of generating a moral obligation of obedience for her. However, such an individual justification cannot ground political obligation, since there is no proof that all or most of the people have committed to similar promises or consent. Even if promise and consent theories can offer a suitable moral source for political obligation, they fail to satisfy the requirement of the generality of subjects. The second aspect of the requirement refers to the generality of the law to be obeyed.[13] A legal system is constituted by heterogeneous rules and principles, regarding various spheres of people's actions and ranging from rules with a strong moral character to rules with a morally neutral content. Suppose the end of our political obligation merely relates to the maintenance of political institutions. It might be the case, then, that people are obligated to obey a limited range of laws regarding the existence of them, whereas legal rules that are not directly related to this end might not fall

[13] By saying political obligation is an obligation to obey the law generally or a legal system in general, I refer to all the directives as valid because based on, or following from a legitimate constitution serving as the source, including not only legislation but also administrative orders, adjudicative judgments, and so forth. There are certain laws in every legal system that are not directives, but still they are integral part of a complete legal system. Thus, political obligation is not a collection of our obligations to obey or respect all the laws, but it is about the appropriate attitude toward the law as an institution in our public life.

under the range of the laws to be obeyed.[14]

As to the two aspects of generality, I argue that the first aspect—the generality of the subject—should be adopted, even though it simply states the obvious, whereas the second aspect—the generality of the laws to be obeyed—is a misconceived standard and should be dropped. As long as political obligation is understood as a moral obligation, people are bound by it generally. I believe that moral obligations are by nature general, and insofar as political obligation is one among them, it should be binding generally as well. Thus, if consent theories can justifiably argue that it is morally wrong for people not to consent to a state and to obey the law, the obligation generated is still generally binding on people. But if they are to circumvent consent theories according to this strategy, what genuinely functions as the justification for political obligation may not be the contractual obligation; instead, it is the more general reason why it would be morally wrong for people not to consent. However, the generality of the laws should not be adopted as a requirement of what it is that should be justified by a theory of political obligation. The law, the government, and the state should be regarded as a whole, serving certain purposes in people's living together, and our moral obligation to obey the law is an obligation toward the law as a social institution rather than a collection of specific rules and principles. Thus, political obligation is an integrated obligation toward the law rather than a set of specific obligations toward all laws.[15] A more detailed discussion on the problem of the correct method of justifying political obligation will be discussed in the next chapter.

The other notable requirement is called "the particularity requirement,"

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[14] This is a point that Raz employs to draw a distinction between the obligation to support just governments and the obligation to obey the law, which I will discuss in Chapter 6.

[15] Margaret Gilbert seems to define political obligation as a collection of political obligations, as she adds that "the phrase 'political obligations' will be used to refer to whatever specific obligations fall under this general obligation." Margaret Gilbert, *A Theory of Political Obligation: Membership, Commitment, and the Bonds of Society*, Oxford University Press 2006, p. 15.

coined by Simmons,[16] which is believed by some to be the toughest obstacle for any political obligation theories to overcome. To introduce it roughly, this requirement refers to the fact that a person has his or her own state, and if there is a political obligation, he or she should be obligated to only obey the law of his or her own state. Considering the particularity and generality requirements at the same time, political obligation theories would be caught in a more challenging task to justify both of them as we may notice tension between the two requirements. To satisfy the generality requirement, we have to provide a moral source sufficiently general to bind all the subject and applicable to all legal rules. However, the general moral obligation has to be tailored to be valid for a particular group of people. Thus, we may say the justified political obligation should exactly be particularly general. But, as I will point out later, the particularity requirement merely concerns the application or practice of political obligation instead of the normative justification of it. Hence, it has limited impact on the plausibility of the justification for political obligation. Moreover, we should not take this requirement as an idiosyncrasy of political obligation, as particularity exists broadly within topics of political philosophy. For instance, if redistribution is morally justified, why should it be confined within the boundary of a state? Or, if a state bears the moral responsibility to provide welfare for people, why is it that the beneficiaries can only be residents (or citizens) of this particular state, irrespective of substantially worse-off people of other states? In addition, particularity is not peculiar to political obligation from the viewpoint of moral philosophy. I will argue that the fact that political obligation obligates people to obey the law of their own state actually is only an application or identification of this moral obligation within specific contexts—which is common for moral obligations. In Chapter 4, I will contend in full detail why we should not exaggerate the impact of the particularity requirement; I will also address how I will accommodate this feature in my defense of political obligation.

[16] A. John Simmons, *Moral Principles and Political Obligations,* Princeton University Press 1979, p. 31.

CHAPTER 2 THE CONCEPTUAL SEPARATION OF POLITICAL OBLIGATION AND POLITICAL LEGITIMACY

1. INTRODUCTION

Political obligation is widely conceived as conceptually intertwined with legitimacy or legitimate authority. However, some authors, whom I would like to call "integrationists," in contrast with "separatists," may differ on how the two concepts are linked. Some believe that the two concepts are two sides of a coin, so if we can justify political obligation, the legitimacy of a state is justified as an indirect conclusion of political obligation. Moreover, if we believe that political obligation is a *moral* obligation to obey and support a state, then the state has *moral* legitimacy over its citizens. Others believe that political obligation is a necessary but not a sufficient condition for legitimacy: thus, the latter entails the former. To get a firm grip on legitimacy, we need further arguments in addition to the justification of a general political obligation.

Both the integrationist and the separatist conceptions rest upon the correlation of political obligation and political legitimacy. In general, legitimacy is believed to hinge on the justification of political obligation. Or, we might say that the gist of this correlation is that the justification of legitimacy is a result of the justification of political obligation. The correlation of these two concepts exists under the general the correlation of two more fundamental concepts: right and obligation. Since the legal scholar Wesley Hohfeld first introduced his conceptual analysis or typology of rights, four basic components of the typology—claim, power, privilege, and immunity—have been accepted and applied broadly in analyses of specific rights in legal, political, and moral philosophy.[1] Each of the four elements has a "jural correlative" according to Hohfeld:

[1] Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions: As Applied in Juridical Reasoning and Other Legal Essays*, edited by Walter Wheeler Cook, Yale University Press 1919, p. 36.

a. If a person A has a *claim*, then some other person B has a *duty*;
b. If a person A has a *privilege (or a liberty-right)*, then some other person B has a *no-claim*;
c. If a person A has a *power*, then some other person B has a *liability*;
d. If a person A has an *immunity*, then some other person B has a *disability*.

Integrationists define political legitimacy as a claim-right to rule over citizens. Hence, a duty or an obligation of obedience is the political obligation that correlates conceptually with this claim-right.[2] Thus, we might conjecture that the Hohfeldian framework of right underlies the correlation between legitimacy and political obligation:

> *The integration thesis*: political obligation is the correlative of legitimacy as a claim-right to rule.

However, in order to arrive at the integration thesis, we would need to justify at least three sub-theses, and I will present them in ascending order of demandingness, since the second sub-thesis is a specification of the first one, and the third sub-thesis is a specification of the first (and, by transitivity, of the first). I would like to organize the argument of this chapter according to the three increasing degrees of demandingness that comes with increasing specificity:

> 1. *Typology*
> *The Hohfeldian typology thesis* states that we should accept the Hohfeldian typology of right. Thus, if we were to define legitimacy in terms of any of the four kinds of right, we would correspondingly have to define political obligation in terms of its conceptual correlative.

[2] E.g., Raz defines political obligation as a claim-right. See note 7 of this chapter.

2. *Claim Right*

The claim-right thesis refers to the proposition that we should define legitimacy as a claim-right, instead of a power, privilege, or immunity. Thus, the correlative of legitimacy should be an obligation.

Claim Right rests upon *Typology*, but it does not stipulate the specific content of the two poles of the correlation, which calls for the third argument:

3. *Content*

The content thesis states that the content of the two terms of the correlation between legitimacy and political obligation should be, specifically, the claim-right *to rule* and the obligation *to obey*, respectively.

Only if all three theses hold can we justify the integration thesis. Unfortunately, each of the three has encountered objections, and it is the difficulty of upholding all three of these arguments that leads another camp of theorists—the separatists—to maintain the separability of political obligation and legitimacy. However, it is noteworthy that separatists do not necessarily reject the Hohfeldian typology of right. This means that it is possible for them to uphold the general correlation between claim-rights and obligations, while denying the specific correlation between legitimacy and political obligation in particular. Hence, we might come up with two versions of *the separation thesis*:[3]

Strong separation thesis: legitimacy and political obligation are separable because the Hohfeldian typology is invalid.

Thus, for strong separatists, the main target is to rebut *Typology* and, as a corollary, the other two sub-theses as well. On the other hand, there is a weak version of the separation thesis:

[3] For instance, Kent Greenawalt, Rolf Sartorius, and Robert Ladenson adhere to this thesis, albeit for an entirely different purpose than in my defense of it. See note 15 of this chapter.

> *Weak separation thesis*: legitimacy and political obligation are separable because legitimacy is not a claim right and political obligation is not an obligation

Therefore, if either *Claim Right* or *Content* can be discarded, the weak separation thesis is justified.

In this chapter I will argue for the weak separation thesis based on a denial of *Content*. Even if legitimacy could be defined as a claim-right and entail a correlative obligation, this does not imply that there is a *moral* obligation of obedience. Therefore, in order to justify political obligation or legitimacy, we should directly concentrate on the exact concept, instead of attempting to justify the one by way of the other. Section 2 explores how the most notorious skeptics of political obligation and legitimacy—political anarchists and philosophical anarchists—employ the integration thesis to reject legitimacy by negating political obligation. This section also briefly investigates a potentially obvious response to the integration thesis: attacking *Typology* to dispose of this way of discussing legitimacy and political obligation altogether (that is, by arguing for the separation thesis). Sections 3 and 4 canvass two forms of the weak separation thesis: Section 3 deals with rebuttals of *Claim Right*, or arguments denying that legitimacy can be couched in claim-rights. Instead, they try to tie legitimacy to (one of) the other three Hohfeldian rights—powers, privileges, and immunities—to avoid that that legitimacy correlates to an obligation. Section 4 examines the arguments against *Content*, according to which even if legitimacy can be categorized as a kind of claim-right, this does not necessarily make its correlative obligation a moral obligation of obedience, i.e. political obligation. It could be some other kind of obligation rather than political obligation. Ultimately, I contend that the justification for political obligation should be anchored to a directly normative and substantive argument concerning the source or moral principle generating such a moral obligation, and this should also be the main focus of justifying legitimacy.

2. PHILOSOPHICAL ANARCHISM AND THE INTEGRATION THESIS

Legitimacy is normally conceived as legitimate political authority or de jure authority (as contrasted with de facto authority).[4] A person might possess de facto authority due to violence, physical power, or tradition without appealing to moral justification. For example, a political ruler like an emperor or a duke may have de facto authority due to lineage. For a state or government, however, in order to duly enact laws or settle disputes through proper adjudication, a de facto authority must be morally justified as legitimate or de jure, and this is where legitimacy makes a state's directive to pay taxes different from the robber's command to surrender one's property.

Although all forms of anarchism claim that states are illegitimate, philosophical anarchism, which concentrates on the *moral* judgment against states, claims that no state is *morally* legitimate. If this claim were true, people would not be bound by a general obligation of obedience, as no state could legitimately claim people's obedience.

Philosophical anarchism can be divided into different versions according to different points of contention. First, the *a priori* version maintains the impossibility of a legitimate state, whereas the *a posteriori* version merely claims that no *existing* states are legitimate, without denying the possibility of a legitimate state. Second, there are differences of degree. Weak philosophical anarchism claims that no general political obligation exists, but that we might have good moral or practical reasons to comply with the law and support our government, whereas strong philosophical anarchism stresses a moral obligation to actively oppose the state, in addition to the denial of political obligation.[5] The view that "no state is legitimate"

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[4] I use "legitimacy" and "legitimate authority" interchangeably. Unless noted, "legitimacy" refers to political legitimacy and authority rather than a general concept of moral legitimacy. Simmons is an exception to this use—he distinguishes between authority and legitimacy. By "authority," he refers to a state's moral defensibility. A political authority would be justified if it is morally better to have a state than it is to not have one. However, political authority is merely a necessary, not a sufficient condition for political legitimacy, which can only arise from people's actual consent. See A. John Simmons, "Justification and Legitimacy," in his *Justification and Legitimacy: Essays on Rights and Obligations*, Cambridge University Press 2001, p. 125 and 137.

[5] See A. John Simmons, "Philosophical Anarchism," in his *Justification and Legitimacy: Essays on Rights and Obligations,* Cambridge University Press 2001, pp. 104-7.

might seem radical, because people in fact live under different political frameworks such as states, governments, and legal systems, while in leading their lives they are always treating legal rules as reasons for action. Yet this anarchical claim does sound appealing, especially considering that almost every state owes its existence and emergence to some combination of events including "a share of force or fraud."[6] Moreover, John Simmons, for example, endorses a version of a posteriori and weak philosophical anarchism in which no drastic change or opposition against states is required. Simmons's version of anarchism, thus, does not deny the possibility of a state possessing legitimacy, but only advocates that no existing states so far have had the perfect legitimacy which requires citizens' voluntary consent. Under his conception of anarchism, we are not generally obligated to obey the law, but we still have good practical reasons to follow those directives, so we are not under a moral obligation to rebel against reasonably just states either. Hence, a rebuttal merely focusing on how radical anarchism has to be would not effectively undermine Simmons's anarchical stance and his refutation of political obligation.

We shall closely scrutinize how philosophical anarchism hinges on the correlation of right and obligation and deploys the integration thesis to resist both political obligation and legitimacy at the same time. The integration thesis is a prevalent assumption of theories that intend to lay a foundation for the legitimacy of a state. For instance, Raz—who argues for a state's claim of legitimacy—emphasizes the dependence of authority as a right to rule on a general obligation to obey, since "[i]f there is no general obligation to obey, then the law does not have general authority, for to have authority is to have a right to rule those who are subject to it. And a right to rule entails a duty to obey."[7] And on the other hand Simmons, who is

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6 David Copp, "The Idea of a Legitimate State," *Philosophy & Public Affairs*, Vol. 28, No. 1 (1999): 31.

7 Raz's theory of political obligation is rather interesting as he distinguishes the concept of "political obligation" from "a general obligation to obey the law." Where he believes a political obligation is entailed by the idea of de jure authority, the entailed obligation is not specifically an obligation to obey the law, which stipulates the exact content as obedience. Moreover, he contends that there is no general obligation to obey the law because it applies merely to those who practically respect the law. I will

probably the most sophisticated philosophical anarchist, explicitly states that the correlation of legitimacy and political obligation is connected to the fundamental correlation of right and obligation. He defines legitimacy as follows:

> Legitimacy … is the exclusive *moral right* of an institution to impose on some group of persons binding duties, to be obeyed by those persons, and to enforce those duties coercively. Legitimacy is thus the logical correlate of the (defeasible) individual obligation to comply with the lawfully imposed duties that flow from the legitimate institution's processes.[8]

Or, in an earlier argument where he does not make such a rigorous distinction between authority and legitimacy (conceived in terms of consent), Simmons expounds how he is driven to anarchism by the integration thesis, as the problem of legitimacy "has been tied to the problem of political obligation; for if no government is legitimate which does not have de jure political authority, and if having such authority consists in having the right to command and be obeyed, then only where a citizen has political obligations will his government be legitimate with respect to him."[9]

Simmons's primary concern in *Moral Principles and Political Obligations* is to argue against major approaches to political obligation such as consent theories and theories based on the principle of fairness or on natural duty. Furthermore, by denying all those approaches aiming to justify a general

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discuss the position of Raz in Chapter 6, but it should be noted at this stage that the content of the correlative obligation does make a difference in the justification for political obligation or legitimacy. "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 341.

8 A. John Simmons, "Justification and Legitimacy," in his *Justification and Legitimacy: Essays on Rights and Obligations*, Cambridge University Press 2001, p. 155. Emphasis added. Robert Paul Wolff also takes the integration thesis for granted in his definition that "[a]uthority is the right to command, and correlatively, the right to be obeyed." R. P. Wolff, *In Defense of Anarchism*, New York: Harper & Row 1970, p. 4.

9 A. John Simmons, *Moral Principles and Political Obligations,* Princeton University Press 1979, pp. 195-6.

political obligation, as well as by endorsing the correlation between political obligation and legitimacy, Simmons believes that he is entitled to accept the conclusion that "governments do not normally have the right to be obeyed by their citizens,"[10] or to use the anarchists' slogan, governments are illegitimate. The integration thesis actually bridges the denial of political obligation and the endorsement of anarchism. Either because no theory has provided a sufficiently general ground for political obligation applying to most citizens of a state, or because such a ground cannot account for the particular subjection of a citizen to her state, from an *a posteriori* point of view there is no general political obligation. Hence, no state genuinely possesses legitimacy as a right to rule or a claim to be obeyed.

Simmons's argument appears to be flawed because even if the general correlation of obligation and right can be maintained, it does not follow that the specific correlation between political obligation and a right to rule can be. However, it seems that Simmons believes that such a specific correlation can be taken for granted, as the argument provided for the integration thesis is that political obligation and a right of government to command "have traditionally been supposed to be logical correlates,"[11] whereas he offers no further argument to explain why this traditional supposition describes the correct relationship between the two terms. This amounts to overlooking *Claim Right* and *Content* altogether, which we will come to in the following sections. For now, we can see that anarchists need to reject *all* approaches to justifying political obligation, and only if they succeed in doing this can they reach the conclusion of philosophical anarchism.

Three strategies can be deployed to defend political obligation against philosophical anarchism, corresponding to its three pivotal claims, i.e. no political obligation conclusively, legitimacy as a claim-right and the integration thesis. First, we can provide a *direct* justification for political obligation to invalidate Simmons's a posteriori conclusion on both political obligation and legitimacy. I believe this is the most forceful and productive

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[10] A. John Simmons, *Moral Principles and Political Obligations,* Princeton University Press 1979, pp. 195-7.

[11] A. John Simmons, *Moral Principles and Political Obligations,* Princeton University Press 1979, p. 195.

way to combat anarchism, since developing a counter-example to anarchism is more promising than refuting all the possibilities of political obligation. Therefore, we might regard all accounts of political obligation—including the moral necessity thesis that I defend in the next chapter—as endorsing the first strategy to respond to the skeptics. Second, we could prove that the argument for philosophical anarchism contains significant flaws. For instance, with regard to R.P. Wolff's anarchism, it might be argued that a so-called "duty for autonomy" cannot be justified and that the tension between autonomy and authority is not inevitable as claimed.[12] Or, as Christopher Wellman has argued, the boundary between philosophical anarchism and political anarchism is difficult to maintain:

> The crucial point is that if a state is nonconsensually coercive despite having no special rights over us, then it seems appropriate to conclude that, other things being equal, we have moral reasons to actively resist the state. And this last conclusion, of course, is *political*—not merely philosophical—anarchism.[13]

If philosophical anarchism cannot be prevented from sliding into political anarchism, it will not be able to circumvent the criticism of radicalness and hence from being exposed to all the criticisms of political anarchism. The third way to refute anarchism is by accepting the separation thesis in order to detach the problem of political obligation from legitimacy. This would mean that if we do not succeed in justifying a general political obligation, this still does not necessarily call legitimacy into question. Also, this strategy cuts both ways, since if anarchism's attack on legitimacy is successful, political obligation is shielded from that attack.

As noted before, the integration thesis consists of three steps or sub-theses. In this section, I will start by addressing the rejection of *Typology*,

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12 See Scott Shapiro, "Authority," in *The Oxford Handbook of Jurisprudence and Philosophy of Law,* edited by Jules L. Coleman, Kenneth Einar Himma, and Scott J. Shapiro, Oxford University Press 2002, pp. 387-8.

13 Christopher Wellman, "Samaritanism and the Duty to Obey the Law," in Christopher Wellman and A. John Simmons, *Is There a Duty to Obey the Law?* Cambridge University Press 2005, p. 27.

implying a separation of legitimacy and political obligation by negating the fundamental correlation of right and obligation.

Typology states that when we explore legitimacy in terms of any of the four kinds of right, we also commit ourselves to its correlative. It seems that if we are to renounce the integration thesis by rejecting the Hohfeldian framework of right, we could either develop a conception of legitimacy that does not involve the concept of right, or argue against the conceptual linkage of right and obligation.

Robert Ladenson famously attacks the correlation of right and obligation at this level by establishing a new type of right—"justification-rights"—with "an *altogether different conceptual structure* from claim-rights" which "accordingly differ from them [i.e. claim rights] in neither presupposing any institutional background nor correlating with duties."[14] Therefore, idea of a justification-right is a rejection of the integration thesis at the highest level, as it denies the conceptual entailment of right and obligation. This denial is rooted in the idea that this new sort of right is not tied to any form of claim. Moreover, the core of it is merely a justification of people's doing certain things, such as the justification-right to self-defense that will be mentioned later, so no correlating obligations are involved. The discovery of this novel type of right is so enormously consequential that there have been several well-known attempts to salvage legitimacy or authority from anarchism's refutation of political obligation by cutting the link between legitimacy and political obligation on the basis of Ladenson's justification-right.

For example, Kent Greenawalt and Rolf Sartorius follow Ladenson in defining political authority as a sort of justification-right, claiming that it entails no correlating political obligation. Thus, the failure to justify political obligation does not affect the justifiability of legitimacy. In addition to denying a correlation of right and obligation, they offer additional arguments, mainly from the standpoint of voluntarism of moral obligation, to support the idea that political obligation is neither sufficient nor necessary

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[14] Robert Ladenson, "In Defense of a Hobbesian Conception of Law," *Philosophy & Public Affairs*, Vol. 9, No. 2 (1980): 138, emphasis added.

for legitimacy.[15] Still, I will concentrate on Ladenson's construction of a justification-right, since without it the foundation of Sartorius's and Greenawalt's separation arguments would collapse.

I regard two points about Ladenson's justification-right as especially noteworthy: First, is justification-right really a sort of right? Alternatively, does justification-right really represent an entirely new "conceptual structure" as Ladenson contends, or does it still fall somewhere under the four Hohfeldian components of rights? I shall argue that, Ladenson's justification-right unfortunately does not satisfy the conditions for being a conceptual structure of right. The second point issues from this negative conclusion. If legitimacy as a "justification-right" to rule discards the typology of right altogether, the plausibility of legitimacy as the justification-right to rule does not affect the justification of political obligation, because, not being a right, its status has no impact on the justification of political obligation.

Ladenson believes that the notion of governmental authority contains two basic parts. First, to have such authority is to have governmental *power*, which means that the exercise of such power is effectively uncontested. Second, a plausible conception of governmental authority must incorporate the notion of the *right* to rule, and this right is not a valid claim in Joel Feinberg's terms.[16] Rather, it is a justification-right. To assert a claim-right is

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[15] Kent Greenawalt, *Conflicts of Law and Morality*, Oxford University Press 1987, p. 54; Rolf Sartorius, "Political Authority and Political Obligation," *Virginia Law Review*, Vol. 67, No. 1 (1981): 5. Besides Greenawalt and Sartorius, Leslie Green believes that William Edmundson similarly rejects the correlation of right and obligation on the basis of Ladenson's justification-right. However, this is a misinterpretation, since what Edmundson genuinely denies is that the *content* of the correlative obligation of legitimacy is obedience. Thus, he still develops his conception of legitimacy under the Hohfeldian framework, while rejecting the content argument that we will come to in Section 4. Leslie Green, "Legal Obligation and Authority," *The Stanford Encyclopedia of Philosophy* (Winter 2012 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/win2012/entries/legal-obligation/>.

[16] Robert Ladenson, "In Defense of a Hobbesian Conception of Law," *Philosophy & Public Affairs*, Vol. 9, No. 2 (1980): 137; Ladenson draws the distinction between claim-right and justification-right using Feinberg's terms. However, Feinberg rejects the idea that a right is to be conceived as a *justified* claim, the use of which he regards as

to demand something or other against other individuals, and this kind of right entails correlative duties to actions by others. Thus, a claim-right essentially rests upon a second-personal authority to address such a demand on certain actions of other persons.[17] In contrast, to assert a justification-right, one merely responds to demands for a justification of his or her behavior, while no claim against others is involved. Ladenson offers the right of self-defense as an instance of justification-right: although the performance of self-defense might hurt an attacker or violate certain moral and legal rules, the so-called "justification-right to self-defense" is justified "in virtue of the presence of justificatory considerations."[18] "The right to self-defense" should be conceived as a justification-right in that, in exercising such a right, we do not address a demand on particular persons but invoke it as a response to the demand for justification for our actions undertaken to defend ourselves. But when it comes to legitimacy or governmental authority, what kinds of action in particular require responding to the demand for justification? Ladenson follows Kantians, and in particular Rawls, arguing that legitimacy is invoked as a justification for coercive acts that would otherwise be immoral.[19] Thus, if justification-rights, as Ladenson claims, had a conceptual structure different from that of claim-rights, the concept of right would not entail that of obligation. Particularly, legitimacy as a justification-right to exert coercion would not conceptually correlate to a general obligation. As a result, anarchists' rejection of political obligation, would not necessarily undermine legitimacy, as Greenawalt and Sartorius

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"confusing". Instead, a right should be conceived as a *valid* claim, as he contends: "I prefer to characterize rights as valid claims rather than justified ones, because I suspect that justification is rather too broad a qualification. 'Validity,' as I understand it, is justification of a peculiar and narrow kind, namely justification within a system of rules." Joel Feinberg, "The Nature and Value of Rights," *The Journal of Value Inquiry* Vol. 4, No. 4 (1970): 253; 255.

[17] See Stephen Darwall, *The Second-Person Standpoint: Morality, Respect, and Accountability*, Harvard University Press 2006, pp. 18-20.

[18] See Robert Ladenson, "In Defense of a Hobbesian Conception of Law," *Philosophy & Public Affairs*, Vol. 9, No. 2 (1980): 137-9.

[19] See Robert Ladenson, "In Defense of a Hobbesian Conception of Law," *Philosophy & Public Affairs*, Vol. 9, No. 2 (1980): 139.

contend.

Nevertheless, I believe that Ladenson's justification-right either does not have a different conceptual structure, remaining within the Hohfeldian typology, or abandons the framework of right altogether, since couching legitimacy in the idea of justified coercion amounts to dropping the idea of a right to rule. Moreover, the conception of legitimacy merely as justified coercion might be too narrow to include all aspects of a state's legitimate enforcement of its authority, for instance, to promote the welfare of its citizens, to lead or advise a better way of action or life, and so forth. Therefore, I contend that the attempt to reject the integration thesis by endorsing a strong version of the separation thesis so far fails. We are thus led to find answers in a weaker version of the thesis: remaining in the Hohfeldian framework while rejecting the specific correlation of legitimacy and political obligation.

To begin with, the two basic elements of legitimacy that Ladenson provides—a governmental power and a justification-right—make up a hybrid conception, because it rests legitimacy on a power and a right. However, what is not clear is how Ladenson intends to accommodate this power and this right or how the relationship between the two elements of legitimacy should be understood. According to Stephen Perry, for instance, legitimate authority is defined as a moral *power* to change someone else's normative situation, the Hohfeldian correlative to which is liability rather than obligation.[20] It might be that if we conceive governmental power as a moral power or normative power, it would render trivial the justification-right in (matters of) legitimacy. Hence, it is more plausible if we interpret governmental power and justification-right in accordance with the distinction between de facto authority and justified authority. Moreover, it seems that Ladenson would agree on this interpretation as he stresses the effectiveness of the exercise of coercion while discussing governmental power. What genuinely matters for the justification of legitimacy, then, is the plausibility of justification-right, for the governmental power merely refers

[20] Stephen Perry, "Political Authority and Political Obligation," in *Oxford Studies in Philosophy of Law: Volume 2*, edited by Leslie Green and Brian Leiter, Oxford University Press 2013, p. 4.

to a de facto power.

However, a justification-right still cannot ground legitimacy as a right to rule; at the very least, it falls short of offering a way out of the Hohfeldian framework. This is because Ladenson's construction of the justification-right or the instances he refers to as a justification-right still *can be* accounted for in Hohfeldian terms. Again, take the right to self-defense as an example. If a robber B threatens a person A with a knife at his throat, and A happens to be legally carrying a gun, Ladenson would say that A has the right to shoot B because he has a justification for shooting B to defend himself. Nevertheless, this does not require a completely different framework of right, as Ladenson promises, as we might also conceive A's right to shoot B as a Hohfeldian privilege or liberty. A has the liberty to shoot B because A does not have a duty not to do so, and B does not have a claim to demand A not do so. Under normal circumstances, a person should not shoot other people or cause any harm to others. But in our case, because B's behavior endangers A's physical safety and property, A has *moral* permission or a liberty to do what he needs to do to guarantee his own safety. This is also why he should not respond in a way disproportional to the risk he is running. Thus, if B is pickpocketing or snatching A's belongings, A would not have a liberty to shoot B to death, because he does have a duty not to do so unless it is necessary.

In sum, Ladenson's idea of a justification-right cannot be regarded as a rebuttal of the Hohfeldian conceptual structure. It is merely a rejection of the definition of legitimacy *as a claim-right* specifically. Therefore, he, either develops a conception of legitimacy that can do without the idea of a right to rule and defines it as a justification for governmental coercion; or he employs other elements of Hohfeld's typology. The latter alternative shifts the argument from an objection to *Typology* to an objection to *Claim Right*, which we will discuss in the next section.

But what if by "justification-right," Ladenson means to escape the idea of right altogether and to explain legitimacy as a justified action of a government? This strategy puts aside the correlation problem, and whether there is an obligation to obey would no longer be relevant to the justification of legitimacy. Defining legitimacy in terms of justified coercion is a widely accepted approach, especially among Kantians. John Rawls argues that

legitimacy is essentially a problem of a justifiable exercise of political power that is coercive in nature.[21] Additionally, Ronald Dworkin insists that a conception of law must explain "how what it takes to be law provides a general justification for the exercise of coercive power by the state," by which he directly links a conception of law to the problem of the moral authority of law to justified coercion. If a state is morally justified in coercing the inhabitants living within its territory, the political authority it possesses will have moral legitimacy. A legitimate law in a derivative sense of legitimacy refers to the law that the state would be permitted to enforce coercively.[22] The justification of legitimacy rests on the conditions under which coercion could be justified, which is why the main arguments focus on the moral properties of the state that justify its coercive enforcement. Consequently, whether there is a general political obligation does not conceptually connect with the concept of legitimacy. Reasons for the people involved to obey the command of the state are merely desires to avoid punishment.[23] Because of the relatively weak requirement of the justification, this conception is believed to be a thin version of legitimacy. But what is the difference between the Kantian conception of legitimacy and Ladenson's Hobbesian conception? I contend that it lies in the fact that Kantians' conception of legitimacy still appeals to the idea of obligation, while Ladenson's conception abandons any such claim. However, abandoning this claim puts Ladenson's conception on shaky grounds when it comes to trying to explain why his is a conception of legitimacy.

By contrast, Dworkin—who holds the Kantian conception of legitimacy—also maintains that justifying force and coercion is the center of legitimacy. Hence, the problems of legitimacy and political obligation are not two sides of the same coin, as the correlation between right and obligation would imply. However, the conceptual separability is not tantamount to the denial of *any* normative connection between legitimacy and a state's capacity

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21 John Rawls, *Political Liberalism,* Columbia University Press 1993, pp. 136-7, 393.

22 David Estlund, *Democratic Authority: A Philosophical Framework*, Princeton University Press 2008, p. 41.

23 See also Thomas Christiano "Authority," *The Stanford Encyclopedia of Philosophy* (Spring 2013 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/spr2013/entries/authority/>.

to impose obligations. Actually, Dworkin stresses that "no general policy of upholding the law with steel could be justified if the law were not, in general, a source of genuine obligations."[24] Accordingly, the justification for legitimacy involves the determination of the conditions under which a state's constitutional structure and practices are such that "its citizens have a general obligation to obey political decisions that purport to impose duties on them."[25] We may say that for Dworkin, for whom political obligation is based on a communal duty, the problem of legitimacy concerns the question of what sort of state can maintain fraternity among the members of a community on order to merit obedience.

But why does abandoning the appeal to obligation make Ladenson's conception question-begging? Remember that I distinguished two parts of Ladenson's legitimacy: a governmental power to coerce and a justification for (the exercise of this power of) coercion. The governmental power is not a normative power; rather, it is an empirical power, together with the acquiescence of its subjects. Nevertheless, even if I am justified in locking up a suspect, I do not necessarily have any authority over this person. Here I follow Raz, believing that the exercise of coercive or any sort of power is not an exercise of authority unless "it includes an appeal for compliance by the person(s) subject to the authority."[26] The appeal invokes a duty of obedience, but it is not necessarily entailed by the concept of legitimacy. Without such an appeal to an obligation and a claim of obedience, Ladenson's explanation of legitimate authority is merely a conception of justified de facto authority that cannot be conceived "except by reference to that of legitimate authority,"[27] and such a justified de facto authority cannot merely refer to an ability (to exercise control) over other people. Therefore, both Kantians' and Ladenson's conceptions of legitimacy resort to the idea of justified coercion exerted by states and governments, but only the latter suffers from its vulnerability in providing a conception of legitimacy to the extent that constructing legitimacy is a normative enterprise. As to those

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24 Ronald Dworkin, *Law's Empire*, Harvard University Press 1986, p. 191.

25 Ronald Dworkin, *Law's Empire*, Harvard University Press 1986, p. 191.

26 Joseph Raz, *The Morality of Freedom*, Oxford University Press 1986, pp. 25-6.

27 Joseph Raz, *The Morality of Freedom*, Oxford University Press 1986, p. 27.

Kantians mentioned above, their conceptions of legitimacy remain normative and will not be vulnerable in this way. On the contrary, Ladenson's conception of legitimacy remains empirical, in which case the exercise of legitimate power still can be free of moral justification. And such an empirical conception is counter-intuitive.

The argument in this section about the attempt to refute the fundamental correlation of right and obligation shows that no attempt canvassed so far has convincingly succeeded in doing so. Although anarchism essentially rests its rejection of legitimacy via the rejection of political obligation on such an integration thesis, it is neither necessary nor promising for us to renounce the Hohfeldian conceptual structure altogether, since what the integration thesis upholds is the *particular* correlation of legitimacy to political obligation. Moreover, we could invoke a weak version of the separation thesis to combat anarchism, namely by objecting to either *Claim Right* or *Content*.

3. AGAINST *CLAIM-RIGHT*

From this section onwards, I will canvass the two approaches to a weaker version of the separation thesis. In this section, I will address the approach that seeks to rebut *Claim Right*. As noted above, *Claim Right* not only defines legitimacy as a Hohfeldian right but also specifies it as a claim-right. Inasmuch as *Claim Right* is one of the necessary conditions of the integration thesis, we could detach legitimacy from an obligation to obey by refuting legitimacy as a claim right in particular, without denying the whole Hohfeldian typology of right. This means that a conception of legitimacy could be couched as a power, privilege, or immunity, with liability, no-claim, or disability, respectively as their correlatives. If legitimacy should be conceived as one of these kinds of right, the correlating obligation would not be conceptually entailed. As a consequence, the attack on political obligation would not necessarily lead to any version of anarchism. Since, moreover, the converse is also true, any doubts cast on a state's legitimacy could not spread to political obligation.

The most common approach to invalidate *Claim Right* is to construe the legitimacy of a state in terms of normative power over its people. By contrast, the concepts of privilege and immunity are rarely employed. The

reason for this seems obvious, for it would not reflect our prevailing understanding of the state and politics.[28] If a state's right to levy taxes were a Hohfeldian privilege, the state would not have a duty not to levy taxes, and the citizens would have no claim against the taxes imposed. However, levying taxes cannot merely be a liberty or privilege since every citizen does have a claim on his/her legitimate property. It has to be either a state-held claim-right that is stronger than the citizens' claim on their own property or some sort of power entailing liabilities on the part of citizens Moreover, a state's authority in punishing criminals cannot be like a person's liberty or permission to choose any seat in a library, inasmuch as there is not much discretion for a state to decide whether to administer punishment. Thus, legitimacy as a privilege or immunity appears unacceptably weak given the practice of the authority of states. It seems that we need a stronger ground for legitimacy.

For this reason, I would like to focus on whether legitimacy can be conceived as a sort of power-right. Intuitively, a power to alter citizens' rights and obligations seems able to avoid the drawbacks of a privilege or immunity approach. Apart from defining legitimacy uniquely as a power-right, David Copp explores the possibility of basing legitimacy on a plurality of Hohfeldian rights. If either of these approaches can be proven sound in grounding legitimacy, we should endorse a separation thesis of legitimacy and political obligation: on that scenario, legitimacy would not be a claim-right and, consequently, political obligation would not follow. As a result, legitimacy (although not as a claim-right) and political obligation would have to be conceived as two independent concepts. Hence, the right methodology for justifying should consist in directly targeting either of the two.

Moreover, the separation thesis would also allow us to undermine the anarchists' destructive work, because even if no state were legitimate, as they claim, political obligation would remain intact. Unless anarchists were successful in conclusively refuting all approaches to political obligation, their *a posteriori* standpoint of negating political obligation would not be tenable.

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[28] This is also Raz's criticism of Ladenson's "justification-right." See Joseph Raz, *The Morality of Freedom*, Oxford University Press 1986, pp. 26-7.

Undermining the force of anarchists' skepticism is crucial for reestablishing political obligation, since it is believed that the anarchist critique has made it necessary to rebuild political obligation by salvaging pieces from the wreckage or coming up with materials completely different from the ones destroyed by Simmons.[29] In this section, we will see how political obligation can be protected from anarchism's attacks and why Wellman's picture of justifying political obligation is overly pessimistic.

3.1 *The Power Approach*

According to Hohfeld, A's having a *power* over B is opposed to A's having a disability, and correlates to B's having a *liability* with respect to A. So, saying that a parent has the parental power to ask her child to go to bed at ten p.m. is identical to saying that the child has a liability to follow his mother's order. Furthermore, liability is the opposite of immunity. Therefore, we might also say the child does not possess an *immunity* to his mother's order. A Hohfeldian power is believed to be a "meta-right", which means that it is capable of altering the status of other elements of the Hohfeldian typology.[30] If A is the owner of a house, the lawn of which gives B a shortcut to go to work, then A has the power-right to give B the privilege or permission to obtain access to her property. A's power is exercised by altering B's privilege, which shows why a power is a "meta-right". Thus, in the context of political authority, if a state has the ability to affect every citizen's claims, privileges, powers, and immunities, then it has a power-ability over its citizens. The question, then, concerns the content of the power that a state possesses.

In addition, we should ask what is the correlating liability. Also, we may ask how to demarcate the boundary of such a power and a claim-right and, correspondingly, how to distinguish liability from obligation. A power does not have a duty or obligation as a correlative. So if the authority of a state

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[29] Christopher Wellman, "Toward a Liberal Theory of Political Obligation," *Ethics*, Vol. 111, No. 4 (2001): 750-1.

[30] See F. M. Kamm, "Rights," in *The Oxford Handbook of Jurisprudence and Philosophy of Law,* edited by Jules L. Coleman, Kenneth Einar Himma, and Scott J. Shapiro, Oxford University Press 2002, p. 479.

can be justifiably conceived as a sort of normative power, we could infer from this the separability of legitimacy and political obligation. However, under this definition of legitimacy, how are we to locate and construe political obligation, which falls out of the whole picture of the conceptual analysis of legitimacy? I will scrutinize Arthur Isak Applbaum's and Stephen Perry's arguments for the power approach to legitimacy in this section to determine if they can plausibly answer this question and be justified in endorsing the separation thesis by refuting *Claim Right*. I contend that the power approach does offer the possibility of separating obligation and legitimacy, but that in order to justify political obligation, we still need normative or substantive arguments in addition to the conceptual analysis.

In an article titled "Legitimacy without the Duty to Obey," Applbaum champions the power-liability correlation in interpreting legitimacy, and, as the title explicitly states, his main purpose is to divest legitimacy of the duty of obedience. According to his definition, a legitimate authority has the moral power "to author legal, institutional, or conventional rights and duties, powers, and liabilities, and create social facts and mechanisms of coordination that change the legal, institutional, and conventional situation or status of subjects."[31]

Such a moral power can change the moral status of its subjects by virtue of imposing a moral liability on the subject with respect to the command of the legitimate authority. This means that legal, institutional, or conventional rights and duties are altered. The corresponding moral liability to power, according to Applbaum, refers to "the justified loss of moral

[31] Arthur Isak Applbaum, "Legitimacy without the Duty to Obey," *Philosophy & Public Affairs*, Vol. 38, No. 3 (2010): 221. Applbaum argues that the elements to be altered by moral legitimacy as a kind of power are *nonmoral* prescriptions and social facts. For this reason, this moral power cannot create a moral duty or right. However, in the following description of legitimacy as a moral power, Applbaum's argument seems inconsistent, as he offers an example in which by A's decree (who has the moral legitimacy over B and C), C might gain a *moral privilege* not previously held to act against B's interests. It is unclear to me why C can gain a moral privilege instead of an institutional or legal one. See Arthur Isak Applbaum, "Legitimacy without the Duty to Obey," *Philosophy & Public Affairs*, Vol. 38, No. 3 (2010): 222.

claims" relative to other subjects or the holder of the power.[32] To distinguish such a moral liability from a moral duty, Applbaum specifies that the justified loss of moral claims should be understood as a loss of immunity, which is the opposite of liability.

Let me simplify the model of power-based legitimacy by linking it specifically to the case of political legitimacy. If state A has legitimate authority over its citizens, A has the normative power to change their moral status by granting or forfeiting advantages such as legal rights, permissions, immunities, and so forth, and imposing on them or exempting them from, for instance, legal duties and responsibilities. What the citizens have surrendered is a moral immunity against the loss of legal advantages, the imposition of the disadvantages, and the enforcement necessary to ensure the exercise of the power. The surrender of such an immunity constitutes the moral liability that changes the citizens' normative status.

A salient feature of the power-liability model of legitimacy, compared to the right-obligation model, is that it is capable of warding off a conceptual inconsistency. It is plausible that most people break the law from time to time, particularly petty legal rules that we intentionally ignore. For instance, many people occasionally drive slightly faster than the speed limit on a highway or join the flood of pedestrians in Manhattan to cross the streets before the crosswalk sign permits them to do so. I suppose two points could be taken for granted: first, a legitimate state can make mistakes while enacting laws that rule and guide us extensively, especially in the public sphere; second, we should guard ourselves against rule-fetishism, or the conviction that we have a moral duty to strictly comply with all the legal rules of our state. However, if we conceive of legitimate authority as a right to rule, corresponding to a moral obligation to obey, we have to deny the state's legitimacy so long as we act against some legal rules and deny we have a moral obligation to follow, at times, silly rules. Applbaum believes that if a person denies that he is under a moral obligation to not violate the most innocuous legal rule while he at the same time does not deny the state's legitimacy, he would be conceptually inconsistent. It is self-contradictory to

[32] Arthur Isak Applbaum, "Legitimacy without the Duty to Obey," *Philosophy & Public Affairs*, Vol. 38, No. 3 (2010): 222.

say that there is a legitimate state in force and at the same time deny a moral obligation to obey all of its directives if these two aspects refer to the same concept. Applbaum presents a case to illuminate why the power approach can circumvent this conceptual inconsistency.

