

Klosko, George. *Political Obligations*.
Oxford: Oxford University Press, 2005. Pp. 266. \$40.00 (cloth).

Skepticism concerning the existence of any obligations to obey the law is still the dominant view about the subject. This book is part of a countermovement which seems to be gaining in strength recently. In *The Principle of Fairness and Political Obligation* (1992), Klosko ably defended the view that the principle of fairness can account for at least some political obligations. A standard objection to the application of this principle is that it is paternalistic to presume the benefits produced by the activities of the state to be sufficiently worthwhile to someone who will not get the option to refuse them. In response to this objection Klosko argued that some public goods—for example, national defense and law and order—are indispensable to any acceptable life. Because these goods are nonexcludable, it will not be feasible to make receiving them conditional on accepting them or on paying a price for them. Therefore the result of allowing people to abstain from contributing would be to resign to the fact that even these indispensable goods will not be produced.

Governments supply us with many goods which are not indispensable, hence Klosko recognized his argument to cover only a relatively small part of the obligations they claim to impose on us. But some goods which by themselves are not indispensable but merely beneficial can, he suggested, be seen as instrumentally necessary for the enjoyment of indispensable goods. The deployment of military forces, for example, requires roads and harbors and communication facilities. This indirect argument does not bring us far, even less far than Klosko acknowledges. For even if some goods the government provides can be shown to be instrumentally necessary to the production of indispensable goods, the actual format in which they are provided is mostly not. Government plans for the construction and the upkeep of roads are only to a modest extent dependent on the needs of the military.

The present book should be seen as complementing the account of the earlier one. In the first place, it complements it in a defensive way, by replying to some objections and criticizing some alternative views. The argument that public goods can be provided only by a monopolistic force able to coerce would-be free riders has been resisted by anarcho-liberal authors who have designed sophisticated schemes of nonstate provision. Klosko argues that none of these schemes is likely to be viable. One of the more prominent alternative accounts of political obligation appeals to natural duties—duties of everyone owed to everyone else, in particular the duty to help other people in need when helping them does not require great sacrifice. Such accounts cannot be comprehensive, Klosko suggests, if only because the state actually requires great sacrifice. He does not want to deny, however, that the appeal to such natural duties may be part of the truth about political obligation. And this brings him to the second, more constructive, way in which he complements the theory of his first book. If the principle of fairness can account for only some political obligations, obligations arising in the context of the production of indispensable public goods, the natural duty to help the needy may account for additional obligations, for example, the obligation to help finance welfare or to pay a fixed premium for a universal health-care insurance scheme. In such a way the fairness theory starts

to develop into a multiple principle theory of political obligation. In Klosko's view, the fairness principle remains the basic one, the other principles being in some ways dependent on it. Principles may also overlap with each other. For example, if the government has instituted any coordinated scheme for catering to a specific category of needs and fairly distributes the costs of the scheme among the citizens, it will be a form of parasitism and hence unfair to evade paying one's contribution.

The final principle Klosko proposes is a requirement to take a fair share of the burdens involved in the promotion of the common good. This principle cannot be reduced to any of the other ones, he believes, for on the one hand it may require a citizen to pay for the provision of a good which has no or only very little value to himself—not enough to justify his contribution as a fair reciprocation—and on the other hand it may require that citizen to pay for goods which cannot be considered anyone's pressing needs, for example, public parks or the promotion of a national moviemaking industry.

A large part of the book is finally devoted to another constructive task. According to Klosko, justifying a "theory" of political obligation should take the form of showing it to be in reflective equilibrium with basic moral intuitions. Usually the moral intuitions used as input in such a construction are the actual ones of the author and the presumed ones of his readers, but Klosko believes that this procedure bows too much to the views of philosophers which might be unrepresentative and professionally distorted. So he follows Aristotle in considering the views of the Wise and the Many, the wise in his case being American, German, and Israeli supreme courts deciding cases of conscientious objection to military service, and the many being ordinary citizens discussing reasons to obey or not to obey the law in small focus groups. The courts largely consider military service to be a fair reciprocation for the benefit of protection; the people believe that they have obligations to obey most laws, for reasons which, although hard to sort out, seem to involve notions of fairness and of the common good, as well as a notion of membership.

