

The Nature, Grounds, and Limits of Berkeley's Argument for Passive Obedience

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ABSTRACT

Scholars disagree about the nature of the doctrinal apparatus that supports Berkeley's case for passive obedience to the sovereign. Is he a rule-utilitarian, or natural law theorist, or ethical egoist, or some combination of some or all these elements? Here I argue that Berkeley is an act-utilitarian who thinks that one is more likely to act rightly by following certain sorts of rules. I also argue that Berkeley mischaracterizes and misevaluates Locke's version of the social contract theory. Finally, I consider the potentially practically self-defeating nature of Berkeley's claim that there is no obligation to submit to the rule of "madmen" or "usurpers".

Controversy has long swirled, and continues to swirl, around the proper way to understand the nature, grounds, and limits of George Berkeley's argument for passive obedience. As Berkeley describes it, passive obedience requires all human beings under sovereign rule not to forcibly resist enforcement of the legal prohibitions promulgated by the sovereign and to accept the penalties established by the sovereign for refusing (on grounds of conscience) to perform legally required actions. This much is clear. But scholars disagree about the nature of the doctrinal apparatus that supports Berkeley's case for passive obedience. At the same time, insufficient attention has been paid to the problems faced by Berkeley's brief dismissal of the social contract version of natural law theory, and by his own limitations of the reach of the obedience principle he supports. My aim in this paper is to clarify these matters and hopefully shed greater light on Berkeley's most important contribution to political philosophy.

To many, Berkeley is an indirect (or rule-) utilitarian of some sort, perhaps a theological utilitarian (Fraser 1871, Albee 1902, Brandt 1979, Warnock 1986, Berman 1986 & 1994, Häyry 1994, Häyry and Häyry 1994, Darwall 2005, Irwin 2008, Gylling 2015). To some, he is a purveyor of classical natural law (or divine command) theory (Orange 1890, Jakapi 2007). To others, he is an ethical egoist (Flage 2008). And to the remaining, his theory is a combination of some or all these elements (Olscamp 1970, Pitcher 1979, Häyry 2012, Flage 2014, Besedin 2015). As I will argue, although these reconstructions capture one or more elements of Berkeley's political theory, none of them properly identifies the theory's *ultimate* ground, which lies in a particular moral relation in which human beings stand to God.

Regarding the details of his account of what morality requires of subjects (or citizens) in society, I will argue that Berkeley is best understood, not as a rule-utilitarian, but as an act-utilitarian who thinks that one is more likely to act rightly by following certain sorts of rules. The

Berkeleyan *standard* of right conduct, I will argue, is action that achieves the general well-being of humankind. The Berkeleyan *decision procedure* for meeting this standard involves respecting a set of rules that have a necessary tendency, when all of them are universally adopted, to promote universal well-being.

Historically, I will suggest, Berkeley's theory resembles Locke's up to the point where they diverge, which concerns whether the moral obligation that subjects bear to their sovereign is grounded in a social contract, and hence conditional. But I will argue that Berkeley misunderstands Locke's own version of the social contract theory, mischaracterizing and misevaluating an important Lockean strand of argument for conditional political obligation.

Finally, I will consider the potentially practically self-defeating nature of Berkeley's own explicitly drawn exception to the rule of passive obedience, namely that there is no obligation to submit to the rule of "madmen" or "usurpers", as well as the problems that arise when these exceptions are combined with Berkeley's claim that, in the absence of a recognized supreme civil authority, human beings should be free to decide for themselves who shall have the power to rule them.

1. The Ultimate Ground of Political Obligation

The main lines of Berkeley's argument for passive obedience are well known. Berkeley first notes that there are four possible methods that one might use to discover moral rules: (i) by looking at God's ideas, (ii) by looking at the innate ideas in one's own mind, (iii) by deriving them from the authority of experts or what is universally accepted, or (iv) by "the deductions of reason". Noting that the first three methods "labour under great difficulties" (difficulties not otherwise described or specified), Berkeley promises a demonstrative "inquiry into the origin, nature, and obligation

of moral duties in general” (PO 4, W6: 19).¹ In this way, Berkeley’s deductive method resembles the method proposed and implemented by his predecessors, John Locke (1690/1960) and Samuel Clarke (1706).

At this point, Berkeley explains that there is a universal principle of self-love according to which human beings are naturally motivated to pursue their own happiness, in the form of “lasting goods” different from the momentary pleasures of sense (PO 5, W6: 19). Berkeley then notes that God’s existence is evident “by the light of nature”, that is, by reason; and given that God has the power and knowledge to make us happy or miserable depending on whether we conform to his will, and that “God alone is maker and preserver of all things”, it follows that human beings are bound both by ties of self-interest and by ties of duty to obey him (PO 6, W6: 20).²

Berkeley then argues that God’s goodness entails that his end must be good. And since human beings have no way of improving the condition of higher intelligences (such as God and angels), it follows that God’s good end for humans in creating humanity must be the good of all human beings. And this end cannot involve the pursuit of greater well-being for some human

¹ References to *Passive Obedience* will be in the form [PO section number, W6: page number], where “W6” refers to the sixth volume of *The Works of George Berkeley, Bishop of Cloyne*, 9 vols., edited by A. A. Luce and T. E. Jessop (London: Thomas Nelson, 1948-57).