> *Motorist and the long red light*: In view of the high rate of traffic accidents in the downtown area, a town council decides to replace every stop sign with a traffic light and a "No Turn on Red" sign. A motorist turns right at a sparsely traveled intersection when the light has just turned red, indicating a long period of waiting. She is familiar with the area, and sure about the zero risk the turn would cause. But a police officer stops her and writes her a ticket, which she accepts without resentment.[33]

The motorist violates a legal rule, which is poorly designed yet not morally wrong. Although she denies a moral obligation to stop at the red light, she recognizes the moral liability to cede her privilege to turn right and to accept the fine as a result of disobeying the traffic rule. Since legitimacy is construed as a moral power to change the normative status of citizens, the motorist can consistently claim that she is not bound by a moral obligation toward the law, while holding that the town has the moral power to impose a legal obligation on her not to turn right and a moral liability to punish her for the disobedience. Additionally, it is the correlation of legitimacy to a moral liability instead of a moral obligation, as in Raz's conception of legitimacy, that is responsible for the inconsistency. So far, it seems that with the power-liability correlation, Applbaum has offered a sound approach to the separation of legitimacy and political obligation in Hohfeldian terms. However, it seems to me that the Razian or the claim-right approach does not necessarily suffer from Applbaum's inconsistency. This is, because the Applbaum's imputation rests on two questionable equations: (1) a denial of a general moral obligation of obedience is equal to the rejection of the legitimacy of a state, and (2) a denial of a moral obligation to obey a

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[33] Arthur Isak Applbaum, "Legitimacy without the Duty to Obey," *Philosophy & Public Affairs*, Vol. 38, No. 3 (2010): 230-1.

particular law is equal to a denial of the moral obligation to obey the law *as a whole*. (1) stands for the right-obligation correlation; however, because (2) is unfounded, Applbaum's imputation loses its force. I contend that even if a person rejects the notion that she has a moral obligation not to turn right at an intersection (or, for that matter, to obey many other legal rules), she does not necessarily thereby reject a moral obligation to obey the law *as a whole*. In contemplating legitimacy and political obligation, the most directly pertinent and appropriate way is to conceive them as systems and explore whether a state and a legal system as an integrated body of institutions has the justified moral standing to guide people's behaviors, to coerce them to do something, and to punish them. Correspondingly, political obligation should be conceived as a moral obligation with regard to the law as an integrated body rather than an aggregate consisting of a great number of individual legal rules and principles. Otherwise, it would be better to speak of the moral obligation to obey *laws* or every single law instead of the problem of political obligation or the moral obligation to obey *the law*. That, however, is a substantively different problem, and equating them is committing the fallacy of composition.

To clarify the point that political obligation is a moral obligation to obey the law rather than to obey all the laws *cumulatively*, we need to distinguish between the law as a whole and the law as the set of all particular laws. Firstly, the law as a whole or an integrated legal system should have a coherent identification, which is usually prescribed by the moral property of the law as a social institution in consideration of the end or role it serves in people's collective life. For instance, the law could be conceived as the social institution that maintains social cooperation, guides people's actions, helps people to better conform to their practical reasons, or helps them discharge other moral obligations. The identification of the law as a whole need not rest upon a singular end or value, and it could perfectly well exist as a combination of various considerations in social life. However, the problem concerning whether people are morally obligated to obey a particular law concerns the moral property of that single legal rule, which could be irrelevant to the purpose of the law as a whole. It can help to illustrate this point with an example that is used as a counter-example to political obligation: it is claimed that we are not under a moral obligation to obey

those morally neutral laws such as trivial traffic laws compared with laws that pertain to morally wrong actions. That is, skeptics believe that even though we are morally obligated to obey the law to not kill, we do not commit a moral wrong if we drive marginally faster than the speed limit on a highway, and hence we do not have a moral obligation to obey the law. This is a typical example of this logical fallacy: only if the claim of political obligation were the claim that we are under moral obligations to obey *all the laws* could the denial of the moral obligation to obey one specific law be a valid counter-example. However, this is not the problem associated with political obligation. Rather, it is a consideration of what would happen if there were no general subjection to an integrated legal system, and what sort of moral wrongs we would commit, that motivates our search for a justification for such a general moral obligation. Therefore, a case in which the prescribed action should not be considered a moral requirement because of the lack of a moral property does not have the argumentative force to refute the moral obligation toward the law as a whole, which is a different moral consideration.

Secondly, political obligation in terms of obedience to all laws cannot be taken seriously, since the types of legal norms are not homogeneous. It is obvious that in any legal system there exist laws that are not directives at all, so we might say that not all laws are "obey-able." However, those laws that are not supposed to be obeyed by people are still necessary for the existence and maintenance of an integrated legal system, such as laws that draw the jurisdiction or hierarchy within a legitimate authority. This point cannot pose a threat to political obligation toward the law as a whole, because even though certain laws are not directly linked to the end that the legal system serves, they are an integrated part of the law. Therefore, we should bear this distinction in mind and not conflate the two separate problems of political obligation and moral obligations to obey laws. This will be a significant point for us in responding to Raz's criticism in Chapter 6 as well.

Perry expresses the same concern by advocating the method of what he calls "top-down justification" for securing political obligation. According to this method we would begin "with the fact that we are dealing with a *system* of directives and then ask which moral property or properties of the system, considered as a whole, might give rise to an obligation to obey each

of its directives regardless of their individual moral content."[34] In contrast, a "bottom-up justification" starts with individual directives of the legal system. If a moral obligation to obey an individual directive can be affirmed in every case, an aggregative conclusion about a moral obligation toward the legal system as a whole can be confirmed.[35] Let me use taxation as an example to illustrate why the bottom-up justification is incorrect. When liberals and libertarians dispute the legitimacy of taxation, the point of contention is whether taxation as an institution can be a form of morally justified redistribution or is instead to be rejected as a governmental violation of citizens' freedom of property. Hence, the dispute concerns a "top-down justification" of the institution of taxation as a whole and the exploration of its relation to basic values such as freedom, equality, and so forth. I believe it is extremely difficult to justify or reject taxation with a case-by-case method to see whether income tax, real estate tax, inheritance tax, and all other kinds of tax can be reconciled with various basic values, and then come to a conclusion regarding the legitimacy of taxation. Thus, if proponents of the claim-right approach have not endorsed the bottom-up justification, they can avoid conceptual inconsistency, as they do not have to admit that a moral obligation to obey the law is equivalent to a moral obligation to obey all the directives of a legal system. Even though we often reject a moral obligation to obey particular laws, such as the motorist's turning right on red, there is a gap between the disobedience of particular laws and a moral obligation toward the institution of law as a whole. The only way to bridge the gap is to regard disobeying the law as a whole in an aggregative sense of disobeying particular laws. However, for this method to be plausible, we would have to define the threshold beyond which the aggregated disobedience of particular laws turns into a rejection of the law as a whole. Moreover, even if there were such a threshold, a denial of the motorist's moral obligation to follow an individual traffic regulation could not be conceived as a denial of legitimacy and political obligation.

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[34] Stephen Perry, "Law and Obligation," *The American Journal of Jurisprudence*, Vol. 50 (2005): 270.

[35] Stephen Perry, "Law and Obligation," *The American Journal of Jurisprudence*, Vol. 50 (2005): 270.

Although Applbaum's argument against the claim-right approach turns out to be flawed, this does not mean embedding legitimacy in moral power, corresponding to a moral liability, is not a promising path to the separation thesis. One of the questions that need to be answered is how political obligation can be accommodated by the power-based legitimacy approach, given the fact that obligation is not a correlative of a Hohfeldian power. We may find some inspiration in Perry's construction of legitimacy and political obligation within the power approach.

Unlike Applbaum, Perry stresses that the fundamental power underlying legitimate authority is the moral power to impose obligations, with as a correlative the general liability of people to "have their normative status affected by their government." [36] Armored with this power-liability correlation, Perry also argues against the claim that moral obligation is necessary for the *existence* of a legitimate authority. Yet he complicates his argument by insisting that the *exercise* of a legitimate authority is fundamentally consists in the imposition of genuine duties. Hence, Perry believes that legitimate political authority entails the existence of a general obligation to obey the law, although the existence of a general obligation to obey the law by itself does not entail legitimate political authority.[37] This latter inference he calls the "reverse entailment problem," which he employs to undermine Raz's service conception of authority. However, it does not hold. It seems contradictory for Perry to argue that the existence of legitimate political authority does not entail a moral obligation to obey the law, while at the same time claiming that the exercise of legitimacy as a moral power entails a moral obligation to obey the law. I think his use of the term "entailment" actually refers to two different kinds of relation: First, as it concerns the *conceptual* analysis of legitimacy as a moral power, what it entails is a moral liability to be subjected to the duties imposed. The second

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[36] Stephen Perry, "Law and Obligation," *The American Journal of Jurisprudence*, Vol. 50 (2005): 271; Stephen Perry, "Political Authority and Political Obligation," in *Oxford Studies in Philosophy of Law: Volume 2*, edited by Leslie Green and Brian Leiter, Oxford University Press 2013, p. 3.

[37] Stephen Perry, "Political Authority and Political Obligation," in *Oxford Studies in Philosophy of Law: Volume 2*, edited by Leslie Green and Brian Leiter, Oxford University Press 2013, pp. 3-4; p. 34.

entailment then refers to a *substantive or normative* relationship, namely that for political authority to exercise its moral power to impose genuine duties on citizens, these citizens have to incur a general obligation to obey the law. We might say that the second entailment stems from a fundamental concern about the effectiveness of law.[38] Consequently, political obligation is not conceptually entailed by legitimacy, but rather is normatively required by it for the sake of a state's efficacy in imposing duties that are likely to be fulfilled. Even if, conceptually speaking, political obligation is detached from the concept of legitimacy, this does not mean that the two ideas are utterly irrelevant to each other, since such an obligation is necessary for the *practice* of legitimate authority.

At this stage, I would like to set aside the problem whether Perry is right about political obligation being a necessary condition for legitimacy but not *vice versa*; Instead, I would like to endorse his proposal to take political obligation and legitimacy as two normatively distinct projects, enabling us to

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[38] Perry has provided arguments for both the conceptual analysis and the substantive theory of authority. The former is based on what he names "the value-based conception," and the latter is based on "the task-efficacy view." The value-based conception is as follows: "Legitimate moral authority can only exist if there is something sufficiently good or valuable about one person being able intentionally to change the normative situation of another person." Stephen Perry, "Political Authority and Political Obligation," in *Oxford Studies in Philosophy of Law: Volume 2*, edited by Leslie Green and Brian Leiter, Oxford University Press 2013, p. 26. The task-efficacy view, well known from Elizabeth Anscombe and John Finnis, will be canvassed in the next chapter. Here it is pertinent to note that Perry believes that the effectiveness of the authority marks the difference of Raz's and John Finnis's conceptions of authority. While Raz believes that effectiveness is extrinsic to legitimate political authority, Finnis contends that it is fundamental to the obligation of obedience and political authority. Perry sides with Finnis on this point. For instance, he takes it that "Finnis regards effectiveness as a—indeed, the—defining feature of legitimate political authority, whereas Raz believes that it is an extrinsic factor which, as a practical and empirical matter, will almost inevitably figure in most substantive theories of political authority, but that it is not an element of the very concept of such authority." Stephen Perry, "Political Authority and Political Obligation," in *Oxford Studies in Philosophy of Law: Volume 2*, edited by Leslie Green and Brian Leiter, Oxford University Press 2013, p. 37; Stephen Perry, "Law and Obligation," *The American Journal of Jurisprudence*, Vol. 50 (2005): 288-95.

justify our target concept—political obligation—directly. Leslie Green, a skeptic of political obligation, suspects that the power-liability analysis turns out to be of secondary, merely logical importance. At the same time, he emphasizes the primacy of the substantive argument, as "whether the right to rule and the duty to obey are simply logical correlates depends on substantive questions of political theory, and not on the analysis of concepts."[39] What really matters for the two terms of the correlation is the relative priority of the state on the one side and citizens on the other: this relative priority decides whether the nature of a theory is right- or duty-based.[40]

Since the relationship of political obligation and legitimacy is of a normative rather than a logical nature, Perry contends that we should "begin our analysis of the related problems of political authority and political obligation by focusing *directly* on the existence conditions for the appropriate kind of moral power, rather than on conditions that will justify the supposedly mediating conclusion that there exists a (general) moral obligation to obey the law."[41]

I think the direct method is the most practical and fruitful for dealing with political authority and political obligation. The major reason for the direct method is the wide disagreement about whether the concept of political authority is a claim, a power, or merely justified coercion. The same is also true for the problem of political obligation: witness the controversies about the moral or non-moral nature of the obligation and the stringency of the requirement of obedience. If we are not sure about either of the two sides of the Hohfeldian correlation, the only plausible way to cope with the

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[39] Leslie Green, *The Authority of the State*, Oxford University Press 1988, pp. 235-6.

[40] Leslie Green, *The Authority of the State*, Oxford University Press 1988, pp. 236-7. Moreover, I think Applbaum would agree on this point, because in the motorist case, the recognition that the motorist ought to pay the fine would follow from "a substantive moral argument, rather than a conceptual analysis, of what minimal respect for legitimate law requires." Arthur Isak Applbaum, "Legitimacy without the Duty to Obey," *Philosophy & Public Affairs*, Vol. 38, No. 3 (2010): 231-2.

[41] Stephen Perry, "Political Authority and Political Obligation," in *Oxford Studies in Philosophy of Law: Volume 2*, edited by Leslie Green and Brian Leiter, Oxford University Press 2013, p. 4; 25.

problem is to focus directly on the concept to be justified, independent of whatever Hohfeldian correlate. We may follow Perry in taking Raz's service conception of authority as an instance to show why the analysis of political obligation should be conceived as an independent project, without, however, abandoning all connection with the problem of legitimacy.

Roughly speaking, Raz argues that the normal way to establish A's authority over B is by showing that B is "likely better to comply with reasons which apply to him if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them," instead of following the reasons applying to B directly.[42] This is the renowned "normal justification thesis", which is at the core of his service conception of authority. However, Perry believes that Raz runs into the "reverse-entailment" problem, conceiving legitimate authority as entailed by political obligation. The latter concept actually requires a substantive justification that cannot be entailed by the normal justification thesis. This point also shows that political obligation should be justified directly (as should legitimate authority), which can be illustrated in the following case.

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[42] Joseph Raz, *The Morality of Freedom*, Oxford University Press 1986, p. 53. Raz's conception of authority consists of three theses: First, the pre-emptive thesis states that "the fact that an authority requires performance of an action is a reason for its performance which is not to be added to all other relevant reasons when assessing what to do, but should exclude and take the place of some of them" [p. 46]. Second, the dependence thesis states that "all authoritative directives should be based on reasons which already independently apply to the subjects of the directives and are relevant to their action in the circumstances covered by the directive" [p. 47]. The third thesis is the normal justification thesis, the official definition of which is as follows: "the normal way to establish that a person has authority over another person involves showing that the alleged subject is likely better to comply with reasons which apply to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly" [p. 53]. The second and third theses constitute the service conception of authority, as the aim of a legitimate authority is to serve people in helping them to better conform to reasons that apply to them independently. The service conception, according to Raz, is "a normative doctrine about the conditions under which authority is legitimate and the manner in which authorities should conduct themselves" [p. 63].

> *The toxic substance transportation case*: Adam is in the business of transporting toxic substances, and since a governmental agency in fact has better expertise in ensuring the safety of others during such transportation, Adam will better conform to the background reason—the concern of safety—if he follows the directives (as legal requirements) of the agency. According to Raz's normal justification thesis, the agency has legitimate authority over Adam.[43]

There is a fundamental presupposition in this case, namely the concern of the safety of others. Without such a premise, the normal justification thesis cannot establish the authority of the agency. Thus the reason for Adam to follow the agency's directives depends on a preexisting reason—do not cause harm to others—which is a moral and categorical reason by nature. It is because of this preexisting reason that Adam incurs a moral obligation to follow the directive of the agency. Likewise, anyone who is engaged in such an activity has a moral obligation to obey the agency's directive as long as the duty not to harm others is conceived as a categorical background reason. As to an obligation to obey the law as a whole, what we would need is to find an analogous categorical background reason for us to obey the law as a whole.[44] Perry pushes the argument beyond the separation of the justifications for political obligation and legitimacy, He objects that Raz's normal justification thesis includes a reverse entailment, which renders his conception of authority unreliable. As we have noted in the toxic substance case, there is a moral obligation to obey the directive of the agency, and Raz reaches the ultimate conclusion—that the agency has legitimate authority—from the intermediate conclusion, i.e. that Adam has a moral obligation to obey the directive. In other words, Perry believes that Raz's conception of legitimate authority entails an argument for political obligation, which is the reverse

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[43] See Stephen Perry, "Political Authority and Political Obligation," in *Oxford Studies in Philosophy of Law: Volume 2*, edited by Leslie Green and Brian Leiter, Oxford University Press 2013, pp. 44-6.

[44] The identification of such a general categorical background reason is the substantive argument for political obligation, which will be the main concern of Chapter 3.

entailment.[45]

Nevertheless, in the toxics transportation case, such a moral obligation, or the normal justification thesis, is insufficient to establish a legitimate authority. Suppose we replace the governmental agency and its commands or directives with a friend named Bob, who has a PhD in chemistry, and his well-meaning advice. Bob has expert knowledge of how to prevent a toxic substance from harming anybody during its transportation, and Adam would better conform to his background concern of safety if he follows Bob's advice. Does this establish Bob's legitimate authority over Adam, or does the advice obligate Adam as a result of the normal justification thesis?[46] I think Perry is right in denying that it does. Even if Bob is in a position to offer Adam serious advice, he does not have practical authority to impose any obligations upon Adam. As a result, the method of justifying legitimacy as a corollary of political obligation is called into question. Therefore, we should discard the method of justifying political obligation as an implication of justified legitimacy and vice versa. To avoid an unsound argument, the best way to embark on either of the two enterprises of justification is a direct normative justification for each concept independent of the other.

In summary, the approach of couching legitimacy in the idea of a moral power to change the normative status of citizens by (among other things) imposing duties has offered us a promising path to support the separation thesis. We need not deny the connection between the two concepts in all forms. Rather, in the next chapter, I would like to propose that any credible justification of legitimacy must offer certain conditions that a state must meet to merit political obligation. More specifically, for a state to

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[45] Stephen Perry, "Political Authority and Political Obligation," in *Oxford Studies in Philosophy of Law: Volume 2*, edited by Leslie Green and Brian Leiter, Oxford University Press 2013, pp. 44-8.

[46] Stephen Darwall makes a similar objection to Raz's normal justification thesis, contending that this thesis fails to create preemptive reasons for action. See Stephen Darwall, "Authority and Reasons: Exclusionary and Second-Personal," *Ethics*, Vol. 120, No. 2 (2010): 267-78. Jonathan Quong also argues that it is because of pre-existing moral duties in similar cases that the normal justification thesis can give rise to a moral obligation to follow the directive of a legitimate authority. See Jonathan Quong, *Liberalism Without Perfection*, Oxford University Press 2011, pp. 115-6.

be legitimate, it has to possess certain features in order to accord with people's ultimate goals in accepting political obligation. If so, the connection would be normative rather than conceptual.

3.2 The Plural Components Approach

The power-liability approach explores the possibility of working out a Hohfeldian idea of legitimacy within the Hohfeldian typology while opposing *Claim Right*. But as noted, we might also reject the integration thesis by positing a plural Hohfeldian basis for legitimacy. This would be a hybrid conception of legitimacy combining several Hohfeldian rights, i.e. what David Copp refers to as a "cluster of Hohfeldian advantages."[47] Here I will succinctly assess the merits of this way of assailing the integration thesis. I can afford to be brief, because, as we will see, even if legitimacy could be explained by a cluster of claim, power, privilege, and immunity, the part that genuinely relates to the moral obligation to obey has to fall under a single Hohfeldian right—most likely a claim or a power. Therefore, the previous investigation of legitimacy as a claim or a power, as we shall see in the case of Copp's argument.

In Copp's analysis, the cluster of Hohfeldian advantages constituting the legitimacy of a state has five aspects, covering all four Hohfeldian rights. First, a legitimate state has the *privilege* to enact and enforce laws that apply to the residents of its territory, and there should be moral limits for laws to be enacted. In other words, it is not morally free for a state to enact any law. Second, a legitimate state would have the *power* to impose upon its residents a pro tanto duty to act in a certain way simply because acting in this way is required by an enacted law. Such a law either falls within the spectrum of the state's privilege to enact laws or is morally innocent at least. These two aspects concentrate on the way a state's legitimacy relates to its residents or domestic affairs. However, Copp believes that legitimacy should not be confined to the domestic point of view. There is an external or international aspect involving three Hohfeldian rights. The third Hohfeldian right a legitimate state would have is a *privilege* relating to border-control, so that it

[47] David Copp, "The Idea of a Legitimate State," *Philosophy & Public Affairs*, Vol. 28, No. 1 (1999): 18.

can permit or refuse nonresidents' and noncitizens' claim to have access to its territory. Fourth, a legitimate state would have a *claim* against other states' interference with its internal affairs. Fifth, a legitimate state would have *immunity* to any of these rights being violated by actions of any other state or person.[48] Without any of the above five aspects, the conception of legitimacy would be incomplete.

The plural conception does give us a comprehensive outline of what Hohfeldian rights a legitimate state should have. Nevertheless, I doubt that it genuinely provides an original perspective to discuss the relationship of citizens and a state or makes a substantial difference to the justification of legitimacy and political obligation compared with a conception based on a single Hohfeldian right. Two distinctions would help to clarify this point. Firstly, we might follow Allen Buchanan's distinction between internal political legitimacy and what he calls "recognitional legitimacy" or "international legitimacy"; hence his conception involves not only the traditional aspect of political legitimacy as it concerns the requirement of justice but also the international aspect of the conditions under which a state can be justifiably recognized by other states.[49] Copp's last three components—a privilege of border-control, a claim against interference, and immunity to the loss of right—basically address the international aspect of legitimacy. Only the first and second components deal with traditional political legitimacy, regarding the tension between individuals' freedom, autonomy, equality, etc. and a state's authority over them. We can say these two components—a privilege to enact laws and a power to impose duties—constitute political legitimacy as traditionally conceived.

This distinction between internal and external dimensions of legitimacy leads us to another distinction: the normative justification of legitimacy and the practice of legitimacy. The former might be interpreted as relating to the issue whether a state has legitimate authority over individuals to prescribe certain actions and enforce their performance. The practice of legitimacy, on

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[48] See David Copp, "The Idea of a Legitimate State," *Philosophy & Public Affairs*, Vol. 28, No. 1 (1999): 18-29.

[49] See Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*, Oxford University Press 2004, pp. 266-8.

the other hand, involves not only its justification but also the conditions for external legitimacy to assure the effectiveness of legitimacy. Thus, when it comes to the problem of political obligation in particular, mainly concerning the internal dimension of legitimacy, Copp's five elements of legitimacy can be reduced to the power to put residents under a pro tanto duty that actually functions. Such a power involves the internal relationship of a state to its citizens or residents, and it is this element that relates to the *justification* of political obligation. In other words, the question of whether or not citizens have the moral obligation to obey the law essentially boils down to the moral power to put them under a duty. Thus, the focal point for the problem of political obligation in Copp's plural conception of legitimacy falls under the element of power. This brings the argument back to the discussion of Applbaum's and Perry's power approach.[50]

To conclude the core argument of this section, given the acceptance of the Hohfeldian scheme of rights, I argue that the separation thesis can be endorsed, because we need not subscribe to *Claim Right* which is a necessary requirement for the integration of legitimacy and political obligation. The Hohfeldian scheme allows us to conceive of legitimacy in terms of other rights, such as, particularly, a moral power to impose duties. In the next section, I will argue that even if integrationists were justified in maintaining *Typology* and *Claim Right*, there would be another gap for them to fill: the *content* of each term of the correlation of legitimacy and political obligation.

4. AGAINST *CONTENT*

For the sake of the argument of this section, we presume the correctness of both Hohfeld's correlations and the definition of legitimacy as a right to rule in the sense of a claim-right. Therefore, legitimacy entails a moral obligation. For the integrationists' claim to be sound, they still have to

[50] Buchanan also couches legitimacy in the idea of political power, as he states: "[A]n entity has political legitimacy if and only if it is morally justified in wielding political power, where to wield political power is to attempt to exercise a monopoly, within a jurisdiction, in the making, application, and enforcement of laws." Allen Buchanan, "Political Legitimacy and Democracy," *Ethics,* Vol. 112, No. 4 (2002): 689-90.

deal with the remaining concern about the nature of this moral obligation. This is where *Content* asserts itself.

As defined before, *Content* states that the relationship of legitimacy and political obligation should be understood in terms of the right-obligation correlation. The content of the terms of the correlation are determined specifically as the claim right to rule and the moral obligation to obey. It is important to note that one of the two terms, namely legitimacy, gets established first. According to *Typology* and *Claim Right* legitimacy should be defined as a claim-right to rule, which correlates to an obligation. Therefore, *Content*, by specifying the exact nature of the corresponding obligation, is required to integrate legitimacy and political obligation. Unfortunately, it seems that the prevailing attitude is to take *Content* for granted. For instance, Raz states that "it is *common* to regard authority […] as correlated with an obligation to obey."[51] As far as I know, Simmons explicitly supports such an argument without articulating his reason for doing so, since he merely asserts that legitimacy or authority is "viewed"[52] or "traditionally supposed"[53] to be correlated to the moral obligation to obey. However, these expressions invite questions such as: can we take a "common" or "traditional" supposition to be on par with an *argument* needed for a justification to stand? I do not think such a supposition is capable of explaining *Content* if no further argument could be supplied. But there seems to be an obvious way to address the content issue, which Simmons appears to have in mind accepting the "traditionally supposed" correlation.[54] If legitimacy as a right to rule can be reduced to a state's moral claim to be obeyed, the content of the corresponding moral obligation can only relate to the fact of the subject's obedience. However, I believe this strategy not just oversimplifies legitimacy, but renders it empty. In view of our everyday understanding, legitimacy would have to shed light upon content such as the enactment of rules, the

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[51] Joseph Raz, *The Morality of Freedom*, Oxford University Press 1986, p. 23, emphasis added.

[52] A. John Simmons, "Philosophical Anarchism," in his *Justification and Legitimacy: Essays on Rights and Obligations,* Cambridge University Press 2001, p. 106.

[53] A. John Simmons, *Moral Principles and Political Obligations,* Princeton University Press 1979, p. 195.

[54] See note 11.

imposition of obligations, and coercion, which constitute the abstract conception of the right to rule. Thus, the reduction of legitimacy to a merely formal claim to be obeyed cannot provide us an adequate specification of this concept, and we need to probe deeper to determine the content of the obligation that is the correlative to a right to rule.

At this point, it is worth noting that David Lyons stresses the importance of content for the right-obligation correlation. Lyons contends that the conceptual relationship between right and obligation is not similar to that holding between other paired concepts such as father-son, right-left; if "A is to the left of B," it conceptually follows that "B is to the right of A." However, the correlation between right and obligation is more complex than this, since rights and duties "not only connect ordered pairs of persons; they also have contents."[55] Even if "A has a claim-right against B," whether "B has a duty to A" depends on "*what* it is that A has a right to and *what* it is that B has a duty or obligation to do,"[56] That is to say, whether there is mutual entailment depends on the content of the right and the obligation. In a simple contractual right-obligation case in which B owes A one hundred dollars, the content of the right of A and the obligation of B is relatively apparent; A has a claim against B to return the defined amount of money, and thus is the content of B's obligation. But in the case of legitimacy and political obligation, the content of the two terms is far from obvious. For now, we have assumed the content of legitimacy to be the claim-right to rule over the citizens of a state, and if the *only* candidate for the correlating obligation is supposed to be a moral obligation to obey (which would assure the validity of the integration thesis), integrationists would have to offer a sufficiently strong argument for this. Because of this strong requirement, I

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[55] David Lyons, "The Correlativity of Rights and Duties," *Noûs*, Vol. 4, No. 1 (1970): 47.

[56] David Lyons, "The Correlativity of Rights and Duties," *Noûs*, Vol. 4, No. 1 (1970): 47. Lyons's point is at least two-fold: First, whether right and obligation in particular cases correlate to each other rests upon their content; second, Lyons makes the more general and ambitious statement that rights and duties do not generally correlate, since certain actions are simply not allowed for us to undertake, regardless of whether there are people holding rights. David Lyons, "The Correlativity of Rights and Duties," *Noûs*, Vol. 4, No. 1 (1970): 53-4.

believe that the integration thesis still remains highly questionable, even if we assume the soundness of *Typology* and *Claim Right* as the premises for *Content*.

At first glance, even if a state's legitimacy is a right to rule over its citizens through legislation, adjudication, and administration, the nature of the correlative obligation of citizens remains unclear. Other options besides an obligation to obey the law as the potential correlative cannot be immediately ruled out, for example a moral obligation to support the government, a moral obligation not to interfere with the government's exercise of its authority, or perhaps a moral obligation to acquiesce to specific demands addressed to individuals. Unless integrationists are justified in dismissing all these possibilities, the obligation of obedience at the least cannot be conceived as the sole possible correlative of legitimacy.

William Edmundson proposes a challenge to the integration thesis by arguing specifically against *Content*. He implies that even if the Hohfeldian typology is correct and legitimacy is some sort of claim-right, the corresponding obligation is not simply an obligation of obedience; instead, it is a general moral obligation not to interfere with the administration of the laws of a just state.[57] His major purpose in refuting the integration thesis is to salvage the idea of legitimate authority of states from the difficulties faced by the justification of a general obligation to obey the law. Thus, if a general obligation to not interfere with the administration of a state's laws can be justified, the state has legitimate authority to rule over its citizens *without* a justified general obligation to obey the law on their part.

According to Edmundson, we should distinguish between an ideal authority and a legitimate authority. While being an ideal authority entails "*claiming to create* in one's subject a duty of obedience," being a legitimate authority does not require a state to *actually impose* such a duty of obedience on its citizens.[58] Only if a legitimate authority actually imposes such a duty

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[57] William Edmundson, *Three Anarchical Fallacies: An Essay on Political Authority*, Cambridge University Press 1998, p. 48. See also William Edmundson, "Legitimate Authority without Political Obligation," *Law and Philosophy*, Vol. 17 (1998): 43-60.

[58] William Edmundson, *Three Anarchical Fallacies: An Essay on Political Authority*, Cambridge University Press 1998, pp. 38-9.

would a duty of obedience be necessary for legitimacy. Edmundson believes that a duty of obedience is an unnecessarily over-demanding condition for legitimacy that promotes philosophical anarchism. By contrast, for a state to possess legitimate authority, a weaker corresponding duty should be sufficient. This is what he calls the "modest legitimacy thesis" which he describes as follows: "Being a legitimate authority entails that one's authoritative directives create in one's subjects an enforceable duty not to interfere with their forceful administration."[59]

Although the criteria for a legitimate authority are not as demanding as those for an ideal authority, this does not mean that legitimate authority is entirely disconnected from ideal authority. Preferably, our conception of legitimate authority has some relation to ideal authority. On this point, Edmundson contends that while being an ideal authority involves *truly* claiming to create a duty of obedience, being a legitimate authority entails merely *sincerely* claiming to create such a duty.[60] Thus, if a state on the one hand sincerely claims to create a duty of obedience, and, on the other hand, it actually creates a duty of non-interference with its administration, the state has legitimate authority to rule. Edmundson's reason for supposing that legitimacy requires merely sincerely claiming a duty of obedience lies in an analogy between epistemic authority and practical authority. He argues that if epistemic authority refers to someone who "*truly* knows how the world works," a counter-intuitive result is that Aristotle, Copernicus, Newton, or perhaps Einstein cannot be considered as authorities because their theories inevitably turn out to be false at certain points of history. The more plausible view is that if they sincerely claim their views to be true and those views were sufficiently well-founded in the scientific understanding of the time in which they held such views, they should still *legitimately* be regarded as epistemic authorities. This would fit our intuitions.[61] Legitimate political

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[59] William Edmundson, *Three Anarchical Fallacies: An Essay on Political Authority*, Cambridge University Press 1998, p. 42.

[60] William Edmundson, *Three Anarchical Fallacies: An Essay on Political Authority*, Cambridge University Press 1998, pp. 44-7.

[61] William Edmundson, *Three Anarchical Fallacies: An Essay on Political Authority*, Cambridge University Press 1998, pp. 44-7. I agree with David Lefkowitz that Edmundson is misled by the similarity of epistemic authority and practical authority.

authority, as a sort of practical authority, similarly does not necessarily truly claim to create in its subjects a duty to obey; such a claim would be sufficiently legitimate if it is sincere. With the standard of ideal political authority together with the standard of legitimate political authority and its requirement of sincerity, Edmundson has completed his theory of why legitimacy is something that a state not only claims to have but is able to actually possess.

One of Edmundson's arguments is directly pertinent to this section: that *Content* fails insofar as the correlative obligation of legitimacy is a duty not to interfere with the administration of laws (which I shall for the sake of convenience refer to as a "duty of non-interference"). For this argument to be sound, Edmundson must address what distinguishes the duty to obey the law from the duty of non-interference in order to show that the refutation of the former duty would not be applicable to the latter. To see the difference, we have to examine Edmundson's argument against the general duty of obedience, according to which the most salient reason to reject the duty to obey is that such a duty cannot be reconciled with the feature of content-independence. It seems obvious that if an action of φ-ing is prescribed by a law, the reason for a person to φ is simply because it is prescribed by the law, irrespective of the pros and cons of φ-ing. Or we can say that the law of φ-ing is a valid reason for us to do so, independently of the content of the law.[62] Thus, Edmundson argues that the duty to obey the

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Edmundson misconstrues that a legitimate authority should make true statements, but Lefkowitz believes that what pertain to political authority should be justified statements. See David Lefkowitz, "Legitimate Political Authority and the Duty of Those Subject to It: A Critique of Edmundson," *Law and Philosophy*, Vol. 23 (2004): 408.

[62] The term "content-independence" was first introduced by Herbert Hart into the philosophy of law, meaning that a command or a legal reason for certain actions is supposed to function as a reason independent of "the nature or the character of the actions to be done." However, the scope of the law as a content-independent reason for actions is applicable merely to judges and other officials rather than generally to all citizens; Hart argues that the law as a content-independent and preemptory reason should be recognized by "the Courts of an effective legal system as constituting a reason for action of a special kind." See H. L. A Hart, "Commands and Authoritative Legal Reasons," in *Essays on Bentham: Studies in Jurisprudence and Political Theory*, Oxford

law is content-independent, meaning that its "existence and weight should be determinable without reference to the character and consequences of the

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University Press 1982, p. 243, 254. Raz, Wolff, Simmons, and Green conceive of content-independence in a different and broader sense, as generally applicable to all the subjects of a legal system, describing a feature of political obligation such that people must obey the law simply *because it is the law*. For instance, Raz states that "[a]n obligation to obey the law entails a reason to do that which the law requires. But the converse does not hold. […] The obligation to obey the law implies that the reason to do that which is required by law is the very fact that *it is so required*. At the very least this should be part of the reason to obey." Joseph Raz, "The Obligation to Obey the Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, pp. 233-4, emphases added. As Wolff argues, "Obedience is not a matter of doing what someone tells you to do. It is a matter of doing what he tells you to do *because he tells you to do it*." R. P. Wolff, *In Defense of Anarchism*, New York: Harper & Row 1970, p. 9. Simmons also espouses such a claim out of the concern of content-independence: "Obedience essentially concerns the source of a rule or command, *not its content*. […] A moral duty to obey the law would be a duty to do as the law requires *because it is required by valid law* (or because of what its being valid law implies), a duty to obey the law as such, not to do as it requires just insofar as it happens to overlap with independent moral duties." A. John Simmons "The Duty to Obey and Our Natural Moral Duties," in Christopher Wellman and A. John Simmons, *Is There a Duty to Obey the Law?* Cambridge University Press 2005, p. 95, emphases added. Green offers a definition similar to Edmundson's, as "[t]he core idea is that the fact that some action is legally required must itself count in the practical reasoning of the citizens, *independently of the nature and merits of that action*." Leslie Green, *The Authority of the State*, Oxford University Press 1988, p. 256. I think the shift in scope from Hart's "judge and officials only" to other scholars' "the subject of the law generally" is problematic. Roughly speaking, Hart's core idea is that the law is a content-independent reason for judges to make judgments; this does not amount to saying that political obligation per se should be content-independent. If the expression of "we should obey the law simply because it is the law" stands for the content-independence *of political obligation* as a reason, it is not accurate inasmuch as it seems to me that "simply because it is the law" is the content of political obligation as a reason. Moreover, the enterprise of justifying political obligation concerns whether "simply because it is the law" can be a valid conclusive reason for us to action. In addition, Paul Markwick challenges content-independence in terms of its incapacity to offer a complete reason instead of a partial one. See Paul Markwick, "Law and Content-Independent Reasons," *Oxford Journal of Legal Studies*, Vol. 20, No.4 (2000): 584-6.

actions available to the actor at the time she acts."[63] However, the feature of content-independence, which the duty to obey should be capable of accommodating, would have absurd consequences. We would have reasons of equal weight to obey the law proscribing murder and the law proscribing stopping at a red light in a desert where no one is around. This is absurd because the duty not to murder should carry more weight than the duty not to jaywalk. However, if the duty to obey the law has to be content-independent, it seems that these duties should be equally forceful. Thus, content-independence puts defenders of the duty to obey in a dilemma: either they have to accord a different weight to the duty not to murder and the duty not to jaywalk (which would contradict the nature of law as an authoritative reason for action for citizens); or, they have to concede that there is no general duty to obey the law.

Nevertheless, this dilemma poses no threat to Edmundson's espousal of the duty of non-interference. If there is a red light in the desert where no one is around, deciding whether to stop at the red light concerns the notion of the duty to obey the law that Edmundson has rejected. However, if a police officer is standing at the same spot asking a person to stop, this involves the duty of non-interference, which, as Edmundson believes, is a general duty, conceptually correlated to legitimacy. The content-independence dilemma undermining the duty to obey cannot have an impact on the duty of non-interference. Although the duty to obey the laws forbidding murder and jaywalking cannot be plausibly seen as having equal weight, the respective duties "of the murderer and of the jaywalker to submit peaceably to lawful arrest are of equal weight."[64] Thus, there is a general duty not to interfere with the administration of particular laws, or a general duty not to interfere with particular "administrative prerogatives." Further, is a duty whose existence and weight can be determined without reference to the content of the laws that are administered. As long as a police officer, a judge, or another authority figure is issuing a lawful

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63 William Edmundson, *Three Anarchical Fallacies: An Essay on Political Authority*, Cambridge University Press 1998, p. 52.

64 William Edmundson, *Three Anarchical Fallacies: An Essay on Political Authority*, Cambridge University Press 1998, pp. 51-2.

administrative order, whatever its content, the subject has a duty not to interfere.[65]

My intention in discussing Edmundson's duty of non-inference as the correlative of legitimacy as a claim-right, is to emphasize the point that without flawless arguments for all three parts—the Hohfeldian typology (*Typology*), legitimacy defined as a claim (*Claim Right*) and the content of the correlative obligation(*Content*)—the integrationist thesis cannot stand. Moreover, Edmundson's theory demonstrates the possibility of embracing the separation thesis by denying *Content*—that is, the content of legitimacy as a claim-right could be something other than the traditional duty to obey. Without a stronger argument for a duty to obey the law as the exclusive possibility for the content of the correlative to legitimacy, the integration thesis cannot be justifiably endorsed, and philosophical anarchism is on thin ice.[66]

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[65] So if a police officer tells me not to kill a person and not to turn right on red, it seems that Edmundson would say that the obligations to obey both prerogatives have the same weight.

[66] I cannot expand my criticism of Edmundson's argument here, since it does not tie in with the purpose of this chapter. But except for the doubt regarding his view of the identical basic structure of theoretical and practical reason as mentioned before, I believe his argument against the duty to obey or political obligation is fundamentally misplaced, since Edmundson completely misconstrues the problem of the moral obligation to obey *the law* as a moral obligation to obey *laws*. This is clear in the way he defines legitimacy: "[a] state is legitimate only if it claims to impose on its subjects a general, at least prima facie, duty to obey its *laws* and its subjects have a general prima facie duty not to interfere with their enforcement." See William Edmundson, *Three Anarchical Fallacies: An Essay on Political Authority*, Cambridge University Press 1998, p. 48. It is a typical mistake to approach the problem of political obligation with the "bottom-up justification," but we have seen that the appropriate method for the problem is a "top-down justification." Specific cases showing that a moral obligation to obey some laws can be absurd cannot suffice to refute a general obligation to obey the law as a whole. My purpose is merely to demonstrate how strong an argument justifying the integration thesis needs to be by introducing Edmundson's argument as one of many other potential alternative options for the obligation corresponding to legitimacy.

5. CONCLUSION

As I argued at the beginning of this chapter, for the integration thesis of political legitimacy and political obligation to be justified, all three arguments—the Hohfeldian typology argument, the claim-right argument, and the content argument—constituting the thesis should be well-grounded. After closely scrutinizing each of the three arguments, we found that each faces substantial challenges, some of which are problematic for the integration thesis. For example, we might recall how a power-right can provide us a framework that elides any conceptual link between legitimacy and political obligation. Another significant difficulty for the integrationists is that they face an impractically high burden of justification in terms of the uniqueness of the two terms of the correlation, since both need to be confirmed. Such a justification would have to exclude all other possible interpretations of legitimacy and of its correlative obligation. This is unduly demanding.

Therefore, I conclude that theories of both legitimacy and of political obligation should discard the integration thesis and embrace a separation thesis, which states that the two concepts are not only conceptually distinguishable but also calling for independent justifications, even though they may be normatively related. The separation thesis has implications for the appropriate method for handling the problems of legitimacy and political obligation. As noted in Section 3, the most appropriate and fruitful way to approach these problems is to provide a normative justification for them, addressing questions such as why a state is legitimated to guide the behavior of its subjects and why it has the capacity to coerce. Moreover, should the criteria for a state's legitimacy including a democratic process? Or should it possess the capacity of fulfilling certain functions such as the pursuit of the common good, the protection of liberty and equality, and the maintenance of social cooperation? As for the problem of political obligation, the most crucial question should be why a state and the legal system have such a significant impact on our moral lives, especially in the public sphere, that we should incur a general obligation to obey the law and support the government. What conditions must a state or government meet to deserve its subjects' duty of obedience? Those normative arguments have direct force in justifying political obligation and legitimacy, and should be

conceived as the more suitable method than a conceptual analysis that proceeds by indirect routes.

One question remains to be answered. If political obligation is justified, and if we decide not to discard the Hohfeldian scheme then such an obligation still has a correlative claim-right that calls for elaboration. Moreover, if such a correlative claim were something that a state possesses, then why would not it overlap with legitimacy as a claim to rule? This view conceives political obligation as a vertical relationship that is owed by subjects to their state and government. However, political obligation could also be seen as a moral obligation obtaining horizontally among subjects. As I will show in the next chapter, it should be seen in that way. For instance, if legitimacy is a power-right to impose duties, and citizens have a political obligation to fellow citizens, then citizens possess the correlative right to claim from them a similar submission and obedience to the law. This explanation seems to be sound even in some of the most extreme cases offered to reject political obligation. For example, even if you come upon a red light in an unfamiliar remote street you want to cross, it may occur to you that you should wait for it to turn green if you see another person doing the same; otherwise, the person may blame you for disobeying the law. Or, take an intersection of a busy street in Manhattan as another example. If the flood of pedestrians does not wait for the interval between the red light for vehicles to stop and the white light for them to cross, you can be justified in joining them to cross on red, since everyone has reasonably waived his or her claim of obedience due to the poor design of the traffic lights compared with the flexibility of human beings. This relates to the art of legislation, which is another topic. The suggestion of a horizontal political obligation cannot be endorsed until I have provided a normative justification for a general obligation to obey the law and explained why the law or a "political condition" as what I will explain in the next chapter is valuable for our moral lives. The answers to these questions have important implications for those to whom we such an obligation. In the next chapter, I will argue that a state, the law, or a political condition is necessary for us to lead morally acceptable lives together and discharge our moral obligations. Since political obligation is essentially reciprocal or second-personal in nature, it can only be conceived as a moral obligation owed by individuals to other individuals.

