Plato portrays Socrates as regarding his duty to obey his state as so important that he thought it better to accept execution at the hands of the state than to violate the duty, knowingly foregoing clear opportunities to escape this high cost for obedience. More recent historical treatments of the question of political obligation (Locke’s treatment, for instance) often have framed the discussion in terms of identifying those (extreme) actions or failures of government that would morally justify rebellion or revolution. More recently still, for instance, during the civil rights era in the United States, the practice of civil disobedience well short of revolution was nonetheless widely justified against a presumption that there existed for citizens a general duty to obey the state. It is fair to say that the idea that persons have some kind of duty to obey their states has held sway throughout the history of western philosophy.

Rejecting this long-held idea has gained an eloquent and forceful spokesman, however, in John Simmons. Simmons’ defense of philosophical anarchism takes center stage in this edition, earning critiques from his University of Virginia colleague, George Klosko, and David Lefkowitz. Klosko focuses attention on Simmons’ treatment of arguments grounding political obligation on duties of fairness while Lefkowitz builds on the recent work of Christopher Wellman’s samaritan-based natural duty defense of political obligation. In addition, Chris Naticchia suggests that Simmons understates the case for philosophical anarchism against any natural duty approach to grounding political obligation, a case that can be seen by considering the practical reasoning that would apply to anyone under a natural duty to obey the state. Finally, John Simmons responds to these three essays, focusing primarily on the way in which his particularity requirement for establishing a duty to obey the state is not fully appreciated, though in different ways, by his commentators.

Moral Principles and Political Obligations is one of the rare philosophical works—especially rare for a revised doctoral dissertation—that defines an entire field. To a large extent, since its publication in 1979, all work in political obligation has been attempting either to respond to it or to build upon its basic insights. The book makes important original contributions on both particular and general levels. As many people know, the form of the work is straightforward. After two clear and helpful chapters on the nature of obligation and political obligation, Simmons proceeds to examine the then standard arguments in support of political obligations, which he demolishes like ducks in a row, to use Joel Feinberg’s metaphor, quoted on the book’s cover. In large part as a result of his criticisms, prominent scholars now claim a “consensus” in the literature against the existence of political obligations.

Simmons’ own view is that free consent is an adequate basis for political obligations, but it does not ground the obligations of most actual citizens because few have performed acts that constitute consent. His forceful critique of claims to widespread tacit consent is perhaps the best in the literature, while his other critical arguments are, again, clearly and elegantly developed, raising daunting objections. Several of Simmons’ points are now standard throughout the literature, e.g., his identification of “generality” and “particularity” as criteria of a successful theory of political obligation, problems the latter raises for natural duty theories, and difficulties in fixing the content of obligations from gratitude. Others of his arguments, if less original in absolute terms, have attained classic status because of their presentation. This is especially true of his arguments against consent. Although his approach has been familiar since the time of Hume, Simmons’ case is especially well crafted. His discussion is also studded with valuable insights, including identification of the “attitudinal sense of consent” and observations concerning Locke’s tendency to run together arguments from consent and from benefits received.

The position Simmons defends in his final chapter follows from what he views as failure to establish an acceptable theory of political obligation. He faces the consequences of this situation head-on and develops his distinctive account of “philosophical anarchism.” In Simmons’ hands, this position differs from more
familiar anarchistic doctrines, which generally reject the state. For instance, according to Mikhail Bakunin: “If there is a state, there is necessarily domination and consequently slavery. A state without slavery, open or camouflaged, is inconceivable—that is why we are enemies of the state.” One of Simmons' significant accomplishments is to make a version of anarchism appear, if not exactly plausible, not unacceptably implausible on its face. Philosophical anarchism, unlike its distinguished forebear, does not deny the legitimacy of the state, but only the idea that individuals are morally required to support it. Briefly, according to Simmons, the state is a legitimate moral actor, even a necessary one. In the absence of political obligations, there remain significant moral reasons to obey many laws, and so the absence of political obligations does not entail anarchy (as popularly understood) and chaos. Rather, confronted with particular claims on the part of the state that they should obey, citizens should examine the full range of moral factors involved in each case—including the fact that the state says to obey X—and decide how the overall balance of reasons requires that they act. Much of what the state commands is beneficial in different ways, e.g., not to commit obvious moral wrongs, such as murder and rape, while it also performs important services in coordinating various spheres of action, e.g., traffic laws. In these cases and many others like them, the balance of reasons often favors obedience. But once again, this is because of the entire range of factors in each situation, not because the state says we should obey.

In spite of Simmons’ impressive development of philosophical anarchism, not all scholars have been persuaded. Claims concerning the existence of a skeptical consensus are clearly exaggerated. Some scholars are less confident than Simmons that the consequences of doing away with political obligations would be relatively benign, while the idea that there are no obligations seems to clash with strong general beliefs that there are. In order to counter skepticism, scholars have pursued a number of different strategies. First and most obviously, they have attempted to counter criticisms of existing theories. In recent years, there have been significant reworkings of theories of political obligations based on the main principles: consent, gratitude, a natural duty of justice, and fairness. Other scholars attempted to develop theories of political obligation on new grounds. Two approaches that are especially notable are based on principles of association or membership and samaritanism. Finally, important scholars have pursued strategies like Simmons’ own, turning their backs on traditional theories of obligation. Attempting to work out the implications of societies without political obligations, these scholars generally argue for the existence of the state, although individuals’ determinations when obedience is necessary should be based on all moral considerations operative in each case. Like Simmons, these scholars distinguish between a state’s having “legitimacy” and “authority” and defend the former but not the latter. To counteract the view that people have political obligations, and so that the state can justifiably claim obedience, they argue that authority is not necessary, that important state functions can be accomplished without political obligations. Clearly, such approaches are among the most important new areas of research on political obligation.