² Although Berkeley does not offer a deductive argument for the existence of God in *Passive Obedience* (1712), he does do so in two works that were written around the same time, *A Treatise Concerning the Principles of Human Knowledge* (1710) and *Three Dialogues Between Hylas and Philonous* (1713). For discussion of both arguments, see Rickless (2013; forthcoming). References to the first book will be in the form [PHK section number], and references to the second book will be in the form [DHP page number]. Both PHK and DHP appear in volume 2 of *The Works of George Berkeley* (see note 1).

beings relative to others, given that “no distinction can be conceived between men” in advance of God’s promulgation of moral rules. Thus, God intends for each human being to pursue “the general well-being of all men” (PO 7, W6: 21). Again, Berkeley’s conclusions, and much of his reasoning for them, mirrors Locke’s argumentation for the fundamental law of nature, which is “the preservation of mankind” (1690/1960 T2: 135).

Thus far, Berkeley’s position appears to display elements of ethical egoism (the view that one is obligated to pursue one’s own self-interest in all things—PO 6, W6: 20), divine command or natural law theory (the view that one should follow God’s edicts, understood as natural laws, i.e., “rules directive of our actions to the end intended by the legislator”—PO 7, W6: 20), and utilitarianism (the view that the end of all action is the greatest good for human beings—PO 7, W6: 20-21). So it is understandable for Berkeley to be described by some as an ethical egoist, by others as a natural law theorist, by yet others as a utilitarian, and by yet another group as having combined (perhaps not without tension or inconsistency) some or all of these ethical theories.

However, these moral theories are not consistent, though they may contingently issue in the same moral prescriptions. For example, if God commanded us to do something that is self-evidently not in the best interest of human beings (e.g., he commands us to destroy all of humanity), then divine command theory would come into conflict with both ethical egoism and utilitarianism. And if the greatest good for human beings were inconsistent with *my* good (because, for example, my survival depended on sucking all the air of the universe into my lungs, thereby depriving all other human beings of the air their own survival requires), then ethical egoism would come into conflict with utilitarianism. So those who hold that Berkeley attempts to meld two or more ethical theories into one are at risk of foisting inconsistency on him. And many who recognize the problem of inconsistency are therefore motivated to find textual and philosophical

reasons to read him as adopting one, but not more than one, of the three ethical theories he appears to endorse.

But, in point of fact, if we think of the various views apparently on display in PO 6-7 as fixing the *ultimate ground* of moral obligation, none of them, whether individually or collectively, accurately captures the axiom at the heart of Berkeley's moral theory. Berkeley doesn't really hold that one's most basic moral obligation is to pursue one's own happiness, follow God's commands, or advance the well-being of humankind. Berkeley's basic moral axiom is that the ground of moral obligation lies in a particular relation that obtains between God and his creatures.

Let us begin by noting that the textual case for Berkeley's acceptance of ethical egoism is weak. Although it is true that Berkeley begins his investigation of the "origin, nature, and obligation of moral duties" in PO 5 with a discussion of self-love, i.e., one's natural desire to pursue one's own happiness, his discussion in PO 6 suggests that his appeal to self-love is in the service of making a *prudential*, not a *moral*, case for conforming to God's will.

PO 6 is divided into two parts. In the first, Berkeley argues that "every reasonable man ought so to frame his actions as that they may most effectually contribute to promote his eternal interest". At the beginning of the second, he claims that "[t]he same conclusion doth likewise evidently result from the relation which God bears to his creatures". However, at the end of the second, he concludes that "mankind are, by all the ties of duty, no less than interest, bound to obey [God's] laws" (PO 6, W6: 20 – underlining added).

At first blush, these statements are not mutually consistent. To say that one is bound by ties of duty to obey God's laws is to say that obeying God's laws is a moral duty, i.e., something that one is morally required to do. To distinguish between ties of duty and ties of interest, as Berkeley explicitly does, is to distinguish between moral obligation on the one hand and prudential

obligation on the other. But it then follows that the claim that one is bound by ties of interest to obey God's laws is distinct from the claim that one is bound by ties of duty to obey God's laws. Hence it cannot be that Berkeley is actually providing two arguments for the same conclusion, to the effect that we are bound to obey God's laws. Although he might not have put the point in these terms, the most charitable reading of PO 6 suggests that Berkeley uses the language of 'interest' and 'duty' to distinguish between the prudential 'ought' and the moral 'ought'.³ In saying that every human being *ought* to promote her own interest, Berkeley is saying that she has all-things-considered *prudential* reasons for promoting her own interest, not that she has an all-things-considered *moral obligation* to promote her own interest. The text therefore suggests that Berkeley is not an ethical egoist.⁴

³ Häyry (2012, 7) makes a similar point.

⁴ Flage (2014, 187, n. 8) points out that in *Guardian* 126, published in 1713, just one year after the publication of *Passive Obedience*, Berkeley writes that "the good of the whole is inseparable from that of the parts; in promoting therefore the common good, every one doth at the same time promote his own private interest". This suggests that Berkeley sees a tight connection between promotion of the common good and promotion of one's own interest. But it doesn't follow from this that Berkeley thinks that a *moral duty to promote the common good* entails a *moral duty to promote one's own interest*. (It is possible, at least in theory, for the promotion of the common good to lead necessarily to the promotion of the interests of bad people, but it should be clear that one might have a duty to promote the common good without having a duty to promote the interests of bad people.) Indeed, in the very same issue of the *Guardian*, Berkeley distinguishes *explicitly* between duty and interest. The passage Flage quotes, more fully rendered, reads as follows: "[A]s social inclinations are absolutely necessary to the well-being of the world, it is the duty and interest of each individual to cherish and improve them to the benefit of mankind; the duty, because it is agreeable to the intention of the author of our being, who aims at the common good of his creatures, and as an indication of his will, hath implanted the seeds of mutual benevolence in our souls; the interest, because the good of the whole is

This, however, leaves both the divine command interpretation and the utilitarian interpretation standing. What are the reasons for rejecting these interpretations of the ultimate ground of Berkeley's moral theory? The answer lies in the agonizingly brief and underdeveloped passage in which Berkeley argues that we are bound to obey God's laws by ties of duty:

God alone is maker and preserver of all things. He is, therefore, with the most undoubted right, the great legislator of the world; and mankind are, by all the ties of duty...bound to obey His laws. (PO 6, W6: 20; underlining added)

This argument is short and, for obvious reasons, requires unpacking. What, exactly, is Berkeley trying to say?

