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### **When Jobs Require Unjust Acts: Resolving the Conflict between Role Obligations and Common Morality**

Each day people go off to work as doctors, lawyers, professors, and government employees. Most of these jobs or roles are created by an institution that divides and organizes labor so that the purpose of the institution can be achieved effectively. The criminal lawyer belongs to the institution of a justice system that outlines the obligations and limits of the role she must fulfill.<sup>1</sup> In other occupations, medical doctors, journalists, and police officers have duties and limits prescribed by the institutions that sanction their roles. But what should the role-holder do when her role obligations conflict with a principle of universal or common morality?<sup>2</sup>

For example, a lawyer traditionally has a role obligation to provide a vigorous defense of those accused of crimes in order to protect their rights to a fair trial. But what if this obligation requires her to free a murderer on a technicality when doing so is contrary to common moral principles about justice? Another conflict between role obligations and common morality occurs when role-holders must act for the purpose of public safety. For example, the New York City police department set up an Intelligence Squad before the 2004 Republican National Convention in New York City. The squad gathered intelligence about various groups in an effort to find and stop any troublemakers who would cause significant city disruptions like the violent protests in Seattle during the 1999 World Trade Organization meeting. Now the New York Times and the

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<sup>1</sup> In this paper I use the terms “duties” and “obligations” interchangeably. Both mean, at least as I am using them, that one is morally required to do something or it is wrong to leave it undone.

<sup>2</sup> In this paper I use the term “common morality” narrowly to mean the moral rules and principles that human beings generally apply to all human conduct, regardless of one’s role or position. For example, according to common morality, murdering an innocent person is wrong regardless of one’s role. I discuss common morality in detail in section 1.

New York Civil Liberties Union are trying to “determine if any laws were broken or civil liberties trampled” while the squad gathered information. Some citizens argue that common moral principles of freedom of association and speech make unwarranted intelligence gathering immoral. The agents who carried out the operation, however, can claim that the purpose of securing the city and preventing violence justifies their efforts, even if they may have broken some principles of common morality.<sup>3</sup>

In each of these scenarios a role-holder faces a conflict. They all work for an institution whose purpose is to protect something valuable to citizens, such as the fair trials or public safety. As agents of these institutions, they can either perform their roles and act against common moral principles within limits established by the institution, or they can refuse to perform their roles out of respect for common moral principles. The purpose of this paper is to explore this conflict and present a way to solve it.

I present my argument in four sections. In section one I define the concepts surrounding roles and role obligations. In section two I argue that institutions can be morally justified and that these institutions can justify role obligations. In section 3, I take up the topic of the existence of conflict between role obligations and common morality. I consider the claims of EJT and IJT and determine that a conflict does exist and must be addressed. In section 4, I provide my solution to the conflict problem.

## **Section 1: Role Concepts**

In this section I describe how roles are created, define what they are, and explain how they are acquired, but first I define what I am calling “common morality.”

### *1.1 What Is Common Morality?*

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<sup>3</sup> “The Police and the Spy Unit,” *New York Times*, 27 March 2007, national ed., <http://www.nytimes.com>.

When I speak of common morality in this paper, I am referring to the moral rules and principles that human beings generally agree apply to all human conduct. It has two characteristics. First, common morality articulates *moral principles* or rules that are commonly used to judge actions as being right or wrong. Because I am specifically focusing on the interaction between social institutions and citizens, the closest approximation of a theory that defines common morality would be a theory of basic moral rights. These may include principles that protect the basic moral rights of bodily integrity, free speech, freedom of conscience, and justice or fair treatment.

Common morality also justifies purposes, institutions, roles, and actions. By justifying I mean that common morality provides reasons that support the pursuit of moral purposes such as justice and public safety. These reasons, which may include the welfare and fair treatment of citizens, give role-holders the justification they need to enforce institutional mandates on citizens. Using the example of justice presented above, if a society agrees that justice can only be secured through legal and judicial institutions, then the institutions and roles that pursue justice derive their justification from the common moral principle of justice.

Common morality, therefore, is a set of principles that generally determines what is right and wrong and also justifies the purposes, institutions, and roles that pursue those purposes on behalf of society and its members. It must be noted that common morality does not provide a decision procedure that clearly determines which action is right or wrong in every circumstance. As a set of principles, common morality only offers general guidance about the basic moral rights and their limits.

