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THE MORAL FORCE OF POLITICAL OBLIGATIONS

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*P*olitical obligations vary in force. Though we have strong obligations to obey certain laws, our obligations to obey others appear to be considerably weaker. Because the weakness of the obligations to obey certain laws has been employed as an argument against the existence of general *prima facie* political obligations, an adequate theory of political obligation must account for this. By employing the obligation to keep promises as a model, I sort out the factors that contribute to the force of *prima facie* political obligations. Their varying force can be explained according to a general theory of political obligation founded on the principle of fairness.

A number of scholars have argued in recent years that there are no *prima facie* political obligations. Typically, these scholars proceed by puncturing the traditional theories of obligation. When none is found to hold, the existence of *prima facie* political obligations is placed in doubt (Pateman 1979; Raz 1979, chap. 12; Raz 1986; Simmons 1979; Smith 1973). In addition to arguments along these lines, certain scholars have found more direct evidence in the very nature of political obligations. I will focus on arguments of this sort. In particular, I will look into the fact that political obligations appear to vary in force and the problem that this poses for theories of political obligation. I will then attempt to show how a theory of political obligation rooted in the principle of fairness is able to account for this.

The Varying Force of Political Obligations

We can begin by pointing out two main features of *prima facie* political obligations. First, *obligations* (as the term is

commonly used) are construed on the model of promises. They are distinguished from other moral requirements because of their specificity: they are created by specific voluntary actions or performances, owed to particular individuals, and discharged through the performance of specific actions. However, in discussions of *political obligation* a wider usage is preferable. The current demand for an adequate theory of political obligation would be satisfied if one could bring forth good reasons for complying with the injunctions of one's government, whether or not these reasons stem from specific voluntary actions. Thus, I will discuss political obligation in the broad sense.¹ Second, *prima facie obligations* (as the term has been used since its introduction by Ross) are defeasible. Obligations, like other moral requirements, are subject to being overridden by conflicting requirements (Ross 1930, 18–20). Under certain circumstances promise *p* can be overridden by considerations *q* and in fact ought not to be complied with. However, in such a case *p* does not cease either to be a promise or to have generated an obligation.² By saying that *p* generates a *prima*

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facie obligation, we distinguish this obligation from what we can call *conclusive obligations*, which express what we ought to do when all relevant moral considerations have been taken into account.

The language of *prima facie* obligations is helpful in reminding us that political obligations are of limited force. But this realization raises another problem, namely, to ensure that they are sufficiently strong. Because modern states exercise their authority through the rule of law, questions of political obligation can be construed as questions about the obligation to obey the law. We can assume that an adequate account of political obligation will explain our obligation to obey all laws that are passed by legitimate authorities. In order to distinguish political obligations *per se* from other moral requirements to obey the law, we can say that A's political obligation is his or her obligation to obey the law *because it has been passed by the proper authorities* rather than for other reasons. The immediate problem is that our obligations to obey certain laws are weak. We can get a rough idea of the force of a particular obligation by considering the censure that would follow the discovery of its violation. According to this standard, the obligation to stop at a red light on a deserted road in the middle of the night is not very strong, as A would probably face only mild censure (if that) if he were discovered not to have stopped. On similar grounds we would say that the obligation to stay within the speed limit is also frequently weak.

The fact that certain of our political obligations are so weak has been employed as an argument against the existence of *prima facie* political obligations. According to M.B.E. Smith, in order for theories of obligation to be worthy of serious consideration, the obligations that they establish must be substantial (1973, 970-76).³ However, as our red light example shows, the obligation to obey certain laws does not meet this test. Smith sug-

gests, then, that even if the existence of a *prima facie* obligation to obey the law could be established, it is not clear that it would merit much attention.

While Smith's approach indicates that political obligations are not sufficiently strong, a different analysis raises a problem of the opposite sort. In arguing for the moral authority of law (which I view as coextensive with a *prima facie* obligation to obey the law), John Finnis appeals to the wide range of benefits that the legal system confers and to their great complexity. These considerations establish a strong obligation to obey all laws, as presumably, all laws are implicated in the supply of benefits. In Finnis's words, "The law presents itself as a seamless web" (1984, 120). However, if the law actually were a seamless web so that our failure to obey any given law affected all laws, our obligations to obey all laws would be of significant force. But this conclusion conflicts with the fact that obligations attached to particular laws, for instance, the traffic example, are of only slight force.

An obvious way around the arguments of both Smith and Finnis is to suggest that political obligations vary in force. Though some are weak and so not worthy of much consideration, others are stronger and more important. To the extent that the varying force of obligations has been noted, it appears to have been used as an argument against the existence of general political obligations (Raz 1984, 145-49). But this can be shown to be consistent with at least one theory of political obligation.

Intuitively, it seems clear that our obligations to obey different laws are of different moral force. Legal scholars frequently distinguish between actions that are inherently wrong (*mala in se*) and actions that are wrong only because they are illegal (*mala prohibita*). There are obvious moral reasons not to perform actions of the first sort, especially actions that directly harm other people. If it is against

the law to kill other people and Jane kills Dick, she would obviously face strong censure. It is also clear that violations of laws of this sort would meet with censure of varying intensities. Jane's condemnation for murdering Dick would be far greater than for shoplifting. In these cases, however, it is not clear how much of the censure would stem from Jane's violation of her obligation to obey the law and how much from committing acts that are inherently wrong.