CHAPTER 3 POLITICAL OBLIGATION AS A MORAL NECESSITY

The conclusion of Chapter 2 leaves the following issues to be addressed. First, the method argument states that the correct method for justifying political obligation is to justify political obligation *directly*. Thus, what genuinely matters for the justification is to establish such a moral obligation as a valid requirement, and provide the source for this obligation. This project requires a normative thesis rather than an analysis of the conceptual connection of political obligation to legitimacy and political authority. Second, the justification cannot be achieved on a law-to-law basis, because the "top-down justification" requires political obligation to take the form of an attitude or deontic requirement toward the law *as a whole*. Thus, the plausible sort of justification cannot simply be a judgment about the merits of particular laws, rather it should be an investigation of the role of law and political condition in general as a social institution in our moral life. Third, the most persuasive way to respond to philosophical anarchists, apart from exposing its unjustifiable reliance on the correlation of right and obligation, would be to offer a positive justification for political obligation. In this chapter, I offer a justification that satisfies these three requirements.

1. THE MORAL NECESSITY THESIS

Thomas Nagel sees it as the most important task of political thought and action "to arrange the world so that everyone can live a good life without doing wrong, injuring others, benefiting unfairly from their misfortune, and so forth."[1] I believe that this is also the essence of the problem of political obligation—everyone can *only* live a good life, whether in the private or the public sphere, without wronging others, under the framework of a just state and legal system. As a consequence, the moral obligation to obey the law is of vital importance for all aspects for our lives.

In the following sections, I will argue for a theory of political obligation the substance of which is what I call the *moral necessity thesis*. According to this thesis, the justification for our moral obligation to obey the law and

[1] Thomas Nagel, *The View from Nowhere*, Oxford University Press 1986, p. 206.

support political institutions rests not on external or independent moral principles such as the fairness principle (to be discussed in later sections); rather it is founded on the idea that if people are to live peacefully together and act in morally responsible ways toward each other, we have to rely on political institutions that make our moral obligations determinate so as to enable us to fulfill them. By "external" or "independent" moral principles, I am referring to theories that regard political obligation not as an internal requirement of leading a moral life and avoiding doing harm to other people's freedom, but rather as an obligation that is *not* incurred unless people commit certain types of actions or transactions or accept identities that trigger specific moral principles—e.g. the principle of fairness—and give rise to political obligation. So according to those external theories, failing to comply with political obligation would not necessarily produce any moral wrong if a person is not bound by this obligation, since such a moral obligation is only generated if his or her actions, identities etc. trigger external moral principles. The contrast of "external" and "internal" thus describes different views of the relationship of political obligation to people's moral lives: whether political obligation is an intrinsic or contingent requirement of people's living morally responsible lives.

The moral necessity thesis asserts that it is an intrinsic requirement. That is to say, once we can justify that a positive legal system, political institutions, or the political condition in general are necessary not only for our survival but for the maintenance of our moral life and the assurance of not wronging others, especially in the public sphere, a general moral obligation to enter the political condition and obey the law is imposed on the citizens of a given state. Or we could say that if a group of people are to live together peacefully or to fulfill all or most of their moral obligations at all, their obedience to a set of institutions, including publicly enacted rules, a legitimate government, and the legitimate enforcement of law, would be necessary for their doing so. Thus, the moral necessity thesis could be phrased as follows:

> *The moral necessity thesis*: Political obligation is justified because being subject to just political institutions is a necessary condition for living morally without wronging others or undermining other people's

freedom, when people cannot avoid interacting with others.[2]

By using the term "moral necessity" to refer to the role of political obligation in our moral life, I intend to distinguish it from the idea that a state or political obligation is *empirically* necessary for our lives:

> *Empirical necessity:* from the perspective of self-interest, a state is necessary because an individual's survival factually depends on it. As a matter of fact, a state is necessary for individual survival in the same sense as water, food, security and other necessities are.[3]

By contrast, moral necessity concentrates on the interpersonal aspect of our lives—especially the normative impact on others' lives—and what is necessary for complying with our moral obligations and avoiding morally wrong action, while empirical necessity emphasizes the individual aspect of a person's life. If empirical necessity—an obviously Hobbesian argument—were to ground political obligation, this would likely be insufficient to give the obligation a moral dimension, since people would not be *morally* bound to act and live in the way that can provide empirical

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[2] I use the expression "moral necessity" in a different sense from moral necessity in practical or moral deliberation, which refers to the question of "what I ought to do". Here in my argument, moral necessity refers to the idea that political obligation is necessary for people's acting morally. See Bernard Williams, "Practical Necessity," in his *Moral Luck*, Cambridge University Press 1982, pp. 125-7.

[3] Howard Williams makes a similar distinction between positive law as "simply necessity" and as "moral necessity," linking it to a person's double nature as belonging to the intelligible world and the phenomenal world. See Howard Williams, *Kant's Political Philosophy*, Basil Blackwell 1983, p.67. Also, I believe Waldron has this distinction in mind when contrasting Kant's political obligation with the Hobbesian political obligation when he argues that, "[f]or Kant, in contrast, the hypothesis that one person may force another to enter along with him into civil society indicates that the basis of political obligation is not individualized in this Hobbesian way… In other words, he is to be aware that his presence in the civil society is as necessary for the interest and advantage of others—others who would be entitled to compel him to enter if he did not want to enter—as for his own interest and advantage." Jeremy Waldron, "Kant's Legal Positivism," *Harvard Law Review* Vol. 109, No. 7 (1996): 1563.

necessities for survival. For Kant, in contrast, political obligation is morally necessary because no one can justifiably possess the privilege to impose an obligation on others at his or her will, for this would mean that he or she stands in a position of dominance, undermining other people's freedom and independence. It is on the premise that political obligation is a necessity for people's acting morally in the interpersonal dimension, rather than for their individual self-interests, that I argue for it as a *moral* necessity. It should be pointed out that political obligation and a state can be a moral necessity and an empirical necessity at the same time, and I doubt if anyone could reasonably deny the state's empirically necessary function in providing us with security, social infrastructure, law and order, and other basic necessities.[4] Hence, what distinguishes the Kantian view of political obligation is the normative impact that such an obligation has in the moral sphere or in

[4] That states are mainly necessary to guarantee and further people's freedom is also the basic assumption of republicans. In arguing for law as a necessity on the basis of freedom, Philip Pettit states that "[t]he first and most important reason why a republic is going to need to have its laws embedded in a network of norms is that people enjoy a higher degree of non-domination under a regime where there are norms to support republican laws." Philip Pettit, *Republicanism: A Theory of Freedom and Government*, Oxford University Press 1997, p. 246. Elsewhere, Pettit states that "[c]onstrued in the republican fashion, however, negative liberty is an inherently social property. It amounts to the freedom of the city and it is something that a person can enjoy only if she has a certain status in the society of others." Philip Pettit, *The Common Mind: An Essay on Psychology, Society, and Politics*, Oxford University Press 1993, p. 314. Louis-Philippe Hodgson contrasts Pettit's and Kant's views on the relationship between political institutions and freedom, and argues that Pettit posits an instrumental relationship of political institutions as a guarantee of freedom, while Kant takes it to be an intrinsic one. See Louis-Philippe Hodgson, "Kant on the Right to Freedom: A Defense," *Ethics*, Vol. 120, No. 4 (2010): 813-4. Moreover, Hume, for instance, also argues that "[t]he general bond or obligation, which binds us to government, is the interest and necessities of society; and this obligation is very strong. The determination of it to this or that particular prince or form of government is frequently more uncertain and dubious. Present possession has considerable authority in these cases, and greater than in private property; because of the disorders which attend all revolutions and changes of government." See David Hume, "Of the Original Contract," in his *Political Essays*, edited by Knud Haakonssen, Cambridge University Press 1994, p. 200.

second-personal relationships.

The justification for the moral necessity thesis will be accomplished in two steps: firstly, I will demonstrate why a political obligation is internal to a moral life, guaranteeing people's freedom and equality. The first part of my argument will rest substantially on Kant's political and legal theory, especially *The Doctrine of Right*—the first part of *The Metaphysics of Morals*, will be the major concern in this chapter. Secondly, I will bring out the essential but sometimes implicit role that the moral necessity thesis plays in almost all contemporary political obligation theories. The argument offered in this step does not suffice by itself to justify political obligation, because a shared common ground is not tantamount to a theory's being right or well-grounded. However, it surely shows that the moral necessity thesis is fundamental to the justification of political obligation. The second argument will be presented in Chapter 5.

A few caveats are in order at the outset: firstly, whether political obligation is a *logical* necessity for living morally or sharing a public life is not something that I intend to address, because so long as it is necessary from a practical viewpoint, political obligation can still be justified. For example, if there could be a utopia, say a Marxist communist society, where no state exists anymore and people live peacefully with each other, we might be able to say that political obligation is not logically or conceptually entailed by a conception of moral life. But so long as we are factually leading morally acceptable lives together with the necessary maintenance carried out by political institutions, a general moral obligation toward the political condition should be justified. Hence, the project that I pursue in this chapter is a normative justification, instead of a conceptual analysis of the term "political obligation".

Secondly, by "peaceful" or "living together," I do not imply an assumption of a Hobbesian state of nature as a state of war, or that people would be vicious without coercive rules and severe sanctions. We do not need to presume a moral psychology of egoism or people caring only about their self-interests to justify political obligation. I think Gregory Kavka is right in claiming that government is a necessity even in a society comprised

of morally perfect people or angels.[5] Or we could similarly arrive at this conclusion with the help of John Rawls's careful reading of Hobbes, which states that "we don't have to be *monsters* to be in deep trouble."[6] Thus, our moral life requires political obligation regardless of whether human nature is altruistic, egoistic or simply indifferent.

Finally, the particular way I have formulated the moral necessity thesis might immediately invite skepticism, especially from those who accept the "particularity requirement" coined by John Simmons. Roughly, this requirement refers to the observed fact that people of one state are only morally obligated to obey the law of their own state: Dutch citizens have a moral obligation, if they have one, only to the Dutch state. My very formulation of the moral necessity thesis might be criticized for failing to satisfy this very requirement. According to this line of criticism, the moral necessity thesis, if justified, could lead to the unacceptable result that Dutch people are morally obligated to obey the law of any random just state. Also,

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[5] Kavka makes this argument against James Madison's well-known remarks that "[i]f men were angels, no government would be necessary". Four reasons lead to Kavka's conclusion that morally perfect people might have disagreements with each other about practical matters: "The first and most obvious of these is their cognitive limitations…A second source of practical disagreement among the morally perfect is the truth of the philosophical doctrine of moral pluralism or, as it might more accurately be labeled, 'incomplete objectivism.'…A third source of practical disagreement among the morally perfect is the structure of certain of their interactions…Motivated belief—the fourth and final cause of angelic disagreement—may be viewed as a special case of our first cause: factual disagreement due to cognitive limitations. But it is a sufficiently important, and controversial, source of factual disagreement, to deserve to be separated out for comment. Motivated beliefs are beliefs that are not determined solely by evidence, but are instead influenced by motivational states of the agent." See Gregory S. Kavka, "Why Even Morally Perfect People Would Need Government," *Social Philosophy and Policy*, Vol.12, No. 1 (1995): 3-6. Charles Larmore considers a similar concern in his *Patterns of Moral Complexity*, Cambridge University Press 1987, p. 72.

[6] Rawls concludes that the significance of Hobbes's thesis derives from the fact that "the premises rest solely on normal and more or less permanent circumstances of human life as they quite plausibly might be in a State of Nature." John Rawls, *Lectures on the History of Political Philosophy*, edited by Samuel Freeman, Harvard University Press 2007, p. 51.

the fact that people happen to live in a certain territory might seem to be too weak an explanation for the moral bonds between citizens to their state or fellow citizens. The moral necessity thesis can be particularized only if "*the* set of political institutions" can be justified as a moral necessity, instead of "*a* set of political institutions". The particularity requirement seems to be the toughest issue for any political obligation theory to address, but I will argue, paradoxically perhaps, that once we can prove that political institutions are morally necessary, the political obligation justified will have been particularized. At this point I will just briefly mention how the moral necessity thesis can deal with this requirement: first, I think the particularity requirement does not pertain to the *justification* of political obligation, and at most it can be a requirement on the practical *feasibility* of a theory, because its central concern is the application or practice of political obligation as conceived in real politics instead of its normative justification. Furthermore, the moral necessity thesis contains a proviso confining the political obligation justified to a group of people that "cannot avoid interacting with each other," and this proximity proviso helps us to explain why people owe an obligation to particular states.[7] These two arguments definitely need to be specified and elaborated, which I will do in the next chapter.

Basing political obligation on the moral necessity of political institutions is definitely not a brand new project in political philosophy. Surprisingly, however, it has not been a central element in the contemporary debate about political obligation.[8] But recently, an increasing number of scholars appeal to this kind of thesis to ground, entirely or partially, their theories of political obligation. Such an appeal can be found in Samaritan theories, democratic authority theories, or even consent theories, but most notably in Kantians' recent interpretations of Kant's political and legal philosophy.

We also find it in an influential early article by Elizabeth Anscombe. In

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[7] For an exemple of this proviso, see Jeremy Waldron, "Special Ties and Natural Duties," *Philosophy & Public Affairs*, Vol. 22, No. 1 (1993): 13.

[8] Tony Honoré grounds political obligation in necessity, which however does not exactly correspond to the necessity that I will illustrate. See Tony Honoré, "Must We Obey? Necessity as A Ground of Obligation," *Virginia Law Review*, Vol. 67, No. 1(1981): 59; For a criticism on Honoré's necessity, see David Lyons, "Need, Necessity, and Political Obligation," *Virginia Law Review*, Vol. 67, No. 1 (1981): 63-77.

her explanation of the source of the authority of the state, Anscombe argues that it "arises from the necessity of a task whose performance requires a certain sort and extent of obedience on the part of those for whom the task is supposed to be done."[9] According to Anscombe, the justification of the institutions of, for example, law, trial and punishment only stems from an institutions' necessity for the task of protecting people, since she believes that civil society, the bearer of rights of coercion, cannot exist among people without government. Moreover, obedience is the logically primary correlative of authority, so the obligation of obedience as the logical correlative of political authority is correspondingly justified on the basis of this necessity.[10] Nevertheless, Anscombe's version of necessity is not echoed extensively in justifications of political obligation in particular, and I think the main reason for this should be sought in the denial of the correlation between authority as a right to coercion and the obligation to obey as we have seen in Chapter 2.[11] In the version of the moral necessity thesis to be defended here, the justification concentrates directly on the source of moral obligation toward a political condition of our living together, instead of an indirect justification through the logical correlation of rights and obligations as in Anscombe's argument.

2. RIGHT AS ESSENTIALLY RELATIONAL

I would like to start with a very simple scenario. Suppose that a bunch of people living together in a certain area cannot avoid interactions with each other, and every individual member of this bunch needs a permanent shelter and a small piece of soil to grow edible plants for food. A crucial problem

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[9] G. E. M. Anscombe, "On the Source of the Authority of the State," in *Authority,* edited by Joseph Raz, Basil Blackwell 1990, p. 147.

[10] See G. E. M. Anscombe, "On the Source of the Authority of the State," in *Authority,* edited by Joseph Raz, Basil Blackwell 1990, pp. 162-3; 148.

[11] See M. B. E. Smith, "Is There a Prima Facie Obligation to Obey the Law?", *Yale Law Journal*, Vol. 82 (1973): 950–76; Rolf Sartorius, "Political Authority and Political Obligation", *Virginia Law Review*, Vol. 67, No. 1 (1981): 3-17; William Edmundson, "Legitimate Authority without Political Obligation", *Law and Philosophy* Vol. 17 (1998): 43-60; William Edmundson*, Three Anarchical Fallacies: An Essay on Political Authority*, Cambridge University Press 1998, Ch. 2 and 3.

arises right away—how are they to ascertain who has a morally legitimate claim of which piece of land as a necessity for survival? Without a procedure for determining the property of each person, conflicts would naturally arise and consequently, the peaceful coexistence that everyone yearns for would be at risk. If a person Adam has fenced off a piece of land of reasonable size and says to others "this land is mine from now on," we have to admit that he is not making any unacceptable demands. But still, we do not have a criterion to decide if Adam's claim should be supported without considering other people's situations, especially when there are competing claims of the same plot of land. What happens next?

I think five different scenarios might unfold. The first two scenarios assume that other people object to Adam's claim of private occupancy: (1) Adam could be deprived of his private right to this land and could not justifiably regard his house as a permanent shelter or rely on others to enforce his right to this land; or (2) if Adam is physically strong enough to emerge victorious from conflict with the others, all others would feel indignant and regard his behavior as unacceptable because they will have lost an equal chance to choose, use, or own this piece of land freely. Two other scenarios assume that other people do not object to Adam's claim: (3) they might still feel indignant because Adam's claim has imposed on all others the extra restraint not to step on that land again without Adam's permission; or (4) they might just not know what is a reasonable share of the land, how to distribute each share, or through what process they are to reach a consensus of those affairs. And finally, (5) all others might just not have a clue whether they should accept or deny Adam's claim, or similarly claim some entitlements on necessities for their own lives. They believe that it is inappropriate to impose burdens on others at will, or to be imposed upon at others' will; on the other hand, whether Adam can permanently possess his land or not remains uncertain, since no one is capable of ruling out the possibility that others are going to take the land from Adam either immediately or any moment after his announcement. Here the five scenarios presume a Kantian capitalist premise, namely that property is necessary for people to further their life plans. In view of the Kantian capitalist premise, it is possible, in addition to these five scenarios, to imagine a communitarian scenario in which people have communal shared understandings about

owning or utilizing the land together. Nevertheless, defects such as indeterminacy, or lack of enforceability as will be presented later, would still make political institutions necessary in order for people to act morally. So I will keep focusing on the five scenarios.[12]

I think each of these five scenarios calls for a sort of mechanism to assist this group of people in living together and finding their way out of this state-of-nature dilemma:

> No one is bound to respect others' claims of property unless it is assured that his or her claimed property will be respected.

These imagined scenarios bring out at least the following issues that need to be dealt with if such a mechanism is to be established. How are we to ascertain and define everyone's claim to a certain sort of right? Who is to enforce everyone's rights and protect them against violations (both *mala per se* and *mala prohibita*) of the defined right? Most crucially, how are we to guarantee that those people can live together as equal and free persons without being dominated, or the possibility of being dominated?[13] Following Kant and Kantians, the answers to all these questions rest upon the idea of the political condition as a moral necessity and people being morally obligated to enter the political condition, namely a state. Thus these scenarios help to illustrate the general idea of the political condition being a moral necessity, which is reflected in the defects in the state of nature according to Kant or the circumstances of justice in Rawls's terms.[14]

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[12] I am indebted to Stephen Darwall on this point.

[13] Anna Stilz identifies two reasons leading us to believe that establishing background conditions of equal freedom requires states through her analysis of Kant: "first, a state is required to *define* certain sorts of acquired rights—rights that we do not possess solely as a matter of natural interpersonal morality, and paradigmatically rights to property; and second, a state is required to *enforce* all our rights—both rights to bodily inviolability and rights to property—in a way that does not subject some persons to domination by others." See Anna Stilz, *Liberal Loyalty: Freedom, Obligation, and the State*, Princeton University Press 2009, p. 35.

[14] According to Rawls, the circumstances of justice refer to the normal conditions under which human cooperation is both possible and necessary – in other words, the

I will follow the Kantians in seeking the foundations for political obligation in Kant's system of equal freedom. At the highest level, Kant divides rights, or moral capacities to put others under obligations, into *innate* and *acquired* rights. An innate right belongs to everyone by nature, not needing any further act to establish it, whereas an acquired right does require such an act (6:237).[15] Furthermore, what should be noted is the *uniqueness* of the innate right, for Kant explicitly claims that there is only one innate right:

> *Freedom* (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every human being by virtue of his humanity. (6:237)

Therefore, "the innate right of humanity"[16], the "freedom as independence"[17], or in Kant's own terms, the right to be one's own master (*sui iuris*), is the one and only source from which any further rights derive.[18]

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conditions under which it is possible and necessary for representatives to choose a set of principles of justice in the original position. And the circumstances of justice include two dimensions: first, the objective circumstances with particular emphasis on the condition of moderate scarcity of resources; second, the subjective circumstances pertaining to the people working together: for instance, they are not interested in other people's interests or have complete knowledge in making judgments. See John Rawls, *A Theory of Justice*, Harvard University Press 1971, pp. 126-8.

[15] Immanuel Kant, *Metaphysical Principles of the Doctrine of Right*, in *Practical Philosophy,* translated and edited by Mary Gregor, Cambridge University Press 1996. References are made in accordance to volume and pages numbers from the Preussische Akademie edition of Kant's collected works.

[16] Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, Harvard University Press 2009, p. 30.

[17] See Anna Stilz, *Liberal Loyalty: Freedom, Obligation, and the State*, Princeton University Press 2009, p. 37.

[18] It seems that for Hart, there also exists an ultimate source for all moral rights, as he claims that "if there are any moral rights at all, it follows that there is at least one natural right, the equal right of all men to be free." [p. 175] And whatever moral rights we claim, Hart believes that such a claim should be considered as "in fact indirectly invoking as our justification the principle that all men have an equal right to be free." See H. L. A.

Right, ultimately conceived as everyone's independence from others' wills, takes on a deeper relational aspect, since one's legitimate rights should coexist with other people's rights. Everyone's innate right, then, should be conceived as embedded in a system of equal freedom, as Kant formulates it in the *universal principle of right*: "Any action is right if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law" (6:231). So according to this principle, whoever hinders any action or condition of mine that could coexist with everyone's freedom in accordance with a universal law is deemed to act wrongly. Thus the crucial idea that both gives rise to rights and defines the criterion for wrong actions is independence or self-mastery.

Independence means not to be dominated by others' choices and to be capable of making choices in accordance with the universal principle of right. A person is free if no-one else's choices could interfere with whatever actions he or she chooses to perform, as long as those actions are consistent with the freedom of others. Therefore, the concepts of right, freedom, and independence have an irreducible relational aspect, concerning in particular the dominating or non-dominating relations with other peoples' choices and will. A slave can never be free or independent as he is subject to whatever choice his master makes for him, even if the master gives him all the resources to lead a free life and treats him well.[19] To briefly summarize, a

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Hart, "Are There Any Natural Rights?" *The Philosophical Review*, Vol. 64, No. 2 (1955): 190-1.

[19] The case of the merciful master and slave is also the reason that Pettit endorses a third conception of freedom (the first two are Isaiah Berlin's positive and negative liberty), namely freedom as non-domination. What matters in Pettit's conception of freedom is not the *actual* interference with liberty, but the *capacity* to interfere arbitrarily Such a capacity to interfere in another person's affairs constitutes the relationship of domination. He defines this relationship as follows: "Domination, as I understand it here, is exemplified by the relationship of master to slave or master to servant. Such a relationship means, at the limit, that the dominating party can interfere on an arbitrary basis with the choices of the dominated: can interfere, in particular, on the basis of an interest or an opinion that need not be shared by the person affected." See Philip Pettit, *Republicanism: A Theory of Freedom and Government*, Oxford University Press

system of equal freedom is one in which everyone is independent in making choices and setting up his or her own purposes, and no one is subject to a dominating or dependent relation with others in which he or she is subject to the ends or purposes of others.

In order for people to further their ends chosen for themselves, it is indispensable for them to be entitled to use the external objects in the physical world. The rights to those objects are not natural rights; on the contrary, actions are required to establish these rights. Kant believes that there can be only three kinds of external object of choice: "(1) a (corporeal) *thing* external to me; (2) another's *choice* to perform a specific deed (*praestatio*); (3) another's *status* in relation to me" (6:248). In more familiar terminology, the three objects correspond to the right of property or ownership, rights generated by contracts or consent, and rights generated by the establishment of a relationship or the assumption of a certain role. As I have mentioned regarding the crucial relational aspect of rights, others' wrongdoing might interfere with my exercise of these three rights. Since external freedom is a matter of the capacity to set and pursue one's ends, Ripstein argues that three sorts of wrongdoing exhaust all possibilities of interfering with others' external freedom—two relating to the pursuit of ends and one to the setting of ends. We can interfere with another person's ability to *pursue* ends firstly by wrongfully depriving her of a means at her disposal; secondly, by failing

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1997, pp. 22-3. But what if I cannot achieve a successful career as an opera singer or scientist, a career I freely choose, because of a lack of talent? Can I blame anyone for hindering my freedom? This is where the distinction between *choice* and mere *wish* makes a difference: according to Arthur Ripstein, Kant follows Aristotle in distinguishing the two concepts on the grounds that "to choose something, a person must take himself to have *means* available to achieve it." Taking oneself as having the means to achieve his or her purpose is, then, a conceptual premise for a choice, and thus conceptually prior to independence. No one does me wrong or undermines my independence if I cannot obtain the basic means to be a good opera singer in the first place. See Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, Harvard University Press 2009, p. 14, 34; Kant, 6:213; Aristotle argues that we can wish for impossibilities, e.g. immortality, but there is no decision (choice) for impossible things, since "generally decision [choice] appears to be about things that depend on us", or things that are within our power. See Aristotle, *Nicomachean Ethics*, translated by Christopher Rowe, Oxford University Press 2002, 1111b 20-30.

to provide her with a means that you have given her a right to by contract or consent; and thirdly, as to interference with the *setting* of ends, we can only do this is by making someone pursue an end that she has not set for herself.[20]

Armed with the Kantian system of equal rights, especially the emphasis on the relational aspect of acquired rights, independence, or external freedom, we can now locate the reason for the predicament confronting Adam and the group of people that he cannot avoid interacting and living together with, and provide a solution to it. They can neither determine what is yours or mine, as the appropriation of anything potentially interferes with others pursuing an end, nor can they be assured of the exercise of their rights to set and pursue their own ends. The solution to this problem will have to demonstrate why a state or a system of positive law is internal to equal freedom and thus morally necessary for a group of people to live together.

3. BACK TO THE SCENARIOS

Although Adam claims that the land he fenced in and the shelter he built on it belongs exclusively to him or simply is *his*, he might have wronged others by depriving them of the freedom to use or own this very land. And this is exactly why Kant eloquently states:

When I declare (by word or deed), I will that something external is to be

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[20] Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, Harvard University Press 2009, p. 77. In an earlier paper, Ripstein concludes that there are three ways exhausting all the possibilities to interfere with others' external freedom: "taking advantage, interfering, and failing to complete a transfer," or more specifically, "(1) interfering with your capacity to pursue your ends, for example by injuring your person or property; (2) failing to aid you in pursuit of some end when I have contracted to do so, for example by failing to cut your lawn when I promised to; (3) forcing you to adopt an end that is mine but not yours, either by doing so literally, as when I use you or your property in pursuit of my purposes, or indirectly, in those cases in which your ability to consent to that use is vitiated by youth, impairment, or status." See Arthur Ripstein, "Authority and Coercion," *Philosophy & Public Affairs*, Vol. 32, No. 1(2004): 19, 21.

> mine, I thereby declare that everyone else is under obligation to refrain from using that object of my choice, an obligation no one would have were it not for this act of mine to establish a right (6:255).

Hence, the problem with Adam's claim of a property right is that it would put everyone else under an obligation not to impair this right. This would be wrong unless his claim is consistent with others' freedom and independence.

In the five imagined scenarios, the lack of public rules might cause two different situations given certain assumptions about human nature: first, it might occasion wars or violent conflicts about resources for survival among those living together, and the fact that resources are moderately scarce in the circumstances of justice may further amplify the chance of conflicts. The possibility of war or violent conflict is regarded as Kant's "reminiscence of Thomas Hobbes,"[21] who describes the state of nature as the war of all against all with the only possible solution that people surrender their pre-political rights to a sovereign.[22] Kant also presumes that people have a "tendency to attack others" in the absence of public rules. However, he departs from the Hobbesian state of nature in that he does not make any strong assumptions about human nature or motives. As I mentioned earlier, it is possible for Kant that angels might fight without those public rules, or as Waldron remarks, even if people were angels, they might be opinionated angels always prepared to fight over conflicting views about justice.[23] I believe that the Kantian view of the state lends credibility to our argument for the moral necessity thesis for political obligation, as he makes it clear that a system of publicly enacted laws will be morally necessary for people to live together regardless of what real human nature is. Kant makes this explicit:

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[21] Jeremy Waldron, "Kant's Legal Positivism," *Harvard Law Review,* Vol. 109, No. 7 (1996): 1545.

[22] See Thomas Hobbes, *Leviathan*, edited by Richard Tuck, Cambridge University Press 1991, pp. 86-90.

[23] Moreover, Waldron also offers an interpretation of why people have moral disagreements with each other, and why the disagreements tend to lead to violence. See Jeremy Waldron, "Kant's Legal Positivism," *Harvard Law Review*, Vol. 109, No. 7 (1996): 1547-56.

> It is not experience from which we learn of men's maxim of violence and of their malevolent tendency to attack one another before external legislation endowed with power appears, thus it is not some deed that makes coercion through public law necessary. On the contrary, however well disposed and law-abiding men might be, it still lies a priori in the rational idea of such a condition (one that is not rightful) that before a public lawful condition is established, individual men, peoples, and states can never be secure against violence from one another, since each has its own right to do *what seems right and good* to it and not to be dependent upon another's opinion about this (6:312).

Since each has his or her own right to do what he or she believes to be right and good independently of another's views, scenarios (4) and (5) have to be taken into consideration to see how people are to live together and to live morally if they not purely egoistic. In those scenarios, people do not object to Adam's claim to the property, and this makes the second situation possible: that even if people are not necessarily self-interested and believe that all other people should be regarded as equals in terms of the distribution of life's necessities, still they need public rules to instruct them in how to determine what belongs to whom. Since these problems inevitably arise in the state of nature, Kant views it as a state where no rights can exist or be confirmed.[24] To continue to live in the state of nature would be morally incoherent or wrong if people are to take any actions to further their own plans by claiming rights or by appropriating external resources at all. Therefore, living in the state of nature would be self-contradictory as far as moral lives or acquired rights are concerned. Some sort of a mechanism is necessary to sustain moral life and assist people in complying with their moral obligations respecting others' freedom and rights.

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[24] Barbara Herman regards the Kantian state of nature as "a place in which we cannot exist as rational beings. Its role is as an analytic device that explains the necessity of the state and the legitimacy of juridical coercion." Barbara Herman, "Leaving Deontology Behind," in her *The Practice of Moral Judgment*, Harvard University Press 1993, note 39 p. 235.

In sum, if people are morally obligated to obey the law of a state, it is because such an obligation is necessary to remove all the defects and wrongs in the state of nature as identified in the five scenarios. These defects would render a group of people incapable of avoiding wronging others in realizing their own life plans, and if the only way out of this morally unacceptable situation is through subjecting themselves to the same polity, then they are under a moral obligation to do so. Three categories of defects can be derived from the state of nature.

First, there is the defect of *unilateral choice* or the impossibility for acquired rights to exist in the state of nature, while rights are morally necessary extensions of freedom. Second, the defect of *enforceability* or *assurance* refers to the problem that since no unilateral will can put others under an obligation to respect one's claims, a person's rights lack enforceability, because it cannot be assured in the state of nature that everyone else will reciprocally respect his or her claims to properties and other rights. Third, the defect of *indeterminacy* arises when a person exercises his or her rights but finds that this exercise conflicts with another person's rights (or exercise of rights), while disputes cannot be settled in the state of nature because no unilateral will can be the final adjudicatory authority.[25] With the diagnosis of those defects in the state of nature, the task of the following section will be to come up with a solution to these three defects that correlates to the three branches of a state, namely, legislative, executive

[25] Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, Harvard University Press 2009, p. 146. Scholars diverge on the priority of these three defects in the state of nature. I agree with Ripstein that the problem of unilateral will is the most central defect because the other two are derived from this defect. For an overview of this disagreement, see Kyla Ebels-Duggan, "Kant's Political Philosophy," *Philosophy Compass,* 7/12 (2012): 901-2. Williams, Leslie Mulholland and Paul Guyer, for instance, stress the defect of indeterminacy, whereas Robert Pippin emphasizes the problem of assurance as the central concern. See Howard Williams, *Kant's Political Philosophy*, Basil Blackwell 1983, p. 67; Leslie Mulholland, *Kant's System of Rights*, Columbia University Press 1990, p. 283-5; Paul Guyer, "Kant's Deductions of the Principles of Right," in *Kant's Metaphysics of Morals: Interpretive Essays*, edited by Mark Timmons, Oxford University Press 2002, pp. 23–64; Robert Pippin, "Mine and Thine? The Kantian State," in *The Cambridge Companion to Kant and Modern Philosophy*, edited by Paul Guyer, Cambridge University Press 2006, p. 437.

and judicial. This ultimate solution rests upon what Kant calls "omnilateral will".[26]

4. OMNILATERAL WILL AND THE OBLIGATION TO A STATE

The problem with Adam's owning external things arises when his ownership is treated as putting others under an obligation merely by his unilateral will. Such a problem leads to an impasse in which no one has the right to claim "what is mine," and on one is obligated to comply with others' claim of "what is thine". Kant believes that "I am therefore not under obligation to leave external objects belonging to others untouched unless everyone else provides me assurance that he will behave in accordance with the same principle with regard to what is mine" (6:255). According to this quotation, the only way out of the impasse is to obtain assurance of the mutual dependence that is necessary for any person's owning something, without imposing any burdens on others at will. The psychology of mutual dependence explains why rights should not be perceived as a relationship between a person and the external object to be owned in a Lockean sense, but rather represents the entitlement to "limit the conduct of others in relation to particular things," and thus concerns the relationship between the exercise of your independence and other's equal independence.[27] Based on this idea, Kant stresses that no acquired rights can exist without the relation to others' freedom, while he argues that "*a right to a thing* is a right to the

[26] Given that states are moral necessities for people to live with others and avoid undermining other people's equal freedom through these three defects, the moral necessity thesis for political obligation is not relativized to a voluntarist requirement, according to which political obligation can only be incurred by people's voluntary actions such as consenting, promising, accepting benefits from the states, and so forth. Staying in a state of nature per se is morally wrong or morally incoherent; people cannot act morally and at the same time refuse to be subject to a state, so political institutions are morally necessary regardless of whether people have expressed their acceptance.

[27] Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, Harvard University Press 2009, p. 93. For a recent defense of the Kantian conception of property rights against the Lockean conception, see Louis-Philippe Hodgson, "Kant on Property Rights and the State," *Kantian Review*, Vol. 15–1(2010): 66-8. See also Jeremy Waldron, *The Right to Private Property*, Clarendon Press 1988, pp.173-6.

private use of a thing of which I am in (original or instituted) possession in common with all others…it is clear that someone who was all alone on the earth could really neither have nor acquire any external thing as his own, since there is no relation whatever of obligation between him, as a person, and any other external object, as a thing" (6:261). Seen from this viewpoint—no rights can be claimed through a unilateral will—the solution to the defects and the moral incoherence of the state of nature entails the necessity of omnilateral will and publicly enacted laws. Only with the presence of institutions representing the omnilateral will, a state can be conceived of as a rightful condition, otherwise, external things can never be yours, or yours but only "provisionally".[28]

To determine and ensure the rights of every person and the consistency of the boundaries of the exercise of their rights with the equal freedom of all others, rights need to be authorized by an omnilateral will. This requirement is the essence of a rightful condition.[29] A public authority and especially a systematic body of positive laws are capable of making a moral difference under these circumstances, by maintaining a structure that authorizes rights and imposes relative obligations, and a capacity to enforce the exercise of these rights and fulfilment of obligations.[30] In this sense,

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[28] See 6:256.

[29] Addressing the contrast between the Hobbesian argument and the Kantian argument on assurance, Ripstein also stresses the former [being? 'The Hobbesian argument'?] as morally neutral, while the latter originates from a moral concern; this distinction corresponds to that between moral and empirical necessity. Ripstein argues that "[t]he Hobbesian argument focuses on a strategic problem: nobody wants to be played for a sucker; absent assurance, nobody will ever perform, and contracts will be factually impossible. The Kantian argument focuses on a moral one: nobody can rightfully be compelled to serve the purposes of another unilaterally." Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, Harvard University Press 2009, p. 164.

[30] According to Waldron, the moral difference the state can make depends on "its being more or less exactly the sort of organization that the sociologists and positive lawyers have described. It depends on the existence of a systematic body of enacted law, it depends on the actuality of an institution monopolizing the use of force in a territory, and it depends on the latter (coercive) resource being put at the disposal of the former (legalistic) enterprise." also Jeremy Waldron, "Kant's Theory of the State,"

Kant remarks that "right and authorization to use coercion therefore mean one and the same thing" (6:232).[31] Therefore, in our scenarios, Adam and the individuals living or interacting with him can be assured that their rights are in accordance with public rules and other institutions obtaining among them, and these rules and institutions can only be maintained if all or almost all concerned subject themselves to them. Any obligations generated by public rules should be regarded as part of such a system of mutual respect among all people, or as a system of reciprocal constraints, as according to such a system no one owes others an obligation until everyone else does.

This has established the initial purpose for a state to exist and also the limits of the authority that is to equally limit everyone's action to harmonize their external freedom according to such an omnilateral will or universal law.[32] In other words, if people are to have rights at all or to avoid moral wrongness while privately interacting with others and pursuing their own purposes, the only plausible choice for them is to be subject to the same system of equal rights and accept the same but reciprocally binding limits.[33] I think it is now clear why Kant makes a claim about external rights that

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in *Toward Perpetual Peace and Other Writings on Politics, Peace, and History*, edited by Pauline Kleingeld, Yale University Press 2006, p. 183.

[31] Hence, Anna Stilz argues that an institutional nature is intrinsic to justice. Anna Stilz, *Liberal Loyalty: Freedom, Obligation, and the State*, Princeton University Press 2009, p. 86-7.

[32] See Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, Harvard University Press 2009, p. 163; Jeremy Waldron, "Kant's Legal Positivism," *Harvard Law Review*, Vol. 109, No. 7 (1996): 1557.

[33] Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, Harvard University Press 2009, pp. 10-11 and 26. Stephen Darwall also emphasizes such a reciprocal aspect as fundamental to his conception of morality, namely morality as equal accountability, as he states: "According to this conception, moral norms regulate a community of equal, mutually accountable, free and rational agents as such, and moral obligations are the demands such agents have standing to address to one another and with which they are mutually accountable for complying. In Kantian terms, norms of moral obligation are 'laws' for a 'kingdom of ends,' which structure and define the equal dignity of persons as beings who may not be treated in some ways and must be in others and who have equal standing to demand this second-personally of one another." Stephen Darwall, *The Second-Person Standpoint: Morality, Respect, and Accountability*, Harvard University Press 2006, p. 101.

appears to be quite strong, but is in fact perfectly consistent with both his system of equal freedom, namely: "it is possible to have something external as one's own only in a rightful condition, under an authority giving laws publicly, that is, in a civil condition" (6:255), and his understanding of autonomy for which the ownership of external objects is necessary.

Likewise, enforceability also requires such an omnilateral will. A unilateral will is not a morally acceptable basis for coercing anyone, because as noted before, such a will would violate the universal principle of right by infringing upon others' independence and freedom. Thus, if people need coercive laws at all, given the possibility of violations of determined rights and freedom, it is only possible to put everyone under obligation through "a collective general (common) and powerful will, that can provide everyone this assurance," and being under a general external (i.e., public) law-giving instance accompanied by power is the civil condition which makes it possible for something external to be mine or yours (6:256). The necessity of the omnilateral will and the civil condition also has the necessity of a civil constitution as a corollary:

> If it must be possible, in terms of rights, to have an external object as one's own, the subject must also be permitted to constrain everyone else with whom he comes into conflict about whether an external object is his or another's to enter along with him into a civil constitution (6:256).

We do not need to go as far as arguing that a state is logically or conceptually necessary for omnilateral authorization in order to establish it as a moral necessity. I think as long as there is no better substitute for a state or a set of positive laws available to realize the purpose of the rightful condition, people are morally obligated to the omnilateral mechanisms of the state and the law.

Political obligation understood in the Kantian sense is an obligation toward the civil condition, that is to say people are morally obligated to leave the state of nature and enter the condition where a state and public law exist to make everyone's freedom and rights determinate, assured, and enforceable. People's moral obligation toward the condition and its constitutive law and

government is a result of the relations of reciprocity between equal and free persons.[34] Hence, we could say that the obligation toward the civil condition and thus toward political institutions is conclusive or unconditional, even if people are in states where no political institutions exist. And that, again, is to say political obligation should be taken for granted or seen as a requisite of being moral at all; rather what needs to be determined is whether the state and the body of public laws correspond to the rationale of the omnilateral will or the reciprocal system of limits.

To put it very roughly, there is always a moral obligation of obedience awaiting a set of political institutions deserving people's obedience. Or, to quote Ripstein, "political authority, whether by a legislature, executive, or judiciary, is only legitimate provided that it can be understood as an instance of an omnilateral authorization."[35] The moral basis of political obligation, then, is not tied to any restraints from further specific moral principles, such

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[34] According to Korsgaard, the relations of reciprocity essentially call for mutual responsibility for two reasons: "In order to make the ends and reasons of another your own, you must regard her as a source of value, someone whose choices confer worth upon their objects, and who has the tight to decide on her own actions. In order to entrust your own ends and reasons to another's care, you must suppose that she regards you that way, and is prepared to act accordingly…In everyday personal interaction, we cannot get on without the concept of responsibility." Christine M. Korsgaard, "Creating the Kingdom of Ends: Reciprocity and Responsibility in Personal Relations," in her *Creating the Kingdom of Ends*, Cambridge University Press 1996, pp. 196-7.

[35] Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, Harvard University Press 2009, p. 214. The morality of the Kantian political obligation imposes certain restraints one a state if it is to be legitimate or deserve people's a priori obedience, since the ultimate end of a state is to guarantee people's freedom and equality and settle disputes about rights. Kant makes it rather clear what principles a state or a rightful condition should be based on, as he states that "the civil condition, regarded merely as a rightful condition, is based a priori on the following principles:

1. The *freedom* of every member of the society as a human being.
2. His *equality* with every other as a *subject*.
3. The *independence* of every member of a commonwealth as a *citizen*."

See Kant, "On the Common Saying: That May Be Correct in Theory but Is of No Use in Practice," in *Practical Philosophy*, translated by Mary Gregor, Cambridge University Press 1996, 8:290.

as the obligation to deliver on your promises to the state or your fellow citizens, but depends on a state's being a moral necessity for living morally or acting morally when people cannot avoid interacting with each other. So in Kant's own words, political obligation is a moral obligation to leave the state of nature and enter the civil condition or the rightful condition:

> So, unless it wants to renounce any concepts of right, the first thing it has to resolve upon is the principle that it *must leave the state of nature*, in which each follows its own judgment, unite itself with all others (with which it cannot avoid interacting), subject itself to a public lawful external coercion, and so enter into a condition in which what is to be recognized as belonging to it is determined *by law* and is allotted to it by adequate *power* (not its own but an external power); that is, it ought above all else to enter a civil condition (6: 312).[36]

The moral necessity thesis has been justified by the claim that establishing and entering into a state is internal to the requirements of morality. As a consequence, it is justified to coerce or forcefully compel people to join even if they are opposed to the enactment of a civil constitution.[37] Thus a state instantiates the Kantian division of rights: private right cannot be granted

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[36] I use "civil condition" and "rightful condition" interchangeably. While Mary Gregor translates "der rechtliche Zustand" as "a rightful condition," B. Sharon Byrd and Joachim Hruschka directly translate it as "the juridical state". According to the latter translation, it is even clearer that while Kant argues we are under a moral obligation to the "rechtliche Zustand," it basically coincides with the contemporary idea of political obligation as a moral obligation to a state. See B. Sharon Byrd and Joachim Hruschka, *Kant's Doctrine of Right: A Commentary*, Cambridge University Press 2010, p. 23, p.139. Kant also mentions that the civil condition is a condition for distributive justice. For instance, he states that "[f]rom private right in the state of nature there proceeds the postulate of public right: when you cannot avoid living side by side with all others, you ought to leave the state of nature and proceed with them into a rightful condition, that is, a condition of distributive justice" (6:307).