## *1.2 What Are Roles?*

Societies tend to agree that the purposes of justice, safety, and health are important and must be pursued by establishing institutions to fulfill these purposes. The institutions then create roles (e.g. police officer, judge, lawyer) to divide the labor needed to achieve the institutions' purposes. Certain role obligations are attached to each role based on the institution's purpose and the expectations of those who rely on the institution.

Philosopher David Luban defines "role" by considering the analysis of anthropologist Ralph Linton. Luban, paraphrasing Linton, states that a role "is a status in its dynamic aspect: when you put a status into effect, you perform a role . . . a status is 'simply a collection of rights and duties.'"<sup>4</sup> Expanding on Linton's definition, societies often accept that role-specific rights and duties are necessary for a specific institution to fulfill its purpose. For example, our society allows physicians to have certain rights and duties not available to non-physicians. The right to make medical decisions and dispense medicine and the duty to treat patients are unique to physicians and we acknowledge these rights and duties. If a physician cannot fulfill her role, then she loses those rights and duties.

Pulling from the descriptions above, I am going to use "role" to refer to an institutionally constructed status defined by a cluster of rights and obligations in order to further a purpose. I elaborate on the idea of purpose later in the paper, but I think this minimal definition provides enough structure to proceed.

### *1.3 How Are Roles and Role Obligations Acquired?*

Another important consideration is how roles are acquired. After reviewing the literature on roles, the most plausible account is one of *voluntary role acquisition* because it most accurately reflects how roles are acquired within social institutions. For the purposes of this

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<sup>4</sup> David Luban, *Lawyers and Justice: An Ethical Study*, (New Jersey: Princeton University Press, 1988), 105-106.

paper, a person can acquire a role in an institution by either promising or explicitly agreeing to perform the role obligations.

Another question arises. Can a person acquire a role with role obligations if she accepts the *benefits* of a cooperative scheme? As a citizen, a person does have a role, but most of her role obligations are not explicitly defined by any institution but rather by common morality itself. A citizen must perform her general role obligations of respecting the rights of others and supporting the institutions that pursue these rights, especially as the institutions benefit her.<sup>5</sup> The general obligations of being a citizen can include subordinating some of one's rights to institutions as they pursue the purposes of justice and public safety. To reject reasonable claims by these institutions is against common moral principles of fairness to other citizens.

## **Section 2: Can Institutions Justify Role Obligations?**

In this section I present arguments for how institutions are justified and then layout the arguments for how roles are justified.

Many philosophers agree that common morality justifies institutions when it supports the purposes and the goods they provide. Simmons argues that we can justify institutions, such as states, by “demonstrating that their existence is a good thing, that we have good reason to create or refrain from destroying such things . . . that their benefits outweigh their costs, that they possess interesting virtues.”<sup>6</sup> In other writings he claims that the institution of the state is justified if certain goods it supplies (e.g. justice, rule of law) “make it a good thing to have such

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<sup>5</sup> The social institutions that I am focusing on in this paper are those institutions that are justified by common morality. Institutions such as slavery or racism are not justified by common morality and therefore have no claim on citizens, even if the citizens enjoy their benefits. As mentioned earlier, institutions such as businesses and universities are beyond the scope of this paper as I am arguing as a test case that at least some social institutions can justifiably act against common morality.

<sup>6</sup> A. John Simmons, *Is There a Duty to Obey the Law*. Co-authored with Christopher Heath Wellman. (New York: Cambridge University Press, 2005), 148.

states in the world.”<sup>7</sup> Institutions with purposes or effects contrary to common morality would not be justified.

Stocker argues that institutions are important in determining *what* is morally required for a community because institutions establish “patterns of actions” that people rely on for interacting with others. In this way, “institutions are able to convert their institutional obligations into moral obligations—by providing specifications of the moral duty of [for example] not acting unjustly.”<sup>8</sup> Stocker believes that institutions are justified if they are a *means* to achieving such common moral ends as justice, fairness, not harming others, and not limiting the freedom of others. They do not, however, pass on their moral justification to the role obligations created by the institutions. A police officer enforcing a specific traffic law is not justified because of the justified institution of the law, but rather because he is enforcing a specific law that is a means to goods that society needs. The grounding, explaining, and creating of a moral obligation comes from the end as defined by common morality, not by the means to achieve that end (i.e. the institution).<sup>9</sup>

They hold what I call the *External Justification Thesis* (EJT) which is the position that the role-holders’ actions in the examples above are justified if and only if those actions are externally justified by principles of common morality. On this view, no institution, not even the legal system or a public safety department, can independently justify a role-holder’s actions.<sup>10</sup> The only justification for a person’s actions is common morality. No conflict exists in the scenarios because the role-holders should do what common morality tells them to do.

