

Fixed Content of Political Obligations

GEORGE KLOSKO

University of Virginia

An aspect of political obligations that has received little attention is the means through which their content, i.e., exactly what is required of their bearers, is determined. An adequate moral basis for political obligations must account for this requirement, which is closely linked to the concept of authority, the state's right to substitute its judgement in various areas for the subjects' own. The problems faced by theories of obligation based on gratitude and tacit consent in fixing the content of obligations are examined, while I show how a theory based on the principle of fairness is able to overcome them. As long as a cooperative enterprise supplies public goods that are indispensable to minimally acceptable lives and require 'regulated cooperation' for their supply, it is able to ground obligations with fixed content under the principle of fairness.

In this paper I discuss the nature of obligations, as a particular kind of moral requirement, and the implications particular aspects of obligations have for theories of political obligation. I am especially interested in the difference between having *an* obligation, i.e., a strong moral requirement to do something, and having an obligation with a determinate content, i.e., being required to do something particular. In regard to political obligations, this second sense is being required to do particular things for one's state. A workable theory of political obligation must have obligations of the second sort rather than the first, though it seems to me that this distinction is often lost in the literature.

Throughout this paper, I will construe political obligations in the usual sense, as moral requirements to obey the laws of the state or to submit to political authority (on which, more below). I will follow common practice and not require that political obligations be 'obligations' in the strict sense. Establishing strong moral requirements to obey the law would counter widespread current scepticism about the possibility of a workable theory of political obligation founded on liberal premises, and so answer basic questions of political obligation, whether or not these requirements are 'obligations' strictly speaking.¹ Because the moral requirements I discuss have the particular content I have noted, the nature of authority is an important concern, and I will discuss the relationship between political obligation and political authority in detail.

¹ Scholars who question the traditional arguments in defence of political obligation include A. J. Simmons, *Moral Principles and Political Obligations* (Princeton, Princeton University Press, 1979); L. Green, *The Authority of the State* (Oxford, Oxford University Press, 1988); J. Raz, *The Authority of Law* (Oxford, Oxford University Press, 1979), ch. 12; C. Pateman, *The Problem of Political Obligation* (New York, University of California Press, 1979). For the broader sense of obligation, see Simmons, *Moral Principles*, ch. 2; and G. Klosko, *The Principle of Fairness and Political Obligation* (Savage MD, Rowman and Littlefield, 1992), ch. 1.

After general discussion of political obligations, their content, and authority, in Part I, I briefly examine difficulties problems determining the content of obligations raise for theories of political obligation based on gratitude and tacit consent, in Parts II and III. In Part IV, I explore how a theory of political obligation based on the principle of fairness (or fair play), is able to overcome these problems. Showing how fairness theory negotiates these hurdles will provide additional support for its claim to be a workable theory of political obligation, while also shedding new light on exactly how it works.

The Content of Obligations

Though it is not necessary that a theory of political obligation establish ‘obligations’ in the strict sense, the issues we explore are best approached by briefly considering obligations properly speaking. As generally understood, an ‘obligation’ has three central features. Construed on the model of a promise, an obligation is viewed as: (a) grounded on a specific voluntary action or performance; (b) owed to a particular person; (c) having a determinate content.² Thus if Smith promises Jones to give her \$10.00, the obligation is (a) established by the promise Smith makes, (b) owed to Jones and not to other people, (c) a requirement to pay Jones the money. Though a case of this sort illustrates the concept clearly, other obligations are more complex, as we will see below.

Regardless of whether political obligations are obligations in the strict sense, it is clear that their determinate content entails submitting to the authority of the state. As analysed by Raz, whom I follow here, political authority centres on the subject’s surrender of judgment to the state. In place of his own reasons for actions, the subject will substitute reasons mandated by political authorities. Raz refers to the reasons presented by authorities as ‘preemptive’ reasons, and argues that the essence of political authority is the subject’s substitution of the preemptive reasons thus promulgated for reasons of his own. In Raz’s words:

The fact that an authority requires performance of an action is a reason for its performance, which is not to be added to all other relevant reasons when assessing what to do, but should exclude and take the place of some of them.³

Thus according to Raz, political authority has an important epistemic dimension. Rather than acting on what she thinks, the subject must act on what the authorities think. This construal of authority is closely bound up with the law (the vehicle through which authorities generally present their preemptive reasons), and so requirements to obey the law.

Raz’s view can be illustrated by an example. Assume that Jones believes it is most efficient to drive on the left-hand side of the road. Regardless of what she thinks on the matter, when the government mandates driving on the right, she must act on this opinion rather than her own and will be penalized if she does not. It is notable that in a case of this sort Jones’s interests are best served by

² For the concept of obligation, see R. B. Brandt, ‘The concepts of obligation and duty’, *Mind*, 73 (1964), 374–93; H. L. A. Hart, ‘Legal and Moral Obligation,’ in A. I. Melden, ed., *Essays in Moral Philosophy* (Seattle, University of Washington Press, 1958); Simmons, *Moral Principles*, ch. 1; J. Mish’Alanai, ‘“Duty,” “Obligation,” and “Ought”’, *Analysis*, 30 (1969), 33–41.

