

ON KOSKO'S ACCOUNT OF POLITICAL OBLIGATION

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TABLE OF CONTENTS

Acknowledgements	2
CHAPTER 1. INTRODUCTION	6
SECTION 1.1. WHAT THE DISSERTATION IS ABOUT	6
SECTION 1.2. MORAL DUTIES AND OBLIGATIONS	9
SECTION 1.3. THE STRUCTURE OF THE DISSERTATION	15
 PART I. CONCEPTUALIZATION OF POLITICAL OBLIGATIONS	
CHAPTER 2. DELINEATING POLITICAL OBLIGATIONS	19
SECTION 2.1. DEFINITION	19
SECTION 2.2. THE CORRELATIVITY THESIS	20
SECTION 2.3. WHOM ARE POLITICAL OBLIGATIONS OWED TO?	23
SECTION 2.4. CONTENT-INDEPENDENCE	24
SECTION 2.5. THE PARTICULARITY REQUIREMENT	29
SECTION 2.6. THE GENERALITY REQUIREMENT	31
SECTION 2.7. STRINGENCY OF POLITICAL OBLIGATIONS	31
SECTION 2.8. DIFFERENCES BETWEEN PEOPLE	32
SECTION 2.9. CONFLICT BETWEEN MORAL AND PRUDENTIAL REASONS	33
SECTION 2.10. THE PRIMA FACIE NATURE OF POLITICAL OBLIGATIONS	35
SECTION 2.11. THE MEANING OF 'POLITICAL'	37
SECTION 2.12. THE CONSENT THEORY	40
SECTION 2.13. VOLUNTARINESS	44
SECTION 2.14. CONCLUSIONS	45
 PART II. KLOSKO'S ACCOUNT AND THE OBJECTIONS IT CAN WITHSTAND	
CHAPTER 3. KLOSKO'S ACCOUNT OF THE FAIRNESS PRINCIPLE	46
SECTION 3.1. INTRODUCTION	46
SECTION 3.2. WHAT IS KLOSKO'S ACCOUNT ABOUT?	47
SECTION 3.3. THE CONDITION OF ACCEPTANCE	49
SECTION 3.4. FREE-RIDING	49
SECTION 3.5. THE LIMITING ARGUMENT	50
SECTION 3.6. SCHEMES THAT SATISFY THE ACCEPTANCE CONDITION	51
SECTION 3.7. KLOSKO'S CONTENTION	53
SECTION 3.8. PRESUMPTIVELY BENEFICIAL GOODS	56
SECTION 3.9. WELLMAN'S OBJECTION	57
SECTION 3.10. THE APPEAL OF THE NOTION OF PRESUMPTIVE GOODS	60
SECTION 3.11. NOZICK'S OBJECTION	62
SECTION 3.12. REBUTTAL OF NOZICK'S OBJECTION	64
SECTION 3.13. KLOSKO'S COUNTER-OBJECTION TO NOZICK'S CONCLUSIONS	66
SECTION 3.14. TAKING STOCK	67
SECTION 3.15. ADDITIONAL ELEMENTS OF KLOSKO'S ACCOUNT	68
CHAPTER 4. OBJECTIONS TO KLOSKO'S THEORY: THE FIRST CONDITION OBJECTION	70
SECTION 4.1. OBJECTIONS TO KLOSKO'S THEORY	70
SECTION 4.2. WOLFF'S OBJECTION	73
SECTION 4.3. THE FIRST REASON	75
SECTION 4.4. THE SECOND REASON	76
SECTION 4.5. THE ENFORCEABILITY REASON	81
SECTION 4.6. THE FIRST CONDITION OBJECTION	83
SECTION 4.7. SUMMARY	84
CHAPTER 5. THE DISCRETIONARY GOOD OBJECTION	85
SECTION 5.1. WHY BOTHER ABOUT DISCRETIONARY GOODS?	85
SECTION 5.2. MEETING THE DISCRETIONARY GOOD CHALLENGE	86
SECTION 5.3. WHAT I WILL DO NEXT	88

SECTION 5.4. THE INDIRECT ARGUMENT	89
SECTION 5.5. 'NON-TRANSITIVITY OF OBLIGATIONS' OBJECTION	91
SECTION 5.6. THE INSTITUTIONAL ARGUMENT	95
SECTION 5.7. THE BAD HABIT ARGUMENT	101
SECTION 5.8. AN INTERMEDIATE SUMMING-UP	104
SECTION 5.9. THE PACKAGE ARGUMENT	106
CHAPTER 6. SIMMONS'S OBJECTIONS	111
SECTION 6.1. INTRODUCTION	111
SECTION 6.2. CONGRUENCE IN UNDERSTANDINGS OF THE FAIR PLAY PRINCIPLE	112
SECTION 6.3. THE FIRST OBJECTION (A STATE IS NOT A COOPERATIVE COMMUNITY)	113
SECTION 6.4. THE EMPIRICAL MATTER	118
SECTION 6.5. THE SIGNIFICANCE OF RULES	119
SECTION 6.6. FORCED COOPERATION	122
SECTION 6.7. THE SECOND OBJECTION (FRESH WATER IS A PRESUMPTIVE GOOD)	126
SECTION 6.8. THE THIRD OBJECTION (COERCIVE PROHIBITION OF ALTERNATIVE PROVISION)	130
SECTION 6.9. THE FOURTH OBJECTION (OPTIONAL GOODS?)	133
CHAPTER 7. THE PRESUMPTIVELY BENEFICIAL GOOD OBJECTION	137
SECTION 7.1. SPECIFYING WHAT I AM UP TO	137
SECTION 7.2. THE NEED INTERPRETATION	138
SECTION 7.3. NEEDS AND WANTS	139
SECTION 7.4. MORAL REASONS INVOLVED IN THE NEED INTERPRETATION	140
SECTION 7.5. THE PREFERENCE INTERPRETATION	141
SECTION 7.6. KIS'S CONCLUSION	146
SECTION 7.7. REMARKS AVAILABLE TO KLOSKO	146
SECTION 7.8. KIS'S ANSWER TO THE SECOND REMARK	148
SECTION 7.9. TIGHTENING THE DEFINITION OF PRESUMPTIVE GOODS	149
SECTION 7.10. TAKING STOCK	150
CHAPTER 8. THE PARTICULARITY OBJECTION	152
SECTION 8.1. THE PARTICULARITY REQUIREMENT	152
SECTION 8.2. OBLIGATIONS ARE PARTICULAR MORAL REQUIREMENTS	153
SECTION 8.3. THE FALSE CONSCIOUSNESS CLAIM	154
SECTION 8.4. THE COHERENCE METHOD AND KLOSKO'S LINE OF REASONING	157
SECTION 8.5. A REMINDER OF THE POLITICAL OBLIGATIONS WE ARE AFTER	159
SECTION 8.6. KLOSKO'S ACCOUNT AND THE PARTICULARITY TEST	160
SECTION 8.7. THE APPLICATION CONDITION IS 'TOO EASILY' SATISFIED	162
SECTION 8.8. THE MASON OBJECTIONS	167
SECTION 8.9. THE SPILL-OVER BENEFIT OBJECTION	170
SECTION 8.10. PARTICULARITY IS PREDICATED ON NECESSITY	174
SECTION 8.11. SUMMING UP	176
PART III. THE OBJECTION FROM REDISTRIBUTION AND HOW KLOSKO'S ACCOUNT CAN BE REVISED	
CHAPTER 9. THE OBJECTION FROM REDISTRIBUTION	177
SECTION 9.1. FOREWORD	177
SECTION 9.2. A SHORT DESCRIPTION	177
SECTION 9.3. KLOSKO ANTICIPATES THE OBJECTION	181
SECTION 9.4. NO PRESUMPTIVE GOODS WITHOUT REDISTRIBUTIVE MEASURES	184
SECTION 9.5. THE SCHEME IS TO BE FAIR	186
SECTION 9.6. INTERDEPENDENT AND UNILATERAL REASONS	186
SECTION 9.7. PROCEDURAL FAIRNESS	189
SECTION 9.8. THE PRECEDENCE AND OPTIONS RULES	190
SECTION 9.9. CONDITION (III) AND DISCRETIONARY GOODS	191
SECTION 9.10. THE OBJECTION FROM REDISTRIBUTION REMAINS UNCHALLENGED	192
CHAPTER 10. HOW KLOSKO'S ACCOUNT MAY BE ENHANCED	194

<i>SECTION 10.1. THE OPENING STATEMENT</i>	194
<i>SECTION 10.2. THREE GROUPS OF BENEFITS</i>	194
<i>SECTION 10.3. THE DISTINCTIVE ROLE OF ESSENTIAL BENEFITS</i>	195
<i>SECTION 10.4. A SERIES OF EXAMPLES</i>	196
<i>SECTION 10.5. WHY OBEY?</i>	202
<i>SECTION 10.6. WHY SHOULD EVERYBODY CONTRIBUTE?</i>	209
<i>SECTION 10.7. ARE MORAL BENEFITS PRESUMPTIVE OR DISCRETIONARY GOODS?</i>	211
CHAPTER 11. CONCLUSIONS	213
REFERENCES	216

CHAPTER 1. INTRODUCTION

SECTION 1.1. WHAT THE DISSERTATION IS ABOUT

It is often said that John Rawls's¹ *A Theory of Justice* (1971) breathed new life into the contract tradition and almost single-handedly revived a discourse on the basic moral principles a society should be built on. Similarly, for people who work on the problem of political obligations it is evident that A. John Simmons's *Moral Principles and Political Obligations* (1979) was a book which marked a new beginning in philosophical research on people's relations to their political associations. Indeed, Simmons assiduously discussed and criticized the most significant theories of political obligations of that time, and came to the astonishing and perturbing conclusion that there was no theory which could withstand his criticism and, moreover, it was likely that none would soon be forthcoming.² Ever since this conclusion has served as a daring challenge for those who wanted to justify the special bond between a citizen and his state.³

In the opening paragraph of his book Simmons points to an interesting puzzle. On the one hand, the problem of political obligations has always belonged to the core problems of political philosophy. Writings of liberal thinkers and especially "classical political treatises of

¹ In this thesis I follow suggestions of William Strunk and form a possessive singular of any noun (even that which ends with "s") by adding 's. I admit that nowadays many choose to disregard the first rule of *The Elements of Style* (Strunk and White, 1979). None the less, I have decided to follow this rule despite the recent trends.

² Simmons's skepticism has been shared, though not always on the same basis, by Joseph Raz (1979, 233–249), Rolf Sartorius (1981), Kent Greenawalt (1987), Leslie Green (1990), and William A. Edmundson (1998a). Before Simmons's book came out the two most notable philosophers who had raised their remonstrations about political obligations had been Robert Paul Wolff with his *In Defense of Anarchism* (1970) and M. B. E. Smith who had written *Is There a Prima Facie Obligation to Obey the Law?* (1973).

³ In this thesis personal pronouns are used in the way which reflects the gender of the author. This way implies no bias and no other meaning than the following one: let male authors use masculine pronouns and female

Hobbes, Locke, Rousseau, and Kant all display the centrality of the problem of political obligation quite clearly" (Simmons, 1979a, 1). On the other hand, "it is difficult ... to find two philosophers who even agree on a basic approach to the problem, let alone on its solution" (Simmons, 1979a, 1). This puzzle tells us that the problem in question is not one which is easy to crack. Still it may seem disquieting and daunting that so many great thinkers have been unable to come up with a defensible account of the individual-and-his-polity relationship.

I think, however, that the above consideration is too harsh towards prominent philosophers. It might quite be the case that for Socrates, for instance, the insistence on the need for government and the affirmation of an individual's staying for long in one city determined that the individual would be under an obligation to obey the laws of that city.⁴ Likewise, for Locke express consent made all doubts about an individual's political obligations vanish.⁵ It is true that later both Socrates and Locke were shown to be wide of the mark: their solutions were erroneous. But it is plausible to believe that they themselves thought that they provided tenable accounts of political obligations.

It should be remembered that if we want to put forward a credible theory of political obligations, then we must make it *morally maintainable* and *descriptively accurate*. This descriptive component is important because now we surely do not live in small city-states

authors feminine ones. (I should note that Carol Harrington has pointed out that this is an unconvincing justification. I accept this but still choose to stick to masculine pronouns for simplicity's sake.)

⁴ Socrates's reasons for obedience resemble the doctrine of tacit consent: if an Athenian, reaching maturity and ascertaining how justice is administered in the city, does not go away with his property, he is deemed to have undertaken to comply with Athens's laws (Plato, 1975, 51d). Also, they resemble the claim that political obligations stem from the debt of gratitude people owe to their country. We may see this if we recall how the laws of the city protest: "Are you not grateful to those of us laws which were instituted for this end, for requiring your father to give you a cultural and physical education? . . . We have brought you into the world and reared you and educated you, and given you and all your fellow citizens a share in all the good things at our disposal" (Plato, 1975, 50d, 51d).

where women and slaves are bereft of political rights, as people lived in the time of Socrates. Also, present-day political realities crucially diverge from those existing in the seventeenth century when Lock wrote his *Second Treatise of Government*. Today thinkers have to incorporate in their theories such moral principles as the principle of profound equality of people and such circumstantial facts as the rise of supra-national organizations whose spheres of authority often overlap with or supplant that of nation-states.

In my dissertation I evaluate, criticize and modify an account of political obligations that, in my view, lives up to moral defensibility and descriptive accuracy. This is George Klosko's account. Together with Margaret Gilbert's and associativist accounts, this is an account which appeared after Simmons's *Moral Principles and Political Obligations* was published. I will say nothing about Gilbert's actual contract theory.⁶ Also, I will remain reticent about various associativist accounts of political obligations, which have lately been in vogue.⁷ I have my misgivings as to whether either Gilbert's theory or any associativist one could succeed as a sound theory of political obligations. I will not voice these misgivings, however, and instead I will fully concentrate on the most promising, in my view, theory - viz., Klosko's theory which is an improvement on a standard fairness theory as formulated by Hart and Rawls.⁸

Klosko's works on the fairness principle have not yet been comprehensively analyzed.⁹ I intend to cancel this omission and present a thorough evaluation of his contentions. A conclusion I draw at the end of my journey through intricacies of Klosko's account is that this

⁵ It is worth reminding that according to Locke only express consent allowed one to gain the status of full citizenship; tacit consent did not entitle to such status. See Locke, 1988, 119.

⁶ See Gilbert, 1999.

⁷ See, for example, Dworkin, 1986, Horton, 1992 and Tamir, 1993. For persuasive criticism of associative political obligations see Green, 1989 and Simmons, 1996b. My own evaluation of associativist arguments is given in *On Associative Obligations* (unpublished manuscript).