The force of Jane's obligation to obey the law (because it is the law) can be seen more clearly in cases of the second kind.⁴ Acts that if not for legal prohibitions would not be wrong include violations of various traffic laws, (such as the red light example) and certain tax laws. Now, violations of different laws of this sort will also give rise to censure of varying intensities, though it is more difficult to explain where this variation comes from. As noted above, minor traffic violations would meet with little condemnation. But other acts would give rise to strong censure even though they cause negligible harm at most. The U.S. government has a budget of hundreds of billions of dollars. A few thousand dollars more or less from Jane would make a negligible or imperceptible difference. Yet the discovery that Jane had not paid her income taxes would likely lead to widespread censure, whereas the discovery that she had violated minor traffic laws would probably be ignored. Thus, it must be explained why some violations of laws are regarded as more severe than others even though their consequences appear to be similar.

It strikes me that an adequate theory of political obligation should be expected to explain how obligations to obey different laws vary in force. If theory X construes all obligations as of the force of minor traffic regulations, the resulting obligations would appear to be too weak to account for more onerous political requirements, like the requirement to pay one's

taxes. On the other hand, if theory Y construes obligations along the lines of tax laws, the resulting obligations would appear to be too strong to account for the limited force of minor traffic laws. To be consistent with our intuitions an account should present obligations of varying intensities.

The Force of Promissory Obligations

On an intuitive level it appears that the strength of political obligations should depend largely on the consequences of obeying or disobeying different laws. In general, the rightness or wrongfulness of any action will be judged largely in terms of its consequences (however these are determined). Act-utilitarians, of course, employ this standard exclusively. As we saw in the last section, Smith employs a consequentialist analysis in examining political obligations. Because violations of minor traffic regulations are liable to have only slight consequences, he concludes that *prima facie* political obligations are of little concern (1973, 970-76). But critics of act-utilitarianism have shown that factors other than consequences should be brought to bear in assessing the rightness of actions and that act-utilitarians have especially severe problems in explaining obligations (Brock 1973; Griffin 1982). For instance, there are clear cases in which promises should be complied with even if breaking them would have more beneficial results. Thus, though analysis in terms of consequences can help to explain how political obligations vary in force, other factors should be invoked as well.

We can gain some insight into the range of factors at work in political obligations by examining the factors that contribute to the moral forces of promises. Before proceeding, I should make clear that my analysis of promises does not rest on any

specific moral theory and should be consistent with different construals of the moral basis for the obligation to keep them.⁵ One view in conflict with my analysis is act-utilitarianism, due to its problems explaining cases in which promises should be kept, though the consequences of breaking them would be better. Thus, in addition to the consequences of keeping or breaking a given promise, something of its moral force appears to derive from the promise itself.

The significance of the act of promising—and of similar performances in regard to other obligations—has been analyzed by H. L. A. Hart. According to Hart, in addition to stemming from specific performances and being owed to specific people, promises, like other obligations, are characterized by “independence of content.” The obligation to keep a promise does not arise from the nature of the promised action but from the promise itself (Hart 1958, 102; cf. Brandt 1964, 386–87). If James promises Henry that he will do *p* and *p* is independently the sort of action that he should perform, James’s particular obligation to do *p* does not stem from its independent moral desirability. Actions *q*, *r*, *s*, and so on, can be equally desirable, yet James will have no obligations to do them over and above his general moral duty to perform morally desirable actions. The fact that James promises to do *p* separates it from the general class of morally desirable actions and creates an obligation in regard to it. Contrariwise, if *t* is a morally wrong action, James’s promise still creates an obligation for him to do it—though there are complexities here that will be explored below. In this case the obligation is obviously independent of the nature of the promised action.

Though independence of content appears to capture important features of promises, Hart’s account can be elaborated upon. Hart’s discussion of independence of content appears to be in refer-

ence to the *existence* of obligations. A promise is a certain kind of performance that creates a particular obligation, without regard to what the promise is about. The obligation is created by the performance and does not otherwise exist. But the *force* of a promise is affected by what is promised. To capture this additional aspect of promises (and other obligations) we can distinguish between the performance that creates an obligation and the content of the obligation. In the case of a promise, as long as A utters some appropriate verbal formula (or otherwise invokes the conventions of promising that exist in A’s society) A can make a promise to B regardless of what is promised. In this sense independence of content holds.

But the content of the obligation affects its force. If Jack promises to do something that is morally wrong, under many circumstances his promise should not be complied with. He would be subject to greater censure if he committed a severe crime after promising to do so than if he broke his promise and did not commit it. In a case of this sort, it appears that the obligation created by the promise is overridden by the wrongfulness of what is promised. In order to facilitate discussion, we can refer to the *value* of an obligation. In assessing reasons for and against complying with a given obligation, those in favor of compliance can be said to have positive value, and those against, negative value. I will assume that the values of different aspects of an obligation can be added and subtracted to yield its cumulative value, or the overall strength of the considerations in favor of complying (or not complying) with it. By analogy with the concept of “truth-value,” we can say that if an obligation should be complied with when all relevant moral concerns have been taken into account, it has positive value. An obligation that is overridden by conflicting factors can be said to have negative value. Employing this terminology, we can say that in certain

cases carrying out a promise can have negative value, because the negative value of the promised action outweighs the value of the transaction through which the promise comes into existence.

