

# Content-Independent Obligations: A Reply to Kevin Walton

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I am grateful to Kevin Walton for his response to my paper, which has obliged me to reconsider important questions central to political obligation.<sup>1</sup> These are difficult issues, on which I have changed my position since my first work on this subject, and which I continue to ponder. I believe it is possible to respond to Walton’s arguments, of which I will discuss three. The first two, which are more or less subsidiary, seem to me quite off the mark. However, as we will see, the third, which appears to be his main argument, raises difficult questions.

The two initial arguments can be dismissed quickly. First, Walton asserts that I “curiously” miss a conflict between content-independence and “moral” reasons to obey the law and, second, that I mischaracterize the general understanding of what a theory of political obligation is intended to accomplish. To begin with the first, on Walton’s account content-independent (CI) political obligations require that subjects not “reason at all about acting in the manner that [a given legal norm] tells them to act.” He claims that political obligations cannot be both CI and “moral,” as moral agents necessarily engage in moral reasoning. To respond, what exactly we mean by “moral” reasons is a large subject, and I do not believe the sense Walton has in mind is the most appropriate in this particular context. Going back to H. L. A. Hart’s seminal account, in regard to questions of obligation, “moral” reasons are opposed to reasons of bare self-interest.<sup>2</sup> If a robber threatens to shoot you unless you turn over your wallet, you have reasons to comply, but these are not moral reasons. In contrast, if you do not comply with moral reason, you are subject to legitimate or rightful condemnation. Because, the subject under discussion

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is the nature of the reasons to obey various laws, on this understanding, CI reasons can still be moral.

Turning to the second argument, I see no reason to alter my view that a successful theory of obligation provides moral reasons for almost all subjects to obey almost all laws. The issue here is what we want a theory of political obligation to accomplish. I concede that not all theorists view explaining people's reasons to obey as their central task. Some are more interested in the nature of obligations or other moral requirements, and Walton might be included in this class. However, I, and I believe most other theorists, believe it is of fundamental importance to provide reasons for general obedience to all or almost all laws. I believe that throughout Western history the problem of political obligation has been interpreted along these lines and, largely because of its practical importance, has long been viewed as central to liberal political theory. On my interpretation, then, a successful theory will provide reasons for John to obey all laws that apply to him. Given what is widely viewed as the current absence of such a theory in the literature, providing such a theory would be a major accomplishment.

Walton's third argument requires more discussion. What I take to be his central claim is that there is a sense of content-independence with which virtually all theories of political obligation are compatible, while he also contends that the notion of content-independence that I criticize in my article has played no role in debates about political obligation.

As it seems to me, Walton and I hold similar understandings of political obligations and the way content-independence affects them. On the assumption that this is true, I take satisfaction from the banishment of a certain incorrect view from the literature, which I also believe has distorted discussion of political obligations.<sup>3</sup> Where Walton and I mainly disagree is about the views of other theorists, past and present, and how they understand content-independence. If Walton is correct, my understanding of how content-independence has distorted debates must also be incorrect—in which case certain peculiarities of the literature require other explanation.

An example will help to clarify our disagreement. Consider a case discussed in my paper, a requirement to drive on the right. As widely understood, this requirement is clearly CI; it is created by the law and does not exist prior to the law. But look at it more closely. Although there is a CI reason to drive on the right, we must recognize a distinction made in my original paper—which Walton cites—between “(a) moral reasons to behave as the law says to behave that are independent of content; and (b) moral reason to behave in this way for the content independent reason that it is the law.”<sup>4</sup> In my article, for convenience, I refer to reasons of type (a) as formal reasons. As I argued in my paper, in this particular case, the reason to comply is of that type. It is concern for the safety of other people. Because other people drive

on the right, I will jeopardize their safety if I do not. It is true that other people are likely to drive on the right because the law tells them to do so. Because the law has this effect, its existence “triggers” this preexisting moral duty in this particular form.<sup>5</sup> But still, the moral reason to comply is public safety, based on the behavior of other people, rather than the fact that it is the law. If people generally ignored the law and drove on the left, because of public safety, my requirement would be also to drive on the left. Accordingly, in a case of this kind, my reason to drive on the right is not merely or directly because it is the law to do so. Rather, it is for other, formal, reasons that are triggered by enactment of the law.

