

The Boundary Problem Reconsidered

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ABSTRACT

In recent years, political philosophers have devoted growing attention to the questions of political obligation. The debate mainly centers on the question “Is there a moral duty to obey the law?” Political obligation refers to a moral obligation to obey the laws of one’s state, and therefore the question may also be “Do we have political obligations?” At present, there are various theories offered to respond to this question, though none are receiving widespread consensus. In this paper, I am going to answer the question “Is there a moral duty to obey the law?” I will defend functionalist theories of political obligation against two well-known objections: the problem of unilateral annexation and the problem of historical injustice. In Section 1, I will explain what functionalism is. In Section 2, I will explain the main objections against it. In Section 3, I will undermine these objections by showing them to depend on untrustworthy intuitions. In contrast, I will show that the case for functionalism can be made without relying on similarly untrustworthy intuitions. Section 4 is the conclusion.

Introduction

In recent years, political philosophers have devoted growing attention to the questions of political obligation. The debate mainly centers on the question “Is there a moral duty to obey the law?” Political obligation refers to a moral obligation to obey the laws of one’s state, and therefore the question may also be “Do we have political obligations?” At present, there are various theories offered to respond to this question, though none are receiving widespread consensus. Some paradigm examples include the Consent Theory of Beran (1987), the Fair-play Theory of Rawls (1964), and the Associative Theories of Horton (1992). On the other hand, there are some political philosophers insisting that none of these theories are satisfactory, questioning whether there is a solution to the problem. Most of them are philosophical anarchists such as John Simmons (2001) and Robert Wolff (1998). These contrasting theories leave the question of whether there is a moral duty to obey the law an unanswered question.

In this paper, therefore, I am going to answer the question “Is there a moral duty to obey the law?” I will defend functionalist theories of political obligation against two well-known objections: the problem of unilateral annexation and the problem of historical injustice. In Section 1, I will explain what functionalism is. In Section 2, I will explain the main objections against it. In Section 3, I will undermine these objections by showing them to depend on untrustworthy intuitions. In contrast, I will corroborate that the case for functionalism can be made without relying on similarly untrustworthy intuitions. Section 4 is the conclusion.

Section 1

Natural duties are moral requirements based on impartial moral values or requirements owed to other people because of their nature. Natural Duty Theories of political obligation claim that political obligations are derived from natural duties. In contrast to Natural Duty Theories, Associative Theories are grounded in roles and relationships, claiming that our social roles are the source of political obligation, while Transactional Theories are based on what we have done or enjoyed. The natural duty theorists, however, differ over which moral duty

provides the basis for political obligation. It could be the maximization of the occurrence of good properties such as happiness, justice, and equality, or the more obvious duties for human beings such as securing peace or providing rescue. However, these theorists all agree that we can only discharge our moral duty to others if we comply with the authority of the state we happen to be in. This is because we have to agree on certain demands of justice and coordinate to solve certain problems.

There are mainly two subsets of Natural Duty Theories: structuralist theories and functionalist theories. Structuralist theories ground political obligations in the legal/political structure of the state's institutions (Kant, 1991). For example, democratic theories of authority are structuralist natural duty theories because they claim that if the state has a certain institutional structure (a democratic structure), then it has authority. Functionalist theories, on the other hand, ground the state's authority in its successful performance of its morally mandated function (Buchanan, 2003). That is, if the state is doing the job it should do, such as maintaining peace or enforcing justice, then the state is legitimate. It claims that we are morally required to support and comply with states that successfully perform their morally mandated functions.

Functionalism comes in both maximizing and threshold variants. The maximizing variant says that a state has authority over a population if it is better at delivering justice for that population than all other states. The threshold variant claims that a state has authority if it succeeds at delivering justice to a sufficient degree (Buchanan, 2003). This article, however, does not turn on the kind of function the states provide. Therefore, I will refer to the function of the state in general terms like 'provision of justice.'

The most popular form of Functionalism is Kantian Functionalism. Kantian Functionalists claim that justice is impossible without the state. In the Kantian view, justice consists in each individual enjoying equal independence from others. Since Kantians think that individuals cannot be independent of one another in a state of nature, they think that justice is impossible without the state. They therefore think that the function of the state is to secure equal freedom-as-independence for each and every member of its population by specifying and enforcing a system of rights for each individual (Stilz, 2009). To the extent that the state succeeds in performing this function, the state has authority over its population. Thus, there has to be a state, and if the state is fulfilling this job, it is legitimate. In order to avoid unjust threats to people around us, and for all to enjoy nonprovisional rights, we must accept the authority of the justice-administering institutions at work where we reside.

Section 2

There are five widely accepted conditions for political obligation, or for a state to have authority:

- (1) Morality: the reason to obey the law is a moral reason (Green, 1986).
- (2) Stringency: the reason to obey the law is that it is very difficult to override (Gilbert 2006, 2013).
- (3) Content-Independence: the reason to obey the law must not depend entirely on the law's content (Hart, 1982).
- (4) Generality: all members of the state's population must have a duty to obey its laws (Beran, 1987).
- (5) Particularity: only members of the state's population must have a duty to obey its laws (Rawls, 1999).

