

Against Treason

An Argument from Political Obligation

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Abstract

This paper identifies the distinct moral wrong of treason in an undermining of the ability of the traitor and their co-nationals to fulfil political obligations. There has been increasing scepticism in some jurisdictions about the morality, relevance, and contemporary meaning of treason legislation. Relatedly, there is scepticism about treason as a distinct moral wrong. Objections to treason as a distinct wrong tend to appeal to, among other things, the idea that the wrong-making component is in fact found in the substantive acts that are treasonous, or the view that treason as a distinctive wrong reflects a conception of the relationship between the individual and the state that is no longer relevant. I defend treason as a distinctive wrong. Instead of relying on the intuitively attractive idea that treason involves a betrayal, I argue that, on some popular and attractive non-anarchist accounts of political obligation, treason is distinctively and seriously wrong because it undermines our ability to fulfil important political obligations. I draw out some implications of this view.

I - Introduction

Most treasonous activities,¹ such as spying on one's own country, sabotaging infrastructure, murdering or attempting to murder agents of the state or assassinating heads of state tend to be illegal in their own right anyway, even in cases when they are not treasonous. I cannot go around sabotaging things or killing people even if I am not doing so in order to give aid and comfort to the King's enemies. The same goes for the morality of such acts; these actions are clearly wrong, and it seems far from obvious that my act is more blameworthy if I kill the heir to the throne or a soldier than if I kill a passer-by.

These considerations motivate much recent scepticism about treason legislation. In the UK no one has been convicted of treason since 1945,² and although various kinds of treason remain criminal there are rarely calls to prosecute anyone for treason even when they have committed acts that may appear potentially treasonous³. This has motivated calls to reform or abolish the separate offence of treason entirely; in 2008, the Law Commission, an advisory body of the UK Government in England and Wales, described it as “an area of the law shaped by political and social conditions that have ceased to be of contemporary relevance.” (The Law Commission, 2008) The authors of a recent history of treason in England go even further: to them, “the traitor, like treason, is now a thing of the past”, and treason “a dead letter across the developed ‘free world’” (Boyer & Nicholls, 2024, pp. 273, 270).

I will argue that, in spite of this, those who hold some of the most popular non-anarchist views on political obligation ought, as a matter of consistency, also hold that treasonous acts⁴ are morally more blameworthy than the same acts done without treasonous intent. On most views of political

¹ Some acts that I have in mind in this paper may perhaps more properly be described as sedition, rather than treason. The difference, however, does not concern me much here; the reasons I will go on to suggest for why treason is wrong should apply to sedition too. I will define what I mean by treason shortly.

² There have been a handful of people found guilty of offenses under various Treason Acts since then (including one in 2023) but these have been for lesser offences, and only in cases involving attempts on the life of the Sovereign.

³ In recent years such arguments have tended to revolve around British nationals who fought for or otherwise supported ISIS. In some cases terrorism offenses have been pursued instead and the cases have also been complicated by the Government's reluctance to repatriate such people for trial in the UK.

⁴ This paper is only about the kind of treason one might commit towards one's state, sovereign, or fellow citizens qua citizens. If my friend decides to go see his partner rather than (as promised) joining me at the pub I may think him a traitor, but that is not the kind of treason that concerns me here.

obligation this only applies when the state meets some minimal requirements of justice. On all these accounts, a content-independent duty not to commit treason arises from the fact that we are all in some way better off, or in a better position to fulfil other important obligations, if we do not undermine the state by committing treason. I discuss non-voluntarist fair play views, natural duty views, and an associative view as these, to me, seem to be among the most plausible non-anarchist views and because they are well-represented among political and legal theorists. I am not suggesting that treason is wrong in the way that all lawbreaking is wrong on these accounts of political obligation – namely, because it involves breaking the law. Instead, I am suggesting that treason, on these accounts, is presumptively wrong in a further way: because it is aimed at undermining the state. This argument is applicable in any minimally just state, regardless of what kind of treason legislation that state may have now.

I will provide a provisional definition of treason here, because without knowing what a treasonous act is it will be difficult to see what, if anything, is wrong with it. Defining treason for this purpose, however, is difficult, as treason is a thick concept with both a descriptive and a negative normative part. The fact that treason has these negative connotations does not in itself mean that treason is morally wrong. It might be that “treasonous” works similarly to “lewd” – it clearly has negative connotations, but many people plausibly think there is nothing morally objectionable about the behaviour it describes (Väyrynen, 2021). On the other hand, it is also important to not merely define as treasonous those acts that the law in particular country deems treasonous. To provide a meaningful account of the wrong of treason, as opposed to the wrong of breaking the law, we must allow for the possibility that acts can be treasonous and therefore wrong while being legal. We must also allow for the converse possibility, that the law describes as treason some acts that are not wrong qua treason.