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<sup>7</sup> John A. Simmons, “Justification and Legitimacy,” *Ethics*, Vol. 109, No. 4. (July 1999): 742.

<sup>8</sup> Michael Stocker, “Moral Duties, Institutions, Natural Facts,” *The Monist*, Vol. 54, No.4 (Oct. 1970): 612.

<sup>9</sup> *Ibid.*, 613.

<sup>10</sup> For the purposes of this paper I am going to focus on socially constructed institutions that are intuitively easy to justify such as legal systems and public safety institutions. If I successfully argue that these institutions can justify their roles, then a further project would be to investigate if private business, religious institutions, and educational institutions can similarly justify roles.

Luban argues that role obligations are justified within a scheme that includes a *strongly* justified institution (i.e. one that constitutes a moral good). Role obligations can conflict with common morality because they are justified within a scheme that includes the institution. Luban presents a *Fourfold Root of Sufficient Reasoning* to explain how justification works in an institution. There are four linked levels: 1) institutions are linked to 2) roles, roles to 3) role obligations, and role obligations to 4) role acts.<sup>11</sup> The justification of each link can be either strengthened by showing that the role is critical to the institution's purpose or undermined by showing that it is not critical to the institution's purpose.

Luban support the *Institutional Justification Thesis* (IJT). IJT is the position that if role holders' act according to their role obligations, then they are justified as long as common morality justifies the institutional *purpose* for which the role was created. Within limits, the justified ends actually justify the means. The lawyer's role obligations derive their justification from the justified purpose of the legal system and not directly from common morality. Likewise, the intelligence agents are justified in doing their duties within limits because the public safety institution they work for is pursuing a justified purpose. The IJT allows there to be a conflict between common morality and role obligations, and this conflict must be resolved.

Daniel Wueste argues that the connection between common morality and role obligations is the institution's justified purpose. Wueste claims that common morality *empowers* an institution by justifying its purpose while also constraining the actions that role-holders in the institution can take. An empowered institution has the *capacity* to justify role obligations and also constrain them. Wueste states, "The purpose itself establishes some boundaries: a connection between the act as means and the purpose as end is a necessary condition of legitimation. More important, non-fanatical commitment to a purpose involves accepting criteria

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<sup>11</sup> Ibid., *Lawyers*, 131-133.

of appropriateness in the selection of means.”<sup>12</sup> For example, a lawyer may vigorously defend a guilty person, but if she uses methods such as witness tampering that go beyond the justified purpose of the legal profession, she is acting inappropriately according to the constraints of the institution’s justification.

Once an institution and its role obligations are justified, however, this justification must be maintained through time. Wueste states, “The justificatory capacity of institutional role *moralities* [obligations] is not established once and for all by a showing that the institution is (or produces) a positive moral good; it is something that, once established, must be maintained by human effort.”<sup>13</sup> “Human effort” means that the supporters (those who receive benefits from the institution) and subjects (those who may be targets of the institution) of the institution continuously maintain the integrity of the institution’s purpose by supporting it, submitting to it, taking benefits from it, and not trying to destroy it. Wueste’s model of justification accounts for the justification of institutions by common morality while not requiring common morality to directly justify role obligations.

At this point I want to layout the key claims of the different perspectives on justification and role obligations. On the EJT side of the debate are Simmons and Stocker who argue that institutions play no part in justifying role obligations. An institution, as a means, is justified if it fulfills its morally justified purpose of supplying some moral good. Similarly, role obligations, as means, are justified in so far as they aim at morally good ends. Role obligations are not justified by the institution’s purpose because both institutions and role obligations are externally justified by their ends.<sup>14</sup>

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<sup>12</sup> Ibid., 112.

<sup>13</sup> Ibid., 110.