⁸ In section 3.2 I spell out Hart's and Rawls's formulations of the fairness theory.

⁹ In section 3.1 I mention those few authors that have given utterance to some critical remarks on Klosko's account of political obligations.

account has many resources which are robust enough to shield it from various objections - recourses which have not been recognized even by Klosko himself. Further, I point out one objection which Klosko's theory, despite its strengths, cannot answer. Then, I develop a way to defuse this objection. My proposal is to modify the notion of benefit - to make it more inclusive.

SECTION 1.2. MORAL DUTIES AND OBLIGATIONS

Before I outline the structure of the dissertation I will say a few words about the problem of political obligations and about moral duties and obligations. The dichotomy between *individual liberty* and *coercive laws* of the state sits in the heart of the problem under consideration. This problem is resolved if it is demonstrated that citizens are indeed morally bound to abide by legal orders of the state and that the state is justified in issuing these orders and demanding compliance from its citizens.

That people are bearers of political obligations towards their states is a commonly held view. This view, however, has received a certain notoriety in philosophical circles. As I have indicated in the previous section, through centuries philosophers have made attempts to provide solid justifications for political obligations, but none of the attempts has been accepted as fully satisfactory.¹⁰ To get a sample of difficulties involved in proving the existence of political obligations, one should come to see that it is not prudential reasons that are to be counted, but *moral* ones. If an individual complies with a law because otherwise he is likely to be severely punished, he acts in accordance with what rationality dictates. Also, if

¹⁰ "Within the liberal tradition of political theory, the problem of political obligation, simply, why some individuals should obey others, has long held pride of place. Yet at the present time a suitable answer to this question is widely believed not to exist" (Klosko, 1992, xi). It should be noted, however, that Klosko tries to

an individual complies because he is sure he will be better off in so doing, he pursues his own self-interest, which is a reasonable thing to do in the majority of circumstances.¹¹ Yet, neither avoidance of punishment nor pursuit of self-interest is a reason we rely on when we analyze the problem of political obligations. For political bonds between citizens and their states, as it is stipulated, can only be explained and vindicated by *moral* considerations. Thus, the essence of the problem is to justify political obligations on the basis of moral reasons.

Moral reasons can be of different strength or binding power. When one person is brandishing a gun in front of another person, the moral reason not to pull the trigger is absolutely imperative (except situations of war, execution, etc., where it may not be imperative). In contrast, when individual A meets his acquaintance, individual B, who happens to be sad at that moment, A has only a weak moral reason to cheer up B. Weak moral reasons can be set aside since they do not pertain to the problem of political obligations.¹² As to strong moral reasons, I suggest we divide them into two categories: the reasons having their origins in *the duties of forbearance* and the reasons deriving from *the duties of assistance*. To avoid becoming verbose, in what follows I will simply speak of duties instead of strong moral reasons stemming from a certain type of duties. The division between the duties of forbearance and of assistance roughly corresponds to the well-known division between the perfect and imperfect duties, which was introduced by Pufendorf. Both the duties of forbearance and of assistance have a mandatory element in them and both are rooted in fundamental moral principles, which imbue them with binding power. Also, both types of

provide such an answer and thinks he succeeds. In my thesis I show where he errs and how he can escape the mistakes.

¹¹ The last two points are connected since avoidance of sanctions is a sort of self-interested behavior.

¹² One reason for doing so is simply that moral obligations cannot rest on weak moral reasons. And since we are interested in moral obligations, we are led to having to put away weak moral reasons. (There is one potential problem here with the so-called obligations of gratitude that are powered by weak moral reasons. My view is that there are no *obligations* of gratitude. There are self-assumed *duties* of gratitude. More on this issue can be found in my *Values, Duties and Obligations* (unpublished manuscript).) It is worth noting that weak moral reasons are

duties can *give rise to moral obligations*. A moral obligation differs from a moral duty in that a moral obligation is a specific moral requirement, whereas a moral duty is a general one. As conceived this way, moral obligations establish a *one-to-one link* between the obligee and obligor. This link is the basis for the obligee's right to demand the fulfillment of the obligation by the obligor. In contrast, moral duties are help by everyone towards everyone. They are not agent-specific. In sum, moral obligations are particularized moral duties.

As formulated above, the notions of moral duty and moral obligation are similar to the notions Simmons uses in his, already mentioned, seminal book *Moral Principles and Political Obligations*. There is one significant difference, however. Simmons says that “[a]n obligation is a moral requirement generated by the performance of some *voluntary act*” (Simmons, 1979a, 14, my emphasis). I want to eschew narrowing down the notion of moral obligation to voluntarily acquired moral requirements. Thus, I assume that there can be involuntary moral obligations. I do that for two reasons. First, I find it clear that in *the drowning child example* the adult person is *under an obligation* to rescue the child despite the fact that no voluntary performance to this effect can be attributed to him. To clarify, the drowning child example is a stock example of moral philosophers that describes an adult individual passing by a shallow pond in which a child is drowning. It is presumed that the adult can save the life of the child by holding out a stick or by wading in the water. The considerations about the child's life hugely outweigh other considerations, like the worry about being late to work on the part of the adult. As a consequence, the individual is obligated to hasten to the aid of the child. Moreover, the child has a right against this individual to demand being rescued.¹³ Hence, we are doing here with an example of a moral obligation.

not less important in our moral lives than strong ones: the view that the moral dimension of people's interactions is molded out of obligations and rights is obviously inaccurate (think, for instance, about forgiveness).

¹³ Or, if someone insists that a child cannot be a right-bearer due to its age, we can say that the child's parents (or those who have custody of the child) are entitled to lodge a claim against the adult individual in the example.

Second, the insistence on voluntary way of acquiring moral obligations shoots down some theories of political obligations even before they have a chance to take off. For example, the natural duty of justice theory becomes undermined from the outset. This theory postulates that people are obligated to abide by the rules and regulations of just institutions that apply to them (cf. Rawls, 1971, 115). It does not predicate people's compliance on any voluntary act. Waldron sees this feature as an asset to the theory since the law also does not base its validity and its authority on such contingencies like a freely given promise or a willingly accepted benefit (Waldron, 1993b, 3). Thus, if genuine moral obligations were only voluntary obligations, the natural duty of justice theory would immediately be discredited as a theory of political obligations.¹⁴ Similarly, Klosko's account or associativist theories would stand open to the immediate and trouncing attack. And this would hardly be desirable or fair.¹⁵

There is another difference between the notion of obligation applied in this dissertation and Simmons's one. Simmons asserts that “[i]t is the nature of the transaction or relationships into which the obligor and the obligee enter, not the nature of the required act, which renders the act obligatory” (Simmons, 1979a, 15). I will deny this assertion. To be precise, I will accept only a part of the above quote: obligations are not necessarily generated by the nature of the

¹⁴ The considerations in this paragraph serve as evidence for the support of the claim that Simmons commits the fallacy of circular reasoning when he first insists on the voluntary nature of moral obligations and then finds holes in the natural duty of justice theory. This claim is correct, though its substantiation is not that simple as it might look at first glance. For Simmons (1979) follows Rawls (1971) in holding that there are no general political obligations. Both Rawls and Simmons adopt a narrow definition of obligations: there can be only self-assumed obligations (Simmons, 1979a, 14, Rawls, 1971, 113). Thus, on this score they concur with each other. But Rawls believes that the problem of political obligation is solved by acknowledging a moral requirement (which needs not be an obligation) to obey the law based on the natural duty of justice. Simmons points up that the problem at issue could be dealt with if one were able to show that there are *particularized moral bonds* between a political association and an individual. But Simmons's conceptualization of a particularized moral bond is predicated on voluntary performances. Therefore, he denies that moral requirements stemming from the natural duty of justice can have anything to do with the problem of political obligations without bringing to the scene either the consent theory or the theory of accepted benefits. Hence, the circularity in reasoning transpires on the level of particularization of moral requirements, not on the level of duties versus obligations.

¹⁵ More on the voluntariness condition see in section 2.13.

required act. It is correct that even if everybody believed that act X is laudable, it might not be the case that X is morally mandatory. And I will protest against the part which says that the transaction is the source of acts' obligatory force. Consider the example: individual A gives his promise to individual B to do Y. A ought to fulfill his promise, therefore doing Y becomes morally mandatory. According to Simmons, then, the transaction, i.e. giving the promise, is the source of bindingness in the requirement to do Y. Contrary to Simmons, I take for granted that the source of bindingness lies in the moral duty of fidelity which becomes particularized by the performance of promise-giving. Likewise, whenever we encounter an obligatory act, we are to look for an underlying moral duty, which infuses the act with its binding force.

To be sure, some duties of forbearance, called *negative* duties, are easily, almost automatically, particularized. For it is plain that if we take any two persons, each of them will stand under an obligation not to torture the other, not to deceive him, not to maim him, not to inflict unnecessary pain on him, and so on. By contrast, if we take any two persons, it is not obvious that they hold an obligation to each other that arises from some duty of assistance. To see this, it is enough to take the duty of charity. Should individual A help individual B in the given circumstances and at the given moment? The answer is not straightforward. Much depends on the combination of additional factors like whether B is in urgent need, whether B can more effectively be helped by somebody else, etc. The contrast is intensified if we notice that the negative duties do not lead to the *accumulation problem*, while the duties of assistance do. The accumulation problem is a problem of being overburdened with moral requirements. The negative duties fend off the accumulation problem because it does not take much effort to abstain from doing harm or telling lies. It does not make a difference whether one refrains from killing one person or one million persons. With the duties of assistance the situation is strikingly different. Helping people consumes time, money, and other resources. It

does make a difference whether one goes with the aid to one person or to one million persons. Thus, if some theory of political obligations is (to an extent) based on the duties of assistance, it has to contain an explanation of how the accumulation problem is warded off.

There are some other duties of forbearance which are not distinctly negative duties. Among them the most significant are the duty of fidelity and the duty to be fair. The former gives rise to the obligations to stand by one's word, to keep one's promises, to adhere to the agreed terms of contract, etc. The latter generates obligations of fair play. The obligations stemming from the duty of fidelity and the duty to be fair are more difficult to redeem than the obligations springing from other negative duties. For instance, it takes some effort not to disregard one's promise.

Also, it takes some labor and often inner struggle with oneself to forbear free-riding. It is worth noting that the difficulties involved in particularization of duties increase with moving from the negative duties to the duties of assistance. In order to establish that individual A is under an obligation not to murder individual B it is enough to check the institutional setting and consult the ongoing practice. The setting and practice will tell us what murder is and what it is not. To determine that A is obligated to discharge his promise given to B, we will have to find out what the practice of promise-giving is and what it is not in the given social circumstances. Further, to decide whether A is under an obligation to reciprocate for services rendered by B, we will have to examine whether A has incurred this obligation in an obligation-generating way, which is often a controversial matter. Finally, in order to present our judgment as to whether A is obligated to help B, we will be compelled, as was indicated above, to assess many complex factors. Notice, in addition, that the parental and filial obligations arise from the corresponding duties of assistance. They are, however, among the

easiest to determine, though sometimes the picture may be blurred (e.g. in the case of adoption).

One of the lessons we can draw from the above paragraph is that the particularization process is related to the accumulation problem. Imagine we have laid down the rule according to which particularization of the duties of assistance is an easy matter, e.g. people are obligated to lend a hand everyone who personally addresses them with an appeal for help. This rule is good for particularization (with some obvious qualifications like specifying whether a request through a phone call is a personal contact, etc.). But it runs into objections arising from the accumulation problem. The objections would point out that people would be deprived of fulfilling and organized lives if such a rule were in operation, or that overall capacity to help might be diminished (however paradoxically this may sound) if we adopted that rule.

To sum up, when we speak of political obligations we look for obligations which may be voluntary or involuntary, and stemming from the duties of forbearance or of assistance. We also look for obligations whose particularization processes do not encounter objections rooted in the accumulation problem. This is the result I wanted to achieve in this section.

SECTION 1.3. THE STRUCTURE OF THE DISSERTATION

The thesis gets going with chapter 2 in which I present the definition of political obligations and outline the most important characteristics of these obligations. I emphasize the content-independence of political obligations and spell out what the particularity and generality requirements, introduced by Simmons, stand for. In this chapter, I conceptualize political obligations as moral obligations with various stringency, which allows me to vitiate

arguments of those who claim that if there is no political obligation to stop on the red-light at a deserted crossroads then there are no other political obligation either (cf. Smith, 1973). Also, I admit that different people can have different political obligations, which tallies with what we regard when we recall the figure of the president or prime-minister and that of a mere citizen. Chapter 2 is also about the conflict of moral and prudential reasons for action. To the end of this chapter I discuss the *prima facie* nature of political obligations and point out that they are better viewed as *pro tanto* obligations.

In chapter 3 I analyze Klosko's account of the fairness principle. I consider how Klosko treats the condition of acceptance and how he overcomes the limiting argument. Klosko's main contention at this point is that non-excludable schemes can generate fairness obligations if those schemes provide essential public goods. Klosko's presumptively beneficial goods are then discussed. To illuminate the concept of presumptive goods I bring up Wellman's objection to fairness theories and show why it misfires. Next, I examine the most celebrated objection to theories based on the principle of fairness - namely, Nozick's objection. I show how Nozick's objection can be rebutted in the case of Klosko's rendering of the fairness principle.

Chapter 4 opens a series of chapters in which I appraise a number of serious, but answerable, objections to Klosko's account. In chapter 4 I concentrate on the first condition objection which casts doubts on the composition of Klosko's core argument: the objection asserts that this argument can be truncated. First I take up Jonathan Wolff's proposal to drop the second condition from Klosko's argument. I show why Klosko's replies to Wolff's objection are misguided. Then I suggest how Klosko's account can really be defended against the charges

raised by Wolff. This leads me to formulate an additional objection and to demonstrate how it might also be met by Klosko.

Chapter 5 is devoted to the discretionary good objection. This is an important objection and Klosko assigns a whole chapter in his book (Klosko, 1992) to its discussion. The advocates of the discretionary good objection might ask, "What good it does to establish that we should bear our burden in schemes which provide us exclusively with indispensable and vital goods?" There can hardly be found such schemes. At any rate, if we look at the state, the scheme we are interested in, we will see that it provides many other public (and non-public) goods, which are not necessarily essential to a satisfactory life of an individual. Why then should the individual obey the state's injunctions?