I will try, here, to isolate the descriptive part of treason. Dictionary and legal definitions of treason tend to include mention of betrayal.⁵ Betrayal, like treason, is another thick concept. I will go on to argue, however, that betrayal is not the wrong-making feature of treason, and that it is not obvious whether all treasonous acts involve any betrayal, at least in the sense of a breach of promise, at all. As such, I jettison betrayal from this descriptive definition. Provisionally then,

Treason (descriptive): to (attempt to) act in a way that injures, destroys or undermines one’s own state.⁶

I will seek to investigate when and why this kind of behaviour is distinctively wrong, and why. I will also consider, and dismiss, the idea that adding betrayal to this definition is what makes treason wrong.

I will begin by outlining some putative reasons to be sceptical of the distinctive wrong of treason. Inspired by public debates in the UK, these centre on the facts that most treasonous acts are wrong for other, unrelated reasons anyway, and on the claim that the relationship between the state and its citizens has changed, and that treason is therefore not intelligible as a separate wrong. Section III covers accounts of treason that, in some way, associate the distinctive wrong with betrayal. I argue that these accounts fall short. In section IV I introduce what I take to be some important mainstream views on political obligation, namely natural duty, fair play, and associative views, and what I take to be their consequences for an account of the wrongness of treason. I discuss how, on these accounts, treasonous acts must be wrong because they undermine the state, and how that makes treason qua treason a distinctive wrong. I then, in section V, discuss in more detail when an act that undermines the state is wrong qua treason – in particular, I focus on the

⁵ And dictionary and legal definitions - see, for example, the Oxford English Dictionary (2024).

⁶ A lot can and has been said about who this could apply to, and on what grounds I can or should call a state my own. I not say very much about this in this paper. I assume that someone who intentionally commits these acts towards what they see or (by some correct standard) should see as their own state will understand that they are committing treason in the purely descriptive sense. For their action to be wrong, they also need to have political obligations towards the state they are harming – as I discuss in section III, different accounts of political obligation provide different answers as to when such obligations exist.

role of the would-be traitor's intentions. The concluding section explores some implications of my argument.

II – Are there any traitors left?

Just before Christmas 2022 an amendment to a National Security Bill was introduced in the UK House of Lords. Lord Bethell thought that, while the bill proposed by the Conservative government was generally excellent, it failed to plug what he thought was a gap in UK legislation – treasonous acts done in peacetime. When someone hands sensitive information to a foreign power, for example, “the wrong being done [...] is typically worse than merely mishandling official information” and should be punished accordingly (*Hansard*, 21 December 2022 col 1144). In Lord Bethell's view it is a shame that, during the Cold War, “there were British nationals who betrayed our country by passing secrets to the Soviets; they certainly deserved to be punished as traitors but were not because the law of treason was in a poor state.” His amendment would have rectified this.

The Bethell amendment did not get far, however. Other peers opposed it because the conduct it was meant to address was already illegal anyway, because it might make terrorists seem more glamorous, and because they considered the amendment insufficiently clear. There are also deeper doubts about the whole idea of treason. Lord Falconer, the former Labour Lord Chancellor, no doubt echoed the thoughts of many when he questioned, in 2010, the contemporary relevance of treason in a liberal society in which we accept that many feel greater loyalty to their religion or to organisations like Greenpeace than they do towards the state they happen to have been born in (Bowlby, 2010). Others may find themselves (perhaps with good reason) of one mind with James Baldwin (2018), who writes of African Americans that “[t]he romance of treason never occurred to us for the brutally simple reason that you can't betray a country you don't have.”

There do, indeed, seem to be some putatively good reasons behind this treason scepticism. The first reason to doubt the distinctive wrong of treason can be seen clearly in cases such as the Cold War spying Lord Bethell took up as his example. Handing secret information to a foreign power is plausibly often wrong, and also, generally, illegal. On the moral level, it is at least an objectionable breach of promise – when I am entrusted with secret information I give an undertaking not to hand it over to foreign powers, an undertaking it is presumptively wrong to later go against. Other forms of potential treason may involve murder, sabotage, or terrorism, for example. These acts, too, are separately morally wrong and illegal.

Some arguments of this kind implicitly or explicitly rely on the idea that the distinct wrong, or feature, of treason must be some form of betrayal. I will return to this idea in a moment, but for now it is sufficient to highlight how well suited it is to these arguments. As Lord Anderson of Ipswich put it, a “child who kills his parents betrays the family bond, but parricide and matricide are simply types of murder.” (*Hansard*, 21 December 2022 col 1148) On this kind of view, betrayal may be an unfortunate fact of life and perhaps a moral wrong, but not something the state is properly concerned with and certainly not something on a par with murder or terrorism. To rescue treason as a distinct wrong we may need to separate it from betrayal.

Another argument is offered by the Law Commission (The Law Commission, 2008). The Commission concluded in 2008 that one main reason to abolish the offence of treason is that it is only relevant when someone is aiding the enemy. Given that countries like the UK, unlike in the Middle Ages, are now usually at peace, this legislation is no longer relevant.⁷ Those who wish to extend treason legislation to acts committed in peacetime are misidentifying the wrong committed. This, in my view, is an unduly narrow account of treason, but a more comprehensive one may be correspondingly more difficult to defend.