³ Raz, ‘Authority and justification,’ *Philosophy and Public Affairs*, 14 (1985), 3–29, p. 13; italics removed.

accepting the state's reasons, as to drive on the left would have undesirable consequences. Accordingly, Raz holds that political authority is defended most effectively by showing that it is necessary if people are to accomplish their goals.⁴

If we combine our brief discussions of obligation and authority, we can see that the distinctive thrust of political obligations requires substituting the state's judgments, its reasons for acting, for reasons of one's own. But in spite of this clear conceptual relationship, it remains to be seen how the moral requirements that constitute actual political obligations come to have this specific content. The problem can be illustrated by a particular feature of obligations, what Hart refers to as 'independence of content'.⁵ Hart's meaning is seen most clearly in promises. In the case of an obligation grounded on a voluntary performance, such as that which generates a promise, the content of the obligation becomes mandatory through the performance and is not otherwise binding. If Smith promises Jones to pay her \$10.00, the requirement in question is generated by the promise and does not otherwise exist. Even if paying Jones \$10.00 is a morally desirable thing to do, Smith's requirement to do this stems from the promise. There are numerous other desirable actions that Smith could perform but is not required to because he has not promised to do them. Contrariwise, if he had promised Jones to give her \$20.00, he would be required to do this. Thus the content of a given obligation is distinguishable – or independent – from the performance through which it becomes morally required.

Applying Hart's analysis to political obligations raises the question of how their content is determined, or fixed, as mandatory acceptance of the preemptive reasons of the state. It seems that this problem has received little attention until now because of the hold consent theory has maintained on the liberal imagination. Ever since the time of Locke, the dominant view within Western (including American) society is that people are required to obey the state because they have consented to do so. In theories of obligation based on consent, it is not ordinarily difficult to explain how political obligations attain the necessary content, as the proponent of such a theory will typically designate this as the content of the acts of consent through which political obligations are incurred. Thus for Locke, the best known consent theorist, a person leaves the state of nature for civil society by promising to accede to the expressed will of the majority:

And thus every man, by consenting with others to make one body politic under government, puts himself under an obligation to every one of that society to submit to the determination of the majority and to be concluded by it ...⁶

The requirement to be 'concluded by the majority' readily lends itself to analysis in Raz's terms.

⁴ Raz, 'Authority and Justification,' pp. 18–9. In order to be as clear as possible here, I should note that political authority does not require the subject's actual surrender of judgment. For instance, Jones does not have to change her previous belief and accept the view that driving on the right is preferable; she must only *act* on the state's opinion, more or less regardless of her own beliefs.

⁵ Hart, 'Legal and Moral Obligation,' pp. 100–1.

⁶ J. Locke, *The Second Treatise of Government*, Sec. 97, in P. Laslett, ed., *Two Treatises of Government*, Student edition (Cambridge, Cambridge University Press, 1988).

Similarly, in Hobbes's theory, the acts of consent through which subjects authorize the sovereign to bear their persons (in Hobbes's distinctive sense) clearly require that subjects substitute the sovereign's judgments on numerous important matters for their own. This is a central theme in Hobbes's political theory.⁷ In the works of Locke and Hobbes and other theorists, we can see how consent theory is ideally equipped to explain not only how political obligations attain the necessary content but how this content includes whatever the state says it does.

However, as theorists have pointed out since the time of Hume, consent theory's great flaw is that adequate numbers of people have not consented to their governments – or performed related acts that constitute tacit consent.⁸ With the downfall of consent theory, it is no longer easy to account for the content of political obligations. If the subject does not explicitly transfer the right to provide authoritative judgments to the state, how then does the state acquire this? As we will see below, in Section III, although theories of obligation based on express consent successfully address this question, it causes difficulties for theories based on tacit consent – the main variants of consent theory seriously advanced at the present time.

Obligations of Gratitude

Problems of fixing the content of political obligations are apparent in theories of obligation based on gratitude. According to such theories, citizens have moral requirements to obey the state because of the important benefits they receive from it. Different aspects of gratitude theories of political obligation have received attention in recent years.⁹ One topic of discussion has been exactly what gratitude commits the recipient to doing.¹⁰

A central problem with gratitude obligations is their vagueness. Assume that Grey confers some benefit upon Jones. This generates an obligation on Jones's part to respond in an appropriate way, which includes a requirement to confer some similar benefit upon Grey should the occasion arise.¹¹ What concerns us is how the precise nature of Jones's obligation is determined. Even if we grant that she has an obligation to perform some appropriate action out of gratitude to Grey, it is not easy to say exactly what the action in question must be. For political obligations, the problem here is that a specific content is necessary. The

⁷ T. Hobbes, R. Tuck, ed. *Leviathan* (Cambridge, Cambridge University Press, 1991), chs 16–19, 26.

⁸ D. Hume, 'Of the Original Contract', in E. Miller, ed., *Essays: Moral, Political and Literary*, rev. ed. (Indianapolis, Liberty, 1985). For the best recent discussion, see Simmons, *Moral Principles*, chs 3–4, who demolishes the contention that adequate numbers of people have consented tacitly.

⁹ The main discussions are A. D. M. Walker, 'Political obligation and the argument from gratitude,' *Philosophy and Public Affairs*, 17 (1988), 191–211; and Simmons, *Moral Principles*, ch. 7. See also Klosko, 'Political obligation and gratitude', *Philosophy and Public Affairs*, 18 (1989), 352–8; Walker, 'Obligations of gratitude and political obligation', *Philosophy and Public Affairs*, 18 (1989), 359–64; and Klosko, 'Four arguments against political obligations from gratitude', *Public Affairs Quarterly*, 5 (1991), 33–48. On the concept of gratitude, see Walker, 'Gratefulness and gratitude', *Proceedings of the Aristotelian Society*, 81 (1980–81), 39–55; F. R. Berger, 'Gratitude', *Ethics*, 85 (1975), 298–309; C. Card, 'Gratitude and obligation', *American Philosophical Quarterly*, 25 (1988), 115–27; P. Camenisch, 'Gift and gratitude in ethics', *Journal of Religious Ethics*, 9 (1981), 1–34.