Let us take this one claim at a time. First, Berkeley tells us that God is the sole maker and preserver of all things. The thought that God created the universe is a familiar part of natural theology, and something that many of Berkeley's theistic predecessors and contemporaries (including Descartes, Locke, Clarke, and Leibniz) thought could be established by rational demonstration, as a consequence of God's omnipotence. But the thought that God *preserves* the

inseparable from that of the parts; in promoting therefore the common good, every one doth at the same time promote his own private interest" (underlining added). Duty here is explicitly described as a function of God's intention (or will), and also explicitly *contrasted* with interest, which is explicitly described as a function of one's own good. The contrast remains even as Berkeley emphasizes that discharging one's duty and pursuing one's own interest lead to the same *actions*, namely the cherishing and improvement of the social inclinations (such as sympathy and parental love). Berkeley's point in PO 6 is similar: first, we are morally bound to obey God's will; second, we are prudentially bound to obey God's will; and third, what morality requires is the same as what prudence counsels.

universe, though also a standard part of theological orthodoxy in Berkeley's day, is perhaps less familiar. The thesis, contrary to the views of the deists of Berkeley's day, is that God does not merely create the universe at a particular time (or outside of time) and then set the vast clockwork of being in motion. Instead, as Descartes and Malebranche had argued, God sustains his creation, in the sense of maintaining its existence from one moment to the next. Were God to withhold his concurrence from any part of the world, it was thought that that part would cease to exist (see, e.g., PHK 147 and 155). This view is encapsulated in one of Berkeley's favorite biblical quotations, from Acts 17:28, namely that "in God we live, and move, and have our being" (see PHK 149: 109 and DHP3: 236).

From the fact that God is the maker and preserver of all things, Berkeley *infers*, using the illative "therefore", that God is "with the most undoubted right, the great legislator of the world". Laws, according to Berkeley, are "rules directive of our actions to the end intended by the legislator" (PO 7, W6: 20), and we may reasonably infer from this that Berkeley takes someone who legislates "with the most undoubted right" to have the *authority* to promulgate and enforce such rules. What Berkeley is telling us, then, is that God's being the maker and preserver of the universe, and hence of human beings, *entails* that he has the rightful authority to promulgate and enforce rules constraining the activities of human beings in the service of his end in creating them. The problem, of course, is that it is difficult to understand why this entailment holds. What, exactly, is the nature of the logical connection between creation and preservation on the one hand, and rightful authority to make laws for the creation one is preserving on the other?

Indeed, it might be objected that there is no such connection. As Häyry (2012, 12) puts the point:

[I]t was apparently obvious to Berkeley that creatures must always obey their creators. This is, however, a difficult rule to comprehend in a secular context. Analogical cases could be provided by children and robots—both arguably duty-bound to their parents and makers. But the problem is that neither children nor robots are always morally expected to conform to all the rules (harmful and abhorrent ones are a case in point) that are invented by their biological and technological masters. (Häyry 2012, 12 – see also Pitcher 1979, 233)

The worry, then, is that the fact that X created Y doesn't entail that Y is morally bound to follow all the rules laid down by X, no matter their content. Even if I tell my children that it's a rule of the house that they should hit anyone who steps over the threshold with a baseball bat, they are not duty-bound by the rule and are well within their rights to ignore it. How, then, can Berkeley reasonably take it to follow from the fact that God created and preserves us that we are always morally required to obey him?

Faced with a similar difficulty, Locke in the *Second Treatise* appeals to the concept of *property*:

[M]en being all the workmanship of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they are his property, whose workmanship they are, made to last during his, not one another's pleasure. (1690/1960, T2: 6)

The thought here is that if I am God's property, then I am not morally permitted to dispose of my body and mind, or of the bodies or minds of others, as I see fit without getting his permission to do so.⁵ Although Berkeley could, in principle, appeal to the claim that creatures are the property of their creator (and preserver), this is probably not his best option for filling in the enthymeme of PO 6. For although the fact that X owns (or has property in) Y entails that no-one other than X is morally permitted to harm or destroy Y without X's consent, it does not by itself entail that Y is morally required to follow every one of X's orders.

At this point, I think, we must frankly grant that Berkeley's argument could be supplemented in different ways. The textual evidence, such as it is, underdetermines the choice of admissible supplementations. But it seems to me that Berkeley has the resources to answer Häyry's objection, and that those resources could be used to fill in the reasoning to Berkeley's conclusion, in the following way. By hypothesis, we have been created by God, and, more importantly, we continue to be preserved and sustained by his will. Our very existence at every moment is completely dependent on his concurrence. At every moment, then, we should be grateful to God for not withholding the support on which the continuation of our lives depends. Not only that, but God is "a being of infinite goodness" (PO 7, W6: 20), and thus the purposes for which he ontologically sustains us must themselves be good and worth pursuing. But those purposes are exactly what the divine rules that are directive of our actions are designed to promote. Being perfectly good, God will choose only good means to good ends. So there is no possibility of the relevant divine rules being "harmful or abhorrent" in the way contemplated by Häyry. Moreover, given that we owe God a debt of gratitude for his benevolent preservation of our bodies and souls

⁵ For more on this, see Rickless (2014, 172-173).

at every moment, surely the least we can do in the way of discharging that debt is to follow the good (and benevolent) rules that God has laid down to govern our conduct.

