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978-0-521-79016-1 - Justification and Legitimacy: Essays on Rights and Obligations

A. John Simmons

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JUSTIFICATION AND LEGITIMACY

A. John Simmons is widely regarded as one of the most innovative and creative of today's political philosophers. His work on political obligation is regarded as definitive, and he is internationally respected as an interpreter of John Locke.

The characteristic features of clear argumentation and careful scholarship that have been hallmarks of Simmons's philosophy are everywhere evident in this collection. The essays focus on the problems of political obligation and state legitimacy as well as on historical theories of property and justice. Cumulatively, the collection presents a distinctive social and political philosophy, exploring the nature of our most fundamental rights and obligations and displaying the power and plausibility of Lockean ideal theory.

The volume will be eagerly sought out by students and professionals in the fields of philosophy, political science, and law.

A. John Simmons is Commonwealth Professor of Philosophy at the University of Virginia. His previous books are *Moral Principles and Political Obligations* (1979), *The Lockean Theory of Rights* (1992), and *On the Edge of Anarchy* (1993).

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Essays on Rights and Obligations

A. JOHN SIMMONS

University of Virginia



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INTRODUCTION

Justification and Legitimacy brings together a closely related set of my papers in social, political, and legal philosophy. All of the papers assembled here concern the basic rights and obligations of persons, citizens, and states, and nearly all express my most recent thoughts on these subjects. All of these papers also exemplify or defend one particular approach to the fundamental questions of social, political, and legal philosophy. This approach begins with an examination of the natural moral condition of persons: that is, an examination of the basic rights and duties persons possess and of the special moral relationships into which they can enter (or in which they can find themselves), independent of their roles as members of organized political societies. The basic assumptions on which this approach is founded are: (1) that all persons, whenever and wherever born, begin their moral lives (upon rising to the status of full moral agents) with a substantial body of moral rights and duties, and (2) that the rights in question centrally include, and perhaps add up to no more than, a broad right of self-government or independence (both from other persons and groups and from states).

A person's standing as a legitimate subject of some government must then be understood, on this approach, as the result of a special kind of departure from that person's natural condition. The political realm is to be analyzed in terms of permissible transitions from the natural condition to the condition of political membership. The rights and duties of states and governments, the moral limits on the state's employment of coercive political power, and the demands of social justice are all to be explained by delineating the (actual and morally permissible) processes by which persons make the transition from the natural to the political condition.

This approach to political philosophy, then, constitutes a straightforward rejection of what we might call “political naturalism” – according to which the natural condition of persons born within the territories of political societies is one of political membership and political obligation. The political relationship is by contrast, according to the view espoused here, essentially “artificial” (that is, a product of human artifice), however “natural” it may be for us to create and live in political societies.

The best-known practitioner of this approach to social and political philosophy, of course, was John Locke, though many philosophers since Locke (and a few before him) have explicitly or implicitly practiced it as well. We can see Locke’s commitment to this approach just by noticing the most prominent claims in his writings. For instance, it would not be misleading, I think, to identify as the central theses of Locke’s *Second Treatise of Government* the following: (1) All persons are naturally free and equal; (2) persons can acquire natural property rights by laboring on unowned nature; and (3) all legitimate political power derives from the consent of those subject to it. In defending the first thesis, Locke lays out his view of persons’ basic rights and duties. All persons are by nature equally subject to the requirements of natural law and equally entitled to govern their own lives within the constraints of that law. In defending the second thesis, Locke explains one of the most basic and politically important sources of special rights and obligations. Persons are by nature capable of making for themselves (without the need for conventional, legal, or political sanction) full private property rights in fair shares of the earth and its resources; and it is only by the voluntary subjection of such property to the jurisdiction of a state that states can legitimately achieve their familiar territorial dimensions. The third thesis, of course, gives us Locke’s view of the only legitimate ground for the transition from our natural to our political condition. Without their free consent to membership in some legitimate political society, persons remain always in their natural moral condition, however thoroughly political their lives may otherwise seem to be.