Simmons objects to functionalism on the basis of "boundary problems." The question is, even if a state has authority over a certain area, why should individuals have the obligation to obey this particular state only because of the social fact that he/she is a member of the state? Why do we only support and comply with the state that applies to us? In other words, why not obey other just states, or even those which are better at promoting justice? For example, suppose both China and Japan provide sufficient justice. Why should the individuals within the boundaries claimed by China only be obliged to support and comply with Chinese law, and only Japanese law for those within the boundaries claimed by Japan?

Simmons specifically discusses two kinds of boundary problems: the problem of unilateral annexation, and the problem of historical injustice. These two problems often involve unjust rights violations. The unilateral annexation problem occurs when a country invades or occupies another country by unjust means. Simmons thinks that people have no political obligation to their new country under these circumstances. He illustrates his point using the following thought experiment:

Imagine that (perhaps citing concerns about national security) the United States somehow manages to move its southern border barriers further south by several miles, declaring the newly enclosed territory to now be part of the United States. The United States commences then to effectively and fairly administer justice in this new territory and extends full US citizenship rights to all of the (former Mexican) residents of the territory. (Simmons, 2016)

Assume that the United States provide the same, or even more justice as Mexico did to satisfy the threshold of authority. Do these conquered Mexicans have a moral duty to obey these U.S. laws? Is it morally wrong not to do so? For Simmons, the answer is apparently negative- that the United States does not have the right to rule these former Mexicans. However, for functionalists, the answer should be yes- if the state provides a sufficient amount of justice that the condition of authority is met, then the new U.S. citizens should have the duty to comply with the laws and institutions of the United States. Critics claim that functionalism implies that the United States does have the right to rule in this thought experiment, but intuitively, the United States does not have the right. Therefore, Simmons charges functionalism with having counter-intuitive implications.

Relatedly, Simmons also presents what he calls the historical injustice problem. It seems like historical injustice can often prevent a state from having the right to rule a population. For example, it seems like European colonial powers have no right to rule former colonies because of the human rights abuses from the past. And this seems so, even if these colonial powers could better govern these populations. Therefore, it seems like historical injustice can prevent a state from having the right to rule. However, Functionalist Theories imply that historical injustice cannot prevent a state from having the right to rule. This is because Functionalist theories claim that a state's right to rule is solely determined by its successful performance of its morally required functions at present, not what it did in the past.

An obvious reply to this objection would be to point out that actual cases of colonialism involved injustice such as forced labour, economic exploitation, as well as systems of racism and cultural discrimination. Since functionalism grounds the state's authority in its success at securing justice, these historical injustices would rule out the legitimacy of colonial states. However, this reply does not rule out the legitimacy of benign colonial states. These are merely possible states that colonise others, but treat their colonial subjects justly and afford them the same rights and protections as their own citizens. The problem remains that these benign colonial states seem to lack legitimacy, and yet functionalism implies otherwise.

In the next section, I argue that functionalism can address these problems by undercutting the intuitions that underlie these objections.

Section 3

As mentioned in Section 2, Simmons argues that functionalist theories are counterintuitive. One possible reply to Simmons's objections may be to undermine the intuition Simmons relied on in his argument. Therefore, in this section, I will concede that Functionalism gives the unintuitive verdict in Simmons' thought experiment, yet this kind of intuition is untrustworthy. On the other hand, functionalism is based on a different and more reliable intuition, and hence we can undermine Simmons' objections without thereby undermining functionalism.

I will start my rebuttal by discussing moral intuition in general and the kind of moral intuition Simmons appealed to. I have to first clarify that I do not oppose all moral intuitions, and in fact, functionalism also

depends on moral intuition to a certain extent. What I mistrust is the specific type of moral intuition Simmons used in his argument.

Intuitions are a way to discover the facts. However, there are different types of intuition. Some intuitions are used to track reality, such as mathematical or logical intuitions. If I tell you $1+1=3$, you will know it is wrong. You may prove it by putting two sticks together to show that the answer is actually two or use some complicated mathematics to prove it. Either way, we will have no reason to doubt this intuition, and therefore it should be trusted. Other intuitions may not be caused by reality but by cultural indoctrination or evolution. To discover moral facts, we need to rely on the intuitions that are trustworthy indicators of moral facts. The intuition Simmons relied on, however, likely reflects our evolutionary and cultural history rather than moral facts.

By way of example, consider the intuition that it would be wrong not to help a stranger in need at little cost to yourself. Not only is this a firmly held intuition, but it is difficult to explain how this intuition could be merely the result of evolutionary or cultural processes. By contrast, consider the intuition that you ought to prioritise helping a cousin over helping a stranger. This intuition is also firmly held and widespread. But we have strong reason to suspect that we have this intuition merely because of evolutionary processes. Evolutionary processes produce behaviours that tend to the replication of one's genes. Since cousins will share more genes with you than mere strangers, it is apparent why evolution would select the intuition that one ought to help cousins over strangers.