All this seems to me on the right track. If any theory has the chance to supplant orthodox skepticism, it will be a multiple principle theory with a principle of fairness at its core. Klosko's two books together make a strong case for this kind of theory. And his proposal to consider popular beliefs breaks new ground in this area (although his report of the focus group discussions is somewhat unnecessarily repetitious).

Whether the outcome of these focus group discussions strengthens his case is debatable, and it is to his credit that he makes no secret of the fact. People obviously tend to overrate the causal importance of their own contributions to collective actions. They do not only ask "What if everyone did the same?" but believe that any individual's free riding significantly increases the probability of everyone's doing the same. But in that case it may turn out that the obligations they recognize are not obligations to obey the law because it is the law, but rather obligations to bring about good consequences by joining others in cooperative efforts they happen to be involved in, irrespective of the role of the law in initiating this involvement. Klosko's hypothesis must be that, as soon as people understand the causal insignificance of their own contribution, they will

go on asking "What if everybody did the same?" But this hypothesis still awaits confirmation.

There is one aspect of the principle of fairness which, although not completely absent from Klosko's account, is not consistently stressed by him either. Making it more prominent would help to sharpen the distinct profile of his multiple principle theory, which because of the theory's pluralism might easily get blurred.

Fairness is not simply a matter of reciprocating for benefits; it means doing one's fair share of a self-consciously collective effort of a group of people. If any individual is content to produce the good simply for his own enjoyment without any regard to its positive external effects, there is nothing wrong with free riding. (Russell Hardin somewhere gives the example of Howard Hughes, who bought a television station in order to have it run Westerns throughout the night.) The same is true if some people accidentally happen to act in such a way that their combined actions produce some benefit to you. A "duty" or "obligation" like the obligation of fairness should therefore not be seen as simply a compelling moral reason or moral requirement; it is a moral requirement which satisfies a specific condition: its moral force depends on other people legitimately expecting you to fulfill it. In Hume's terms it is not a natural but an artificial or "conventional" duty. This Humean insight is largely absent from Klosko's book. At one point he recognizes that political obligation can only be a duty citizens owe to each other, but most of the time he writes as if it is either owed to no one in particular ("a moral requirement") or owed to the government. But if political obligation is an obligation of fairness, it should not be conceived as a bilateral moral relation between a government and a given individual subject, considered independently of all other subjects. Rather it should be seen as a multilateral relation between the participants in a cooperative enterprise. This consideration by itself suffices to disqualify quite a number of common theories of political obligation, including consent and natural duty theories. It also explains the moral relevance of membership, in a different way than proposed by communitarian or associationist theories.

Highlighting this conventional element of political obligation would strengthen Klosko's approach in a number of ways. In the first place, it gives us an additional reason to accept the relevance of people's (rather than the courts' or any other state agencies') actual beliefs. If people do not commonly believe themselves to have obligations to obey the law, they cannot have such obligations. But if they have such beliefs, the fact itself has moral weight unless the beliefs can be shown to be based on objectionable grounds. That political obligations arise within political communities which are bound together by mutual expectations of fair contribution may in the second place also buttress the refutation of the anarcho-liberal argument. Even if a case could be made for the viability of some scheme of nonstate provision of any public good, we have acquired obligations within existing practices of cooperation which we cannot simply renounce.

Pointing out the conventional nature of political obligation also helps us to answer some questions about the "natural duty" part of Klosko's multiple principle theory. Usually and for good reason the samaritan principle is given a more restricted interpretation than Klosko gives it: you should, indeed, provide

help to someone who is in peril or dire need, if you can do so at relatively little cost, but only if you are in a privileged position to provide that help. Even in legal systems which recognize a duty of rescue there is no legal duty to contribute to famine relief. If many people are similarly situated for providing aid, you have no perfect duty to provide it, but only the imperfect duty to use x percent of the resources at your disposal for charitable aims. It is left to your discretion to decide such questions as when to give and to whom. If we had perfect duties in all such situations, that would create a black hole problem. Now, if a government sets up some coordinated scheme for providing assistance, why should anyone be required to join the scheme? Why should the new duty be a perfect, even an enforceable one? Joining the scheme may not even increase the efficiency of your activities, but in any case it was not your imperfect duty to maximize efficiency.