Klosko meets this challenge with two arguments: the indirect and the institutional argument. I scrutinize these arguments and show why they are problematic. One of the problems the indirect argument faces is that if we use it consistently we may be compelled to give up on many familiar public goods which the government has traditionally supplied us with. One of the institutional argument's problems is that it relies on the bad habit argument which has serious defects itself. Further, I submit an argument for justification of discretionary goods, which is wrongly ignored by Klosko. I call this argument the package argument.

In the next chapter I consider four objections to Klosko's account that have been propounded by Simmons. I evaluate these objections and contend that they all fail. While doing so, I touch upon such questions as whether the state can be deemed a cooperative venture, what conditions of applicability of the fairness principle are, and what can be said about forced cooperation. I also reveal weaknesses in Simmons's argumentation when the discussion turns

to presumptive goods, property rights, and optional goods. I give reasons to believe that we can learn a lot about Klosko's account by paying attention to how we manage to deflect Simmons's objections.

Janos Kis's objection, which targets the notion of presumptive goods, is studied in chapter 7. Two interpretations of this notion are weighed up. The *need interpretation* is easily discarded. The *preference interpretation* is considered into two readings: the hypothetical preference reading and the actual preference readings. The former is found wanting, whereas the latter is defended against Kis's objection, which holds that some governmentally supplied goods, usually conceived of as surely presumptive, may turn out not to be such under closer scrutiny.

The particularity objection is discussed in chapter 8. There I tackle various interesting problems related to the objection in question. In particular, I come to a controversial conclusion that we may be obligated to follow orders of not only our nation-state, but also some international organizations, or we may be obligated to abide by commands of the state which has occupied our state, providing there was a cogent reason for occupation and the winning state is just and efficient.

The next chapter is a special one. It reviews the objection from redistribution which, as I claim, is damaging to Klosko's position unless this position is revised. The major insight is that by certain groups of people some well-rooted and morally laudable functions of the state are seen as totally redundant from the perspective of self-interest-based benefits. Recall that the state normally provides unemployment benefits, allowances for the disabled, single-parent support programs, etc. Now, if you are rich, these state activities are not something that you

deem indispensable and vital for your survival. Klosko is unable to accommodate the mentioned state activities within his account. He can invoke procedural justice and democratic mechanisms, but still it will remain unclear why a well-to-do individual ought to part with a fraction of his income in order to feed the hungry and shelter the homeless. If beneficent impact of some state activity on an individual is missing, it is difficult to argue from the principle of fairness that the individual should share the costs of this activity.

In chapter 10 I show how by modification of the notion of benefit we can answer the objection from redistribution. My suggestion is that we extend the notion of benefits to mean moral benefits as well. Finally, I finish my dissertation with the concluding chapter where I mention what I have achieved, what the meaning of this achievement is, and what possible ways of development of Klosko's account of political obligations can be.

CHAPTER 2. DELINEATING POLITICAL OBLIGATIONS

SECTION 2.1. DEFINITION

Political obligations are moral requirements that enjoin people to maintain state institutions and to abide by commands of these institutions (predominantly to obey the law).¹⁶ Political obligations are the obligations that the citizens owe to their fellow citizens through the state. Using a shortcut, I will often focus only on the citizens' obligations to the state authorities and

¹⁶ Compare how political obligations are defined in the most influential work on the problem of political obligations - viz., in Simmons's *Moral Principles and Political Obligations*: "a political obligation is a moral requirement to support and comply with the political institutions of one's country of residence" (Simmons, 1979a, 29). As is evident, I am not at odds with this definition, on the contrary I fully subscribe to it. Additionally, I want to underscore the accent on compliance with the law. I am not alone at this attempt: Klosko defines political obligations as requirements to obey the law and abide by other political injunctions (Klosko,

will omit repeating that the citizens owe their obligations to the state authorities because they have moral responsibilities towards their fellow citizens.¹⁷

If someone agrees that political obligation is a persuasive concept then he has also to agree that there is a moral reason to obey the state and its laws even if apart from political obligation there would be no moral reason to comply with the state's commands. For example, imagine a law that is 'morally neutral'.¹⁸ If political obligation exists then one who does not obey such a law, in normal circumstances, should feel moral guilt for violating the law. It is a distinctive feature of political obligation that it renders some actions morally mandatory even if without political obligation such actions would lack direct morally-commanding force.

It is worth mentioning in this section that there are the *thin* and the *thick* conception of political obligations.¹⁹ In simple terms, the former one refers to the obligation to obey the law, while the latter one entails, apart from the obligation to obey the law, several other obligations, like the obligation to actively participate in political life and to strive for well-being of one's political community. In this thesis I will neither justify the distinction between the two conceptions, nor invalidate it. I will simply stick to the thin conception and assume that before it is conclusively shown that we cannot have a cogent theory of political obligations that is based on the thin conception, there is no need to resort to the thick one.

1992, 1-2); Gans claims that obeying the law is the central core of political obligation (Gans, 1992, 8); or Raphael conceives of a political obligation as "a duty to obey the laws of the state" (Raphael, 1990, 174).

¹⁷ Some might object at this juncture that the stipulation that political obligations are owed to fellow citizens through state authorities precludes considering Raz's theory (based on the normal justification thesis (Raz, 1986)) as a potential theory of political obligations. My answer to this objection could be that Raz belongs to the camp of non-believers in political obligations, rather than to the camp of advocates of (general) political obligations.

¹⁸ To be sure, it is not easy to prove that some law is morally neutral. Moreover, people who adhere to different ethical schools (like deontologists, consequentialists, etc.) may fail to agree on whether a given law is morally neutral. Despite the above, I assume that it is a viable endeavor to single out a law which is morally neutral. Note that 'morally neutral' does not mean morally uncontroversial. 'Do not torture' is an uncontroversial precept but it is not neutral. An example of a morally neutral legal regulation may be 'Wednesday is a non-admittance day in

This decision of mine is justified since Klosko, whose theory is in the center of this thesis, gravitates to the thin conception. Compare: if I considered Dworkin's theory of political obligations, I would have to adhere to the thick conception because Dworkin emphatically underscores that political obligations belong to associative obligations, and the latter go far beyond mere compliance with the law.

It is also appropriate to mention in the opening section that in the thesis I will mostly be concerned with moral obligations of citizens. However, there is always a hovering question of "What about mere residents?" With due respect to our deep intuitions, I will take it for granted that residents also bear political obligations towards the authorities of the state which they reside in. However, it must be clear that political obligations of citizens are weightier than that of residents.

SECTION 2.2. THE CORRELATIVITY THESIS

Whether or not from the existence of political obligation it follows that the state has a correlative right over the citizens to demand obedience I will not discuss here.²⁰ Some (e.g. Simmons, 1979a and Dworkin, 1986) argue that political obligation and the right to rule are two sides of the same coin and therefore it is enough to substantiate and justify one of these

public offices'. It is worth mentioning also that the law resolves many pure coordination problems, which are morally neutral – its domain of applicability is not (or even predominantly not) restricted only to arbitration.

¹⁹ Cf. Harris, 1990.

²⁰ I will call *the correlativity thesis* the claim that political obligation entails the authority's right to rule as well as the authorities' right to rule entails political obligation. In other words, the correlativity thesis states that political obligation is the necessary and sufficient condition for the authority's right to rule. Notice that it is not a straightforward matter to specify what the state's right to rule signifies. For instance, Simmons conceives of the right to rule as the state's right to command and be obeyed (Simmons, 1979a, 196), whereas Wellman sees the right to rule as the state's right to coerce its constituents (Wellman, 2001, 747).

conceptions in order to have the other automatically beyond criticism.²¹ Others disagree and tend to believe that moral obligation to obey the laws of one's state does not entail the state's right to issue and impose those laws²², especially by coercive measures.²³ Yet others make a case for the assertion that the state's right to rule is separate from political obligation and can be justified in situations where vindication of political obligation is absent.²⁴ Whoever is right at that dispute, I choose to focus narrowly on showing that there are cogent moral reasons supporting the claim that there are political obligations. However, as an additional claim which smoothly goes along with the overall framework of this dissertation, I want to commit myself to the statement that the correlativity thesis holds.²⁵ For it is only natural that if moral obligations have their correlative rights (like the obligation of a promisor correlates with the right of the promisee to insist on the fulfillment of the promise), political obligations (as species of moral obligations) also have their correlative rights.

This conclusion can be unconvincing for those who define political obligation and the state's right to rule differently from how I spell them out in this dissertation. I mark out political obligation as the obligation to obey the law and hence the correlative right of the state is the right to have the state's laws obeyed. If, for example, we define political obligation as the obligation to refrain from punishing moral transgressors and from interfering with the state's punishment of moral transgressors (as Nozick does in Nozick, 1974; see also Edmundson 1998a and 1998b), then we obtain the correlative right on the part of the state to demand from

²¹ Or there are those who claim that it is not likely that moral legitimacy of the state is justified unless political obligation is justified either; or those who maintain that the notion of moral legitimacy is equally open to critical arguments as that of political obligation (cf. Murphy, 1999).

²² See Edmundson, 1998b for references.

²³ There is a view that the legitimate authority of a state over the citizens could have been possible had it not been tainted by the extensive reliance on force and coercion. See Dan-Cohen, 1994; for the criticism see Soper, 2002, 166, Edmundson, 1998b, 73-94.

²⁴ See McDermott, 1999. McDermott argues, among other things, that state legitimacy is not inextricably linked to political obligation.

²⁵ On this score I keep company with Klosko who also assumes that "[o]bligations generally correlate with rights" (Klosko, 1992, 8).

us that we abandon punishing and to punish moral transgressors itself (to enforce the moral law). Look, however, at another example: Wellman defines political obligation as I do, i.e. as the obligation to obey the law, but he ends up with the statement that the correlative right is the right of the state to create legal duties through making laws.²⁶ Such a discrepancy may be explained by reference to the Hohfeldian taxonomy of rights but I will not embark on this lead since it may take me away from my primary concerns.²⁷

To recapitulate, in this dissertation I subscribe to the following correlativity thesis: wherever there is a political obligation to obey a law, there is a corresponding (correlative) right on the part of the issuer of the law to issue the law and to insist on (enforce) the obedience with that law. It must be borne in mind, however, that I will mainly speak of moral reasons we can garner in order to justify political obligations and will not much touch on the right of the government to issue binding commands and to enforce them. One motivation for not concentrating on the government's right to rule is that the state does not condition the obligation to obey the law upon any prior conduct or circumstance of the citizen, such as consent or receipt of benefits. And since the state's claims to authority acknowledge no need to satisfy conditions inherent in the consent or the fairness theory, these theories would, at the outset, be put in disadvantage if considered from the perspective of the government's right to rule. Another motivation is that Klosko is chiefly concerned with reasons for political obligations, not with reasons justifying the state's right to rule. And I will follow suit.

SECTION 2.3. WHOM ARE POLITICAL OBLIGATIONS OWED TO?

²⁶ See Wellman, 1996.

²⁷ See Hohfeld, 1964. Incidentally, here are the Hohfeldian correlatives: right and duty, privilege and no-right, power and liability, and, finally, immunity and disability.

Obligations are moral constraints on our action and, as Simmons notes, "limitations on our freedom, impositions on our will, which must be discharged regardless of our inclinations" (Simmons, 1979a, 7). Below I will list several major characteristics of political obligations. I will start from the question, "Whom are political obligations owed to?"

In section 2.1 I have said that political obligations are owed by citizens to citizens. However, this assertion does not entail that each citizen of some state can approach another citizen of the same state and demand from him to carry out his obligation. The idea is that political obligations are incumbent on all citizens and are owed to all citizens taken as a collectivity. Political obligations do not characterize transactions between concrete individuals. Rather, they describe the moral status of an individual with regard to his political community, where political community is embodied in the state and its institutions.

If so, then it is natural to construe political obligations as obligations obtaining between states and their subjects. The citizens of a state are bearers of political obligations and the state authorities are the recipients of those obligations. In a simpler version we can say that political obligations are owed by taxpayers to their governments. Hence, it is a relationship between the ruled and the rulers (or between the governed and the government) that is in focus when we talk about political obligations.

Thus, we do say that, for instance, citizens should submit to the government's commands, and we really believe that they should and the government has the right to issue those commands. But what we really mean at bottom is that we live in the moral domain with other people, we are morally entangled with them, and governments along with other state institutions mediate in the fulfillment of our duties and obligations. In other words, the ultimate recipients and

bearers of political obligations are citizens themselves, and civil authorities just facilitate the execution of these obligations.

This dissertation deals with Klosko's account of political obligations and hence it is important to stress that the above understanding of political obligations is not at variance with what Klosko contends. It is interesting to notice that he often considers some country X and an individual A and then he examines the moral standing of A with respect to X's institutions. But his most powerful and frequent tool to bring us around is to ask the question, "What does A have to say to *X-ies* if he does not want to obey the laws of the country?" Thus, the reference to the citizenry as a whole plays a crucial role in Klosko's account.

SECTION 2.4. CONTENT-INDEPENDENCE

As has been stated, one of the most significant political obligations is the obligation to obey the law of the country of which one is a citizen. The law is a set of norms backed by the legal practices and regulations. Clearly, the body of law contains various laws. Some laws (as those prohibiting murder or robbery) are intimately related to what morality requires. Others are neutral with respect to moral precepts.²⁸ Both state laws and moral requirements can run against private interests of some people. Both can also be beneficial to those interests, on other occasions. How much accord and disagreement can be observed between law and morality is not, however, the issue I intend to discuss now. That people's compliance with a law is not contingent on the content of this law is this issue. Barring the cases when a law blatantly contradicts moral norms, *how is it possible that people become obligated to abide by*

²⁸ Can a law that instructs people to do what is morally blameworthy be a real law? It certainly can from the point of view of the legal positivist. Others would disagree to a smaller or bigger extent. On this matter I assume the positivist stance in the dissertation.

a legal rule regardless of its content? The standard answer is that it is possible because a given law is part of the legal system and the overall authority of the legal system spreads on its laws taken severally. Moreover, the general compliance with the legal system as a whole is expressed by the compliance with the system's particular laws. This general compliance is, as a rule, independent of the content of individual laws.

I will not analyze the merits of this standard answer. My purpose here is to indicate that political obligations embrace, as part of their definition, *the obligation to obey laws without qualifications concerning the content of those laws*.²⁹ Employing some word toying, we can say that the content of political obligations includes the compliance with laws that is independent of those laws' content.