In any given case it appears that the value of an obligation depends on a complex interplay between the performance through which it is created and its content. Content here centers largely on the consequences of performing or not performing the promised action. The content of a promise has positive value if the consequences of keeping it will be beneficial and negative value if they will be harmful.⁶ Though it is difficult to determine the precise values of the different aspects of a given promise, a rough approximation is provided by the simple formula that the positive value created by the transaction through which the promise comes into existence will be increased by the positive value of beneficial consequences and decreased (and possibly overridden) by the negative value of harmful consequences. Thus, if keeping some promise would give rise to great good, A's obligation to comply with it would be stronger than if the consequences were less beneficial. Along similar lines, if A promises B to commit a crime, then even though the promise itself has some moral force, its value will be counteracted by the negative value of the crime. In many cases these negative factors will override the positive value of the promise itself, and it should not be complied with.

Confirmation of the role that consequences play is that a promise's value will vary as we vary the consequences of complying with or breaking it. Let us assume that Susan is about to have a baby. She already has a young child, June, who must be cared for when she goes into the hospital to give birth. Bob promises Susan that he will take care of June. If Bob breaks this promise (which we will assume he does for no pressing reason), his behavior would be clearly

wrong, and he would be subject to censure. As the consequences of his breaking the promise varied, the degree of his wrongdoing would vary accordingly. If Bob called Susan as she was beginning to go into labor to inform her that he was no longer available, the censure would be strong, especially if his behavior seriously inconvenienced her at this difficult time. Bob's violation of his promise under such circumstances would be considerably worse than if he notified Susan in advance—and the farther in advance, the less the censure. If he notified Susan sufficiently far in advance to allow her easily to make other arrangements, his wrong would be relatively slight. As this example shows, as the consequences of non-compliance with a given promise change, the force of the obligation to keep the promise changes as well.

Additional factors play a role in determining the strength of promises. Though all transactions performed in accordance with the conventions of A's society will constitute promises that are of some moral force, the value of promises will vary as the transactions themselves vary. A solemn oath is of greater force than a promise made more casually. The increased force that particular verbal formulas create is clearly understood by children who demand that certain promises be reinforced with "Cross your heart and hope to die" and the like. Along similar lines, promises made in particular circumstances are of special force. The most notable examples are deathbed promises, which are widely viewed as especially binding. Of course, there are cases in which even solemn oaths and deathbed promises should not be complied with, for instance if compliance would be inherently wrong. But because transactions of these sorts imbue the promised action with considerable value, the conditions under which they should not be kept will be more difficult to satisfy than for other promises.

Because promising is a complex institution, the elements that we have discussed could well interact differently in different cases. It is not possible to say in the abstract exactly how different elements should be weighed in particular cases. But the analysis here should contribute to the assessment of specific promises in making clear the factors involved. It seems safe to say that in general the value of a promise will depend on the interaction of (1) elements bearing on the transaction through which it arises (e.g., its solemnity and its circumstances) and (2) its content, expressed in terms of the consequences of compliance or noncompliance.

Generalized Consequence Analysis

If we construe political obligations on the model of promises, we must locate a feature corresponding to the performance through which a promise comes into existence. The force of the political obligation could then be assessed by combining the value of the performance and the value of complying with a given law, expressed in terms of the consequences of compliance or noncompliance. This sort of analysis would account for the fact that political obligations vary in strength, as obedience to different laws involves different consequences. However, there are problems in assessing the content of political obligations in terms of consequences, while it is also difficult to identify aspects of political obligations corresponding to the performances that give rise to promises.

According to one account of political obligations, the difficulties in construing them on the model of promises are relatively slight. According to theories of obligation based on consent, A's obligation to obey the law stems from an actual promise, whether express or tacit. On this account, the factors discussed in the last section would seem clearly relevant in assessing the force of political obligations. But because theories of consent have been

severely criticized by many scholars and are generally viewed as fatally flawed, they can be set aside.⁷

At first sight it might appear that a consequentialist theory of obligation, for example, one based on act-utilitarianism, would be more promising. Roughly, on this analysis, the force of an obligation to obey a specific law would depend on the consequences of obedience or disobedience. This might explain why relatively trivial laws (such as that in the red light example) are of slight force, while more important laws (such as those concerned with paying taxes) possess greater force. Because we do not require that an account of political obligation be based on obligations in the strict sense and so do not require the existence of specific performances, a consequentialist account would not be vulnerable on this ground. However, consequentialist theories encounter grave difficulties in certain of the most important cases with which political philosophers deal, namely those involving coordinating the activities of large numbers of citizens. Many of the crucial benefits that governments provide are of this sort. Clear examples are national defense, the rule of law, and protection from natural disasters and threats to public health. Benefits such as these, commonly referred to as *public goods*, are characterized by *nonexcludability*. It is difficult to provide them to certain members of a given society while denying them to other members. Under most circumstances they must be provided to all members if they are provided at all.⁸ Other important benefits that governments provide are also public goods, for instance, many public health measures. In addition, though such components of a societal infrastructure as roads, bridges, harbors, and airports are not necessarily public goods since their use could be limited to particular individuals (e.g., those who pay user fees), such limitations would frequently involve severe practical difficul-

ties, so that they too can be regarded as public goods.