¹⁰ Discussion in the following three paragraphs draws on Klosko, 'Four arguments.'

¹¹ For different circumstances in which gratitude obligations arise, see D. A. J. Richards, *A Theory of Reasons for Actions* (Oxford, Oxford University Press, 1971), pp. 173–5, 189–90, 209–11.

recipient of important benefits is not under a *general* obligation to express her gratitude to the state in an appropriate way but has a *specific* obligation to obey the law. This specificity does not rest easily with the nature of gratitude. As Walker says: 'The grateful response has about it a gratuitous and indefinite quality which aligns it with generosity rather than justice'.¹²

The difficulty here is described in a recent article by Card.¹³ When Grey confers some benefit upon Jones, she is supposed to respond with gratitude. But to *require* her to respond in this way is problematic. It is central to gratitude that the grateful response be gratuitous: spontaneous and *not* required. As Camenisch says, gratitude falls somewhere between obligation and whimsy.¹⁴

An action performed from gratitude is necessarily performed in a certain way. It is not merely an action but an action performed because of certain feelings, especially a desire to make one's appreciation known to one's benefactor and to behave in a certain way towards him, because one has regard for him and does not view him merely as a means to one's satisfaction. Walker illustrates the internal or attitudinal component of gratitude by pointing out the analogy between gratefulness and revenge.¹⁵

These points indicate a central difficulty of gratitude theories of political obligation. If it is problematic for a gratitude theory to *require* a response, it is doubly difficult to require one with a determinate content. Because an element of expressiveness is central to the grateful response, the recipient rather than the state must be able to fix the content of his obligation. When Grey receives a benefit, he responds with gratitude in order to return the goodwill his beneficiary has shown with goodwill of his own.¹⁶ Central to this situation is the recipient's own decision as to how he will respond. If you do me a favour, even a large one, it would not be proper for you to specify the form in which I should express my gratitude. In this sense, gratitude is like a gift, as it would be improper for you to tell me what to give you as a gift.¹⁷ It is possible that circumstances are different when benefits are conferred by political institutions rather than by individuals. But there is little reason to believe this is true, that as part of its conferral of benefits, an institution somehow acquires not only the right to a grateful response but the further right to require a response of a particular type.¹⁸ However, unless this can somehow be explained, a gratitude theory of obligation cannot work.

At the beginning of this paper, I noted the distinction between having *an* obligation and one with a determinate content. Though gratitude may account for obligations of the first sort, it appears to be unable to generate obligations with determinate content. Since obligations of this sort are central to a workable theory of political obligation, it follows that gratitude cannot be the basis for such a theory.

¹² Walker, 'Gratefulness,' pp. 50–3; the quotation is from p. 50. For the most important attempt to deal with vagueness problems, see Walker, 'Political obligation'; for discussion, see Klosko, 'Four arguments'.

¹³ Card, 'Gratitude and obligation'.

¹⁴ Camenisch, 'Gift and gratitude', p. 4.

¹⁵ Walker, 'Gratefulness', p. 49; on the relationship between gratitude and gratefulness, see Walker, pp. 45–7.

¹⁶ Berger, 'Gratitude'.

¹⁷ See Camenisch, 'Gift and gratitude'.

¹⁸ On how institutions can have motives necessary for the generation of political obligations, see Walker, 'Political obligation', pp. 196–9.

Obligations from Tacit Consent

Similar difficulties are encountered in a theory of obligation based on tacit consent. We have noted that problems of fixing content do not generally arise in regard to promises. Ordinarily, if Grey makes a promise to Green, his promise itself identifies a specific act or performance that is required of him. If he promises to give Green \$10.00, obviously, that is the content of the promise. The situation should be similar with political obligations. If Grey promises to obey the state under specified conditions, then the terms of his agreement, as spelled out in his promise, constitute the content of his obligation to government.

When we turn to tacit consent, however, circumstances are different. Because Grey does not make an express promise to government, the content of his act of consent is more difficult to determine. According to Locke, for instance, people tacitly consent to government by simply residing in their countries.¹⁹ But even if Locke is right that residence constitutes consent,²⁰ it is not clear how the content of such acts of tacit consent can be identified. If Grey consents tacitly to government, his act of consent does not clearly mark off specific acts or performance that are thereby required of him.

Following Simmons, we can say that, properly construed, for an act to qualify as tacit consent, it must possess qualities of intentionality and deliberateness similar to those possessed by acts of express consent. As Simmons argues, acts of tacit consent differ from acts of express consent solely in their mode of expression, that they are given by remaining silent and inactive, rather than through the performance of actions that signify consent.²¹ There are certain situations in which the similarity between tacit consent and express consent is clear. For instance, if Chairman Jones announces to his board that he will change the time of the next meeting unless there are objections, and no one objects, those present have consented to the change of time.²² In this case, although their consent is given tacitly – through inaction rather than action – it clearly possesses the necessary deliberateness. In this case, moreover, it is notable that the content of the act of tacit consent is also clearly fixed. On the whole, it seems that we can hypothesize that acts of tacit consent that possess the necessary deliberateness to qualify as genuine acts of consent will also have clearly fixed content.