I. Balance of Reasons and Multiple Principles

In order to appreciate Simmons’ accomplishment, it should be helpful to step back and look briefly at how questions of political obligation have traditionally been addressed in the literature. The standard approach has long been to treat different theories of obligation in somewhat reified form, as independent “theories.” Each is assessed as if it alone is to provide satisfactory answers to the full range of questions. When a given “theory” is found deficient in some respect, it can be labeled unsatisfactory and rejected. The critic can then move on to assess the next “theory” on his list. In the literature, such procedures of “divide and conquer” are followed not only by Simmons but by other important scholars as well. Their conclusions are largely responsible for the currently widespread view that political obligations cannot be accounted for.

Taking matters one step farther, Simmons recognizes that discussion of political obligation does not end with successful refutation of individual theories. As just indicated, he believes we should proceed on the balance of reasons. But he does not recognize that the balance of reasons approach severely undermines the critical side of his project. Briefly and simply, if decisions whether or not to obey particular laws should be made on the basis of all relevant moral considerations, in examining overall questions of political obligation, why should we confine attention to separate theories, in isolation from one another? Divide and conquer is obviously flawed. The fact that no single moral principle is able to answer all relevant questions does not rule out the possibility that, by bringing other considerations to bear, better answers can be developed. It is possible that, by combining two or more different theories, we can construct a position that is stronger than either of the original theories on its own.

I believe that many political obligations are overdetermined and that there is an element of truth in many different theories of obligation. Even if a theory based on a single principle—e.g., gratitude or a natural duty of justice—is not able to overcome all difficulties and so to give rise to a theory that is fully satisfactory, this does not mean that it is not able to account for at least some requirements to obey the law. Accordingly, while Simmons has made impressive achievements in lining up the traditional theories and shooting them down (although I criticize his analysis of one particular principle, below), and in opening up a way to move beyond the apparent failure of traditional views, his leap from criticism to skepticism is overly quick. While his arguments provide strong evidence against general obligations based on a single moral principle, they do little to dispel the idea that general obligations can be salvaged through a non-traditional theory that combines different moral principles. While the overlap of different principles complicates the task of laying out a satisfactory theory of political obligations, requirements to obey the full range of laws could well be provided by a crosshatch of different principles.

Although I cannot make this case here, I believe it can be shown that, through the combination of different moral principles, a satisfactory account of general political obligations can be developed. To the extent this is true, it does little to diminish the importance of Simmons' critical accomplishments, although it leads to strikingly different results. On this line of argument, the result of a balance of reasons approach will be a view that is in practical terms substantially similar to the traditional one. Although our eventual answers to questions of political obligation will not be based on a single moral principle, they will be traditional in the crucial practical respect of mandating obedience to all justifiable laws. In other words, properly understood, philosophical anarchism leads to results that are extensionally equivalent to those of traditional theories of political obligation.

In the following section, I turn to Simmons' arguments against political obligations based on one particular moral principle, the principle of fairness (or fair play). Although I do not believe that, by itself, this principle is able to ground a fully satisfactory theory of political obligation, I believe it is able to establish requirements to obey laws bearing on provision of security and other essential state functions. For
this reason, this principle constitutes the core of a successful multiple principle theory of obligation. I will attempt to show that Simmons’ analysis of the principle of fairness is seriously flawed, focusing on two main areas: his political sociology and his direct criticisms of the principle.

II. Simmons’ Political Sociology

As a general rule, a successful theory of political obligation must establish both normative and factual premises.17 The former center on the need for the state. Unless the state is necessary, it is difficult to justify claims that people must obey it. The latter premises address why individuals should obey particular states. Simmons’ views in regard to the former subject are not entirely clear. It appears that he is influenced by his overall Lockean orientation, to the detriment of the plausibility of his position.18 Although I have no objection to normative Lockean premises concerning the inherent dignity and liberty of individuals, Simmons appears to be unusually Lockean in his sociological views as well. Although he recognizes the possibility that the state is necessary, throughout his works he says little about this, especially exactly what it is necessary for, and, in the absence of the state, how various requirements of a functioning society could be met. Simmons’ basic position is presented in the concluding chapter of Moral Principles and Political Obligations. As I have noted, according to Simmons, although we do not have obligations to obey the state, it remains in existence. In the resulting situation, the state is a moral actor like other actors, required to abide by moral norms, but also, like other moral actors, able to take justifiable steps to enforce them. Although people are not required to obey the state, they should support it when it performs important tasks.19

To my knowledge, Simmons has provided little or no detailed discussion of the nature of this state, e.g., who staffs it, their motivation, how they are paid, and other similar matters. It appears that he assumes the continued existence of the state in something like its present form, although with the major difference of clear recognition that general requirements to obey it cannot be established. Presumably, the behavior of Simmons himself and other people who properly understand their relationship to the state will be affected by this realization. But what would ensue were this recognition to become general is a subject he does not examine.