[37] See also Jeremy Waldron, "Kant's Theory of the State," in *Toward Perpetual Peace and Other Writings on Politics, Peace, and History*, edited by Pauline Kleingeld, Yale University Press 2006, pp. 186-7.

unless public rights are in effect, and both kinds of right are derived from people's unique innate right.

Up to this point the argument for the moral necessity thesis and a theory of political obligation based on this thesis has illustrated how the moral obligation toward a state can be justified solely on the idea that people are to live morally together, if we take it that not wronging others is an essential part of this, without resorting to any external moral principles.[38] It might be helpful to contrast this thesis with theories of political obligation based on an external principle. For instance, some theories appeal to the so-called fairness principle. Such theories mainly claim that our moral obligation to obey the law and support the government hinge on three propositions: first, a state is a cooperative enterprise; second, we benefit from this enterprise;[39] third, as a requirement of the principle of fairness, every beneficiary should have an equal share of the sacrifices required to keep the enterprise going. What justifies political obligation according to this approach is obviously the fairness principle as a "mediator" between benefits or rights received and contributions to be made. Without it, those who contribute would not have a right to require a fair share of similar contributions from potential free riders. So we might say that in these theories an external moral principle accounts for the moral obligation of obedience. By contrast, the moral necessity thesis does not require such an independent moral principle to accomplish this, since political obligation is an internal to acting morally and avoiding wrongdoing.

To conclude the justification of the moral necessity thesis, I would like to point out some features of the thesis and the political obligation theory that rests on it. The first feature, as emphasized before, is that political obligation is *internal* to our moral life. The second feature is that political obligation, being a moral obligation necessary for a group of people to live together, is a *general* obligation. Finally, political obligation is owed by

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38 See the distinction between political obligation based on an "external principle" and as an "intrinsic moral requirement" at the beginning of this chapter.

39 I do not make a distinction between "voluntarily *accept* benefits" and "involuntarily *receive* benefits" here, rather this is a broad description of how the fairness principle functions in generating political obligation according to various fairness theories. And in section five, I will discuss a specific voluntarist version of the fairness principle.

individuals not *vertically*, to the state, but *horizontally*, to other individuals one cannot avoid interacting with. In Chapter 5, I will argue that the moral necessity thesis should also be the foundation for other contemporary political obligation theories, since these theories all have a gap that can only be bridged by this thesis.

5. CONCLUSION

I would like to conclude this chapter by highlighting several advantages that the moral necessity thesis has over some other political obligation theories. Spelling out these advantages is, in fact, indispensable not only for the plausibility of a political obligation theory as such, but also for fleshing out political obligation's significance for political and legal philosophy and its practical implications as well.

Firstly, as argued before, in contrast to theories that rely on an analysis of the moral properties of particular laws, the moral necessity thesis grounds citizens' political obligation toward the law and the political condition as a whole. For instance, if we sought to justify political obligation on the basis of a fairness principle, there would be room for doubt as to whether any particular law is necessary to uphold a cooperative enterprise. If it is not people would not be constrained by such a principle. A notorious counter-example is why we should see people as acting unfairly if they run a red light at 2 a.m. on a remote road. On the conception defended here, whether particular laws are just or in accordance with the purpose of the political condition is a question not directly pertinent to the justification of political obligation. We could simply retort that yes, we are morally obligated to obey the traffic rules since they are rooted in a state's "obligation to provide the conditions of equal freedom."[40] But when we are called upon to make a conclusive judgment about whether to obey such a law, this is a different problem about how such a rule serves the aim of a legal system and the normative weight of political obligation compares with other considerations.

Secondly, consent theories might face a problem of the following sort.

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[40] Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, Harvard University Press 2009, p. 238.

Suppose citizens are morally obligated to Rex I as a result of their consent to obey the law (which is supposed to be just) enacted by Rex I. Suppose now that Rex I has been overthrown and the country is now under John I's reign. John I has not enacted new laws, and people are still living under the law enacted by Rex I, and they have not consented to obey John I. Are they under a moral obligation to obey the morally just law during the reign of John I? It would seem that consent theorists would have to answer negatively as no consent has been expressed to John I. However, according to the moral necessity thesis, they are still obligated to complying with Rex I's law because that is required for living together. Although the state, the political institutions and the validity of the law might have changed, the fact remains that it is still this group of people that continues to interacting with each other. The moral obligation is owed among citizens who hold equal authority to demand that their fellow citizens obey the law.[41] I believe this would be the plausible answer to the questions about the continuity of states and the law.

The last advantage of the moral necessity thesis concerns the so-called "national values hidden in the liberal agenda".[42] According to nationalists, we have to resort to national values, especially shared culture, to explain the moral bonds among a group of people and to explain why problems such as political obligation and distributive justice are confined to the territory of a state. However, the justification for political obligation on the basis of moral necessity concentrates merely on how people can live together and live *morally*. Correspondingly, as long as people are to live together, regardless of their nationality, culture or conceptions of the good, political obligation could justifiably obligates them as a moral necessity, or indeed as Waldron argues: "[the] presence or absence of trust, or shared culture, or shared understandings are simply irrelevant to that moral necessity."[43] The remaining concern is how we can explain the political obligation as

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41 Stephen Darwall, *The Second-Person Standpoint: Morality, Respect, and Accountability*, Harvard University Press 2006, p. 11-5.

42 Yael Tamir, *Liberal Nationalism*, Princeton University Press 1993, p. 69.

43 Jeremy Waldron, "Redressing Historic Injustice," *University of Toronto Law Journal*, Vol. 52 (2002): 140.

something owed among fellow citizens.

It might be objected that the moral necessity thesis has fulfilled only part of the whole justification of political obligation. Some might argue that the justification of political obligation necessarily consists of two stages, which I would like to call "the source stage" and "the particularizing stage" respectively:

> *The source stage:* people are morally obligated to obey the law and support the political institutions of *a state*.
>
> *The particularizing stage:* people are morally obligated to obey the law and support the political institutions of *their state*.[44]

I believe this is not a plausible way to formulate the justification for political obligation, and especially not the right way to depict the justification of the moral necessity thesis. The moral necessity thesis, if justified at all, should be a particularized thesis. By implication, the political obligation justified pertains to the moral obligation owed among fellow citizens in particular. Therefore, the major concern in the next chapter will be a defense of the moral necessity thesis as a "one-stage" or monistic justification, which incorporates the question of how it has been particularized within one state.

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[44] As mentioned before, Horton presents such a two-stage argument: the solution for the problems involved in the source stage lies in the moral necessity thesis while the solution for those involved in the particularizing stage lies in associative theories; similarly, Stilz also addresses political obligation by a two-staged argument. Her Kantian justification concentrates on the first stage, whereas an argument on the basis of Rousseauian democracy deals with the particularizing stage. In a recent paper, Simmons generalizes the particularity requirement specifically pertinent to political obligation theories into a "boundary problem" affecting other topics of political philosophy, while criticizing democratic authority theories. See A. John Simmons, "Democratic Authority and the Boundary Problem," *Ratio Juris*, Vol. 26 No. 3 (2013): 326–57.

CHAPTER 4 PARTICULARIZING POLITICAL OBLIGATION

1. INTRODUCTION

As the moral necessity thesis claims, the source of our moral obligation to obey a set of legal rules, support political institutions (which should satisfy certain qualifications), and enter a rightful condition is an intrinsic requirement of people's morally living together. To use Kant's terms, our political obligation is morally necessary to ensure people's freedom and independence, since various rights securing this freedom would be impossible or merely provisional in the state of nature. A fundamental assumption of political obligation as a moral necessity is concisely formulated by Rawls, namely that people are "self-originating sources of valid claims."[1] This is also the root idea of Darwall's argument that moral obligation is a claim validated by the equal authority of different persons, what he calls second-personal authority.[2] The moral obligation to obey the law, among other moral obligations, is grounded in those valid claims addressed by people aiming to live peacefully and morally while the circumstances render it impossible to avoid interacting with each other. Thus, as noted before, if the moral necessity thesis is correct, political obligation should be seen as internal or intrinsic to people's moral lives, which is why no external moral principle is necessary for its justification.

Voluntary actions, such as promising or consenting to obey, would be similarly superfluous. To be sure, many social institutions other than political ones depend on voluntary actions to justifiably impose certain restrictions on people. For example, audience members should not bring their own food or drinks into a cinema. By purchasing a ticket, and thus entering a contract, a person has expressed her consent to be bound by the rules of the cinema. Without such a contract and the consent to comply with these rules, a person would not be under an obligation not to bring her own food and

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1 John Rawls, "Kantian Constructivism in Moral Theory," *The Journal of Philosophy*, Vol. 77, No. 9 (1980): 546.

2 Stephen Darwall, *The Second-Person Standpoint: Morality, Respect, and Accountability*, Harvard University Press 2006, p. 21 and 121.

drinks. Sports are also typical examples. If you want to join others playing football, you are under an obligation to play with your feet and not touch the ball with your hands unless you are a goalkeeper. Hence, the obligations imposed by practices like football or institutions like cinemas would not bind a person unless he or she chooses to be bound by them. Unlike playing football or watching a movie in a cinema, leading a moral life by complying with one's moral obligations and not wronging others is an institution that a person does not have any space to choose or refuse to enter. Interactions with others are inevitable, and many of them call for a set of publicly enacted rules to maintain the moral relationship within a group of people. Roughly put, people's lives necessarily take place in a public domain in which political institutions are necessary for people to live morally and peacefully. Moreover, they have to be subject to a single set of rules guiding their interactions.

However, if the moral properties of political obligation do originate from people's valid claims to protect their freedom, this could immediately give rise to doubts about the ability of the moral necessity thesis to satisfy the particularity requirement. Political obligation, according to this thesis, is applicable universally because it is a moral obligation that people incur regardless of their nationality, citizenship, or membership in a given state or political community. Therefore, it might be thought that the thesis cannot explain why a U.S. citizen bears a political obligation merely to comply with the law of the United States, even if the legal system of another country is more just or more consistent with the virtues of democracy and constitutionalism. Or the thesis might be discredited for failing to explain why a U.S. citizen living in southern Texas, speaking Spanish and interacting more frequently with the Mexican community, is still under a moral obligation to obey the law of the United States rather than that of Mexico. A requirement of any viable theory of political obligation is that there is an often exclusive and particular relationship between a citizen and, on the one hand, her state, and, on the other hand, her fellow citizens. Therefore, the main concern of this chapter is how the moral necessity thesis satisfies the particularity requirement.

I will argue that while Kant justifies a moral obligation to enter a juridical state or a rightful condition, he implies that such a moral obligation

is valid for a certain group of people, not for the human race in general. According to Kant, an individual ought to leave the state of nature and incur a political obligation when he or she "cannot avoid living side by side with all others," and it is with this definite range of people that a person "proceed[s] with *them* into a rightful condition" (6:307). It seems to me that with the expressions "living side by side" and proceeding to a rightful condition with "them," Kant has in mind a special, not a general or universal duty or obligation. Thus, I will contend that if the moral necessity thesis is capable of generating political obligation, this specific moral obligation is eo ipso particularized or "range-limited."[3] A proximity principle entailed by the moral necessity thesis and also implicit in Kant's argument satisfies the particularity requirement. However, I will endorse a somewhat different version or interpretation of the principle to deal with a problem for the traditional understanding, the so-called "physical proximity principle." The alternative version of the proximity principle, which I would like to call the "juridical proximity principle," is the justification for political obligation as a particularized moral necessity to be a moral obligation.

Before entering into the discussion of the proximity principle, it is necessary to clarify what Simmons actually means by "the particularity requirement". Although both supporters and skeptics of political obligation generally accept the requirement, they unfortunately disagree about the exact role of the requirement in a theory of political obligation. Some take the requirement to call for an explanation of how political obligation is confined to the people with membership or citizenship in a *particular* political community.[4] Others believe that a plausible theory of political obligation

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[3] Jeremy Waldron, "Special Ties and Natural Duties," *Philosophy & Public Affairs*, Vol. 22, No. 1 (1993): 13.

[4] For instance, Simmons argues that "[f]or political obligation has always been very intimately associated with the notion of citizenship, and has often been thought of as something like an obligation to be a "good citizen," in some fairly minimal sense." A. John Simmons, *Moral Principles and Political Obligations,* Princeton University Press 1979, p. 5; Margaret Gilbert also ties the problem of political obligation to the idea of citizenship or membership, and she rephrases political obligation as what she names "the membership problem" which focuses on the following: "Does membership in a political society in and of itself involve obligations to uphold the relevant political

should be able to explain why the moral bonds exist merely among members because of the moral nature of a *particular* political community.[5] Again others hold that such a requirement is a description of the fact that a citizen of state A is morally obligated to obey the law of this *particular* state, while that citizen is not morally bound by the political institutions of other states. I will address each of these variants, as well as their relation to the moral necessity thesis in the following chapter. As these different interpretations of the particularity requirement suggest, its exact formulation is related to the understanding of the concept of political obligation. For instance, if political obligation is particularized as a result of its entailment by a wider set of obligations generated by the acceptance of citizenship, the obligation would not necessarily be categorized as a moral obligation, since it is a subcategory of the obligation of citizenship. Therefore, in order to demonstrate how the proximity principle satisfies the particularity requirement, I will begin by discussing what this requirement actually is. The more significant task will then be to determine, firstly, whether the particularity requirement is a *valid* constraint on the justification of political obligation. By locating the origin of this requirement or the feature of particularity of political obligation, we will get a firm grip on what the nature of this requirement is and whether political obligation theories should be more profoundly liable to the particularity requirement than other topics of political and legal philosophy.

The argument in this chapter consists of two parts: the first part (Sections 2 and 3) concentrates on the formulation of the particularity requirement itself. Section 2 sets out the weak version of the particularity requirement as a minimal condition on a theory of political obligation. Section 3 explains why the strong version of the particularity requirement that Simmons and many others defend, if it is a valid constraint at all, is not a *sui generis* requirement that applies only, or is especially important to

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institutions? Alternatively: are there plausible senses of the relevant terms such that membership in apolitical society obligates one to uphold its political institutions?" Margaret Gilbert, *A Theory of Political Obligation: Membership, Commitment, and the Bonds of Society*, Oxford University Press 2006 p. 18.

[5] Ronald Dworkin, *Law's Empire*, Harvard University Press 1986, pp. 195-202.

political obligation theories. Furthermore, this section will take a step beyond the argument of the second section by denying the validity of the strong particularity requirement (SPR) for the justification of political obligation. The second part of the chapter (Section 4), in contrast, is the constructive stage, in which I will mainly demonstrate how the moral necessity thesis satisfies the weak particularity requirement (WPR) and why the two-stage account of the justification of political obligation (mentioned in the last chapter) is not a proper way to understand either the moral necessity thesis or Kant's justification of it.

2. TWO VERSIONS OF THE PARTICULARITY REQUIREMENT

Since both proponents and skeptics of political obligation agree that a special relationship obtains between states and their citizens, we may take this consensus as a starting point. Additionally, we may take this consensus as a criterion of the plausibility of any explanation of the particularity requirement:

> *Factual consensus*: a person is morally obligated to obey the law and support the political institutions *only* of his or her state.

Here I use "state" in a very broad sense, which does not presume a citizen-state relationship, so that "his or her state" expresses what might be a contingent connection to his or her state of citizenship, state of residency, or perhaps only his or her travel destination.[6] By this very broad usage of "state," I hope to include all interpretations of this consensus, because it appears to me arbitrary at this stage to limit the interpretation to the standpoint of citizenship. However, there is controversy over the moral weight (if any) and the role of the people-state connection in the justification of political obligation, which engenders the uncertainty about

[6] For travelers, it seems inappropriate to refer to the destination state as *his or her* state, but as I will explain by means of the juridical proximity principle, there are at least two states with legitimate jurisdiction over a traveler or a long-term resident: her original state would claim *lex personalis* jurisdiction and the state of her destination or residence would claim *lex situs* jurisdiction. Under this circumstance, a person may bear a moral obligation to obey the law of both states.

the extent to which a theory of political obligation is required to account for such a connection or bond. For example, if the bond is an expression of nationalism, a theory of political obligation that primarily claims a moral obligation to obey the law might fail to spell out such a nationalist moral bond, which contains far more elements than a moral obligation of obedience. A positive obligation to protect the culture of a nation might be the dominant component of such a nationalist citizen-state bond. On the other hand, if political obligation is supposed to explicate the moral relationship of negative freedom, or contributing one's fair share to social cooperation, then the particular bonds to be represented might not carry any flavor of the relationship resembling brotherhood or family, as implied in the nationalist moral bonds. Therefore, the first task is to clarify the following: while Simmons contends that a theory of political obligation should contain particularity, what exactly is he referring to as "the particularity requirement"?

According to Simmons's official statement of the particularity requirement, the right sort of moral obligation for a theory of political obligation is comprised of those "moral requirements which bind an individual to one *particular* political community, set of political institutions, etc."[7] This statement might be seen to capture the common-sense intuition that a Dutchman is morally and exclusively bound by the law of the Netherlands. Such a particular relationship, according to Simmons, assumes a tie between the particularity of political obligation to citizenship as the only correct explanation of the particularity requirement. Citizenship, which in most cases is an exclusive relationship between a citizen and her political community, cannot be understood as a universal bond between undefined parties. In other words, citizenship should be seen as a special connection between an identifiable citizen and one or more particular states. Consequently, it is claimed that a plausible theory of political obligation should be capable of pinpointing the particular state(s) to which a group of people owes obedience and of which they are citizens. From this perspective the particularity requirement might be appropriately termed the "citizenship

[7] A. John Simmons, *Moral Principles and Political Obligations,* Princeton University Press 1979, p. 31.

requirement," as Simmons believes what we really need in a political obligation theory is "a principle of political obligation which binds the citizen to one particular state above all others, namely that state in which he is a citizen."[8]

However, an immediate doubt might be raised: Why citizenship? Is this the only explanation of the discerned fact that only the law of the Netherlands should morally bind a Dutch individual? Can we not simply answer that Dutch law is her law, or that Dutch territory is where she lives, or that it is together with her Dutch fellows that she constitutes a moral community in which she will be morally blameworthy if she does not discharge her moral obligation to obey the law? Someone who dismisses these answers as the explanation of the particular connection, as Simmons does, would have to justify the claim that citizenship is the only right interpretation of particularity. However, I will contend that it is not a correct interpretation, let alone the only correct one. Therefore, we need to examine the assumption of Simmons's version of the particularity requirement.

Simmons's principal reason for holding this view lies in the observation that people tend to "feel […] that they are tied in a special way to their government, not just by 'bonds of affection', but by *moral* bonds."[9] As a result, the core task of a plausible political obligation theory is to account for the way such moral bonds come into being as well as the range of subjects of these moral bonds. The range of subjects cannot be explained, according to Simmons, without appeal to citizenship. In order to complete the justification for political obligation, any theory has to be able to determine the range of citizens, which essentially calls for a specification of (the qualification for) citizenship. But why should the particularity of political obligation be implied by citizenship? What explains this conceptual connection? If citizenship is merely people's feeling of being bound by certain types of moral bonds to their government as Simmons states, a feeling is too weak an argument to establish an exclusive connection between

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[8] A. John Simmons, *Moral Principles and Political Obligations,* Princeton University Press 1979, pp. 31-2.

[9] A. John Simmons, *Moral Principles and Political Obligations,* Princeton University Press 1979, p. 3.

political obligation and citizenship. As a consequence, the way that the particularity of political obligation ties to citizenship remains vague. Simmons does mention the connection of the two concepts, as he claims that the problem of political obligation "has been *very intimately* associated with"[10] or "relates […] *closely* to"[11] the notion of citizenship. Political obligation correspondingly falls under the package of moral obligations generated by citizenship, or, in Simmons's own words, it is an obligation to be a "good citizen in a fairly minimal sense," which contains the obligation to obey the law and support the political institutions.[12] Therefore, Simmons's formulation of particularity stands or falls with the interpretation of what a "very intimate" or "close" connection amounts to.

I believe that it should be relatively clear now that, despite Simmons's qualifications the "intimate or close connection," he is committed to nothing less than a conceptual connection: citizenship is a necessary condition for the particularity of political obligation. Particularity can be accommodated *solely* through the particular relationship of citizenship, and moreover political obligation has to be included in the package of obligations entailed by the duty to be a good citizen. Therefore, I would like to call Simmons's particularity requirement the strong version, as it makes a relatively strong demand on how such a requirement connects with a specific notion of citizenship:

> *The Strong Particularity Requirement (SPR)*: the explanation of the particularity of political obligation, as noted in *Factual consensus*, *necessarily* depends on an account of the scope of citizenship of a particular state.

The implication of SPR is that theories of political obligation should specify criteria for calling someone a citizen, so as to enable us to determine the

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10 A. John Simmons, *Moral Principles and Political Obligations,* Princeton University Press 1979, p. 5.

11 A. John Simmons, *Moral Principles and Political Obligations,* Princeton University Press 1979, p. 155.

12 See A. John Simmons, *Moral Principles and Political Obligations,* Princeton University Press 1979, p. 5, p.155.

class of citizens. Simmons believes that only in this way can a theory of political obligation be complete and well-grounded. This version of the particularity requirement implies that we have to clearly specify questions such as how and when a group of people become Dutch citizens as a prerequisite of explaining their political obligation to obey the law of the Netherlands. We may say that the SPR is strong in two dimensions: first, it posits a conceptual connection between citizenship and political obligation, claiming that there is a fixed pattern to satisfy the particularity requirement, i.e. citizenship of a particular state; second, SPR is a requirement imposed on the *justification* of political obligation. It is strong in the second aspect because SPR rules out the possibility that the failure of satisfying the particularity requirement would only affect the application of political obligation, instead of denying the normative force of the obligation. Nevertheless, I believe that if the particularity requirement is generated by *Factual consensus*, we need not go as far as claiming that the only plausible interpretation of the consensus requires an account of citizenship or that such a requirement has any impact on the normative validity of a moral obligation. If the ability to accommodate factual consensus is condition for any viable interpretation of particularity, we should be open to all interpretations satisfying this condition. Such an open attitude means that unless Simmons is able to show that consensus can only be accounted for by citizenship, it is unreasonable to filter out all other explanations for a person's obligation to obey the law of her particular state. Additionally, the particularity requirement pertains only to the political feasibility of political obligation, and is irrelevant to its normative justification. This gives us the weak version of the particularity requirement:

> *The Weak Particularity Requirement (WPR)*: an account of political obligation should be able to accommodate and explain the particular connection noted in in *Factual consensus*, whatever its source may be.

WPR, in other words, constrains accounts of political obligation only to the extent of requiring them to clarify why a certain group of people is morally bound by the law of a particular state, without assuming that citizenship is the only plausible explanation of the particularity. Citizenship might be but

one of many potential answers to the particularity question; as I will argue in Section 4, I believe it is the particularity implied by the moral necessity thesis that makes political obligation a special obligation. However, before entering the constructive phase of the argument, we should examine why the SPR is the wrong particularity requirement.

3. WHY THE SPR SHOULD NOT CONSTRAIN POLITICAL OBLIGATION THEORIES

If the particularity requirement is a requirement for explaining factual consensus, it might seem astonishing that such a requirement is sometimes thought to be particularly related to political obligation. Suppose that there is a world government and a unified set of laws and political institutions ruling the whole world. Would there be a problem of particularity in that political arena? If all the people in this imagined polity would be morally bound to the same legal system by a justified general moral obligation toward political intuitions, particularity would be redundant to the justification of political obligation. A fortiori this would apply to SPR in virtue of its condition of citizenship. Thus we cannot simply ignore the possibility that the particularity requirement is a contingent and empirical requirement affecting the *application* of political obligation rather than its justification. In this section I investigate this possibility in two stages: I will first undermine the force of the particularity requirement by demonstrating that such a requirement has never been peculiar to political obligation; rather, it is ubiquitous in political philosophy generally. I will then argue that the particularity requirement, especially SPR, does not have any force in constraining the justification of political obligation at all. A theory of political obligation only needs to be able to satisfy WPR in order to accommodate the practice of politics. The necessary justificatory work has been taken care of by the moral necessity thesis.

3.1 A Not So Particular Requirement

Particularity is ubiquitous. There is a general moral obligation to rescue other people from peril, but if your best friend and a perfect stranger are drowning at the same time and you can only save one of them, your moral obligation is particularized as saving your friend. Therefore, we might

conclude that particularity exists in such a moral obligation and that the particularity is entailed by a special relationship.[13] Moreover, I believe that particularity is a pervasive feature of political philosophy, where particularity is probably found in any topic as long as a polity is involved. For instance, Rawls notably confines the application of the two principles of justice to a political society marked by the territory of a state; hence, the purpose of the difference principle is to maximize the well-being of the worst off in a domestic political society.[14] Thus the subject of the principles of justice is

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[13] Alasdair MacIntyre argues that those inherited expectations and obligations from the past of one's family, city, tribe, or nation constitute a given of life and its moral starting-point, which is also "part of what gives my life its moral *particularity*." See MacIntyre *After Virtue: A Study in Moral Theory*, University of Notre Dame Press 1981, p. 220. There is a debate on whether relationships per se can generate moral duties and responsibilities or if it is the fundamental values underlying those relationships that give rise to moral duties and responsibilities. The former view is called "associativism" or "non-reductionism," while the latter is called "reductionism." Samuel Scheffler supports anti-reductionism in arguing for the sufficiency of relationships to generate moral responsibilities. For instance, Scheffler believes that "to attach noninstrumental value to my relationship with a particular person just is, in part, to see that person as a source of special claims in virtue of the relationship between us. It is, in other words, to be disposed, in contexts which vary depending on the nature of the relationship, to see that person's needs, interests, and desires as, in themselves, providing me with presumptively decisive reasons for action, reasons that I would not have had in the absence of the relationship." See Samuel Scheffler, "Relationships and Responsibilities," *Philosophy & Public Affairs*, Vol. 26, No. 3 (1997): 196. Wellman, on the contrary, advocates reductionism, as duties generated by the relationship of "compatriots" are indeed generated by distributive duties. Thus, the difference "between associativism and reductionism is not necessarily in the duties posited; it is in terms of how these duties are grounded and described… reductionism strikes me as having a decided advantage over associativism in its ability to explain why agents *should* be motivated to perform their special duties." Christopher Heath Wellman, "Relational Facts in Liberal Political Theory: Is There Magic in the Pronoun 'My'?" *Ethics*, Vol. 110, No. 3 (2000): 560.

[14] As Rawls clearly states, "I shall be satisfied if it is possible to formulate a reasonable conception of justice for the basic structure of society conceived for the time being as a closed system isolated from other societies." John Rawls, *A Theory of Justice*, Harvard University Press 1971, p. 8.

limited to a particular group of citizens rather than people in general or globally. So when taxation is employed as a means to redistribute social resources to people in a given political community rather than people in general, the problem of particularity arises, as such a theory of redistributive justice has to explain why fellow members of this political community are entitled to the privilege of getting those resources. The particularity requirement is also valid to the Rawlsian distributive justice, because he needs to explain why the particular group of the worst-off of basic structure-A enjoys the priority in the redistribution of social resources from the better-off of the same basic structure, even if there exists worse-off people living under other basic structures. It seems that the boundary of a polity also affects the moral standing in distributive justice, and particularity comes to the surface.

Or we might take democratic authority as another example, according to which, roughly, the legitimacy of a state depends on the process of democracy.[15] However, if legitimacy is grounded in democracy, another point remains to be clarified: the range of subjects participating in the democracy process. In other words, democracy might be a potentially plausible justification for legitimacy, but such a theory must be able to satisfy the requirement of particularity by determining who should vote or who should be identified as participants in order to explain why such a legitimate state is their particular state. To draw the boundary of who is qualified to vote in a state, while ruling out other people, is to establish a particular political community, and the question of why there exists the particularity regarding the qualification to vote is related to the problem of the particularity requirement. In mentioning the topics of distributive justice and democratic authority, I do not intend to claim that the Rawlsian justice principle is justified in granting privilege to the citizens of a domestic political society or that democratic authority theories are necessarily

[15] I will discuss democratic authority theories in the next chapter. For instance, see Thomas Christiano, "The Authority of Democracy," *The Journal of Political Philosophy*, Vol. 12, No. 3 (2004): 266-90; David Estlund, *Democratic Authority: A Philosophical Framework*, Princeton University Press 2008; Daniel Viehoff, "Democratic Equality and Political Authority," *Philosophy & Public Affairs*, Vol. 42, No. 4 (2014): 337-75.

restrained by the question of the range of subject. Rather, my purpose is to demonstrate that the particularity requirement is not of particular significance or idiosyncratic to political obligation theories.[16]

We might approach the particularity of political theory from both the personal and the impersonal standpoint. The two standpoints are what Nagel views as the ethical basis for political theory. While the impersonal standpoint demands impartiality and equality, the personal standpoint stands for individual motives and requirements. The personal standpoint is believed to be obstructive to the impersonal standpoint's ideals; thus, conflicts are unavoidable, according to Nagel.[17] As a consequence, the ideal of political theory is that there is a set of political institutions in which people lead a collective life that satisfies impartial requirements from the impersonal standpoint, while also acting with strong personal motives.[18] An implication for political theory is that justification is necessarily twofold, or justification "must address itself to people twice: first as occupants of the impersonal standpoint and second as occupants of particular roles within an

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[16] I believe this is the reason why Simmons upgraded the particularity requirement to a boundary problem in a recent paper, where he argues this problem poses a special difficulty to the Kantian theories of legitimacy and political obligation "because the theories in that tradition attempt to solve the boundary problem without recourse to the kinds of historical considerations that are routinely employed to identify the legitimate moral boundaries of political authority and obligation." See A. John Simmons, "Democratic Authority and the Boundary Problem," *Ratio Juris*, Vol. 26 No. 3 (2013): 329.

[17] Thomas Nagel, *Equality and Partiality*, Oxford University Press 1991, p. 4; Nagel argues: "Both the content of an objective view and its claims to completeness are inevitably affected by the attempt to combine it with the view from where we are. The reverse is also true; that is, the subjective standpoint and its claims are modified in the attempt to coexist with the objective…But I shall also point out ways in which the two standpoints cannot be satisfactorily integrated, and in these cases I believe the correct course is not to assign victory to either standpoint but to hold the opposition clearly in one's mind without suppressing either element. Apart from the chance that this kind of tension will generate something new, it is best to be aware of the ways in which life and thought are split, if that is how things are." See Thomas Nagel, *The View from Nowhere*, Oxford University Press 1986, p. 6.

[18] Thomas Nagel, *Equality and Partiality*, Oxford University Press 1991, p. 18.

impersonally acceptable system."[19] Accordingly, once the Rawlsian justice principle and democratic legitimacy are justified from the impersonal standpoint, there remains the task to determine which particular group of the given basic structure-A have the priority and who have the right to vote in the democracy-A and who do not. Being a part of political theory, then, a theory of political obligation must first address why such a moral obligation is justified impartially, for instance, as morally necessary for collective life. Subsequently, it should address why an individual should be bound by such a moral obligation to other people with whom she particularly connects. This latter task constitutes the particularity aspect of political obligation.

It might be questioned whether the particularity mentioned in the Rawlsian distributive principles, Nagel's general reformulations of particularity, and the particularity in political obligation refer to the same sort of particularity, and I think they are. All three types of particularity are brought about by the boundaries of states and the different political communities drawn by differing polities in political practice. Moreover, all three concern the same problem, i.e. that a contingent event of being born into a pre-existing state can affect a person's normative situation, namely to which persons a person has rights and obligations and within which community he or she has a priority to make claims and complaints compared with those who are not from the same community. In the case of political obligation, this concerns to what such a moral obligation is owed and why the subjects of political obligation are typically constrained within the boundary of a state. Therefore, the problem of particularity is actually more of an issue in the field of moral philosophy, namely whether the boundary of a state can justifiably influence people's situations. I believe this is also the exact reason that Simmons has upgraded the problem of particularity as peculiar to political obligation to the problem of boundary, which is more extensive, including problems of distributive justice, rights of immigration, and so forth.[20]

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19 Thomas Nagel, *Equality and Partiality*, Oxford University Press 1991, p. 30.

20 See A. John Simmons, "Democratic Authority and the Boundary Problem," *Ratio Juris*, Vol. 26 No. 3 (2013), 326–57.

By linking the particularity requirement to this feature of political theory, I hope I have made it clear that such a requirement has never been of particular pertinence or significance for the justification of political obligation. As long as a state or government or a polity is involved in topics of political theory, particularity will appear as a representation of jurisdiction or boundary in the political arena. The purpose of the following section, then, is to argue that the particularity of political obligation is misrepresented by SPR, and all that is required of the justification of political obligation is to accommodate factual consensus or WPR.

3.2 An Invalid Requirement

If we conceive political obligation as a moral obligation to obey *our* law and support *our* institutions, the requirement of particularity stems from the identification of a set of laws and institutions as *ours*. The SPR holds that the only way to realize the identification is through citizenship. This raises an obvious question: If a person is a long-term or permanent resident of a state without citizenship, does she bear a moral obligation to obey the law of this state? If the moral necessity thesis is plausible, the law of her state of residency should morally bind her to not only this state, but also to all its inhabitants (whether citizens of not). However, according to SPR, if a political obligation theory is to be justified, she is still morally bound only by the law of the state where she has citizenship, even though she has been living in another state for most of her life. On the contrary, if we understand the particularity requirement in terms of WPR, a theory of political obligation should only be constrained by the requirement to explain that she has a moral obligation to obey the law of *her* state. Therefore, the problem concentrates on the interpretation of which state is hers or how she relates to the law of a given state. At this stage, both her state of citizenship and her state of residency remain potentially plausible, as WPR does not enforce any specific pattern of the particular relationship between a person and her state or community as SPR does with the citizenship interpretation. As a constraint on the *justification* of political obligation, then, SPR may appear to be a void, because it might be the case that even if a theory cannot accommodate SPR, political obligation is still a valid obligation that compels people to obey the law of a legitimate state. The problem only concerns to

which state such an obligation is owed. For instance, according to the moral necessity thesis, obedience to the law is justified as a moral requirement because it is morally necessary, and whether or not we have defined a specific legal system for a person to obey cannot influence the normative force of this obligation. Rather, it is a problem of determining the applicable relationship between a legal system and this very person—which is why, so we may conceive the requirement as a requirement of feasibility. But SPR is unduly demanding as a requirement of feasibility. I would like to propose an analogy to illustrate the invalidity of SPR and to cast some light on the nature of the particularity requirement through examining different types of moral obligation.

Suppose Adam stole Bob's wallet. Is Adam morally obligated to return the wallet to Bob? I believe the answer has to be "Yes, he is," and this conclusion can be reached by this moral argument:

> P1. One is morally obligated to return property to its rightful owner;
> Q1. The wallet is not Adam's property (as it was stolen from Bob);
> R1. Adam is morally obligated to return the wallet to Bob.

I will take for granted that P1 is a justified or *a priori* moral obligation, and I believe this is an uncontroversial assumption. Such a moral obligation is universally valid, and its validity does not depend on a specification of the person. The moral obligation stated in R1, on the other hand, is a particular obligation with a right-obligation relationship of which the terms are clear. Thus, through P1 to R1, a universal obligation has been specified as a moral obligation with particularity. We might analogously find an inference of the same (syllogistic) structure pertaining to the particularity of political obligation:

> P2. Everyone is morally obligated to obey the law and support the political institutions of her or his (reasonably just) country;
> Q2. Chuck's country is the U.S.;
> R2. Chuck is morally obligated to obey the law and support the political institutions of the U.S.

P2 states the universal obligation under which Chuck's particular obligation is subsumed. What has particularized the universal obligation into the particular obligation in R2 is Q2, which states a matter of fact, similar to Adam's stealing of Bob's wallet, that serves to particularize a universal obligation to the relationship of Adam and Bob. If the end of a theory of political obligation is to justify the particular obligation of R2 rather than just P2, the normative justification is achieved *by way* of justifying P2. It is because P2 has normative force and Q2 is factual that P2's justificatory force spreads to R2. I think that as long as P2 is justified, we have a positive answer to the question "*Should* there be a political obligation?", if we remember the dispute of political obligation as a moral obligation in a prescriptive or factual sense in Chapter 1.

Nevertheless, according to the particularity requirement, this is not enough. This is because the real question for political obligation theories to answer is: "*Is* there a political obligation among the people of state A?" According to the moral necessity thesis, there should always be a moral obligation to obey the law among a group of people living together, so the problem is merely one of *applying* the thesis to the specific context of state A. Therefore, this question leads us to two further issues. First, does state A satisfy certain moral demands, e.g. justice, protection of freedom, rule of law and so forth? Second, why is *this* particular group of people politically obligated to state A? We will leave the first point aside by assuming that the state is nearly just in order to assure that the argument about political obligation is not trivial—since most (if not all) believe that people are not under a moral obligation toward a wicked regime. Thus, to give an answer to the target question "*Is* there a political obligation among the people of state A?" the remaining task is to apply the moral necessity thesis to the context of state A by explaining why the justified political obligation of a particular group of people is toward state A's laws and institutions. However, even if we fail to answer this question, the justified political obligation to be discharged by this group of people remains unaffected, just as the justification for a general moral obligation to return property to the owner would not be influenced by whether or not Adam has stolen Bob's wallet. Citizenship, which is emphasized by SPR, might be just one plausible way of explaining such a particular connection between the group of people and

state A. Moreover, the particularity requirement, especially SPR, should not be regarded as affecting the justification of political obligation. Rather, it is at best a feature of the *application* of political obligation in certain contexts, and this would be the whole content of a requirement as stated by WPR.

3.3 The Nature of the Particularity Requirement

In arguing for SPR, Simmons does not explain why we should regard it as a "limit of the investigation" or "standard of success."[21] All he provides to show the urgency of such a requirement is that we are only *interested* in those moral requirements binding an individual to a particular political community,[22] which sounds vague and question-begging. First, it fails to articulate the indispensability of citizenship in this whole picture, as noted above. Moreover, whether or not something matches our interest should not be the standard of success for a theory of political obligation, even though we do take note of particularity when it comes to the application or the real politics of this moral obligation. Hence, I will articulate the nature of this particularity with the aim of achieving an accurate understanding of the requirement's role and force in an account of political obligation.

If political obligation is conceived as a moral obligation *owed* to specific people, it is by nature a kind of "directed obligation." According to Gilbert's definition, a directed obligation is incurred by someone if and only if he or she owes another person an act of his or her own, which is why the obligation incurred is "an obligation to, or towards, that person, who has a correlative right against him to the act that is owed."[23] By categorizing political obligation as a directed obligation, Gilbert means to distinguish it from obligations owed universally, such as the moral obligation not to kill or steal. The proposal of directed obligation is clearly inspired by the

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21 These are the two functions that Simmons attributes to the particularity requirement as one of the limits and standards on any account of political obligation. A. John Simmons, *Moral Principles and Political Obligations,* Princeton University Press 1979, p. 29, and pp. 54-5.

22 A. John Simmons, *Moral Principles and Political Obligations,* Princeton University Press 1979, p. 31.

23 Margaret Gilbert, *A Theory of Political Obligation: Membership, Commitment, and the Bonds of Society*, Oxford University Press 2006, p. 40.

distinction between "duty" and "obligation," especially in Hart's claim (as noted in Chapter 1), that the most significant features of obligation are the following:

> (1) that obligations may be *voluntarily* incurred or created, (2) that they are *owed to* special persons (who have rights), (3) that they do not arise out of the character of the actions which are obligatory but out of the *relationship* of the parties.[24]

It follows that political obligation as an "obligation" in Hart's terms, or a "directed obligation" in Gilbert's terms, implies particularity, since it involves a clear relationship of specific right-claimer and specific obligation-bearer.

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[24] H. L. A. Hart, "Are There Any Natural Rights?" *The Philosophical Review*, Vol. 64, No. 2 (1955): 179 note7. Echoing Hart, Brandt and Rawls, for instance, also accept the distinction between "duty" and "obligation," but the standard of the distinction might slightly differ between Hart on the one hand and his followers on the other. To take Rawls's standard as an example: he believes an obligation is incurred only by voluntary acts, so that in contrast with obligation, "it is characteristic of natural duties that they apply to us without regard to our voluntary acts." Hart does not require voluntariness as a necessary condition for obligation, as he contends that obligations *may be* voluntarily incurred. Gilbert points out, and I think correctly, that for Hart, voluntarism is not necessary. See Rawls 1971, pp. 114-5; Margaret Gilbert, *A Theory of Political Obligation: Membership, Commitment, and the Bonds of Society*, Oxford University Press 2006, pp. 37-8; Richard Brandt, "The Concepts of Obligation and Duty," *Mind*, Vol. 73 (1964): 374-93. It is not my purpose to get involved in the debate concerning voluntarism and involuntarism, though I do believe some genuine obligations are incurred involuntarily. I agree with Williams that most of our obligations are not promissory and not voluntarily incurred, as he argues that "[i]n a case such as the duties of a job, the job may have been acquired voluntarily, but in general duties, and most obligations other than those of promises, are not acquired voluntarily." Bernard Williams, *Ethics and the Limits of Philosophy*, Harvard University Press 1985, p. 7. With regard to political obligation in particular, I believe voluntariness does not come up as an issue as long as this obligation is justified by the moral necessity thesis. I believe it makes perfect sense when Nagel states that "[s]ubjection to a political system cannot be made voluntary: even if some people can leave, that is very difficult or impossible for most of them." Thomas Nagel, *Equality and Partiality*, Oxford University Press 1991, p. 36.

However, what I want to emphasize is this point: if an obligation, according to Hart's third feature, arises out of the relationship of the parties, the relationship as such, being a matter of fact, would not impact the justification of the obligation. The capability of a relationship to generate certain sorts of moral obligation hinges on the nature of the relationship or the moral obligations that are intrinsic to this relationship. Hence, it is a normative question, or a question calling for normative justification, whether a given kind of relationship can give rise to moral obligations. An empirical relationship may particularize a general moral obligation or help identify a particular obligation; nevertheless, a failure of identification cannot undermine the *justification* of the obligation.

To see this point more clearly, suppose I promise to meet you at your office at 9 a.m., Tuesday. As a consequence, I am under an obligation to you, and a particular relationship between right-holder and obligation-bearer has been established as a result of my act. However, the normative force of a promise in general is presumed by this particular obligation, and the implied and justified premise is that "one has a moral obligation to abide by one's promise." Thus, the justification of the particular obligation is entailed by the presumption, while the relationship established or the act conducted merely triggers or "directs" the normative force of a promissory obligation.