But if we turn to acts that are frequently cited as constituting tacit consent to government, we will see that this is frequently not the case. Not only is it not clear that these acts should be construed as consent to government, but it is difficult to say how their content can be identified as requiring submission to political authority. For instance, Plamenatz argues that voting constitutes consent to government: ‘where there is an established process of election to an office, then *provided the election is free*, anyone who takes part in the process consents to the authority of whoever is elected to the office’.²³ In this case, however, it is difficult to say exactly how the act of voting specifies the subject’s intention to accept the preemptive reasons of whoever wins the election, rather

¹⁹ Locke, *Second Treatise*, Sec. 119.

²⁰ For criticism of this claim, see Simmons, *Moral Principles*, ch. 4.

²¹ Simmons, *Moral Principles*, pp. 79–83; Simmons discusses other necessary conditions, which it is not necessary to examine here.

²² Simmons, *Moral Principles*, pp. 79–80.

²³ J. Plamenatz, *Consent, Freedom and Political Obligation*, 2nd ed. (Oxford, Oxford University Press, 1968), p. 170; his emphasis.

than some other content. It is not unlikely that in voting for one candidate rather than another, Green merely has in mind the desire to prevent another candidate who is even worse from winning office. If we construe this purported act of consent to government as a genuine promise, we must focus on what the agent has in mind in performing it. It is unlikely, to say the least, that most people who perform acts that are said to constitute tacit consent to government *intend* by these acts to subject themselves to governmental authority.

Problems of fixing the content of tacit consent are seen in the first argument from tacit consent in the literature, in Plato's *Crito*. In the *Crito*, having been tried and sentenced to death, Socrates explains why he should not try to escape. He places his arguments in the mouth of the fictitious 'Laws' of Athens, who address their remarks to him. One of their arguments is that he must accept the court's sentence because he agreed to do so; the Laws speak of 'the agreement between us, Socrates . . . to respect the judgments that the city came to'.²⁴ The basis for the agreement is tacit consent. The Laws' account of this is fairly elaborate. Socrates has consented to obey because, after overseeing his birth and education, the Laws gave him the opportunity to leave: 'by giving every Athenian the opportunity, after he has reached manhood and observed the affairs of the city and us the laws, we proclaim that if we do not please him, he can take his possession and go wherever he pleases'.²⁵ No obstacles are placed to the citizen's departure; he is allowed to go wherever he pleases, and to keep his property. Accordingly, whoever remains in the city, 'has in fact come to an agreement (*hōmologēkenai*) with us to obey our instructions'.²⁶ What obeying the city's instructions entails is made clear at a previous stage of the Laws' argument where they say that one must do 'whatever it instructs' (*ha an keleuē*).²⁷ The language used here and elsewhere suggests obligations that are effectively unlimited – though this position is not only implausible on its face but creates serious problems for the consistency of Socrates' philosophy.²⁸

For our purposes, it is not necessary to explore these problems in the *Crito*. What is important to note is the overall difficulty the passage indicates in moving from an act of tacit consent to political obligations with specific content. One great advantage of express consent is that, by virtue of entering into an explicit agreement with government, the citizen declares exactly what he is committing himself to do. With tacit consent, this determinacy is lost. As the claims of the Laws of Athens show, it becomes open for political authorities to construe particular actions the citizen has performed as not only constituting consent to their authority, but as effectively unlimited. Again, one reason they are able to do this is because acts of tacit consent frequently lack determinate content.

²⁴ *tauta hōmologēto hēmin te kai soi ē emmenein tais dikais hais an hē polis dikazē*; *Crito* 50c4–6; J. Burnet, ed. *Platonis Opera*, 5 vols (Oxford, Oxford University Press, 1900–1907); translation by G. M. A. Grube, in Plato, *The Trial and Death of Socrates* (Indianapolis, Hackett, 1975).

²⁵ *Crito*, 51d.

²⁶ *Crito*, 51e.

²⁷ *Crito*, 51b.

²⁸ For interesting discussion, see R. Kraut, *Socrates and the State* (Princeton, Princeton University Press, 1984).

Fairness Obligations

A theory of political obligation rooted in the principle of fairness is more successful at fixing the content of political obligations. The principle of fairness was originally formulated by Hart in 1955:²⁹

[W]hen a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission.³⁰

The moral basis of the principle is the mutuality of restrictions. Under specified conditions, the sacrifices made by members of a cooperative scheme in order to produce benefits also benefit non-cooperators, who do not make similar sacrifices. According to the principle, this situation is unfair, and it is intended to justify the obligations of non-cooperators. In the view of Lyons, the underlying moral principle at work in the principle of fairness is 'the just distribution of benefits and burdens'. According to Rawls: 'We are not to gain from the cooperative labors of others without doing our fair share'.³¹

The principle of fairness operates clearly in certain cases. If we assume that three neighbours cooperate in order to dig a well, a fourth who refuses to share their labours but later goes to the well for fresh water is subject to condemnation by the cooperators. There are complexities here which for reasons of space we cannot explore, but it seems clear that when a person takes steps to procure benefits generated by the cooperative labour of others, he incurs an obligation to share the labour through which the benefits are provided.³² However, the principle is of greatest interest as it concerns the supply of benefits that, because of their nature, cannot be procured, or even accepted. These benefits are important public goods produced by the cooperative efforts of large numbers of people, coordinated by government. The clearest instances are public goods bearing on physical security, most notably national defence and law and order. Because public goods such as these are non-excludable, and so must be made available to a wider population (or the entire population of some territory) if they are supplied to only certain members, there is an immediate problem in explaining how individuals who have not accepted them incur obligations. Certain scholars argue that, because public goods are not accepted, they cannot generate obligations under the principle of fairness.³³

This conclusion is supported by a series of examples presented by Nozick. For instance, suppose a group of neighbours bands together to institute a public

²⁹ Hart was anticipated by C. D. Broad, 'On the function of false hypotheses in ethics', *International Journal of Ethics*, 26 (1915–16), 377–97; and A. C. Ewing, 'What would happen if everyone acted like me?' *Philosophy*, 28 (1953), 16–29.