Even if we accept these points, we must inquire further into our relationship to the state, in particular, whether it is in fact necessary, and, if it is, exactly what it is necessary to do. In various contexts, Simmons makes broad claims about the necessity of the state. This is discussed in “The Duty to Obey Our Natural Moral Duties”:

As I have indicated already, I am prepared to grant (at least arguendo) all that is said about the accomplishments of modern states and modern legal systems—about their importance (or even their necessity) for the efficient provision of a (relatively) secure environment under the rule of law; about their importance (or even their necessity) for solving the coordination and assurance problems that would plague even a relatively benign social condition without government and law; about their consequent importance (or even their necessity) for the provision of a wide range of other public goods.20

Although it is unclear how seriously we are to take “arguendo” here, it is likely that Simmons does recognize the necessity of the state,21 though once again the sphere of this necessity is not explicitly delineated. But concessions along these lines are rare. Simmons is clearly interested in various self-help schemes and mechanisms through which, through voluntary actions and cooperation, individuals are themselves able to provide services that are often thought to require the state. We will return to questions concerning self-help below.

In regard to the need for the state, Simmons faces a pair of unpalatable choices, both of which eliminate much of the apparently paradoxical force—and so the distinctive philosophical territory—of his philosophical anarchism. It is difficult to argue that the state is necessary but that people do not have obligations to obey it. If it is necessary, it is obviously necessary for particular people and, as we will see in the next section, a position according to which A, B, C, etc. need the state but are not required to obey it is difficult to maintain. The alternative is no better. To the extent that Simmons argues that the state is in fact not necessary, that through voluntary arrangements, people would be able to furnish the requisites of acceptable lives without its help, his position departs from traditional liberal political theory and enters the territory of traditional anarchism. If this is in fact his position, then he should be required to discuss life without the state, how the services we require—especially in the modern world—would be supplied. To the extent that his arguments against political obligation rest on doing without the state, his criticisms of particular theories of obligation are largely otiose. How can Jones be required to obey an entity that he does not need?

Although it is not possible to present a full-fledged defense of the state and our need for it in this context, in the following discussion I stipulate that we do need it—and discuss various services it must provide. Because of the elusiveness of his presentation, this assumption may not be entirely fair to Simmons. But if it is not and he wishes to maintain that the state is in fact not necessary after all, then once again, he must take pains to avoid falling into the trap of conventional anarchism.

III. Political Obligations and the Principle of Fairness

As indicated in the last section, establishing the need for the state takes us only part of the way to a successful theory of political obligation. In addition to demonstrating that the state is necessary, we must provide convincing reasons why individuals have moral reasons to obey it. I believe such reasons exist in connection with the principle of fairness. From my first reading of Moral Principles and Political Obligations, I have believed that, in spite of the merits of Simmons’ arguments against other possible bases for obligations, his arguments against the principle of fairness were seriously flawed. In the intervening time, Simmons has presented a range of additional arguments, but as we will see, none of these is convincing.

Before proceeding further, I should make clear exactly what I believe can and cannot be established by proper understanding of the principle of fairness. As indicated above, I believe Simmons has succeeded in demonstrating the futility of attempting to establish a theory of political obligation along conventional lines, that is, a theory that justifies the state’s ability to impose on the relevant population obligations to support the entire range of its services. As we will see, the principle of fairness falls short of this ideal. It establishes obligations only in regard to a central core of services. But in keeping with Simmons’ balance of reasons approach, I believe appeal to additional moral considerations can support the remaining services.22

Reasons of space and scope do not allow full discussion of the principle of fairness in this context.23 The principle was first clearly formulated by H.L.A. Hart in 1955:

[W]hen a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions
Briefly, proponents of this principle argue from mutuality of restrictions. If a given individual, Jones, profits from the burdensome cooperative labor of others, then under certain circumstances he will have a moral requirement to share in the burdensome labors. As we will see below, the principle works differently in regard to different kinds of benefits. If the benefits are excludable goods, then ordinarily Jones would have to accept them or otherwise seek them out in order to incur obligations to scheme members. The principle bears more importantly on questions in regard to public goods, which ordinarily cannot be accepted or sought out. Moral requirements to cooperate in providing these may be incurred if the benefits are (i) worth their costs, (ii) indispensable to satisfactory lives, and (iii) fairly distributed. Exceptions are justified if there are morally relevant differences between particular recipients and other people. For instance, if Jones is a pacifist, this may absolve him of duties he would otherwise have to contribute to defense. Or, more fancifully, if he were physically invulnerable and so did not require a secure environment, such an environment would not be a benefit to him and he may not have requirements to contribute to it. But when people receive benefits that are ordinarily viewed as essential to acceptable lives, the facts that they receive them and can be presumed to need them generates a burden upon them to demonstrate the existence of morally relevant differences, if they wish to be absolved of obligations.

If we grant these points, then it follows from the state’s role in providing public goods concerning a secure environment and other requisites of satisfactory lives that people who receive these goods incur obligations to do their fair share in the burdensome cooperative activity necessary to produce them. Ordinarily, these moral requirements will be to obey the law as it bears on providing the public goods in question. These moral requirements are not comprehensive. In accordance with a balance of reasons approach, the state must be able to justify requirements to cooperate in the provision of each public good it supplies.