The entailment of a particular obligation by its general justification is elucidated by the Darwall's distinction between two different types of moral obligation, viz. *bipolar* moral obligation and moral obligation *period*. As the adjective "bipolar" indicates, a bipolar moral obligation refers to a right-obligation relationship with two terms. It is identical with Hart's obligation and Gilbert's directed obligation. Moral obligations generated by promises are typical bipolar moral obligations, as a right holder (or an obligee) has the moral right to demand the fulfillment of the duties or claims in accordance with the promise. Otherwise, the right holder has the *individual authority* to blame the promisor/obligor. By contrast, moral obligation period is a moral obligation owed to an indefinite range of people or not to anyone in particular. It is, an obligation simply *to do* something.[25] We can perhaps

[25] Stephen Darwall, "Bipolar Obligation," in his *Morality, Authority, and Law: Essays in Second-Personal Ethics*, Oxford University Press 2013, p. 21.

make the distinction clearer with an example: civil law, such as contract law or tort law, mainly contains legal relationships analogous to bipolar moral right/obligation, as the right to demand certain actions is borne by a certain holder against specific bearers of the correlative obligations. Thus, an individual authority is presumed for the right-holder to make demands on the obligor, and it is the same for the right-holder in the bipolar moral obligation relation. Nonetheless, in criminal law, as in moral obligation *period*, the right to demand the fulfillment of certain duties, such as the duty not to steal or kill, is not borne by any specific individual but instead by people in general or the moral community as a whole. Hence, in order to warrant proper reactive attitudes, especially blame, toward violations of moral obligation period, a *representative authority* must be presupposed. Such a representative authority, unlike an individual authority permitting discretion, is non-discretionary, and something that "anyone has as a representative person or member of the moral community."[26] Murder, for example, allows no space for discretion as to whether or not the murderer is blameworthy, whereas a breach of an agreement might allow a right-holder to judge if the obligor is blameworthy. Moreover, no individual authority can exist without a representative authority shared generally with all third parties of a moral community. Returning to the previous example, you hold a special individual authority against me because I promised to meet you on time, and you will be personally wronged if I fail to keep my promise. However, while I wrong you personally for failing to keep the *promise to you*, I am also guilty of a wrong period for failing to keep a promise, an act for which I can be blamed by any third party. Accordingly, a "wrong to someone" entails a "wrong period"; hence, a moral obligation to φ owed to a certain person cannot exist without a moral obligation to φ period. Thus, following Darwall's conclusion, "the individual authority that is involved in bipolar obligations cannot exist without the representative authority that is involved in moral obligations period."[27]

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[26] Stephen Darwall, "Bipolar Obligation," in his *Morality, Authority, and Law: Essays in Second-Personal Ethics*, Oxford University Press 2013, p. 27.

[27] Stephen Darwall, "Bipolar Obligation," in his *Morality, Authority, and Law: Essays in Second-Personal Ethics*, Oxford University Press 2013, p. 24.

Regarding political obligation, we might correspondingly assert that a (bipolar) moral obligation as owed to a certain group of people simply cannot exist without a moral obligation (period) to obey the law. Therefore, if political obligation is justified as an obligation period, the only remaining task is to explain why a group of fellow-citizens have the special standing to demand each other's compliance. Political obligation based on the moral necessity thesis is a bipolar moral obligation owed by everyone to everyone else in the same community, so the particularity requirement illustrates why being bound by the same set of laws puts each person in a particular position to demand or expect others' obedience. To use R. Jay Wallace's expression, particularity is represented by a "privileged basis for complaint."[28] Since the privileged basis may be caused by contingency, it merely identifies of the obligor-obligee relationship, rather than justifies a particular obligation. For example, my accidentally stepping on your foot gives you a personal authority to demand an apology from me, or that I move my foot, while any third parties lack such a personal authority. So in this example my stepping on your foot plays the particularizing role, and the particularity requirement should be understood as an explanation of the event that plays such a role in political obligation rather than as a requirement that affects the normative force of this moral obligation. Alternatively, we can say that WPR is the requirement that a plausible account should aim to satisfy, because a fact suffices to achieve that, and whether we can identify such a fact is not a concern for the validity of the obligation established. In contrast, SPR cannot accept a contingent event as the answer, since the answer that it requires has to be tied to citizenship and the failure to fulfill the requirement would invalidate the obligation. The over-demandingness, I hope, has been illustrated by how an obligation period can be turned into a bipolar obligation.

To summarize, the particularity requirement is, first, not peculiar to a theories of political obligation; rather, it is a feature of (applied) political theory in general. Second, it is not a requirement for the justification of political obligation; instead, it is better conceived as a requirement for the

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[28] R. Jay Wallace, "Reasons, Relations, and Commands: Reflections on Darwall," *Ethics*, Vol. 118, No. 1 (2007): 29.

identification or the application of such a normative concept. Third, what it requires is an explanation of what grants fellow members a "privileged basis" for demanding compliance. Such an explanation will be the main focus of the next section.

4. THE PROXIMITY PRINCIPLE AND THE ONE-STAGE JUSTIFICATION

4.1 The Proximity Principle

In arguing for the moral necessity thesis, I claimed that the core of the thesis is to ensure that people are able to lead a moral life while they *cannot avoid living together with others*. We might say that this thesis has an inherently particularistic dimension in that a set of political institutions is morally necessary to those specifiable individuals whose lives are structured by those institutions. In other words, political obligation is owed to people with whom we cannot avoid living or interacting, and only those that can be identified as living together have a "privileged basis" for demanding compliance from other members of the group.

I follow Waldron and refer to a "living together" condition as the "proximity principle."[29] This principle particularizes and ascertains the range of the subjects of political obligation, once the moral necessity thesis is justified. This condition is also explicit in Kant's argument for the moral obligation to leave the state of nature for a rightful condition or state:

> From private right in the state of nature there proceeds the postulate of public right: *when you cannot avoid living side by side with all others*, you ought to leave the state of nature and proceed with them into a rightful condition, that is, a condition of distributive justice. (6:307, italics added)[30]

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[29] Jeremy Waldron, "Redressing Historical Injustice," *University of Toronto Law Journal*, Vol. 52 (2002): 137-8.

[30] According to Kant, though, the explanation of the particularity requirement would lie in the idea of consent, as he argues that the attributes of a citizen in a state include lawful freedom, which is "the attribute of obeying no other law than that to which he has given his consent" (6:314). However, I believe consent is not necessary to explain such a particular relationship, as long as we can demonstrate how the proximity

Elsewhere, when addressing the subject of a unified constitution, Kant adds a similar proviso to answer the question of "what is mine or thine":

> It can be said that establishing universal and lasting peace constitutes not merely a part of the doctrine of right but rather the entire final end of the doctrine of right within the limits of mere reason; for the condition of peace is alone that condition in which what is mine and what is yours for a multitude of human beings is secured under laws *living in proximity to one another*, hence those who are united under a constitution; but the rule for this constitution, as a norm for others, cannot be derived from the experience of those who have hitherto found it most to their advantage; it must, rather, be derived a priori by reason from the ideal of a rightful association of human beings under public laws as such. (6:355, italics added)

By the same token, where he argues that any concept of right has to rely upon the principle that each person must leave the state of nature and have "united itself with all others (*with which it cannot avoid interacting*) … and so enter into a condition in which what is to be recognized as belonging to it is determined *by law* and is allotted to it by adequate *power*" (6:312, italics added). Therefore, for Kant proximity results in the moral necessity of a set of laws and also the political condition. This is the rough basis for believing that the moral necessity thesis is capable of accounting for the moral obligation of obedience and entering a political condition as owed to a particular group of people, and of generating political obligation as a bipolar obligation. Borrowing these terms, we might formulate the proximity principle in this rudimentary way:

> *The proximity principle*: political obligation is owed to others with whom one lives side by side or cannot avoid interacting.

Constrained by such a principle, the moral obligation to comply with the law

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principle suffices to explain it.

of a community is not a moral obligation period, but rather a bipolar obligation. It constitutes a relationship between two specific poles, namely the right-holder and obligation-bearer relationship. At the same time, any member of the community is such an obligor and obligee. Nevertheless, the proximity principle in this rough formulation inevitably invites two (probably connected) doubts: first, expressions such as "side by side" or "cannot avoid living with" are too vague to distinguish parties of the right-obligation relationship from people outside of the relationship; second, if the proximity principle implies that people are morally obligated to obey what *happens* to be the law of a state of a the law that *happens* to apply to them, such a principle, together with the moral necessity thesis, might be exposed to a dilemma that is believed to render natural duty theories implausible. What this means I shall explain in the next section. Furthermore, by considering how the natural duty account can deal with such a dilemma and what differentiates this account from the moral necessity thesis, I will articulate the role of the proximity principle in particularizing the general political obligation and identifying whom the law of a given state should bind.

4.2 Natural Duty and Proximity

It is well known that Rawls changed his mind about political obligation. In *A Theory of Justice*, he denies that a general political obligation can be generated by the principle of fairness, an account he once endorsed.[31] As noted above,

[31] Rawls systemizes the fairness approach of political obligation by linking it to his theory of justice as fairness, and only with regard to his two principles of justice can we define what constitutes a fair share. See John Rawls, *A Theory of Justice*, Harvard University Press 1971, pp. 111–3; John Rawls, "Legal Obligation and the Duty of Fair Play," in his *Collected Papers*, edited by Samuel Freeman, Harvard University Press 1999, p. 123. Furthermore, the principle of fairness sheds light upon the moral source of political obligation as a special case of moral obligation. However, Rawls eventually conceded this point in the article "The Justification of Civil Disobedience" in 1969, where he argues that there is another reason—apart from the concern of fairness—for us to comply with just and efficient social institutions, which refers to "a natural duty not to oppose the establishment of just and efficient institutions (when they do not yet exist) and to uphold and comply with them (when they do exist)." John Rawls, "The Justification of Civil Disobedience" in his *Collected Papers*, edited by Samuel Freeman,

Rawls accepts the distinction between obligation, which can only be incurred by people's voluntary acts, and duty, which applies to us regardless of our voluntary acts. Since there is no clear evidence for voluntary acts incurring political obligation, Rawls asserts that there is no political obligation for citizens generally; instead, it is an obligation to officials as a result of their promises.[32] However, Rawls does believe that there is a natural duty, applying to us as equal persons, to obey the law and support just institutions. It is not a trivial duty; rather, it is the most significant or fundamental natural duty from the standpoint of the theory of justice. Such a natural duty of justice requires us "to support and to comply with just institutions that *exist and apply to us.*"[33] Although the ultimate morality of the two theories overlaps as both presuppose that people are equally free, I think it should be clear that the Rawlsian theory differs from the moral necessity thesis in that political obligation as a moral necessity is owed particularly to those who cannot avoid living together. Therefore, we might say that the political obligation generated by this thesis is a bipolar obligation, rather than an obligation period. Furthermore, the aim of the moral necessity thesis is to assure that people are able to comply with their moral obligations *by means of* political institutions, while for natural duty theories it is the moral properties *of* political institutions that generate such a duty. Or we may conceive political institutions as a means to discharge our moral obligations and have instrumental value according to the moral necessity thesis, whereas for natural duty theories, it is the intrinsic value of political institutions asks for people's respect and compliance.

In contrast to all other accounts of political obligation, the duty of

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Harvard University Press 1999, p. 177. Finally, in *A Theory of Justice*, he officially abandoned the fairness part of the obligation of obedience, because only voluntary actions can give rise to obligations, and endorsed a natural-duty-based account of political obligation.

[32] John Rawls, *A Theory of Justice*, Harvard University Press 1971, pp. 113-4.

[33] John Rawls, *A Theory of Justice*, Harvard University Press 1971, p. 115. The natural duty of justice has two parts, according to Rawls: "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." See also John Rawls, *A Theory of Justice*, Harvard University Press 1971, pp. 333-4.

obedience or of supporting just political institutions for the natural-duty account is a universal duty binding all people as equals. It is precisely this difference—defining political obligation as universal—that is believed to be the Achilles' heel of the account, because it fails to satisfy the particularity requirement. Opponents claim that since the scope of the natural duty is universal, such an account is incapable of explicating why people of a certain state are morally obligated to obey the law of their state only, instead of any other equally just states, as WPR has it. This criticism presents a dilemma for the natural duty theory. On the one hand, if it purports to deflect this criticism by turning the duty into an obligation, the source of political obligation would need to be replaced by an act that generates such an obligation. That is to say, if this account provides an explanation fulfilling WPR by saying that people consent to obey a particular set of laws, then it is their *consent*, instead of a natural duty, that has generated such a moral obligation; hence, it is no more an account of natural duty. On the other hand, the natural duty theory has to concede that such a duty, which is a duty to support all the just political institutions, is universal, irrespective of a person's nationality, citizenship, and so forth. The concession of political obligation as a universal duty might make some sense in several circumstances. For instance, as travelers in other states, we are morally bound by the laws of those states assuming they are reasonably just; hence, it sounds reasonable to say that we do owe a moral duty to respect all just political institutions.[34] Yet such a concession cannot provide a practically robust account of political obligation, as people always do belong to a certain polity whose laws bind them even if they are abroad. However, although the dilemma appears threatening for the natural duty account, Rawls might have proposed (as it is not his intention to deal with the particularity requirement especially) a possible way out of it, as he does add a condition to identify the duty toward particular political institutions. This condition requires people to support just institutions that "exist and apply" to them.

Waldron advances a political obligation theory based on the idea of natural duty by elaborating on what "apply to" refers to. An in-depth

[34] See Jeremy Waldron, "Special Ties and Natural Duties," *Philosophy & Public Affairs*, Vol. 22, No. 1 (1993): 8-11.

discussion of Waldron's entire interpretation of the Rawlsian natural duty account would be very relevant for an examination of the force of the proximity principle in accommodating WPR in the moral necessity thesis. This is because Rawls's circumstances of justice contain what Kant calls "the proximity to others."[35] However, one aspect that needs to be highlighted is that Rawls's or Waldron's strategy of accommodating the particularity requirement is slightly different from that of the moral necessity thesis, which arrives at this particularity by limiting the particular subject or bearer of the obligation. The natural duty of justice, according to Rawls and Waldron, can never be particularized in terms of a bipolar right-obligation relationship. There does not exist a definite connection between right-holders and obligation-bearers, as political obligation as natural duty binds on people universally. Rather, their justification intends to accommodate particularity by limiting the *content* of this duty, which means that the duty still applies to all people, but its particular character resides in the fact that its content refers to particular political *institutions*. Thus, to put the natural duty account in its complete form: people have a natural duty to support and comply with just political institutions that apply to them, or we may say it is a universal duty to obey particular institutions applying to them.

The moral necessity thesis concurs substantially with natural duty theories, in particular with respect to the mode of the justification. As mentioned previously, two modes of justification are common in theories of political obligation: generalizing a special obligation or particularizing a universal obligation. Both the moral necessity thesis and natural duty theories choose the latter mode. Thus not only can we be inspired by Waldron's way of dealing with particularity by applying a general moral principle to a particular political community, but we can also arrive at a proper understanding of the difference in how natural duty theories and the moral necessity thesis handle the particularity requirement. Waldron spells out Rawls's notion of "applying to" by an argument consisting of three steps, which may be called the steps of principle, institution, and realization.

First, *the principle step* separates insiders from outsiders with regard to a

[35] Jeremy Waldron, "Kant's Legal Positivism," *Harvard Law Review*, Vol. 109, No. 7 (1996): 1555.

political principle. A political principle, and most notably the principle of distributive justice, is what Waldron calls a "range-limited" principle.[36] For instance, if Adam decides to give each of his children equal resources for education, then the underlying principle of equal education is range-limited inasmuch as it applies only to Adam's children and precludes all other people. In other words, only Adam's children can be counted as insiders of this principle. Analogously, a principle of distributive justice is range-limited in the same sense. This is why such a political principle is capable of accounting for the particularity of the duty of justice by only including insiders. However, a range-limited principle is not sufficient to show how insiders connect with political institutions, and this point leads to the second step. *The institution step* states that a distributive principle of justice necessarily calls for a set of practical institutions for administration, and for the sake of the efficacy of the administering, those institutions—entailed by the justice principle—demand insiders' acceptance and non-interference. In other words, people are firstly filtered by a range-limited principle as insiders and then connected to a set of institutions backed by insiders' acceptance of a principle of upholding the operation of these institutions.[37] The last step, titled *the realization step*, is devised to assure or determine whether a particular organization is able to realize the range-limited principle or whether it is in accordance with such a principle. This step concerns the judgment of the legitimacy of a political organization, meaning that if such a political organization is qualified to serve the end of the moral principle in the first step, it will be regarded as legitimate. I will not unfold the argument for the last step as we have been proceeding on the assumption that a set of political institutions is legitimate or nearly just, and the third step primarily concerns the problem of legitimacy, which should be dealt with independently of political obligation (as we have seen in Chapter 2).

I believe that there is a remarkable consensus between the natural duty account and the moral necessity thesis in that each account endorses the

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[36] Jeremy Waldron, "Special Ties and Natural Duties," *Philosophy & Public Affairs*, Vol. 22, No. 1 (1993): 13.

[37] See Jeremy Waldron, "Special Ties and Natural Duties," *Philosophy & Public Affairs*, Vol. 22, No. 1 (1993): 15-9.

correct method of justifying political obligation. Both of them directly target political obligation instead of legitimacy. Also, both accounts can accept different grounds for legitimacy and political obligation, as Waldron contends that legitimacy arises from democratic decisions, whereas political obligation is generated by our natural duty.[38] Put differently, since both accounts start with the belief that there is simply a duty or obligation to obey a *just* or *morally legitimate* state, the uncertainty is brought about by the considerations of whether a state is just or legitimate, thus meeting the standard of such a duty or obligation.

To conclude, the proximity to others constitutes one of the circumstances of justice, as "those with whom I come into conflict will in the first instance be my near neighbors."[39] Therefore, proximity provides the fundamental rationale for natural duty theories to explain why conflict should be resolved locally or particularly with the guidance of political institutions.

4.3 Two Interpretations of the Proximity Principle

The strategy of interpreting "apply to" or "application" invites objections. A range-limited principle should be able to cast light on the reason or justification for limiting its range of application. After all, there is a crucial dissimilarity between being born into a social structure with a principle of distributive justice and into a family with a principle of equal education, because many doubt that we could ever make an analogy between political bonds and family. To use Waldron's terms, the range of insiders of a family is rather obvious, while it is not clear of insiders of a polity, or even if there can be the distinction of insiders and outsiders of a polity. Simmons deploys two arguments against this strategy, both of which arise from a misunderstanding of the proximity principle.

Firstly, Simmons contends that an institution should not bind me simply because it applies to me, no matter how just such an institution is. For instance, suppose there is a philosopher's association for the good of

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[38] The separation thesis supported in Chapter 2 offers the conceptual possibility for distinctive justifications for these two enterprises.

[39] Jeremy Waldron, "Special Ties and Natural Duties," *Philosophy & Public Affairs*, Vol. 22, No. 1 (1993): 15.

philosophers, the maintenance of which rests upon philosophers' paying their dues. Does this association have a right to demand payment from me only because I am a philosopher? Suppose further that all the philosophers gather together and live on a certain piece of "territory" where such an association functions like a political institution, enacting rules, adjudicating, and enforcing. If philosophers eventually regard the institute as having the right to rule, and every child born on the "territory" is considered a philosopher to whom its rules apply, are those children under a moral obligation to obey the institute because they apply to them?[40] Simmons believes that the answers to both questions should be negative. As a consequence, particularizing people's natural duty of justice by correlating it with particular political institutions is unfeasible, since we cannot maintain the view that a philosopher is morally obligated to obey the institute's rules simply because she is a philosopher. Simmons's example implies that if the linkage between a state and political institutions and a certain group of people cannot be entailed by the idea of "application" or the physical proximity of a person to a certain group of people, the proximity principle seems to be unqualified to accommodate WPR. If living in the proximity of a political community fails to establish any justification for the law of that state being binding on the person, such a principle cannot accommodate the fact that it is to this very state that this person owes her obedience.

A second challenge concerns the stability of political obligation engendered by the proximity principle. According to Simmons, if political obligation is owed particularly to people in the vicinity or a state ruling over the proximate group of people, does not this entail that the obligation would be automatically transferred to different states as we move among states? For instance, take the inhabitants in a city called Yanbian, located on the Chinese side of the border with North Korea. A large number of Chinese citizens in this city have Korean ethnicity, speak Korean, and do business with Korean citizens. Therefore, it is not far-fetched to suggest that those Chinese citizens live in proximity to Koreans rather than to most of their fellow Chinese citizens (as for instance people living in Hainan province, thousands of miles

[40] A. John Simmons, *Moral Principles and Political Obligations,* Princeton University Press 1979, pp. 148-52.

away). This example obviously challenges the proximity principle. Yet this is clearly counter-intuitive, because only the law of China, the residents of which are not generally in their proximity, should morally bind them. In this manner Simmons would refute the proximity principle.[41]

Both challenges, however, are based on a misplaced interpretation of the proximity principle. In Kant's argument for the obligation to leave the state of nature, the "living side by side" setting is part of a normative justification for the necessity of a rightful condition or state. Therefore, proximity is more of an abstract principle rather than an algorithm, representing the particular subject as bound by the moral obligation in the moral necessity thesis. However, we do need a specific interpretation of the principle for the fulfillment of WPR or the determination of the scope of the political obligation in practice. Simmons believes that such a proximity principle should be interpreted as a *physical* proximity principle, which might be formulated as follows:

> *The physical proximity principle*: political obligation is owed to a group of people or a government with which one is physically living side by side.

If we understand the proximity principle this way, it is unsurprising when Simmons argues that the reason for supporting a proximity principle is because "[l]iving in the domain of government A certainly makes it *easier* for me to support government A than to support any other just government."[42] In addition, such an interpretation drives Simmons to ask detailed empirical questions pertaining to a quantitative standard for the proximity: "If I live ten miles away from you? Or fifty miles? On the other side of a river or mountain? If I once hiked past your property or was told of your existence by a

41 A. John Simmons, "Democratic Authority and the Boundary Problem," *Ratio Juris*, Vol. 26 No. 3 (2013): 335-6.

42 A. John Simmons, *Moral Principles and Political Obligations,* Princeton University Press 1979, p. 33.

friend?"[43] At this point, we may be able to understand why the example of the Chinese citizens living on the border poses a special threat to Simmons's understanding of the proximity principle, because those citizens might be more appropriately viewed as bound by the North Korean law in terms of physical proximity. It is then quite plausible to reject the idea that "mere physical proximity 'particularizes' the sorts of moral bonds we have been considering."[44] However, even if we concede that physical proximity does not offer a solution to particularity, this is not tantamount to a rejection of the proximity principle. The expression of "living side by side" should be understood as a justificatory device within a thought experiment. To apply such an abstract principle, we need to note an essential difference between our contemporary politics and the scenario in the normative justification: whom we cannot avoid living side by side or interacting with does not depend on our own will. In other words, we cannot *decide* the range of our proximity, since we were born into states whose territories had already been settled, and whose constitutions had been valid for a long time. Thus, if a U.S. citizen wants to fence off a piece of land and possess it as her own near the U.S.-Mexico border while refuses to pay any sort of real-estate taxes, she does not harm a Mexican citizen living only a few miles away, but her disobedience does harm a resident who lives far off in Hawaii paying all the taxes. The consequence of our being born into different clusters of people and different states is that different jurisdictions apply to us. To interpret the proximity principle from the jurisdictional point of view, we might specify it as follows:

The juridical proximity principle: political obligation is owed to a group of

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[43] A. John Simmons "The Duty to Obey and Our Natural Moral Duties," in Christopher Wellman and A. John Simmons, *Is There a Duty to Obey the Law?* Cambridge University Press 2005, p. 173; And, in a recent paper, Simmons insists on the physical interpretation of the proximity principle, where he argues ". . . the claim that we are *special* threats to those with whom we are side by side […] is a straightforwardly *factual* claim and must be evaluated as such. […] Who is a special threat to whom depends on far more than simple physical proximity." A. John Simmons, "Democratic Authority and the Boundary Problem," *Ratio Juris*, Vol. 26 No. 3 (2013): 335.

[44] A. John Simmons, *Moral Principles and Political Obligations,* Princeton University Press 1979, p. 33.

> people with whom one cannot avoid living side-by-side and interacting with due to legal relationships.

According to this version, the physical proximity is not the key element in deciding whom we are living with. Jurisdiction is. Hence, we concentrate on the juridical sense of living side-by-side and interaction. This juridical interpretation of proximity helps us to dismiss the second challenge about the instability of political obligation. If a citizen of the Netherlands is travelling in the U.S., her political obligation does not automatically transfer to being owed to the U.S. citizens in her physical proximity; rather, Dutch law is valid for her even if she is currently outside of the territory of the Netherlands. However, U.S. law simultaneously morally binds her, as we might say that the situation is marked by a personal jurisdiction and a territorial jurisdiction claimed by both states. Furthermore, the juridical proximity principle helps the moral necessity thesis to overcome the first challenge from Simmons. In coming into this world we are practically unable to avoid living together with others and would inevitably harm others if we are not committed to a set of political institutions. Therefore, political institutions should be regarded as *morally necessary*, or, as noted before, as internal to our moral life. A philosophical institute cannot have this force. In other words, disobeying the rules of the philosophical institute is not a moral wrong, while without subjection to a set of political institutions, one would necessarily fail to comply with one's moral obligations.

4.4 The Moral Necessity Thesis: A Restatement

Armed with the juridical proximity principle, we have a comprehensive understanding of the moral necessity thesis, especially concerning the particularity requirement in the application of political obligation. As we have argued, the ultimate basis of the moral necessity thesis is that we have a moral obligation to comply with our pre-existing obligations and do others no harm while we cannot avoid interacting with others. Hence whether a person is a U.S. citizen or a Canadian citizen has no effect on the nature of this moral obligation of obedience, since the identity of a person, or of the state as his or her state, does not make a moral difference for the person's end of maintaining a morally acceptable life by correctly discharging pre-existing

moral obligations. Therefore, we may say at this point that such a principle is agent-neutral, since no back-reference to the political identity of a person is necessary for the justification of this general moral obligation.

Discharging moral obligations requires a political condition, although the particular condition into which a person enters makes no moral difference as long as it is morally just or legitimate. Every political structure has a settled jurisdiction, determining whom one is going to legally interact with or live near to. As a consequence, being born in the U.S. or Canada makes a difference at this point—but it is a practical rather than a moral difference. The general moral obligation to obey a state or a legal system, has now been particularized as a moral obligation owed to a definite group of people. Moreover, it is an obligation that involves the performance of certain actions according to a particular system of laws. This particularization has been achieved by the juridical proximity principle, according to which people are born, as matter of contingent fact, into a particular jurisdiction. To conclude, political obligation is morally necessary for people to live together in morally responsible ways, and it is a particular political obligation owed to those who live in the same political structure according to the jurisdiction of a constitution.

One point that has come up in the previous arguments is that the political obligation generated by the moral necessity thesis is by nature a special or bipolar moral obligation that is morally necessary only for a given group of individuals. Hence, if to be a *justifiable* moral obligation, it should be a *particularized* moral obligation. Simmons argues that the Kantians have to justify political obligation by a two-stage argument: first, they need to justify why political institutions should be regarded as a moral necessity; then, they need to particularize the moral necessity to explain the particularity requirement. However, Simmons's characterization of the Kantian justification is wrong because he overlooks the particularity implicit in the moral necessity thesis: without proximity, political institutions would not be morally necessary in the first place. Accordingly, the justification of political obligation offered by the moral necessity thesis cannot be broken down into a source stage and a particularizing stage, as depicted by Simmons.

5. CONCLUSION

The argument of this chapter has both a destructive and a constructive aspect. In its destructive aspect, three specific conclusions may be identified: Firstly, the requirement of particularity is *not peculiar to* the theory of political obligation. Secondly, this requirement cannot have any substantial impact on the normative force and the justification of political obligation. I have distinguished two types of the particularity requirement and argued that if the aim of the requirement is to accommodate the factual consensus of people falling under different political frameworks, what should be satisfied is the *weak* version of the requirement. Moreover, abandoning the strong version leads to the third conclusion: there is no fixed pattern, such as citizenship in Simmons's framework, for accommodating particularity. As Darwall's account of the relation between bipolar obligation and obligation period makes clear, contingent events or moral luck have the capacity to particularize a general obligation. I believe that these three destructive conclusions sufficiently relativize the importance of the particularity requirement for the justification of political obligation. We do better in leaving open all possible explanations of the factual consensus, if citizenship is not the exclusively default choice.

In the constructive part, I endorse the proximity principle to show why political obligation is only morally necessary relative to certain circumstances. For Kant and Kantians, the circumstances include people's sharing a common moral life in their proximity in the state of nature. However, political obligation is embedded in real politics, which is a background that differs from that of the state of nature, so we should conceive people's proximity not as physical but as juridical. In reality and especially in the public sphere of our life, it is the law that decides whom we are living in proximity to, rather than physical distance.

CHAPTER 5 THE MORAL NECESSITY THESIS AND TWO KINDS OF THEORY

1. INTRODUCTION

As announced in Chapter 3, the second part of the argument for the moral necessity thesis involves demonstrating the essential but subtle role the thesis plays in various contemporary theories of political obligation, and this part of argument is the topic of this chapter. This part of the argument does not constitute the normative justification for the thesis, which has been provided in the previous two chapters; rather it is an investigation of the different approaches to political obligation in view of the moral necessity thesis and an exploration on the nexus between this thesis and contemporary theories.

According to Elisabeth Anscombe's arguments for political authority in terms of the necessity of a certain task, the obligation of obedience is entailed as a correlative of political authority once this is justified. The moral necessity thesis defended here, in contrast, *directly* focuses on a moral obligation toward the law and polity, while leaving aside the problem of legitimacy. Legitimacy is about the question whether a state and its laws represent the omnilateral will. According to the Kantian approach defended here, legitimacy, or the instantiation of the omnilateral will, is based on the principle of protecting citizens' freedom, equality and independence.[1] Once political obligation is justified a priori as morally necessary, together with the proximity principle confining the range of political obligation, the remaining question concerns whether the state in people's proximity is legitimate or not: does political obligation demand that people comply with *this* particular state? Hence, the inference from the moral necessity thesis goes roughly as follows:

> P1: People are morally obligated to obey publicly enacted laws and support political institutions, which is a moral necessity for (especially the public or interpersonal aspect of) range-limited moral life.

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[1] Immanuel Kant, "On the Common Saying: That May Be Correct in Theory but Is of No Use in Practice," in *Practical Philosophy*, translated and edited by Mary Gregor, Cambridge University Press 1996, 8:290.

P2: If a particular set of laws and political institutions are capable of satisfying certain qualifications as a moral necessity,

then:

P3: people are morally obligated to obey this particular set of laws and support those political institutions.

However, many theories of political obligation such as consent theories, associative theories, theories based on the fairness principle etc., argue in the reverse direction:

Q1: There is a set of laws under which a certain group of individuals live and act.

Q2: If they have consented to obey it, or if it is the law of their community, or if it is the result of a democratic process, or if they would otherwise be taking advantage of other people etc.,

then:

Q3: this particular group of individuals are morally obligated to obey the law.

I believe that we cannot take Q1 for granted, because the presumed reason why there is a set of laws ruling people's behaviors and lives in the first place is quite essential for this proposition. We can change some elements in this inference to make the presumption explicit. Suppose that citizens of a certain state wear blue pants on Tuesdays, can we conclude that they should be morally blamed for not wearing blue pants simply because of the fact that this silly custom is something most of them agree to do, or that belongs to their community as a cultural mark or whatever, or that the majority have voted to install it? I think we cannot. As a result, the *content or substance* of a moral obligation matters. Even if we grant that consent or community membership can generate *certain kinds* of obligations, we still need to examine whether political obligation is one of those kinds. Put differently, even if, say, consent by itself suffices to create a moral obligation to obey the law, we might wonder why people would consent to incur this particular obligation instead of alternative obligations. For if the alternative obligations are strong enough to morally compel people to consent to obey the law, is

not the consent redundant?

Therefore, the aim of this chapter is to articulate how the moral necessity thesis essentially functions in different types of theory, so as to ensure that a set of laws is not just some institution requiring us to wear blue pants. These types of theory either presume the moral necessity thesis in their arguments for Q1, or they will be confronted with a dilemma—a dilemma that as we will see later, may well be fatal. The importance of the moral necessity thesis will be revealed by scrutinizing two categories of contemporary political obligation theories: namely *voluntarist* theories (*voluntarism*), and *involuntarist* theories (*involuntarism*).[2]

The ambition of this chapter is not or cannot be an utterly comprehensive investigation into the connection between the moral necessity thesis and all sorts of political obligation theories. Rather I investigate what I take to be paradigmatic theories from each category with the purpose of clarifying the significance of the thesis.

2. THE MORAL NECESSITY THESIS AND VOLUNTARIST THEORIES

By voluntarist political obligation theories, I am referring to theories that assume a necessarily voluntary basis for moral obligations. Therefore, voluntarism can be described as follows:

> *Voluntarism*: voluntary expressions, actions etc. are *necessary* for the imposition of political obligation.

2.1 Consent Theories

The exemplary variety of voluntarism is actual consent theory, according to which people are morally obligated to obey the law of their states because

[2] However, it should be pointed out that the classification of some theories into either of these two categories might be controversial, as not every single theory has taken an explicit stance on whether voluntariness is necessary for people to take on political obligation. For instance, some theories hold that citizenship is the source of political obligation, but have not stated clearly whether citizenship can be acquired only through voluntary actions, or whether it is something one is born with and thus not necessarily voluntary.

they have consented to obey—where consent is a voluntary action. Consent as a basis for political obligation has enjoyed a particular appeal due to the work of Hobbes, Locke, and other social contract theorists. For example, Locke argues that "[m]en being, as has been said, by Nature, all free, equal and independent, no one can be put out of this Estate, and subjected to the Political Power of another without his own *consent*" (II 95).[3] Even the most committed skeptics of political obligation concede that actual consent is capable of generating a moral obligation of obedience. Their skepticism rather concerns the scope of the obligation thus generated: are all or most of the citizens of a state obligated in this way?[4]

The work of Simmons may be taken as a case in point. Simmons believes that the only plausible basis for political obligation is actual consent. Moreover, he also argues that the only legitimate basis for the existence of a state is citizens' actual consent to give it the power to coerce them. So according to Simmons, no matter how just or well-governed a state is, it lacks legitimacy if citizens of this state have not actually consented to the state's usage of coercion to protect their pre-political rights. The consent is supposed to have actually given at some point of history by those who live in a state, rather than being an ideal or hypothetical event, and because no state in our world was actually consented to, or is capable of providing a proof of actual consent (such as a written contract), no state is legitimate. The only plausible way to bridge the gap between the justification and the legitimacy of a state is the voluntary, actual consent of all or at least the majority of the citizens of the state.

Skepticism about consent theories, therefore concerns their lack of generality. But this is far from the end of the story. For there are two obvious and well-known methods of circumventing the alleged lack of generality: either we can treat some actions or speech acts that are not

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[3] Quotations are from John Locke's *Two Treatises of Government*, edited by Peter Laslett, Cambridge University Press 1988; Arabic numerals refer to particular sections. Socrates implies a similar argument in *Crito* treating not leaving the state as a sign of consent. See Plato, *Complete Works*, edited by John Cooper, Hackett 1997, 51c-e.

[4] See Joseph Raz, "The Obligation to Obey the Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, p. 239; A. John Simmons, *Moral Principles and Political Obligations*, Princeton University Press 1979, pp. 57-61.

intentional expressions of consent of citizens *as consent,* or we can argue that the genuine basis of consent theories is not the fact of people's actual consent, but the claim that that they *should consent.* The former way out the generality criticism is known under the heading of "tacit consent," while the latter is referred to as "hypothetical consent". I would like to focus on tacit consent and skip the argument about hypothetical consent in this section. I think Ronald Dworkin is right in arguing that a hypothetical contract is not just a pale version of an actual contract, but in fact no contract at all.[5] But Dworkin's argument does not amount to a denial of hypothetical consent either: since if what compels citizens to consent to incur a political obligation is a sufficiently strong moral requirement, we might still be correct in claiming that political obligation is morally justified, although the ultimate justification rests not on hypothetical consent or a hypothetical contract, but on the substantive moral reason that requires people to consent. I will argue that for a tacit consent theory to bypass the generality criticism, it has to rest on an assumption that the political obligation stems not just from tacit consent, but at least partially also from some kind of pre-existing moral obligation. I will not defend consent theory, nor do I believe Simmons's refutation of this theory is convincing. My focus will be on how the moral necessity thesis can (or cannot) serve as part of the argument of tacit consent.

On Simmons's interpretation, Locke endorses the tacit consent approach to explain how a person can be subjected to a government.[6] More

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[5] Ronald Dworkin, *Taking Rights Seriously*, Harvard University Press 1977, p. 151. Waldron distinguishes between two accounts of political legitimacy—voluntaristic and rationalistic, corresponding to "the distinction between actual and hypothetical consent." See Jeremy Waldron, "Theoretical Foundations of Liberalism," *The Philosophical Quarterly*, Vol. 37, No. 147 (1987): 140-1.

[6] Apart from Locke, contemporary tacit consent theories regard voting as a sign of consent, see Alan Gewirth, "Political Justice," in *Social Justice*, edited by Richard Brandt, Prentice-Hall 1962, p. 138; Peter Singer, *Democracy and Disobedience*, Oxford University Press 1973, p. 52; For criticism of this approach, see M. B. E. Smith, "Is There a Prima Facie Obligation to Obey the Law?" *Yale Law Journal*, Vol. 82 (1973): 960-4; Also, Harry Beran believes that the acceptance of membership assumes a consensual obligation to obey the law of the state, see Harry Beran, *The Consent Theory of Political*

specifically, Simmons identifies Lockean tacit consent as implied by a person's residence in a state. If a person is continuously living on the territory of a state, whether or not she has expressed her consent to the state, she is under a moral obligation of obedience by virtue of her residence.[7] However, according to Simmons, residing is not an act of consent, or a genuine "sign of consent," but only an "implication of consent". Lockean residence merely *implies* consent, which means that an actor is morally bound by her residence as she would be bound had she in fact consented. As a consequence, residence turns out to be a kind of hypothetical consent; and what really matters is not whether consent as a voluntary act has in fact been given, but what *reason* we have to treat a person as if he or she had consented to incur political obligation. Thus, the primary defect of the Lockean account lies in confusing consent "with other grounds which may be sufficient to generate obligations."[8] Nevertheless, this so-called primary defect might not be as fatal as it appears, and it is at this point that I argue

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Obligation, Croom Helm 1987, pp. 29-32.

7 The most notable criticism of Locke's political obligation based on residence as tacit consent is probably offered by Hume. He criticizes Locke's argument as unreasonably demanding. Hume believes that it is impossible for citizens to give up their current lives to emigrate to other states, and he compares Locke's theory with an imaginary scenario in which a poor peasant has been brought onto a vessel involuntarily, and he either submits to the master's commands or steps off the ship into the ocean at the cost of perishing. Hume argues that the peasant's staying on board cannot be interpreted as consenting to the master's authority and dominion. However, I believe this is not where the fatal flaw of tacit consent theory lies. In the first place, the analogy is not entirely to the point. Emigration to another state does not amount to perishing. Therefore, I think the more proper analogue of jumping into the ocean and perishing would be leaving a political condition and going back to the state of nature, instead of leaving a state for another one. And secondly, suppose the master of the vessel is an extremely vicious dictator, then it might be more burdensome for the peasant to stay on board than jump into the sea. So how demanding or costly it is to leave a state, as such, cannot be the criterion of whether we should treat a person's continuous residence as tacit consent. See David Hume, "Of the Original Contract," in his *Political Essays*, edited by Knud Haakonssen, Cambridge University Press 1994, p. 193.

8 A. John Simmons, *Moral Principles and Political Obligations*, Princeton University Press 1979, pp. 88-91.

that consent theories should be regarded as presuming the moral necessity thesis to complete their justification. Moreover, I contend that Simmons's analysis of Locke's consent theories has three flaws.

I will start with a minor flaw found in Simmons's criticism of Locke's tacit consent. A person's residence does not exhaust Locke's notion of tacit consent. It also encompasses all the actions involving legal rights and obligations that he or she performs. To Locke, possessing or bequeathing a piece of land, lodging somewhere for a short term, driving on the highway and so on all signal a person's tacit consent to the state on whose territory those actions are performed, since the state has exclusive jurisdiction over it. The reason why Locke treats all such actions as tacit consent is not entirely clear. All he says is that all such actions involve "enjoyments" on the territory of the state. As a consequence, whether a person has enjoyments from his or her dwelling serves as the criterion for "tacit consent". Hence Locke defines the range of the subjects of political obligation, as he states that "*[t]he Obligation* any one is under, by Virtue of such Enjoyment, *to submit to the Government, begins and ends with the Enjoyment*" (II 121). So the political obligation generated by consent hinges on the question of how enjoyments can give rise to a moral obligation to submit to a polity, and this will be clarified after discussing the third defect in Simmons's interpretation of Locke.

But two features in Locke's account of tacit consent are noteworthy: the first it shares with the moral necessity thesis, namely that the range of the subjects of political obligation is determined by jurisdiction instead of citizenship. Citizens, long-term residents or even travelers, on both theories, are morally obligated to be subjected to the state on whose territory they happen to find themselves. The difference lies in the *source* of political obligation: on the moral necessity thesis, it stems from the idea that without such a moral obligation, it would be impossible to live morally without arbitrarily harming other people that one cannot avoid living or interacting with. And the contingency of citizenship to political obligation leads to a second feature in Locke's argument: the distinction between express consent and tacit consent. A person's express consent makes her a citizen of a political society, while tacit consent, represented by living peacefully in or enjoying all sorts of legal rights and benefits of a state, relates a person to

the legal system of a state, but does not make "a Man a Member of that Society" (II 122). This legal identity is something that she can quit freely by moving out of this state. I believe that this distinction is extremely important to understanding Locke's justification for political obligation and political legitimacy, as it implies differing bases or grounds for the two concepts: express consent for legitimacy and tacit consent for political obligation. I will spell out the distinction later to illustrate why Locke might have presumed the moral necessity thesis.

The second defect in Simmons's criticism lies in an exaggeration of Locke's voluntarism. Simmons argues that a voluntarist assumption is essential in the consent tradition: a person gives up her natural freedom and incurs an obligation *only if* she performs a voluntary action to signal her acceptance of the obligation and, furthermore, only if she performs the action as a deliberate undertaking.[9] Locke does stress that under certain circumstances, a person can only subject herself to the power of another person or society by consent, but he does not make the stronger claim that this is the *only* way to generate obligations. For instance, duties to God or duties to follow the law of nature actually cannot be conceived as arising from consent. More specifically, Locke argues that a victor in a war who has justice on her side still has no right to seize more than what the losing side could forfeit. This means that she cannot have any claims on the lives or necessary goods of the enemy's children or innocent people in general. It is an obligation to follow the law of nature that she must "give way to the pressing and preferable Title of those, who are in danger to perish without it" (II 183).[10] So even for Locke there still can be duties and obligations stemming from sources other than consent. It might be objected that the idea of involuntary duties rests upon a confusion of duty and obligation. While obligation involves a relationship between a particular obligation-bearer and a particular right-holder duty binds everyone.

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9 A. John Simmons, *Moral Principles and Political Obligations*, Princeton University Press 1979, p. 64.

10 For other kinds of obligations and duties that do not arise from consent in Locke, see John Rawls, *Lectures on the History of Political Philosophy*, edited by Samuel Freeman, Harvard University Press 2007, pp. 125-6.

Therefore, without voluntary actions there can exist only duties but not obligations. Political obligation can only be justified with particularity being presented, according to Simmons. However, as argued in the last chapter, particularity barely has any impact on the normative justification of political obligation. Also, as I would like to demonstrate, in arguing for the source of political obligation Locke never requires a voluntary basis for it. This leads to the third defect in Simmons's interpretation of Locke.