Notice that this supplementation of the enthymematic reasoning of PO 6 appeals to two separate, and equally important, facts: first, that God preserves us from moment to moment, and second, that God is perfectly good. Considered individually, these facts do not entail that we are duty bound to follow God's laws for humanity. Neither the mere fact that God is good (and well disposed towards us) nor the fact that God created and preserves us, by itself, entails that we are morally required to follow all of his orders. However, the obligation to follow God's will in respect of our conduct does follow from the *conjunction* of these facts. That is, Berkeley's argument can (without, I believe, distorting the relevant text) be read as relying on the following general moral principle:

If X is perfectly good and X created and sustains Y, then Y has a duty of gratitude towards X that is best discharged by following X's will in respect of Y's conduct.

On this reconstruction of Berkeley's reasoning, God's authority does not derive from his creative or sustaining activity alone, nor from his omnibenevolence, nor from the fact that he has property in his creatures, but from the fact that those whose existence he beneficently preserves at every moment owe him the kind of existential debt that can only be discharged by complying with his legislative intentions. This is not utilitarianism and it is not divine command theory, assuming that the former understands the ground of moral obligation to lie in the happiness of others and the latter understands the ground of moral obligation to lie in the mere fact that God has issued a directive.

2. Act-Utilitarianism vs. Rule-Utilitarianism

Assuming, then, that we are all duty bound to follow God's prescriptions, and that, given his infinite wisdom, all of his prescriptions aim at some end, we are morally obligated to pursue his end, which of necessity is good. But all that is good is good *for* someone. And yet we are not in a position to make a difference in the lives of greater intelligences. So the good end that God must mean us to pursue is the good "of His creatures".

One concern here is that there are many creatures other than human beings whose good one would think God might intend to promote, mostly notably animals with the capacity to feel pain and pleasure. And yet, like Locke before him, Berkeley limits the reach of his principle of happiness-promotion to human beings. Why?⁶ According to Locke, non-human animals were made by God to serve as a source of nutrition. For God created human beings, presumably with the purpose of living for some time (otherwise, why create them in the first place?), and thus must have intended them to use whatever else he had created, including non-human animals, as a means to their subsistence (1690/1960, T1 86 and 92).⁷ Berkeley doesn't elaborate, but we may reasonably presume that he is thinking along very similar lines.

If we are duty bound to promote the good of human beings generally, are there some human beings who count for more than others in the calculation of overall good? Berkeley's answer to this question is negative, again for reasons similar to the reasons Locke offers in defense of a similar conclusion. In the state of nature (i.e., a state of things antecedent to society and civil government), says Locke, all human beings are equal in respect of morally relevant characteristics:

⁶ See, for example, Pitcher (1979, 235).

⁷ See Rickless (2014, 173-174).

none deserves more, or less, than anyone else, and so each is to count equally when it comes to applying the injunction to preserve humanity as much as possible (1690/1960, T2: 4). Berkeley himself argues that “in a natural state...antecedent to the end proposed by God, no distinction can be conceived between men” (PO 7, W6: 20-21), and hence God’s end must be the maximal good achievable for humanity, with everyone counting for one and none for more than one.

Now it is evident that no end can be achieved without the implementation of necessary means: “he that willeth the end doth will the necessary means conducive to that end” (PO 11, W6: 22). So Berkeley naturally turns to a discussion of the necessary means of achieving the general well-being of humankind. He considers two options. The first involves deciding for oneself on each particular occasion which act, among all those available to be performed, will most conduce to the public good. The second involves following “determinate, established laws, which, if universally practised, have, from the nature of things, an essential fitness to procure” the general welfare (PO 8, W6: 21). For two main reasons, Berkeley chooses the second option over the first. The first reason is that even for the best and wisest of human beings, it is impossible to accurately calculate the long-term consequences of every available action, while it is relatively easy to conform one’s conduct to a determinate, established rule. The second reason is that, with all human beings calculating the consequences of available alternative acts for themselves at different times, the significant variation in their capacities will unavoidably result in the absence of interpersonal and intrapersonal “harmony or agreement”, and hence there will ensue “the most horrible confusion of vice and virtue, sin and duty” (PO 9-10, W6: 21-22).

For many scholars, these familiar remarks clearly betoken a choice of rule-utilitarianism over act-utilitarianism, for some of the same reasons that have attracted moral theorists to the former theory. But we need to be careful here. It is possible to look at achievement of general well-

being as a *standard*, or as a *decision procedure*, for right conduct.⁸ A standard for right conduct simply specifies individually necessary and jointly sufficient conditions for conduct's counting as right. A decision procedure for right conduct is an account of the best means for achieving conduct identified as right according to the standard. According to this typology, is Berkeley trying to provide a standard or a decision procedure for right conduct? The answer isn't crystal clear, but what Berkeley says is consistent with the following interpretation. The right thing to do is to procure the general well-being (because this is what God wills, and we are duty bound, for reasons canvassed in the previous section, to do what God wills). So the *standard* of right action is the property of actually leading to the greatest good for the greatest number. But the best *means* of achieving the greatest good for the greatest number doesn't involve calculating the expected utility of each available alternative action and picking the one with the greatest expected utility. Rather, it involves following certain predetermined rules of conduct. On this view, the *standard* of right conduct is act-utilitarian, while the *decision procedure* for meeting the standard involves conformity to certain rules. If rule-utilitarianism is understood as the doctrine that the *standard* for right action is conformity to certain sorts of rules, then, on the interpretation we are considering, Berkeley would not be a rule-utilitarian.⁹

⁸ For more on this, see Brink (2006).