In considering political obligations under the principle of fairness, it is important to concentrate on a particular kind of cooperative scheme. In modern countries, these are large, involving the cooperation of many millions of people, in the U.S., of hundreds of millions. The goods in question must not only be necessary for acceptable lives, but because of their nature and the large-scale cooperation they require, they must not be able to be supplied by individuals themselves without state direction. The incentive structures of these public goods generally correspond to those of N-person prisoner’s dilemmas. Although it is in the interest of each person to receive the goods, even at the required costs of contributing, it is more advantageous not to bear these costs, as long as enough other people will cooperate to make sure the goods in question are supplied. Given the likelihood that many people would attempt not to cooperate, the state is necessary to make sure that all people, or as many as possible, do. Although I am not able to pursue this topic here, I stipulate here that, for a range of necessary public goods, voluntary efforts are not enough. If voluntary efforts were sufficient to provide all relevant public good, then, in keeping with the discussion above, it would be difficult if not impossible to demonstrate the existence of political obligations—in regard to receipt of these goods. Under full anarchist assumptions, according to which all necessary goods could be provided without the state, political obligations likely could not be demonstrated. But as noted above, a view along these lines falls outside traditional liberal political theory and so, in this context, need not be discussed.

Two examples may be used to illustrate the nature of the moral requirements generated by the principle of fairness in the cases that interest us:

(a) Defense Example: Grey lives in a territory, X, that is surrounded by hostile territories, the rulers of which declare their intention of massacring the people of X. Accordingly, the X-ites bind together for their protection, instituting demanding measures, compulsory military service for men and women, mandatory service in the reserves, including a substantial period of yearly active duty until a relatively advanced age, and provisions for rapid mobilization of reservists. Because these requirements are obviously burdensome, Grey, who would prefer to go about his business as usual, decides not to comply. Under these circumstances, assuming that a number of X-ites, sufficient to ensure the safety of X and its inhabitants, do comply, is he justified in not complying?

A second vignette concerns environmental protection.

(b) Pollution Example: Brown lives in a territory, Y, that is affected by severe air pollution, which is dangerous for all inhabitants’ health. Accordingly, the Y-ites pass stringent environmental regulations, including strict limits on driving and requirements that all vehicles be equipped with expensive catalytic converters to limit harmful emissions. A sufficient number of Y-ites comply with these regulations to reduce the air pollution to acceptable levels. For obvious reasons, Brown would prefer not to have to restrict her driving or to purchase a catalytic converter. Under these circumstances, is she justified in not complying?

I believe it is apparent that Grey and Brown have moral requirements to cooperate with their respective cooperative schemes, and that in each case, the obligations in question are based on the principle of fairness. In each case, it is wrong for them to benefit from the cooperative labors of others without bearing similar burdens themselves.

Simmons has long disputed these conclusions. In arguing against political obligations based on the principle of fairness, his main strategy is two-part. He contends that, in order to establish fairness obligations, a cooperative scheme must meet stiff requirements. Then step two is that existing states do not meet them, and so the principle is unable to ground general obligations. In assessing his position, I will focus on the two most important arguments used to develop this approach.

IV. Classification Argument

Simmons’ first argument may be referred to as the classification argument. Part of his attack on fairness obligations is that moral requirements that appear to be generated by various cooperative schemes do not involve the principle of fairness, but other moral principles. For instance, in “Duty to Obey,” referring to the arguments from the principle of fairness developed in my previous works, he argues as follows: “George Klosko’s prominent recent defense of a fairness theory of obligatory obedience [...] seems actually to be far less concerned with fairness, properly understood, than with the needs of those who depend on the public goods states provide” (DO, p. 189). His meaning is made clear in a footnote on the following page: “Klosko’s theory is not really a fairness theory at all. It is in fact a disguised Natural Duty theory, resting on an unstated moral duty to help supply essential goods locally—and is thus indistinguishable in its foundational assumptions from” natural duty theories (DO 190 n. 3; his emphasis).

In response, I wish to make two points. First, such questions of classification have little bearing on what I view as the main questions at issue. Our central questions concern the extent to which citizens have obligations to obey the law because of their relationship to cooperative schemes like those described...
in the Defense and Pollution examples. If, as seems intuitively clear—but this is a point to which I will return—Grey and Brown have strong moral requirements to comply, it does not matter whether we describe the bases of their requirements as fairness or natural duty, or other alternatives. The crucial point remains that under certain kinds of circumstances, political obligations are generated. If, as I also contend, these circumstances are central to the lives of all or almost all contemporary citizens, the resulting moral requirements satisfy the generality criterion. Because individuals receive the relevant public goods from particular cooperative schemes, the particularity condition is satisfied as well. If these points are accepted, then central questions of political obligation are largely solved, regardless of exactly how we characterize the moral principles at work. Establishing the existence of moral requirements to obey the law in these respects is enough, regardless of the labels we choose to put on them.

Aside from their irrelevance, I believe Simmons’ classification claims are also incorrect. As one can see from the Defense and Pollution examples, the moral requirements that are generated in such cases follow from the fact that Grey and Brown would otherwise be profiting from the cooperative labors of others without doing their fair shares. In the Defense Example, why should Grey be exempt from military service when he benefits from provision of defense in much the same way as everyone else, unless there are morally relevant differences between him and other people? The same principle is at work in the Pollution Example. Why should Brown rather than other people be free from driving restrictions and having to buy a catalytic converter? In these two cases—and many others one could identify—it is possible that additional moral requirements flow from providing important public goods to other people. But whether such added requirements exist and how they should be understood are questions we need not examine in this context. These additional considerations need not be invoked to justify Grey and Brown’s moral requirements, which appear obviously to stem from the principle of fairness.

