

takes his accountant's advice, he would wrong his needy fellow citizens, even though he breaks no law.²

3. *Duties to participate politically*: Many of us who live in democratic states think that we have a general duty to be a good citizen. I fulfill this duty by staying informed; voting; working for a campaign, party, or advocacy group; participating in social movements; or even committing acts of civil disobedience. But we don't think I have an equal responsibility to involve myself in the democratic process in other countries, say, by reading Argentine newspapers or getting involved in an Argentine political campaign.

4. *Duties on outsiders to respect self-determination*: Many of us believe that the fact that a group has shared a state in the past gives them a claim to have their separate institutions respected. Suppose that the United States could do a better job ruling Haiti than the current Haitian government does, and suppose that it could intervene militarily in Haiti without injustice, perhaps in the aftermath of a future humanitarian disaster. Would the United States have the right to annex Haiti in such a scenario, even if it would do a better job ruling it? Most of us think not: to annex Haiti would violate the Haitian people's right of self-determination.³

Each of these intuitive duties supposes that the state makes a moral difference to us. Though the existence of each of these duties is contested, let us suppose for a moment that their existence is plausible, as many people believe. Where might such duties come from? Why does the state matter morally?

One story, to which I am sympathetic, is that these civic duties derive from a more fundamental natural duty of justice that is binding on all human beings as such. Simply as rational agents, we have a duty to establish state institutions and to comply with their laws and policies, at least when the state is reasonably just and legitimate. This is an unconditional duty that is binding on us independently of any special relationships we may have or any voluntary transactions we may have engaged in. Along these lines, John Rawls has argued that we have a natural duty of justice that "requires us to support and comply with just institutions that exist and apply to us. It also constrains us to further just arrangements not yet established, at least when this can be done without too much cost to ourselves. Thus if the basic structure of society is just, or as just as it is reasonable to expect in the circumstances, everyone has a natural duty to do his part in the existing scheme."⁴

Chapter 13

Why Does the State Matter Morally?

Political Obligation and Particularity

ANNA STILZ

Most of us think the fact that we belong to a particular state matters morally: it makes a difference to what we ought to do.¹ Consider four ways we take the state to matter:

1. *Duties to obey the law*: In most places in the United States, I ought not operate a motor vehicle with a blood-alcohol content above 0.08 percent. But if I lived in Brazil, I ought not operate a motor vehicle after drinking any alcohol at all: Brazil has a zero-tolerance law. Duties to obey the law—if they exist—bind only those within the state's territory, which means people in different territories may have different duties.

2. *Duties to pay taxes*: Most of us believe we are obliged to pay taxes to the revenue authorities of our own state, not the revenue authorities of some other state. The fact that I reside in the United States and not Norway gives me a duty to pay my taxes to the U.S. government, not the government of Norway. Moreover, this may not be just because the law requires it. Suppose a wealthy businessman consults his accountant, who recommends that he legally domicile himself in a tax haven like the Cayman Islands. The Cayman Islands is a reasonably just state; domiciling himself there will save him lots of money in taxes to support domestic welfare programs; and he can continue living where he now does. But many of us think that if he

Immanuel Kant, on whose writings I draw later in this chapter, defends a similar natural duty account of our obligations to the state.⁵

However, A. John Simmons has put forward an important objection against natural duty theories of this kind, which we can call the *particularity objection*.⁶ Simmons argues that a natural duty theorist cannot establish that the citizen has any special bond to her own particular state, in the manner assumed by the moral intuitions we invoked above. The particularity objection has two parts: first, it asks why the natural duty of justice gives one the obligation to support and comply with the state rather than some other kind of just institution (as, say, a just nongovernmental organization (NGO), such as Oxfam). Why not instead think of the natural duty of justice as the duty to do justice oneself or—since collective action might sometimes be useful—to support whatever institutions might best facilitate just outcomes? Why support the state? Second, the particularity objection asks, even if the case for supporting states in general could be made, how does the natural duty of justice ground a special obligation to support and comply with our own state in particular rather than all just states, or perhaps the most just state in the world? As Simmons observes, “Even if you had perfectly general duties to promote justice or happiness, say, and consequently duties to support just or happiness-producing states, these duties would require of you that you support all such states, providing you with no necessary reason to show any special favoritism or unique allegiance to your own just state, and providing none of those with any special right to impose on you additional duties.”⁸

Justice and Political Institutions

Let us tackle Simmons’s particularity objection in two stages. First, why might we have a natural duty to support the state rather than a club, NGO, or other institution? Briefly, I think we are required to support states because we have preexisting, coercible duties to other people that we can fulfill only through states. If a state exists where I happen to be, and if it enforces a legitimate system of law, then I ought to comply with it since it is only through a state institution that I can fulfill my more basic duty to do justice to people with whom I interact.

To flesh out this story, let us distinguish between three different sorts of reasons we might have to contribute to an institution: purely voluntary commitment, duties of charity or beneficence, and coercible duties of justice.