Relatedly, consider the intuition that one ought to be loyal to one's own sports team. For example, imaginethat one of the players of your team told your rival the strategies you had planned for the competition. As a result, your adversary spotted your tricks and eventually won the game. What would you feel under this circumstance? I assume you would consider him disloyal to your team, and that this is wrong in some way. It could be the case that people in one's culture are expected to be loyal to others because it brings benefit, or that disobeying it would cause harm to someone within the culture. Also, we know that social groups can have psychological effects on their members (James, 1890/1950). Their members often feel a sense of loyalty even when the group is evil or unjust. For example, criminal gangs often have this psychological effect on their members even when they are engaged in evil activities (Woldoff & Weiss, 2010). Likely these effects are the result of cultural indoctrination, or something like it. My point is that we have no reason to doubt the intuition that we ought to help strangers at a low cost to ourselves, but we have reason to doubt intuitions telling us that we ought to prioritise our cousins or be loyal to sports teams and criminal gangs.

The type of intuition Simmons relies on with regard to this issue is the latter. The two problems demonstrated in Section 2 both claim that functionalist theories do not conform with our moral intuitions. But if we have reason to doubt that these intuitions track the moral truth, then these two problems do not undermine functionalism.

Let us start with the case of the United States annexing Mexican territory. In this case, we have the intuition that the former Mexican citizens do not have political obligations to the United States. But do we have reason to think that this intuition is the result of evolution or cultural indoctrination? I think we do. Imagine a football fan of Club A. Suppose that this fan has been a loyal supporter of Club A for many years. However, on this occasion, his favourite team is losing to Club B. Suppose that the fan switches sides and starts to cheer for Club B. Many would say that this fan acts wrongly because he is disloyal. However, as we have seen, this intuition probably does not track moral reality. But notice how this disloyal fan is similar to the newly conquered Mexicans in Simmons' example. Those citizens would seem to be disloyal to Mexico were they to obey the United States without reservation. It is probably this sense of disloyalty that accounts for the intuition that these people do not have political obligations to the United States. But if we think that our intuitions about the disloyal football fans are untrustworthy, then we should also doubt our intuitions about the newly conquered Mexicans.

There is an additional reason to doubt our intuitions in this case. Though it is stipulated that the United States annexed this territory without any violence, and that they then proceeded to treat the annexed people

fairly from then on, we know that actual annexations rarely (if ever) work out this way. History tells us that conquest almost always goes hand in hand with horror and mistreatment. Given these facts, we should expect our intuitions to be attuned to the way things almost always go, even if the thought experiment stipulates otherwise.

Now, let us consider the intuitions behind the examples of historical injustice and benign colonialism. Firstly, the intuition that historical injustice precludes political obligation could very well be the result of cultural indoctrination. Cultures pass down grudges. This makes sense as a survival strategy in a capitalist world where social groups have to compete for resources (Marx & Engels, 1848). The awareness of this phenomenon should undermine our trust in the intuitions behind cases of historical injustice because it shows how these intuitions could arise by means other than the moral truth.

Secondly, the intuition behind benign colonialism can also be debunked by considering alternative likely explanations for it. The intuition behind this case seems to come from the idea that political groups ought to have autonomy or be self-determined. And indeed, this makes sense from the perspective of social group survival. Historically, social groups that have lacked self-determination have fared poorly. So, it makes sense that social groups would adopt a preference for self-determination. And given this likely alternative explanation for our intuition in the benign colonialism case, we have reason to doubt that this intuition tracks the moral truth.

The intuitions that Functionalism relies on (especially the Kantian versions of it) are more abstract, and so, less likely to be the result of evolution or culture (Singer, 2005). Functionalists claim that the conditions of authority are that the state performs its morally required function: to provide justice. Functionalism therefore relies on nothing more than the intuition that justice is morally required, and then arguments for why the state is necessary to secure justice. To my mind, none of these intuitions are likely to be the result of anything but the moral truth. Therefore, I think we have reason to doubt Simmons' objections to functionalism, without having reason to doubt functionalism itself.

Section 4

In this paper, I have tried to answer the question "Is there a moral duty to obey the law?" First, I explained what Functionalism is. Then, I have explained the main objections to it - the boundary problems given by Simmons. I have shown why these problems may count against functionalism, and I have used examples to show the sort of intuition Simmons is relying on when defending his argument. Lastly, I explored the origin and the basis of the intuitions that Simmons relies on to show that they are untrustworthy intuitions, which are culturally or evolutionarily biased and therefore not reliable guides to the moral truth. In contrast, I showed that the case for functionalism can be made without relying on similarly untrustworthy intuitions, but a more abstract and more reasoned intuition instead. Generally, this study attempted to separate the intuition based on evolutionary and cultural reality from the real moral fact, offering a potential new approach to solving the problems Simmons raised. However, my research could still be evolutionarily or culturally biased because these factors, especially culture, vary from one another. Also, specifying moral judgement or moral facts could be a difficult task. Therefore, this is an area that future research would have to explore more.

Acknowledgments

I would like to thank my advisor for the valuable insight provided to me on this topic.

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