<sup>14</sup> It is beyond the scope of this paper to discuss Simmons’ arguments about the difference between justification and legitimacy, specifically because he is addressing state control of a person while I am addressing

On the IJT side of the debate are Luban and Wueste who argue that institutions can justify role obligations. According to Wueste, an institution is justified if common morality justifies its purpose. Common morality empowers the justified institution to pursue its purpose and also gives it the capacity to justify role obligations within constraints set by common morality. To remain a justified institution, continual human effort is required to maintain the integrity of the institution's purpose. Because of the institutional justification of role obligations, conflicts with common morality can occur in which the justification of the role obligation may trump the requirements of common morality.

Given these arguments for IJT, I believe there are three necessary conditions for an institution to justify role obligations. 1) The institution's purpose must be justified by common morality; 2) To be a justified role obligation, it must be necessary for achieving the institution's purpose; 3) The supporters and subjects of the institution must continually expend effort to maintain the institution's integrity as it pursues its purpose. These three conditions will figure prominently in the next section where I argue that the IJT description of institutional justification is the most accurate account of the conflict between role obligations and common morality.

### **Section 3: Two Reasons that Support Institutional Justification**

Against the EJT, I have two reasons for believing that the IJT is a more accurate account of how role obligations are justified.

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specific social institutions. I mention his arguments briefly to fill in his picture of justification. In his discussion of states and a duty to obey them, Simmons argues that being a justified institution does not mean that it may permissibly harm others or demand their obedience. A state must also be legitimate, or have an appropriate history and relations with its subjects. He states, "We can justify arrangements simply by demonstrating that their existence is a good thing, that we have good reason to create or refrain from destroying such things . . . By contrast, legitimating an arrangement that involves some claiming the authority to control others involves showing that a special relationship of a morally weighty kind exists between those persons, such that those particular persons should have authority and those particular others should have a duty to respect that authority. This kind of legitimation simply cannot be demonstrated by merely pointing to the justifying virtues of an arrangement; a different kind of argument is required (*Is There a Duty*, 148).

*Reason 1. Institutions create role obligations as a means to achieve the justified purpose, or “The justified ends justify the means.”* A reason to believe that the justified institutional purpose justifies role obligations is because the institution itself creates the role obligations required to further its purpose and for no other reason. By “required” I mean those role obligations that directly connect to or are the means by which the justified purpose of the institution is achieved. The legal system, for example, does not create the role obligation of lawyers zealously defending clients for a direct moral reason; it does it to fulfill its purposes of protecting the right to justice. The role obligation cannot exist outside of the institution that created it, and neither can its justification.

Stocker would respond that institutions only create *specifications* for what moral obligations are to be carried out, but these specifications do not ground role obligations. Justification must be prior to and external to the institution.<sup>15</sup> I agree that an institution creates specific role obligations to fulfill its purpose and that these role obligations do not justify themselves. However, an external justification is not required for these role obligations because the justified institution creates and justifies these obligations as a means to achieving that purpose. Any additional justification is unnecessary.

Simmons would disagree with my account and gives scenarios that show how justified institutions and justified actions can be separated. He argues that the unjustified government of the Third Reich “was justified in prohibiting rape and punishing rapists, however . . . unjustified was its existence . . . It is important to see that justification for particular actions are not in any simple way related to or derivable from justifications for existing or from possession of the right to be the one who acts or enacts policies.”<sup>16</sup>

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<sup>15</sup> Ibid., 612.

<sup>16</sup> Ibid., “Justification”, 770.

Simmons intends these scenarios to show that an unjustified institution could still carry out justified actions and that justified actions can exist outside of an institution, but these scenarios do not prove that justified institutions cannot and do not justify role obligations. To understand the limits of his objection, we need to first consider the connection between an unjustified institution and justified actions, and then justified actions apart from institutions. The key to understanding both of these scenarios is that Simmons is talking about justified *actions* in a lawless context and not justified roles and role obligations in a lawful context.

In his first scenario, Simmons presents an unjustified institution (i.e. the Third Reich) prohibiting and punishing rape to show that unjustified institutions can still carry out justified actions. However, the argument that the government is unjustified is not completely accurate. While the Third Reich may have been a wicked organization overall, if one of the institutions within it existed for the purpose of prohibiting and punishing rape, then that institution was justified at least in this narrow domain and could then justify roles, role obligations, and actions to prohibit and punish rape. But what if no justified institution existed, which would be strange to imagine if rape prosecutions were going forward? Given Simmons' scenario, anyone in a lawless situation would be justified in performing the actions of prohibiting and even prosecuting rape. Just as I do not need a justified role to perform the justified actions of saving a drowning child or stopping a mugger when no one else is around, anyone in a similar situation is justified by common morality in prohibiting and possibly even prosecuting rape. Common morality still justifies any non-role-holder acting to protect the basic moral rights of others whether or not a justified institution exists.