³⁰ H. L. A. Hart, 'Are there any natural rights?' *Philosophical Review*, 64 (1955), 175–91, p. 185.

³¹ D. Lyons, *Forms and Limits of Utilitarianism* (Oxford, Oxford University Press, 1965), p. 164; J. Rawls, *A Theory of Justice* (Cambridge MA, Harvard University Press, 1971), p. 112. The underlying moral principle is analyzed by R. Arneson, 'The principle of fairness and free-rider problem', *Ethics*, 92 (1982), 616–33; see also C. Strang, 'What if everyone did that?', *Durham University Journal*, 53 (1960), 5–10.

³² For full discussion, see Klosko, *Principle of Fairness*, ch. 2.

³³ The need to accept benefits is noted by Rawls, *Theory of Justice*, pp. 113–6; similarly R. Nozick, *Anarchy, State, and Utopia* (New York, Basic, 1974), p. 95; R. Dworkin, *Law's Empire* (Cambridge MA, Harvard University Press, 1986), pp. 192–3; R. Sartorius, 'Political authority and political obligation', *Virginia Law Review*, 67 (1981), 3–17, pp. 14ff.

address system in order to provide the neighbourhood with entertainment and other broadcasting. If there are 364 other neighbours and each runs the system for one day, is Brown obligated to take over the broadcasts when his day comes? Nozick assumes that Brown has benefited from the scheme by listening to the broadcasts, but he would prefer not to give up a day.³⁴ Or suppose the neighbours form a street-sweeping association. Must Black sweep the street when her turn comes, even if she does not care a great deal about clean streets? If she refuses to sweep, must she 'imagine dirt' when she goes outside, so as not to benefit as a free rider?³⁵ Nozick believes that Brown and Black are not obligated in cases of this sort: 'One cannot, whatever one's purposes, just act so as to give people benefits and then demand (or seize) payment. Nor can a group of persons do this.'³⁶ According to Nozick, fairness does not 'serve to obviate the need for other persons' *consenting* to cooperate and limit their activities'.³⁷

Clearly, according to Nozick, individuals cannot have obligations imposed on them through the receipt of particular benefits, unless they *agree* to the obligations. The force of his argument, however, is blunted by examination of the specific benefits discussed in his examples. It is striking that these are of relatively little value. If we substitute examples of cooperative schemes providing more significant benefits, the force of Nozick's arguments will be blunted.

I believe the principle of fairness is able to generate powerful obligations to contribute to non-excludable schemes if three main conditions are met. Goods supplied must be (i) worth the recipients' effort in providing them; (ii) indispensable for satisfactory lives; and (iii) have benefits and burdens that are fairly distributed.³⁸

Roughly and briefly, if a given benefit is indispensable to Jones's welfare, as, for example (and most notably) physical security, then we can assume that she benefits from it, even if she has not sought to attain it. This is especially important in the case of public goods such as security, the pursuit of which is not required for their receipt. Because of the importance of such goods, unusual circumstances would have to obtain for Jones not to benefit. Though the class of indispensable public goods is perhaps small, it undoubtedly encompasses crucial benefits concerning physical security, notably national defence and law and order, protection from a hostile environment, and provisions for satisfying basic bodily needs.³⁹ What I mean by calling such goods presumptively beneficial is that, in almost all cases, people can be presumed to benefit from them at a very high level. That we all need these public goods, regardless of whatever else we need is a fundamental assumption of liberal political theory. It is notable that liberal theorists generally view providing them as a central purpose of the state.

The high level of benefit associated with presumptively beneficial public goods (hereafter, presumptive goods) is necessary for the generation of political obligations under the principle of fairness. To illustrate this, we can ask whether

³⁴ Nozick, *Anarchy, State, and Utopia*, pp. 93–4.

³⁵ Nozick, *Anarchy, State, and Utopia*, p. 94.

³⁶ Nozick, *Anarchy, State, and Utopia*, p. 95.

³⁷ Nozick, *Anarchy, State, and Utopia*, p. 95; his emphasis.

³⁸ For reasons of space, I will discuss only (ii) in this paper. In the following discussion, I assume that (ii) and (iii) are met. For discussion of these and other important aspects of the principle, see Klosko, *Principle of Fairness*.

³⁹ Though I will not discuss other possible members of this class, I do not rule them out.

an individual, Grey, incurs obligations to cooperative scheme X by virtue of receiving indispensable public goods from it, even if he does not accept them or otherwise seek them out. The example we can concentrate on is national defence.

A strong argument can be made for Grey's obligations in a case of this sort. Because national security is a public good, he receives it whether or not he pursues it. In fact, the benefits of national defence are unavoidable as well as non-excludable; he cannot avoid receiving them, and so it is not clear how he could pursue them even if he wished to. Because the benefits of national defence are indispensable, we can presume that Grey *would* pursue them (and bear the associated costs) if this were necessary for their receipt. If we imagine an artificial choice situation analogous to a state of nature, it seems clear that under almost all circumstances Grey would choose to receive the benefits at the prescribed cost, if he had the choice. Because of the indispensability of national defence, it would not be rational for him to choose otherwise. But in the case under consideration, Grey's obligation to the members of X does not stem from hypothetical consent – that he would consent to receive the benefits under some circumstances – but from the fact that he receives them.⁴⁰

However, even if we regard this overall argument in favour of the principle of fairness as acceptable, we have not seen how members of a cooperative scheme acquire the right to determine the content of people's obligations to it. It remains possible that Green could have an obligation to cooperate with the members of scheme X, but that this could be discharged in a manner that *he* rather than the scheme members should determine.