Walton’s main claim is that I am incorrect in identifying sense (b) as content-independence as it is generally understood in the literature. If he is correct, then two conclusions follow: first, my arguments do not overthrow content-independence, because, second, my understanding of the notion and so what I criticize is not consistent with the views of all or almost all scholars. It follows that the only way to settle our disagreement would be by examining the views of all these scholars, which is not possible in this context. The main issue between us is accordingly left unresolved, and I leave it to the reader to decide whose interpretation of the literature is correct.

Granted that the matter cannot be settled here, I think there are good reasons for preferring my interpretation. Walton’s account seems to me to be based on a distinction of which there is no evidence that virtually all previous scholars were aware. I believe the mistake he makes is common in the history of philosophy: correcting what can be construed as mistaken beliefs of past theorists by reading into their works views or distinctions of which they themselves were not aware. I find it highly improbable that the numerous theorists discussed in my article understand content-independence in accordance with (a) rather than (b). To cite one piece of evidence, were the distinction so well known, Larry Alexander would not have felt it necessary to work it out in painstaking detail in his splendid 1990 article on which I draw.<sup>6</sup> It is also worth noting that Walton’s understanding of the literature in regard to the first two arguments discussed above is so improbable as to lead one also to question his reliability in regard to the point at issue.<sup>7</sup>

Given general agreement between Walton and myself in regard to the sense in which laws are actually CI, where does this leave us? I believe the main arguments of my article are not affected by any of his claims. Once again, in spite of what I view as the general understanding of content-independence in the literature, the state is not able to create a moral requirement to  $\Phi$  simply by making a law that requires one to do so. Rather, as I say in my article, the actual ways CI reasons function are complex and messy. By making various laws, the state can trigger conditions in which other

considerations eventuate in a moral requirement to  $\Phi$ . But lest this account appear to leave us with a distinction that makes no difference, we should recognize some implications. In cases in which these additional moral considerations are not present, there may be no moral reasons to obey certain laws, even though they are legitimately made. I believe this is the case when laws serve no legitimate public purposes. Consider an example of what I call in my article a worthless law. If it is the law to jump up and down and shout hurra every day at noon, you are not legitimately subject to condemnation if you do not comply, because the commanded conduct serves no useful purpose. In addition, it is not clear whether or how far the fact that the law requires one to  $\Phi$  adds to other moral reasons to  $\Phi$ , which are triggered by the law, as opposed to the fact that it is the law. In short, although I do not wish to raise difficult issues in interpreting Hobbes, it seems clear that his famous definition of command does not accurately track political obligations that are widely believed to be CI.<sup>8</sup>

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### Notes

1. K. Walton, "The Content-Independence of Political Obligations: A Response to Klosko," *Political Theory* (Reference); G. Klosko, "Are Political Obligations Content Independent?," *Political Theory* 39 (2011): 498–523.
2. H. L. A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1961), 80–81.
3. See Klosko, "Are Political Obligations Content Independent," 515–16.
4. *Ibid.*, 501.
5. D. Enoch, "Giving Practical Reasons," *Philosophers' Imprint* 11 (2011): 3–4.
6. L. Alexander, "Law and Exclusionary Reasons," *Philosophical Topics* 18 (1990); Klosko, "Are Political Obligations Content Independent?" 512.
7. Similarly, in his article "The Particularities of Legitimacy: John Simmons on Political Obligation," *Ratio Juris* 26 (2013), Walton neglects the practical requirements of a theory of political obligation, especially in regard to "particularity." While it may not be necessary that a citizen of Norway have obligations to obey only the laws of Norway, a successful theory must explain her moral requirement to obey Norway's laws.
8. "Command is where a man saith, *Doe this* or *Doe not this*, without expecting other reason than the Will of him that sayes it." T. Hobbes, *Leviathan*, chap. 25; R. Tuck, ed. (Cambridge: Cambridge University Press, 1991), 176.

**Author Biography**

**George Klosko** is Henry L. and Grace Doherty Professor of Politics at the University of Virginia. He works in both normative political theory and the history of political thought. His books include *Political Obligations* (Oxford, 2005) and *The Oxford Handbook of the History of Political Philosophy* (Oxford, 2011), which he edited. His new project examines the public justification of the American welfare state. *The Transformation of American Liberalism*, is under contract with Oxford University Press.