⁹ Flage (2014, 151) argues that the proscription of adultery, which Berkeley treats as a natural law (PO 3 and 15), is something Berkeley could not consistently treat as a natural law if he were a utilitarian. The problem is that the general welfare, as Berkeley understands it, is "the general well-being of all men, of all nations, of all ages of the world" (PO 7). Yet it would be impossible, both in practice and in principle, to calculate, as utilitarianism supposedly requires us to do, whether a rule banning adultery would advance the general welfare more than some alternative rule: our

It might be objected that Berkeley isn't a utilitarian of any kind, because he is more properly classified as a natural law theorist. If the point of this classification is that Berkeley *grounds* moral obligation in God's will, then I agree. But the point might be that, for Berkeley, the *content* of moral obligation (i.e., an account of what it is that we are morally obligated to do) is best described as a form of natural law theory rather than a kind of utilitarianism. Flage (2014, 142), for example, distinguishes between utilitarianism and natural law as follows:

knowledge is simply too meager for the purpose. This case for not reading Berkeley as a utilitarian confuses the *standard* of right conduct with the *decision procedure* (or means) of achieving what is right according to the standard.

Flage might respond by saying that Berkeley couldn't reasonably take himself to have enough information to choose obedience to natural law over direct calculation of what would most conduce to the general welfare as a means of obtaining what is right according to the act-utilitarian standard. But this response doesn't make the best sense of the relevant texts. Berkeley himself argues in PO 9-10 that we know enough to know that persons not only lack the kind of knowledge and judgment that would enable them to determine whether this or that particular action will produce more good overall than any alternative, but also differ in their opinions about which action is optimal inasmuch as they differ in their "particular views and circumstances". The result of direct calculation, as Berkeley claims to *know*, would be, as we've seen, "the most horrible confusion of vice and virtue" (PO 10). *By comparison*, Berkeley avers, obedience to natural laws, such as truth, justice, and charity, has "a necessary connexion with...universal well-being" (PO 15). How so? Berkeley doesn't say. But we can reasonably assume that he is thinking that truthfulness builds trust and that trust builds social bonds and hence conduces to peace; that justice (keeping one's promises, respecting property, and so on) does the same; and that charity creates and reinforces ties of love and care among persons. Under the circumstances, it is reasonable to suppose that Berkeley takes himself to *know* enough to know that the long-term consequences for humanity of following natural law are far better on the whole than the long-term consequences of acting on direct calculation of long-term consequences.

Utilitarianism: What yields the greatest total amount of good for a society is a duty for each member.

Natural Law: What yields the most good for each member of a society is a duty for all members.¹⁰

Under these descriptions, Flage then argues that Berkeley is a natural law theorist, rather than a utilitarian. If Flage is right, then not only is Berkeley not a *rule-utilitarian*; he is also not an *act-utilitarian*.

According to Flage, although both utilitarianism and natural law are concerned with the promotion of the good of *all* members of society, what distinguishes the theories is that the former

¹⁰ Flage (2014, 141) doesn't quote from any of the natural law theorists he mentions: Hooker, Grotius, Pufendorf, Cumberland, and Locke. An exhaustive investigation of whether Flage's "**Natural Law**" principle is an accurate reconstruction of the views of all five of these theorists is beyond the scope of this paper. However, there is some room for scepticism on this score. For example, Cumberland (1727, section 5.46) writes that "the Sum of the Law of Nature" is that "every one, by the exercise of *Universal Benevolence*, should always seek the *Common Good*, and *his own* only as a *Part* thereof, and consequently *subordinate* thereto". The fact that Cumberland *subordinates* promotion of one's own good to promotion of the common good means that he understands that it *could happen* that the advancement of the common good requires the sacrifice of one's own good (and perhaps, by extension of the reasoning, sacrifice of the good of some others). Thus, at least according to Cumberland, the common good does not *consist in* the greatest good for *each* member of society. Similarly, Locke (T2: 134) holds that "the *first and fundamental natural Law*...is the *preservation of the Society*, and (as far as will consist with the publick good) of every person in it". So here, too, we have a natural lawyer suggesting that the preservation of any particular person might not be morally required if it is inconsistent with the public good, which evidently means that he does not *identify* the public good with the good of *each and every* person.

reads “all” in the *collective* sense, while the latter reads “all” in the *distributive* sense (2014, 141—see also 150). What are these senses? If I say “I ferried all the members of the basketball team to the game”, I could be saying that I ferried all the members of the basketball team in one trip as a group, or I could be saying that I ferried each and every member of the basketball team to the game separately: the former is the collective sense of “all”, while the latter is the distributive sense of “all”. Flage’s suggestion, then, is that Berkeley treats one’s duty to promote the well-being of all human beings as a duty to promote the well-being of each and every human being, rather than as the duty to promote the well-being of all human beings as a group.