The above portrayal of the content-independent character of the requirement to obey the law is overly simple and, therefore, may be inadequate. For what does it mean "the content-independent character of the requirement to obey the law"? It means that the state authority issues irrevocable instructions and these instructions are content-independent in a sense that the authority does not provide exact explanations of the merits of the instructions. *The state authority expects citizens to act as the instruction commands not because the authority believes that the citizens will evaluate the advantages and disadvantages of the instruction and will find it worthwhile to follow; on the contrary, it expects the citizens to abide by the instruction because the instruction is issued by the authority, period.* The content of the instruction matters only if what it enjoins palpably violates some of the crucial moral principles. Otherwise, the content does not carry weight. What, instead, carries weight is the fact that this instruction has been lawfully commanded by the relevant authority.

²⁹ This characteristic has been highlighted by many, for instance Hart, 1958, 100-101.

Some may object at this point that though authoritative instructions may be content-independent, reasons for action are always based on evaluation.³⁰ On this view, if one has a reason to do D, then it follows that there is some good (and one clearly discerns it) which is brought about by doing D. Hence, as is contended, the truly interesting problem is not the difference between the content-independent and content-dependent normative requirements; the truly interesting problem is the difference between normative requirements, on the one hand, and reasons for action, on the other.³¹

This objection admits of a straightforward response, provided by Joseph Raz.³² To put it in a nutshell, Raz claims that normative requirements (rules) can also be *reasons* for action. Not all normative requirements are reasons but only those which are associated with *autonomous* reasons (see Raz, 2001, 5 and 13). If there were no autonomous reasons, human life would be miserable, if not impossible. How could it be so? It could be because autonomous reasons are reasons provided by promises, agreements, commitments, life plans and decisions to follow rules. If there is a valid rule its persuasive strength exceeds the strength of the reasons for having that rule. For instance, one has good reasons to commit himself to a certain agreement. Once he has done so, he is bound to support his commitment *because he has undertaken it*. The initial evaluative reasons have been obliterated. The conclusion is that unless one is prepared to dispense with such important instances of our lives like promises (think about social life), oaths (think about marriages), commitments (think about friendship), or plans

³⁰ Cf. Broom, 2000.

³¹ According to the logic of this paragraph, I should have written "the truly interesting problem is between the content-independent normative requirements and reasons for action". I dropped "content-independent" because I wanted to be closer to the spirit of Broom's assertions. And one of his assertions is that all normative requirements are content-independent (see Broom, 2000).

³² See Raz, 2001.

(think about career fulfillment), he must keep faith in authoritative instructions, which also give content-independent reasons for upholding them.³³

Usually, the discussions of content-independent reasons for action have more to do with theories of rationality than with morality. These are sophisticated discussions (a tiny sample of which we have just gone through). However, for the purposes of my thesis there is no need to go into their intricacies. What I will need to do is the following:

(a) to stress again that I take it for granted that moral requirements are reasons for action.

Though they may be not conclusive reasons; they are, nevertheless, valid reasons;

(b) to assume that political obligations are content-independent moral requirements.

Two remarks will end this section. First, if we say that political obligations are content-independent, we do not mean that whatever is commanded by a state authority should immediately be carried out. As has been indicated already, if a command distinctly runs counter to the basic moral principles, it should not be acted upon. But apart from this, if the government cannot, in principle, explain and substantiate why a certain instruction is issued, then the citizens are released from abiding by this instruction. To illustrate: it makes sense that the government regulates traffic by establishing and enforcing traffic regulations; however it is indefensible if the government regulates the way one wipes his nose after sneezing. Thus, the content-independence of political obligations does *not* obliterate the need for justification of governmental policies and laws.

³³ Ruzja Smilova writes a dissertation, which, among other things, challenges this response of Raz. She accentuates the difference between self-assumed promises, for instance, and 'given from outside' directives. Her idea is that the parallel between promises, commitments, etc., on the one hand, and state commands, on the other, is defective. Content-independence of promises does not give support to content-independence of state commands. Thus, more should be brought up in order to retain state commands in the class of content-independent reasons for action.

As the second remark, I want to suggest that it is sometimes confusing to think of the content-independent moral requirements as *source-dependent* ones (as they are usually thought of). An authority (the source) declares that something has to be done in such and such way. It is often said that this declaration introduces a source-dependent requirement for action. But it is important to see that the source of binding power of this requirement is not the authority. The authority is a source of the formal declaration; the source of binding power lies in the fundamental moral principles. Let me explain it in the following terms.

A paradigm example of content-independent/source-dependent moral requirements is the requirement to fulfill one's promises. Whatever is the content of a promise (leaving out flagrant instances of iniquitous promises which are not valid ones), the fact of undertaking the promise makes the promise morally mandatory. In contrast, the moral requirement to help someone in urgent need is not rooted in any undertaking of an agent. The content of what this requirement demands from the agent is specified by particular circumstances of the agent's position. If the requirement demands to rush out to a pharmacy in order to buy an inhaler so that someone having an asthma fit may be saved, it is a serious moral requirement. Its mandatory force is related to the context the agent finds himself in (he is in a unique position to save the sufferer) and the content of what is required from him (fetch an inhaler).

I firmly hold to the view that the fact of undertaking a promise is not the source of the promise's binding power. The voluntary undertaking only activates the fundamental moral principle of fidelity which is the real source of the promise's normative force. Similarly, the normative force of the requirement to help stems from the fundamental principle of helping people in urgent need. Now, turning to political obligations as source-dependent moral

requirements, we can say that the *formal source* of binding power of political obligations is the authoritative institutions of the state. However, this formal source is only intermediate. The *real, ultimate source* is always the same: the fundamental moral principles.

SECTION 2.5. THE PARTICULARITY REQUIREMENT

Particular people owe political obligations to particular states. Once one owes political obligation to some state he cannot owe it to any other one³⁴. A. John Simmons calls this characteristic the *particularity* requirement³⁵. Simmons explains the essence of this requirement by considering the suggestion that our political obligations consist in our being required to abide by the laws of any just government. He criticizes this suggestion by means of the particularity requirement:

Suppose we accepted ... that we have an obligation ... to support just governments, and that this is what our political obligation consists in. And suppose that I am a citizen living under a just government. While it follows that I have an obligation to support my government, it does not follow that there is anything *special* about this obligation. I am equally constrained by the same moral bond to support *every other* just government. Thus, the obligation in question would not bind me to any particular political authority If political obligation and citizenship are to be related ..., we need a principle of political obligation which binds the citizen to one *particular* state above all others, namely that state in which he is a citizen (Simmons, 1979a, 31-32, italics in original).³⁶

³⁴ Barring the cases of dual (triple, ...) citizenship.

³⁵ See Simmons, 1979a, 30-35. "I stand firm ... in requiring "particularity" in answers to questions about political obligation" (Simmons, 1979a, 34).

³⁶ Throughout all his writings Simmons is very insistent on the particularity requirement. Here is another formulation of it that helps further elucidate the requirement's meaning: "Political obligations are felt to be obligations of obedience and support owed to one particular government or community (our own), above all others. Citizens' obligations are special ties, involving loyalty or commitment to the political community in which they are born or in which they reside. More general moral duties with possible political content, such as duties to promote justice, equality, or utility, cannot explain (or justify, or be) our political obligations, for such

The particularity requirement is recognized to be quite a strict requirement. Here is how Horton captures this point:

Political obligation is understood as the special moral relationship which obtains between members and *their* political community. Failure to appreciate this point effectively debars a theory from being an account of *political* obligation, whatever merits it may otherwise possess (Horton, 1992, 16, italics in original).³⁷

From the nature of the particularity requirement, it is clear that consent-based theories of political obligations will have little trouble in meeting this requirement, whereas duty-based theories will run into difficulties. How does Klosko's account fare with regard to this requirement? The answer to this question will be postponed till chapter 8.

SECTION 2.6. THE GENERALITY REQUIREMENT

The *whole* citizenry owes political obligations to the state authorities. There may be some exceptions, but when normal conditions prevail there cannot be a situation that only a small number of people in a given state have political obligations. A. John Simmons calls this characteristic the *generality* requirement (see Simmons, 1979a, 35-37).

It is important to see that the generality requirement does not demand that *every* citizen of a given state should be under an obligation to obey the state's laws. As Simmons admits, there

duties do not necessarily tie us either to one particular community or to our own community" (Simmons, 1996b, 250).

³⁷ Horton also calls the satisfaction of the particularity requirement "a necessary feature of any adequate account of political obligation" (Horton, 1992, 104).

is "no obvious objections to a theory which allows that some people have political obligations while others, and even others in the same state, do not" (Simmons, 1979a, 36). In view of the above, I stipulate that it is enough that a theory, purporting to explain political obligations, will tell us why in some state the *majority* of people are under an obligation to obey the state's laws (or, more precisely, to obey most of the state's laws³⁸). In other words, I stipulate that *most* people on most occasions have political obligations.

SECTION 2.7. STRINGENCY OF POLITICAL OBLIGATIONS

Should we say that some political obligations are more stringent than the others? Our intuitions and considered judgments lead us to the view that, indeed, some political obligations may be less rigorous than others. For instance, many people would contend that the obligation to vote is not very strict, the obligation to assist the police force in apprehending a culprit if one possesses the information on the culprit's whereabouts is more demanding, while the obligation to conform with the contract law is the most rigorous of the three mentioned. Consequently, I assume that different political obligations may vary in their stringency.

However, it is worth noting that the obligation to obey the law, which constitutes the kernel of political obligations, allows no latitude. The state authorities demand that the law should be obeyed and they do not envisage that one law should be obeyed more frequently than another. To be sure, the legal force and social impact of different laws may and do differ, as differ the types of punishment for the violation of those laws. Yet, insignificant laws cannot simply be broken or ignored. If they do not serve any social purpose, they should be changed or

³⁸ It is important that a cogent theory of political obligations is not required to explain the obligation to obey *all*

rescinded. As long as they are valid, however, they are to be complied with (through the compliance may be overridden by some other considerations).

Let me be clear on this score. We should differentiate between what legal institutions insist on and try to exact, and what political obligations demand from us. The former require that we abide by the laws without exception. To be sure, there are more and less weighty laws, but all should be obeyed from the legal perspective. The latter require that people comply with the laws of their states in general. If, however, it comes to laws in particular, some of them may correspond to very weak political obligations or none at all.³⁹

SECTION 2.8. DIFFERENCES BETWEEN PEOPLE

Is it possible that different people can have different political obligations? I will give the affirmative answer to this question. I can see no serious objections to the view that some people have more (and more stringent) political obligations than others. After all, it is only to be expected that the president or prime-minister of a state will have more political obligations than an ordinary citizen since one should take an oath in order to become the president or prime-minister and such an oath creates additional and often burdensome responsibilities.

laws. But it should be *comprehensive* enough and show why most of the state's laws are to be complied with.

³⁹ If we grant that political obligations vary in stringency, we are able to overcome some arguments against the existence of *prima facie* political obligations. That the obligation to stop at the red light in the middle of the night and at a deserted crossroads is weak does not sap the strength of other political obligations such as the obligation to pay one's taxes. See, for instance, Smith, 1973, 970 and Klosko, 1992, 14-15. About the *prima facie* nature of political obligations see section 2.10.

SECTION 2.9. CONFLICT BETWEEN MORAL AND PRUDENTIAL REASONS

As I have indicated above, political obligations are moral requirements which enjoin one to obey the laws of his country and to support institutions of the state of which he is a citizen. It is essential that a political obligation is a *moral* requirement. It is not a requirement to do what is *rational* in a given situation, but what morality requires. Whether what a rational course of action points to is also a moral choice, is not the question we will tackle in this section. Pace Gauthier⁴⁰, in many cases what rationality/prudence dictates parts company with what morality/justice instructs people to undertake. What hint does this observation give us? It intimates that clashes between moral and prudential requirements are plentiful.

Do we know how to proceed if moral and prudential requirements conflict with each other? Consider examples. You have successfully passed all but one entry exams at Harvard. Your dream is about to come true: you may become enrolled. However, you have a feeling that you would fare poor on the last exam and you decide that you would cheat. Should you go on or should you refrain from cheating? It is prudentially rational (this combination of words looks like a pleonasm, but in a sense it is not: prudence refers to foresight and rationality to optimization of means) to cheat but it is not fair. Here we believe that you can be convinced in wrongness of cheating and that you will abandon your disgraceful plans regardless how rationally promising the cheating appears to you.

Another example: you want to stay longer in your laboratory because you are at the brink of discovering a new biological molecule (which is bound to be highly beneficial for the pharmaceutical industry and, as a result, for all people, but also *to bring you fame and*

⁴⁰ Gauthier, 1986.

money). However, you promised your friend to have a beer with him in a pub this evening. Your promise gives you a moral reason to stop your experiment and leave the lab, whereas the prospects of discovery and subsequent material gains incline you to continue with your scientific work. Here, in contrast to the first example, we may be predisposed to admit that you can be justified in breaching your promise.⁴¹

As the examples show, prudential reasons can gain the upper hand over an individual's behavior on one occasion, though on another occasion they give way to moral reasons. Only this much I will say on the matter. It is not part of my brief in this dissertation to provide a possible method for the resolution of the prudence versus morality conflict. My task is to find out whether moral reasons to embark upon a certain type of action are present at all in the situations I am interested in - viz., in the situations of the state-citizen relationships.

As is formulated above, however, the task is trivial. It can be argued that in each and every situation there is at least one moral reason (however weak) to do (or avoid doing) something. This assertion may be true or false: maybe it is possible to indicate morally indifferent states of affairs or maybe it is not possible. Whatever we finally converge on has no bearing on what I do in the dissertation. For, as I have stipulated, I am concerned only with moral requirements of *considerable significance* - viz., moral requirements stemming from the fundamental moral principles. It follows, then, that there should be present truly exceptional circumstances so that a political obligation (as a moral requirement) could be overridden by a prudential consideration.

⁴¹ Here is a hidden problem: some may object that this example does not depict a clash between prudential self-interest and morality. This is so because to benefit other people (to invent a cure for the ill) is a powerful *moral* consideration, which overrides the moral reason of going to the pub. But I will put this problem aside.

I do not want to get involved into a more serious discussion about the relationship between prudential and moral considerations. What has been written in this section is only a thumbnail sketch of such a relationship. This sketch, however, has emphasized one point: we are to seek moral factors if we strive to justify political obligations, and are to lay prudential factors aside.

SECTION 2.10. THE PRIMA FACIE NATURE OF POLITICAL OBLIGATIONS

Having granted that prudential considerations do not directly enter the moral reckoning about political obligations, we are to admit that other moral considerations do. This is to say that *political obligations can be overridden by other moral requirements*. Political obligations are never conclusive moral obligations. Here is how Klosko formulates this point:

[P]olitical obligations are of limited force. Like all moral requirements, they are binding under normal circumstances but can be overridden by conflicting moral principles. This aspect of political obligations is indicated by referring to them as *prima facie* obligations (Klosko, 1992, 12-13).