Sometimes I have a duty to contribute to an institution simply because I have voluntarily transacted with it, as I have voluntarily transacted with Princeton University by accepting a job there. I was not morally required to get involved with Princeton, but now that I have done so, I have acquired a slew of new duties to the institution, such as the duty to show up to class. We should note, however, that duties to voluntary associations like these are importantly optional: they depend on our personal history of transactions and consent, and we do no wrong in refusing them.

A second reason we might have to contribute to an institution is if it helps us fulfill some preexisting but noncoercible duty we have to other people, like the duty of beneficence. Perhaps I ought to give to charity in order to promote others’ well-being, and perhaps contributing to one particular organization (say, the Salvation Army) is the best way for me to do that. But even if I have some general moral reason to transact with a charitable organization, and even if this particular institution is the one I ought to support, my duty to contribute to charity does not give the Salvation Army a right to show up at my house and requisition my contributions. I have some discretion about how to fulfill this duty, including discretion over which institutions to support.

Finally, we may have a third kind of reason to contribute to an institution, if we have a general, coercible duty to support or comply with it. We take ourselves to be subject to some general, coercible duties, like the duty not to injure other people or to respect their property. We do not have the same discretion over how to perform these duties that we have in the case of voluntary transactions or beneficence. If you don’t perform your duty to respect my property, then I can make you do so by demanding your compliance and, if necessary, by calling the police. I can requisition your performance without any previous consent from you. One interesting question about the state is whether some of our general, coercible duties might be mediated by state institutions. If some of our duties were so mediated, then we might have a general, coercible duty to comply with and support the state’s system of law. This, in turn, might go some way toward explaining why the state matters morally. Let’s call this the institutional mediation hypothesis.

I think that the institutional mediation hypothesis is true and that some of our general, coercible duties are in fact mediated by states. To explain why this is so, it will be helpful to look to Kant’s argument that justice depends on legitimate state authority. Kant’s account can be (briefly) summarized as follows.⁹

1. Each individual has a basic claim to external freedom, which requires that he not be forced to obey the will of another person; he must enjoy a secure sphere of self-determination within which others cannot interfere. The bounds of his sphere of self-determination are defined by his rights, including rights over his body and his property.

2. Each individual has a general, coercible duty to respect the external freedom of others.

3. Individuals cannot respect others' external freedom if they interpret and enforce their own rights unilaterally.

4. The only way to respect others' external freedom is to set up a state that can serve as an omnilateral arbiter and enforcer of everyone's rights.

5. If a state that actually interprets and enforces everyone's external freedom exists, then its subjects have an obligation to comply with it because that is the only way to fulfill their basic duty to respect others' external freedom.

If Kant is correct, then justice requires us to put an omnilateral arbiter and enforcer of rights, the state, into place. Our duties to do justice to others are mediated by this institution; we might say these duties "go through" the state.

Why might justice be institutionally mediated in this way? One reason may be that individuals could not successfully respect one another's rights in the state's absence. Acting on their own, individuals would find themselves unable to do justice to one another. Simmons denies this view: "If we conceive of the natural duty of justice as simply requiring us to respect others' rights, then this duty can plainly be discharged by individuals regardless of their social circumstances. Even in a relatively disorganized state of nature, it is perfectly possible—even if sometimes difficult—for persons to do their duty, obeying the natural law requirement of respect for others' rights."¹⁰ Simmons conceives of the state of nature along Lockean lines, as one in which persons enjoy an equal moral right to freedom from harm and from interference by others, and also equal executive rights to enforce their moral rights and punish any wrongdoers. Because individuals are of equal moral worth, whatever general rights they possess must be shared equally since no one is naturally marked out for special authority or privileges. In order to do justice to others, in Simmons's view, these individuals need only discharge their natural duties to respect others' moral rights to freedom, to aid others in need, and to restrain and punish wrongdoers. They can do

these deeds simply by acting justly. Since—for Simmons—individuals can discharge these duties independently of institutional arrangements, there is no reason why their natural duties of justice require them to obey or support the state.

We should note that Simmons's critique rests on an understanding of our natural duties that is fundamentally interactional, as opposed to institutional.¹¹ For an interactional theorist, our duty of justice is a moral duty that applies directly to our personal conduct and requires us to respect or promote others' basic rights. Interactionalists share the broad view that our duties of justice regulate our personal behavior; our duties of justice are defined by moral reflection, not by authoritative institutions; and our duties of justice bind us to behave in the same manner to each human being, regardless of his or her institutional connection to us. I say that for Simmons our duties of justice are fundamentally interactional because he can concede that sometimes we might best discharge our natural duties through an institutional arrangement, as when we aid others by contributing to an organized charity. But the key point is that our duties are in no way defined by these institutions and could be carried out—though perhaps less efficiently—without any institutions.