⁷ Terrorism legislation, it is argued, should be used instead when someone aids groups that may appear to be enemies, but with whom no state of war exists.

How might treason be rescued from these sceptics? There have been some, in my view, unconvincing attempts, particularly from the political right. On one such view, “[t]o abandon the idea of treason [...] is to take a step toward that post-national future where a country is merely an agglomeration of people who happen to pay the same taxes to the same public utilities.” (Zhu, 2023)⁸ For reasons that I do not need to go into here I do not find these kinds of arguments, appealing as they are to some kind of defined nation-state with special bonds between members, appealing. I will not, in this paper, make any claims of that sort. I will focus on the implications of a range of views on political obligation, some of which seem perfectly compatible with thinking that one’s country is not that much more than “an agglomeration of people who happen to pay the same taxes to the same public utilities”. I will argue that even people who think like this should care about treason.

III - Betrayal

There is also the probably quite widespread idea, mentioned earlier, that the distinctive wrong of treason is that it involves betrayal, and that betrayal of one’s country is a particularly serious form of betrayal. In the words of a British minister, “[t]reason acknowledges the duty that a citizen has not to betray their state.” (*Hansard*, 21 December 2022 col 1151) Lord Anderson, whom we came across above, compares treason to adultery in this respect. Adultery betrays the bond of marriage, he argues, and “[c]an it be said that the bond of citizenship is of a wholly different nature, such that to break it must attract the most severe consequences?” Identifying the serious wrong of treason in betrayal requires us to find a relevant difference between citizenship and marriage.

A similar worry is identified by Dennis J. Baker (2020). He presents a set of plausible cases in which it seems that, for example, stealing combined with trespass into a private dwelling is much more harmful to the victim than stealing combined with breach of trust. Treason (and the betrayal it is claimed to involve) tends to appear, like this, in conjunction with other putative wrongs. Trespass, as Baker points out, is wrong whether or not the would-be burglar finds something to steal. It is not clear that the same can be said of betrayal – and even if betrayal is wrong on its own, then that stand-alone wrong does not seem particularly serious. Accounts of the wrongfulness of treason that rely on betrayal must therefore explain why betrayal in the context of treason becomes particularly serious compared to betrayal in other contexts. This will depend on the provision of a convincing account of who or what it is that is betrayed.

One promising approach is found in a report by Policy Exchange, a right-wing think tank. The authors argue that “[b]etrayal is a breach of the duty each one of us owes to our compatriots, a breach which undermines the trust that we ought to be able to have in each other, trust which is the foundation of a decent social order.” (Ekins et al., 2018, p. 5) Here, the traitor breaches a *trust* that is at the foundation of our social order, and which they have a duty not to breach.

This approach suffers from one main problem – it is not clear that many societies are built on trust in this way. At least, there are many societies that manifestly are not, but it seems possible to be a traitor in these too – Cécile Fabre (2020, p. 439) cites the Soviet Union as a place with general distrust, but where those who handed secrets to the West nevertheless committed treason. This approach is more applicable in some cases of treason. Suppose Jill is in charge of a domestic security agency. Her compatriots know that this is her job, and they know that she has given an explicit undertaking to not, say, hand secrets to an enemy state. If she does so anyway, then she has plausibly undermined the trust her compatriots justifiably had in her and the important institution she is a part of. To Fabre,⁹ (2020, p. 440) this makes treason wrong in some cases – cases where parties have mutually understood expectations about each other’s behaviour. Most of

⁸ Although I partly disagree with its conclusions, I am indebted to this article by Zhu for bringing several of the cases and arguments discussed in this section to my attention.

⁹ As Fabre notes in her article, political and legal philosophers have been remarkably uninterested in the whole topic of treason. This is why, alas, I am unable to discuss the views of philosophers other than Fabre and, later, Ruairi Maguire here.

us, however, are not in Jill's position – our compatriots have few expectations about the way we will act. We need a way to explain the wrong of treason in such cases too.

Fabre (2020, p. 428) also argues, more broadly, that laws against treason, and indeed its wrongness, are rooted in “deep seated moral revulsion about acts which, in the political realm, are paradigmatic examples of breaches of loyalty.” The traitor, Fabre says, “breaches promises – implicit or explicit – he has made to remain loyal, and leads us to doubt in the trustworthiness and dependability of our fellow citizens and public officials.” As Fabre herself accepts, however, it is not always clear what these promises are. It also appears far from clear what right we, as fellow citizens, had to expect the traitor to remain loyal to us. These accounts rely too heavily on expectations that the co-nationals of traitors are unlikely to justifiably have. They work well when applied, for example, to officials who have signed the Official Secrets Act or made a similar undertaking, but an account of the wrongness of treason can and should be more comprehensive.

Thankfully, Fabre's final argument (2020, p. 441) for the wrongness of treason can capture a much broader range of cases. Traitors, according to this argument, wrongfully expose others to a risk of wrongful harm. A traitor might, for example, put at risk the lives of co-nationals in the armed or intelligence services, or the population more broadly. On its own, however, this fact is not enough to ground the distinctive wrong of treason. If someone puts at risk the population of a country other than their own they may act wrongly, but they cannot usually be called a traitor. Because of this, Fabre argues that this risk imposition only counts as wrongful treason when the traitor has a special relationship with those they harm. Specifically, the traitor undermines institutions thanks to which they can enjoy the benefits of social membership, and which their co-nationals benefit from too.