However, in the case of well-being promotion, the collective/distributive division strikes me as a distinction without a difference, unless the well-being of all humans in the collective sense is understood, bizarrely in the context of Berkeley’s discussion, as the well-being of the *set* of all humans. Suppose that we are not talking about the welfare of sets. In that case, promoting the well-being of all humans can’t be understood except distributively. Promoting the good of all humans is more like hugging all humans than it is like ferrying all humans: just as I can’t hug all humans without hugging each individual human separately, so I can’t promote the good of all humans without promoting the good of each individual human separately. Of course, it is possible to think of groups (e.g., clubs) as having interests that transcend the interests of their members: it might be good for the Republican Party, say, to revoke Donald Trump’s membership in the organization, even if the revocation isn’t good for Donald Trump himself. But in the context of Berkeley’s *Passive Obedience*, it doesn’t make sense to think of humanity as a whole as a kind of superordinate entity with interests of its own.

It might be suggested, in response, that Berkeley’s talk of “procuring” the “general well-being of all men” (PO 7) cannot be understood in any sort of utility-maximizing sense.

Utilitarianism, it might be argued, requires the maximization of the *total amount* of good, however distributed among humans, whereas natural law theory doesn't. Consider, for example, two states of affairs, in each of which there are two individuals, A and B: in state S1, A has 101 units of good and B has none; in state S2, A and B each have 50 units of good. The utilitarian, it might be argued, must treat S1 as better than S2 (because there are 101 units total in S1, but only 100 units total in S2), whereas it is open to the natural law theorist, who aims at the good of each rather than at the maximization of the total amount of good, to treat S2 as better than S1. But unless there is some sort of egalitarian or prioritarian constraint built into the very structure of natural law theory (which is not something that we clearly see in the works of, say, Cumberland or Locke), it is completely unclear, at least on Flage's picture, what natural law theory requires. Suppose I have the option of choosing between promoting S2 or promoting S3, where S3 involves A having 52 units of good and B having 49 units of good. Which of S2 and S3, to use Flage's phrase, "yields the most good for each" of A and B? Well, in S3 relative to S2 there is more good for A and less good for B, and in S2 relative to S3 there is more good for B and less good for A. It therefore seems indeterminate which of S2 and S3 is better according to Flage's understanding of natural law. Moreover, this reasoning generalizes, so that it becomes indeterminate whether S2 is better than S4, where S4 involves A having 1000 units of good and B having 49 units of good. And yet surely, on any reasonable construal of the theory, natural law prefers S4 to S2.¹¹

¹¹ Flage (2014, 151-152) argues that utilitarianism might approve of a caste system if the implementation of such a system maximized the total amount of happiness. In this sense, he claims, "on the utilitarian account, the social arrangement, if it actually yields the greatest utility, carries moral weight"; by contrast, however, "to the natural lawyer, society might evolve in any number of ways, the exact social structure that evolves is morally neutral" (152). This may be correct, as a matter of differentiating utilitarianism from natural law theory. But it doesn't help us to

Admittedly, Berkeley himself doesn't consider the sorts of complex circumstances that later become the stuff of controversy over how best to measure or define the sum of the well-being of humankind. In this sense, one might wish for greater detail or completeness in his exposition of the end toward which all human actions should be directed. But, upon reflection, any version of natural law theory one might reasonably ascribe to him either collapses into some version of utilitarianism or is radically indeterminate or incomplete. Under the circumstances, the case for reconstructing Berkeley's ethical system as encapsulating an act-utilitarian standard of moral conduct is stronger than the case for the alternative.

3. Passive vs. Conditional Obedience

As we have already noted, the political theories of Locke and Berkeley have much in common. They both begin with (proof of) the proposition that God exists and created everything in the universe, that we are beholden to God as his creatures (though here Locke focuses on the fact that we are God's property, while Berkeley arguably focuses on the fact that we owe God a debt of gratitude), and consequently that it is our duty to pursue what we infer to be his purpose in creating the world he did. Thereafter, however, Locke's reasoning and Berkeley's reasoning diverge, and, interestingly, lead them to diametrically opposed conclusions: whereas Berkeley argues that citizens or subjects are always morally required not to resist the sovereign, Locke argues that there

determine whether *Berkeley* is a devotee of the one or of the other. Moreover, there is some evidence that Berkeley cares deeply, for moral reasons, about structural problems in society, inasmuch as he opines in such works as *An Essay Towards Preventing the Ruin of Great Britain* (1721) about systems of government and public policies designed to promote wealth and public safety (e.g., W6: 70-71), including the relative advantages of a monarchy over a republic (W6: 75).

are circumstances in which the citizens of a society are morally permitted to engage in active rebellion against the supreme civil power. How do two philosophers who share so many fundamental premises and who adopt similar reasoning to the conclusion that it is our moral duty to observe the laws of nature come to such radically opposed conclusions? And which, if either, has the better of the argument?

One might expect Berkeley to have the upper hand in the debate with Locke, given that he was familiar with Locke's work whereas Locke died before he could offer any kind of a response to Berkeley's. However, as I will now argue, Berkeley's main criticism of Locke's position rests on a significant misunderstanding. Once the misunderstanding is removed, it should become clear that Locke's theory remains standing as a cogent alternative to Berkeley's defense of loyalty.