And why should you be required to contribute to the scheme organized by one particular state rather than another? Klosko raises this last question, and he replies: because you are already bound to this particular political community because it provides you with indispensable public goods. But if you have made your fair contribution to the provision of these goods, why shouldn't you be free to absolve your duties of charity within another framework? Such questions can be answered by pointing out that if a government creates a coordinated scheme of aid, each citizen by convention acquires a "privileged" position with respect to a discrete task. In that case you are not free to disregard the legitimate expectations of the others. Obviously the resulting duty should not be seen as a natural duty at all.

Klosko accepts that, if the principle of fairness requires us to contribute to any particular cooperative scheme, the details of the organization of the scheme (including, within rough limits of fairness, the exact distribution of the burdens) should be left to authoritative determination by a fair (democratic) procedure. This is true not only if there are several fully equivalent ways of organizing the scheme but in particular if the best way of organizing it is contested: the major forms of coordination to be provided by governments are really forms of "umpirage" as Locke would call it. This is precisely the reason why a fair contribution can only take the form of obedience to authoritative decisions. A multiple principle theory could express the point by proposing an additional principle: accepting reasonably fair arbitration. This principle explains why law can provide content-independent reasons, even if their content independence is only a limited one, and hence why the theory does not collapse into a form of philosophical anarchism after all. You do not know what your fair share is until this is authoritatively decided.

The principle could also be used to extend the area of application of the principle of fairness. As we saw, the reason why Klosko does not want to apply the principle to cooperation for merely beneficial goods is that this would be paternalistic: for each of these goods some people might reasonably protest that they don't value it sufficiently, or even at all. But even if this is true for each single good, it need not be true for packages of such goods as they are actually provided by present-day governments (including all essential goods of which the indispensability is not generally accepted). Life without any controversial public good would be worse for everyone; hence, a package of goods of controversial

value may be of uncontroversial value: the accumulation of leaky buckets will stop the leaking. Such a program will also profit from economies of scale: paying for the production of many goods from one tax fund, for example, will save transaction costs. Obviously, we cannot allow people to pick and choose the elements of the scheme which they like and to deduct a proportional part from their taxes for the rest. We can only have one scheme for all or no scheme at all. Hence we should appeal again to the duty to accept a fair compromise. There is nothing paternalistic about that appeal. Although I have no basic objection to Klosko's proposed duty to contribute to the promotion of the common good, for this reason I am not convinced by his argument for why we need it as a separate principle.

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MacGilvray, Eric. *Reconstructing Public Reason*.
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Drawing on the pragmatism of James and Dewey, MacGilvray offers a reconstruction of public reason as it is conceived by political liberals, notably by Rawls and Larmore. He endorses political liberalism's concern with accommodating the ethical and cultural pluralism of modern, democratic societies, but he bemoans what he calls its "minimalism," its effort to ground public justification on principles that can be universally accepted but that must therefore be narrowly drawn. This search for "transparently valid premises" and its accompanying appreciation of "deep moral, philosophical, and cultural differences" (236) have stifled our political imagination, leaving us ill equipped to respond to the homogenizing forces of international capitalism. Democratic publics must be free to consider a wider range of policies than those that pass the test of public reason, narrowly construed. MacGilvray claims that his reconstructed public reason is more capacious and thus provides the resources we need to confront the issues we face.

The principal idea MacGilvray takes from pragmatism is "the ideal of experimental intelligence" (137), a substantive ethical position which holds that "the development and application of the faculty of experimental intelligence is . . . an essential condition of human well-being" (117). He also borrows pragmatism's insistence that the question of justifying a belief—including a moral or an ethical belief—arises only when one faces genuine doubt about its acceptability and that we address doubt by acting on the belief and determining whether the results of our action comport with our expectations. Thus, justification is always prospective, and "our judgments about matters of public concern should . . . be the subject of an ongoing investigation undertaken within a shared context of meaning and oriented toward an assessment of the possibilities the world will admit" (119). These ideas point to a politics unconstrained by fixed principles of public reason but structured to enhance citizens' experimental intelligence as they propose public policies and, learning from the results