The third defect is the confusion of consent as the justification for political obligation with consent as the justification for political legitimacy. This defect is intertwined with both of the former defects. While construing Locke's argument as a consent theory of political obligation, Simmons defines such a theory as one according to which the political obligations of citizens are grounded in their personal performance of a voluntary action such as a promise, a contract or express or tacit consent. Yet he holds that most consent theorists maintain that de jure political authority or legitimacy and political obligation share the same source, viz. deliberate action.[11] However, Locke distinguishes the sources of political obligation and legitimacy and would therefore refuse to be categorized as a consent theorist of *political obligation*, as it is legitimacy rather than political obligation that can only arise from people's express consent. As quoted above, a person as free, equal, and independent cannot be "subjected to the Political Power of another without his own *consent*" (II 95)." "Consent" here means *express* consent. As a matter of fact, Locke mentions tacit consent only when he is discussing political obligation. Only express consent, for example an oath of allegiance, can make a person a member of a political society, and there is not much room to doubt that the origin or source of political legitimacy for Locke rests upon such express consent or contract. Moreover, Locke explicitly states that people can be members of a commonwealth only if they actually enter it by "positive engagement, and express promise and compact," which he generalizes under the label 'consent' when he talks about "the beginning of Political Societies, and that *Consent which makes any one a Member* of any Commonwealth" (II 122). Thus, (express) consent is the

[11] A. John Simmons, *Moral Principles and Political Obligations*, Princeton University Press 1979, pp. 57-8.

sole source of political legitimacy, and surely it is capable of generating political obligation for members of a state without being the sole source of political obligation. Therefore, there must be a more general ground for political obligation, since Locke believes that this obligation is applicable not only to members or citizens of a state, but also to residents and even travelers.[12] So the third and probably most serious flaw in Simmons's criticism of consent theory in general and of Locke's theory in particular is caused by conflating distinct sources of political legitimacy and obligation.

The question for Locke, then, is how tacit consent can generate political obligation. To answer this question, Locke needs to explain why the status quo for a person who has not given express consent is to be duty-bound and not duty-clear. In other words: why does merely leading a life on a contingent piece of land impose a moral obligation to be subjected to the state and its laws? The ultimate answer for Locke lies in a religious view, namely that God put a person "under strong obligations of necessity, convenience, and inclination, to drive him into society" (II 77).[13] So political obligation as a result of tacit consent all the way down depends on an obligation imposed by God. What I hope to argue is that we are still able to make sense of Lockean tacit consent while shelving the religious approach to political obligation, as long as we retain the idea that there must be a pre-existing obligation giving rise to political obligation.[14] Locke argues that

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12 I think John Dunn also opposes categorizing Locke as a consent theorist of political obligation when he distinguishes the sources for political obligation and legitimacy and writes that "[c]onsent may explain the origins of political legitimacy. It may indicate how it is that a particular individual at some specific time becomes liable to particular political obligations. But it is simply not the reason why Locke thought most men were obliged to obey the legitimate exercise of political authority." John Dunn, "Consent in the Political Theory of John Locke," in his *Political Obligation in its Historical Context: Essays in Political Theory*, Cambridge University Press 1980, p. 31.

13 "Society" for Locke includes all kinds of communities, from the family to political or civil society.

14 Dunn also argues that the only possibility for Locke to articulate political obligation as tacit consent is to make such an implied source of obligation explicit, "If a government is legitimate almost any adult behaviour within the boundaries of the country - that is, all behavior except emigration - constitutes consent. Why should this be so? There are two possible reasons. It might be the case that all persons who live in

the reason for conceiving people's enjoyment within the jurisdiction of a state as tacit consent to obey the law is grounded in people's purpose to seek a "local protection and homage". Without a government and laws there would be the various "inconveniences" of the state of nature, for which civil government is the proper remedy (II 13). This brings us back to the distinction we drew in Chapter 3 between political obligation as empirically and morally necessary for survival and peaceful living. If a civil government as the remedy for these inconveniences also implies that political obligation is morally necessary, then arguably Lockean tacit consent theory fundamentally presumes the moral necessity thesis. Hence, we need to figure out whether these inconveniences involve moral wrongness, and whether overcoming those inconveniences is a requirement of morality.

I believe this is where the moral necessity thesis to be located within the whole Lockean argument. One of the major inconveniences in the state of nature is the lack of an impartial judge, because Locke believes that people by nature will be partial to themselves and their friends, and that "ill nature, passion and revenge" will lead them to overestimate the harm and damage done to them and inflict excessive rather than reasonably proportionate punishment on others. Thus, if people are to be judges of their own cases, this "inconvenience" will inevitably lead to confusion, violence, and disorder precluding any realistic prospect of people living morally and peacefully together without harming each other (II 13).[15] Those inconveniences, therefore, morally obligate people to leave the state of nature and found a political society. What we have here is, in essence, the Kantian idea of

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a certain geographical area do in fact share a certain attitude of mind towards the political authorities of such an area. But Locke plainly does not believe anything so odd. The only other possibility is that such a situation in itself implies certain *prima facie* duties; that the duties are derived from the context and can, at most, be voided by considerations about the state of mind of the subject." John Dunn, "Consent in the Political Theory of John Locke," in his *Political Obligation in its Historical Context: Essays in Political Theory*, Cambridge University Press 1980, p. 36.

[15] Locke believes that the chief end of a government is the preservation of private property (property for Locke also includes property in one's own person). For the sake of this chief end, a government needs a set of settled and established laws, an impartial and known judge, and power to guarantee the execution of the laws. See (II 124-6).

political obligation as a moral necessity. Political obligation as tacit consent, therefore, implies the moral necessity thesis as the source of political obligation. What is more, it allows us to bracket its religious Lockean moorings. Hence, when Dunn summarizes Lockean political obligation as "a conclusion of reason based on the necessary features of specifically human biological existence, an elementary theorem of the human condition"[16], these necessary features include the impossibility to live morally together or act morally without arbitrarily harming others, and political obligation becomes a moral requirement to be subjected to a political condition.

Once we replace Simmons's picture of Locke as a consent theorist of political obligation by a picture of Locke as an adherent of the moral necessity thesis who makes use of tacit consent theory to help ground this obligation, we can argue that the reason to conceive people living in a state without expressing consent as duty-born rather than duty-clear is because without such a default duty people would be unable to live morally while interacting with others. In this way the moral necessity thesis can help in circumventing the objections to consent theory. But there is a remaining problem not just for tacit consent theory but for consent theory in general. How does consent theory help us distinguish between consenting to incur a moral obligation to obey a just state and consenting to incur a moral obligation to obey a morally wicked regime? This problem concerns the content of the consent. Suppose that Adam consents to Mike to killing someone for him, does this consent give rise to a *moral* obligation to kill? I think it obviously does not. Thus, it is a necessary condition for consent to serve as a source of moral obligation, roughly, the object of the consent is not immoral. So *ceteris paribus* by consenting to meet your friend at a certain time—content that is not immoral—you incur a moral obligation to respect the agreement. And the concern about the substance of consent leads to a second question, namely: why should people consent to obey the law of the state in the first place? If the content of a promise or contract is a moral requirement per se, it will probably render the consent *redundant*. For

[16] John Dunn, "Consent in the Political Theory of John Locke," in his *Political Obligation in its Historical Context: Essays in Political Theory*, Cambridge University Press 1980, p. 31.

example, what does Adam's agreement with Mike that he will never kill anyone add to the moral obligation not to kill that Adam is under anyway? If tacit consent essentially calls on the moral necessity thesis to explain why people should consent to obey the law of a just state, then the content of the consent might have already involved a moral requirement not to harm others or to live morally together.

As far as I can see, these two questions place the proponents of consent theories in a dilemma. On the one hand, they need to explain the moral properties of the consent's object, since if the law that they consent to obey is wicked or unjust, the consent will not so much be redundant but void. A plausible consent theory should be able to distinguish between consent to obey the law of a perfectly just state and consent to be subjected to the Nazi regime. On the other hand, if obeying the law is a moral requirement in itself, how can consent be a necessary condition of political obligation? For instance, it could be God's command, the law of nature, or the moral necessity thesis that serves as the source of political obligation all the way down. Or should they perhaps resort to a form of *normative* consent theory, for instance the one that David Estlund defends? Estlund argues that the duty to obey "is, rather a duty to act as you *would have been* morally required to promise to act if you had been asked. This, as the normative consent approach suggests, would be a duty just as stringent as if you actually had promised."[17] Thus, the problem of political obligation is not whether people are morally obligated to obey the law, but rather whether people are morally obligated to *consent* or *promise* to obey the law.[18] Still, that might render the consent part of the argument in justifying political obligation no less superfluous.

2.2 The Fairness Principle

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[17] David Estlund, *Democratic Authority: A Philosophical Framework*, Princeton University Press 2008, p. 155.

[18] To quote Estlund's own words on how to define political obligation in the normative consent theory, he argues that "[w]hen we turn to normative consent we are not asking, at first, about a duty to obey, but a duty to consent to the new authority—a duty, not to obey, but to promise to obey." David Estlund, *Democratic Authority: A Philosophical Framework*, Princeton University Press 2008, p. 152

Apart from consent theory, I would like to discuss the role of the moral necessity thesis in voluntarism by analyzing the argument of voluntarist fairness-principle theories (for simplicity's sake, I will just call them fairness theories).[19] The justification of such theories can be described as follows:

> *Fairness theories:*
>
> 1a. People have voluntarily accepted non-excludable benefits from a particular form of social cooperation.
>
> 1b. Those who have made sacrifices to contribute to the form of social cooperation are entitled to require a similar or a fair contribution from its beneficiaries.

Therefore,

> 1c. Beneficiaries have a moral obligation to support the form of social cooperation as a requirement of the moral principle of fairness.

In other words, if people have accepted significant benefits from the state as a cooperative enterprise, they should make a contribution that corresponds to these benefits. It might be questioned why voluntary acceptance of some benefits would impose a moral obligation to *obey* the provider of the benefits, since the fairness principle is a general moral principle applicable in extensive aspects of our lives. For instance, if I have accepted help from my neighbor, I ought, as a requirement of fairness, to offer my help when she needs it. Nevertheless, the fairness principle alone cannot explain why I

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[19] Voluntarist fairness principle theories are defended in Rawls's early writings where he argues that political obligation, as a special case of the duty of fairness, is a moral obligation owed by people who *have accepted and intend to continue accepting* the benefits of a cooperative scheme accruing to their fellow cooperating citizens. George Klosko on the other hand, claims that his version of fairness principle is involuntarist, and he develops his involuntarism by confining the benefits received by citizens to what he calls "presumptively beneficial goods," so that people cannot reject and the requirement of voluntary acceptance would be nullified. See John Rawls, "Legal Obligation and the Duty of Fair Play," in his *Collected Papers*, edited by Samuel Freeman, Harvard University Press 1999, pp. 122-3; George Klosko, *The Principle of Fairness and Political Obligation*, Rowman & Littlefield 2004, p. 39.

should take an order from her, even if what she asks me to do is totally fair and reasonable considering her service to me. Fairness theories bypass this difficulty by confining the benefits provided by social cooperation to the goods that are significant and essential for people's lives, such as national defense, education, the health system, and other kinds of infrastructure of the state, which are benefits that people cannot reasonably reject. However, I believe fairness theories unjustifiably equate a moral obligation to engage *in social cooperation* with a moral obligation to the political institutions *of the state*. It is not unusual in our contemporary world for a country to rely on international aid, but that does not mean that its citizens are obligated to obey the states aiding them. Thus, the supporters of fairness theories imply that a set of publicly enacted laws and judiciary, administrative, and other political institutions are fundamental for the maintenance of social cooperation and the generation of non-excludable benefits. If we add this implication to the structure of fairness theories laid out above, we end up with a relatively complete justification for fairness theories:

> 2a. If people are to lead decent lives and live together, some essential benefits are imperative.
> 2b. The benefits can only be provided through a particular form of social cooperation.
> 2c (*the presumption*). A state and its political institutions are necessary for the maintenance of the social cooperation.
> 2d. People have voluntarily accepted the essential benefits provided by the relevant form of social cooperation.
> 2e. Thus, as a moral requirement of the fairness principle, they are morally obligated to support the relevant form of social cooperation through obeying political institutions.

The presumption as shown in 2c basically stands for the implication that political institutions are necessary for social cooperation and for people to access to certain types of benefits, but the sense in which political institutions are necessary in fairness theories has not yet been clarified. There are two provisional forms such a clarification might take. The first obscures the distinction mentioned earlier between moral necessity and

empirical necessity, while the second—based on moral necessity—renders the external moral principles redundant.

As to the first alternative, it might be argued that a set of political institutions is necessary for social cooperation in a practical sense, i.e. a state or legal system is *practically* or *empirically necessary* for social cooperation to provide and distribute primary goods. So in this picture, political institutions are necessities for people's leading decent lives given how important water, food, or clean air are to them. But this practical interpretation of 2c gives rise to the following question: given that the state is legitimate as long as it actually serves as an effective tool for the maintenance of social cooperation, how can we conceive legitimacy as a set of *moral* requirements or restraints on the state? An autocratic state may be highly effective in furthering social cooperation and providing primary goods to people. Still, it lacks moral legitimacy if it fails to treat its citizens as equals or guarantee basic liberties and so forth.

This leads us to a second interpretation of 2c, conceiving states not only as practically necessary for social cooperation, but as *morally necessary* for assuring each member's equal standing, justice in the distribution of those essential goods, and so on. Construed in this way, 2c shows that the moral necessity thesis is implied by fairness theories. A state and its laws are necessary for social cooperation, without the help of those political institutions its members as equal and free persons would be unable to avoid doing harm to others and to live together peacefully. In this way, 2c completes the argument from 2a to 2e.

Fairness theorists may be troubled by a concern that also worries consent theorists. As I have argued, the moral necessity thesis by itself suffices to generate a moral obligation to submit to a state and its laws. What difference, then, does the fairness principle make to the justification of political obligation? It seems to me that if the moral necessity thesis is entailed by fairness theories as stated in 2c, then people have a moral obligation to comply with the law regardless of the fairness principle. In other words, people lack the discretion to decide if they are going to follow the law of their state, since they are not morally free to reject the law.

2.3 Democratic Authority

In addition to consent and fairness theories, voluntarist theories of democratic political obligation also presuppose the moral necessity thesis. For instance, Thomas Christiano argues that democratic authority has both substantive and procedural dimensions. That is to say, the decisions issuing from a democratic procedure should be evaluable not only independently from the quality of the decisions, but also from the procedural viewpoint in terms of how they are made and the justice of the procedure. Since the two dimensions are irreducible to each other and tend to conflict, he defends a dualism.[20] Christiano argues that consent is not a necessary condition for political authority and political obligation, and he attributes the flaw of consent theories to the failure to explain the moral necessity of the state. The main purpose of the state and the legal system is to establish justice among a certain group of people, which means that the legal system of a reasonably just state determines "how one is to treat others justly if one is to treat them justly at all."[21] And the only way that a reasonably just state settles what constitutes justice is by promulgating public rules guiding individual behavior. To make it possible for people to treat each other justly, a state should ensure that people act on the basis of a unique set of rules that is publicly and clearly promulgated by an authority so as to bring about mutual expectations of compliance. Hence, according to the democratic authority theory, the activity of the state is "a *morally necessary* one in the sense that someone who fails to comply with the state's publicly promulgated rules is merely violating a duty of justice to his fellow citizens."[22] The reason why people are morally obligated to obey the law of their states hinges on the fact that public laws are "how the society has resolved a whole variety of disagreements in order to get people to treat each other reasonably well."[23] In sum, the basis for political obligation is

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[20] Thomas Christiano, "The Authority of Democracy," *The Journal of Political Philosophy*, Vol. 12, No. 3 (2004): 266-8.

[21] Thomas Christiano, "The Authority of Democracy," *The Journal of Political Philosophy*, Vol. 12, No. 3 (2004): 281.

[22] Thomas Christiano, "The Authority of Democracy," *The Journal of Political Philosophy*, Vol. 12, No. 3 (2004): 283.

[23] Thomas Christiano, "The Authority of Democracy," *The Journal of Political Philosophy*, Vol. 12, No. 3 (2004): 283.

simply that compliance is morally necessary to treat other people fairly and reasonably, and democracy is a way (probably the only way) to decide the specific content of the "actual collective authorization of laws and policies by the people subjecting to them."[24]

Nevertheless, we might have noticed that here the genuine source for political obligation lies not in people's participation in democratic procedures as a sign of consensual obligation, but in the moral necessity of a state and democracy to ensure that people are treated justly and reasonably. Put differently, political obligation is generated as a moral necessity in order for people to act morally and to discharge pre-existing obligations, which explains why a democratic state is required in the first place.[25] Thus, we may arrive at the conclusion that for typical democratic authority theories that Christiano and Estlund defend to work as an approach to political obligation, they need to rely on the moral necessity thesis to explain why we would need a state and a legal system to guarantee people's compliance. Democracy is the path to deciding what sort of states and laws can serve the end implied in the moral necessity thesis. And again, democratic authority theory reminds us of the distinct sources of political authority and obligation, since the former arises as the result of democracy while the latter is a requirement of justice—or, in my own terms, a moral necessity.[26] Thus the independence

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[24] David Estlund, *Democratic Authority: A Philosophical Framework*, Princeton University Press 2008, p. 38.

[25] Perhaps democracy can be used to relate a group of people to a state, or to particularize the duty of justice or the duty of moral necessity in order to satisfy the requirement of political obligation as exclusively applicable to members of a state. But as we have argued before, we should not overestimate the importance of the particularity requirement in justifying political obligation. Moreover, the moral necessity thesis should be seen as a range-limited principle when it comes to determining who is bound by a political obligation.

[26] My focal argument confines itself to political obligation, shelving the question of political legitimacy or political authority, but I would like to mention that political obligation as a Kantian moral necessity entails a prerequisite of a state's political legitimacy. And as noted before, the justification of political obligation includes intrinsic postulates about the condition of legitimacy, as Kant states "the civil condition, regarded merely as a rightful condition, is based a priori on the following principles:

of the two issues of legitimacy and political obligation of the separation thesis discussed in Chapter 2 is not just presupposed by consent theories such as the Lockean theory, but as we see here, has also been confirmed by democratic authority theories.

To briefly conclude, voluntarist theories need to explain why people would voluntarily undertake the actions to incur a moral obligation in the first place. This is why they inevitably presuppose the moral necessity thesis in order to complete their justification. But this presupposition requires them to explain why a voluntary action is still necessary in justifying political obligation, since the moral necessity thesis by itself suffices for such a justification.

3. THE MORAL NECESSITY THESIS AND INVOLUNTARIST THEORIES

As opposed to voluntarists who believe that political obligation derives from actions or expressions, "involuntarists" argue that it is entailed by relations into which people are born. The most obvious example is nationalism: since a nation is marked by a culture and people born in this nation have a moral obligation to maintain and preserve this culture, they are morally obligated to obey the law of their nation.[27] In other words, their political obligation follows from the moral obligation toward their nation. But cultural nationalism is not the only form of involuntarism, and a shared culture is

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1. The *freedom* of every member of the society as a human being.
2. His *equality* with every other as a *subject*.
3. The *independence* of every member of a commonwealth as a *citizen."*

If democracy is the only way to satisfy the principle of political equality that Niko Kolodny has recently defined as "[e]qual opportunity to influence political activities," then the legitimacy of a state essentially consists in its being a result of the democratic process. See Niko Kolodny, "Rule Over None I: What Justifies Democracy?" *Philosophy & Public Affairs*, Vol. 42, No. 3 (2014): 195-229; see also the companion article "Rule Over None II: Social Equality and the Justification of Democracy" *Philosophy & Public Affairs*, Vol. 42, No. 4 (2014): 287-336; see Kant, "On the Common Saying: That May Be Correct in Theory but Is of No Use in Practice," in *Practical Philosophy*, translated by Mary Gregor, Cambridge University Press 1996, 8:290.

[27] See Yael Tamir, *Liberal Nationalism*, Princeton University Press 1993, pp. 134-5.

not the only basis for the moral bond among a group of people. Dworkin, for instance, argues that in a genuinely fraternal community we are under moral bonds toward all other members of the group, and our moral obligation of obedience is entailed by what he calls associative obligation. Associative obligations are generated in the exact same manner as obligations among family members or friends: people incur moral obligations by the fact of being born into associative or communal relations.[28]

Whatever the varieties of specific versions of involuntarism, they all agree on the point that people need not perform any actions or express anything to incur moral obligations. Some obligations result from natural or social facts, such as being born or being in a relation with others. For this reason, political obligation can be something we are born with. Involuntarism can be described as follows:

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[28] Ronald Dworkin, *Law's Empire*, Harvard University Press 1986, pp. 207-8. Thus for Dworkin the question that matters is whether a community can be qualified as truly fraternal. According to Dworkin, only if four conditions are fulfilled can a bare community turn into a true or fraternal community: (1) members must treat the group's obligations as *special* within the group, instead of general duties equally owed to people outside the group as well; (2) they must accept that these responsibilities are *personal*, which means that those responsibilities are imposed on each member to each other member, rather than to the group as a whole in a collective sense; (3) members must regard these particular responsibilities as entailed by a general responsibility: each has a *concern* for the well-being of others in the group; (4) the group's practices are supposed to involve not only concern but an *equal* concern for all members. See Ronald Dworkin, *Law's Empire*, Harvard University Press 1986, pp. 199-200. Stephen Perry contends that the second and fourth conditions are not necessary for associative obligation, but he believes that the Dworkinian strategy is promising. Perry argues that associative obligation can be justified on the basis that the relationship generating the obligation is intrinsically valuable, and he believes that Dworkin suggests this. But unlike Dworkin, Perry thinks that the value underlying associative obligations should be a plurality of values instead of a monistic value such as integrity in Dworkin's sense. Stephen Perry, "Associative Obligations and the Obligation to Obey the Law," in *Exploring Law's Empire*, edited by Scott Hershovitz, Oxford University Press 2006, pp. 189-98.

Involuntarism: people incur political obligation as a result of their social relationships, such as their citizenship, associative relationships with fellows, culture identities, and so on.

3.1 Associative Theories

A paradigmatic version of involuntarism—associative obligation theory—can be formulated as follows:

Associative obligation:

3a. People are born into a community.

3b. People who are born in a community are bound to each other by associative moral obligations.

3c. Political obligation imposed on members of a political community is entailed by associative moral obligations that constitute this kind of community.

3d. Thus, people are moral obligated to obey the law of their political community.

For the sake of argument, I will assume that communal relations do give rise to associative obligations and investigate whether there is a logical gap in the justification. Friendship, for instance, essentially contains a moral obligation of loyalty. The duty of loyalty, in other words, is intrinsic to friendship. However, even if we accept the analogy between friendship and ties among members of a community, it is not clear what reason we have to believe that the moral obligation to obey the law relates to communal ties as the duty of loyalty does to friendship. In other words: why is *political* obligation intrinsic to a non-political community? This is a logical gap in associative obligation theories that calls for an explanation. I believe that associative theories either presuppose the moral necessity thesis, or face a dilemma, depending on their conception of community. If, on the one hand, they conceive "community" narrowly as a political community, then they have to explain why political obligation does not follow from the assumption of a political community. What does the associative argument contribute to the justification? If, on the other hand, they conceive "community" more broadly, then they have to explain why political obligation extends to all non-political communities. I

will first illustrate the dilemma and then explain why the moral necessity thesis is indispensable for associative theories and other versions of involuntarism.

Some theories have ignored this gap. They claim that the existence of a community entails a moral obligation to obey the directives of the community. Associative obligations, according to these theories, are obligations *simpliciter*, so people are obligated to communities irrespective of the nature of a community, how people join a community, or people's will for or against being included in such a community. This claim seems to be question-begging as it would force an unacceptable conclusion on us: people would be morally obligated to support and obey all kinds of community into which they are born or enter, irrespective of their moral quality. As a consequence, those theories fail to satisfy the moral parameter that we set for a plausible theory of political obligation in Chapter 1. According to those theories, even for members of a drug cartel, a criminal gang, or a Nazi community, a general moral obligation toward these communities still exists, although such a moral obligation might be overridden by other moral considerations. For instance, in the version of associative obligation that Margaret Gilbert proposes, political obligation is entailed by an obligation toward a joint commitment, and the proponents of this theory can argue that membership in a political society "is accompanied by obligations to uphold its political institutions, *whatever the moral character of that society*."[29] However, since political obligation in morally wicked communities is conceived as just one normative consideration among many others, it does not compel members to do anything morally wrong. All things considered, its validity remains independent of the moral quality of the communities. Political obligations, according to Gilbert, are obligations of joint commitment that "always have the same, considerable impact on one's situation from a normative point of view. What one is to do in a given case, all things considered, is a matter of judgment. In principle things can go either way."[30] Thus, if associative theories do nothing about this logical gap,

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[29] Margaret Gilbert, *A Theory of Political Obligation: Membership, Commitment, and the Bonds of Society*, Oxford University Press 2006, p. 236.

[30] Margaret Gilbert, *A Theory of Political Obligation: Membership, Commitment, and the Bonds*

they face the following dilemma: either they have to concede that there is a moral obligation (*pro tanto* or *prima facie*) to obey morally wicked laws and states, or they have to strip political obligation of any moral properties.

The first horn is obviously unacceptable, since it is counter-intuitive to say that people are morally obligated to obey the law of Hitler's regime. Others take the second option by identifying political obligation as a morally neutral obligation, as Gilbert does. However, this response leaves itself open to the criticism of triviality. Suppose that the law and other political institutions in a state are in general morally wicked. Nonetheless, every citizen bears a general political obligation to obey the law and support the state. In this case, political obligation, however, is systematically overruled by citizens' other moral considerations (such as the concerns of justice, human rights, or freedom) and this will render political obligation a trivial normative concern in moral reasoning or practical reasoning in general. Thus, on this scenario the issue of political obligation does not really matter in people's collective life. This might compromise the significance of political thought, the most important task of which, according to Nagel's argument quoted in Chapter 3, is to arrange our society so that "everyone can live a good life without doing wrong, injuring others, benefiting unfairly from their misfortune, and so forth."[31]

Associative theorists, then, have to find another method to deal with the logical gap, and I think some of them have done this with the moral necessity thesis defended here. For instance, John Horton bases political obligation on two arguments. The first, what he labels "the Hobbesian argument" establishes a necessary but not sufficient condition for political obligation, which is the value of a polity as a form of association. In order to identify a polity as *our* polity, however, we need another kind of argument—"the associative argument"—to explain the special relation between members of the polity.[32] In putting forward the Hobbesian argument, Horton states that the crucial feature explaining the most distinctive element of the polity as a form of human association is "*the need*

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of Society, Oxford University Press 2006, p. 260.

31 Thomas Nagel, *The View from Nowhere*, Oxford University Press 1986, p. 206.

32 See John Horton, *Political Obligation (Second Edition),* Palgrave Macmillan 2010, p. 176.

for an effective coercive authority to provide order, security and some measure of social stability."[33] It is "Hobbesian", I suppose, because political authority is primarily meant to guarantee human survival. The purpose of the associative argument, on the other hand, is to satisfy Simmons's particularity requirement: "[i]t is in meeting the particularity requirement that the distinctively 'associative argument' comes in."[34] Thus Horton uses a typical "two-stage" justification for political obligation and we might reformulate its structure as follows: the first (or source) stage argues that people are under a moral obligation to a polity because a polity is valuable and necessary for people's lives; and the second (or particularizing) stage deals with the specific problem of how a person relates to a particular polity as his or hers. In this way Horton's two-stage justification, fills the gap identified in associative theories by a premise 4b:

> 4a. People cannot avoid living together.
> 4b. A polity is necessary for maintaining their peaceful lives together.
> 4c. A polity becomes theirs if they have identified with it through, for instance, a sense of belonging, emotions or reasonable expectations on each other.
> 4d. Thus, people are morally obligated to obey the law of *their* political polity.

The way Horton formulates the Hobbesian argument might raise a concern about the distinction between empirical and moral necessity. If a state is empirically necessary, then it might not be morally necessary, or failing to subject oneself to it would not cause any moral harm or wrongness, but mere irrationality. However, I believe that 4b cannot be interpreted this way, for it would contradict Horton's insistence on the moral dimension of political obligation.[35] As shown in the first stage of Horton's justification,

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[33] John Horton, *Political Obligation (Second Edition),* Palgrave Macmillan 2010, p. 176.

[34] John Horton, *Political Obligation (Second Edition),* Palgrave Macmillan 2010, p. 180.

[35] Simmons argues that if political obligation is to be justified, it cannot be a sort of morally neutral positional obligation, since political obligation is supposed to be a moral obligation. Horton insists that political obligation as an associative obligation

since a state or polity's being necessary is believed to be the source of the moralization of political obligation, a moral obligation to the polity is imposed on people inasmuch as it is necessary for their lives. If a polity were a merely empirical necessity, as argued before, it would fail to generate an obligation as a moral requirement, because even if food is necessary for our lives, such an empirical necessity can hardly generate a moral obligation. Thus, the only plausible interpretation of 4b, that a state is necessary for people's lives, is through the moral necessity thesis, namely a state is integral to people's moral life and compliance with their moral obligation in the public sphere.

Therefore, in associative theories the moral necessity thesis functions as the origin of the moral properties of political obligation. Nonetheless, this way of bridging the gap leads associative theories into the same trouble that plagues voluntarism. If the moral necessity thesis by itself is sufficient to give rise to a moral obligation of obedience, then how can the associative argument make any difference to the justification of political obligation? Since Horton believes that the Hobbesian argument is merely necessary but not sufficient for political obligation, and the task of particularizing political obligation requires deployment of the associative argument, the moral necessity thesis cannot do all the work in justifying political obligation. As I argued in the last chapter, political obligation would not be morally necessary without the proximity principle; however, this principle assures that the political obligation generated is capable of accommodating the weak version of the particularity requirement. This makes the associative argument in Horton's associative theory superfluous and, as a consequence, the assumption of the moral necessity thesis reduces the role played by this approach in grounding such political obligation to triviality.

3.2 Natural Duty

Associative obligation is merely one kind of involuntarist theory. Another

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does have a moral dimension, as the obligation generated by relationships such as family or friendship. See A. John Simmons, *Moral Principles and Political Obligations*, Princeton University Press 1979, p. 21; John Horton, *Political Obligation (Second Edition),* Palgrave Macmillan 2010, p. 172.

notable approach takes our moral obligation toward the state to rest upon a kind of natural duty. In Chapter 4, I pointed out how Waldron tries to save the natural duty account from its failure to deal with the particularity requirement by appealing to the proximity proviso, and I developed a juridical interpretation of the proximity principle on the basis of this proviso in order to demonstrate how the moral necessity thesis determines the scope of the subject of political obligation. In this section, I will mainly concentrate on both the overlap and the divergence between natural duty theories and the moral necessity thesis.

John Rawls, for instance, embeds our obligation to support just political institutions in a natural duty of justice that does not require any prior acts. The duty of justice, according to Rawls, "requires us to support and to comply with just institutions that exist and apply to us."[36] Actually, it is not accurate to say that natural *duty* grounds a moral *obligation* to obey the law, as for Rawls duty and obligation belong to distinctive categories. The reason that Rawls abandoned the fairness approach to political obligation is because he came to believe that the natural duty to promote justice universally exists among people as equal moral persons, whereas political obligation can only be conceived as a result of voluntary acts and thus only to hold between particular individuals. Rawls believes that, since it is not clear what sorts of binding action from what persons political obligation requires, there is no general political obligation for citizens.[37] More interestingly, both a duty *and* an obligation to obey the law and support the state might simultaneously and consistently exist among persons, with the natural duty binding everyone more fundamentally and unconditionally compared to the moral obligation, which would only bind only those who assume public office or who have explicitly accepted benefits and advanced personal aims in the state. And regarding the particularity requirement, we are under the natural duty of justice to obey and support those political institutions *existing and applying* to us. To sum up Rawlsian natural duty:

5a. Every person has a natural duty to promote justice, owed to

[36] John Rawls, *A Theory of Justice*, Harvard University Press 1971, pp. 115-6.

[37] John Rawls, *A Theory of Justice*, Harvard University Press 1971, p. 114.

everyone else as morally equal;

> 5b. Just states and laws are necessary for promoting justice;
> 5c. People have a natural duty to support just states and obey just laws;
> 5d. There is a definite just state and legal system existing and applying to a certain group of people;
> 5e. This group of people have a natural duty to support this state and obey its laws.

Given the fact that the natural duty to promote justice is natural in the sense that it is a duty owed to all people as equal moral persons, no actions are required to generate such a duty. Proposition 5b may remind us of the moral necessity thesis, as both natural duty theory and the theory that I defend hold that political institutions are necessary. However, 5b differs from the moral necessity thesis by virtue of their sources. The moral necessity thesis maintains that without a state and the presence of law, we are inevitably in a condition in which we cannot avoid doing harm to people with whom we live together and failing to discharge our other moral obligations such as respecting others' property or liberty. The natural duty account, on the other hand, finds its moral source in the task, to use Anscombe's terminology, of promoting justice, and our duty to obey the law and support the state is necessary for us to achieve the task. Thus, if promoting justice cannot ground a moral duty, the natural duty of obedience loses its moral force. So even if we construe 5b as holding states and laws empirically necessary for the task of promoting justice, the duty to obey the law—as a subcategory of the duty to promote justice—still remains a moral duty.

This difference in source leads us to notice a categorial difference between the two approaches. For the natural duty account, the duty of obedience is a universal duty. Even though Rawls and Waldron attempt to particularize the natural duty with 5d—a territorial or jurisdictional political application—the duty still remains universal, as it is valid to all the people without a limited range. What has changed is merely the content of the duty, as I discussed in Chapter 4, since the natural duty to support *all* just political institutions has been tailored into a duty to support just political institutions

that apply to a person. Accordingly, people in Nazi Germany would be under the same natural duty to support just political institution with that of citizens of the Netherlands. What is different is that no legitimate political institution applies to Nazi German citizens, so their natural duty does not require them to support *their* political institutions.

But still, this might have an awkward result. Assuming the justification from 5a to 5e to be sound, the citizens of the U.S. are under a natural duty to obey the law of the U.S., which is necessary to promote justice. Nevertheless, the duty is owed by U.S. citizens to all other people in the world, no matter what state they belong to, if they are conceived as morally equal persons. And similarly, a Canadian citizen owes a duty to all U.S. citizens to obey the law of Canada. What has been particularized is the natural duty's content, which directs a person to obey the law of a particular state, although he or she still owes the duty universally *to all moral persons*. There is only a thin sense of community or membership because different applicable political institutions put people in different groups. A group of people constitute some sort of a relationship similar to a fraternal community because the same set of political institutions happen to apply to them and as a result, they are under the exact same duty with the identical content. But it is merely a community in a thin sense, since the relationship would still be relatively weak, and the state their natural duty points them to obey would be contingent. By contrast, political obligation generated by the moral necessity thesis entails a proviso—the proximity principle—that confines the subjects of the obligation to a group of people who cannot avoid living together. Compared with the natural duty account, the relationships among people are stronger in this scenario, inasmuch as this moral obligation is owed only to a limited scope of people and is domestically justified vis-à-vis their moral community. The way that the natural duty theory satisfies the particularity requirement and the weak relationship this theory builds up among members of the same group lead us to a further worry. If NGOs, international charities or associations in fact promote justice for citizens of certain countries, are these citizens under a moral duty to obey those organizations? In other words, if non-political institutions apply to those citizens in terms of promoting justice, are they morally obligated to obey? How shall we tell the difference between the

natural duties to promote global justice and domestic justice, as only the latter idea is the more typical or pertinent concern for the discussion of political obligation? If the natural duty account is to allay these worries, its proponents need to elaborate on the definition of a "range-limited" principle and in what way an organization exists and applies to us.

3.3 Samaritanism

I hope it is now clear why the particularity requirement has exceptional force in undermining natural duty theories.[38] Although the moral necessity thesis and the natural duty to obey the law overlap to a considerable extent, they diverge on the scope of the subject of the obligation (or duty). Based at least partly on the concern to accommodate particularity, Christopher Wellman has come up with an upgraded and specified version of the theory of natural duty, which integrates a duty of obedience into what he calls "Samaritan duty". This is a natural duty to rescue people from perils rather than a duty to promote justice. An example might be helpful to illustrate Wellman's novel approach and the particular way it connects to a duty in the political context. Suppose that, when Adam sees a child drowning in a canal, the only possible way for him to save the child is to use Mike's boat moored nearby. According to Wellman, Adam's using Mike's boat is legitimate; alternatively put, Adam has the liberty to use Mike's boat because it is necessary to save the child from drowning. Correspondingly, Mike, the owner of the boat, is under a moral duty to permit Adam's using it. By analogy, the peril that political obligation is to eliminate is a state of nature in which people's lives are in chaos and constantly threatened by attack; only a state can provide the benefits essential for a decent life. A state is therefore legitimated in exerting justifiable coercion for the purpose of rescuing its citizens from the perils of the state of nature, and citizens are under a moral obligation to obey and support the state to fulfill the moral requirement to

[38] Simmons claims in different places that the fatal defect of the natural duty account is its incapability of accommodating particularity. See A. John Simmons, *Moral Principles and Political Obligations*, Princeton University Press 1979, p. 156; A. John Simmons, "The Duty to Obey and Our Natural Moral Duties," in Christopher Wellman and A. J. Simmons, *Is There a Duty to Obey the Law?* Cambridge University Press 2005, p. 168.

rescue their compatriots from those perils. The reason that prompts Wellman to replace the natural duty to promote justice with the Samaritan duty lies in the urgency of the perils or evils in the state of nature: the "best prospects for building a satisfactory account of our duty to obey the law come from highlighting the importance of avoiding these perils rather than the imperative to promote justice."[39]

Samaritanism and the moral necessity thesis are in agreement about the undesirability of the state of nature. But the difference is that for Wellman the deficiencies of this state and the necessity for a political state to solve these deficiencies remain descriptive claims, while the moral properties of political obligation enter only with the normative claim that we are morally bound to save other people from perils. However, for the moral necessity thesis, staying in the state of nature is *in itself* a moral wrong or morally inconsistent, inasmuch as no one can discharge many of their moral obligations without the condition provided by a state and a set of publicly enacted laws (and according to Kant no right can be determined or realized). Since obeying the law and supporting the state is the only way that a person can lead a peaceful moral life, we are under a reciprocal moral obligation to act accordingly. Moreover, the moral necessity thesis only justifies political obligation as a corollary of the moral obligation to avoid the state of nature, whereas it does not suffice to justify political legitimacy. But Samaritanism claims that the duty of rescuing or mutual aid grounds both political legitimacy and political obligation, but political obligation will only be justified with legitimacy as one of its normative premises. Even if a state is justifiably coercive, people are nevertheless not necessarily under a political obligation, because according to Wellman an individual's disobedience is of too little weight to impair the state and its legal system. And only if we conceive of obedience as "our fair share of the communal samaritan chore of rescuing others from the perils of the state of nature" can there be a general obligation for people to obey the law.[40] So even if one's

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[39] Christopher Wellman, "Political Obligation and the Particularity Requirement," *Legal Theory*, Vol. 10 (2004): 105.

[40] Christopher Wellman, "Samaritanism and the Duty to Obey the Law," in Christopher Wellman and A. J. Simmons, *Is There a Duty to Obey the Law?* Cambridge

disobedience does not substantially undermine a state's function in facilitating the discharge of the duty of rescue, we are still under a moral obligation not to free-ride upon others' contribution of obedience.

Now we have the whole argument of Samaritanism:

6a. We have a natural duty to save people from the perils in the state of nature;

6b. A state is necessary to remove these perils; [41]

6c. A state has justified coerce power, and is therefore legitimate;

6d. The state as a cooperative enterprise would collapse without a certain degree of people's collective obedience;

6e. Although each individual's disobedience is negligible, fairness in terms of contribution to the Samaritan chore requires *everyone's* obedience to the law;

6f. Every person is under an obligation to obey the law.

The justification for legitimacy consists in the argument from 6a to 6c. The two normative premises, 6c concerning legitimacy and 6e concerning fairness, lead to the justification of political obligation. With the combination of the fairness principle and the Samaritan duty, Wellman believes that the hybrid account suffices to ground a political obligation general enough for a universal Samaritan duty. What is more, it also accommodates the particularity requirement, because no one has the discretion to choose how and in the service of which state they should perform their Samaritan chore. The discretion cannot be enjoyed by every individual citizen as it would break the state apart. And if not everyone can have this discretion, fairness requires that no one should have the unjustified privilege to choose what he or she shall do or to which state shall he or she

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University Press 2005, p. 33.

[41] Political legitimacy in Wellman's Samaritanism, understood as justified coercive power, should satisfy two premises: the first is that vital benefits or the rescue from perils can be secured only by states and coercion; and the other premise requires that states should not impose unreasonable burdens upon their citizens. See Christopher Wellman, "Samaritanism and the Duty to Obey the Law," in Christopher Wellman and A. J. Simmons, *Is There a Duty to Obey the Law?* Cambridge University Press 2005, p. 19 and 23.

perform the Samaritan chore of obeying the law. Furthermore, Wellman employs the premise of fairness to satisfy the particularity requirement, because fairness requires a person to contribute to a particular collective, since "in the political instance, individual impotence is required for the group effort to succeed."[42]

However, like any other attempt to provide a plural or hybrid basis for political obligation, this addition of a fairness principle to Samaritan duty gives rise to a worry about the genuine source of political obligation: whether each basis of the hybrid argument is necessary for the justification, and whether Samaritanism remains an account of natural duty as Wellman claims it to be. The Rawlsian natural duty account does not face such a worry because it is a monistic justification: if obedience to the law and support of a state are necessary to discharge the natural duty to promote justice, then we are morally bound to do so. So we can say that for Rawls, political obligation is justified as a constituent of the natural duty of justice, which does not require any prior transaction or other actions to occur. In other words, political obligation is justified as necessary for the moral task of promoting justice.

But for hybrid Samaritanism, political obligation is no longer a requirement of the Samaritan duty, but rather is presented as a moral obligation to act fairly and not to free ride on others' sacrifices. To show how the fairness principle renders Samaritanism redundant, we can replace Samaritan duty with any other moral task, for instance that of promoting justice or maximize well-being; insofar as all those moral tasks can be conceived as a form of social cooperation maintained by positive laws and other political institutions, we are morally obligated to obey the law in order to do our fair share to contribute to the enterprise. In other words, Samaritan duty offers a justification of why states are entitled to coerce, whereas the duty to obey does not arise directly from Samaritan duty, but as an implication of not taking advantage of others. Recall the previous example illustrating the duty of rescue: Mike as the owner of the boat has a

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42 See Christopher Wellman, "Toward a Liberal Theory of Political Obligation," *Ethics,* Vol. 111, No. 4 (2001): 748-9; Christopher Wellman, "Political Obligation and the Particularity Requirement," *Legal Theory*, Vol. 10 (2004): 110.

duty not to interfere with Adam's using his boat to save the drowning child, and this is because Mike, as a moral agent, bears a natural duty to rescue that in this particular situation can only be discharged by permitting Adam to use his boat. Whether he is contributing his fair share is irrelevant to the duty of rescue, and this is similarly true of the derivation of political obligation. If everyone is under a natural duty to rescue others from the state of nature, and to discharge the duty of rescue necessarily calls for a general obligation of obedience, then the obligation is justified as a necessary condition of natural duty. Even though it is the case that a successful rescue does not depend on every single person's obedience, and minor disobedience would be too innocuous to impede the collective project, this does not undermine the validity of the natural duty to rescue and to obey the law, because those who disobey the law are still failing to discharge their natural duty to rescue. Because political obligation is seen as a general moral obligation to the people of a given state, it does not require a justification valid for each individual. Thus, I believe the use of the fairness premise in fact illicitly switches the basis of political obligation from a duty to rescue or mutual aid to an obligation of fairness.[43]

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[43] Such a fairness premise is also superfluous for this natural duty, at least according to Barbara Herman. She argues that the duty of mutual aid necessarily presumes mutuality and arises simply from the *fact* of our mutual dependency; and she argues furthermore that the fact of dependency grounds the duty to help, and "[t]he claim of each of us on the resources of the others is equal. The argument that defeats the maxim of nonbeneficence leads, positively, to a duty of mutual aid." And mutual dependency yields a duty of mutual aid instead of a duty to help. And here it is worth quoting Herman at length: "The dependency argument against a policy of indifference, then, does not simply yield a duty to help others. It defines a community of mutual aid for dependent beings. Membership in the community is established as much by vulnerability (and the possibility of being helped) as by rationality (and the capacity to help). It may well be that this is not the sole duty to help others that we have. Other arguments might yield duties with different requirements, different scope (some of which might apply to angels as well). In this case it is the fact of dependency—that we are, equally, dependent (again, not that we are equally dependent)—that is the ground of the duty to help. I may not be indifferent to others not because I would thereby risk the loss of needed help (this is not a duty of fairness or reciprocity) but because I cannot escape our shared condition of dependency. The claim of each of us on the

Furthermore, the fairness premise fails to properly address the particularity requirement. For Wellman, a U.S. citizen is under a moral obligation to obey the law of the U.S. instead of that of Canada, because she would otherwise be free riding on her fellow U.S. citizens' contribution to political stability. The state, which is necessary for saving people from the state of nature, cannot afford to allow individuals to decide at their own discretion which state they are to submit to or how they will contribute to the collective project of rescue. Thus, the spirit of Wellman's explanation of the particularity requirement is that since *not everyone* can enjoy the privilege to choose, as a requirement of the fairness principle *no one* should have that discretion. Many other theories, including the moral necessity thesis, take the particularity requirement as an empirical limit. Actual consent explains the particular bond of an individual consenter and her state X, but the event is contingent since if she had consented to another state, the particular relationship would change correspondingly.