A second crucial feature of the benefits under discussion is that their provision generally requires the cooperation of large numbers of people. The rule of law in society X requires general adherence to X's legal code. Though the cooperation of all X-ites is not necessary, social order depends on the acquiescence of a high percentage of X-ites. Though the precise percentage needed (commonly referred to as a *threshold*) is difficult to specify, at some point a widespread lack of cooperation would undermine the sanctity of the legal code, thereby threatening the security of all. The case is similar with national defense and other governmental services financed with tax revenues. Though universal compliance with tax laws is not necessary, at some point widespread failure to obey them would jeopardize the government's ability to provide important services, thereby threatening societal functioning and the well-being of all inhabitants.

Because important benefits that governments provide (1) are public goods and (2) require large-scale cooperation, their provision is beset by a troubling pattern of analysis, commonly referred to as the *prisoner's dilemma*.⁹ In many cases it is difficult to justify requiring a given individual (or a relatively small group of individuals) to cooperate in the provision of such benefits on consequentialist grounds. For instance, by paying her taxes Shelly contributes imperceptibly to the public good. If she did not pay, the amount she contributes would scarcely be missed. However, Shelly's tax payments make a considerable difference to her. If she did not pay she would have more money to lavish on herself and her friends, perhaps to contribute to worthy causes. Since her tax money could make a perceptible difference if it were spent in these ways, it is not clear that the consequences of her not paying would actually be worse for soci-

ety than if she paid. Similarly, by serving in the armed forces Sean would contribute imperceptibly to the security of X. But because he would be far happier if he did not serve and his contribution would not be missed, it is not clear that his military service would actually render society better off. Similar examples could be multiplied. What they have in common is the fact that in a large society in which the cooperation of most but not all members is required to provide some important public good, it is difficult to demonstrate that society actually benefits from the cooperation of any given individual.¹⁰

The prisoner's dilemma is damaging to consequentialist accounts of political obligation. On consequentialist grounds, A should obey the law because society benefits from his doing so. But there is a range of important cases in which it is not clear that his obedience is actually beneficial. Consequentialism encounters similar difficulties in explaining how political obligations vary in force. We have noted that the obligation to pay one's taxes appears to be far stronger than the obligation to stop at a red light on a deserted road. But in a large society, under many circumstances the consequences of disobeying the two laws would be similar. Because Shelly's tax payments would make no perceptible difference to her government's ability to pay its bills, it is not clear why her failure to pay is more harmful than her failure to obey minor traffic laws.

A more promising approach relies on a particular variant of consequentialism. Though there would be no detectable consequences if Sean refused to pay his taxes or serve in the armed forces or if he violated various other laws, the situation would be markedly different if *everyone* (or an unspecified, large number of X-ites, to which, for convenience, I will refer as *everyone* or *all X-ites*) behaved similarly. I will refer to an analysis that relies on the consequences of large numbers of individuals behaving in a certain way as a *gener-*

alized consequence analysis.

In speaking of generalized consequence analysis, I must make clear that I am not arguing according to a strictly consequentialist moral view, such as *utilitarian generalization*. Roughly, according to utilitarian generalization, a given act is right under some circumstances if the consequences of its performance by everyone (who is able to do so) would be at least as good as those of the general performance of any other act. Utilitarian generalization is a controversial moral view that has been severely criticized; the claims that I make do not rest on its distinctive features.¹¹ As was true of my discussion of obligations to keep promises, my account of the force of obligations to obey the law does not rest on a specific moral theory. The generalized consequence analysis is necessary to capture one aspect of our intuitions about political obligations, namely, that their force correlates (roughly) with the generalized consequences of obeying or disobeying given laws. Regardless of the specific moral theory to which we refer to explain this, it should not strike us as surprising. We can assume that laws are ordinarily made to serve the public interest, with general obedience as their intended object. Explaining our intuitions about the force of political obligations is logically distinct from explaining the moral principle (or principles) from which the obligations stem, though an adequate account of the origin of obligations should contribute to explaining the variance in their force.

The generalized consequence analysis is immediately more plausible than a view that relies on the consequences of individual actions. We have seen that the obligation to pay one's taxes is stronger than that connected with some minor traffic law. This variance is well explained by a generalized consequence analysis because the consequences of everyone's refusing to pay their taxes would be far more severe

than everyone's violating minor traffic laws. Similarly, in times of national emergency, the consequences of wholesale avoidance of conscription laws would be disastrous. Thus, it is not surprising that individuals who are convicted of desertion or of dodging the draft are subject to severe censure. Though assessments along these lines are necessarily rough, I believe that further examples would support a rough correlation between the force of the obligation to obey a given law and the generalized consequences of obeying or disobeying it.

A generalized consequence analysis is also supported by connections that are frequently drawn between the behavior of A and of all other X-ites. When we consider cases of disobeying laws, a common reproach that A is likely to meet if he is found not to have paid his taxes is, "What if everyone did the same?"¹² In the first recorded set of arguments for political obligation in the Western tradition, in Plato's *Crito*, the personified Laws of Athens reply along these lines to Socrates' proposed willingness to escape from prison and avoid his death sentence: "Tell me, Socrates, what are you intending to do? Do you not, by this action you are attempting, intend to destroy us, the laws, and indeed the whole city, as far as you are concerned? Or do you think it is possible for a city not to be destroyed if the verdicts of its courts have no force but are nullified and set at naught by private individuals?" (50a-b [Grube 1978]). Thus, Socrates should not escape because his doing so would destroy the laws of Athens.