But is Simmons's interactional view correct? Here, I sketch a Kantian argument for why we should see our duties of justice as fundamentally institutional, not interactional duties. In this view, duties of justice require support for reasonably just institutions, not simply moral personal behavior; are defined by political authority, not moral reflection; and bind us to behave in different ways toward different human beings, depending on the nature of their institutional connection to us. Again, I claim only that duties of justice for the Kantian are fundamentally institutional because Kant will concede that justice imposes personal moral requirements as well: for example, the moral requirement on individuals to cooperate in setting up and sustaining just institutions. But the key point is that for the Kantian, institutions play a role in defining our duties of justice to others and duties of justice could not be discharged without institutions, that is, simply through personal moral behavior.

Kant thinks our duties of justice are institutionally mediated in large part because he thinks individuals will disagree about what justice requires and that these disagreements require legitimate authority for their resolution. Like Simmons, Kant thinks that as moral equals, all persons must possess the same general rights: if one person can claim the right to interpret and enforce justice, then so can all. But this means that when individuals

disagree about justice, no one can possess the authority to impose a duty on his moral equals that these others cannot accept and endorse from their own perspective. If each person is an equally authoritative interpreter of justice, then whenever one person does not share another person's belief about justice, his belief imposes no duties on the other person. To attempt to override another's judgments about justice is to claim authority over that person, and the premise of moral equality dictates that no individual has this kind of authority. Instead, only a publicly authorized institution can claim the authority to impose a particular interpretation of what justice requires, while still preserving the moral equality and independence of those subject to it.

To see why duties of justice might be institutional, consider a group of individuals who interact before the institution of a legal system. In this pre-legal situation, each person will certainly have important moral interests. Among their many moral interests would be the interest in, say, claiming certain goods as their property and the interest in not having undue risks imposed on them by the behavior of others. These and other moral interests would call for some respect and protection.

But the bare existence of moral interests in the pre-state situation does not mean that individuals, acting privately and in an uncoordinated way, would be able to discharge their duties to respect one another's rights. Instead, three problems would make it difficult for even well-meaning individuals to carry out these duties: the problems of indeterminacy, moral disagreement, and unilateralism.¹²

Consider first indeterminacy. Even if a group of individuals share a common understanding of their moral interests, what they should do together to protect them remains vastly undetermined. There are three reasons for this underdetermination. First, there are many possible and different schemes of rules that would protect our important moral interests. Even if each person has an interest in personal property, for example, that does not by itself determine whether we ought to adopt a system of full liberal ownership or market socialism: this interest could be equally secured under either system. Second, our moral interests have many vague aspects. While it may be clear that driving with a blood-alcohol level of 0.2 poses unacceptable risks to others, is it better to set the limit at 0.08 or 0.07 or 0? The answer to this question may have an ineliminably decisionist element. Third, the protection that a body of rules might provide for these interests is in part a matter of how the entire scheme fits together. Given that we have already adopted a rule in one area, the best way to secure some additional moral interest may

be to adopt a rule that meshes in a certain way with our preexisting structures, even if we would not necessarily have chosen this rule *ex ante* (Jeremy Waldron and Thomas Christiano raise similar points¹³). Owing to indeterminacy, even individuals who are in full agreement as to what their basic moral interests are may not be able to translate this agreement into a consensus on what particular rights they have. Without such a consensus, it would be hard for them to bring about justice simply through their personal interactions.

Our individuals would also face a second and even more serious problem: that of moral disagreement. Often individuals will not share a common understanding of their moral interests, so that each person's good-faith attempt to respect others' rights may not lead him to respect the precise interests other persons take to be morally significant. In circumstances of moral disagreement, it is difficult for individuals to recognize one another as faithfully attempting to do justice in their personal behavior. Many of us would agree, for instance, that individuals have an important interest in medical care. But not all of us so agree: Christian Scientists think that poor health is a sign of erroneous spiritual beliefs and must be corrected through faith healing. In the pre-state situation, these Christian Scientists might not recognize the interest in health that others find extremely important. If they do not recognize this interest, then their attempts to respect the rights that, by their lights, other individuals have will not strike these others as an effort to respect their rights. These divergent moral understandings will lead to perceived injuries and conflict.

Since individuals disagree on what their moral interests are, whether these interests should be protected by coordinated rules, and which is the best of the many possible schemes that could protect these interests, even moral and law-abiding individuals may have a great deal of trouble coordinating their behavior so as to effectively respect each other's rights in the absence of a political authority. They will have trouble respecting rights in a coordinated way because, with the best of intentions, they can still reasonably disagree over what rules ought to guide their attempts to do justice to others. Because individuals will reasonably disagree, in attempting to do justice to others, they must not only ask themselves a substantive question about justice (for example, what rights and duties do we all have on the best understanding of justice)? Instead, they face an equally important procedural question of justice: namely, when we reasonably disagree about our rights and duties, how are we to do justice to one another? Kant's argument is that a group of individuals cannot do procedural justice to one another by acting

unilaterally, that is, by demanding that others conform to their own view of what justice requires and by privately enforcing this demand. Instead, they must act through a state. In cases of disagreement, justice must be done through an authoritative institution.