Locke’s work thus identified as the three central problems the political philosopher must address: the nature and justification of our natural rights to self-government, the nature and justification of natural rights to property, and the nature and justification of political obligation and of governmental or state legitimacy. The papers collected in this book all explore, directly or indirectly, these three central problems of social, political, and legal philosophy. All the papers concern either the substance of the moral relationship between citizen and state or the extent of and grounds for individual natural rights. I do not, of course, always employ Locke’s

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methods or follow his arguments, nor do I always accept anything like the conclusions Locke defended; but I do take my approach to these issues to be throughout Lockean in spirit, following the same basic orientation to these areas of philosophy and taking the same issues to be fundamental.

The first eight of the twelve papers assembled here address, in one way or another, the nature of the citizen–state relationship, dealing principally with the problems of political obligation and state legitimacy. Of these, only one (“‘Denisons’ and ‘Aliens’ . . .”) attempts a detailed or scholarly treatment of Locke’s own consent theory of political obligation and legitimacy, despite the broadly Lockean orientation of all of the papers. In “‘Denisons’ and ‘Aliens’” I offer both a new interpretation of Locke’s consent theory and a defense of the theory I attribute to Locke as the soundest position for a consent theorist to take. Some of the other papers on these themes aim instead to refute currently popular rival accounts of political obligation and legitimacy. Two, for instance (“The Principle of Fair Play,” “Fair Play and Political Obligation”), have as their target the fair play or fairness account of political obligation, according to which the citizens of reasonably just polities who have accepted the beneficial results of the cooperative sacrifices of their fellows owe an obligation to reciprocate by doing their fair shares in supporting the political scheme. This account, I am distressed to report, seems to enjoy more support today than it did when I first argued against it in 1979, which explains my return to the subject after twenty years. My conclusions about this account remain highly skeptical. Two other papers (“Associative Political Obligations,” “External Justifications . . .”) argue against the view of political obligation as an “associative” or “role” obligation, a view taken very seriously in Locke’s own day (and during several periods since) that is once again quite popular today. It is also a view that is diametrically opposed to the voluntaristic approach to such issues that I favor – and that Locke favored as well, if not, perhaps, in so wholehearted a fashion as do I. “Associativists” hold that our political obligations are binding on us simply by virtue of our occupation of certain social, institutional, or associational positions or roles. If my arguments against this view are sound, they effectively undermine theories of political obligation that are Hegelian or Wittgensteinian (or, more broadly, communitarian), as well as views like Dworkin’s “liberal associativism.”

In another of the papers dealing with political obligation (“The Obligations of Citizens . . .”), I try to provide some general organizing principles for discussions of political obligation, and I briefly lay out the grounds for my systematic rejection of all attempted defenses of political obligation. This paper, in addition to thus helping to motivate those that follow it,

offers a useful illustration of the practical bearing of arguments concerning political obligation on political policy issues – in this case, on the justification of military conscription. “Philosophical Anarchism” has as its objective a clear description and defense of my favored position on this subject, a position toward which all of the best arguments about political obligation seem to me to push us. This position is that all actual states are illegitimate, but that there may nonetheless be good moral grounds for supporting (or, at least, not resisting) the activities of many states. Finally, in “Justification and Legitimacy” I try to place all of the preceding arguments in a broader context, defending a Lockean view of the relationship between these concerns about political obligation and state legitimacy, on the one hand, and additional dimensions of institutional evaluation (such as virtue or justice), on the other. I argue that evaluations of states in terms of their legitimacy should be understood to be distinct from, and to vary independently of, their evaluations in terms of justice or goodness (i.e., that which “justifies” states), in opposition to the dominant schools of contemporary political philosophy.

The remaining four papers collected here address the other central areas of concern in a Lockean approach to social, political, and legal philosophy, though again only one (“Makers’ Rights”) includes any extended consideration of Locke’s own views. “Human Rights and World Citizenship . . .” discusses both Locke’s and Kant’s (rival) views of the natural moral condition of persons; it also tries to clarify the ways in which our views on that subject should affect our picture of the primary focus of loyalty for citizens, thus providing a perspective on the viability of the “cosmopolitan” stance in moral and political philosophy.