The second scenario involving a person justifiably prohibiting rape without any justifying institution is also explained by common morality's presence at all times and how it can justify

anyone stopping inappropriate actions. Actions such as stopping rape, saving a child, or stopping a mugger are always justified without an institutional justification. But after the rape is stopped, is the hero justified in locking the rapist in his basement, trying him for rape, and possibly carrying out his execution, especially if the hero lives in a world with justified institutions? The answer is “no” because only the legal system is justified in incarcerating, trying, and punishing the rapist because society has turned that *justified* authority over to the legal institution. Simmons is missing the point that anyone is justified in acting to stop suffering, but in a society with justified institutions, citizens are not justified in carrying out the role obligations that society has reserved for those in justified institutions.

*Reason 2. Actual role obligations are justified by institutions:* The second reason for accepting an institutional justification account is that it describes how role obligations are *actually* justified in our society. I mentioned above (Reason 1) that the popular commitment to an institution’s justified purpose best explains how it has the capacity to justify role obligations. One way people express their commitment to the institution’s purpose is by taking the role obligations seriously and this means acting in ways that demonstrate this commitment.

For example, if a person goes to a lawyer to defend him against the state, he has certain expectations of the lawyer based on the role obligations established by the legal system. The defendant would not go to the lawyer unless actual role obligations such as expectations of confidentiality, integrity, and a vigorous defense existed. Wueste states, “For a client or a patient as well as the professional, then, role obligations are basic. They are, as it were, presupposed on both sides of the relationship.”<sup>17</sup> For impersonal relationships involving justified institutions, we rely on the institution’s purpose to justify the role obligations.

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<sup>17</sup> Ibid., 115.

The EJT theorist may stop me at this point and admit that my three reasons for why institutions justify role obligations are convincing when one considers practical facts about how institutions, role-holders, and citizens interact. The glaring issue I do not address is that when it comes to the role-holder acting like the person in the Simmons scenarios, no conflict exists between role morality and common morality. At the point of action, the role-holder is only justified if his action matches the demands of common morality. The EJT theorist can replace all this role morality talk with some moral theory and get the same action guidance in any scenario presented. For example, attorney-client privilege is a justified standard because it maximizes justice in society, not because the institution of a legal system justifies it.

As a reminder, I have not claimed that common morality is a decision procedure for determining what specific action is right or wrong, but rather it provides general guidelines about what is right and wrong. However, if common morality is the sole justifier and determiner of actions apart from role morality, then some form of common morality must be used to make decisions.

Here is what applying common morality could look like. In the case of the lawyer withholding information, common morality may guide her to act to maximize justice regardless of her role and in one case she withholds information and in another she doesn't. Common morality may guide the intelligence agent to never use a person as a means to an end, and so he should not eavesdrop. The journalist can justify withholding a source's name because she made a promise not to tell his name.

My response to the EJT objection is that common morality cannot provide a reliable and clear process for deciding how to make a justified decision in cases involving roles and institutions. The result is moral chaos. In the examples above I have used three different moral

theories (a maximizing consequentialism, respect for humans, and an obligation of promising) to justify the actions of the role holders, but which of these moral theories should be chosen to justify an action, especially within an institution? In the lawyer case, she decides to maximize justice but what does this mean? Will she reveal the information and destroy attorney-client privilege or will she withhold the information to maximize justice by supporting the attorney-client privilege? If she only refers to common morality rather than the institution and her role obligations, then her decision depends on her understanding of common morality, and this may change from day to day and from lawyer to lawyer. In all of the cases relying only on an individual's interpretation of common morality exacts a huge cost on society by undermining the stability, predictability, and effectiveness of our most critical institutions. Common morality itself may judge that undermining the purposes of justice and public safety through moral anarchy harms society and should be stopped.