V. Argument from Subjective Conditions

Simmons, however, contests this analysis because he does not believe obligations of fairness are generated by the kinds of cooperative schemes under discussion. This is his second argument, to which we may refer as the argument from subjective conditions.

Simmons’ account of the principle of fairness follows from his view of the wrongs it is intended to redress. He describes these as “taking advantage of or exploiting the sacrifices of persons who have freely assumed the burdens associated with maintaining mutually beneficial schemes” (FP, pp. 29-30; his emphasis). As we will see, the points at issue depend largely on what one means by “freely assuming” the relevant burdens. Simmons bases his interpretation on small, voluntary schemes that exemplify a spirit of willing cooperation. If the neighborhood puts on a pot-luck dinner to which each neighbor agrees to bring a dish and Jones shows up without a dish, he is clearly doing something wrong. If the neighborhood digs a well and, after refusing to join in the labor, Jones proceeds to take water, he is guilty of a similar wrong. I agree with Simmons that the wrongs in such cases are clear, and that, as Simmons says, in each case, they may be characterized as “self-selection” (p. 30). In such cases, in order for the relevant enterprise to succeed, universal cooperation is not necessary. Only general cooperation is needed, and so if Jones decides unilaterally that he, rather than other people, will assume the advantages of not having to contribute, he commits a wrong of fairness. However, one should note that the cooperative schemes in these examples provide excludable benefits. They are what we may call “excludable schemes.” Because individuals can be excluded from receiving the benefits in question, ordinarily, it should be their decision whether or not to participate, and so membership of such schemes is essentially voluntary. In such schemes, the workings of the principle of fairness verge on consent to bear the relevant burdens in return for the benefits, although as Simmons demonstrates, in certain cases, the moral principles do not entirely overlap.22

With all this I have no quarrel. But I believe Simmons makes a fundamental mistake in insisting that all cooperative schemes capable of generating fairness obligations must be of this sort. Without strong reasons, he dismisses other kinds of cooperative schemes that provide non-excludable benefits (“non-excludable schemes”). Although the latter depart from the Lockean models that Simmons apparently has in mind, because these other cooperative schemes provide the essential public goods on which the successful functioning of modern societies depends, they are far more important to political philosophers than the schemes that interest him.

As indicated above, the main benefits I have in mind are those centering on security. These include law and order, national defense, control of threats to the environment, protection against infectious diseases, against natural disasters, and perhaps other dangers. Provision of each of these benefits requires the cooperation of many millions of people. I also stipulate that, as noted above, in each case, this must be coordinated by the state, with unwilling parties forced to cooperate by the threat of sanctions.23 Because these benefits are necessary for acceptable lives in modern societies, cooperation is generally worth the costs of compliance, while the essential nature of the benefits entails that all individuals in the relevant community benefit from their receipt, generally at a high level. And so these goods may be described as “presumptively beneficial.” But this is only a presumption. If Jones is able to present convincing reasons why he does not benefit—or benefit to the relevant extent—from some particular public good, then he will be freed of requirements to cooperate in providing it. But such reasons must be convincing; it is not enough for Jones to say simply that he would prefer not to cooperate. Because the relevant benefits are public goods, he will continue to receive them as long as he resides in the relevant territory. He must therefore explain why his situation differs in morally relevant ways from those of all other X-ites, who presumably would also prefer to receive the benefits at no cost to themselves but are required to cooperate.

Crucial to Simmons is that, in such cases, individuals do not freely accept the goods in question. However, a strong case can be made that a given individual, Smith, incurs obligations from receipt of such public goods, even if she does not accept them or otherwise seek them out. Because they are public goods, they cannot be accepted in the usual sense. Consider receipt of national defense. Because this is a public good, Smith receives it whether or not she pursues it. In fact, because the benefits of national defense are unavoidable as well as non-excludable, it is not clear how she could pursue them even if she wished to. Because these benefits are indispensable, we can presume that she would pursue them (and bear the associated costs) if this were necessary for their receipt. If we imagine an artificial choice situation analogous to a state of nature or Rawls’s original position, it seems clear that under almost all circumstances Smith would choose to receive the benefits at the prescribed cost, if she had the choice. But in the case under consideration, Smith’s obligation to the defense providers does not stem from hypothetical consent—that she would consent to receive the benefits under some circumstances—but from the fact that she receives them.24
Simmons’ Lockeanism shows up in the examples he uses to counter an argument along these lines. In “Fair Play,” for instance, he argues that the magnitude of particular benefits is irrelevant to their generation of obligations by presenting the following example, in which he assumes that water is an essential need:

Suppose there is a severe drought in my rural neighborhood, where we are all dependent for water on our wells, wells that are now drying up. I am hard at work, successfully digging a new, much deeper well in my backyard to supply my family. But my neighbors, instead of doing the same, opt to dig a long trench along our neighborhood road and beyond, diverting water from a river several miles away, so that all will have access to running fresh water in front of their homes. If I decline to participate in my neighbors’ scheme, have I breached an obligation of fair play by benefiting as a free rider? (FP, p. 34)

This, of course, is a poor example, as the individual in question does not need the benefit supplied by the state. He does not need it because he is fully capable of supplying it himself. The benefits provided by the non-excludable schemes that interest us are of an entirely different order of magnitude. Because of the large numbers of cooperators they require, they cannot be supplied by individuals themselves, or through voluntary associations. To make Simmons’ example more relevant, it could be recast as follows. While still accepting that fresh water is necessary for acceptable lives, we should alter the circumstances so that a given group of individuals cannot simply dig wells and provide their own supply, but that this requires the coordinated efforts of large numbers of people. Accordingly, assume that all wells have dried up and so the trench Simmons mentions is necessary and digging it will take a hundred thousand people. If this is the only way water will be available, then for Simmons’ protagonist to be absolved of obligations to contribute, he must be able to demonstrate morally relevant differences between himself and other people.