In order to address this problem, I will consider a recent analysis of the principle of fairness, presented by Wolff.⁴¹ Though Wolff believes that the principle is able to ground political obligations for most members of society, he questions the set of necessary conditions presented above. In particular, he argues that condition (ii), that the benefits must be presumptively beneficial, is unnecessary. As long as benefits a scheme provides are (a) worth their costs and (b) fairly distributed, he contends it can generate obligations. Wolff wishes to drop condition (ii), because he believes it adds nothing to the first condition. Apparently, the state can generate obligations by supplying benefits of little value as well as more important benefits, as long as the costs attached to a package are outweighed by their value and distribution of benefits and burdens is fair. Wolff argues that, to say that a package of benefits is worth its costs to Brown is not the same as saying that Brown believes this is the case, and that the relevant condition is the former. He acknowledges the 'important and very difficult matters of proof here'.⁴² But though he does not discuss these in detail, he apparently believes they can be dealt with.

I believe Wolff's objections can be met. An immediate advantage of requiring that benefit packages contain at least some goods that are presumptively beneficial is that this lessens the difficulties of showing that a package is worth its costs. One reason it is difficult to show this is that people's tastes differ. What is valuable to one person may be of trivial value to another. This could well be

⁴⁰ Discussion here draws on Klosko, *Principle of Fairness*, ch.2, where I also consider and counter other possible arguments against obligations in these cases.

⁴¹ J. Wolff, 'Political obligation, fairness, and independence', *Ratio*, 8 (1995), 87–99, 93 ff.

⁴² Wolff, 'Political obligation,' p. 96.

true for the benefits Nozick discusses, e.g., broadcasts and cleaner streets. But things are quite different with presumptive goods. Because such goods can be presumed to be necessary for minimally acceptable lives for everyone, it is far easier to show that they are worth their costs. Many of these costs are not insubstantial. In the case of law and order, for example, the citizen must not only obey the laws but also help pay for their administration and enforcement. But such costs pale in comparison to having to live in a situation devoid of law and order. Accordingly, though problems of assessing costs and benefits are not eliminated for packages of benefits containing presumptive goods, in many cases they are clearly lessened.⁴³

A second and more important reason to retain condition (ii) is the need to explain how the state acquires the right to fix the content of fairness obligations. If a package of benefits does not contain presumptive goods, it seems that, even if an individual incurs an obligation to support it, she retains the right to decide exactly what this requires of her. In effect, though she might incur *an* obligation to the state, it is not clear that this will have the proper content to function as a political obligation.

Consider once again Nozick's public address system. For the sake of argument, we can assume that Jones greatly enjoys listening to broadcasts and so benefits from the system. It seems that under these circumstances, she has an obligation to contribute to the system and that, in accordance with the principle of fairness, this is to do her fair share in supporting it. However, it is not clear exactly what this commits her to. Because benefits and burdens must be distributed fairly, Jones is not required to do as much as people who benefit from the system a great deal more. If she listens to the broadcasts only occasionally, or enjoys them less than other people, her obligation to support the scheme is less strong – and requires a lower level of support. Clearly, there are enormous problems in determining exactly how much Jones benefits from the public address system. In practical terms, there is no alternative but to allow her to make this determination herself and take her word for it. In discussing questions of proof, Wolff does not distinguish between the burden of demonstrating that an individual's benefits from a scheme outweigh his costs and the more precise determinations necessary to fix his costs. Because Wolff agrees that condition (iii) must be satisfied as well as condition (i), he must also agree that if Jones benefits less than Green, her required support should be similarly lower.

To determine what Jones is required to do for the scheme, the scheme-members must ascertain what constitutes her fair share. What is crucial here is that, in order to do this, they must rely on *her* judgments at crucial points rather than their own. They can present no objective means to weight the value of her benefits or the burdens of her proposed contribution. Accordingly, though Jones has an obligation to contribute her fair share, what this entails will be determined by *her* opinion as to what constitutes the importance of the benefits received and of what she decides to give in return. Though Jones has an obligation to support the cooperative scheme, this does not include submitting to the scheme-members' assessment of what this requires of her in these important respects. The scheme-members' position is analogous to that of someone owed an obligation of gratitude who must rely on the person having

⁴³ For discussion, including assessing costs and how packages of benefits are constituted, see Klosko, *Principle of Fairness*, ch. 4.

the obligation to determine the nature of the appropriate grateful response. Actual experience of public radio and television associations – in the United States, at least – supports this line of argument. When these agencies request contributions, they leave it to contributors to decide for themselves what to give.⁴⁴ If they demanded that contributors pay set fees, this would probably adversely affect their contributions.