This third problem of unilateralism builds on the other two and occurs in connection with individuals' attempts to privately enforce their rights in circumstances of indeterminacy and disagreement.¹⁴ Even when you privately enforce what you take to be the correct scheme of rules, Kant's claim is that you still wrong other people by doing so unilaterally. In effect, you are claiming authority over others that as a moral equal, you do not have. These other people are equally authoritative interpreters of justice, bound only by their own good-faith view of what justice requires, which means they will rightly perceive even your well-meaning attempts to enforce justice as an arbitrary assumption of power over them, not as something that places them under a genuine obligation.¹⁵ In imposing a view of justice for which the other person cannot see adequate justification, from his perspective, one simply subjugates him to one's own will. Unless one can give him a reason to accept the obligation you seek to impose on him, your private enforcement of this obligation looks like arbitrary coercion, inconsistent with his independence.

Consider further what might happen if our group generally enforced their private views of justice in such an uncoordinated manner. Rather than sharing one univocal set of rules about rights, these people conduct their common life together in accordance with a whole slew of divergent private interpretations. Would these individuals actually fulfill their fundamental duty to respect one another's external freedom? Imagine that you were one of the people in this society. Would you enjoy a secure sphere of external freedom? No: other people would constantly be attempting to apply force to you in accordance with views that you deny and dispute. The bounds of your sphere of self-determination would depend on these others' private beliefs, which are conflicting and seem to you arbitrary. In these circumstances, you can expect your external freedom to become very precarious indeed. Meeting someone for the first time, you would have no settled expectation about what they take your rights to be. Some people, under their preferred scheme of rules, might recognize you as having a right to what you take to be your house. But other people, under their preferred scheme of rules, might not, and might indeed try to forcefully dispossess you of what, by their lights, is not really your property. How could you securely dispose of your own body and property in this kind of world? And if you don't securely dispose

of these things, how can you exercise even a minimal degree of independent self-determination?¹⁶

Kant's argument is that as a group, these individuals fail to fulfill an important procedural duty of justice. They fail to commit themselves to a common, public understanding of their rights and duties that can be enforced in a unitary way consistent with their reciprocal equality. Though human beings may do "one another no wrong" by pursuing justice in this uncoordinated and conflictual manner, in general "they do wrong in the highest degree by wanting to be and to remain in a condition that is not rightful."¹⁷ We have a responsibility of justice to commit ourselves to one interpretation of external freedom that is collectively "ours," to designate it as the one on which we will together coordinate. Unilateralism is "wrong in the highest degree" because it fails to recognize that we cannot do justice to others without an omnilateral arbiter. In circumstances of disagreement, we cannot do justice through our personal behavior.

Because no one's external freedom could be secure in a world of indeterminacy, moral disagreement, and unilateralism, our natural duty to respect others' freedom gives us a joint responsibility to set up a state that can promulgate one public interpretation of our rights and duties to one another. This duty to construct and comply with an authority is not a different duty from our more basic natural duty to do justice to others; it is simply a necessary precondition for our acting together to fulfill that duty. As our thought experiment just showed, a world without coordination on what justice requires is a world in which no one's external freedom is secure. Because individuals who disagree about justice have no way to publicly establish what rights they are all committed to respecting, to decide which of many conventional sets of rules to protect those rights they collectively wish to adopt, and to enforce justice without wrongly claiming authority over their moral equals, they are unable to do justice to one another. So the duty to do justice to others itself gives individuals reason to coordinate their interpretations and to set up one common and univocal set of rules.

With these reflections in place, let us return to Simmons's initial objection to natural duty theories. Why, he asked, does our natural duty of justice require us to comply with the state? Why doesn't it simply require us to do justice ourselves, or to support a just NGO or business or whatever? We now have the outlines of an answer to this basic question. Establishing justice requires coordinating ourselves around a unitary and common interpretation of our rights and duties. Collective action to support public authority is a crucial precondition for justice's realization. Therefore, if one wishes to do

justice to others, it is not sufficient to simply act on the basis of one's private beliefs or to support the institution of one's choice, like a club, business, or NGO. In order to do justice to others, one must abide by the system of common rules that defines the rights and duties of those with whom one shares a territory and interacts. That means supporting the state.

The Limits of Legitimate Authority

There are also limits to our obligation to comply with the state on a natural duty of justice view. These limits derive from the very ground of that obligation in the first place: the duty to respect the external freedom of others. No natural duty of justice can give us a reason to comply with a scheme of law that clearly and obviously fails to aim at the external freedom of its subjects. Such a system of law does not enable us to do justice to others.¹⁸ We need an authority to resolve our practical disagreements about justice, but we expect this authority to address itself to the question of what justice requires and not to some other, irrelevant question: for example, what would best promote my private advantage? An answer to that irrelevant question would have no claim to practical authority over us.

