

Philos 117AC, Fall 2017

Setting the Stage:

Rev. Martin Luther King, Jr. "Letter from a Birmingham Jail"

Main Text:

John Rawls, *A Theory of Justice*, §§18–19, 55, 57

First contrast between Locke and Rawls on political requirements:

Locke: all political requirements on individuals (e.g. a duty to obey the law) are chosen.

Rawls: not all political requirements on individuals are chosen.

1. "Political obligations":

- Based on "principle of fairness": "holds that a person is required to do his part as defined by the rules of an institution when two conditions are met: first, the institution is just... and second, one has voluntarily accepted the benefits of the arrangement or taken advantage of the opportunities it offers to further one's interests" (96).
 - Applies only when the institutions themselves are just.
 - Applies only when a person has chosen.
 - The basic idea is that one shouldn't "free ride" on the contributions of others, enjoying the benefits without doing one's share.
- This principle may explain the political obligations that officials have in virtue of accepting particular offices, such as accepting a judgeship.
- But Rawls does not think that the principle of fairness can explain the political requirements that citizens in general have, since most citizens do not choose the society in which they live. Rawls is convinced by Hume! Instead, we need...

2. The "natural duty to support and comply with just institutions that exist and apply to us"

- Requires that one support and comply with just institutions that exist and apply to one.
- And requires that one work to establish just institutions, at least when this can be done without too much cost to oneself.
- Applies whether or not a person has chosen.
- The only political requirement most citizens have.

Second contrast between Locke and Rawls on political requirements:

Locke: The social contract is an agreement *to be bound to a particular* community, government. Our consent satisfies a condition of a *preexisting, independently justified* principle of moral requirement: i.e., if you make a promise, then you are required to keep it.

Rawls: The social contract—that is, the original position—is an agreement *on moral principles themselves*:

- Principles of justice for institutions: e.g., equal liberty, FEO, difference principle.
- Principles of individual requirement:
 - Principle of fairness
 - Natural duty of justice: Why would the parties in the original position choose a principle of requirement that is *not* conditional on choice? Because the parties would be convinced by Hume!

Civil disobedience:

Applies to a society “well-ordered for the most part, but in which some serious violations of justice nevertheless do occur.”

Definition: “a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of government. By acting in this way one addresses the sense of justice of the majority of the community”

- Public: done in the open, calling attention to itself
- Nonviolent: does not use or threaten physical force or violate others’ civil liberties.
- Accepts legal consequences (e.g., a night in jail, fine): so still partly law abiding.
- Political, addresses sense of justice: does not appeal to self-interest, or even “to principles of personal morality or to religious doctrines,” but instead to principles of justice (Question: Did MLK meet this condition?)
- Sincerity and conscientiousness expressed by public, nonviolent, law-abiding character.

By contrast, “the militant may try to evade the penalty, since he is not prepared to accept the legal consequences of his violation of the law; this would not only be to play into the hands of forces that he believes cannot be trusted, but also to express a recognition of the legitimacy of the constitution to which he is opposed. In this sense militant action is not within the bounds of fidelity to law, but represents a more profound opposition to the legal order.”

Grounds of civil disobedience:

1. Limited to “substantial and clear injustice, and preferably to those which obstruct the path to removing other injustices.” So focused on first principle of liberty and fair equality of opportunity, not on the difference principle.
2. “normal appeals to the political majority have already been made in good faith and ... have failed. The legal means of redress have proved of no avail.”

An internal conflict within the natural duty of justice:

What counts as doing one’s part to support just institutions?

- On the one hand, contributing to the realization of the first principle of equal liberty seems to require respecting majority rule, since among the liberties are liberties of political participation.
- On the other hand, when the majority has made an unjust decision, contributing to the realization of two principles seems to require violating majority rule.

However, if this is the picture, then it seems permissible to violate majority rule *only when the principle of equal liberty is violated*, simply because the principle of equal liberty *takes priority over* FEO and DP. (Even if the violation of the DP were perfectly clear, it wouldn’t matter; the principle of equal liberty would still take priority, and so one must respect the majority decision.)