Having established that there are laws of nature binding on all human beings, Locke argues that they are all grounded in the fundamental rule enjoining the preservation of humanity (as far as possible). This rule requires that we harm neither ourselves nor others, and that we treat those who observe the fundamental law of nature with beneficence. In the state of nature, antecedent to society and government, the duty we have to preserve humanity entails a right to prevent others from harming human beings, including a right of self-defense and a right to punish those who transgress the laws of nature. But the state of nature is subject to several inconveniences, among them the fact that human beings are prone to excessive self-love, bias and self-deception in their own interest, negligence when it comes to pursuing the good of others, and overinflated passions (such as ill-nature and revenge). To remove or severely mitigate these inconveniences, humans can agree to come together to form a society, which is a collective scheme designed to protect the natural rights of its members. This agreement takes the form of a (legitimate) contract, inasmuch as each new member freely gives up her right to enforce the laws of nature in exchange for which

she receives protection from the sovereign. The touchstone of the sovereign's political legitimacy, then, is the consent of the governed.

This is a powerful idea, but Berkeley attempts to make short work of it. He understands Locke's argument to be that a society comes into existence once "subjects have contracted with their respective sovereigns or legislators to pay, not an absolute, but conditional and limited, submission to their laws, that is, upon condition, and so far forth, as the observation of them shall contribute to the public good, reserving still to themselves a right of superintending the laws, and judging whether they are fitted to promote the public good or no; and (in case they or any of them think it needful) of resisting the higher powers, and changing the whole frame of government by force" (PO 23, W6: 29). Earlier, however, at PO 9, Berkeley had already argued that permitting each individual to determine for herself whether following such-and-such a rule would lead to better consequences than refusing to follow it would, primarily because of widespread disagreement about the relevant facts, result in disharmony, indeed, in radical anarchy. On the basis of similar reasoning, Berkeley now claims that permitting each subject to judge for herself whether active resistance is called for will "loosen the bands of civil society, than which nothing can be of more mischievous consequence to mankind" (PO 24, W6: 30).

There are only two ways to prevent the social bands from being thus loosened. The first requires that the social contract be *express* (rather than *tacit*), and that it be "equally allowed and unquestioned by all as the common law of the land". The second requires, on the assumption that the social contract is *tacit*, that it be "necessarily implied in the very nature or notion of civil polity" (PO 23, W6: 30). But, argues Berkeley, not only have these propositions not been proved, it seems evident that they will never be proved. Berkeley concludes that the thesis of Lockean conditional obedience is both absurd and pernicious (PO 24, W6: 30).

The main problem with Berkeley's argument is that he has misunderstood the nature of the *terms* of the social contract as Locke conceives of it. Locke's social contract involves (i) my agreeing to transfer my right to enforce the laws of nature to the sovereign, and (ii) the sovereign agreeing to enforce those laws, thereby protecting all those who fall under the aegis of the state. The contract *does* generate a conditional obligation to obey the sovereign; but obedience is conditional not on *whether the sovereign's laws promote the public good*, but on *whether the sovereign enforces the laws of nature*. This is a subtle difference, but it has significant ramifications. If I am permitted to determine whether the sovereign's laws actually promote the good, and to resist the sovereign in case I judge that they don't, then, as Berkeley avers, all hell will surely break loose merely as a result of predictable disagreement. But if I am permitted to determine whether the sovereign has violated the most stringent rights of his subjects (e.g., by depriving them of their liberty without due process, torturing them as a means of social control, or executing them in the absence of a fair judicial proceeding to determine guilt or innocence), then it is far less likely that the polity will fall into chaos. Indeed, if history teaches us anything (and Berkeley was surely aware of the social consequences of dictatorship, whether in ancient Athens or Rome), it is that power has the tendency to corrupt those who wield it, that oppression is an effective tool of social control, and hence that citizens' reservation of the right to rebel when the sovereign has repeatedly and evidently violated their most stringent rights is the most effective bulwark against extreme tyranny. Given the wildly destructive religious conflicts that scarred generations of Europeans in the centuries preceding Berkeley's birth, it is understandable that he would be worried that a principle of conditional political obligation would be a recipe for rampant civil war. But the kind of conditionality belonging to Locke's proposal is far less likely to lead to anarchy than the version of conditionality Berkeley (reasonably) fears. And unconditional

obedience will in many circumstances lead to greater suffering and hardship than would massive coordinated resistance.

Berkeley, to his credit, is aware of these considerations, not in respect of their tendency to weaken his argument against Lockean social contract theory, but as “objections drawn from the pretended consequences of non-resistance” (PO 40, W6: 38). His responses, it must be admitted, leave something to be desired. First, he distinguishes between the necessary and accidental consequences of a moral law: the former have, while latter lack, an “intrinsic natural connexion with...its observation”. He then argues that any bad consequences that derive from the observation of loyalty are not necessary, but accidental, and hence do not “argue a defect of wisdom or goodness in God’s law” (PO 41, W6: 39). That, of course, is very well and good. But the decision procedure for procuring the general welfare that Berkeley has already endorsed is not sensitive to the distinction between necessary and accidental consequences: if one system of natural law, when implemented by real human beings, warts and all, leads to worse consequences overall than another, then we are entitled to infer that God does not mean us to follow the former.

Second, Berkeley argues that even if a system of natural law that includes loyalty conduces to great suffering *in this life*, “God...hath appointed a day of retribution in another life”, at which time he will punish the wicked and reward the innocent with eternal glory that will easily compensate for the “transient sufferings” on Earth (PO 42, W6: 39-40). But this makes it exceedingly difficult to understand why God would have set laws for his creation with the aim of promoting “the well-being of the sum of mankind” (PO 10, W6: 22), if the consequences of implementing those laws in this life were as horrific as Berkeley grants for the sake of argument.