This is a promising argument, and as will become evident in the next section it has much in common with an argument that can be made by a proponent of fair play views of political obligation. It is worth noting, however, that the notion of betrayal seems to play no obvious part in it – treason, on this argument, is wrong because the traitor undermines these institutions, not because they betray any commitment to the contrary. This, however, is a merit and not a defect – it is what gives this argument wider applicability than the arguments from trust and mutually understood expectations, which have a more obvious connection to betrayal.

The argument from the risk of wrongful harm is still missing a piece, however. Treason is wrong because the traitor undermines institutions thanks to which they and their co-nationals enjoy the benefits of social membership, thereby exposing others to wrongful harm. This is not always wrong, however. Suppose Harry and Ben happen to be using the same path on their way to work every day. There is a second path, but it is much more dangerous. One day, Ben decides to destroy the less dangerous path. Harry is now forced to use the second, more dangerous path, and is therefore at risk of more harm. Let us now suppose that Ben could all along have used an alternative, third path, which is used by Flora. The only reason why he used the path that Harry also used is that he tossed a coin and it came up heads. This seems like a poor foundation to ground an obligation on Ben not to destroy the shared path, one that does not obtain in relation to the other path Ben could have used. Analogously, it is not clear why it is worse for the traitor to undermine institutions of their own country rather than some other one, merely because they happen to be using them. At least, we need some further explanation of why this is. In the next section I will explore such explanations.

Finally, Ruairi Maguire (2024) has recently argued that someone acts treasonously only if they (to simplify a little) either take part in significant efforts to subject their own people to violations of self-determination, or in significant efforts to undermine the basic rights of their own people. This argument has much in common with Fabre's argument from wrongful harm, except that it needlessly restricts the kinds of harm that counts. For instance, it does not seem to cover the case of a bloodless coup d'état that replaces one democratic system with another. Moreover, Maguire's account suffers from the same lack of an explanatory step that I identified in Fabre's: it does not

explain why mere membership grounds a duty not to harm other members of the polity in these ways.¹⁰

Fabre and Maguire both argue that a traitor must have bona fide “thick social membership” in the polity in order to be able to commit treason of any of the above kinds against it. This means that their rights must be enshrined in law, and in fact not routinely violated (Fabre, 2020, p. 435pp). An account based on betrayal must rely on this kind of normatively significant relationship between the traitor and those they betray. This has the upside of avoiding over-inclusiveness – Fabre can use it to explain why a tourist or a foreign spy embedded in an enemy country can not be a traitor. On the other hand, however, it can also allow traitors a convenient defence. What if, for example, a traitor never felt part of their country? The double-agent George Blake, who was a British citizen but had a peripatetic upbringing and moved to the UK when he was an adult, claimed not to feel British and used this fact in his defence. He argued that “[t]o betray, you first have to belong. I never belonged.” (Garcia, 2024) This may or may not be a convincing defence from someone who besides being a British citizen through his father also attended the University of Cambridge and served in MI6 long before he was converted to the communist cause. A defender of the betrayal-based account can of course argue that Blake did, in fact, belong in the relevant way. Removing the notion of betrayal from the normative account of treason, however, renders this defence unavailable tout court.

Youngjae Lee (2012)¹¹ rejects the view that betraying one’s country is wrong. He does so on cosmopolitan grounds. If national borders are morally insignificant, then how can it be wrong to fail to prioritise the interests of your compatriots, and how can the same action if done to your compatriots be morally worse than the same action done to a foreigner?¹² Instead, Lee argues that the wrong of treason lies in the way the traitor usurps foreign policy powers that rightly belong to the state. As Fabre (2020, p. 449) points out, however, this makes treason far too broad – it seems to encompass any action that goes against the foreign policy of one’s country.

IV – Treason and political obligation

There are reasons, then, to doubt the adequacy of arguments based on betrayal, and Lee’s alternative cannot provide the account we seek either. I will argue, however, that we still have reasons to consider treason a serious presumptive wrong. My arguments, here, do not apply to anarchists. I doubt there are any arguments that would convince a philosophical anarchist that treason is a serious wrong. Most people, however, are not anarchists. This is also true of many political philosophers who take an interest in political obligation. Many, if not most of them, are instead either supporters of some form of fair play theory or of a natural duty or associative account of political obligation.¹³ As such, I will here show why these views imply that treason is a serious and distinct presumptive wrong. I begin with non-voluntarist fair play views.

