



The Principle of Fairness and Political Obligation.

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where Kymlicka's defense of the position he favors would have been stronger if his argument had probed more deeply.

The liberal equality ideal also prompts questions from the libertarian right that Kymlicka does not take as seriously as he might have. Liberal equality as characterized by Kymlicka fundamentally rejects the Lockean idea that each person is the rightful owner of her own body. In liberal egalitarian theory, we do not fully own our bodies, because we do not deserve our talents, and we are obligated to use our bodies in ways that contribute to the opportunities of others as sanctioned by distributive justice norms. But libertarians note that the liberal egalitarian is quite selective in her discussion of self-ownership and does not fully follow through the apparent implications of its rejection. In the context of abortion controversies, some liberal egalitarians insist on the woman's right to control her own body even if the fetus inside her is deemed a person. The talents of attracting romantic partners and friends are very unevenly distributed across persons, but liberal egalitarians do not propose talent-pooling remedies for these natural injustices. Why not require handsome persons to share sexual favors with unhandsome persons, and charming witty persons to share their company with uncharming and witless folk? As Kymlicka himself points out in another context, you cannot simply invoke a distinction between private life and public responsibility to answer these questions, because the shape of a morally acceptable public/private distinction should be determined by first principles, not by ad hoc accommodation of entrenched hunches. This is not to suggest that this line of criticism is unanswerable, just that it would have been nice if Kymlicka had addressed it.

In this review I have exercised the reviewer's prerogative to be curmudgeonly and to concentrate on disagreements. In conclusion I want to emphasize that there is also a lot to agree with and that Kymlicka's writing is incisive and intelligent even when it prompts disagreement. Kymlicka articulates an important line of thought in contemporary liberalism, usefully compares this doctrine to rival approaches, and thereby contributes significantly to our understanding of theories of justice.

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Klosko, George. *The Principle of Fairness and Political Obligation*. Lanham, Md.: Rowman & Littlefield, 1992. Pp. 204. \$52.50 (cloth); \$19.95 (paper).

George Klosko here refines a number of his recent articles into an original, clear, and pleasingly compact book on an important problem. It is as useful for its discussion of the principle of fairness as it is for its defense of political obligation.

Though many regard fairness as a *constraint* on any theory of political obligation, fewer now regard it as the *ground* of such a theory. First, many of the benefits the state provides are unavoidable and, as Nozick argues, thrusting

benefits on someone and then demanding payment hardly seems fair. Second, the state does a lot more than support fair distributive schemes.

Klosko replies that some of the benefits are “presumptive public goods” (PPGs)—ones that people want, whatever else they want, because they are indispensable to a valuable life. He then argues that if the state secures *even one* PPG, and other necessary conditions are fulfilled, then we have a general obligation of obedience (p. 114). With respect to PPGs, it can hardly be objected that the state is forcing on people benefits they do not want and would not try to get, so those who shirk the duties that help supply those goods are free riders.

Of course, the PPGs must also be worth the recipients’ effort in providing them, and they must be distributed fairly. And since the latter is a controversial matter, Klosko requires only that we accept a principle of “precedence” to comply with the majority view of distributive justice provided it is selected by tolerably fair procedures from a class of principles generally agreed to be fair.

Now, governments claim authority to do a lot more than supply PPGs, so a fairness theory needs to extend its reach. In an especially interesting move, Klosko argues that discretionary (i.e., nonessential) public goods (DPGs) are indirectly necessary to our well-being. No government can provide PPGs without also providing at least some DPGs, for example, transportation, communication, public health, and economic stabilization. Thus there is an obligation to contribute to the supply of DPGs because these are necessary means to the PPGs, and there is an obligation in fairness to contribute to the latter by obeying the law.

This relies on the premise that if there is an obligation to do X, and if doing Y is necessary to doing X, then one also has an obligation to do Y. But that premise may be false. Suppose I promise to meet a friend for lunch and that the only way I can get there is by taxi. Does this entail that I have an obligation to go by taxi? It seems not. If I fail to turn up, I have broken my obligation to meet, but I have not broken any obligation to take a taxi. Obligations are not transitive across the means to their fulfillment.

There is also some doubt about what the argument is intended to show. In his useful introductory review, Klosko omits to say whether he accepts the traditional view that political obligation is a duty to obey the law as it claims to be obeyed, that is, as a supreme (though not absolute) authority determining the existence and content of our social obligations. His argument does not secure such force for the law. He notes that the legitimate scope of government activity depends on large moral questions: “Exactly where one draws the line in regard to governmental responsibility depends on basic features of one’s overall views concerning the nature of man and society” (p. 90). He thinks, for instance, that the state ought not to subsidize operas, nor education in the arts or humanities (political philosophy excepted). Unless these can be defended on other grounds, such subsidies are illegitimate and citizens have no obligations to pay them (pp. 98–99).

But what if a reasonably just state disagrees and subsidizes them anyway? According to Klosko, its citizens would have no obligation to obey these requirements. And that is to reject the traditional thesis of political obligation, for it denies the state the authority it claims.

Klosko is also being reformist when he says that the force of obligation is less in the case of DPGs than in that of PPGs, and thus it is less obligatory to comply with traffic laws than to pay income tax. The law disagrees with him. It sets different *penalties* for breach of different obligations, but it does not do so as a measure of a varying duty of obedience but, rather, by what is required for adequate deterrence, denunciation, or retribution. There are, of course, more and less serious legal obligations, but their varying exigency depends on their content, not on a variable obligation to obey.

The book briefly notices some competing theories. Utilitarianism is dispatched on the ground that it does not provide a very good account of obligations in general. (Some further criticisms are made in a long appendix on Parfit.) Consent theory is rejected because so few actually consent that it renders most existing governments illegitimate.

Is fairness immune to such objections? Klosko has certainly strengthened it. But consider his "institutional" argument for obeying any law passed by a government supplying some PPGs. It rests on the view that the laws are a seamless web; thus, "because of the possibility that violating any law will erode one's habit of obedience, there is a *prima facie* obligation to obey all laws" (p. 105). That claim seems liable to the familiar objections to consequentialism: it is far-fetched on the facts and, taken as an indirect strategy, it seems inadequately motivated.

And what of consent theory's supposed conflict with our intuitions? The question is complex. Klosko thinks "the fact that most citizens of liberal societies believe that they have political obligations and that the institutions of their governments are legitimate indicates that their standards of legitimacy are rather low" (p. 69). A different inference would acknowledge the widespread criticisms of injustice while allowing a more complex account of citizens' attitudes to the law. Perhaps they only think that one should normally obey the law, or that it is wrong to break it without especially powerful reasons. Neither of those amounts to a belief in an obligation to obey the law as it claims to be obeyed.

In grappling with Klosko's arguments one learns much about the theory of fairness itself, and the book is a model of lucid and fair-minded exposition. It provides a nice counterpoint to the skeptical position popular among some liberal theorists.

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Guest, Stephen. *Ronald Dworkin*.
Stanford, Calif.: Stanford University Press, 1992. Pp. 320. \$42.50 (cloth);
\$14.95 (paper).

This book is the latest in the series *Jurists: Profiles in Legal Theory*, edited by William Twining and Neil MacCormick. Guest's aim is to interpret and defend Dworkin's legal and political theories, making them "clearer and more accessible" (p. 1) in the process. In presenting Dworkin's views, Guest has