Surely there is an important substantive distinction between the directives of an authority seeking to guarantee the external freedom of its subjects and the directives of an authority that is seeking to do something else, like promote its own private advantage. There is some essential minimal content, in other words, to what could reasonably count as a state that was aiming to interpret justice. If the system of law enacts at least this minimal justice-content, then it gives subjects moral reasons for their compliance since it secures a degree of external freedom for each member and everyone has a natural duty to cooperate in sustaining a collective view of external freedom. But if the system of law fails to aim at justice—if, for example, it is simply a means to secure the private interests of the ruling elite—then its subjects have no duty to sustain it and may instead have a duty to resist or overthrow it.

How are we to tell if the state to which we are subject is actually aiming at the interpretation of its subjects' external freedom?¹⁹ In my view, we must demand that a legitimate state give at least minimal consideration to each member's interests by delineating a set of basic rights as a standard for state legitimacy. Violation of these basic rights voids the state's status as a legitimate authority for its subjects. Kant stipulates that any legitimate constitution

must secure three such minimal interests: the freedom of each member of society as a human being, his equality with all others as a subject, and his independence as a citizen.²⁰

First, the criterion of freedom requires that any legitimate state must grant a sphere of private freedom to its citizens. The principle behind civil freedom is that "each may seek his happiness in the way that seems good to him, provided he does not infringe on the freedom of others to strive for a like end."²¹ A constitution that protects freedom requires the provision of a scheme of private liberties to all citizens, which protects their interests in the formation and pursuit of a personal conception of happiness. The precise liberties necessary to guarantee civil freedom will vary over time and with the circumstances of a particular society, but it is reasonable to believe they will include claims to personal inviolability and security, as well as freedom of conscience, private property, freedom of thought and expression, freedom of association, and freedom of movement. These liberties are enshrined in all liberal constitutions and have historically been justified on private autonomy grounds.

The criterion of equality requires that each person be treated as a moral equal in the eyes of the state. Minimally, this requires at least that each subject be able to claim equal treatment before the law. This rules out privileged classes of citizens, including a hereditary aristocracy, as well as any system that would treat humans as unequal legal persons, such as slavery and serfdom. It also requires at least formal equality of opportunity: careers and official positions in the state must be open to all, and each subject must be able to attain any position her luck, effort, and talents will allow her to achieve. Finally, the ideal of equality suggests important limits on the disparities of wealth that can be tolerated within the state. It is reasonable to think that a clear minimal requirement on economic justice is the guarantee of each citizen's subsistence.²² No constitution that jeopardizes a citizen's physical survival is one he has reason to accept. Thus, a state that secures constitutional equality must guarantee at least equal treatment before the law, formally equal opportunity, and basic subsistence for each subject.

Finally, the criterion of citizen independence requires that citizens be consulted in the law-making process, that they be authors of the law they are asked to obey. I interpret this to mean that a legitimate state must allow its subjects some input into its decisions. Conditions may not always favor the establishment of democracy since democratic voting may result in less secure protections of our freedom and equality rights. Even under such unfavorable conditions, however, independence still requires some consideration.

At the very least, it requires rights of free speech and free political association, as well as rights for ordinary citizens to contest political decisions and receive some public justification for those decisions. And under more favorable conditions, the state must recognize independence by granting its citizens equal democratic rights.²³ When a political procedure privileges certain classes of people over others, it makes an invidious distinction among members of the state. As long as democratic procedures can be expected to guarantee civil freedom and equality, then they are an important condition for state authority because democracy is a unique way to affirm citizens' equality amid disagreement about justice. Successful democratic institutions, however, are dependent on a supportive political culture and are often the product of a very long process of political evolution. For that reason, nondemocratic regimes that protect other basic rights and institute the rule of law, provide meaningful nondemocratic forms of political consultation and contestation, and are reformist regimes—that is, they aim at reforming the political culture in the long term in a manner supportive of democracy—can be provisionally legitimate.

If its scheme of law meets these basic conditions, then our natural duty of justice transfers to the state. Since we have a coercible natural duty independent of our consent to respect the external freedom of others, we will also have a coercible natural duty independent of our consent to comply with the laws that publicly define the bounds of this freedom. This is one very important reason why the state matters morally. Since our duties to respect others' rights "go through" the state in this way, we can have duties of justice to the state that we could never have to a voluntary association like a club or an NGO. The main idea is that we could never establish a condition of right without the state. The state is therefore an indispensable means to fulfilling a moral duty by which we are already bound, namely, the duty to respect others' rights.