On non-voluntarist fair play views, those who participate in a mutually beneficial cooperative venture have an obligation to obey the rules that govern that venture.¹⁴ As part of this cooperative venture, presumptively good benefits are foisted upon us. These are benefits we can reasonably be expected to want regardless of our conception of the good. Governments provide goods like public safety and national defence, and these are goods we should want regardless of what we value more generally. Moreover, they are goods our fellow citizens, towards whom we have

¹⁰ A further issue is that, as Maguire makes clear, on his account treason is a wrong that *supervenes* on an existing wrong – that of causing certain kinds of harm to co-nationals. This might cast some doubt on whether treason really is a distinctive wrong, separately from that of causing serious and unjustified harm.

¹¹ Lee’s article is about the United States specifically, but the points I raise here, I think, apply more broadly.

¹² See the discussion of the particularity requirement in the next section for more on these questions.

¹³ I do not discuss consent theory here for want of space. I will note, however, that consent theorists may be more moved than I am by arguments based on betrayal.

¹⁴ I take no view here on which extant or past polities meet this standard of mutual benefit and cooperativeness, but I assume at least some do.

obligations, also need. Pacifists may also have to accept this – even if national defence, say, is only a discretionary good it may be necessary to have for other, presumptive, goods such as the rule of law or a healthcare system.

On these views, recipients of these goods have an obligation to bear a fair share of the burdens of the common venture that produces them. The most important way they can do so is to obey the law, because otherwise the polity could not be maintained at all. This obligation is owed to the other participants. Free riding is a breach of this kind of obligation even if it does not threaten the overall success or stability of the enterprise.

By way of example, in one prominent version of this view George Klosko holds that we have obligations of this kind if we are in receipt of benefits that are required for an acceptable life, assuming that we could only get those benefits from the state (Klosko, 2005, Chapter 1). If we are in receipt of such benefits, then we have an obligation to support and comply with the institutions that provide us with these benefits.

Committing treason undermines our ability to carry out these obligations. Treason, as I defined it at the outset, must involve an attempt to injure, harm, or undermine one's own state. As such, a treasonous act goes against the obligations we have to maintain the institutions of the state we are part of, because the act intrinsically aims at undermining that state. By undermining the polity we make it more difficult for ourselves to fulfil our obligations to obey the law, and we thereby become objectionable free riders. What is even worse, by undermining the state we make it more difficult for our fellow citizens to carry out their obligations too, thereby harming them.

As discussed in the previous section, Cécile Fabre suggests that treason is wrong *qua* treason when the traitor “undermines the institutions which his fellow community members support, thanks to which he can enjoy the benefits of membership, and on which they too are dependent.” (2020, pp. 441–442) As can readily be seen, this argument has a similar structure to the one advanced here. Arguments from fair play, however, can provide an explanation of why the traitor has an obligation not to undermine the institutions they themselves benefit from – it is because we and others need those institutions to carry out our political obligations. This explanation also does not rely on the fundamental interests of others, other than their ability to fulfil their obligations, being harmed.

An alternative view of political obligation holds, with John Rawls, that we have a natural duty of justice to support and comply with just institutions that apply to us (Rawls, 1999, Sections 19, 51). The details vary, but natural duty theorists believe that firstly, we have enforceable natural duties of some kind towards one another, and secondly, that the best way we can fulfil these duties is through the mechanism of the state. Adherents of this view disagree on what, precisely, these natural duties consist of. Anna Stilz (2009), for example, holds that we have a Kantian duty to respect others' freedom in a way that can only be done through the mediation of the state. On her view, we can never realise a natural ideal of equal freedom without constructing and maintaining political authorities. Jeremy Waldron (2004), by contrast, suggests that our obligations to obey the law arise from the fact that the state is the best vehicle to fulfil duties of equal respect that we have towards the people around us.

What most of the views of this broad family have in common is that they view the state as the best or only means to fulfil some other important duty or set of duties that we have. From this there follows a derivative duty to maintain the state, and to obey its laws. If we fail to do so, then we are wrongly undermining our own ability to act in the way we ought to by virtue of the duties we have. As with the fair play view, this is only true when the state is minimally just – otherwise it is unlikely to prove a suitable vehicle for the discharge of our duties towards one another.

Treasonous acts, on this view, undermine the utility of my particular state as the most important tool through which I fulfil the relevant duties. A traitor, to Stilz, objectionably undermines her own ability to respect others' equal freedom. To Waldron, treason involves destroying or harming the best means we have to respect the views and moral status of those we live around. Rawls holds

that we have duties to build just institutions where none exist – inversely, destroying those that do exist is a violation of our natural duty. Treason, then, is a serious presumptive wrong.

We might worry that these views are over-inclusive. Consider a tourist. During even a short visit, a tourist enjoys many presumptive goods provided by the host state, such as the protection of the police and security forces, and, if needed, assistance from other emergency services. Perhaps the host state is also, temporarily, the best vehicle they have for the discharge of their natural duties. Still, if a tourist decides to spy on their host country they are hardly a traitor. These theories of political obligation, however, specifically concern the duty of *members* of a polity to obey the law. Tourists may also have such a duty, but it is not a political obligation in this sense.