Simmons’ main argument against the ability of large-scale, non-excludable schemes to generate obligations under the principle of fairness is their non-voluntary nature, once again, that the relevant benefits are not accepted. The obvious problem with his view is that the benefits are unavoidable as well as non-excludable and so cannot be voluntarily accepted even if individuals wish to accept them. Simmons is therefore forced to find a substitute for “acceptance” relevant to non-excludable schemes. He argues that in order for the relevant benefits to be accepted, individuals must possess certain attitudes. Cooperative schemes characterized by such beliefs evince cooperation in a strong sense, while Simmons holds that wrongs under the principle of fairness necessarily involve cooperation in this strong sense. In “Fair Play,” he writes:

The unfairness lies in the way that self-selection exploits or takes advantage of others’ good faith-sacrifices—an advantage-taking that occurs, I maintain, only when one freely takes the benefits of cooperation with the requisite beliefs and preference structure, *not* when one merely unavoidably receives those benefits while going about one’s normally permissible business. (FP, pp. 30-1; his emphasis)

What are the relevant attitudes? “only those who accept benefits from cooperative schemes can be bound (by considerations of fair play) to reciprocate, and [...] acceptance (in the relevant case of public goods) involves taking benefits willingly and knowingly (so that, e.g., one understand the source and costs of the benefits, prefers their provision in the manner provided to nonprovision, and so on)” (p. 32).

In this context, it is unfortunately not possible to pursue all highways and byways of Simmons’ position, and so I must refer the reader to my previous work on this subject. In response here, I will make four points. First, although I believe some subjective beliefs must be present if Smith is to acquire obligations under the principle of fairness, these are minimal. As I have indicated, the benefits in question must actually be benefits, a requirement that is ordinarily satisfied by their status as presumptively beneficial. If Smith is able to make a strong case that she does not in fact benefit from their provision, then, once again, she will not have obligations to help provide them. But beyond this, it is simply not clear why what Smith thinks about the scheme in question is relevant to her moral requirements. If provision of national defense makes it necessary to draft her into the army, does it matter that she understands that an army requires large-scale cooperation and is necessary for defense? Or do her requirements to pay taxes depend on her knowledge that taxes are generally paid and finance public services? It is hard to imagine that any citizen does not have some basic awareness of these connections, while if Smith does not, that is no excuse, as she should.

To my knowledge, Simmons has never provided convincing examples to demonstrate the relevance of such knowledge in regard to the non-excludable schemes that provide presumptive benefits. In “Fair Play,” he presents the following example:

In my neighbors cooperate to put on a concert, expecting those who listen to reciprocate later but never announcing this fact, I acquire no obligation to take up an instrument and help form a band, just because I innocently listened to the concert during my morning walk. (p. 33)

While this example shows that, under some circumstances, non-excludable goods can be produced in ways that may not generate obligations for individuals who receive the benefits, it has little bearing on the cases that interest us. In this example (as with Nozick’s famous example of the public address system), the benefit is of trivial value. This fact allows a certain casualness in its production. The concert requires the cooperation of few people, little coordination, and apparently also involves little or no costly sacrifice. Once again, let us alter the circumstances. If, for some mysterious reason, hearing the concert were necessary to preserve acceptable lives for all inhabitants of the community, things would be less casual. Under these conditions, steps would be taken to ensure production of the concert, especially if these required the cooperation of large numbers of people and would-be band-members could not organize it themselves, and even more so if participation involved costly sacrifices. With listening to the concert now necessary, its receipt too would not long be a matter of indifference. As a result of these changes, receiving the concert’s benefits would generate obligations to help bear the costly sacrifices. It is important to note that these changes flow from raising the value of the benefit. Moreover, as this example shows, the possible significance of subjective beliefs vanishes as we introduce sociological factors that make the example more relevant to discussions of political obligation in contemporary society.

Let us turn to the second point. Simmons supports his claims concerning the need for a strong sense of cooperation by appealing to “our intuitions” concerning the nature of cooperative schemes. For instance, concerning his view of “true cooperation,” he writes: “This is important, I think, because our intuitions about fair play are drawn from our experiences with small-scale schemes that are cooperative in this strong
sense” (FP, p. 40; his emphasis). The problem with such an argument is apparent. Who is to say if the intuitions in question are actually “ours”? In the cases that concern us, I think it is overwhelmingly clear that our actual intuitions support the existence of obligations and that Simmons is prevented from recognizing this by his deep-seated Lockean sentiments.