If all this is correct, the natural duty of justice can provide some support for the first intuitive civic duty with which we began the chapter: the duty to comply with the law. What are the implications of a natural duty theory for our duties to obey the law? First, and most basically, where one's state meets the legitimacy criteria outlined above, one's natural duty gives one an obligation not to use private coercion against one's fellow citizens or to undermine the state by force. To do that is to do wrong in the highest degree. Second, one's natural duty also gives one a duty to obey the just laws laid down by a legitimate state, as well as those laws that while not ideally just, are at least pursuing a just objective (by one's own lights). For an example of

the latter, consider someone who thinks that basic health care for all citizens is a demand of justice and that the most just scheme is a single-payer system. On the natural duty view, she should still contribute her tax dollars to the recently passed U.S. health-care plan, even though it is not ideally just by her lights, simply because doing justice to others requires settling on and abiding by a community view of what justice requires. Third, I think natural duty can also impose a demand to obey even some laws that one considers unjust, especially when other people's legal entitlements are involved, as long as these laws do not violate core aspects of external freedom. Consider intellectual property or copyright laws. In some cases, I think these laws are unjust (though not too unjust) because they stifle free expression and creative endeavor. Nevertheless, I think I am obliged to respect them—unless I am committing a public act of protest or civil disobedience—because of the important expectations of the rightsholders in having others coordinated around a common view of their rights. I may simultaneously have a duty to protest against laws I find unjust, working to establish a substantively better community view by convincing others to adopt it. Finally, I think we have no duty at all to obey laws that violate the core elements of the right to external freedom outlined above. Our duty to obey rests on our more basic reason to recognize and respect a common view of external freedom; it is not a law cannot reasonably be interpreted as defining external freedom, no one has a duty to collaborate in sustaining it. All of the above reasons to obey the law rest on a strong coordination reason to do justice to others through a unitary legal institution. Though this coordination reason can be trumped by a law's substantive injustice, it is still a very strong reason and may outweigh substantive injustices in many cases.

Notice that the natural duty to do justice to others can also explain why one has the duty to obey the laws of countries to which one travels. In this sense, there is something correct about Simmons's critique: it is not as if the natural duty—even when interpreted along institutional lines—binds me solely to my own state. No: it binds me to any state that is performing the authoritative specification of rights and duties that I need to do justice to others. So, if vacationing in Brazil, I ought to obey Brazil's zero-tolerance law about drunk driving, not U.S. law, because failing to respect Brazil's common and unitary view of what justice requires would mean that I am committing the wrong of unilateralism. If our duty to respect the rights of others is to respect their rights as defined by a legitimate state, then one ought to comply with the laws of whatever state wields authority over the

territory one is in. When visiting Brazil, then, one should comply with Brazilian law not because one is specially biased in favor of it when compared with U.S. law, but because the Brazilian state is the particular authority that determines what one's natural duty of justice requires on this portion of the earth, by laying down public rules about rights.²⁴

Civic Duties and Association

If the argument for the institutionally mediated character of our natural duty of justice that I just outlined is sound, then it provides some support for the notion that the state matters morally. The state matters morally, in part, because it performs a valuable function that we need performed if we are to do justice to others: it allows us to arrive at a common public specification of our rights and duties to one another. But while this explains why we ought to obey the laws of the state in which we find ourselves, the account is too thin to justify all the intuitive civic duties with which we began. For example, it does not explain why the wealthy U.S. taxpayer would do any wrong in domiciling himself, for tax purposes, in the Cayman Islands. After all, he would still fulfill his natural duty: he uses his tax dollars to support a reasonably just state, just not the particular one where he happens to have spent his life. And he is not breaking any laws. The argument also does not show why it might be wrong to annex a people that has shared separate state institutions in the past. If the authority of the state resides wholly in its ability to perform important functions (by specifying our rights and duties), then surely any legitimate state could perform these functions equally well. There would be no reason to insist on the special significance of our own. If the United States annexed Haiti and ruled effectively in accordance with the criteria outlined above—respecting basic freedom and equality rights, and granting the Haitians rights of democratic participation—then, it seems, using the natural duty theory outlined above, it might gain a legitimate claim to authority over the Haitians.

These additional intuitions all invoke the idea that citizens share some special connection to each other that goes beyond the duty to obey the law. If we are to explain these additional intuitions, we will have to supplement the natural duty account in some way. Notice that all these questions speak to the second part of Simmons's particularity objection. Can the natural duty of justice ground some special connection with our own state in particular rather than with all just states, or perhaps the most just state in the

world? Does the U.S. taxpayer have a reason to support his needy fellow citizens rather than the citizens of another state, and do the Haitians have reason to maintain separate state institutions together with their particular fellow Haitians? There may not be a moral basis for these additional intuitions. But I think it is worth trying to give some grounding for these views since they are so widely shared. In order to do so, we will have to invoke an additional value that interacts with our natural duty of justice. Once states come to exist, they may change the landscape in ways that give rise to new moral duties.²⁵ A candidate story I think worth exploring is whether citizens' history of sharing a state together gives rise to new associative obligations among them.²⁶