Consequently, we are not looking for an account of political obligations that will be able to show that what political obligations enjoin us to do always figures in our final decisions. We do not place the hurdle that high. On the other hand, political obligations are to be robust moral requirements. It would be unacceptable if a potential account of political obligations demonstrated that only in exceptional cases political obligations were strong enough to direct our behavior.

At the end of this section, I want to raise my voice against the *prima facie* terminology. Let me explain everything in detail. I will start from the beginning. What is the definition of

prima facie obligations? An obligation is a *prima facie* obligation to do X if there is a presumption that it is an obligation to do X, but this presumption may be shown to be false. A *prima facie* obligation is what 'at first sight' appears to be an obligation. Now, if it turns out to be a genuine obligation, it will be either a *pro tanto* obligation or a conclusive obligation. An obligation is a *pro tanto* obligation to do X if it is a genuine obligation to do X which may be outweighed by other obligations. An obligation is a conclusive obligation to do X if it is a genuine obligation to do X which cannot be outweighed by other reasons.

Now, what Klosko in the above quotation wants to say is that political obligations are not necessarily conclusive obligations to embark on some actions. However, by terming political obligations *prima facie* he (as many others) suggests that they may not be genuine obligations. I do not think this is a suggestion Klosko is ready to uphold. Even if overridden, a political obligation remains a genuine moral obligation. This conclusion is denied only by anarchists. Since I do not deal here with the anarchist position but with Klosko's one, I will recommend that we understand the *prima facie* qualification as the *pro tanto* one, i.e. that we treat political obligations as genuine ones which in different circumstances may or may not be overridden.

This recommendation of mine is in line with what Simmons argues in section I.iv of his *Moral Principles and Political Obligations*⁴². Simmons is also dissatisfied with the usage of the *prima facie* jargon. He distinguishes two kinds of this usage: the unreal-real kind and the genuine-actual one. In the former kind, the language of *prima facie* obligations is simply misguided. It cannot be that individual A gives a promise but this promise does not generate any obligations if on the way of fulfilling this promise A encounters a stronger moral requirement, e.g. the requirement to rescue somebody's life. Of course, the promise gives rise to the obligation and we usually aware of this because we hasten to present our excuses for

non-fulfillment of our promises. Compare with Simmons: "The fact that I have an obligation may call for special behavior on my part, even where I do not and ought not to discharge it" (Simmons, 1979a, 28). In the latter kind, instead of *prima facie* obligations and conclusive obligations, Simmons submits that we speak of simple obligations and "what we ought to do, all things considered" (Simmons, 1979a, 27). This would squarely correspond to what I recommended: to abandon the *prima facie* terminology and make difference only between the *pro tanto* and conclusive obligations.⁴³

SECTION 2.11. THE MEANING OF 'POLITICAL'

The next characteristic of political obligations is quite a subtle one. It has to do with the meaning of 'political' which figures in the expression *political obligations*. In section 2.9 I have called attention to the *moral* nature of political obligations. That we seek moral (and not prudential) underpinnings of political obligations has been featured as a criterion a potential account of political obligations is to live up to. In this section I want to put the stress on the *political* nature of political obligations. How are we to make out what 'political' means?

One conceivable answer is readily forthcoming. 'Political' stands for 'related to the state'.⁴⁴ And indeed, as we have seen above, we grasp political obligations as moral ties between the state and its citizens. Thus, it might seem that the question under consideration is trivially answered.

⁴² Simmons, 1979a, 24-28.

⁴³ Of course, for skeptics of political obligations, political obligations may remain *prima facie* – they may turn out to be not genuine obligations after all. The protagonists of political obligations want to establish the *pro tanto* nature of political obligations, not that they are *prima facie*.

⁴⁴ Cf. Horton, 1992, 15.

There is one problem with this answer, however. The answer is too superficial. It points to an important characteristic of political obligations, one which has already been many times underscored - viz., if we are to justify political obligations, we have to give grounds for the *state-citizen* relationship. But this answer does not bring to light something else that is intrinsic in the concept of 'political'. It does not reveal the *interdependency* which is to be present in the realm of politics.

For political obligations are moral bonds which connect individuals that are not indifferent to each other. This does not mean that people are personally acquainted and express sincere care and concern about each other. Yet, this means at least two things: (a) that plans of life of some people can influence and be influenced by other people's plans; (b) that there is something that unites all people together.

One may respond that (a) is true about nearly any conglomeration of people. And one may add that qualification (b) sounds too mysterious to be rigorously discussed. Still, we may insist that (a) and (b) point to an important characteristic of political obligations. They point to the fact that the citizens of one state are interconnected and *rely on each other*. Moreover, the citizens' moral obligations towards each other depends, to a certain degree, on how others manage to redeem their duties.

Let me be more precise. Qualifications (a) and (b) help us eschew situations like the following. Suppose there is a group of people that are self-dependent. They set up a sovereign whose task is to stir the people's actions in such a way that they do not encounter each other, since encounters bring about conflict and mischief, as it is assumed in this example. Everybody can fare well by his own. There is no need for collective action apart from steering

clear of encounters with others. In this hypothetical vignette, everybody is obligated to conform with the sovereign's instructions. However, by no means we want to say that everybody is obligated on the basis of *political* obligation.

Thus, we assume that people will necessarily interact and that they will join together to resolve collective problems. Drifting along these lines, we can say that it is not enough that a theory of political obligations shows how an individual owes his obligations to one particular polity, and, in addition, how nearly all the members of that polity bear such obligations. It is also important to show that the members of the polity are linked with one another, that they are *interdependent*, that they are truly members of one polity.⁴⁵

Such conceptualization of political obligations may be suspected of favoring associativist (or communitarian) theories of political obligations and to put in disadvantage consent-based theories. Indeed, this suspicion is not without grounds. However, in this thesis I will demonstrate that a modified version of Klosko's theory of political obligations is able to account for the interdependency without the resort to associative obligations. As to the consent theory, in the next section I will discuss some aspects of it. Primarily, I will try to convince the reader that the consent theory fails to tell us *how moral obligations which bind us in virtue of our voluntary performances can become moral obligations which link us as citizens of a common state*.

⁴⁵ More on interdependence and related issues can be found in section 9.6.

SECTION 2.12. THE CONSENT THEORY

Let us imagine that there is a way to enable people to give their consent to their polities in which they live. Let us also assume that most people are willing to become full members of their political communities through consent.⁴⁶ When given, the consent establishes a tie between an individual and the body politic. However, let us look into the nature of this tie. Clearly, since consent is a kind of promise, there is no doubt that the tie is a proper moral relationship with a specific content, and that the particularity requirement is met. However, there is also no doubt that this relationship is *unilateral*. It is not contingent on what other people's relationships to the polity are.

To be sure, the consent theory explains well why the individual is to submit to the authority's commands: the individual uses his natural freedom and voluntarily binds himself to comply with what the authority requires. This explanation is a great asset of the consent theory. But this very explanation is a hindrance to a potential resolution of the interdependency problem. Is it really an insurmountable hindrance? Let us see whether this hindrance might be overcome.

The perennial objection against the consent theory is that few have really given their consent. But let us grant that this objection is deflected (let us say that everybody has consented or can consent). Would then the consent theory be defensible? One may claim that the consent theory would still suffer from one intractable difficulty. For what does it mean to give one's consent? It means that one is offered some options and consents to one of them. But, then, if we further look into the consent theory, it turns out that either consent is given under duress

(and therefore invalid) or it is motivated by independent reasons of great significance that themselves can account for what the agent is required to do, without consent, i.e. consent becomes redundant. Let us start from considering the first horn of this dilemma.

It may be said that the state's offer - viz., "to obey or to leave", is hardly different from the highwayman's offer - viz., "your money or your life". Here we have an example of unjustifiable alteration/limitation of initial options (for instance, the option to have money and to have life at the same time is ruled out in the highwayman case). Thus, the consent given to the state is invalid because it is tainted with duress. This analogy is denied by Beran⁴⁷, who puts forward the hospital example. Here is a succinct description of the hospital example given by den Hartogh:

The highwayman is restricting the alternatives in order to manipulate you into a position in which you will prefer to part with your money. But suppose I enter a hospital in order to be cured of a disease which would kill me if left uncured. This particular hospital is the only one offering an efficient therapy. By entering I am taken to consent to obey the hospital regulations. ... My options therefore have been restricted to either giving this consent or facing death. Nevertheless, this is not the case of coercion, for the options are not restricted in order to bring me to submission to another person's will, but because the hospital cannot do its job - which I particularly want it to do! - without requiring some uniformity of behaviour. There is hardship involved in choosing the alternative, but it is not unreasonable - not a matter of coercion or exploitation - to impose it (den Hartogh, 2002, 68).

⁴⁶ Plamenatz, for example, suggested that voting or participating in elections might be taken to mean 'consent' (Plamenatz, 1963). This suggestion, however, was shown to be deficient by Simmons in Simmons, 1979a.

⁴⁷ Beran, 1987, 105.

Den Hartogh also shows that though Beran's hospital example is capable of breaking the analogy between the state and the highwayman, it is ineffective in defending the consent theory as a whole. In doing so, he employs the grocer's shop example.

Suppose I have collected some potatoes at the grocer's shop, when I discover that I left my money at home. The grocer is prepared to allow me to take the potatoes home, if only I promise to pay for them tomorrow. I protest that he is coercing me by restricting my options to either promising to pay or leaving without potatoes. He replies that he does not take away my option of having the potatoes for free in order to coerce me into promising. I did not have this option to begin with: he runs a shop, not a charity. In other words, the reason why tomorrow he will have the right to demand payment, is not that I promised to pay, but that I took the potatoes (den Hartogh, 2002, 68-69).

Thus, the grocer tells the customer that he has two options (a) have potatoes and pay for them or (b) do not have potatoes and do not pay. After the customer discovers that he has no money in his purse, the grocer suggests that he would pay tomorrow. And at that moment, the customer's options have not essentially changed. Therefore, there is no coercion involved. The same is about the hospital and the state, if we conceive of the state as an organization which offers protection and without which such protection is lacking. Two options are opened for the patient: (a) have the disease and not obey the hospital's regulations or (b) cure the disease and obey the regulations. And two options are opened for a subject of the state: (a) do not have protection, parish and not obey the law or (b) have protection and obey the law.

Now, the reason why the customer should pay is that he has taken potatoes. His *promise* to pay *only facilitates* the customer's acting on this reason. The reason why the patient should obey the regulations is that the hospital cannot function well without these regulations and the patient has a vital interest in perfect operation of the hospital. It is not because the patient has

consented (by deciding to get treatment there) to comply with the regulations that he has to obey; but because without conformity with the regulations the hospital's mission would come to a halt. And finally, the reason why the subject has to obey is that his vital interest in protection can be realized only through obedience.

From the above, den Hartogh draws the following inference. If the state requires from the subject something what has no connection to protection whatsoever, then the subject can be justified if he disobeys regardless of his consent, since his consent is invalid (the state illegitimately coerces him to choose between either leave or comply with unwarranted law). If, however, the state requires something that has connection with protection, then *this constitutes the reason why the subject should obey*.⁴⁸

Now, the reason why the subject should obey is likely to be interdependent. At least, it is the reason *given to everybody* within the jurisdiction of the state. In this way the unilateral character of consent is overcome and the uniting force (the reason given by the state) is established. However, this uniting force enters the picture at the price of degrading consent to supplementary activity, i.e. at the price of stripping the consent theory of the status of a theory justifying political obligations.

There is no denying that the above escapade into the consent theory is extremely sketchy and incomplete. None the less, it serves the purpose of clarifying what we look for when we endeavor to give grounds for political obligations. We look not for private reasons which one

⁴⁸ "If the "sovereign" could give me no independent moral reason for my obedience - if the law would be nothing but an expression of her will - then by giving me no alternative but to emigrate, she would coerce me, and I would not be said to give my free consent by not taking that alternative. ... But if she *can* give me a reason why all the people within the territory should obey her, then indeed I could be said to agree to obey her when I stay within the territory - but my "consent" would only be an additional and derivative ground" (den Hartogh, 2002, 69, italics in original).

is at liberty to create through promises or consent, but for interconnected reasons which the state authority can give to everybody who falls within its remit.

I will end this section with one remark. Den Hartogh's argument that the state should be ready to offer a reason to its subjects why they are to obey its laws is incomplete. What turns out to be missing is the emphasis on the fact that the state may require from its subject to abide by the laws that do not contribute to the subject's protection, but that provide, for instance, aid to the needy. Den Hartogh writes about well-to-do citizens: "If, for instance, they would rather emigrate than to pay a particular tax, they have the moral right to evade that tax" (2002, 71). Now, imagine a new rich man in Russia. President Putin introduces a new tax to help the poor. The new rich man does not want to pay. Of course, he can emigrate if this serves his interests. However, given that the tax is justifiable, as long as the new rich man stays in Russia *he is not morally allowed not to pay it*. In short, the reasons, which the state can offer to those over whom it rules, cannot only comprise the reasons related to gaining benefits by individuals. Those reasons may, and often do, include the reasons stemming from the duty of assistance, or, in other words, stemming from what justice requires since it is not just that the gifted and the born in rich families do not help those who are not talented and born in squalid slums to alcohol-stricken couples.

SECTION 2.13. VOLUNTARINESS

Finally, I want to make a remark on the characteristic of voluntariness. Some philosophers, like A. John Simmons, have argued that obligations can only be self-assumed, i.e. voluntarily undertaken.⁴⁹ Others have waived the condition of voluntariness. In the framework that I

⁴⁹ Simmons, 1979a, ch.1. According to Simmons, an obligation has three characteristic features: (a) it is grounded in a specific voluntary performance of the agent; (b) it is owed to a particular individual (or a group);

employ in my work it is clear that I do not place a premium on the condition of voluntariness. To be sure, the voluntary undertaking of an obligation is an important way of getting obligated to perform certain acts. It can be noted that many a state official comes to bear his political obligations in this way. Yet, along with Klosko⁵⁰, I want to show that even if the condition of voluntariness is relinquished, it is still legitimate to speak about political obligations of citizens.

SECTION 2.14. CONCLUSIONS

In this chapter I have discussed the major characteristics of political obligations. It has been shown that political obligations are content-independent moral requirements which meet the particularity and generality requirements, are not always conclusive reasons for action, and vary in stringency. Furthermore, political obligations are deemed to be (a) not necessarily voluntarily assumed and (b) binding because they are based on the underlying moral principles. In what follows I will focus on one moral principle - namely, the principle of fairness.