An EJT theorist can respond that each institution can come up with justified rules that tell the role-holder how to respond in specific situations and that these rules will provide moral stability to institutions. In the lawyer case, attorney-client privilege can be kept because it maximizes justice for the society, and the intelligence agent can be guided by a rule that states the conditions for when he can and cannot eavesdrop on people. The problem with this response is that rules cannot cover all situations and that either exceptions will need to be made and codified or no exceptions will be made and the rule will at times contradict common morality. If exceptions are allowed, then the exception must also be justified as a rule. The result will be an ineffective system of multiple rules that will undermine efforts to fulfill the institution's justified purpose. If exceptions are not allowed, then the justified rule may contradict common morality. Maybe a case arises where the lawyer must reveal client information to the police to save

someone's life. If the rule of attorney-client privilege doesn't allow exceptions or the lawyer's discretion, then the information cannot be passed along. The imposition of justified rules may solve the stability problem for the short-term, but will eventually run into different problems.

Considering the problems with EJT and our reliance on social institutions, here are two reasons why some type of role morality is necessary: First, role morality gives role-holders the permission to break common moral principles within certain limits to pursue institutional purposes. At times this allowance of permissibility is critical to achieve the purposes of justice and public safety. When role morality justifies the role obligation to lie if necessary when pursuing public safety goals, common morality is violated but in a limited way that appreciates the discretion of the role-holder and the privacy of innocent individuals. Role morality and not common morality can give these limited permissions because a justified role gives role-holders the freedom to assess situations and wisely choose the best path.

Second, role morality provides the social good of consistency and reliability to role-holders and those who rely on institutions. Particularly in the domains of justice and public safety, citizens need consistency and reliability in order to live their lives in relative peace. As mentioned before, common morality can and must be used to check and evaluate institutions and role holders, but this checking is not for fulfilling the institution's purpose, but rather for ensuring that the justified purpose is also providing necessary constraints on appropriate action.

I conclude that institutional justification is a more accurate account of how role obligations are justified. Conflicts occur between common morality and role obligations, and in the last section I present a solution for resolving these conflicts.

#### **Section 4: The Limits of Institutional Justification**

In the previous sections I have argued that genuine conflict can arise between justified role obligations and common morality. Wueste and Luban agree that a conflict can occur between these two. Wueste does not offer a solution but rather explains how one can be pursued, while Luban offers a complex solution. In this section I offer a solution to the conflict from the role-holder's perspective.

My solution to the role obligation/common morality conflict is that the point at which a role holder is no longer justified in carrying out her role obligation is that at which the subject of the action will have her basic moral rights violated *beyond the limit* that an impartial subject would allow for a *morally justified* institution to fulfill its purpose. I break this solution down into three questions that anyone can answer about their role obligations, since this is the perspective that must solve the conflict. I explicate each question and its key terms below.

Q1: Is the institution's purpose strongly justified? (If "Yes", go to Q2. If "No", follow dictates of common morality.)<sup>18</sup>

Q2: Is the role obligation *necessary* to achieve the justified purpose? (If "Yes", go to Q3. If "No", follow dictates of common morality.)

Q3: Given the actual situation and the proposed action, would an *impartial subject* of the action agree that the role obligation should surrender to [i.e. give in to] the demands of common morality? (If "Yes", follow dictates of common morality. If "No", act on the role obligation.)

Regarding Q1, I argued above that a strongly justified purpose has justificatory power and that this is generally accepted. Stocker acknowledges that an institution, as a means, is

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<sup>18</sup> I am using "strongly justified" as presented above by Luban and Wueste. To be strongly justified means that the purpose is morally good for its supporters and subjects. A weakly justified purpose may only be justified for pragmatic reasons such as that no better purpose is available.

justified by its ends. Wueste argues that when common morality justifies an institution's purpose, the institution has the capacity to justify role obligations and that "a connection between the act as means and the purpose as end is a necessary condition of legitimation."<sup>19</sup> And Luban, in considering the institution of political action, states that, "The more just the cause, the stronger the institutional excuse it underwrites. This is not to say that good ends justify any means whatever, but it is to say that better ends will justify more drastic means."<sup>20</sup> Luban is not abandoning his Fourfold Root process, but he is saying that it excuses "departures from common morality only in proportion to the goods these departures promote."<sup>21</sup>

Q1 needs two important clarifications. The first is that the institution's purpose should be described in a way that captures the common moral reasons why its supporters and subjects want the institution to exist. The purpose of the legal system, for example, could be described as "pursuing and securing justice for all people." I am not assuming full consent and agreement on the exact purpose, but only that those who live with the institution would support its purpose because of its agreement with common morality. I am also talking about its purpose as demonstrated by its actual practices, not some bogus purpose that is not exhibited by its practices or some ancillary purpose that can be condemned apart from its justified purpose, as in the Third Reich example.