We should note that the fact we have a natural duty to cooperate together in a state, by itself, does not tell us exactly what the bounds of that state should be. For all I have said so far, we could have a natural duty to support a world state, if there was one. There will therefore be a certain degree of contingency in who ends up together under the same organized political institutions. Waldron has argued for a Kantian principle of proximity, which holds that those who "live together unavoidably side by side" and are likely to come into conflict over property and other resource rights have a moral obligation to construct a state together.²⁷ Perhaps we are most likely to have frequent disputes about justice with those who are spatially close to us, and it is after all these disputes that we need a state to solve. Waldron's account has the benefit of focusing our attention on the territorial dimension of state authority. External freedom can only be securely guaranteed if everyone who interacts with one another in a continuous space is subject to a single, clear set of rules.

While I am sympathetic to Waldron's view, the question I really want to focus on is whether once states are established and however that may have occurred, they bring in their train morally important changes, including the formation of new associative bonds among their citizens. My view is that over time an initially unconnected group of citizens can become "a people" by cooperating together in shared state institutions. Indeed, following Kant, we might say that a group that shares a state eventually becomes a "moral person."²⁸ How might this relationship of peoplehood get established? What sorts of occurrences could help form a previously unconnected group into "a people"?

I suggest we look to two shared activities that peoples characteristically undertake together: sustaining the state and producing law. First, people sustain the institutions that define and enforce their rights. It is their cooperative

activity, by obeying the law and paying taxes, that creates these institutions. Laws are not just enforced through directly coercive acts on the part of the authorities; they depend much more pervasively on large-scale patterns of behavior on the part of the people, who orient their actions to these laws. I have in mind the fact that compatriots share in a practice of political authority that has what H. L. A. Hart called "an internal aspect."²⁹ They recognize certain rules in common and play by these rules in their interactions with one another. By paying taxes, the people also uphold the institutions that enforce their rights against those who refuse to respect them. The fact that these people participate together in a rule-governed social practice gives them a special relation to their fellow participants that they don't have to those outside the practice.

Additionally, when their state is a democracy, the people do not merely sustain an apparatus of legislation and coercion; they also create the law and give it a particular form. They have a voice in determining the particular scheme of rights protected by their state. Consider how different peoples with equally legitimate constitutional traditions—while all protecting core liberal values—often produce schemes of law that differ a great deal in their particularities. By exercising their political rights—voting, debating political issues, associating in political parties and interest groups, and taking part in social movements—democratic peoples produce the laws they live under and give them a shape that reflects their common life together. Though peoples share political bonds even when their history is undemocratic, in a democracy, these bonds are especially robust. The role of the people's shared activity in sustaining the state and—in a democracy—in producing law helps explain why over time political cooperation can constitute a group of citizens into a collective with important ties binding them together.³⁰

A people then is just a group with a history of political activity together in a shared state. I think sharing in this historical pattern of activity can give the members of the people a special reason to support and comply with their own state. Whereas my natural duty, by itself, does not connect me to any particular group, my history as part of a people does connect me to the fellow participants in the various forms of political cooperation outlined above. Because individuals who have shared a state together in the past are heir to a temporally extended pattern of political cooperation, they differ from a merely occasional set of persons with an as-yet-unparticularized natural duty. Such a merely occasional group might have existed at the moment before state formation, the moment with which Waldron is concerned. This imaginary group would have had no special reason to set up one state

rather than two, or eight, to perform the functions of legitimate authority that they needed performed. Perhaps they would have had to appeal to salience, natural boundaries, social ties, or considerations of administrative effectiveness to figure out where the states they had a natural duty to construct should begin and end, and who should be a part of which ones. But individuals who have shared a state in the past—who are already part of a people—are not like this imaginary group. They do not have to appeal to salience, social ties, or considerations of administrative effectiveness to figure out which state they might have a natural duty to contribute to. The difference is that they are already part of a historical practice of political authority.

The mere fact of their political history, I think, gives participants reasons to do their part in sustaining their particular state. The difference between my state and another equally just state isn't that I am especially biased in favor of it, feel especially patriotic about it, or share its national culture (necessarily), but simply that I have been part of this practice, which gives me a special reason to value and contribute to it. This fact is enough to particularize my natural duty to a given scheme of political cooperation and gives me reason to do my part here rather than there. And I think this fact is sufficient to make my concern to do my part in this particular state not an act of arbitrary favoritism but rather a rational response to a valuable relationship in which I have been involved.³¹ It would be purely arbitrary if, natural duty in mind, I was suddenly seized by a fascination with, say, Uruguay—feeling myself duty-bound to send special contributions to its tax authorities or buying full-page ads in its newspapers to influence its next election. "Why Uruguay rather than Paraguay?" one might feel like asking me then. But surely one wouldn't feel the same temptation to ask me "Why the United States rather than Uruguay?" As an American, I have a history with the United States.