This contention is more than assertion on my part. Simmons concedes the existence of obligations in the relevant cases but, invoking the classification argument, claims that they do not proceed from fairness. He writes:

If I genuinely cannot do without a public good, supplied as it is and at the price demanded for it, then I will probably freely accept it. But then the basis of my obligation is my free acceptance of the goods, my bringing myself into the cooperative scheme that supplies the goods. (FP, p. 35)

He continues: the “value or importance of the goods is irrelevant” (FP, p. 35). In response is my third point. It seems unusual, to say the least, to contend that in cases in which, because of their nature, essential public goods cannot be sought out or accepted, even if one wished to accept them, a notion of free acceptance is doing the moral work, instead of a requirement to do one’s share in providing the goods. Once again, not to cooperate in the goods’ provision is to take advantage of the cooperative labors of others. Simmons’ concession that obligations are generated in these cases tells strongly against his contention that recipients’ views about how the benefits are provided is relevant to whether or not obligations are generated. He notes that because of the indispensability of the goods in question, he would “probably freely accept” them. But what if he chooses not to accept them? Does this absolve him of obligations he would otherwise have? What if he chooses not to accept some benefit because he doesn’t feel like paying taxes to support it? Is this enough? Clearly, our actual intuitions support the generation of obligations in such cases almost without regard to subjects’ feelings and beliefs. And, once again, because all this turns on the indispensability of the benefits, their value or importance is crucially relevant.

My last point concerns an additional concession by Simmons. I believe the cases that interest us concern cooperative schemes, although they involve a sense of cooperation that is weaker than what Simmons demands. The sense of cooperation relevant to large-scale schemes involving millions of people centers on joint production and consumption of public goods. As I have indicated, there are minimal additional requirements concerning participants’ beliefs, but cooperation in this sense falls far short of what is seen in a pot-luck supper. However, the crucial point here is that cooperation in this weaker sense is sufficient to generate obligations in the schemes in question. Simmons’ additional concession concerns this weaker sense of cooperation. He writes:

There is undoubtedly a weak sense of “cooperation” in which behavior so indifferently motivated might still be said to add up to a “cooperative scheme,” since all (or at least most) are made better off by the “scheme” and none is left perfectly free always to act in egoistically optimal ways. (FP, p. 42)

According to Simmons, this sense of cooperation is not enough. But once again, he has no real argument in support of his position. The above quotation continues: “But there is, of course, also a weak sense of ‘cooperation’ in which the whipped galley slaves can be said to cooperate in their propulsion of the galley” (FP, p. 42).

This last sentence may be dismissed out of hand. The putative “cooperative scheme” of slaves and masters of course falls short of what is required to generate obligations under the principle of fairness. There is no fair distribution of benefits and burdens, while it is not clear that the slaves receive significant benefits at all.

The series of concessions Simmons makes is damaging to his philosophical anarchism. He notes that provision of indispensable public goods will “probably” generate obligations, although, once again, he does not recognize these as fairness obligations. I have addressed his classification claims in some detail. But however we come down on the nature of the relevant obligations, the fact that they follow from state production of indispensable public goods demonstrates that the balance of reasons approach of Simmons’ philosophical anarchism will establish central moral requirements for all or almost all individuals to support the state in regard to its core functions of providing security.

VI. Conclusion

Having reviewed both Simmons’ approach and central problems with his position, I hope the nature of his contribution is clear. Once again, Simmons’ work has defined an entire subject area. Because of his forceful presentation, many scholars have given up on traditional theories of political obligation, while those who have not done so generally address their efforts at Simmons’ criticisms. His pathbreaking analysis of people’s moral requirements in circumstances without traditional political obligations has spurred an entire series of innovative proposals. But once again, as it seems to me, Simmons does not recognize the full implications of his accomplishments. His balance of reasons approach requires citizens to consider all relevant factors whenever they are called upon to obey the law. Where Simmons falls short is in not recognizing the force of these circumstances. In many cases, and most clearly in regard to central functions concerning security, individuals can be seen to have strong moral requirements to obey the state. In practical terms, the result of a balance of reasons approach will be moral requirements to obey all justifiable laws. Although the road to this conclusion breaks with the traditional view, the conclusion itself is much the same. While moral requirements to obey justifiable laws may follow from a range of moral considerations, they are centrally concerned with the principle of fairness, properly understood. Simmons’ attempts to undermine this principle fall short in various ways, frequently as a result of the Lockean assumptions he brings to his work.

In closing, then, although one may take issue with the constructive side of Simmons’ endeavors and with one set of his critical arguments, this does not alter the fact that, for the near future, his work will set the agenda for studies of political obligation, as it has for more than twenty years.  

Endnotes

3. For brief discussion of these criteria, and one other, see below, note 5.
5. For discussion here, the requirements of a successful theory of political obligation are three: (a) “generality,” that the theory establishes obligations for most or all relevant individuals; (b) “particularity,” that these obligations are owed to their particular states; (c) “comprehensiveness,” that obligations are established to support the full range of state services. Other criteria could be invoked but are less important here. For discussion, see Simmons, Moral Principles, ch. 2; G.


9. For survey research and focus groups on attitudes towards political obligations, see Klosko, *Political Obligations*, chs. 7-11.


15. For similar implications of the general view that political obligations must be “independent of content,” see Klosko, “Philosophical Anarchism and Independence of Content” (under review).

16. See Klosko, “Multiple Principles.”

17. This formulation follows Wellman, “Toward a Liberal Theory of Political Obligation.”


21. For instance, he also writes that “the denial of a general moral duty of domestic legal obedience can perfectly well be maintained even in conjunction with the acceptance of standard claims about the importance or necessity of states and legal system to the provision of familiar public goods” (p. 196).