Because the cooperative schemes under consideration provide public goods, their bargaining power is unfortunately weak. Proponents of the public address system cannot succeed through their strongest threat, non-provision of benefits. They cannot tell Jones they will withhold broadcasts from her unless she pays a specified amount. An essential feature of public goods is that they cannot be so withheld. The possibility remains that they can threaten to shut down operations altogether, unless Jones meets their demands. But once again, their position is weak. If Jones believes that what she gains from the broadcasts is less than what she is asked to give, she can allow them to close up shop. This response would not violate the principle of fairness. In accepting non-supply, she is willing to allow all other contributors to the scheme to stop contributing also. Thus she would not be seeking special treatment for herself and so violating the just distribution of benefits and burdens in the broadcast scheme.⁴⁵

Allowing Jones and other recipients to determine their own contributions could result in the scheme's collapse inadvertently. The fact that people recognize obligations to a cooperative scheme may not be sufficient to keep it functioning, unless these have particular content. Unless people's own determinations correspond with what the scheme in fact requires, it is possible that it will have to close down. But once again, because benefits the scheme supplies are not indispensable, people may be prepared to accept such an outcome – as has not infrequently been the case with actual public broadcasting systems.

An additional consideration is the value of Jones's right to self-determination. Autonomy is of course a central value in liberal political theory. An individual's right to determine what she will and will not do should be respected unless there are strong reasons to the contrary. The requirement that Jones perform *a* service in return for the benefits she receives from the public address system is justified as long as her benefits outweigh the costs of the required service. But in addition to the costs of the actual service Jones must perform, further costs are associated with lost self-determination in being required to perform a specific service dictated by others. Even if the value of her benefits itself outweighs the costs of the service, this may not be true if we also consider the costs of lost autonomy in having the content of the service imposed on her. This is especially unlikely to remain true if the value of her benefits is slight. Once again, because it is difficult to determine how much Jones values her autonomy in cases of this sort, there is no practical alternative but to take her word for it. The implication is that if benefits conferred are clearly to outweigh both the costs of services required and lost autonomy in having the contents of

⁴⁴ In Britain, contributions are set by the government, but broadcasts are one component of the overall package of benefits supplied by government, as opposed to the product of an independent agency that furnishes only them. For the importance of this distinction, see Klosko, *Principle of Fairness*, ch. 4.

⁴⁵ For this formulation of the principle, see Rawls, 'Legal Obligation and the Duty of Fair Play', in S. Hook, ed., *Law and Philosophy* (New York, New York University Press, 1964), p. 17.

these services fixed, the value of the benefits must be substantial – presumptive, as it seems to me.

Obligations are far easier to justify if a package of benefits contains presumptive goods. As long as the other two conditions are also satisfied, members of cooperative schemes are able not only to impose obligations but also to determine their content.

As I have noted, if a package of benefits contains presumptive goods, it is easier for scheme members to demonstrate that Brown's benefits outweigh his costs. It is also easier for them to justify imposing obligations on Brown the content of which they determine. Consider scheme X, which provides law and order. Because law and order is a presumptive good, as long as the required costs are within reason, the X-ites should be able to show that benefits outweigh them. If Brown disputes this, the X-ites can present a powerful line of argument. We saw in regard to the public address system that if a recipient claims that prescribed costs outweigh benefits, scheme members can threaten to shut the system down. But in a case of this sort, it would be open to the recipient to do without the broadcasts. If she believes she does not benefit enormously from them, the scheme-members' ultimate threat, non-supply, will hold no terror for her. However, because law and order is presumptively beneficial, the threat of non-supply is more powerful here. Because Brown cannot do without law and order (i.e., why it is presumptively beneficial), he *must* support the X-ites' endeavour to supply it. What is more, Brown's obligation can be seen to have determinate content, fixed by the scheme-members. If a cooperative scheme providing law and order cannot remain in operation unless recipients of benefits not only have obligations to it but these also have specific content, then if the recipients cannot do without benefits, their obligations must have fixed content.

The argument here depends on certain empirical assumptions which should be pointed out. The presumptive public goods under discussion are not only indispensable to minimally acceptable lives, but their supply depends on a particular kind of cooperative activity, which involves complex coordination and large numbers of people. The necessary pattern of cooperation cannot be maintained unless to some extent people do what they are told. We can refer to cooperative activity of this sort as 'regulated' cooperation. The need for regulated coordination is a central assumption of liberal political theory, seen for example in Weber's standard definition of the state as an agency exercising a monopoly of legitimate force in a particular territory, and so it requires little discussion.⁴⁶ It is unquestionably necessary for the military activity that is central to national defence. As Locke's account of the 'inconveniences' of a state of nature in which the law of nature is enforced by uncoordinated, general punishment makes clear, it is also central to law and order.⁴⁷ Thus if Brown and all other inhabitants of X are to receive the benefits of national defence and law and order, they must take their places in the pattern of social activity necessary to provide them. Regardless, then, of his opinions on these matters, Brown must accede to scheme-members' preemptive reasons. Not to be willing to take his place and obey prescribed rules – when the benefits in question depend on the fact that most

⁴⁶ M. Weber, 'Politics as a Vocation', in H. Gerth and C. W. Mills, ed. and trans., *From Max Weber: Essays in Sociology* (Oxford, Oxford University Press, 1946), p. 78.