Though cases like these are frequently encountered, they raise a severe problem for a general consequence analysis. To the Laws' question "What if everyone did the same?" there is an obvious response: there is virtually no chance that everyone will do so. In itself, Socrates' escaping would have little effect on Athenian laws. Though the laws would be destroyed if

everyone disobeyed them, the requisite connection between Socrates' disobedience and everyone else's has not been established. In many cases A's failure to obey a certain law would have no detectable effect on whether other individuals (or at least a sufficient number to have detectable societal effects) would obey. In a large society there are many cases in which A's actions would not influence those of other people, but people would still condemn A's failure to obey the law.

Though actual connections between A's behavior and that of the requisite number of X-ites are not always easy to draw and utilitarian generalizations does not seem an acceptable approach, the generalized consequence test can be supported in other ways.¹³ In recent years theories of political obligation based on the principle of *fairness* have received a good deal of attention. The principle was originally formulated by Hart in 1955 and developed by other thinkers, most notably John Rawls (Hart 1955; Klosko 1987a; Rawls 1964). The principle centers on the idea of the mutuality of restrictions: individuals who benefit from the cooperative efforts of others have an obligation to cooperate as well. As scholars have shown, the principle of fairness rests on a more general moral principle, which David Lyons refers to as "the just distribution of benefits and burdens" (1965, 164). According to Rawls, "We are not to gain from the cooperative labors of others without doing our fair share" (1971, 112; also Arneson 1982 and Ewing 1953). A clear example is national defense. If A benefits from the protection his fellow citizens provide, he has an obligation to cooperate in their efforts. He can be obligated to serve in the armed forces or to help finance them with tax payments or both.

The principle of fairness provides the requisite connection between the behavior of A and other X-ites. According to an alternative formulation of the principle,

presented by Rawls, the principle "requires one to abstain from an advantage that cannot be distributed fairly to those whose efforts have made it possible" (1964, 17). National defense and other similar benefits are necessary for the well-being of all X-ites, A included. Because such goods require large-scale cooperation and all benefit from their provision, A would behave unfairly in receiving the benefits of others' cooperative activity without cooperating himself. If the cooperation of many but not all is required to provide some good, why should A, rather than other X-ites, be free of the burdens of cooperation unless there is some morally relevant difference between A and them?

Content Value

I have argued elsewhere that the principle of fairness can support a workable general theory of political obligation. Arguments for this theory (which I will refer to as *fairness theory*) need not be reviewed here.¹⁴ More important for our immediate concerns is the fact that fairness theory is able to explain how political obligations vary in force. Because great precision concerning the force of political obligations is not easily attained, our account must be somewhat rough. But the presentation here should be able to cover our intuitions about important features of political obligations.

In assessing the strength of political obligations, two factors should be taken into consideration. I will call these *content value* and *institutional value*. Content value is concerned with the importance of the benefits that stem from particular laws. Though the importance of different benefits cannot be identified precisely, we can divide the benefits supplied by governments into rough classes, obligations corresponding to which appear to vary in force. The first class is comprised of benefits essential to individuals' well-

being. Examples of these have been noted: national defense, the rule of law, protection from a hostile environment. For example, in the case of national defense the cooperation of large numbers of X-ites is required for the benefit to be produced. If Karl receives the benefit without bearing his share of the burden, his behavior would be clearly unfair, and he would be subject to strong censure. As noted, during times of national emergency (e.g., in the U.S. early in World War II), individuals who were believed to have illegally avoided the draft, deserted, or taken illegal liberties with the country's wartime economic measures were harshly criticized.¹⁵ If we employ the severity of such censure as a measure, we should conclude that the obligations to obey these laws are of considerable moral force. Similarly, the rule of law is necessary to protect individuals from various sources of harm. Individuals who violate the law and thereby threaten the security of their fellow citizens are also harshly condemned. Clearly, there are strong obligations to obey a range of laws bearing directly on personal security, though it is not easy to distinguish the components of these obligations that stem from immediate harms that are committed from more strictly political obligations, obligations to obey laws because they are laws.¹⁶

Of course, in addition to defending their populations, governments perform a much wider range of services. As noted above, the government in country X is responsible for providing and maintaining an infrastructure of roads, bridges, tunnels, and harbors. It regulates communication and education, provides sewers and sanitation, works to promote economic stability, and cares for the percentage of the population that is unable to care for itself. The population of X will contribute to government's provision of these extensive services in various ways, most notably by providing tax revenues and by following the laws (e.g., traffic

regulations) that are necessary to coordinate their actions with their fellows.

The benefits represented by this range of governmental services vary enormously in importance. Those that any given program provides citizen A can be quite different from those enjoyed by other citizens. Because of this wide range of benefits and differences in how they fall out on different individuals, it seems unlikely that we would be able to specify the moral force of specific obligations to comply with specific programs. However, it seems likely that there is a rough correspondence between the importance of the overall benefit that a given law produces and the force of the obligation to obey it. Thus, the obligation to obey minor traffic laws is less strong than that to pay one's taxes, which is in turn less strong than that to serve in the armed forces in times of dire need. Again, as noted in the last section, the benefits in such cases should be assessed in terms of generalized consequences. In itself A's avoidance of the draft laws may do no more harm to society than his or her failure to stop at a red light on a deserted road. But the consequences of generalizing the former sort of behavior would be far worse than the latter. Similarly, we can make rough gradations within the range of governmental services. Thus, we distinguish between significant and insignificant traffic violations. Going very fast on a busy highway or in a residential neighborhood is a more serious offense than failing to stop at a red light on a deserted road, whether or not harmful consequences result from specific instances of each kind of act. Generalizing the former sort of behavior would have more severe consequences than generalizing the latter.