The fairness principle, however, offers a strong explanation, because this person's consent to state X should not be understood as contingent but as a prescriptive requirement: if she does not consent to state X, she would be taking advantage of other citizens of this state. However, the fairness interpretation is unnecessarily strong and also misses the point of the particularity requirement. This way of accommodating the particularity requirement is unnecessary, as I argued in Chapter 4, as it would be sufficient for political obligation to explain the observed fact that people of state X contingently bear the obligation to obey the law of state X, whatever its cause. This is what I called the weak particularity requirement. So I will focus on why Wellman's argument misses the point of the requirement. All the fairness principle shows is that *if* no citizen can enjoy the discretion to choose to which state she is to submit, then claiming that discretion would run afoul of the fairness principle. So this principle accommodates particularity as a moral demand on the assumption that "a certain group of

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resources of the others is equal. The argument that defeats the maxim of nonbeneficence leads, positively, to a duty of mutual aid." See Barbara Herman, "Mutual Aid and Respect for Persons," in her *The Practice of Moral Judgment*, Harvard University Press 1993, pp. 60-1.

people belongs to a cooperative enterprise," but what the principle assumes is exactly what the particularity requirement aims to address and what is needed to address to satisfy the requirement. And this means that the particularity requirement calls for an explanation of why and under what conditions can we say a person belongs to a state or cooperation—in other words, how it can be that a state or a cooperation is his or hers. If Wellman's approach fails to account for a person's membership in a cooperative enterprise, the fairness principle cannot satisfactorily address the particularity requirement. The fairness principle applies domestically to the members of a state, while the particularity requirement demands an account of how a person becomes a member.[44]

In distinguishing the justifications for political legitimacy and political obligation, Wellman argues that what is at stake in both is the idea of necessity. Since legitimacy is justified by the necessity of state coercion for peace and security, political states would not be justified if "there were a less coercive way to eliminate the horrors of a state of nature."[45] In contrast,

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[44] Simmons also denies Wellman's account of the particularity requirement. Moreover, Massimo Renzo doubts whether the natural duty to rescue can serve as an acceptable ground of political legitimacy, because the natural duty to rescue others from perils appears to be a universal duty among all persons. So it seems unacceptable for us to only rescue our compatriots and disregard other people who are in more serious danger. Renzo believes that Wellman's theory cannot explain why a state should pay more attention to or prioritize its own citizens in distributing benefits. This is what the state is meant to do, but the universality of a duty to rescue cannot accommodate this priority of domestic citizens. However, I believe Renzo's version of the particularity requirement is not something that a theory of political obligation needs to address, as it is a general requirement of a moral justification for a boundary, probably affecting everything hedged in by boundaries—equality of distribution, citizenship, the right to residence, emigration etc. See Massimo Renzo, "Duties of Samaritanism and Political Obligation," *Legal Theory*, Vol. 14 (2008): 200-1; See also A. John Simmons, *Moral Principles and Political Obligations*, Princeton University Press 1979, pp. 147-56; A. John Simmons, "The Duty to Obey and Our Natural Moral Duties," in Christopher Wellman and A. J. Simmons, *Is There a Duty to Obey the Law?* Cambridge University Press 2005, pp. 185-7.

[45] See Christopher Wellman, "Toward a Liberal Theory of Political Obligation," *Ethics,* Vol. 111, No. 4 (2001): 748-9

because not everyone's obedience is *necessary* for the existence of the state, the fairness principle is recruited to straddle the justifications of political legitimacy and political obligation. Wellman's ambition to kill two birds with one stone renders the whole argument superfluous as a justification of political obligation. I believe that Samaritanism can use the same model of argument as the Rawlsian natural duty account, since the natural duty of rescue serves as the ground of political obligation: (a) people are under a natural duty to rescue others from the perils of the state of nature; (b) a state is necessary for discharging this natural duty; (c) a general political obligation is justified for the maintenance of the state. This way of justifying political obligation makes Samaritanism into a natural duty account, which is why it retains the advantages of this approach, such as dispensing with the need for any voluntary action to incur the moral obligation. However, it is also stuck with the general vulnerabilities of the natural duty approach, because the Samaritan duty is also universal to all moral persons. If we compare the moral necessity thesis to natural duty theories, the former project is of itself "range-limited"; it is designed for a certain group of people living together, defined by physical proximity in the state of nature and by jurisdiction in our daily life, that a state and its laws are established as necessary for the end of leading moral lives, especially in the public sphere.

In sum, involuntarist theories normally claim that political obligation is a moral obligation that people are born with. Either it is attached to a valuable relationship such as fraternal communal bonds, or it is an integral part of a morally significant project that every person bears a natural duty to pursue simply in virtue of being a moral person. But still, we have identified the role of the moral necessity thesis in these justifications, which reduces them to triviality.

4. CONCLUSION

In this chapter, I investigate the connection between two kinds of theory of political obligation and the moral necessity thesis, and use this connection to assess the plausibility of paradigmatic approaches to justifying political obligation. For voluntarist theories, as we have seen, unless they can clarify the reason for people to undertake the action voluntarily, they inevitably face the criticism of incompleteness. There must be some implicit basis for this

sort of theory to explain why people should voluntarily incur a moral obligation to obey the law of a state in the first place, regardless of whether this is done by a promise, an agreement, the acceptance of goods from social cooperation, or by voting for their own government. In establishing a connection between voluntarism and the moral necessity thesis, proponents of such theories either explicitly state that this thesis serves as the ground for the explanation—most notably the democratic authority camp—or they treat the thesis as an assumption.

On the other hand, for involuntarism the acceptance of the moral necessity thesis is more on the surface: both Horton's associative obligation account and Wellman's Samaritanism directly incorporate such a thesis into their theories. In addition, the natural duty theories of Rawls and Waldron actually share the basic ideas of the moral necessity thesis; the difference lies in whether we see it as a duty with particularized content (as in natural duty theories), or as an obligation binding on a particular group of people (as the moral necessity thesis holds).

However, for both kinds of theories, incorporating the moral necessity thesis would put them in a predicament, for they would need to explain why their additional justification would still be necessary once the moral necessity thesis itself is a sufficient justification for political obligation. A common answer offered by both is that this is necessary to satisfy the particularity requirement—but then again, such a requirement can also be satisfied by the moral necessity thesis, and so they still need to demonstrate what difference their theories make to the argument. If what genuinely grounds political obligation is the moral necessity thesis, it seems pointless to heap unnecessary layers of argument on it.

CHAPTER 6 POLITICAL OBLIGATION AND THE DUTY TO OBEY: A RESPONSE TO RAZ

1. INTRODUCTION

There remains one task: as noted before, we treat "political obligation" as a concept interchangeable with "the moral obligation to obey the law." Yet it is not without controversy, although not many scholars linger on the distinction between the two concepts. In addition, I have so far considered one major form of skepticism about political obligation—philosophical anarchism—the main claim of which is that we can provide neither a general nor a particular basis for political obligation. As such, its primary target is the credibility of the argument for political obligation. However, there is another kind of skepticism that focuses not on whether such an obligation can be proved to exist but on its acceptability in our moral reasoning. Thus, even if political obligation does exist, it cannot be a legitimate consideration in people's actions, hence, should be ruled out in our moral reasoning.

These two points invite a separate discussion of Raz's arguments about political obligation, particularly since he champions both distinctions. What is more, Raz's standpoint is too singular to subsume under any of the theories previously canvassed. I have explored the approach based on a Kantian justification of the moral necessity thesis, according to which political obligation essentially refers to a moral obligation to obey the law and support the government. What is morally necessary for people to discharge their moral obligations and live morally and peacefully is the law and the political condition in general as a social institution facilitating and creating the conditions for people to do so. Thus, political obligation as a moral necessity entails a general obligation toward the law as whole. The equation of political obligation and a duty of obedience forces us to respond to those who distinguish between these two obligations, which is why Raz's theory of the moral attitude toward the law deserves particular attention here.

As we saw in Chapter 2, skeptics of political obligation and legitimacy typically assume the integration thesis, to the effect that legitimate authority as the right to rule and political obligation as the obligation to obey are the

two sides of the same coin. As a consequence, acceptance of one of the three components of the integration thesis—legitimate authority, the duty to obey, and/or the conceptual correlation—commits one to acceptance of the other components. Raz, however, is unique in that, on the one hand, he espouses all three elements and the integration thesis, while on the other hand he is skeptical toward a general moral obligation to obey the law. Raz's peculiar skepticism is results from a purported gap between political obligation and the duty to obey. Raz believes that legitimate authority requires a conceptual correlation of political obligation, but that such a political obligation does not amount to the general moral obligation *to obey the law*. The gap is the result of the different ranges of the two obligations, as Raz claims that political obligation, or "the duty to support and uphold good institutions, the existence of which need not be denied, is insufficient to establish an obligation to obey. It [scil. political obligation] extends directly to *those laws setting up and maintaining the just institutions*. It provides reasons to obey other laws only to the extent that by doing so one sets a good example or that by failing so to act one sets a bad example."[1] We may define this gap as follows:

> *The Gap*: while the duty to obey the law denotes a moral obligation to obey *all the laws of a state*, political obligation—the duty to support and uphold just institutions—demands the obedience of *laws only with regard to the existence of those institutions*.

According to Raz, political obligation refers to the correlate of legitimacy as "the duty to support and uphold just institutions," and the scope of such a duty cannot extent to the whole legal system.

This brings out another idiosyncratic aspect of Raz's account of political obligation and authority. For adherents of the integration thesis a positive or negative conclusion about legitimacy depends on success in justifying political obligation. By contrast, the Razian account argues the other way around, from the justification of legitimacy to political obligation.

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[1] Joseph Raz, "The Obligation to Obey the Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, p. 241. Italics added.

As Raz states, "One has a duty to uphold and support authorities if they meet the condition of the service conception."[2] According to Raz's service conception, a government has legitimate authority if by following its directives, the subjects would likely better comply with reasons that apply to them independently than by conforming to their own reasoning, and they incur a duty to support and uphold the government, though not a general duty to obey the law.[3]

With the separation of political obligation and the duty to obey, as well as the rejection of the latter, Raz's account poses two challenges to the moral necessity thesis. Firstly, the Razian criticism of various approaches to the duty to obey the law might also be applied to the moral necessity thesis. Raz not only doubts the plausibility of such a general duty to obey but even describes it as a kind of moral perversion. It is not just the case that political obligation cannot be justified; rather, it is the *content* of the obligation per se that is not acceptable in our moral reasoning. Thus, even if we are able to ground political obligation, Raz would still deny political obligation as a legitimate consideration for people's actions. By implication, this denial would extend to the moral necessity thesis. Secondly, the moral necessity thesis is supposed to ground political obligation, the content of which includes general compliance with the law. However, if *The Gap* exists, the moral necessity thesis would not be able to have any bearing on people's attitudes toward the law, let alone to claim general obedience of the law. Therefore, there are two tasks for the investigation of this chapter. One is to scrutinize the soundness of Raz's arguments against theories of the duty to obey. In Section 3, I conclude there are three kinds of attack scattered throughout Raz's refutations of specific theories of the duty to obey, and I argue that none of them is successful. Hence, without further elaboration, Raz's criticism of those theories cannot be conclusive. The other task is to examine if *The Gap* exists, and if it does, whether the duty to uphold the government can exist without the duty to obey. I contend in Section 4 that *The Gap* is very difficult to uphold. Moreover, due to his variable usages of "political obligation," "a general duty to obey," "a general reason to obey,"

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2 Joseph Raz, *The Morality of Freedom*, Oxford University Press 1986, p. 66.

3 Joseph Raz, *The Morality of Freedom*, Oxford University Press 1986, pp. 53-6.

and "a general attitude of respect for law," Raz's accounts of these similar yet subtly different ideas are not clearly differentiated. Thus, taking up these two tasks, I would like to resolve the ambiguity by sketching the structure of Raz's conception of the moral attitude toward the law, illustrating the connection between the moral obligation to obey the law, the moral attitude toward the law, and the moral reason to obey the law. Hereafter, I use "political obligation" merely to refer to the duty to support and uphold the government, while the duty or obligation to obey the law represents the sort of moral obligation that contemporary political obligation theories, including the moral necessity thesis, argue for, i.e. the obligation to obey the law as a whole.

2. THE STRUCTURE OF THE MORAL ATTITUDE TOWARD THE LAW

Raz places his rebuttals of the duty to obey within a larger framework of "the proper attitude towards the law." Within this larger framework, Raz unfolds his denials of the duty to obey the law, a general moral reason to obey the law, and a general moral attitude to the law. Each of these three ideas is intertwined with the other two. According to Raz, the appropriate attitude toward the law is "respect for law," which is valuable and does give rise to a duty to obey and a general reason to obey the law. Yet it can only ground a duty to obey and a general reason to obey on the part of those who have expressly adopted this attitude. According to Raz's argument, the fundamental and general reason why respect for law is insufficient to ground the duty to obey is because this appropriate and valuable attitude can merely be permissible but not obligatory. Thus, Raz's skepticism of these three ideas flows from the impossibility of providing an adequate *general* justification for any of them. I will consider Raz's skepticism in the following sections, and, in the current section, I will explain the hierarchy of the Razian structure of the attitude toward the law and articulate the relationship among the three ideas of the structure: a duty of obedience, a general reason to obey, and respect for law.

The core of Raz's skepticism consists of three propositions, rejecting each of the three ideas:

P1: There is no general duty to obey the law;
P2: There is no general moral attitude toward the law, viz. respect for law;
P3: There is no general moral reason to obey the law.

Firstly, I will start with Raz's view of the connection between P2 and P3—respect for law as a general moral attitude and a general moral reason to obey the law. According to Raz, respect is itself a reason for action (i.e. a practical reason), and respect for law is itself a reason to obey the law.[4] However, only those who respect the law have a practical reason to obey the law. Since respect for law is not found generally among all or most of subjects, the reason generated by this attitude consequently falls short of generality. In short, "*P2, therefore P3.*"

Two points call for clarification. First, the practical reason is relative to agents who express their respect for the law in "obeying it, in respecting institutions and symbols connected with it, and in avoiding questioning it on every occasion."[5] Thus, for Raz, respect for the law is not a ubiquitous or general reason for at least most subjects of a given legal system because such an attitude is posited as only held among some of them. Second, respect for law refers to various things: it expresses confidence that the law is morally sound;[6] it expresses one's identification with the community;[7] it is also a belief that one is under an obligation to obey because the law is one's law

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[4] Joseph Raz, "Respect for Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, p. 253, 259, 260. Raz terms this sort of practical reason "expressive reasons" because the actions they require express the relationship or attitude involved. For example, "friendship is an expressive reason for those actions which are (in the agent's culture) fitting to the relationship and against the unfitting ones." See Joseph Raz, "Respect for Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, pp. 255-6, 259.

[5] Joseph Raz, "Respect for Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, p. 259.

[6] Joseph Raz, "Respect for Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, p. 261.

[7] Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 354.

and the law of one's country.[8] Moreover, Raz stresses that the inference can only be a unidirectional argument as "P2, therefore P3, not *vice versa."* Raz argues that even if there is no duty to obey or general moral reason to obey, we can still defend respect for law as a valuable attitude toward the law, and one that is defensible if we conceive it as an independent and more fundamental attitude than a duty to obey and a general reason to obey. Thus, respect for law to Raz is a defensible and valuable attitude, yet it is not a sufficiently general source for a duty to obey or a general reason to obey. In an important passage, Raz stresses the independence of respect for law and the direction of inference:

> Having concluded […] that there are no such general moral reasons it seems to follow that practical respect for law is an unjustifiable attitude. This conclusion is inescapable if practical respect is derivable from an independently based obligation to obey and is itself justified as being the attitude which facilitates compliance with that obligation. Practical respect is morally defensible only if one can *reverse the order of justification* and derive an obligation to obey from an independently defensible attitude of practical respect.[9]

According to the inversion of the order of justification, practical respect is an independently defensible attitude capable of deriving a duty to obey and moral reasons to obey instead of a conclusion following from such a general obligation or reason. Moreover, this inversion also has a strong implication for the connection of P1 and P2, as I will illustrate later.

Secondly, regarding the logical relation between P1 and P3, it should be pointed out that whenever there is an obligation to φ, there is a reason for φ-ing, but not *vice versa.*[10] If you promise your friend that you will meet her at the theater at 8 p.m., the *obligation* incurred by your promise is a *reason* for

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[8] Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 354.

[9] Joseph Raz, "Respect for Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, p. 253, emphasis added.

[10] Joseph Raz, "The Obligation to Obey the Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, pp. 233-4.

you to leave your office for the theater at a quarter to eight. However, the opposite does not hold. Obligation, according to Raz, should be understood as a sort of practical reason that satisfies a demanding threshold, as he claims that an action is obligatory only if it is required by a "protected reason."[11] By "protected reason," Raz means a fact that is both a reason for an action and an exclusionary reason for disregarding reasons against it.[12] Your promise to your friend, according to the idea of protected reason, is not only a reason for you to meet your friend on time, but also an exclusionary reason for you to considering the pros and cons of doing so. Your promise is protected by the "second-order" or exclusionary part, and it is your obligation. Hence, to Raz, all obligations are reasons, whereas only the special sort of protected reasons are obligations. We may conclude that if there is no reason for *φ*–ing, there cannot be an obligation to *φ*. Thus, for the duty to obey to be justified, it is not sufficient to prove that there exists a general reason to obey the law. Additionally, if we deny the existence of a general reason to obey the law, the denial of a duty to obey follows as a corollary, but the reverse does not hold. In short, "*P3, therefore P1, not vice versa*." In other words, the denial of a general reason to obey calls for an argument with a more general scope than that of a duty to obey.

Lastly, as to the relation between P1 and P2, Raz believes that P2 contributes to P1—namely, if there is no general respect for law, there is no duty to obey. He argues that, as previously quoted at length, "[p]ractical respect is morally defensible only if one can reverse the order of justification and derive an obligation to obey from an independently

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[11] Joseph Raz, "The Obligation to Obey the Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, pp. 234-5; Joseph Raz, "Promises and Obligations," in *Law, Morality, and Society: Essays in Honour of H. L. A. Hart*, edited by P. M. S. Hacker and Joseph Raz, Oxford University Press 1977, pp. 223-5.

[12] See Joseph Raz, "Legitimate Authority," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, pp. 17-8; Joseph Raz, "Promises and Obligations," in *Law, Morality, and Society: Essays in Honour of H. L. A. Hart*, edited by P. M. S. Hacker and Joseph Raz, Oxford University Press 1977, pp. 221-2; Joseph Raz, *Practical Reason and Norms*, Oxford University Press 1975, Ch. 1 and 2.

defensible attitude of practical respect."[13] This is a "the cart and the horse" argument, as according to Raz, respect should be the source for the duty to obey, not the other way around. Respect as a reactive attitude does give rise to certain kinds of moral obligation. According to Stephen Darwall, there are two kinds of respect—recognition respect and appraisal respect.[14] By "appraisal respect," Darwall refers to the sort of respect that consists in a positive appraisal of a person or his or her qualities.[15] This is a common type of respect, for example when we express our respect or admiration for the extraordinary skills of a violinist. Recognition respect, on the other hand, is the kind of respect that is able to accommodate Raz's view of the duty to obey as derived from people's respect for law. This kind of respect "consists in giving appropriate consideration or recognition to some feature of its object in deliberating about what to do," and the typical examples of the objects of this sort of respect include "the law, someone's feelings and social institutions with their positions and roles."[16] With this distinction in mind, it seems plausible and reasonable for Raz to contend that "those who respect the law have a reason to obey, indeed are under an obligation to obey. Their

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[13] Joseph Raz, "Respect for Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, p. 253.

[14] In his celebrated "Freedom and Resentment," P. F. Strawson argues that holding people morally responsible necessarily includes a wide range of participant reactive attitudes—even if it is "unscientific and imprecise"—which belong to the involvement or participation with others in inter-personal human relationships, such as gratitude, resentment, forgiveness, love, and hurt feelings. See P. F. Strawson, "Freedom and Resentment," in his *Freedom and Resentment and Other Essays*, Routledge 2008, p. 5. These attitudes are essentially natural human reactions to the good or ill will or indifference of others toward us, as they express "how much we actually mind, how much it matters to us, whether the actions of other people—and particularly *some* other people—reflect attitudes towards us of good will, affection, or esteem on the one hand or contempt, indifference, or malevolence on the other" [10-1]. Darwall argues for a conceptual nexus between moral obligation and moral responsibility, accountability and blameworthiness. See Stephen Darwall, *The Second-Person Standpoint: Morality, Respect, and Accountability*, Harvard University Press 2006, p. 91.

[15] Stephen Darwall, "Two Kinds of Respect," *Ethics*, Vol. 88, No. 1 (1977): 39.

[16] Stephen Darwall, "Two Kinds of Respect," *Ethics*, Vol. 88, No. 1 (1977): 38.

attitude of respect is their reason—the source of their obligation."[17]

Even though the duty to obey can be derived from respect for law, the attempt to endorse this strategy to justify the duty to obey is doomed to fail because of the lack of generality of respect for law as mentioned before. Therefore, we might succinctly formulate the connection between the duty to obey and respect for law as "*P2, therefore P1, not vice versa*." Apart from the lack of generality, another reason that Raz offers for the impossibility of deriving a duty to obey from respect for law is that while it is never morally wrong not to respect the law, it can be morally wrong to respect the law of some fundamentally iniquitous states.[18] It is just morally *permissible* under certain circumstances to respect the law. In other words, you are never morally wrong in not respecting the law of a democratic, constitutionalist country whose legal system is reasonably just, but you are indeed morally wrong if you respect the law of Nazi Germany or the apartheid regime of South Africa.

In the previous paragraphs, I have tried to articulate the Razian structure of the moral attitude toward the law constituted by three components, the relations between these components, and their relative strength. The underlying concept for the Razian structure is the permissible nature of respect for law. Hence, it is the failure to satisfy the requirement of generality that is fatal to P1 and P3. To summarize briefly, the gist of Raz's theory consists of these three conclusions:

1. P2, therefore P3, not vice versa;
2. P3, therefore P1, not vice versa;
3. P2, therefore P1, not vice versa.

By these three propositions, Raz has provided a stronger claim against the duty to obey than other skeptics such as A. J. Simmons, M. B. E. Smith, and R. P. Wolff. The main statements of these skeptics merely go against the

[17] Joseph Raz, "Respect for Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, p. 253, 260.

[18] Joseph Raz, "Respect for Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, pp. 258-9, p. 260.

existence of the duty to obey, while Raz's conclusion is more inclusive in rejecting a general reason to obey. If conclusions 1-3 hold, the situation for proponents of the duty to obey is devastating. But, fortunately for them, the Razian structure is founded upon an over-demanding assumption that appears to me indefensible.

Conclusions 1 ("There is no general respect for law [P2], therefore there is no general moral reason to obey the law [P3], and not vice versa") and 2 ("There is no general respect for law [P2], therefore there is no general duty to obey [P1], and not vice versa") indicate that the focus of the argument against a duty to obey and a general reason to obey concerns the generality of respect for law: P1 and P3 follow from P2. This argument, nonetheless, presupposes that respect for law—a "self-satisfied and complacent attitude"[19]—is the *exclusive* source for a duty to obey and a general reason to obey, and that no independent moral principle or other sort of ground can justify them. This means that Raz would have to reject all sorts of justifications based on grounds *other than respect for law*. Hence, he needs to refute almost all of the approaches to the duty of obedience, such as theories based on the fairness principle, consent, associative obligation, as well as the moral necessity thesis defend here. Otherwise, even if it is justifiable for Raz to claim that without general respect for law there can never be a duty to obey based on this very attitude, it is still possible to justify the duty to obey without resorting to this attitude at all. Therefore, the next section discusses whether Raz provides a convincing argument based on this exclusive character of respect for law. I will only concentrate on his rebuttals of the duty to obey, setting aside the arguments against a general reason to obey.

3. THREE ARGUMENTS AGAINST THEORIES OF THE DUTY TO OBEY THE LAW

Some might object to Raz that, because he does not offer specific arguments against every single contemporary approach to the duty to obey, his attempt to provide a compelling exclusive argument fails. For example, Raz does not

[19] Joseph Raz, "Respect for Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, p. 261.

refute theories of the duty to obey the law based on natural duties, gratitude, or the moral necessity thesis. In itself, this does not neutralize Raz's skepticism, firstly because his specific refutations of certain theories of the duty of obedience might also apply to other theories, but also because of his general criticism of *any* attempt to justify this duty, as a perversion in our moral reasoning. I identify three arguments that Raz offers to support his skepticism toward particular theories of the duty to obey as well as its general justifiability. I will call these three arguments "The Innocuousness Argument (*Innocuousness*)," "The Quasi-Voluntary Obligation Argument (*Quasi-Voluntary Obligation*)," and "The Perversion Argument (*Perversion*)." For each argument, I will start by introducing Raz's elaborations and the targeted theories, and I will then reject each of them. As a consequence, Raz's skepticist objections against the duty to obey the law misfire.

3.1 The Innocuousness Argument

3.1.1 Innocuous Disobedience

When Socrates argues that one should never do wrong in return, nor do any man harm whatever he may have done to you, he implies that even if the law of your state wrongs you, you should not answer by violating or disobeying it. He eloquently questions Crito: "Do you not by this action you are attempting intend to destroy us, the laws, and indeed the whole city, as far as you are concerned? Or do you think it possible for a city not to be destroyed if the verdicts of its courts have no force but are nullified and set at naught by private individuals?"[20] According to Socrates, disobeying the law of Athens may cause destruction to the law, the people, and the city, and he has a moral obligation not to destroy them, upon which the duty to obey rests. Though Socrates's statement focuses on only one individual's violations of the law, the cumulative effect of individuals' disobedience could be destructive for a legal system. In other words, the reason that Socrates advocates the duty to obey is because without the constraint of such a general moral obligation, the state and the legal system would collapse.

However, Raz does not believe in such a consequentialist justification of the duty to obey the law, because most individuals' capacity to undermine

[20] Plato, "Crito," in his *Complete Works*, edited by John Cooper, Hackett 1997, 50b-c.

the law is limited, and their noncompliance is innocuous. The innocuousness follows from two features of ordinary citizens. First, countless offenses to the law are too innocuous to be detected, such as violations of traffic regulations, tax laws, and so forth.[21] It would be at best an exaggeration to accuse a pedestrian of destroying the legal system for disregarding a red light. Second, not many people have Socrates's ability to set a bad example, because most of us have restricted influence on others.

Additionally, if we view our political community as a cooperative venture, such as theories based on the fairness principle or fair play,[22]

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21 Joseph Raz, "The Obligation to Obey the Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, pp. 237-8.

22 Notably, Hart, Klosko, and (in his earlier works) Rawls argue for this version of the duty to obey the law, notwithstanding disagreement on the conditions of the principle. Hart first proposes that "when a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission." See H. L. A. Hart, "Are There Any Natural Rights?" *The Philosophical Review*, Vol. 64, No. 2 (1955): 185. Similarly, Rawls argues that the duty to obey, as a special case of the duty of fair play, is a moral obligation owed by people who have accepted and intend to continue accepting the benefits of a cooperating scheme to their fellow cooperating citizens. See John Rawls, "Legal Obligation and the Duty of Fair Play," in his *Collected Papers*, edited by Samuel Freeman, Harvard University Press 1999, pp. 122-3. However, compared with Hart's claim that all special rights arise from previous voluntary actions (not deliberately incurred), Rawls stresses the dependence of the duty to obey on our own voluntary acts. Klosko, on the other hand, attempts to establish the duty to obey without the constraint of voluntarism of moral obligations, as he argues that it suffices to justify a duty to obey based on benefits that no one can reasonably reject, which are called non-excludable goods. In other words, there would be no space for citizens to choose to accept or reject them if the cooperation generates benefits or goods of this kind. The principle of fairness is able to generate moral obligations to obey the cooperation scheme as long as the goods supplied by the scheme meet with three conditions: the goods must be (1) worth the recipients' effort in providing them; (2) "presumptively beneficial"; (3) have benefits and burdens that are fairly distributed. George Klosko, *The Principle of Fairness and Political Obligation*, Rowman & Littlefield 2004, p. 39. For a more detailed discussion of the theory of fairness, see Luo Yizhong, "I Should Not Be a Free Rider, nor Am I Obligated to Obey," *Ratio Juris*, Vol. 30 No. 2 (2017): 205-25.

disobedience would be unfair to those who contribute to the venture by the compliance of the law. To the fairness camp, citizens are morally obligated not to violate tax laws or traffic rules no matter how innocuous those violations are. Otherwise, they are morally blameworthy for being free riders, taking advantage of other fellow citizens' sacrifices, or arrogating unjustified privileges. Nevertheless, Raz maintains that the force of *Innocuousness* undermines the plausibility of the fairness approach, because innocuous disobedience *cannot* be unfair. Therefore, we may formulate this argument in the following proposition, which covers both the consequentialist approach and the fairness approach to the duty to obey to the law:

> *The Innocuousness Argument (Innocuousness)*: common violations of the law are too innocuous to impair the authority of law, the legal system, or the maintenance of social cooperation.

With respect to the fairness principle, Raz admits that it is unfair to not reciprocate the benefits received from a cooperative enterprise or to not contribute a fair share to the production of those public benefits. However, this principle still cannot adequately establish a duty to obey because "it cannot be unfair to perform innocuous acts which neither harm any one nor impede the provision of any public good."[23] Since many violations of the law are merely innocuous actions, "appeal[ing] to fairness can raise no general obligation to obey the law."[24] However, it seems to be a legitimate question why innocuous violations cannot be unfair, as Raz merely defines "innocuous acts" as violations that neither harm anyone nor impede the provision of any public good. For Raz to equate unfair actions with actions harming others or impairing the provision of public goods, the statement "innocuous actions cannot be unfair" needs further elaboration.

Firstly, we might come up with a causal interpretation according to

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[23] Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 352.

[24] Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 352.

which innocuous violations cannot be unfair *because* they neither harm anyone nor impede the provision of any public good. However, this interpretation remains unconvincing because harming others or hindering the provision of public goods relates to the moral principle of liberty or distributive justice rather than the fairness principle directly. The most common example involves people not purchasing tickets for the use of public transportation. While they do not harm anyone in particular nor hinder the provision of public goods, we still would blame them for not acting honestly and fairly. Thus, it is not clear how Raz can equate unfair actions with harmful actions. A more plausible way to explain how Raz's *Innocuousness* invalidates the fairness approach, I propose, is to argue that violations of the law maintaining social cooperation, sometimes called "free riding," are so innocuous that the detrimental influence on cooperation could be ignored. Jaywalking may be regarded as taking advantage of your traffic law-abiding fellow citizens' contribution to public order. It is just too innocuous to actually harm anyone or hinder traffic public good, while damage it inflicts on the legal system and social cooperation can also be ignored. So even if the violations are unfair, they are too trivial to be taken seriously. This is the most plausible way to explain Raz's *Innocuousness* against the fairness principle approach.

3.1.2 Irrelevant Innocuousness

If, as Raz maintains, the principle cannot generate a general duty to obey because innocuous disobedience cannot undermine social cooperation, this conclusion might also cast doubt on the credibility of the moral necessity thesis. Since the duty to obey to guarantee and facilitate people's discharging of moral obligations and living morally, Raz might also claim that minor violations of the law barely impact the ends that the duty to obey serves insofar as it is morally necessary. It would be an exaggeration to say that a person's running of a red light impairs a political community's public morals. Nevertheless, the consequentialist interpretation of *Innocuousness* is still a misplaced if the duty to obey the law is regarded as a *deontic* requirement instead of a consideration of the effect. Hart's version of the fairness principle can be taken as an example. It states that "when a number of persons conduct any joint enterprise according to rules and thus restrict their

liberty, those who have submitted to these restrictions when required have a right to a similar *submission* from those who have benefited by their *submission*."[25] According to Hart, the obligation of obedience as a rationale of fairness involves everyone being under a moral obligation not to take advantage of or exploit others' submission, endeavor, or sacrifices. Thus, in order to gain goods from a state as a cooperative venture, people should accept constraints on their behavior. No matter how innocuous the effects of violations of the law on the cooperation or the other cooperators, they are under a deontic obligation not to act unfairly. Therefore, innocuousness of their violations or free-riding actions seems to be an *irrelevant* factor in assessing whether one is acting fairly or not or discharging her obligations based on the fairness principle. Such a deontic understanding of obligations, including the duty to obey, concurs with Raz's own definition of an obligatory action, which he defines as an action "required by a categorical rule […], which applies to its subjects not merely because adherence to it facilitates achievement of their goals."[26] As a conclusion, the accusation of innocuousness does not affect the fairness principle approach to the duty to obey.

Moreover, *Innocuousness* could be extended to the denial of all theories of the duty to obey the law. Raz's argument implies that the justification for the fairness principle consists of two parts: first, an authority maintains social cooperation; second, we are morally refrained from impairing the authority. Since the second part of the argument does not yield a general obligation to obey all laws, but only laws regarding the existence of the authority and social cooperation, Raz contends that we are not morally required not to perform actions that would cause only innocuous damage to the authority. Further, Raz maintains that we are only morally obligated to obey those laws that, if ignored, would substantially undermine a justified authority. However, since Raz has transformed the duty to obey into a duty

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[25] H. L. A. Hart, "Are There Any Natural Rights?" *The Philosophical Review*, Vol. 64, No. 2 (1955): 185, emphases added.

[26] Joseph Raz, "Promises and Obligations," in *Law, Morality, and Society: Essays in Honour of H. L. A. Hart*, edited by P. M. S. Hacker and Joseph Raz, Oxford University Press 1977, p. 223.

not to impair the authority, while holding that innocuous disobedience cannot impair an authority, *Innocuousness* might spread to all sorts of theories of the duty to obey the law, no matter how the authority is justified. For instance, if a group of people has consented to a state and promised to obey the its laws, they have a promissory moral obligation to obey the law. But, according to Raz's *Innocuousness*, the promissory duty of obedience is not couched in the moral obligation to respect and keep promises, but in a moral requirement of not to cause damage to the established authority. However, it appears that what genuinely matters to the duty to obey in the promise approach or in the fairness approach is not a consequentialist reason for the existence of the authority. Rather, what matters is to keep the promise or treat others fairly regardless of the consequences. Raz's emphasis on the duty not to harm the authority leads him to mistake the genuine bases of theories of the duty to obey the law. Even if some actions are too trivial to be noticed or to affect the practice and existence of a legal system, the triviality of those behaviors might still go against certain moral principles. In addition, the innocuousness should have no role in the moral judgment as long as the moral principle involved is regarded as deontological. It is on this very point that the innocuousness should be deemed an irrelevant concern for the moral necessity thesis. What matters for this thesis is that people's living a moral life renders the general obedience of the law morally obligatory. Hence, no matter how innocuous the damage that the defiance of specific laws inflicts upon the morally necessary institution, innocuousness should not be regarded as an excuse for a wrong action.

3.2 The Quasi-Voluntary Obligation Argument

3.2.1 The Two-Tier Structure

The second argument—*Quasi-Voluntary Obligation*—covers an even broader range of theories of the duty to obey the law. It has a pivotal role in Raz's refutations of justifications for the duty to obey and his advocacy of respect for law as the proper and morally valuable attitude. Raz agrees with both proponents and opponents of the duty to obey generally acknowledge that voluntary actions, including promising and consent, are capable of giving

rise to moral obligations.[27] His response to consent-based theories of the duty to obey concentrates on the lack of generality. He argues that even if consent *can* give rise to a duty to obey, most people do not commit themselves in this way; consequently, consent cannot provide a sufficiently general ground.[28] Furthermore, Raz also challenges involuntarist theories in terms of the requirement of generality. Unlike some opponents of involuntarist theories who claim that an involuntary basis cannot generate moral obligation in general, Raz admits that for certain sorts of moral obligations voluntary actions are not a necessary condition: we may think of, moral obligations arising from family, friendship, citizenship, and other kinds of relationships. Take friendship as an example. Even though you have never voluntarily promised loyalty to your friends, you incur the moral obligation because it is constitutive of the relationship as friends. Raz draws an analogy between friendship and membership in political communities: "Respect for law does not derive from consent. It grows, as friendships do; it develops, as does one's sense of membership in a community."[29] This analogy indicates that if the duty to obey is to membership of a community as the moral obligation of loyalty is to friendship, then the duty to obey could have an

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[27] For instance, as Raz states, "Consent to obey the law of a relatively just government indeed establishes an obligation to obey the law." Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 353. Also, Simmons, who denies there being any plausible justifications for political obligation, admits that factual consent can give rise to moral obligations to obey the law. A. John Simmons, *Moral Principles and Political Obligations*, Princeton University Press 1979, pp. 57-61. Obviously, classical social contract theorists advance political obligations on the basis of consent (e.g., Locke, Hobbes, Rousseau). There are also contemporary theorists advocating this tenet. See Harry Beran, *The Consent Theory of Political Obligation*, Croom Helm 1987; Mark Murphy, "Surrender of Judgment and the Consent Theory of Political Obligation," *Law and Philosophy*, Vol. 16 (1997): 115-43; reprinted in Edmundson (ed.), *The Duty to Obey the Law*, Rowman & Littlefield 1999; David Estlund, *Democratic Authority: A Philosophical Framework*, Princeton University Press 2008.

[28] Joseph Raz, "The Obligation to Obey the Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, p. 239.

[29] Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 354.

involuntary ground. However, the fact that voluntariness is not necessary for obligations does not imply that, for Raz, there exists a plausible involuntary source for the duty to obey the law. He contends that obligations resulting from relationships, friendship, or membership are not genuine obligations and that "respect for law grounds a quasi-voluntary obligation."[30] We can rephrase his second stream of criticism as follows:

> *The Quasi-Voluntary Obligation Argument (Quasi-Voluntary Obligation)*: semi-voluntary bases such as attitudes and relationships generate quasi-voluntary obligations rather than genuine obligations.

Remember that in the last section, we saw that Raz argues for a unidirectional inference from P2 to P1; there is no general duty to obey because there is no generally expressed respect for law. But theories of membership and citizenship have considered the possibility that the duty to obey does not rest upon an expressive obligation (though Raz had claimed this),[31] because such a duty is intrinsic to a relationship that binds members of a political community, and this relationship provides a sufficiently general basis. What Raz now argues is that a relationship-based theory still cannot resolve the problem of generality because these underlying relationships themselves lack generality. Friendship, for instance, essentially consists of the duty of loyalty; without it, friendship cannot exist. In Raz's term, the duty of loyalty is *intrinsic* to this type of relation. The duty of loyalty, nevertheless, still cannot be conceived as a genuine obligation; it is merely a quasi-voluntary obligation, inasmuch as no one is morally obligated to establish a friendship. In other words, the duty of loyalty is generated based on a hypothetical premise that *if* one has established a friendship, he or she incurs this duty. Raz analogously applies this argument about friendship to membership: so that as long as we are not obligated to identify ourselves with the membership of a community, or to feel a sense of belonging to our community, there cannot be a general duty of obedience. Membership or

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[30] Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 354.

[31] See note 4.

citizenship as such cannot justify a general duty to obey the law, because a relationship-based duty is not a genuine moral obligation. Raz's verdict is as follows:

> An obligation to obey which is part of a duty of loyalty to the community is a semi-voluntary obligation, because one has no moral duty to identify with this community. It is founded on non-instrumental considerations, for it constitutes an attitude of belonging which has intrinsic value, if addressed to an appropriate object. Vindicating its existence does not, therefore, establish the existence of a general obligation to obey the law.[32]

It seems that *Quasi-Voluntary Obligation* is similar to Raz's rejection of respect for law, since in the end both membership and respect for law imply wholehearted endorsement, and this implication means that semi-voluntary obligations are not genuine. To understand the meaning of "semi-voluntary" or "quasi-voluntary," it is important to determine the components of fully voluntary obligation. From the argument quoted we can infer a two-tiered qualification for a fully voluntary obligation. First, a fully voluntary obligation is incurred with the commitment of an action, the endorsement of a relationship, or an attitude that entails a moral obligation. Second, the commitment and endorsement should be obligatory *per se*. We may say that the double qualification for a fully voluntary obligation contains (1) an "obligation in, obligation out" mode and (2) an obligatory commitment. Moral obligations generated by, for instance, membership does have an obligation as input: the duty of loyalty is intrinsic to the relationship, which

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[32] Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 354. Raz believes there is no obligation to identify with a community; as he states, "One does not have a moral duty to feel a sense of belonging in a community; certainly there is no obligation to feel that one belongs to a country (rather than one's village, or some other community). I talk of a feeling that one belongs, but this feeling is nothing other than a complex attitude comprising emotional, cognitive, and normative elements. Feeling a sense of loyalty and a duty of loyalty constitutes, here too, an element of such an attitude."

provides the source or input for the output of an obligation of obedience. This means that relational obligations can satisfy the first condition of the "obligation in, obligation out" mode, yet they fail to meet the obligatory commitment requirement, which demands not only a source for obligation but also people's obligatory commitment to the source. In other words, membership and its constituting duty of loyalty are capable of generating the duty of obedience, the duty generated still fails to be fully-voluntary because the commitment to the membership is not obligatory. In Chapter 4, I argued that an obligation cannot be *sui generis*, that a prior moral duty must entail that obligation as a particularization. I therefore agree with Raz on the "obligation in, obligation out" mode. Nevertheless, I do not believe that the requirement of obligatory commitment is necessary, as a duty can also be particularized or incurred by specific people as a result of coincidence (as I pointed out in my discussion of the particularity requirement). In the next section, I will respond to Raz's obligatory commitment requirement based on my argument in Chapter 4.