On this point it is worth underlining that treason is not wrong because it involves breaking the law. Instead, the distinctive wrong of treason lies in the way it makes it more difficult for the traitor and their co-nationals to fulfil their political obligations. If tourists do not have political obligations of this kind, then they cannot commit the distinctive wrong of treason. They may be committing another kind of wrong by making it more difficult for people in the target country to fulfil their obligations, but this is not treason. Different theories of political obligation have different ways of explaining why each citizen owes obligations only to *their* state (that is, they have different ways of meeting the particularity requirement (see Simmons, 1981)). Anyone who finds one of these theories convincing presumably thinks their preferred version of that theory can meet this requirement.¹⁵

Associative accounts of political obligation, briefly, can also provide an argument of this kind.¹⁶ John Horton (2010, p. 191), for example, argues that “political obligations are a concomitant of membership of a particular polity”. Membership is a status that is internalised through identification, and it is membership itself that directly gives rise to political obligations. These obligations generally include obedience to the laws of an authority backed by legitimate coercion. Treason, on this view, is distinctively wrong because it undermines the ability of the legitimate authority to provide the goods of order and security, goods that only that authority can provide and which underwrite the ability of members of the community to fulfil their political obligations.

As mentioned earlier, on all of the views discussed here (and indeed on any view that holds there is such a thing as a duty to obey the law) treason can also be wrong for a separate reason: because it is illegal, and breaking the law is wrong.¹⁷ I hope it is clear that this is not the argument I have been making here. On the view I have laid out here treason is wrong even if it is not illegal, as is indeed now the case in some jurisdictions. The distinct wrong is not in the breaking of the law, but in the undermining of our ability and the ability of our compatriots to fulfil our duties and obligations.

The views I have discussed in this section contain some version of a requirement of minimum justice – that is, they hold that individuals only have political obligations when the polity meets some requirement to do with justice or goodness. Fair play accounts, generally speaking, only apply when members can reasonably regard their society as a cooperative enterprise that works to mutual benefit. Natural duty theorists tend to insist that the state must respect fundamental rights, and perhaps also be democratic. Horton, meanwhile, adopts a less demanding standard

¹⁵ Youngjae Lee (2012) argues that, unless the particularity requirement can be satisfied, then political obligation cannot ground the wrong of treason. I think Lee is right about this. I do not, however, share Lee’s scepticism about the ability of at least some theory of political obligation to meet the requirement.

¹⁶ Associative theories could also, plausibly, support a separate argument based on betrayal, of the kind discussed in the previous section. This is because adherents to this view tend to argue that, in some form, co-nationals have strong bond that can be aptly betrayed. I cast some doubt on this idea earlier. I include these theories here to show that while adherents to these views may be more amenable to the betrayal-based view, an argument directly from political obligation is also available to them (and, in my view, preferable). I suspect the same is true of consent theorists, though I am not able to elaborate that view here.

¹⁷ Klosko does not support a content-independent duty to obey the law (see Klosko, 2011). Nevertheless, even on his view we have fairly wide-ranging duties to not break laws in minimally just societies.

when he argues that his associative account only grounds obligations when the state provides order and security (Horton, 2010, p. 177).¹⁸ In deeply unjust states, generally speaking, individuals do not have obligations to comply with the law, or any other political obligations. From this it follows that on my account treason against such regimes is not wrong. People may still commit treason in the descriptive sense discussed earlier, but this action is not presumptively wrong.

A comparison with Fabre's view is instructive here. People who live under deeply unjust regimes are likely to lack thick social membership – their fundamental rights may not be enshrined in the legal system, and even if they are they may de facto be routinely violated. On Fabre's view, this means they are not in the social relation that is a prerequisite for the betrayal that the wrong of treason consists in. An account based on political obligation substitutes for this social membership requirement another requirement based on justice or goodness. The upshot, however, is often likely to be the same: if someone's rights are not enshrined in law, or if they are routinely violated, then they are unlikely to be living in even a minimally just state.

There is, however, one key difference on this point between my account and the betrayal-based one. Fabre argues that even treason against an unjust regime is presumptively wrong (2020, p. 444). This is because, even in these cases, the traitor violates mutually understood expectations (assuming that the traitor enjoys thick social membership). This is not an unreasonable or implausible view. Still, I think it is a strength of my view that it does not necessarily label those who undermine deeply unjust states that they have social membership in as committing even a presumptive wrong. These would-be traitors are not destroying anything of value. Consider Ruth First and Joe Slovo, two white South Africans who were charged with high treason¹⁹ (together with Nelson Mandela and more than 150 others) for plotting to overthrow the apartheid regime. Unlike their black compatriots, they plausibly enjoyed thick social membership, though this will have been undermined by how they were treated due to their political beliefs. Independently of their social membership status, however, my account can maintain that they did not commit even a presumptive wrong by seeking to undermine and overthrow their oppressive government.

In his discussion of Fabre's view Jonathan Parry (2024, pp. 1216–1217) goes even further when he argues that we may in fact have special moral reasons to thwart our associates' wrongdoing. On this view, First and Slovo have special reasons to stop the wrongdoing of the apartheid government precisely because they enjoy thick social membership. Their relationship to their white compatriots means they have a responsibility to help them avoid wrongdoing. My view does not go this far, but it can at least avoid labelling First and Slovo as presumptive wrongdoers.