22. For support of these contentions, see Klosko, “Multiple Principles.”

23. For full discussion, see Klosko, *Principle of Fairness*.


25. For these conditions, see Klosko, *Principle of Fairness*, ch. 2, for satisfactory lives and certain public goods they require, see Klosko, *Political Obligations*, ch. 2.

26. For how exceptional cases are dealt with, see Klosko, *Political Obligations*, p. 61.

27. With slight modifications, the wording here is taken from what was read to focus groups used to examine attitudes towards political obligation. This vignette was read to four focus groups, #’s 7-10; see *Political Obligations*, chs. 10-11.

28. These are found in: “Fair Play and Political Obligation: Twenty Years Later,” in *Justification and Legitimacy* (Cambridge: Cambridge University Press, 2001); and “Duty to Obey.” From this point on, these works will be cited in parentheses in the text as “FP” and “DO,” respectively.


30. I should note that fully satisfying the comprehensiveness requirement would still remain.

31. In cases in which universal cooperation is not necessary, the advantages of non-participation should be distributed by a fair procedure (e.g., a lottery), not unilaterally assumed.


33. For detailed discussion, see Klosko, *Political Obligations*, ch. 2.

34. Discussion here draws on Klosko, *Principle of Fairness*, ch. 2, which also considers and counters other possible arguments against obligations in these cases. Additional important criticisms of the position are presented by Simmons, in *On the Edge of Anarchy*, pp. 256-60; for a response, see Klosko, *Political Obligations*, ch. 3.

35. This discussion draws on Klosko, *Political Obligations*, pp. 67-8.

36. Also see *Moral Principles and Political Obligations*, pp. 128-33; for discussion of the subjective conditions argument in that work, see Klosko, *Principle of Fairness*, pp. 51-2.


38. For discussion of how to deal with disagreements over the form in which particular benefits should be provided, see Klosko, *Principle of Fairness*, ch. 3.

39. To use Simmons’ term, her lack of awareness would constitute “culpable or negligent ignorance” (FP, pp. 32-3).


41. He makes numerous other similar appeals, e.g. “For I think these defenders have not adequately considered which features of cooperative schemes actually give rise to our intuitions that obligations are owed to their participants” (FP, p. 38).

42. I tested the intuitions of focus group participants in regard to the kinds of cases at issue. Simmons’ claims about “our intuitions” were unanimously rejected; see Klosko, *Political Obligations*, ch. 10.
I begin with a much abbreviated reconstruction of Wellman’s argument for the duty to obey the law.²

1. All moral agents have a natural duty to rescue others from significant harms as long as the cost of doing so is reasonable. Call this a samaritan duty, or duty of easy rescue.

2. The perils of a Hobbesian state of nature constitute a significant harm.

3. Therefore, as long as the cost is reasonable, all moral agents have a samaritan duty to save others from the perils of a Hobbesian state of nature, or, as Simmons sometimes writes, a duty to provide security for all. (From 1 and 2)

4. Only specifically political institutions—or, more controversially, the modern state—provide(s) a reliable defense against the perils of a Hobbesian state of nature.

5. Therefore, as long as the cost is reasonable, agents have a samaritan duty to support the state, since only by doing so can they rescue others from the perils of a Hobbesian state of nature. (From 3 and 4)

6. If the benefits that the state provides each individual are taken into account, the cost to each of them of supporting the state is a reasonable one.⁶

7. Therefore, agents have a samaritan duty to support the state. (From premises 5 and 6).²

Simmons’ Critique of Natural Duty Approaches to the Duty to Obey the Law

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In his most recent book on the moral duty to obey the law, A. John Simmons considers and rejects a number of natural duty approaches to justifying political authority.¹ Among the targets of Simmons’ criticism is the account defended by the book’s co-author, Christopher Heath Wellman.² In this essay, I evaluate the force of Simmons’ objections to Wellman’s account of political obligation. As will become clear below, I think Wellman’s defense of the duty to obey the law defective in certain ways—but not in all of the ways that Simmons argues it is. By rebutting some of Simmons’ criticisms and identifying the limits of others, I aim not only to indicate one direction in which a renewed defense of natural duty approaches to political obligation might proceed, but also to encourage the pursuit of such a philosophical project.³

Simmons levels three main challenges to Wellman’s samaritan account of the duty to obey the law. First, he questions the existence of a samaritan duty as Wellman characterizes it, arguing that it is a strange hybrid of a samaritan duty as understood in paradigm cases of easy rescue and an imperfect duty of charity. Second, Simmons argues that Wellman cannot account for the particularity of the duty to obey the law; that is, the fact that an agent’s alleged moral duty to obey the law is almost always conceived to be owed to a particular state, usually the one in which the agent enjoys legal citizenship. Third, Simmons contends that Wellman’s argument fails to demonstrate that agents have a duty to obey the law of their state; rather, at best it entails that most agents will often, but not always, have good reason to comply with the law.⁴ In response, I argue for the following conclusions. Simmons’ first criticism is correct, but the (alleged) moral duty Wellman employs as the foundation for his argument can easily be replaced by some other (genuine) natural moral duty or duties. Simmons’ second criticism is also correct, but it only establishes one conclusion that he has long advocated, namely, philosophical anarchism, and not another, namely, that consent is the only possible means whereby a state can come to enjoy authority over an individual, and that individual has a correlative duty to obey the law. Simmons’ third criticism is incorrect; Wellman does demonstrate that if agents have a moral duty to support the specifically political institutions that comprise their state, then their support ought to take the form of obedience to its law.

I.

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