So it must be granted that neither of Berkeley’s ways of parrying the main objection to the implementation of absolute loyalty succeeds. And his misunderstanding of the terms of Locke’s

social contract places his own argument for passive obedience at some significant theoretical disadvantage.

4. The Exceptions Swallow the Rule

Somewhat surprisingly for someone who claims to be implacably opposed, for weighty theoretical reasons, to any form of conditional political obligation, toward the end of *Passive Obedience* Berkeley accepts the existence of exceptions to the principle of loyalty (or, alternatively, accepts a redefinition of loyalty that permits certain forms of justified resistance to the exercise of supreme civil power). He begins by considering the following objection:

[I]n pursuance of [absolute non-resisting obedience to government], where no exceptions, no limitations, are to be allowed of, it should seem to follow men were bound to submit without making any opposition to usurpers, or even madmen, possessed of the supreme authority. Which is a notion...repugnant to common sense. (PO 52, W6: 44)

And his reply to the objection is that, in fact, “by virtue of the duty of non-resistance we are not obligated to submit the disposal of our lives and fortunes to the discretion either of madmen, or of all those who by craft or violence invade the supreme power; because the object of the submission enjoined subjects by the law of nature is, from the reason of the thing, manifestly limited so as to exclude both the one and the other” (PO 52, W6: 45).

So Berkeley thinks that when the supreme legislator loses his sanity, or when the existing monarch is assassinated and his or her crown and scepter taken by another, the injunction to

passively obey no longer applies. There is surely something to Berkeley's idea that this is in keeping with common sense. But what is the argument for making an exception to the rule of loyalty? Berkeley offers none, saying instead that he "shall not go about to prove [that madness and usurpation are sufficient to cancel the requirement of loyalty], because...nobody has denied it" (PO 52, W6: 45).

Unfortunately, it appears that Berkeley's previous arguments in defense of a duty of passive obedience commit him to denying precisely what he says nobody has denied. For, as we have seen, Berkeley could not be clearer that the duty is *unconditional*, and hence absolute. So even though it might seem commonsensical to *others* that we have no obligation to obey madmen or usurpers, Berkeley owes us reasons for why the absence of such an obligation is consistent with his case for passive obedience.

One of the things that Berkeley is *not* entitled to say in his defense is that subjects are permitted to resist the sovereign whenever it seems to them that doing so would conduce to the general welfare better than the alternatives. This is because he has already argued against this very principle (see PO 9-10, and section 2 above). But he might claim that rule by those who are insane will, more likely than not, lead to worse consequences than almost any other alternative. And he might say that usurpation, involving as it does the use of force or fraud, violates the laws of nature, and that subjects are morally permitted to resist those who become sovereigns by such means.

But if he argues in either one of these ways, then he risks jumping from the frying pan into the fire. For, first, although it is true that insanity conduces to decisions that do not procure the general well-being, how is the ordinary subject supposed to *determine* whether the sovereign is insane? Few insane sovereigns admit to being insane, or allow themselves to be publicly diagnosed as insane by medical professionals. So the ordinary subject will need to infer insanity from the

sovereign's decisions or other behavior. But subjects who do not like some or all of the sovereign's decisions will be tempted to infer insanity from the very existence of those decisions ("No one with an ounce of sense would have made *those* decisions!"), while those who like the same decisions will be inclined to infer that the sovereign is really quite sane. And so, for reasons similar to those canvassed by Berkeley at PO 9-10, epistemic differences among differently situated subjects regarding purported evidence of the sovereign's insanity will likely result in civil war or chaotic strife.

Second, if the problem with usurpers is that their legitimacy is undermined by the fact that they come to power by violating the laws of nature, then, by parity of reasoning, political illegitimacy attaches to any *existing* sovereign who violates the laws of nature. Berkeley, however, expressly denies (as part of his criticism of Lockean social contract theory) that an existing sovereign's violation of the laws of nature is sufficient to justify active resistance to exercise of his authority. So Berkeley finds himself caught in a dilemma: either resistance to usurpers is justified, in which case resistance to tyrants is also justified, or resistance to tyrants is unjustified, in which case resistance to usurpers is also unjustified. He simply cannot eat his cake and have it too.

Interestingly, Berkeley also notes that it is up to each individual subject whom to obey when "controversies...arise concerning the seat of the supreme power" (PO 54, W6: 45). This makes sense under the supposition that "there must be a civil government, and you must know in whose hands it is lodged, before the moral precept [of passive obedience] takes place" (PO 53, W6: 45). However, the thesis that absolute loyalty is not required when the supreme power has not been clearly ascertained, when combined with the thesis that subjects are not obligated to obey usurpers, leads to counterintuitive results. Imagine that a widely respected and well-loved monarch

is deposed and imprisoned by her (usurping) brother, leading to a period of instability during which supporters of the monarch and supporters of her brother engage in protracted conflict to determine who shall lay claim to the throne. On the one hand, Berkeley's principles suggest that subjects are morally required to obey the monarch rather than the putative usurper. After all, the monarch remains the rightful sovereign, while the putative usurper is not. On the other hand, Berkeley's principles also suggest that subjects are free to obey whom they wish when the seat of supreme power is a matter of controversy. These consequences are not mutually consistent.

On the whole, then, the exceptions Berkeley carves into the principle of passive obedience threaten to swallow the rule: in order to maintain consistency, Berkeley must defend an exceptionless duty of passive obedience. The problem with this position, of course, is that it is, as Berkeley himself recognizes, antithetical to common sense.

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