The situation is more complicated when it comes to people who, at least arguably, live in a minimally just state but at least see themselves as advancing the cause of justice by committing treason against it. Consider, for example, that a group of climate activists who believe that their generally speaking minimally just state is not doing what justice requires of it in terms of reducing emissions.²⁰ If these activists seek to undermine the state in pursuit of their aims, then they are committing the presumptive wrong of treason. Their action may still be all-things-considered justified. Indeed, in some cases presumptively wrongful treason may even be required. In these cases, however, this is because there are other considerations that override the presumptive wrong.²¹ The fact that their action is presumptively wrong, however, means that they owe their co-nationals a justification for it.

¹⁸ This less demanding standard means that, on Horton's account, a wider range of cases will qualify as presumptively wrong treason than on either the fair play or natural duty view.

¹⁹ First was later assassinated by South African police while living in exile in Mozambique.

²⁰ Assume that the state is in fact minimally just, even if these activists may think it is not, given its climate inaction.

²¹ See Fabre (2020) for an extensive treatment of the kinds of situations where the presumptive wrong is overridden by other considerations.

It should also be pointed out that, on this account, not all cases of treason are equally wrong qua treason. This is a matter of probability: some acts are much more likely to fatally undermine the state than others. Staging a violent overthrow of the government, for example, is far more likely to significantly undermine the ability of your co-nationals to fulfil their political obligations than leaking secret documents to the press. Both of these actions are aptly described as treason and generally presumptively wrong, but the perpetrator of the former owes a weightier justification than the perpetrator of the latter.

Treason, overall, is still a serious wrong. This is because it undermines the ability of the traitor and their co-nationals to fulfil important obligations. Consider two cases. In the first case, I prevent you from fulfilling your promissory obligation to send Peter a postcard from your holiday. In the second case, I prevent you from fulfilling your natural duty not to kill Peter. The nature of the obligation, even on a non-consequentialist view, renders the latter a more serious wrong. It is my contention that political obligations, given that they secure some of our most important goods, reflect some of our most important group memberships, or allow us to fulfil some of our most important natural duties, are closer to the second than to the first case.

In this section I have sought to show that at least on some plausible views of political obligation, treason is a distinct and serious wrong, because of the importance of the duties and obligations it stops us from meeting. I think that similar kinds of reasoning can be applied to other, related and hybrid, views of political obligation too. I am not here able to consider every non-anarchist view of political obligation that I am aware of, but I am yet to come across one where similar reasoning could not be applied. Treason, because it undermines the state, harms our ability to carry out our obligations and duties, regardless of the precise source and content of those duties.

V – Intended and foreseen treason

At this point, however, I need to add some more detail to my account as to when and why treason is wrong. I have said that treasonous acts are wrong, on these accounts of political obligation, because they undermine the state, but that alone cannot be the wrong-making feature, and not every such case can be treason. As I will argue in this section, undermining the state is only treason (and wrong qua treason) if it is done for the right reason.

Consider Dave, a politician in a minimally just state who implements an austerity programme which he believes to be a requirement of justice. In a turn of events that was predicted by other politicians and many economists but not by him, this causes a medium-term process in which the capacity of the state to fulfil its core functions is gradually diminished until one day Dave (who also happens to be a Kantian) can no longer carry out the natural duties he owes his fellow citizens, because the state is no longer an effective means to do so.

Dave has, perhaps, done wrong. It seems far less plausible, however, that what he has done is wrong because it is treason. He did what he did because he thought this was morally required in order to support, not undermine, his own country. Extending treason to these kinds of cases risks inflating the concept to an implausible degree, and it also risks feeding into conspiratorial thinking about the actions of well-meaning policymakers.

Treason is wrong when it is intentional treason. Recall my first pass at a descriptive definition of treason from earlier:

Treason (descriptive): to (attempt to) act in a way that injures, destroys or undermines one's own state.

The importance of intention has an important consequence for my discussion of political obligation in the previous section: there are cases where we can do wrong by undermining our state, thereby making it more difficult for ourselves and others to meet our obligations and duties, without this being a case of treason. Treasonous acts are merely a subset of this larger set of wrongs. Perhaps it is also possible to act wrongly by undermining our state without having the intention of doing so – in this case, however, it would seem like the putative wrongdoer has plenty

of mitigation available to them, and at any rate it does not seem right that this should be a serious wrong.

In reality, traitors can have a wide range of motivations and intentions. In some cases this account of treason can easily explain how they fit the bill: think of someone who, for example, undermines their minimally just state due to an ideological affinity with another state or non-state group. Other cases, however, are more complicated. Consider a Gambling Patriot, who loves her country but has ended up in a lot of debt through gambling. She decides to sell important state secrets to a foreign power in order to pay off some of these debts. Her main intention is to get out of debt, and undermining her state is merely a foreseeable (and in her eyes regrettable) side effect.

