

Notes for Wolff, 46-55

Anarchism

If social contract theories are untenable (because it is not possible to conclusively establish the relevant kind of consent in the real world), then we might be tempted to endorse philosophical anarchism—the view that the state is illegitimate.

- Radical version: Our *only* reason for obeying the state is a prudence (avoiding punishment).
- Moderate version: We have independent moral reasons to obey *some* laws, but no reasons stemming solely from the fact that it *is* the law

This looks good up to a certain point, since it allows us to easily explain why we *don't* have to obey unjust laws. But “it is not so easy to see what this moral limit should be.”

-If we follow this kind of thinking to its ultimate conclusion, we end up back in the kind of chaotic state of nature that we form the state to avoid.

-If we agree that the state of nature is not tenable, then philosophical anarchism begins to look like “a very dangerous example of moral self-indulgence”

-Protesting that people are still *capable* of perceiving independent moral obligations in the absence of a state won't work. We need to ensure that everyone *does* see their moral obligations—and more importantly, we need to ensure that they *adhere* to them.

Utilitarianism

An attractive alternative, at this point, may be to justify the state on the basis of utilitarianism. This theory says that morality requires us to do whatever maximizes happiness in the world. Since the state yields more happiness than we can find in its absence, we are morally justified (and in fact morally *required*) to establish and protect the state.

-Utilitarianism has some famous problems, though.

-How are supposed to *measure* ‘utility’?

-Even if we assume that utility *can* be measured, doesn't this kind of model serve as a “law-breaker's charter”?

-Utilitarianism would seem to allow me to break the law whenever I can create more happiness by doing so. This doesn't look much like a state of law and order.

-The most plausible way to justify the state within a utilitarian framework, then, is to adopt a version *indirect* utilitarianism.

-Indirect utilitarianism (sometimes called ‘rule utilitarianism’)

-We establish a set of laws which, *on the whole*, promote happiness in the world. Individuals must obey these laws regardless of the happiness that might be gained by single acts of law-breaking, making exceptions only to avoid disaster.

Still, a big problem remains. Consider the following argument:

1. The morally best society is the one in which happiness is maximized.
2. The state promotes happiness better than the state of nature
3. The state and the state of nature are the only alternatives we have
- C. We have a duty to bring about and support the state

The argument appears to be formally valid, so it's good on that front. But the premises are *all* dubious.

- Premises 2 and 3 will be immediately challenged by philosophical anarchists who insist that we would be fine in the state of nature (or that we can have functioning cooperative institutions without the kind of coercion that is characteristic of the state)
- Premise 1 runs into the famous "scapegoat objection"
 - o It's not hard to imagine cases where *unjust* laws (or rulings in legal cases) will maximize happiness within the state. Utilitarianism would seem to say that it's ok (and in fact *required*) to endorse these kinds of injustices.
 - o In short, this kind of theory doesn't seem to do a very good job of explaining the role of *justice* in a legitimate state.
- Can 'indirect utilitarianism' address the scapegoat objection?
 - Even if it can explain why we *generally* want laws that treat citizens equally/fairly, it doesn't explain why we can't make *secret* exceptions. For example, if we could placate angry citizens by convicting an innocent person for a violent crime—and if we could do so *without anyone every finding out*—then it seems like even an indirect version of utilitarianism would seem to say that it would be ok.
 - And *even if* the utilitarian can somehow spin the calculus to show that more happiness results from abstaining from scapegoating, "the correct result is achieved for the wrong reason." It's *fairness*, and not utility, that should explain why we can't incarcerate innocent citizens.