(c) it has a determinate content. As it has been stated already, in this dissertation feature (a) is dropped out, while features (b) and (c) are adhered to.

⁵⁰ See Klosko, 1992, 6-12. Klosko says that a theory of political obligations that is based on 'voluntary obligations' would be desirable, however it is not necessary. He himself does not presuppose that political obligations are self-assumed.

CHAPTER 3. KLOSKO'S ACCOUNT OF THE FAIRNESS PRINCIPLE

SECTION 3.1. INTRODUCTION

In 1987 George Klosko launched a powerful defense of the fairness theory.⁵¹ During the next 5 years he was elaborating this defense. His hard work was brought to the fruition with coming out *The Principle of Fairness and Political Obligation*.⁵² Klosko's particular interpretation of the fairness principle received further development in 1994 and 1998 with publication of Klosko's two articles: *Political Obligation and the Natural Duties of Justice* and *Fixed Content of Political Obligation*.⁵³ Judging from this short history, one can regard Klosko's account of political obligation a recent one⁵⁴. Perhaps, this is the reason why there have been but a few attempts of critical appraisal of this account.⁵⁵ According to Klosko, "[the account's] central claims have not yet been rebutted" (Klosko, 1998b, 469). This and ensuing chapters are meant to shake Klosko's confidence in impregnability of his account and to show that there are grave defects from which this account suffers.

In what follows I endeavor to faithfully present what Klosko's account of fairness theory is. I will start from the exposition of Klosko's innovatory way of framing the fairness principle. This will immediately take us to the discussion of the acceptance condition and the conception of presumptive goods. I will continue by considering one typical objection to the fairness principle - viz., Nozick's objection. There will be shown how this objection can be

⁵¹ See Klosko, 1987a and 1987b.

⁵² Klosko, 1992.

⁵³ Klosko, 1994 and 1998a.

⁵⁴ It is admitted by Klosko that "[the fairness account] has been developed only recently" (Klosko, 1998b, 469).

⁵⁵ I am aware of only Simmons, 1987 and Carter, 2001. These are substantial criticisms, though Carter's does not concern us here because it picks holes in Klosko's account from the perspective of the political anarchist (simply put, Carter denies that states can offer any real benefits). There are, however, cursory criticisms scattered in books and articles of the following authors: Simmons, 2001, 31-36, Wellman, 2001, 738, den Hartogh, 2002, ch.4, McDermott, 2004.

defused. At the end of the chapter, I will signal how I intend to further unfold Klosko's account.

SECTION 3.2. WHAT IS KLOSKO'S ACCOUNT ABOUT?

Klosko's main claim is that general political obligation can be grounded in the principle of fairness. What does the principle of fairness stand for? There are two main formulations of this principle: one was given by H. L. A. Hart and the other by John Rawls.⁵⁶ In Hart's expression it sounds as follows:

When any 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. The rules may provide that officials should have the authority to enforce obedience and make further rules ... but the moral obligation to obey the rules in such circumstances is due to the co-operating members of the society, and they have the correlative moral right to obedience. In social situations of this sort (of which political society is the most complex example) the obligation to obey the rules is something distinct from whatever other moral reasons there may be for obedience in terms of good consequences (e.g., the prevention of suffering); the obligation is due to the co-operating members of the society as such and not because they are human beings on whom it would be wrong to inflict suffering (Hart, 1955, 185).⁵⁷

⁵⁶ Though Hart's and Rawls' formulations of the fairness principle are most typical in the literature, they were not the first proposed. The first distinctive attempts to set down the principle belong to C. D. Broad (1915-1916) and A. C. Ewing (1953).

⁵⁷ Hart was a positivist and believed that the obligation to obey is a *prima facie* one and restricted only to fair laws - there is no obligation to unfair and pointless laws (Hart, 1955). Other positivists have been similarly skeptical of the obligation in question: Bentham and Austin, as representatives of the utilitarian school, held that questions about obedience always turn on the consequences and supported the view that disobedience is sometimes fully justified (Bentham, 1970, Austin, 1995); Kelsen maintained that "the science of law does not prescribe that one ought to obey the commands of the creator of the constitution" (1967, 204); and Raz was most resolute of all by arguing that there is not even a *prima facie* obligation to obey the law, not even in a just state (1979, 233-249). (This might sound as if I put Austin, Hart and Raz in the same basket, which I did not. If it comes to the essence of law, Austin adheres to the sanction-based theory, Hart advocates the practice-based one, and Raz adamantly champions the reason-based theory.)

In order to better grasp the meaning of Hart's formulation, let us have Rawls's formulation and compare the two.

Suppose there is mutually beneficial and just scheme of social cooperation, and that the advantages it yields can only be obtained if everyone, or nearly everyone, cooperates. Suppose further the cooperation requires a certain sacrifice from each person, or at least involves a certain restriction of his liberty. Suppose finally that benefits produced by cooperation are, up to a certain point free: that is, the scheme of cooperation is unstable in the sense that if any one person knows that all (or nearly all) of the others will continue to do their part, he will still be able to share a gain from the scheme even if he does not do his part. Under these conditions a person who has accepted the benefits of the scheme is bound by a duty of fair play to do his part and not to take advantage of the free benefits by not cooperating (Rawls, 1964, pp. 9-10).⁵⁸

The first impression is that Rawls's cooperative scheme does not have *rules* that are so emphatically spelled out in Hart's formulation. It is a wrong impression. According to Rawls, cooperative schemes may have rules, but the presence of *explicit* rules is not a necessary condition for the existence of cooperation.⁵⁹ The next impression is that Rawls's elucidation of the fairness principle is more sensible and true-to-life than Hart's one in that it empathizes the fact that for the successful production of benefits the compliance of *all* members of a given cooperative scheme is not necessary. It is enough if a sufficient number of them comply and do their part. This qualification is a significant one since had there been the case that the scheme is workable only when all participants conscientiously cooperate there would have been no free-rider problem and no need for the principle of fair play. Doing one's part in the

⁵⁸ A note to eschew misunderstanding: I assume that the fairness principle and the principle of fair play are the two names for the same moral principle.

⁵⁹ See Rawls, 1971, 111-112 or 342-343.

scheme would have been one's prudential requirement (along or not along with one's moral requirement, depending on circumstances).⁶⁰ The further thing that comes to mind when we juxtapose the two formulations is Rawls's condition that benefits are *free*, i.e. non-cooperators may enjoy the same level of benefit-provision as conscientious cooperators.

SECTION 3.3. THE CONDITION OF ACCEPTANCE

Having stated these three dissimilarities, which bear on the problem of political obligation, I will now turn to the *main* difference. It consists in Rawls's introduction of the condition of *acceptance*. Mere receipt of benefits does not suffice. What is required to generate obligations stemming from the fairness principle is the act of acceptance of benefits in question. Klosko admits this difference.⁶¹ He believes, however, that if for some schemes the condition of acceptance does make sense, it is redundant in the case of the state provision of benefits. Consequently, this condition is to be dropped if we discuss the problem of political obligation.⁶²

SECTION 3.4. FREE-RIDING

Before discussing the condition of acceptance in greater detail, I want to indicate what connects Hart's and Rawls's formulations of the fairness principle. In both formulations it is clear that the problematic question is that about *free riders*. What reason (capable of generating a moral motivation to abide by the rules) is available for someone in whose self-

⁶⁰ Simmons (1979a) undermines the importance of the condition that cooperation of the majority is required. He asks whether anything would change if the cooperative result would be secured by the effort of half of the participants. He assumes that nothing would change, but he is wrong: at least the scheme would be deemed inefficient and up to modification.

⁶¹ Klosko, 1994, 252, and see also Simmons, 2001, section III.

⁶² See Klosko, 1992, ch. 2 and Klosko, 1994, 264.

interest it is to gain benefits from a scheme without doing his part in it? Remember that we are interested in moral reasons, thus the question is also about whether a free rider is morally blameworthy and whether those who are dedicated and faithful to the scheme truly have a moral obligation to continue to be conscientious if free riders abound. *Both* Hart and Rawls share the view that there is moral reason to contribute to the scheme and this reason *is rooted in fairness*. This reason prescribes not to take unfair advantage of others.

SECTION 3.5. THE LIMITING ARGUMENT

Let us now revert to the acceptance condition. This condition was a reason why Rawls abandoned the principle of fair play as a foundation of political obligation. In his *Theory of Justice*, Rawls argued that this principle does not generate an obligation to do one's part in a cooperative venture unless the individual "has voluntarily accepted the benefits of the arrangement or taken advantage of the opportunities it offers to further [his] interests" (Rawls, 1971, 111-112). And this brought him to the conclusion that since it is implausible to construe, in any coherent manner, citizens' actions as such that qualify as voluntary acceptance of benefits, the fairness principle fails to substantiate political obligations.⁶³

The above argument was dubbed as *the limiting argument*. The reason behind such a label is that according to the argument in question the principle of fairness is applicable *only* to schemes where voluntary acceptance of benefits by a scheme's members can unquestionably be established, i.e. the schemes in which the acceptance condition is satisfied.

⁶³ This conclusion is fully shared by many political theorists, e.g. Dworkin (1986, 192-193).

SECTION 3.6. SCHEMES THAT SATISFY THE ACCEPTANCE CONDITION

What are the schemes that satisfy the acceptance condition? It has been argued that such schemes are ones that provide *excludable* goods.⁶⁴ However, on the face of it, the incident that a scheme provides excludable goods is a sufficient rather than a necessary qualification for a scheme to meet the acceptance condition. It is a sufficient qualification because if one chooses not to bear his part of burdens and not to enjoy some excludable good, he is not obligated in any way to the scheme at issue. If, however, one chooses to enjoy the good, it means that one agrees to contribute to its production and, therefore, one will be acting unfairly if one does not do his part in the producing scheme.⁶⁵

For some action to qualify as an instance of voluntary acceptance of some good, it should involve "either (1) trying to get (and succeeding in getting) the benefit, or (2) taking the benefit willingly and knowingly" (Simmons, 1979b, 329). If so, then it becomes clear why excludable schemes generate obligations on the part of its members. Owing to the nature of the excludable schemes, one can enjoy their benefits only when one is engaged in getting and actually gets these benefits.

⁶⁴ "[I]t is apparent that individuals attain obligations to excludable schemes only when they actively pursue the benefits such schemes provide" (Klosko, 1987, 243). Note that excludable goods are goods the provision of which can be restricted to those who opt for it. Non-excludable goods are defined by the negative statement of the above definition. Another way to express the definitions is to say that excludable goods are ones that are readily deniable to anyone who turns down the demands providers place upon their provision, whereas non-excludable goods cannot readily be denied by their providers, nor turned down by their recipients. If all goods were excludable there would be no problem of free-riding. Who wanted a good would pay for it and who did not want to pay would merely be left without the enjoyment of the good. Notice also the difference between non-excludable and non-avoidable goods. Some goods may be avoidable but non-excludable, like public broadcasting. If one does not possess a radio he avoids this good. However, public broadcasting cannot in itself be restricted only to those who have access to a radio.

⁶⁵ Cases like this one are on the borders with the consent theory since 'an individual agrees' can credibly be interpreted as 'an individual consents'.

It is worth noting that willing and knowing acceptance of benefits does not amount to willing and knowing undertaking of moral obligations. An intentional act of taking a benefit may not be accompanied by an intention of obligating oneself to reciprocate. Here lies a crucial difference between the consent and the fairness theories. Within the consent theory, the act of giving one's consent or promise is coupled with the deliberate intention to bind oneself to stay true to his word. Unlike the consent theory, the fairness theory does not predicate incurred moral obligations on the deliberate intention to bind oneself to fulfill them. Simmons recognizes this feature as a distinct advantage of the fairness theory:

No deliberate undertaking is necessary under the principle of fair play. One can become bound without trying to and without knowing that one is performing an act which generates an obligation. Since mere acceptance of benefits within the right context generates the obligation, one who accepts the benefits within the right context can become bound unknowingly. ... Thus, while one can neither consent nor accept benefits (in the right sense) unintentionally, one can accept benefits without being unaware of the moral consequences of so doing (while being unaware of the moral consequences of consenting defeats the claim that consent was given) (Simmons, 1979b, 117-118).

Enjoying one's share of benefits at the price of taking one's share of burdens encapsulates the essence of the fairness theory. That this theory does not rely on the intentional undertaking of moral obligations makes it a promising candidate for a cogent theory of political obligation because *the generality requirement* is likely to be met.⁶⁶ And if the state were an excludable scheme and the majority accepted the state benefits, whether knowingly nor not, we would be able to argue that the majority were bound by the principle of fairness to contribute to the scheme.

SECTION 3.7. KLOSKO'S CONTENTION

Klosko is ready to concur over the view that participation in an excludable scheme is sufficient for the principle of fairness to get activated and to give rise to the corresponding obligation. What he is unwilling to acquiesce in is the view that for the principle of fairness to be activated and for the obligation to arise it is *necessary* that a scheme be excludable. *His contention is that non-excludable schemes can also generate obligations stemming from the fairness principle.* Put differently, Klosko argues that some special schemes (it turns out that they are state enterprises, i.e. big political associations) may be non-excludable but at the same time satisfying the acceptance condition. Hence, that a scheme is excludable proves to be only the sufficient condition for the obligations of fairness to take place; however, it is not the necessary one.

To better explain what Klosko is after, I want to make a small digression. If one consents or gives a promise, he incurs obligations that are predicated on some voluntary and intentional act.⁶⁷ This is a paradigm case that is often used as a starting point or a point of clarification in moral discussions. Let us, however, move further. In the case of a standard application of the fairness principle, that of a scheme producing excludable goods, the corresponding obligations are conditional upon some voluntary, but *not necessarily* intentional act. For example, ascertaining voluntary procurement of the goods by someone who knows how those goods were produced, is *enough* to obligate him to reciprocate. The obligation remains valid even if this person never intended to get obligated. Hence, it is not needed in the case in

⁶⁶ See section 2.6 for details about the generality requirement.

⁶⁷ Notice that there is little sense in giving a promise intentionally if one does not intend to fulfill it. The primary point of giving a promise is in communicating to others, especially to the promisee, that one binds himself to carry out what he said he would do. Here I do not speak of 'strategic' or 'crooked' promises, i.e. promises given with no intention to carry them out. Incidentally, one ought to fulfill a 'crooked' promise if one has given it.

question that one has the intention to put oneself under an obligation.⁶⁸ Nor is it needed that one is aware that he is acquiring an obligation in order to have one. How does it differ from the case of consents or promises? It differs in that the required act or performance need no longer be both voluntary and intentional. It suffices that it is only voluntary.