It seems, then, that there is a rough correspondence between the force of the obligation to obey a given law and the benefits the law provides, assessed in terms of generalized consequences. In contributing to the force of a given obligation, the *im-*

portance of these benefits corresponds roughly to the *content* of promises.

Institutional Value

In another sense laws should be obeyed simply because they are laws, with reference to a different aspect of their specific consequences. In addition to content value, obligations to obey laws also have institutional value. We can refer to the benefits received from the rule of law and the existence of a working social decision process as *institutional goods*.¹⁷ Because the benefits that Karl receives from institutional goods depend on widespread willingness to comply with the law, it follows from the principle of fairness that he, too, has an obligation to cooperate. He should not profit from the sacrifices of other people if the advantages of non-cooperation cannot be extended to them as well. We can call the argument that grounds A's obligation to comply with a given law in A's need for the rule of law the *institutional argument*.

According to the institutional argument, Karl's obligation to obey the law stems from the benefits he receives from the rule of law and the means it provides of peacefully settling disputes. These benefits are of fundamental importance, necessary for the continued existence of society and its members. Karl's obligation to obey stems from the corrosive effects of disobedience. Because the rule of law requires general adherence, individuals who lightly set aside laws with which they disagree undermine the social fabric.

The importance of the rule of law gives individuals an additional reason to obey specific laws, the force of which is derived from a second set of generalized consequences. Let us assume that A confronts the question whether to obey some tax law T of society X. The force of this obligation reflects the consequences that generalized disobedience of T would have

upon X. In addition to the specific subject matter with which it is concerned, a given law is a component of the legal system. Because the rule of law in society X requires general obedience to its laws, T included, general obedience or disobedience of T will affect the rule of law in society as a whole.¹⁸

The size and complexity of a modern legal system render the institutional force of obligations to obey the law complex. These obligations appear to differ in regard to different kinds of laws pertaining to different social functions. Though we need not sort out numerous kinds of laws, one distinction is important. In a basic sense the rule of law is indispensable to the maintenance of society and so to the well-being of its members. Laws that are important in this regard include prohibitions against physically harming other people, taking their property, and defrauding them. We can refer to the direct contribution of the rule of law to personal security as its core or essential function. The laws under consideration here are central to that minimal social order necessary for personal security—for life so "as not to be weary of it," to use Hobbes's words (1968, 192). Since A undoubtedly requires the rule of law in this sense, A would be unfair not to obey the range of laws in question.

The obligation to obey the law encompasses other laws as well. Laws that fall outside this core range should also be supported because this contributes to the core functions. There is an empirical assumption here, but one that is virtually truistic among political philosophers:¹⁹ widespread adherence to the law promotes further adherence, while widespread disobedience has the opposite effect. If individuals develop a habit of disobedience in regard to relatively minor matters, that habit will extend to more important matters, while a habit of obedience in minor matters will strengthen obedience in major matters. Accordingly, compliance

with laws falling outside the core range is indirectly good in itself, because it works to strengthen the core function of the rule of law.

It seems clear that the institutional component of the obligation to obey specific laws will vary in force, depending on the contribution that generalized adherence to a given law makes to the rule of law in society.²⁰ Thus, laws falling in the core range will have greater institutional force than laws that contribute only indirectly to the core function. In many cases laws that have considerable institutional force will also have significant content value, as general disobedience would lead to serious direct harm. The obligations to obey such laws will therefore be doubly strong.

The fact that the societies discussed here are large makes matters more complex. In a large society, Kate's disobedience of a given law, whether major or minor, is unlikely to have an appreciable effect on the degree of adherence to the rule of law throughout society as a whole. If she disobeys minor laws, her resulting habit of disobedience is unlikely to have detectable social effects. According to the principle of fairness, however, the actual consequences of a given act are not the sole concern. As long as the rule of law exists in her society and nonadherence by others would weaken their commitment to it, Kate benefits from their obedience; and the advantages of her noncompliance cannot be extended to them. Thus, Kate should not disobey minor laws; because general disobedience of even minor laws would undermine the rule of law throughout society, it would be unfair of her to disobey them.

The discussion of institutional value up to this point has omitted various complicating factors. Different kinds of exceptional cases should be considered, however briefly. First, because the principle of fairness traces obligations to the receipt of benefits, in circumstances under which

laws are widely disobeyed so that Kate does not benefit from the rule of law, the institutional value of particular laws should be low or nonexistent. As Hobbes says, "He that should be modest, and tractable, and performe all he promises, in such time, and place, where no man els should do so, should but make himselfe a prey to others, and procure his own certain ruine" (1968, 215). Not only would it be foolish for Kate to obey when all others do not, but it would be unfair to require her to do so. Along similar lines, the institutional value of political obligations is subject to being overridden by other moral considerations. For example, assume that Lisa's country, Y, is grievously unjust, along the lines of Nazi Germany. In this case, the fact that the rule of law exists and so provides her with important benefits would create an obligation for Lisa to obey Y's laws. But it is likely that this obligation would be overridden by the moral requirement not to commit unjust actions (or support their perpetration), just as the obligation to keep a promise can be overridden by the injustice of what is promised.