The last three papers (“Original-Acquisition Justifications . . .” “Historical Rights . . .,” “Makers’ Rights”) all concern the idea of natural property rights and allied historical accounts of distributive justice. Property is, according to the approach practiced here, a particularly important special natural right (with important correlated obligations) for a number of reasons. The private property (or use rights) of individuals in land is the material out of which states’ territories must be constructed in order for those territories to be legitimately subject to state jurisdiction. And the rights that politically associated persons must be understood to retain over their land and possessions constitutes one of the important limits on legitimate governmental power. Further, of course, many prominent conceptions of social justice revolve around or centrally feature respect for individual rights to property. A proper appreciation of the nature and grounds of natural property, then, is essential not only to a Lockean, but

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to any, approach to social, political, and legal philosophy. The papers on property included here are all designed to defend (and to modify in ways that render more plausible) historical theories of property – and, in a more limited way, historical theories of justice – of the sort defended by Locke. I try to argue on behalf of these theories in something like their traditional form, maintaining that they in fact have the resources to respond to the familiar dismissive objections (e.g., of contemporary irrelevance and justificatory impotence) that recent philosophy has tended to casually advance and endlessly repeat. I try as well to orient my discussions so that they will bear in obvious ways on some actual examples of historical injustice and property violations, such as the case of Native American peoples.

I have dealt before with many of the issues addressed in these collected papers, particularly in my three previous books (*Moral Principles and Political Obligations* [1979], *The Lockean Theory of Rights* [1992], and *On the Edge of Anarchy* [1993]). The papers assembled here begin, in effect, where those books left off, though they presuppose no knowledge of my arguments there. These papers for the most part represent my most recent thoughts on these subjects and constitute, I think, substantial improvements upon and additions to the work done in those books. For those curious about my earlier arguments, one of the papers in this collection (“The Obligations of Citizens . . .”) does contain a summary of (and a slightly different way of characterizing) the general case that I made against political obligation in *Moral Principles and Political Obligations*. But virtually all of the papers here are otherwise essentially freestanding. Ten of the twelve papers in this book were written since the publication of my last book. Two (“Fair Play and Political Obligation . . .”, “Human Rights and World Citizenship . . .”) have not been previously published in English, while the others were published in a variety of (not always particularly accessible) places.

Two of the papers in this collection, however, are considerably older than the others, and their inclusion here requires some justificatory comment. “The Principle of Fair Play” (originally published in 1979) is included here principally to accompany and motivate a second (very recently completed) paper on the same topic (“Fair Play and Political Obligation . . .”), in which I both develop my earlier view and respond to some of the criticisms of my position that have been advanced during the past two decades. The other older paper, “The Obligations of Citizens and the Justification of Conscription” (from 1983), is included for different reasons. First, as already noted, it reorganizes and briefly summarizes my principal arguments against political obligation and so should help readers

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see more clearly the general grounds for my philosophical anarchist conclusions. But it also contains a discussion of (and arguments against) the approach to the problem of political obligation that was Locke's chief target in his *Treatises*; namely, the view of political obligations as identical to (or strongly analogous to) filial obligations. This paper thus not only supports the case made in other papers in this collection against political obligation conceived of as a "role" or "associative" obligation. It also seems a particularly fitting contribution to an effort to sustain and expand a Lockean approach to normative philosophy.

I hope that readers will agree that the twelve papers collected here make genuine advances on some of the central problems of social, political, and legal philosophy. These papers should, at the very least, help to clarify the character, virtues, and limits of a broadly Lockean approach to those fields. Perhaps they will also, as I hope, help to convince readers that such an approach is genuinely fruitful in ways that require that it be taken very seriously by contemporary philosophers. For the conclusions this approach yields, however unfashionable they might be, seem to me to have considerable force in specifying the regulative ideals in light of which social and political philosophy should proceed.

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