⁴⁷ See esp. Locke, *Second Treatise*, Sec. 127.

other people do so – would violate the principle of fairness, because Brown would be assuming a liberty he would not be willing to allow others.⁴⁸

If Brown could do without presumptive goods, he would have the option of accepting non-supply. Similarly, he would also have the option of conceding the existence of an obligation to the scheme, but one with a content that he reserved the right to determine himself. However, to allow everyone the right to fix the content of their own obligations could well result in the scheme's collapse, an outcome he could not accept. Therefore, Brown must acknowledge not only *an* obligation to the scheme but one with content fixed by the scheme-members – or other coordinating mechanism. In addition, because of the great importance of national defence, law and order, and other presumptive public goods, their value can easily outweigh the costs of lost autonomy in having to accede to imposed patterns of cooperation, in addition to those of required cooperative activity.⁴⁹

I should note that the state's ability to fix the content of obligations is not without limits. This complex subject cannot be discussed here in detail, but three points should be mentioned quickly. First, the most plausible fleshing out of requirement (iii), that benefits and burdens of a cooperative scheme must be distributed fairly, entails that decisions concerning such matters must be made by procedures in which all individuals have relatively equal rights to participate, i.e., by reasonably fair democratic procedures.⁵⁰ Second, political obligations, however generated, are not obligations *simpliciter*, but, to use the common term, *prima facie* obligations.⁵¹ Briefly, this means that such moral requirements are of limited force and so can be overridden by strong counter-vailing moral considerations. Accordingly, the moral requirements generated by the principle cannot require cooperation in odious practices or submission to tyrannical regimes. The third point is closely related. Political obligations are specific moral requirements that exist in a context of, and interact with, other moral requirements, which circumscribe their force. This too prevents political obligations from requiring objectionable conduct. If a given political obligation requires that an individual perform morally unacceptable acts, this will ordinarily be overridden by prohibitions against such conduct and so will not be binding. These three considerations should blunt possible objections to

⁴⁸ See above, n. 45.

⁴⁹ Though this question cannot be pursued in detail here, I should clarify the claim that the form in which a given presumptive good is provided is *necessary*, and so justly comprises the content of a given political obligation. For instance, if country X's national defence needs could be met with a volunteer army instead of a draft, is Brown still required to submit to the draft? Briefly, we should distinguish two levels of analysis here. According to the empirical assumption mentioned on p. 65, a presumptive good such as national defence must be supplied through a pattern of regulated cooperation. Before it is decided how defence will be supplied, citizens can propose alternative means, none of which is *necessary*. But because some coordinated activity *is* necessary, once a particular package of measures has been selected, these are necessary, and Brown must comply with them. At this point, the only alternative to large-scale cooperation is non-supply. If we assume that decisions concerning the provision of presumptive goods are made by democratic procedures, then Brown would retain rights to work towards changing the form in which a given good is provided, though while still being required to cooperate with the measures currently prescribed.

⁵⁰ For discussion, see Klosko, *Principle of Fairness*, ch. 3.

⁵¹ The idea of *prima facie* obligations (or duties) was first presented by W. D. Ross, *The Right and the Good* (Oxford, Oxford University Press, 1930), pp. 18–20. Though Ross's main point still holds, errors in his formulation of the concept are widely noted; see, e.g., J. Searle, 'Prima Facie Obligation', in Raz, ed., *Practical Reasoning* (Oxford, 1978).

the argument of this paper, while they in no way lessen the importance of political obligations or of explaining how their content comes to be fixed.⁵²

In sum then, if cooperative schemes supply presumptive goods, they are able to justify fixing the contents of recipients' obligations. To follow Wolff's suggestion and drop requirement (ii) would leave the principle of fairness vulnerable to objections similar to those of Nozick. Nozick argues that the principle of fairness cannot support obligations unless recipients of benefits consent to receive them. Wolff goes beyond Nozick in arguing that obligations are justified even if people do not consent, as long as benefits are worth their costs. However, as we have seen, even if Wolff's reformulation of the principle is able to justify the imposition of obligations, it does not always licence scheme-members to fix their content. As long as a given recipient can disagree with their claim that a given benefit outweighs its costs, she can rightfully refuse to pay. If the logical conclusion of this attitude would be non-supply of the benefit, this would be acceptable. But with presumptive goods, there is no alternative to supply. If, in order to receive presumptive goods, people must accept assigned costs, refusal to cooperate would be morally and practically impossible.

Accordingly, as long as certain conditions are met, the principle of fairness is able to justify fixing the content of political obligations. We have seen that this claim rests on the important assumption that the supply of many presumptive public goods requires patterns of regulated cooperation. But at least in many cases, this assumption is central to liberal political theory and so it can be accepted here.

Political Obligation and Political Authority

According to the tenets of liberal political theory, the individual is conceptualized apart from the state or political community. The problem of political obligation is to explain how he comes to be required to obey it. We have seen that, as part of the required obedience, the individual must substitute the state's preemptive reasons for reasons of his own. If this epistemic transfer depends on voluntary consent on the part of the individual, it is difficult to account for, while it is not solved by theories of obligation based on gratitude or tacit consent. We have seen that the principle of fairness is able to solve the problem as long as the benefits a cooperative scheme provides are of sufficient value. Accordingly, the argument of this paper pushes in a certain direction in regard to central questions of political obligation. The individual acquires requirements not only to obey the state but to accept its preemptive reasons because of the benefits he receives from it, which depend upon the regulated cooperation of a great many people.⁵³

(Accepted: 23 June 1996)

⁵² For additional limits concerning services that can be required and so gaps in the ability of the principle of fairness to ground obligations to the state, see Klosko, *Principle of Fairness*, pp. 91, 98–9; for problems concerning individuals for whom political obligations cannot be established, see Klosko, *Principle of Fairness*, pp. 48–9; Wolff, 'Political obligation'.

⁵³ An earlier version of this paper was presented at the 1995 meeting of the American Political Science Association, in Chicago, Illinois. I am grateful to Ernie Alleva, Richard Dagger, Joshua Dienstag, Alan Dugger, Debra Morris, John Simmons, Mark Tunick, Jonathan Wolff, and anonymous readers for this journal for valuable comments on previous versions. Financial support was provided by a University of Virginia Summer Grant.