A more difficult range of cases centers on the fact that particular laws appear to be without institutional value even though (1) the rule of law exists in the legal system in question and (2) the system as a whole is acceptably just. In a complex society it is likely that many laws will be instituted that individuals do not feel they should obey. Many laws are in fact widely disobeyed, and it may seem unclear that there is an obligation to obey them. Undoubtedly, beyond a certain point, specific laws that are unfair or unjust lose their binding force. Especially important for our purposes, it is not clear that laws that cannot be shown to serve real or legitimate social purposes or those that actually detract from public welfare, should be obeyed. However, despite appearances to the contrary, these laws have positive institutional value, though this

can be overridden by their negative content value. When some law is widely believed to be detrimental to society, people can generally feel that it should not be obeyed despite the implications that disobeying it might have for the rule of law throughout society. In a complex legal system many sorts of laws lose their rational justifications over time if they ever had them. Frequently, such laws pass out of use and cease to be enforced. Examples are laws against witchcraft and similar practices, still on the books in various countries. Similarly, blue laws can pass out of social fashion before they are officially repealed. In many cases useless laws can be identified by the fact that they are violated openly, without strong disapproval. For instance, certain traffic laws, such as the 55 miles per hour speed limit, are routinely disobeyed. Proof that the benefits of noncompliance with these laws can be generalized without undue harm to society is the fact that nonadherence is widespread.

The variables in these cases are difficult to sort out, but it appears that in many cases the widespread belief that a given law has negative content value will lead to the widespread belief that it can be rightfully disobeyed. Speed limit laws are especially clear instances here, as are also laws forbidding various social practices, for example, certain sexual relations among consenting adults. Public attitudes indicate general disdain for speed limits. The fact that those who are caught speeding and ticketed are often met with sympathy rather than censure is strong evidence that (under many circumstances) the laws in question are widely believed not to serve legitimate social purposes. Under other circumstances, however, speed limits serve clear and important purposes and are regarded differently. When individuals are known to go very fast, say 100 miles per hour on busy highways, they constitute a danger and are accordingly subject to censure. Or if individuals speed

in residential neighborhoods, especially where children are playing, they too become dangers and will meet disapproval. Thus, there are circumstances in which these laws are clearly important, as is indicated by public reaction. If, under other circumstances, a given law actually is useless and widely disobeyed, modifying it would serve an important social purpose in preventing a habit of disobedience from developing in its regard.

Innumerable complexities bearing on the institutional component of the obligation to obey different laws cannot be discussed here. But to hazard a few generalizations by way of summarizing, it seems that even in questionable cases, individuals can be presumed to have prima facie obligations to obey the law because it is the law. In most cases, one can assume that this obligation is of significant moral force. To the extent that disobedience of any law undermines the general fabric of the rule of law on which the welfare of all depends, individuals who disobey are subject to condemnation. We have seen, however, that there are exceptions to this rule—that when a given law is unjust or detracts from the public good, the obligation to obey can be overridden.

It seems that the force of the obligation to obey a given law can be assessed after the model of the obligation to keep a promise. We have seen that the force of the obligation to keep a promise is comprised of the value of the performance that gives rise to the promise, combined with the value of the consequences of keeping or breaking it. As we have seen, the force of the obligation to obey a given law depends on two factors. We have, first, the generalized consequences of obedience to the law, its content value. Second is one particular generalized consequence of obedience or disobedience, that bearing on the law's contribution to the rule of law throughout society, its institutional value. Once again, in the abstract it is difficult to specify the force of a given

law. However, the analysis here should be helpful in indicating the factors to be taken into account in assessing any given case.

It appears that all laws have positive institutional value, though some laws have greater institutional value than others, as generalized obedience to them is more central to maintenance of the rule of law in society. In assessing the moral force of a given law, institutional value should be combined with content value. As noted, institutional value will vary in relation to the contribution that general obedience to a given law makes to the rule of law. Content value will also vary in strength. As the consequences of general obedience to different laws become increasingly important, the value of their corresponding obligations will increase. But as we have seen, in some cases the consequences of general adherence to a given law will be either negligible or actually harmful. In certain cases negative content value can negate or actually override positive institutional value, and the obligation to obey certain laws will be of little or no force. Such laws are often recognized by the fact that they are violated openly, with little condemnation. It seems that laws of this sort should be stricken from the books, because of the potentially corrosive effects of their open violation on the rule of law throughout society.

Conclusion

I have discussed two different ways in which the moral force of political obligations is commonly evaluated. Smith assesses political obligations in terms of their consequences and notes that the obligations to obey certain laws appear to be weak. Finnis discusses the interwoven complexity of legal systems. Viewing the law as a seamless web, he believes that there is a significant obligation to obey all laws. It seems that both of these approaches are partially correct; my argu-

ment confirms both up to a point. We have seen that the obligation to obey a specific law is in part a function of its consequences (generalized consequences). We have also seen important institutional considerations that support obligations to obey all laws. In regard to these factors, the law is a seamless web; within limits, disobedience of any law undermines the habit of obedience on which the entire legal system rests.

I believe that our intuitions about political obligation support both a presumption that a law should be obeyed because it is a law—a presumption that is subject to being overridden by the negative value of specific laws—and the view that obligations to obey different laws differ significantly in force. We have seen that the force of the obligation to obey a specific law can be interpreted as a combination of the law's content and institutional values and that fairness theory accounts for both of these components. The fact that fairness theory is able to ground our intuitions about the varying force of political obligations is a significant consideration in favor of its claim to support a workable theory of political obligation.