Now, Klosko suggests that we take one more step further and drop the voluntary condition as well. But is it possible for an individual to be under an obligation stemming from the principle of fairness if no voluntary performance relating him to some scheme is detected? At first glance, it seems impossible. Imagine someone who is forced to toil at some farm for a meager salary. Certainly, it would not be fair to expect the person to bear any obligations towards the people who run this farm. However, Klosko would be ready to rule out such examples not because the voluntary acceptance of the benefit (salary) was not present, but rather because the benefit was not worth the cost. Hence, for the principle of fairness to apply the following additional condition should be met: *the benefits are to be worth the costs*. Moreover, there is another condition to be satisfied as well: that *the distribution of benefits and burdens in the scheme is a fair one*.⁶⁹

But even if we exclude unfair schemes and schemes where costs transcend benefits, is it possible for an individual to be under an obligation stemming from the principle of fairness if no voluntary performance relating him to the scheme is detected? Klosko insists on the affirmative answer to this question. This affirmative answer hinges on the introduction of the notion of *presumptively beneficial goods*.

⁶⁸ Here I differentiate between an intention to assume an obligation and other intentional acts. An agent can perform intentional acts without the intention to become obligated. Nevertheless, some of such intentional acts may imply putting oneself under an obligation.

⁶⁹ Klosko, 1992, 78. This condition is an important condition and I will discuss it later in more detail. It is articulated by Rawls in Rawls, 1971, 111-112 and 342-343, and scrutinized by Simmons, in Simmons, 1979b, 109-114.

Before explaining what presumptively beneficial goods are, I want to make clear what exactly Klosko's position is. His position is such that holding to it he can maintain that the conclusion expressed by Horton in the below passage is spurious.

[T]he problem for proponents of the fair-play theory of political obligation is that though the idea of 'the acceptance of benefits' can be understood in either of two ways, neither has much plausibility as a justification of the supposed obligation. On the one hand, acceptance of benefits is equivalent to mere receipt of benefits; while on the other, acceptance of benefits entails a voluntary act of acceptance. The first interpretation provides a plausible account of the realities of political life - we do receive benefits about many of which we have no choice - but this does not seem to justify a corresponding obligation. The second interpretation, on the other hand, provides a potentially plausible justification of how an obligation is generated by accepting benefits, but one which has little application to the realities of political life. It is difficult to see how the fair-play theory can circumvent both of these difficulties; in consequence it seems either unconvincing or largely irrelevant as a general theory of political obligation (Horton, 1992, 98).

Klosko contends that Horton underestimates the first interpretation. We can give a more profound and robust rendering to the notion of 'benefit receipt'. This will result in rejecting the claim that the receipt of benefits "does not seem to justify a corresponding obligation". Eventually, the difficulties, of which Horton speaks with regard to the first horn of the dilemma, can be overcome. Let us, then, see how Klosko fleshes out his account of 'benefit receipt'. The primary task for him is to give substance to his concept of presumptively beneficial goods.

SECTION 3.8. PRESUMPTIVELY BENEFICIAL GOODS

It is difficult to explain what presumptively beneficial goods (or presumptive goods, for the sake of brevity) are. Klosko himself agrees that this notion is "undoubtedly unclear in various respects" (Klosko, 1992, 39). To make the notion of presumptive goods more understandable Klosko, drawing on Rawls, proposes that we think of them as "things that every man is presumed to want" (Rawls, 1971, 62). Using Rawls's description of primary goods, Klosko suggests the following definition of presumptive goods: "presumptive goods are public goods it is supposed that all members of the community want, whatever else they want, regardless of what their rational plans are in detail" (Klosko, 1992, 39).⁷⁰ An additional feature of presumptive goods is that their provision is costly. This is an important feature because if relevant public goods were inexpensive or even very cheap, then they would hardly be a ground for fairness obligations to arise, or for any obligations for that matter. To be sure, most theorists take it as a hidden assumption that the production of public goods is not a low-cost enterprise.

Though Klosko is right that his conception of presumptively beneficial goods defies immediate and incontrovertible comprehension, it is nevertheless evident that such goods are produced by cooperation and are non-excludable.⁷¹ Police protection, national defense, and

⁷⁰ Cf. Rawls, 1971, 92. However, it should be stressed here that the primary goods as construed by Rawls are the outcomes of *hypothetical* choices of entirely rational individuals (see Rawls, 1971, 62). By contrast, presumptively beneficial goods are goods the provision of which is the outcome of choices made by *actual* people, who may not be fully rational, informed and capable of calculation.

⁷¹ Klosko is not clear whether those goods can simply be non-avoidable. (To clarify: non-excludable beneficial goods, e.g. national defense or public order, are such that whatever one does one benefits from their provision. Non-avoidable beneficial goods, e.g. telephone booths or public hospitals, are such that one can choose (however unwisely) not to benefit from their provision. A non-avoidable good is necessary non-excludable, but the reversed relation is not true; in other words, non-excludable goods are divided into non-avoidable and avoidable goods.) This is so because in the list of the most important presumptively beneficial goods he puts in the satisfaction of basic bodily needs (see Klosko, 1992, 40). This good, however, is usually avoidable. For instance, one can stop eating or washing. Compare this with the fact that one cannot eschew the protection by the defense system. Now, if we do not demand that presumptively beneficial goods meet the condition of being non-

preservation of clean environment are among stock examples of presumptively beneficial goods.⁷² What makes us be sure that these are good examples is an essential role these goods play in the life of every individual. And this essential role is emphasized by Klosko: "what characterizes such goods is indispensability: they are necessary for an acceptable life for all members of the community" (Klosko, 1992, 39).

SECTION 3.9. WELLMAN'S OBJECTION

To better grasp the essence of the concept of presumptive goods, we will consider Wellman's objection to the theories based on the fairness principle. Below I place a quotation which is, albeit somewhat long, quite illuminative with regard to what the objection in question is really about. The objection is couched in the form of an argument:

One of the pivotal moves in [the fairness] approach is to insist that the advantages of political society bind citizens because it is the citizens themselves who benefit. The problem which emerges for this account is that the liberal premium upon individual autonomy entails that one may not justify one's coercion of another by merely citing the benefits for the coercee. Liberalism's aversion to paternalism implies that each autonomous individual has a right to decide which self-regarding benefits to pursue. In order to steer clear of the paternalism ... one must restrict the fairness principle to only those cases in which the benefits are freely accepted (Wellman, 2001, 738).

Does this argument hold water? To answer this question, let us first notice that Wellman's argument seems to be based on sound and attractive premises. Indeed, the first premise

avoidable, then we are compelled to conclude that such goods as the availability of phone booths and street lighting may also be counted among presumptive goods. This conclusion cannot be welcome by Klosko, however, because he wants the class of presumptive goods to embrace only truly indispensable benefits. And though indispensability is not directly related to non-avoidability, it is practically the case that most vital goods are non-avoidable (and hence also non-excludable).

reminds us of liberalism's commitment to autonomy. More specifically, it tells us that agent A should not have ascendance over agent B just in virtue of agent B's receipt of benefits from agent A (to draw an example from gender studies: if a man gives a woman some money she needs, he does not acquire a right to demand satisfaction of his sexual overtures). The second premise informs us that if agent A decides for agent B about what benefits agent B would like to receive, then agent A behaves paternalistically towards agent B. In other words, to thrust benefits upon someone and then to coerce him into reciprocation (obedience) is morally condemnable. Equally condemnable is to point to someone which benefits one should seek after.

From these two premises Wellman makes a conclusion that only willing and free acceptance of benefits is morally acceptable. And this conclusion is both incorrect and invalid. To explain why, we should pause to reflect on *what kind of benefits* is involved in this argument. No one would deny that many instances when person B receives benefits from person A, or from some institution, qualify as instances in which gratitude is the most appropriate mode of reciprocation. The fact that such benefits have been obtained does not justify allowing person A (or the institution for that matter) to issue binding instructions for person B. Also, it is doubtless that if, for instance, my uncle, upon hearing that I want to buy a hi-fi equipment, supplies me with one of a brand I do not like and prohibits me from buying one I fancy, he deserves no warm feeling to him on my part.

The picture radically changes if we start to think of benefits which are indispensable and vital for any pursuit an individual might choose. First, it ceases to be paternalistic if one is invited to receive benefits which he cannot do without. Contract enforcement or national defense is a

⁷² See Klosko, 1992, 40.

benefit which one ought to receive in order to lead a good enough life. It is not a benefit which one is paternalistically forced to receive. Second, the mere fact that person B acquires even an essential benefit does not by itself lead us to agree that this person owes something to the benefactor. For the benefactor might be a non-human entity - the sun, tropical rains, or fertilizing river flooding, for instance. Hence, we can owe something to our benefactor if the latter is an individual or a body of individuals. And since essential benefits are likely to be produced by a cooperative endeavor of many people, we may be under an obligation to reciprocate their receipt with something that is required from us within this cooperative endeavor. Doing our part in sustaining the provision of essential benefits does not resemble the renouncement of personal autonomy.

To summarize, Wellman's objection hinges on an argument which is fallacious. The fallacy consist in the equivocation on the notion of benefit. The conclusion Wellman draws is valid if the meaning of possible benefits is restricted to non-indispensable and non-vital benefits. However, if the benefits in the argument are supposed to be crucial for conducting an adequate life, then the conclusion is invalid. This judgment about Wellman's objection can be articulated in another terms. It may be said that every time we think of the benefits in the above argument as presumptively beneficent, we are driven to state that Wellman commits a mistake. And every time we substitute 'simple benefits' for the benefits in the argument, we are compelled to admit that Wellman is right. Noticing this difference helps us see deeper into the concept of presumptive goods. The provision of presumptive goods does not result in sacrifice of personal autonomy. Nor does it make one embrace paternalism.⁷³

⁷³ Note that Wellman is correct when he insists on the value of freedom: even if one receives benefits from a scheme that outweigh the corresponding chores, still one may refuse to contribute to the scheme because this is simply his whim. But notice that in this case one has to be prepared not to receive benefits in question and not to

SECTION 3.10. THE APPEAL OF THE NOTION OF PRESUMPTIVE GOODS

The introduction of the concept of presumptively beneficial goods is appealing to Klosko due to several considerations. First, he can make out a good case for the claim that *everybody wants* presumptive goods to be supplied. Consider the provision of national defense. Klosko legitimately assumes that "because the benefits of national defense are presumptively beneficial, we can presume that [an individual] would pursue them (and bear the associated costs) if this were necessary for their receipt" (Klosko, 1992, 41-42). Further, Klosko says that "[i]t is difficult to imagine what [the individual] could say to the members of [the scheme], who have provided him with national defense, in order to justify his unwillingness to co-operate. Because the benefits are indispensable, he could not say he does not want them" (Klosko, 1992, 42).

Why is it important for Klosko to establish the claim that everybody wants presumptive goods? It is important because Klosko's aim is to show that either the acceptance condition is automatically satisfied (the reasoning being that if one wants a good, one is ready to accept the costs of procurement of that good), or the acceptance condition becomes redundant (the reasoning being that acceptance is built into an extended definition of presumptive goods). This way or the other, the inference, conducive to Klosko's overall argument, will be that *the limiting argument does not pose a problem when we deal with presumptive goods*. And this inference is exactly what Klosko is after.

contribute. However, this option is foreclosed if one deals with presumptive goods. One cannot simply agree to having them not provided.

Second, the conception of presumptive goods helps Klosko deflect Robert Nozick's objection to the fairness principle. Before explaining what this objection is about, I want to make the following remark. The major problem of the consent theory of political obligation is its inability to establish an appropriate act of consent on the part of citizens.⁷⁴ In other words, it has been convincingly argued that most citizens do not perform any intentional and voluntary act that can lead to their being morally obligated to obey the law and regulations of their state. Now, the fairness theory may only be an advance on the consent theory if it does not hinge on such intentional and voluntary performances. In the case of excludable schemes this challenge is met by relinquishing the intentionality requirement. As I have discussed above, according to the tenets of the theory, one stands under an obligation to reciprocate if one has voluntarily benefited from some scheme, knowing that the benefits have not fallen from heaven as manna but have cooperatively been produced by the members of the scheme in question. This person might never have intended to get obligated⁷⁵, nor might he have been aware that he was acquiring an obligation.

However, the excludable schemes do not fit the description of big political associations like modern states. The latter are better characterized as non-excludable schemes. Klosko's contention is that the fairness theory has enough resources to explain moral obligations in the case of non-excludable schemes as well. According to this contention, we can give up *both* the intentionality and the voluntariness requirement if we deal with presumptive goods. Nozick is at striking variance with such a contention. What is proposed by him for the denial and refutation of some ways of getting obligated, if applied to Klosko's assertions, will lead to

⁷⁴ See, for instance, Dworkin, 1986.

⁷⁵ He might have an intention to use the benefits but not an intention to self-bind himself to reciprocate.

the claim that either the fairness theory boils down to the consent theory or it does not validate any genuine moral obligation to reciprocate.⁷⁶

SECTION 3.11. NOZICK'S OBJECTION

What is, then, Nozick's objection precisely?⁷⁷ This objection can be encapsulated in the following *claim*: unless we are ready to abandon the voluntaristic foundation of liberalism, the furnishing of public goods cannot give rise to moral obligations stemming from the fairness principle if those goods are not willingly and knowingly accepted.⁷⁸ In order to forward this claim, Nozick invites us to derive conclusions from a specially contrived example. Imagine that a group of neighbors convenes in the main square and reaches a decision to set up a public-address system, so that they may indulge in entertainment and other broadcasting. Suppose also that John lives in the neighborhood and has listened to 364 other neighbors running the system for one day each. Here comes John's turn to entertain his neighbors. The question Nozick asks is, 'Is John obligated to do his part in the public-address system when his turn is up?'

The additional assumptions Nozick makes are (a) John did not promise to run the system for 24 hours, hence he is not bound by the principle of fidelity; and (b) John has indeed benefited from the broadcasting system, however he considers that the price to pay is too high and prefers to stay home and not perform his part in the system.⁷⁹ Given these assumption, Nozick gives the negative answer to the above question: "One cannot, whatever one's purposes, just

⁷⁶ See Nozick, 1974, 90-95.

⁷⁷ Wellman calls Nozick's objection "[t]he most celebrated objection to the fairness principle" (Wellman, 2001, 737).

⁷⁸ Public goods are collectively provided non-excludable goods.