With these reflections in hand, let us turn to consider whether we can now better explain some of the intuitive civic duties with which we began. On this view, should our wealthy taxpayer hesitate to take her accountant's advice? Yes, I think she should. She has a special reason to contribute her taxes to the United States rather than to the Cayman Islands because she has a history of participation in this particular state. The Cayman Islands may well be a just state, but it is not the one with which she has a personal history. The existence of that history is a reason for certain responses to the institution on her part, namely, to value it and to contribute to sustaining it. These agent-relative reasons that the taxpayer has for concern with her own state

and her own fellow citizens go beyond the reasons that anyone would have for supporting the United States—though these more impersonal reasons of support also exist—because they reflect her personal history of involvement with it. By domiciling herself in the Cayman Islands, she fails to acknowledge the reasons her personal history of involvement in a political relationship creates.

Can these reflections also explain why the Haitians have a claim to continue their separate institutions, even when the functions their state performs could be performed as well or better by another state, namely, the United States? In my view, the Haitian claim to preserve their separate institutions is grounded in their relational reasons for valuing their state, which are based on their history with it. These reasons go beyond the functions (like specifying rights and duties, or providing public goods) their state performs. Another reasonably just state could perform these functions just as well as the Haitian state could, and perhaps better. But to allow that another reasonably just state could simply seize authority over the Haitians would ignore the relational value—for the Haitians—that such a seizure would destroy. The existence of their political history is a reason for certain responses on the part of insiders—to sustain and value their association—and of outsiders—to refrain from dissolving it. Respecting a people's self-determination is a way of honoring this relationship and the reasons it gives to those involved.³²

In my view, we can ground civic duties to our own state and our compatriots that go beyond our natural duty to comply with the laws of the state in which we find ourselves (when it is legitimate) and to support the construction of legitimate states elsewhere. These additional duties are based on a personal history of involvement with a particular state, which give rise to a valuable relationship with its institutions and with our fellow participants in those institutions. This history gives us additional agent-relative reasons to support and contribute to our own state, and these reasons interact with our natural duty of justice to particularize it in ways that go beyond the mere duty to comply with law and the duty not to undermine the state, which even tourists and those otherwise unconnected with these institutions might have.

One question we may wish to ask is whether this account of particularity implies that people are somehow locked in forever to supporting the state with which they presently have a history. After all, people emigrate and establish citizenship in other countries all the time. How is the emigrant different from the person who happens to be arbitrarily fascinated with Uruguay

or the taxpayer who is resident in the Cayman Islands for tax purposes only? On the view I outlined above, we should be willing to say that these latter two are neglecting an important political duty. So are we logically forced to say the same of the emigrant?

One major difference between these cases is that the emigrant (say, to Uruguay) ceases participating in the patterns of political cooperation that ground her relational duties. From now on, the emigrant will be participating in Uruguay's practice of political authority, orienting her behavior to its laws, participating in its civil society, and paying taxes to its revenue service. But it is just these kinds of shared activities, when repeated with sufficient density, that make up the personal history that is supposed to particularize our natural duty. Therefore, the emigrant to Uruguay will gradually acquire a new set of duties to Uruguayan institutions and her Uruguayan compatriots. Likewise, as the sorts of activities that made up her history in the United States wane and fade, she will gradually shed her reason to keep contributing to U.S. institutions in ways that go beyond the natural duties anyone might have, like the duty to comply with law while in the territory and not to undermine the functioning of U.S. institutions while abroad. We should note that our reasons for valuing and contributing to many other kinds of relationships wax and wane in this manner. While I may once have had reason to share my living space and leisure time with my college boyfriend, I do not have reason to do those things now since I am married to someone else and our lives have taken different paths for the last twenty years. So while a shared history can provide special reasons to value a particular relationship, those reasons can also dissipate when a history is broken off. The difference between the person who is nonresident for tax purposes in the Cayman Islands and the person who really lives there is just that the former does not cease to participate in the shared activities that give him reason to value and contribute to the relationship. Instead, he continues to share in the relationship without responding to or acknowledging the reasons that it creates for him.

Conclusion

To sum up, I have offered a three-part answer to the question of why the state matters morally. First, we have a fundamentally cosmopolitan reason to construct and comply with states, a reason that is based on our natural duty of justice to others. Second, since the duty of justice itself is institutionally

mediated, this fact alone will give us some reason to behave differently toward those who share a state with us and those who don't. With regard to those who share our state, the natural duty requires us to perform our duties to them as defined by the state. With regard to those who do not share our state, our natural duty requires us to support the construction and effective operation of their just institutions, as well as working toward the establishment of just international institutions to regulate the behavior of states toward one another. Third, once state institutions are in place, they may give rise to new agent-relative reasons for us based on our personal history of involvement with them. These reasons will give participants in a particular institution reason to do more to support their state and their fellow participants than they do for equally just institutions elsewhere.

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