Notes

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1. For the concept of obligation, see Brandt 1964; for its wider use in discussions of political obligation, see Simmons 1979, chap. 1 and Smith 1973, 950-52.

2. Cf. the language of Ross 1930, 18-20; for problems with his language, see Searle 1978.

3. Smith's additional argument concerning the additive force of the obligation to obey the law (1973, 970-71) will not be discussed here; but see below, n. 16.

4. See below, n. 16.

5. For different analyses, see Prichard 1968, and the exchange between Raz (1972) and MacCormick (1972).

6. To keep discussion reasonably simple, I do not

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discuss additional factors relevant to the rightness or wrongfulness of promises, as, for instance, if fulfilling a given promise would cause one to violate certain individuals' rights or would be inherently wrong for other reasons. Obviously, if rights would be violated by Adam's fulfilling some promise or if it would be inherently wrong for him to keep it for some other reason, this would tell strongly against his obligation to keep it.

7. Though I believe that consent theory is irretrievably flawed, it would still merit consideration if all other theories of political obligation were equally or more defective. Although the matter cannot be discussed here in detail, I believe this is not the case. Because the principle of fairness roots obligations in the receipt of benefits and does not require specific voluntary performances, it is able to ground a theory of political obligation that possesses the advantages of consent theory without its disadvantages; see Klosko 1987a. An excellent discussion of consent theory and its flaws is found in Simmons 1979, chaps. 3–4.

8. Public goods (as the term is generally used) are also characterized by nonrival consumption, that is, that one individual's consumption of a given good will not affect the amount available for others. This condition is not directly relevant to my concerns and so is not discussed.

9. An important recent discussion is Parfit 1984, part 1. Though the cases under discussion can be referred to as prisoner's dilemma cases, they do not fall under the prisoner's dilemma in the technical sense. In prisoner's dilemma cases the different participants have different maximands, whereas in the cases under discussion we can assume common interest; see Regan 1980, 62–63.

10. This line of argument is disputed by Parfit (1984, chap. 3); his view is criticized in Klosko 1990b.

11. For criticism of utilitarian generalization, see Lyons 1965 and Gruzalski 1982.

12. See Broad 1915–16, Ewing 1953, and Strang 1960. For evidence of connections between A's political obligations and the behavior of other people, see Klosko 1987b.

13. I do not consider various versions of Kantianism because of the objectionable metaphysical commitments they generally involve.

14. See Klosko 1987a, which responds to important criticisms of the principle of fairness, including those of Nozick 1974, 90–95 and Simmons 1979, chap. 5. (See also Klosko 1987b in criticism of Simmons.) Klosko 1990a responds to Simmons' (1987) criticisms of Klosko 1987a.

15. Individuals who are believed to violate the spirit, as opposed to the letter, of such laws are also censured. It seems, however, that those who are believed to violate the letter (as well as the spirit) are criticized more harshly, as is indicated by public attitudes in regard to the recent insider trading cases

on Wall Street or the tax law conviction of Leona Helmsley.

16. The generalized consequence test does not seem clearly to apply to certain actions that violate laws, especially criminal laws prohibiting actions that entail direct and immediate harms (such as laws against murder, robbery, and rape). It should be noted, however, that the test does seem to apply in certain cases (e.g., white-collar crime, stealing from the rich, and robbing banks) in which the actions under consideration are strongly condemned even though it is not clear that they cause immediate harm. Because acts such as murder and rape are immediately harmful (and so, clearly wrong), the test is not normally appealed to. But this does not indicate that it does not identify an *additional* respect in which the acts are wrong. As is seen in Smith's example of the moral difference between killing 1000 people and killing 1001 people (1973, 970, n. 37), our intuitions are not always reliable in cases in which we identify additional respects in which acts that are obviously reprehensible are wrong. It should also be noted that criminal laws perform important coordination functions in society so that general adherence plays an obvious role in maintaining the social fabric; see Boardman 1987.

17. It is not necessary for us to sort out different aspects of the rule of law and the values associated with each. On the formal conception of the rule of law and its benefits (which are distinct from the protection of persons from coercive interference by others), see Raz 1979, chap. 11. I attempt to capture aspects of the rule of law in this sense in discussing a working decision procedure, which provides society with stable, predictable rules governing social interaction.

18. Though my overall argument does not require any particular account of the obligation to keep promises, the analogy between this obligation and that to obey the law is more clearly seen if we accept (for the sake of argument) an account that roots the obligation to keep promises on concerns of fairness; for this analysis, see Rawls 1971, sec. 52. According to this construction, if A breaks a promise to B, his wrong is twofold: (1) the damage done to B, who relied on A to keep the promise and (2) the unfairness of breaking a promise. According to a fairness account, the practice of promising rests on general adherence to its rules. By making and then breaking a promise, A acts unfairly; he takes an advantage that cannot be extended to those whose efforts make it possible. If we accept this construction, the force of promissory obligations involves factors very similar to those seen in political obligations, as discussed in this section.

19. Aristotle, *Politics*, 2. 13–14; Thomas Aquinas, *Summa theologica*, 1–12. 97. 2 (in D'Entrevies 1973, 72–73).

20. In contrast to Smith (1973), who believes that obligations to obey laws because they are laws are of

only slight moral force, the argument here suggests that the force of such obligations will vary. Some laws have slight force, while others have much more, depending upon the contribution that general adherence to a given law makes to the rule of law in society.

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