A second clarification is that the supporters and subjects, or what I have been calling citizens, of the institution play a critical part in continually affirming its justification. If the institution strays from its original justified purpose, then supporters and subjects can withdraw their support and destroy the institution, or at least leave it without justification. Or, if an

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<sup>19</sup> Ibid., 112.

<sup>20</sup> Ibid., *Lawyers*, 323.

<sup>21</sup> Ibid., *Lawyers*, 323.

unjustified institution adopts a justified purpose or starts living up to its justified purpose, then supporters and subjects can affirm its justification and its power to justify role obligations.

The supporters and subjects that I am considering are those who want or receive the goods that the institution produces or pursues, whether justice, safety, fairness, or health services. The supporters and subjects are not subordinate to the role-holders in general, but rather are equal to the role-holders and may be role-holders themselves in other institutions. Subjects and supporters are free to support and withdraw their support for institutions without coercion and to argue against role obligations when they feel they are unjustified. Moral conflicts come when the role obligation requires it to violate the basic rights of the subjects, who can legitimately argue against the role obligation from the perspective of common morality.

Q2 is a straightforward confirmation that the role obligation is *necessary* to achieve the justified purpose of the institution. I have argued above about how the institution's purpose justifies the role obligations within it. Q2 makes sure that the role obligation is necessary and not only ancillary to the institution's purpose. The further the role obligation is from the institution's purpose, the less strongly it is justified. For example, a government agency with the purpose of "protecting citizens from terrorist attacks" may justify an agent's role obligation of electronically eavesdropping on a person with known terrorist contacts, but not justify the agent eavesdropping on his own landlord. Q2 clarifies the role obligation's justification by evaluating its connection to the institution's purpose.

Q3 is the question that the role-holder must answer as objectively as possible before acting. First, she must consider situational factors that may require special changes to the role obligation so that it stays in line with the institution's purpose. If eavesdropping on a suspected terrorist requires harming a family in a neighboring apartment to get them to move, the method

for gaining access to the terrorist will need to be changed because the institution's purpose would not justify coercing innocent people. Instead, remote electronic surveillance would fulfill the role obligation without violating the institution's purpose of protecting city residents.

Next, the role-holder must consider the *impartial* subject's point of view about the action. In other words, if I would believe it is justified for an intelligence agent to eavesdrop on another citizen suspected of terrorism, then as an *impartial subject* I would agree that the intelligence agent is justified in eavesdropping on me if I am suspected of terrorism. The positing of an impartial subject is necessary for this question because many subjects would agree that a suspected person's basic moral rights can be violated to further the purposes of the public safety institution, *as long as it doesn't apply to them*. But this is a partial view point that does not capture the general agreement among supporters and subjects about the institution's purpose.

The role-holder must seriously consider what an impartial subject would think about the action. This question also requires the role-holder to back away from her emotional commitment to the role obligation enough to judge what action is appropriate. If the role-holder determines that an impartial subject would agree to the action given the institution's purpose, then she is justified in acting against common morality. If the impartial subject would not agree to the action given the institution's purpose, then the role-holder should surrender to the dictates of common morality.

By using the three questions above, a person who is a role-holder can make a decision in favor of role obligations in the face of common morality or be justified in rejecting her role obligation when one of the three questions lead her to do so.

**Conclusion:**

Institutions are justified when their purpose is approved by common morality and that justification is maintained by human commitment to the institution and its purpose. A justified institution has the capacity to justify *required* role obligations in order to achieve its purpose. Role obligations do not need to be directly justified by common morality, but rather may conflict with common morality when the institution's purpose requires it. By answering the three questions listed above, a role-holder can confidently act on her role obligations, even when they conflict with common morality. The progress of society and its morally justified purposes requires that role holders reflect on the three questions and be willing to resist common morality when justified by the institution's purpose and to surrender their role obligations when appropriate.

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