The range of *Quasi-Voluntary Obligation* is not confined to theories couched in terms of citizenship, membership, or associative obligations; it should also be a potential challenge, though have not been actually raised, to approaches based on the fairness principle or gratitude, for example. Rawls, for instance, argues in his early writings for the duty to obey as dictated by the principle of fairness. He contends that the duty to obey the law, as a special case of the duty of fair play, is a moral obligation owed by people who *have accepted and intend to continue accepting* the benefits of a cooperative scheme to their fellow cooperating citizens.[33] In other words, the duty to obey can only be incurred by citizens' *voluntary* acceptance of benefits from the cooperating scheme. Although the duty to obey is voluntarily incurred, it would still be incapable of meeting Raz's second requirement of a genuine obligation, because no voluntary acceptance of benefits or acceptance of the membership in a cooperating scheme is obligatory. Thus, even if the Rawlsian duty of obedience satisfies the "obligation in, obligation out" mode by resorting to the principle of fairness, it falls short of the obligatory

[33] See John Rawls, "Legal Obligation and the Duty of Fair Play," in his *Collected Papers*, edited by Samuel Freeman, Harvard University Press 1999, pp. 122-3.

commitment requirement.[34]

According to *Quasi-Voluntary Obligation*, identifying oneself with a community, consenting to join a community, or voluntarily accepting benefits from the government cannot tell the whole story of the duty to obey. Thus, these theorists are still just building a "sandcastle," i.e. a duty of obedience based on a hypothesis. However, the two-tier requirement of obligation also exposes the ambiguity of what Raz means in speaking of fully voluntary obligations as the only genuine ones. As we have seen in the Rawlsian duty of obedience, even if the duty is incurred by the voluntary acceptance of public benefits from social cooperation, it still fails to mark the voluntary acceptance as morally obligatory. Hence, real reason for Raz's rejection of semi-voluntary duties is not the absence of fully voluntary actions, attitudes, or commitments to some relationships. Rather, it is the lack of obligatory foundations for actions, attitudes, or commitments. In sum, we can concisely capture Raz's second argument against the duty to obey as follows: there is no general duty to obey the law, because the duty of loyalty remains merely semi-voluntary, and the semi-voluntariness is resulted because of no obligation to identify with any political communities.

3.2.2 Quasi-Voluntary Obligations as a Mere Middle Ground

The two-tier structure shows that the semi-voluntary duties are just a middle

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[34] A. D. M. Walker, as a proponent of political obligation as gratitude, does not require voluntary acceptance of benefits from the state to impose a moral obligation to obey the state. Thus it cannot satisfy the first tier of the Razian qualification. As a result, his conception of political obligation cannot be a genuine obligation for Raz. Walker presents a five-step argument to justify the moral obligation to obey the law on the basis of the obligation of gratitude:

(1) The person who benefits from X has an obligation of gratitude not to act contrary to X's interests.

(2) Every citizen has received benefits from the state.

(3) Every citizen has an obligation of gratitude not to act in ways that are contrary to the state's interests.

(4) Noncompliance with the law is contrary to the state's interests.

(5) Every citizen has an obligation of gratitude to comply with the law.

See A. D. M. Walker, "Political Obligation and the Argument from Gratitude," *Philosophy & Public Affairs*, Vol. 17, No.3 (1988): 205.

ground: whether a duty to obey can arise from membership or other sorts of relationships hinges on the question whether there is an obligatory commitment that is necessary for such a moral duty. Or does membership generate a duty to obey only if we are obligated to identify ourselves with political communities? I challenge *Quasi-Voluntary Obligation* on two counts: the first concerns the burden of proof; the second is of a more fundamental and familiar nature. This concerns the necessity of an obligatory commitment for moral obligation in general.

To start with the burden of proof challenge, proponents of membership and associative obligation theories may pose an obvious question with regard to quasi-voluntary obligations: What if the duty to obey the law is a merely quasi-voluntary obligation? Or, why is a quasi-voluntary obligation insufficient for grounding the duty to obey? Unfortunately, Raz does not offer answers to these questions. The ultimate pathology of associative obligation theories, according to Raz, is that although relationships have the potential to generate obligations, and identifying with a political community is intrinsically valuable, "[o]ne does not have a moral duty to feel a sense of belonging in a community; certainly there is no obligation to feel that one belongs to a country."[35] But this diagnosis is not fatal unless Raz convincingly dismisses the possibility of founding a duty to obey on a semi-voluntary obligation, meaning that in terms of the burden of proof, he needs to reinforce the argument in order to decisively denounce, for instance, Ronald Dworkin's approach of associative obligation theory. Dworkin argues that the duty to obey the law is a form of associative obligation because "political association, like family and friendship and other forms of association more local and intimate, is in itself pregnant of obligation."[36] More importantly, not only does Dworkin couch the duty to obey in the associative obligations, but also he makes it explicit that the duty to obey belongs to the category of semi-voluntary obligations. The duty to obey, according to Dworkin, is less involuntary than various family obligations because people may make choices to emigrate to

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[35] Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, pp. 353-4.

[36] Ronald Dworkin, *Law's Empire*, Harvard University Press 1986, p. 206.

other political communities. However, this does not make the membership of political communities generally the consequence of voluntary choices. Most people do not choose their political communities; rather, they are born into them. Hence, "along a spectrum ranging from full choice to no choice in membership, political communities fall somewhere in the center." [37] We have a consensus about what pivotal political attitudes are, which include officials' special responsibilities and main obligations, the central one of which is that of general fidelity to law, associated with political communities.[38] As a result, the duty to obey does not require a fully voluntary basis or an obligatory imposition, and the burden of proof compels Raz as a skeptic to explain why semi-voluntary obligations cannot suffice to ground the duty to obey the law.

Even if Raz were able to reinforce his arguments to discharge this burden, *Quasi-Voluntary Obligation* might be seen as overly demanding, which is the second challenge. I contend that many of our moral obligations do not stem from an obligatory incurrence, and Raz's second tier of a fully voluntary obligation cannot be conceived as a requirement for the duty to obey. As noted, when attacking Simmons's strong version of the particularity requirement, I concluded that moral obligations, resting upon valid moral duties, can be generated or particularized not only by voluntary or obligatory actions but also by accidental events. Thus we should not unduly restrict the ways genuine obligations are brought into being or particularized. Suppose that A, accidentally hits B by car, and although A's reckless driving—the action incurs moral obligations—is neither intentional nor obligatory, she nonetheless incurs a moral obligation to save B because of the special relationship offender and victim the accident has brought into being. Suppose further that A runs away leaving behind B, who is severely injured. A passer-by C happens to witness the in the whole scene. Since no other people are around, B will die if C does not call an ambulance and try to save B. Clearly C is under a moral obligation to save B, yet the obligation is not generated because of C's voluntary commitments. Or we may say that there is not obligatory commitment that triggers C's natural duty to rescue.

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[37] Ronald Dworkin, *Law's Empire*, Harvard University Press 1986, p. 207.

[38] See Ronald Dworkin, *Law's Empire*, Harvard University Press 1986, pp. 207-8.

Neither A's nor C's moral obligation to save B rests upon an obligatory commitment. Although the moral obligations incurred by A and C are categorially different, both moral obligations are genuine. Therefore, it is not convincing that the justification for the duty to obey has to ultimately rest upon an obligatory identification of membership, citizenship, and so forth, and even if the duty to obey is a semi-voluntary obligation, it still can be a legitimate justification, as Dworkin argues.[39]

We can also clarify the redundancy of an obligatory commitment by appealing to the moral necessity thesis. The moral necessity thesis fits the "obligation in, obligation out" requirement, since we are morally obligated to obey the law that serves the purposes of discharging moral obligations and avoiding wronging others capriciously. However, the moral necessity thesis refutes the second tier of an obligatory commitment, as the obligation in the first tier arises from special circumstances, which also particularizes the obligation by binding the subject to a certain group of people. What Kantians call "the proximity principle" is such a kind of special circumstance Therefore, to be committed to a legal system and incur a duty to obey it is not necessary to be obligated to undertake any action. Merely living within a political community is sufficient.

In summary, Raz's second argument, which is mainly against theories of membership and associative obligations, falls apart, because it demands too much of a genuine obligation. Moreover, it does not meet the burden of proof lying on the constructive arguments offered by supporters of the duty to obey the law, such as Dworkin's. Unless Raz can reinforce the argument against founding a duty to obey on what he calls a "semi-voluntary" obligation, it is unreasonable for us to raise the threshold for moral

[39] It is not clear whether Raz requires for a voluntary action to give rise to an obligation. In an earlier paper, he seems to take a loose view on this point where he argues that "[w]hat one ought to do depends in part on oneself, and this not only because the behaviours, needs, tastes, and desires of the agent count just as much as those of any other person, but because the agent has the power intentionally to shape the form of his moral world, to *obligate himself to follow certain goals, or to create bonds and alliances with certain people and not others*." Joseph Raz, "Promises and Obligations," in *Law, Morality, and Society: Essays in Honour of H. L. A. Hart*, edited by P. M. S. Hacker and Joseph Raz, Oxford University Press 1977, p. 228, emphasis added.

obligation by requiring an obligatory source or hinging on obligatory commitments.

3.3 The Perversion Argument

3.3.1 The Paradoxical Duty of Obedience

Finally, Raz raises a general argument against any attempt to justify the duty to obey the law from the perspective of practical reasoning. This is *Perversion*, which goes as follows:

> *The Perversion Argument (Perversion)*: the duty to obey is a moral perversion because it alleges that our moral duties of restraining ourselves from committing certain actions, such as murder, raping, or stealing, arise from our moral obligation *to obey the law* prohibiting murder and rape, rather than directly from our judgment of the nature and merits of those actions.

In all three articles on the topic of the duty of obedience, Raz mentions the presence of "the air of paradox," a "paradoxical claim," or "the apparent paradox" haunting this topic.[40] The paradox stems from the redundancy of the duty to obey, inasmuch as we have pre-existing moral obligations to act in accordance with certain moral imperatives. Those actions are simply *confirmed* by reasonably just legal rules. For instance, criminal laws prohibit us from committing murder, not for the moral obligation to comply with specific laws concerning the crime of murder, but because we are moral obligated not to murder. Raz reinforces the redundancy argument by claiming that the duty to obey is not only superfluous but also humiliating for morally conscientious people; thus, it is a moral perversion. A decent person would be offended or insulted by the suggestion that the reason that he or she refrains from murdering is because of the moral obligation to obey

[40] See Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 343; Joseph Raz, "The Obligation to Obey the Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, p. 245; Joseph Raz, "Respect for Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, pp. 250-3.

the specific law.[41] As Raz eventually concludes, "The more just and valuable the law is, it says, the more reason one has to *conform to it*, and the less *to obey it*."[42] It is a conclusion about the tension between substantive moral judgments merits, i.e. reasons to *conform to* the law, and judgments of the duty to obey, i.e. reasons to *obey* the law. This paradox between the two types of judgment is that we would have less reason to *obey* the criminal law proscribing murder than to *obey* the traffic rule that requires us to "drive under 50 km/h"; on the other hand, we would have more moral reason to *conform to* the criminal law than to the speed limit. Murder, as a *malum per se*, is morally wrong, and the wrongness of such an action per se offers us a conclusive reason not to do it. Hence, with or without a criminal code proscribing his crime, people have the moral obligations to refrain from murder, and less reason to obey a criminal law prohibiting it. Speeding, on the other hand, does not carry much moral weight, and it would not be intrinsically wrong for people to speed as long as they pay due diligence to the safety of others. So we do not have as much reason not to speed as to refrain from murder, and we need a stronger reason provided by the duty to obey.

Perversion, unlike the previous two arguments targeting specific theories of the duty to obey, is a general rejection from the point of view of the alleged "wrong" role that the duty of obedience would play in our moral reasoning. Moreover, this is the very reason that even though Raz does not offer comprehensive rejections of every theory of the duty to obey the law, those theories fall within the spectrum of his three arguments, especially *Perversion*. Nevertheless, this general argument is also flawed, for two reasons. The first reason concerns the misconceived conception of the duty to obey that Raz undertakes. Raz's misconception invites a familiar objection to *Perversion*, the one that I employ to clear up the misconstruction of the duty of obedience as a cumulative project of moral obligations to obey specific laws. According to the Kantian approach that I defend, it is not particular

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41 See Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 343.

42 Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 343.

laws and their moral merits that contribute to a general duty to obey; rather, it is for the sake of the law and the general political condition as a whole, as well as the ends that they serve, that general compliance is morally necessary. The second consideration is to pinpoint why the tension between the reason to conform to the law and the reason to obey the law does not stand.

3.3.2 Two Independent Judgments

To recall the argument in Chapter 2, the correct method to approach the problem of the duty to obey is to conceive of the law, and all sorts of political institutions as a whole, as what Kant calls the political or rightful condition. Whether we are under a moral obligation toward the political institutions and its legal system depends on the nature of the political condition as a whole in our moral life. This is the method of the "top-down justification." However, in his perversion argument Raz applies the wrong kind of "bottom-up justification," because he focuses on moral *obligations* to obey *laws* in particular contexts such as murdering or stealing. This weakens the force of *Perversion* since it is aimed at the wrong target. Raz contends that a morally conscientious person would be insulted if the duty to obey the law implied that the reason for her not to commit murder is because it is forbidden by law. Yet the so-called duty to obey here actually refers to "the moral obligation to obey the law *against murder*" rather than to "the moral obligation toward the law *as a whole*." This betrays the weak spot of this argument: even if the specific moral obligation to obey the law against murder provides a perverse reason, the obligation of obedience remains intact. A person's prior reasons for deciding whether to obey the law against murder include the moral wrongness of murder, the threat of sanctions, and a moral obligation to obey this very law. If she decides to comply with this law out of awareness of the compulsory obligation or the fear of sanctions, instead of recognizing the wrongness of the action per se, we would be able to say that the moral obligation to obey the law against murder is a perverse reason. However, as I have emphasized when proposing the distinction in Chapter 2, the moral obligation to obey specific laws and the duty to obey should be taken as two *independent* obligations, inasmuch as the duty to obey the law cannot be plausibly understood as the *aggregation* of moral obligations to obey all the laws.

Furthermore, Raz's method aggravates difficulty of upholding the distinction and tension between conforming to the law and obeying the law. The analogy with promising may help to clarify this. Suppose that a person A promises loyalty to his wife B by taking a vow, and A has thereby incurred a promissory obligation to be loyal. Since loyalty is also an inherent moral requirement for the two parties of a marriage with or without the vow, A has a pre-existing obligation of loyalty. Therefore, A has two reasons to be loyal. According to *Perversion*, A's obligation to respect his promise is not only redundant but also a perversion of his moral reasoning. The more reason A has to *conform to* the loyalty requirement, the less reason he has to *obey* the requirement. Thus, *Perversion* would not be confined to the duty to obey the law, unless Raz can elaborate on what feature makes an obligation to respect promises different from the duty of obedience. Also, we can see that the moral obligation to keep one's promise is affected by the same erroneous method, because the investigation into the point of such an obligation concerns whether we are morally obligated to honor and keep our promise in general as a social institution instead of whether we are obligated to keep one particular promise. Moreover, the reason for us to conform to the law and the reason to obey the law are derived from different considerations, and no tension exists between the two. Suppose that I promise you that I will kill a person whom you strongly resent. The reason for me to kill this person corresponds to what Raz implies by the reason to conform to the promise, while its moral wrongness should prevent me from killing anyone. However, the reason for me to keep my promise is generated on the basis of other considerations such as a natural duty, honesty, or fairness. Thus, even if I have every moral reason not to kill a person (*reason for conformity*), I am still under a moral obligation to keep my promise (*reason for obedience*). For this promissory obligation, there is no tension between the reason for conformity and the reason for obedience. Correspondingly, the reason to conform to the law and obey the law are independent from each other, and we should reject Raz's statement that the more just and valuable the law is, the more reason one has to *conform to it*, and the less reason one has *to obey it*.[43]

[43] Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the*

The incorrectness of treating specific laws as the locus of the duty to obey the law notwithstanding, even if we have weightier moral reason not to kill than to drive under fifty kilometers per hour, we do not necessarily have less reason to obey the law against murder than the law against speeding The weight of the two moral judgments may affect the weight of moral reasons to *conform to* the two legal rules with specific content, but it has a trivial impact on moral reasons to obey the two legal rules of the same legal system. For instance, according to the fairness principle, disobedience of the criminal law against murder and the law against speeding should be seen as an infringement of the moral obligation of doing one's fair share to maintain social cooperation. The extent to which each of acts of disobedience defies fairness-based duty of obedience depends on the different impacts of murder and speeding on social cooperation and the violation of the fairness principle. In other words, the weight of both the reason to obey the law against murder and of the reason to obey speed limit are determined by the parameter of fairness, rather than the moral merits of the two actions of murder and speeding. I believe that this is also the reason why proponents of the duty to obey the law build justifications upon independent moral principles rather than the analysis of the value of specific legal rules. If the argument so far is correct, there is no tension between the reason to conform to the law and the reason to obey it, since they have different sources and are therefore independent of the other. As a consequence, there is also no apparent paradox between the duty to obey and a just legal system.

This analysis allows us to return to the refutation of the duty to obey as a moral perversion. Suppose that a morally conscientious agent A refrains from committing murder because of a particular duty to obey rather than the wrongness of murder as such. It seems that the perversion resides *not* the idea of or the reason provided by the duty to obey but A's moral reasoning. At this point, we may conclude that *Perversion* has missed the point of the duty to obey the law, and that it fails to provide us with a general rejection of all theories of the duty of obedience from the viewpoint of moral reasoning. However, Raz presents an argument following up on

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Public Domain, Oxford University Press 1994, p. 343.

Perversion: only if *every law* can make a difference to our moral obligations can we justify a general duty to obey. Laws prohibiting murder and rape make little difference to the pre-existing moral obligations, and "[i]f these laws do not make a difference to our moral obligations, then there is no general obligation to obey the law."[44] Again, this argument is evidence of Raz's mistake of method. He regards the duty to obey the law as moral obligations to obey all particular laws instead of the legal system as a whole. Even if we put aside this mistake, this argument still falls apart because Raz simply overlooks the independence of our moral obligations to do certain things from the duty to obey. By insisting that "laws make a difference to our obligations," Raz means that, for instance, the moral obligation to obey the law against murder should make the duty not to kill "stricter or weightier than it was without the law."[45] Nevertheless, I think the requirement of "making a difference" is also untenable. This point can be made with the help of the moral necessity thesis. If the duty to obey is supposed to facilitate discharging our pre-existing moral obligations by specifying the content of those obligations, it is not clear why the duty to obey adds weight to them. The obligation to obey the law against murder does not make a difference to our moral obligation forbidding murder; rather if such a law is part of an integrated legal system that maintains people's ability to live and act morally, then the obligation to obey the particular law is simply an inference from our obligation to comply with our legal system as a social institution. Or as I implied before, the weight of the moral obligation to obey a single law hinges not on the merits of the action that the law states, but how such a law relates to the morale or the end of a legal system as a whole. Also, we can see that Raz's requirement is not necessary for the fairness principle, according to which our duty to obey is a means to acting fairly in the context of social cooperation, and the moral obligation to obey the law against murder is embedded in the requirement of fairness represented by the whole legal system rather than in the singular duty to not

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[44] See Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 344.

[45] See Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, pp. 343-4.

kill. The duty to obey the law is thus a moral obligation independent of and parallel to our moral duty to not kill. Hence, the requirement that the duty to obey makes a difference to our moral obligations is untenable.

To conclude the investigation of Raz's three arguments against a general duty to obey the law, we should examine his claim that they form the "modest conclusion" that we are not under a general moral obligation, not even a prima facie one, to obey the law of a just legal system, but that respect for law is a valuable attitude toward the law, albeit not obligatory or general.[46] Still, all three arguments fail. As we have seen in the last section, both P2 (no general respect for law) and P3 (no general moral reason to obey the law) unidirectionally entail P1 (no general duty to obey the law). But for Raz's whole conception of the moral attitude toward the law to be plausible, he has to offer a conclusive argument that no justification for the duty to obey is sound: only such a conclusive argument can make the inferences from P2 or P3 to P1 meaningful. Yet the three flawed arguments leave open the possibility of justifying the duty to obey on other moral principles or moral considerations, and the inferences from P2 to P1 and P3 to P1 lose their point if they fail to establish their exclusive relevance.

4. THE DUTY TO OBEY THE LAW AND POLITICAL OBLIGATION

A remaining problem concerns *The Gap* identified by Raz between the duty to obey the law and political obligation that I identified at the outset of this chapter. This gap is a striking feature of his theory of political obligation and legitimacy. Unlike the common understanding of political obligation as a broader concept within which a duty to obey is included, Raz holds the opposite view: that a duty to obey is an obligation to obey all laws whereas political obligation concerns only some laws involving the existence and maintenance of the law. This difference in scope is responsible for *The Gap* and leads Raz to endorse political obligation and deny the duty to obey. I think it is pointless to argue about the meaning of political obligation as an obligation to obey the law and support political institutions in general, or as an obligation merely toward some laws that are essentially political. We need to figure out *the context* in which such an obligation arises and why it matters.

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[46] Joseph Raz, *The Morality of Freedom*, Oxford University Press 1986, p. 99.

Only when we do so, we ascertain what the exact content of political obligation is. On this point, I advance three objections to *The Gap*.

Firstly, for Raz, political obligation is justified as a correlate of political legitimacy. Legitimate authority is a Hohfeldian right to rule and according to Raz the correlative obligation is political obligation. It is out of this concern that he defines "political obligation" as a moral requirement to obey the laws so as to assure the right to rule. To the extent that not all laws of a legal system serve this purpose, political obligation cannot be generalized and *The Gap* opens up. Nevertheless, according to the separation thesis political legitimacy and political obligation are conceptually independent, and the justification for the latter cannot be derived from that of the former. It follows that even if Raz were right in claiming that the correlative obligation of legitimacy can only be a partial one, it would not succeed in refuting political obligation for its lack of generality. When philosophers argue for political obligation, they do not derive it from legitimacy; rather, they target it directly. Thus, what proponents of political obligation seek to justify is a moral obligation consisting of elements of a duty to obey and a duty to support the just state, while they treat the duty to obey as a corollary.

The second objection to *The Gap* stems from the moral necessity thesis, once we see why political obligation is not limited to laws controlling the existence of political institutions. According to this thesis, political obligation is justified because it is morally necessary for us to be bound by it in order to discharge our prior moral obligations and to live morally. Moreover, a political condition in general is indispensable for this end in that it confirms the content of our moral obligations and the boundaries of our rights and duties, acting as mediator, and so forth. Therefore, whereas we do have a moral obligation to comply with laws that are necessary for upholding the political condition, it cannot be the only constituent of a morally necessary political obligation. Political obligation is set up to maintain our moral lives, while the existence of political institutions and the law is a necessary means to realize to that end. Even if some laws are not significant for the existence and maintenance of political institutions, they still serve the purpose of maintaining our moral lives and helping us to discharge our moral obligations. That is why they should be perceived as a part of political obligation. Indeed, as Darwall argues, "[i]f the only way we can adequately

comply with our moral obligations is to treat an alleged authority's directives as pre-emptive reasons, then there seems to be a sense in which it is plausible to suppose that we would be under an obligation so to treat them."[47] Raz believes that the justification for the duty to obey can be divided into stages: first, where a state is reasonably just, one ought to support and maintain it; second, since disobeying the law undermines the state's authority, we ought not to disobey the law. It is the second stage that Raz takes issue with, since minor violations of laws cannot undermine a state's authority, and it would be an exaggeration to argue that they can.[48] However, the impairment that acts of disobedience cause to the authority of a state is not the foundation of the moral necessity thesis. Political obligation is a *deontic* requirement for us to fulfill our moral obligations and maintain our moral lives, and even if the defiance of certain laws would not cause any damage to the legal system and the authority of a state, we still should respect the moral obligation.

The third objection to *The Gap* is that even under Raz's service conception of authority, especially the normal justification thesis, it is groundless to draw a distinction between political obligation and the duty to obey.[49] First, the methodological pitfall also makes this distinction vulnerable. As Raz distinguishes laws relevant to the existence of political institutions and laws irrelevant to it, he takes the problem of the duty to obey as the moral obligation to obey all laws in a cumulative sense; yet this is not the correct method to approach this problem. To regard political obligation as an obligation toward the political condition and the law as entity whole, we cannot anatomize it as a set of particular moral obligations to politically relevant laws and to politically relevant laws and then separately offer justifications for them on different grounds. Rather, as long as both types of law are necessary for a legal system to exist, they are within the range of our moral obligation toward the legal system as a whole. This point

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[47] Stephen Darwall, "Authority and Second-Personal Reasons for Acting," in his *Morality, Authority, and Law: Essays in Second-Personal Ethics I*, Oxford University Press 2013, p. 148.

[48] Joseph Raz, *The Morality of Freedom*, Oxford University Press 1986, pp. 101-2.

[49] See note 42 of Chapter 2.

further leads us to see why the distinction under Raz's normal justification thesis cannot hold either. He contends that "[o]ne has a duty to uphold and support authorities if they meet the condition of the service conception."[50] According to the service conception, people better conform to reasons applying to them if they follow the directives of the authority rather than following their own reasoning. That is to say, inasmuch as a state has the capacity to fulfill the condition of the normal justification thesis, a duty to uphold and support it comes into play. I am not sure why for Raz the only way to uphold and support an authority is by merely not imperiling the existence of it. Given that an authority is supposed to help us to better conform to our reasons in normal circumstances, the proper way to support it appears to be to generally follow its directives to promote conformity with our independent reasons. The purpose of the authority requires that people are not just obligated not to undermine the authority, but rather to generally follow the authority's directives.

The Gap between the duty to obey the law and political obligation is thus untenable, and conventional political obligation theories aim to directly justify the moral requirement of a general obedience of the law. Thus, if the justification for political obligation is sound, there exists a general moral obligation to obey the law.

5. CONCLUSION

According to the Razian conception of the moral attitude toward the law, we have no general obligation or reason to obey the law, nor do we have a general respect for law. The lack of generality is the main reason that pushes Raz to propose the three negative propositions within the structure: P1 (no general duty to obey) derives from either P2 (no general respect for law) or P3 (no general reason to obey the law). However, Raz's argument fails to produce an exclusive inference from P2 to P1 or P3 to P1. The consequence is that P1 can be overruled as long as we can justify such a moral obligation on grounds other than a general respect for law. I argue that theories such as the moral necessity thesis are able to offer us such a justification. Moreover, for Raz to uphold P1, he has to offer a conclusive refutation of all

[50] Joseph Raz, *The Morality of Freedom*, Oxford University Press 1986, p. 66.

approaches to political obligation, which is a task that his three major arguments cannot accomplish. Raz persistently misconceives the problem of political obligation as the aggregation of moral obligations to all particular laws, and this is the typical methodological pitfall of undertaking to found political obligation on the basis of a "bottom-up" justification or denial. In the "top-down justification," advanced here we have assumed that a state and its political institutions are reasonably just or nearly just, and on the basis of that assumption, we need to consider the role that political obligation will play in our ethical or moral life. Thus, political obligation is generally imposed if a political condition is able to play this role, be it as the mechanism to assure social cooperation, to ensure our better conformity with our moral reasons, or simply as a moral necessity. The mistaken methodology that Raz engages in also vitiates his distinction between political obligation and the duty to obey. This mistake misleads Raz into arguing that the duty to obey is a broader idea than political obligation, concerning only politically relevant laws. Contrary to the Razian view of the duty to obey entailing political obligation, contemporary political obligation theories approach political obligation directly. This is also the strategy of the moral necessity thesis. Since we need an integrated legal system to confirm our moral obligations, to facilitate discharging them, and to maintain our living morally, our political obligation to the political condition in general requires a general duty to obey.

CONCLUSION

After this long journey of exploration, the major conclusion of my dissertation is that there is a general moral obligation to obey the law and support the political institutions of a legitimate state. It is a moral obligation without which people would not be able to discharge their pre-existing moral obligations, avoid doing harm to others, and thereby maintain a moral and peaceful public life. This consideration leads me to the claim that political obligation is a moral necessity. This core conclusion requires more than awareness of what the problem of political obligation is about. We also need to be alert what the problem is not about. Indulgence in the temptation to include arguments that are not conceptually or directly related to political obligation has muddied the debate; the failure to separate wheat from the chaff has spawned irrelevant discussions. In my argument, three pillars support the major conclusion and delineate the scope of the problem of political obligation.

Firstly, in Chapter 2, I canvass the relation between political obligation and political legitimacy through the analysis of the Hohfeldian structure of right, conveying that political obligation should not be conceived as a problem of political legitimacy. Also, another significant claim is made with regard to the right method for approaching the problem of political obligation. I reveal philosophical anarchists' dependence on the integration thesis, claiming that political obligation and legitimacy are basically the same idea, since a state's right to rule is tantamount to people having an obligation to obey according to the Hohfeldian typology. This correlation further leads to a misconceived methodology that regards political obligation as a corollary of the justification of legitimacy. However, to maintain both the correlation between political obligation and legitimacy and the wrong methodology, skeptics must espouse all three arguments, namely the Hohfeldian typology argument, the claim-right argument, and the content argument. The latter two arguments have been proved to be difficult to uphold; thus, we have to accept the separation thesis, conceiving political obligation and political legitimacy's justifications as two independent projects. Thus, the first pillar concerns methodology of justifying political obligation and a claim about focusing directly on the morality of whether there is a

general obligation to obey.

Secondly, inspired by Kant's and Kantian formulation of the system of right, innate right, and freedom, I propose the core argument for the moral necessity thesis is that the subjection to a political condition and the law is morally necessary for the assurance and existence of any sort of rights. Also, it is the only way to guarantee of people's discharging pre-existing moral obligations. Remaining in the state of nature amounts to abandoning the necessary condition for avoiding morally wrong actions and maintaining a morally acceptable relation with whom one cannot avoid interacting with. The moral necessity thesis provides a plausible and methodologically correct source for a general moral obligation, because the priority of the investigation concerns the morality of people's collective subjection to a rightful condition.

Thirdly, the particularity requirement is satisfied by the proximity principle, which is entailed by the moral necessity thesis. However, I deny the strong version of the particularity requirement. By probing into the nature of the requirement, we find that particularity is derived from a purported distinction of obligation and duty. However, such a distinction cannot be upheld since an obligation cannot be *sui generis*. As a result, the correct version of this requirement should be the weak one, namely to depict the political reality in a theory of political obligation, which has no bearing on the normative justification of political obligation. For the moral necessity thesis, the juridical proximity principle draws the boundary of the subject of political obligation with a political community, since it is the jurisdiction that determines the group of people that a person lives with and owes to her obedience.

If these three specific conclusions are well-grounded, there does exist a general moral obligation to obey the law. Furthermore, I employ the moral necessity thesis as the standpoint from which to survey the plausibility of two main categories of contemporary political obligation theories and their dependence on the thesis. For the voluntarists to ward off the criticism their theories are incomplete, they have to assume the moral necessity thesis to explain why undertaking a stipulated action would be compulsory in the first place to account for a general political obligation. On the other hand, involuntarists normally make the incorporation of the thesis explicit, and

their original arguments are invariably intended to meet the particularity requirement. Nevertheless, if the moral necessity thesis is capable of dealing with the requirement, both kinds of theories are confronted with the danger of redundancy, meaning that they have to prove that apart from the moral necessity thesis, their arguments are necessary for the justification of political obligation.

Through the construction of the moral necessity thesis, we have responded to philosophical anarchism in both methodological and substantive aspects. Also, we have covered the two main streams attempting to justify political obligation and have made comparisons between those theories and the moral necessity thesis that I defend. The whole argument cannot be complete without responding to Raz's skepticism of the duty of obedience. Raz not only distinguishes political obligation from a general moral obligation toward the law in terms of the scope of law involved, but also presents an argument against the duty to obey the law that focuses not on the justification of the duty but on the role of it in moral reasoning. The two outstanding features demand a particular rejoinder insofar as his arguments cannot be attributed to any sort of skepticism. By refuting the three arguments that Raz offers to invalidate justifications of the duty to obey the law, I come to the conclusion that the distinction between two obligations cannot be maintained. Our moral obligation to obey the law concerns the law and political condition as a whole.

As expressed at the start of this investigation, the complexity of the problem of political obligation is due to the fact that it is a problem of the overlapping fields of moral, political, and legal philosophy. But the priority for the justification on the basis of the moral necessity thesis is to obtain a firm grasp of the *moral* aspect of the problem, because the justification primarily focuses on conveying the source of the moral obligation in the Kantian tradition. Therefore, problems such as political legitimacy are left for future explorations, even though we can already discern certain implications from what we have achieved so far.

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SUMMARY
Political Obligation as a Moral Necessity

This book defends political obligation, stating that people are morally obligated to obey the law of their state, if the law is at least reasonably just. The defense is based on the tradition of the Kantian political philosophy and legal philosophy, and it is a defense mainly against political anarchists. They believe that the only possible justification for political obligation should be voluntarist, proving people's deliberate undertakings to incur the obligation. Since no attempt in the voluntarist approach is justifiable, political obligation does not exist from the *a posterior* point of view. As a consequence, political legitimacy, which is claimed to be the other side of the same concept of political obligation, fails to obtain its justification, and no state is legitimate. The exploration in this book contends that a voluntarist basis is neither necessary nor sufficient for people to be obligated to obey the law. And this contention earns the space for justifying political obligation on an involuntarist ground, meaning that people can be imposed on a moral obligation to obey the law without any voluntary actions incurring this obligation. This involuntarist ground is what I name the "moral necessity thesis".

The first task is to clarify what is the right way to approach the problem of political obligation. Philosophical anarchists equate the justification of political legitimacy with that of political obligation. The equation is achieved because of the Hohfeldian conceptual correlation between right and obligation: while legitimacy is the moral right to rule, political obligation is the correlative of this moral right. In Chapter 2, I reject the correlation between legitimacy and political obligation, and the rejection includes three steps: (1) Political legitimacy may not be a right at all, hence, the conceptual structure of right is irrelevant. (2) Even if legitimacy is a sort of right, it might not be a claim-right, hence, the correlative could be liability, immunity other than obligation. (3) Even if legitimacy is a claim-right, the content of the correlative obligation could be requirements other than to obey the law. Through the three steps of rebuttal, we find that the justifications of political obligation and legitimacy

can be separated. The separation urges us to approach each of the two concepts directly, instead of treating one concepts as the entailment of the other.

Having established the correct methodology, we concentrate on the moral source for political obligation directly. The basic idea derives from Kant's political philosophy. In the state of nature, people would be incapable of avoiding moral wrongness without a legitimate political order, for instance, specifying the content of people's moral obligations and creating the conditions of maintaining a morally acceptable life especially in the public sphere. Therefore, the moral obligation to obey the law is generated on the basis of the moral necessity basis, which goes basically as: political obligation is justified because being subject to just political institutions is a necessary condition for living morally without wronging others or undermining other people's freedom, when people cannot avoid interacting with others.

Since political obligation is owed to those who share public life with us, this confined scope of the subject can be developed into a principle to satisfy the so-called particularity requirement. This requirement is a depiction of the reality that people of a state only bears the obligation to obey the law of this state. I weaken the force of the particularity requirement by pointing out that the requirement cannot shed any impact on the normative justification of political obligation; rather it is a contingency to be explained by political obligation theories. Inasmuch as the moral necessity thesis encompasses a proviso, political obligation is able to accommodate particularity. The proviso is that political obligation only exists when people are not able to avoid interacting with each other, which means that this obligation is owed merely to people in proximity, so the proviso can be called "the proximity principle". A juridical interpretation of the proximity principle can resolve the problems that a physical interpretation have encountered, because in real politics, it is the jurisdiction rather than physical distance that determines with whom we share public life and cannot avoid interactions.

In Chapter 5, I compare the moral necessity thesis with other theories divided into voluntarism and involuntarism. For both camps, the moral necessity thesis is detected either as an implicit bedrock, or directly taken

for granted. Both camps however find them in a predicament: if the moral necessity thesis has to be part of their justification, specifying the moral source of political obligation, they have to explain why their own theories are still necessary. Since we have proved that the moral necessity thesis is capable of grounding political obligation, the theories considered in this chapter are suspicious to the charge of triviality.

One last task to be coped with is the distinction between political obligation and the moral obligation to obey the law. The distinction is employed by Joseph Raz to deny there being a general moral obligation of obedience, while maintaining that there does exist political obligation as the correlative of legitimate authority. The difference between the two obligations lies in the range of laws to be obeyed: whereas the moral obligation to obey involves a legal system in general, political obligation involves only laws regarding the existence and maintenance of a legitimate state. I reject Raz's conclusion by two arguments: the first is Raz's mistaken methodology as discussed in Chapter 2; the second is to deny all the three arguments Raz offers to criticize theories of the duty of obedience, i.e. The Innocuousness Argument, The Quasi-Voluntary Obligation Argument, and The Perversion Argument.

If the arguments throughout these chapters are plausible, people are morally obligated to obey their law and support their state. No prior voluntary actions would be needed for people to incur the obligation, as to obey the law is necessary for us to avoid moral wrongness while interacting with others. There is no need to worry that the moral necessity thesis as an involuntarist approach would support an illiberal state, and that is because the obedience of law as morally necessary sets certain thresholds for a political authority to satisfy. Otherwise, to obey the law would not be a moral necessity. Therefore, the justification for the moral necessity thesis does connect to political legitimacy. But this connection is normative, instead of simply conceptual as what was rejected before. The project of political legitimacy then is going to be the successive research of this thesis.

SAMENVATTING (DUTCH SUMMARY)
Politieke Verplichting als Morele Noodzaak

Dit proefschrift verdedigt de stelling dat mensen een morele verplichting hebben om de wetten van hun staat te gehoorzamen, als deze staat tenminste een redelijk rechtvaardige staat is (voorts: 'politieke verplichting'). De verdediging is gegrond in de Kantiaanse traditie van politieke filosofie en rechtsfilosofie en is vooral gericht tegen het filosofisch anarchisme. Het filosofisch anarchisme stelt dat de enig mogelijke rechtvaardiging van politieke verplichting een voluntaristische is: politieke verplichting komt voort uit de handelingen die tot doel hebben een dergelijke verplichting op zich te nemen. Aangezien niet veel mensen een dergelijke verplichting op deze wijze op zich genomen hebben, kan niet gesproken worden van een wijdverbreid bestaan van deze verplichting. Dit heeft consequenties voor de legitimiteit van staten: immers, als politieke legitimiteit het correlaat is van politieke verplichting, en politieke verplichting niet of nauwelijks voorkomt, zijn staten niet legitiem. Dit proefschrift stelt dat voluntarisme geen voldoende of noodzakelijke voorwaarde voor politieke verplichting is. Integendeel, het beargumenteert dat zij geschoeid is op een involuntaristische grondslag, namelijk de these van 'morele noodzaak' (*moral necessity thesis*).

De eerste taak bestaat in het verduidelijken van de juiste benaderingswijze van het probleem van politieke verplichting. Filosofisch anarchisten onderscheiden niet tussen de rechtvaardiging van politieke verplichting en politieke legitimiteit. Dit volgt uit de correlativiteit van rechten en plichten zoals bekend uit het conceptuele schema van Hohfeld: politieke verplichting volgt uit legitimiteit, opgevat als het *recht* te heersen (en omgekeerd). In hoofdstuk 2 verwerp ik de correlatie tussen legitimiteit en politieke verplichting in drie stappen: 1) politieke legitimiteit dient niet opgevat te worden als een recht; 2) zelfs als zij wordt opgevat als een recht, zal zij geen claim-recht zijn: alleen claim-rechten hebben verplichtingen als correlaten; 3) zelfs als zij een claim-recht is, zal de correlatieve verplichting niet een verplichting zijn de wetten te gehoorzamen. De scheiding van legitimiteit en politieke verplichting leidt ertoe dat wij legitimiteit en

politieke verplichting onafhankelijk van elkaar moeten benaderen.

Nadat we de benadering hebben bepaald verschuift de aandacht naar de direct morele bron van politieke verplichting. De basale gedachte komt uit Kants politieke filosofie. In de natuurlijke toestand zijn mensen niet in staat om moreel falen te vermijden door de afwezigheid van een legitieme politiek orde die bepaalt aan welke morele plichten mensen onderhevig zijn en zorgt voor de voorwaarden voor een moreel acceptabel leven in de publieke sfeer. Derhalve is politieke verplichting gegrond op basis van morele noodzaak: politieke verplichting wordt gerechtvaardigd door het feit dat onderworpenheid aan rechtvaardige politieke instituties een noodzakelijke voorwaarde is voor een moreel collectief leven dat individuele vrijheid respecteert in een situatie waarin mensen interactie niet kunnen vermijden.

Aangezien wij politieke verplichtingen hebben ten aanzien van personen met wie wij samenleven kan met behulp van dit Kantiaanse beginsel aan het vereiste van particulariteit worden voldaan. Dit vereiste stelt dat wij alleen politiek verplicht zijn met betrekking de wetten van *onze* staat. Dit vereiste wordt in dit proefschrift in die zin gerelativeerd dat de bewijslast wordt omgekeerd: het vereiste als zodanig is niet van invloed op de normatieve *rechtvaardiging* als zodanig van politieke verplichting. Het is een toevallig verschijnsel dat door een theorie van politieke verplichting moet worden *verklaard*. Dit gebeurt door een voorwaarde die een integraal onderdeel is van de these van morele noodzaak. De vooraarde is dat politieke verplichting alleen daar bestaat waar mensen interactie niet kunnen vermijden. Dit is waarom deze voorwaarde aangeduid wordt als het 'nabijheidsbeginsel' (*proximity principle*). Een juridische interpretatie van dit beginsel reflecteert het feit dat nabijheid in ons geïnstitutionaliseerde bestaan bepaald wordt door jurisdictie in plaats van fysieke nabijheid.

In hoofdstuk 5 wordt morele noodzaak vergeleken met andere voluntaristische en involuntaristische theorieën. Beide soorten theorieën leggen geen rekenschap af over de theoretische noodzakelijkheid van deze these om hun morele gehalte te verantwoorden. Echter, als zij dit wel doen rijst de vraag wat deze theorieën eigenlijk toevoegen. Gezien het vermogen van de these van morele noodzaak om de morele basis van politieke verplichting te leveren dreigen deze theorieën te verzinken in trivialiteit.

Een laatste vraag is gericht op het onderscheid tussen politieke verplichting en de morele plicht de wet te gehoorzamen. Joseph Raz brengt dit onderscheid in stelling om een algemene morele gehoorzaamheidsplicht te ondermijnen. Op deze wijze kan hij de correlativiteit van politieke legitimiteit en politieke verplichting handhaven. Het verschil tussen de twee verplichtingen ligt in de extensie van de te gehoorzamen wetten: terwijl de morele verplichting tot gehoorzaamheid aan de wet het hele wettelijke stelsel als geheel betreft, strekt politieke verplichting zich uit tot wetten die het bestaan en de continuïteit van een legitieme staat aangaan. De positie van Raz wordt verworpen door twee argumenten: het eerste argument is het argument over de benaderingswijze dat bekend is uit Hoofdstuk 2; het tweede argument behelst een weerlegging van de drie argumenten die Raz hanteert om gehoorzaamheidstheorieën te ontkrachten: het 'Onschadelijkheidsargument' (*The Innocuousness Argument*), het 'Quasi-voluntaire Verplichtingsargument' (*The Quasi-Voluntary Obligation Argument*) en het 'Perversie-argument' (*The Perversion Argument*).

Als de redenering van dit proefschrift stand houdt zijn mensen moreel verplicht de wetten van hun staat te gehoorzamen en de staat te steunen. Er zijn dan geen voluntaire handelingen nodig om dergelijke verplichtingen aan te gaan: gehoorzaamheid aan de wet is noodzakelijk om immoreel handelen ten aanzien van anderen te voorkomen. Er is geen reden om bezorgd te zijn dat dit leidt tot een 'illiberale' staat: gehoorzaamheid aan de wet als morele noodzaak impliceert bepaalde beperkingen aan het gezag van de staat. Als dat niet zo was, zou er immers geen sprake zijn van morele noodzaak. Om deze reden is de rechtvaardiging van morele noodzaak gelinkt aan politieke legitimiteit: maar de connectie is van *normatieve*, niet van louter conceptuele aard. Een onderzoek naar politieke legitimiteit is dan ook de logische opvolger van het onderzoek waarvan in dit proefschrift verslag wordt gedaan.

CURRICULUM VITAE

Yizhong Luo was born on July 2nd, 1988 in Yichang, China. He attended secondary school at Yiling High School during 2003 to 2006. During 2006 to 2010, he majored in law at Hubei University of Economics and was granted a B.A. in 2010. In 2013, Yizhong Luo obtained his LL.M. in Jurisprudence from China University of Political Science and Law, also in 2011, he was admitted to the bar in China.

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