As a contrasting case, consider a Tax Evader who evades tax only for personal monetary gain. This is quite likely to be morally objectionable, but is it treasonous? Of course, if we all decided to evade taxes in the same way, then we would certainly be undermining the state in a way that would make it difficult for us and our co-nationals to discharge our political obligations. From the point of view of Tax Evader, however, the undermining of the state may not even be a foreseeable consequence of her actions, as long as she has no reason to believe that many others will act in the same way.

These two cases enable me to refine the definition of wrongful treason further. On my account, Gambling Patriot is committing wrongful treason, but Tax Evader is not. Gambling Patriot acts in a way that she knows is likely to seriously injure or undermine the state. Tax Evader, on the other hand, has no such knowledge. Tax Evader cannot even be reasonably expected to have that knowledge, given that the claim that her action undermines the state is false. If many others were planning to undertake the same course of action, and Tax Evader could reasonably know this, then the situation would be different.

This answer might strike some readers as unsatisfactory – after all, Gambling Patriot loves her country, and Tax Evader is, at the very least, not supporting it in the way she is morally required to do. Surely we are calling the wrong person a traitor? What is key here, however, is that a traitor is merely someone who commits treason – it is not someone with some specified attitude towards their country.

We are now in a position to refine the descriptive definition of treason:

Treason (descriptive): to intentionally (attempt to) act in a way that foreseeably injures, destroys or undermines one's own state.

We can now say that treason is distinctively and presumptively wrong because it involves intentionally carrying out an act that foreseeably injures, harms, destroys, or undermines our state, and this in turn undermines the ability of ourselves and others to fulfil important obligations and/or duties. I have not shown, nor have I tried to show, that this is the only way in which treason is distinctively wrong, but it is the most general one. This account does soothe the worry that one might feel after encountering some of the arguments against the distinctive wrong of treason presented in section II. If we accept any of these accounts of political obligation, then treason is a wrong that is distinct and separable from any other wrongs that may be committed at the same time, and it is wrong even if it does not involve any significantly objectionable betrayal.

VI - Conclusion

I have argued that, if we hold some common views on political obligation, then treason is wrong qua treason, and a treasonous act is morally worse than the equivalent non-treasonous act. If I commit murder with the intention of undermining my state, then that is, morally speaking, much worse than merely committing murder. This is because treason undermines the state, and I am obligated not to undermine it because of its role in enabling me and my co-nationals to carry out our obligations and duties, or because it provides me with presumptive goods. The fact that treason is wrong qua treason does not mean it needs to be criminalised – that is a separate question – but it may provide evidence for such a criminalisation.

There are a couple of possible reactions to this argument, if it is accepted. Someone who, like Lord Bethell, intuitively feels that treason is a serious wrong, may be reassured and may find here more ammunition ahead of future debates. Someone who, conversely, feels that treason is an archaic idea that ought to have no relevance in contemporary liberal society may feel, as a result of these arguments, more drawn to at least philosophical anarchism. Both of these responses seem to me reasonable.

On the latter response, it is worth noting that many philosophers do in fact believe that there can be no successful theory of political obligation. Such scholars often follow John A. Simmons (1981) in considering each of the proposed theories in turn and rejecting them. I have some sympathy, however, with George Klosko's (2011, p. 515) observation that this approach can render invisible how principles of political obligation bear on particular laws and political questions. Those who reject political obligation may be happy with the consequence that treason is no longer a comprehensive presumptive wrong, but they should be aware of this consequence of their view.

I will end with one more implication of my argument. Ruairi Maguire (2024) asks whether unilateral secessionists are traitors, and concludes that they often are not, given that their activities do not necessarily violate the self-determination of the political community seceded from.²² On my account, on the other hand, even justified secessionists may commit a presumptive wrong (and treason) by seceding, given that their action is likely to impair the ability of many of their co-nationals to fulfil obligations they have towards the existing state. Assuming, however, that the secession is indeed all-things-considered justified and the secessionists quickly set up a minimally just state, then this wrong can be minimised or even avoided entirely.

Ultimately, however, secessionists tend to intentionally undermine the state they are part of, and assuming they have political obligations towards that state they are committing treason. They are making it more difficult for themselves and their co-nationals to fulfil their political obligations. Their behaviour stands in need of a convincing justification, and it is up to them to provide it. To demand this justification we do not need to show that they stand in any particularly thick relation to their co-nationals. Indeed, it may be enough for them to be in receipt of the same presumptive goods, for them to pay taxes for the same public utilities. We should care about their treasonous act regardless of whether we believe in these strong national ties, as long as we hold that they have political obligations.

This paper has argued that treason is a distinct and serious presumptive wrong. Treason often appears in conjunction with other wrongs, such as murder, sabotage, or spying. I have sought to show, however, that any of these acts done treasonously is a more serious wrong than the equivalent non-treasonous act. This is true even in contemporary societies, where many people do not feel particularly loyal to their country, or even very connected to their compatriots. Lord Falconer, assuming that he is no philosophical anarchist, is wrong to think that treason is irrelevant in a society where some people feel more loyalty towards Greenpeace than towards their King.

²² In section III I explain where I believe Maguire's self-determination – based account of treason falls short.

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