⁷⁹ Nozick, 1974, 93-94.

act so as to give people benefits and then demand (or seize) payment. Nor can a group of persons do this" (Nozick, 1974, 95).

This answer is supported by supplementary examples that are meant to reinforce it. One example runs like this: if the neighborhood bands together and establishes a street-sweeping association, should John sweep the street when his turn comes, providing that he does enjoy the clean neighborhood? Now, let us ask the question, 'What is the salient core of the presented examples?' The salient core is that we can call these examples the bystander examples because what is crucial about them is that the agent, who is allegedly obligated to participate in a scheme, did not willingly join the scheme in question, though he has enjoyed the benefits provided by that scheme.

If one accepts Nozick's answer, one becomes committed to the view that bystanders cannot incur obligations if they merely receive benefits from some cooperative scheme. Indeed, had one not agreed to this view, he would have been bound to accede to very implausible and even bizarre obligations.⁸⁰ From this claim Nozick moves to the conclusion that the fairness principle cannot be used "to obviate the need for other persons' *consenting* to cooperate and limit their own activities" (Nozick, 1974, 95, italics in original). The target of Nozick's endeavors is consent. He deeply believes that without consent the obligations are not generated.

⁸⁰ Den Hartogh, for instance, wonders what he should do if someone washes his (den Hartogh's) car and sends him (den Hartogh) a bill. Hardly are any obligations created by such unasked-for services (see den Hartogh, 2002, 84). However, den Hartogh also offers us a shrewd insight: in the examples like the above "there is no question of cooperative activities, for the profit of the service and the profit of the return service are independent. All persons involved can attach conditions to their choice without difficulty and may not complain if an unconditional choice is 'exploited'" (den Hartogh, 2002, 84). It must be admitted, then, that we can credit Nozick with inserting an element, however insignificant, of cooperation in his examples. Thus, the emphasis on the cooperation condition will, in fact, screen out those bizarre obligations.

SECTION 3.12. REBUTTAL OF NOZICK'S OBJECTION

The move of Nozick, referred above, is a hasty one. As *the first counter-objection*, one may argue against Nozick that Nozick's examples do not provide enough evidence to draw the conclusion he actually draws.⁸¹ To see this, suppose that John from the first example is called upon not to run the broadcasting system for 24 hours, but to run it for t_1-t_2 hours, where t_1 is a period of time that corresponds to the amount of pleasure and satisfaction (in short, the amount of benefit) that he has received from the entertaining efforts of others⁸² and t_2 is some period of time (not further specified). Let us say t_1-t_2 amounts to 3 hours. In other words, if John were offered a deal of either to have the entertainment and to contribute to it by being in charge of the system for 3 hours or not to have the entertainment and not to contribute to it, he would patently be willing to enjoy the entertainment and do his part in it. Now, it is clear why we had to subtract t_2 from t_1 . If we had not done this, John would have been indifferent as regards the deal. 'Entertainment plus contribution' would have been equal to 'no entertainment and no contribution' (zero overall benefit would have been equal to zero overall benefit).

Suppose further that John was actually not offered the deal, but all the other neighbors have carried out their part in the system and asked him to take on the management of the system next day for the duration of 3 hours. It is clear that in this case John would be under an obligation to take on the management. And this obligation would be grounded in the principle of fairness. Since the essence of the principle of fairness can be captured in the precept of not

⁸¹ I owe the idea of this objection to Janos Kis. Also, cf. Simmons, 1979a, 120. Note, however, that according to Simmons, Nozick's objection does not apply to the fair-play theory because people who receive benefits in Nozick's examples are not 'insiders' to a cooperative scheme.

⁸² For the sake of the argument, I assume complete transparency of cost-benefit evaluations. In other words, I take it for granted that John (or others for that matter) does not distort the costs he really bears and the benefits he in fact avails himself of; his preferences are not misrepresented. For that reason, strategic manipulation is also ruled out. To be sure, this is a serious assumption, which some may want to avoid making. It is, however, a thoroughly relevant and justifiable assumption at this point of the argument.

taking an unfair advantage of others (and this precept means that we should reciprocate when others have made sacrifices which have brought benefits to us, and that we are to bear our burdens if others have borne theirs to our advantage), John's refusal to accept the task of running the system under the conditions just specified would be morally objectionable, to say the least.

As a result, one may hold that Nozick's example leads us, in fact, to the conclusion that the contributions to the system have to *accord with* the benefits derived from this system. Whether or not John has voluntarily agreed to participate in the system, if what he has obtained from the broadcasting system outweighs what he is supposed to lose by way of his contribution to this system, he will be morally required to do his part. Thus, had Nozick allowed for differentiated hours of the system management as the *differentiated costs* (i.e. different people run the system for the different number of hours that matches the level of satisfaction they gain from the system plus some extra benefit), he would not have arrived at the conclusion that the fairness principle is impotent to explain the obligations that the neighbors can have to the system.⁸³ Instead, he would have inferred that only those who do not acquire any benefits at all from the existence of the public address system, or those whose benefits are always outweighed by the related costs, however small the latter may be, find themselves beyond the scope of the fairness principle.⁸⁴

This is a valid objection against Nozick's conclusion. Yet, this objection has little bearing on the problem of political obligation. This is because its upshot is the suggestion that for the

⁸³ There is an additional complication with 'some extra benefit': since the cooperative scheme should be fair, the extra benefits accruing to different members of the scheme are to be similar. For instance, it would be fair if the proportion of this extra benefit (e.g. $(t_1 - t_2)/t_2$) were the same for different participants.

⁸⁴ From this statement it follows that the procurement of benefit is the bedrock of any moral requirement that is based on the fairness principle. This is a correct inference. However, the concept of benefit should be construed broadly. I will return to this issue in chapter 12.

fairness principle to apply there should be available differentiated or graded packages of the relevant costs and benefits. But it is safe to assume that the plausibility and the effectiveness of such packages vary with different schemes. And if we consider a state as a pertinent scheme where political obligations are expected to exist, we will soon recognize that states cannot offer graded packages. States demand unqualified obedience to their laws and regulations. There cannot be 'more stringent' or 'less stringent obedience' geared to specific profiles of citizens. This brings us to *the second counter-objection* to Nozick's examples and conclusions - viz., Klosko's counter-objection.

SECTION 3.13. KLOSKO'S COUNTER-OBJECTION TO NOZICK'S CONCLUSIONS

The essence of Klosko's counter-objection is the emphasis on the importance of benefits provided by a scheme. Klosko maintains that whatever merits Nozick's objection holds, they are only relevant under the condition that we consider schemes which offer trifling enjoyments. If we consider serious schemes that supply people with essential and highly desired benefits, the counter-arguments amassed by Nozick crumble down.⁸⁵

At the center of Klosko's expostulation is the conviction that Nozick had in mind only *optional goods* when he put forward his examples and conclusions. Presumptive goods vitally differ from optional goods. If an individual can live without optional goods, he cannot lead a minimally satisfying life without presumptive goods. The latter are simply indispensable. Thus, if presumptive goods are at stake, the individual *necessary benefits* - there cannot be

⁸⁵ "[A]ccording 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." (Klosko, 1998a, 61).

doubt about that. Therefore, Nozick's stress on consenting is misplaced. Consenting grows redundant since whatever happens, the individual is always willing to get presumptive goods.

From this overwhelming importance of presumptive goods also follows that the individual is bound to cooperate. For if he does not cooperate, he takes unfair advantage of others who cooperate and ensure the provision of the set of presumptive goods. Had it been possible to *deny* to the non-cooperator an access to this set, the unfairness could have been avoided. Likewise, had it been possible to *extend* the gains of non-cooperation to others, the unfairness could also been avoided. Yet, in the first instance, it is unfeasible. The enjoyment derived from presumptive goods cannot be withdrawn for one particular individual. Since presumptive goods are non-excludable, such a withdrawal is not a viable alternative. In the second instance, it is vastly undesirable. The gains of non-cooperation can be procured only at the expense of losing presumptive goods. This is so because to extend the gains of non-cooperation effectively means to allow for total free-riding, which would surely lead to forsaking presumptive goods. Hence, if one is inclined to agree with Klosko that the goods governments provide do not belong to a class of trifling ones (and remember that states themselves are justified, among other things, by showing that they provide non-trivial goods), then one may be led to accept that Nozick's objection *does not apply* to Klosko's account of political obligations.

SECTION 3.14. TAKING STOCK

Let us take stock of what has thus far been achieved in this chapter. I have presented the basic tenets of the fairness theory. I have tried to avoid a potentially stodgy discussion of various modifications of this theory. Instead, I have concentrated on the crucial aspects of the theory

from the perspective of the problem of political obligation. It has been indicated that the acceptance condition is a stumbling block to applying the fairness theory to large political communities. Then, the discussion of Klosko's attempt to circumvent the acceptance condition has followed. The key to understanding of Klosko's proposal is his conception of presumptively beneficial goods. I have considered how this conception can be brought to bear on rebutting Nozick's objection to the fairness theory.

My last step in this chapter will be to round out Klosko's account of the fairness theory with touching upon Klosko's two additional conditions for generation of serious moral obligations (additional to the condition that goods are to be presumptively beneficial) - namely, the condition that a cooperative scheme is to be fair and the condition that a scheme is to be efficient with regard to cost-benefit calculations. Also, I will mention the problem of discretionary goods.

SECTION 3.15. ADDITIONAL ELEMENTS OF KLOSKO'S ACCOUNT

Two more characteristics of Klosko's account need to be highlighted. *First*, the provision of presumptive goods does not alone usher moral obligations stemming from fairness. It is required that, in addition, the scheme, which enables the provision, should be fair. This is to say that a given non-excludable scheme should have its benefits and its corresponding burdens fairly distributed. Furthermore, the goods this scheme supplies should also be worth the recipients' effort in producing them.⁸⁶ This means that the benefits flowing from the scheme are to outweigh the costs of required contributions for the participants of the cooperation.

Second, Klosko thoroughly realizes that the reliance only on presumptive goods furnished by a fair and cost-efficient scheme is not sufficient to argue for political obligations. It is common knowledge that constitutional democracies (as examples of the schemes Klosko actually has in mind) are usually engaged not only in provision of presumptive goods strictly speaking (like national defense, police protection, or environment control), but also in provision of many other goods of minor or at least not overpowering importance (like road reparation, clean streets, public education and transportation). Those goods that are furnished by governments but are not presumptive public goods, Klosko suggests that we call *discretionary public goods*.

This brings us to a *problem*. Even if an individual may be obligated to abide by the government's laws and regulations due to his availing himself of vital public goods, it seems undeniable that his freedom is infringed if he is also obligated to perform some actions (like paying additional taxes) for the maintenance of provision of discretionary public goods which he has not expressively asked for. Put differently, unless the government in question belongs to the type of minimalist governments⁸⁷, Klosko's account of political obligation has a serious complication to resolve in order to show that an individual is morally required to obey the state authority. According to Klosko's account as thus far presented, the individual owes his obedience to the state authority, but this obedience is conditioned on the effective provision of presumptive goods. It needs to be shown, then, that the state authority is not compromised or discredited by forcing the individual to reciprocate for the additional provision of discretionary goods. This complication is confronted by Klosko by means of two arguments: the *indirect argument* and the *institutional argument*.⁸⁸

⁸⁶ See Klosko, 1992, 39.

⁸⁷ See Nozick, 1974 for the definition of the minimalist government.

⁸⁸ Klosko, 1992, ch. 4.

I have finished to spell out the aspects of Klosko's account of the fairness theory. In the next chapters I want to embark on evaluative analysis of most important elements of Klosko's position. I will present, examine and either trash or reinforce various objections to those elements. It will be shown that Klosko's account is remarkably resistant to various critical attacks. The account succumbs, however, to the last objection I consider. I will argue that in order to rescue his position Klosko has to allow some modifications of his approach.

CHAPTER 4. OBJECTIONS TO KLOSKO'S THEORY: THE FIRST CONDITION OBJECTION

SECTION 4.1. OBJECTIONS TO KLOSKO'S THEORY

As we can judge from the preceding chapter, the overall schema of Klosko's account is as follows. There is *the first part* in which Klosko contends that given certain conditions are met, the principle of fairness generates strong obligations to contribute to state enterprises which are beheld as non-excludable cooperative schemes. Moreover, in the same part he defends the view that those obligations are best understood as political obligations. In *the second part*, Klosko argues that the problem related to inclusion of discretionary goods in the packages of goods that governments provide, can effectively be dealt with. Moreover, he maintains that modern liberal and democratic states, as political entities he envisages when he speaks of non-excludable cooperative schemes, sufficiently square with his presuppositions and sufficiently fulfill the conditions he imposes in the first part.

Given the above schema of Klosko's theory, one may try to find fault with it in several ways. The most interesting among them are the following.

(i) *The first condition objection*: one may object to the structure of the first part of Klosko's account. This first part consists of three conditions and the conclusion. The list of the conditions is as follows: (1) the goods provided by the state must be worth the recipients' effort; (2) these goods must be presumptively beneficial; (3) the state as a non-excludable scheme must be fair. Then, upon the satisfaction of these conditions, the conclusion ensues that the principle of fairness is able to generate political obligations.⁸⁹ The objection to this structure is that the first condition is redundant. It is claimed that this is so because the second condition encompasses the consequences of the first one. For it is hardly possible to imagine any presumptive good that is not worth the recipient's endeavor to get it. Since presumptive goods are thought to be of highest priority for everybody, it appears inessential to assume in addition that the individual would be willing to pay for them.⁹⁰ Thus, as the objection runs, Klosko's core argument in the first part of his account can be reduced to only two conditions and the conclusion, i.e. to conditions (2) and (3) and the derived conclusion.

Does Klosko have an answer to this objection? In fact, he does not discuss this objection directly. However, in his paper *Fixed Content of Political Obligations*⁹¹ Klosko attempts to meet a similar objection. I will draw on this attempt in order to figure out what would be a possible strategy for invalidating the objection to the first condition.⁹²

⁸⁹ See Klosko, 1992, 39.

⁹⁰ Note that condition (1) is interpreted as assuring the positive outcome of cost-benefit calculation with regard of the provision of presumptive goods. Remember also that we are not concerned here with the problem of true preferences, i.e. with the problem of whether anyone hides his real preferences in order to take advantage of others or distorts them in order to have a strategic dominance. Thus, we assume that cost-benefit calculations are unfeigned.

⁹¹ Klosko, 1998a.

⁹² I address the details of this objection below. What I want to signal here is that Klosko sometimes writes as if he agrees that the first condition can be treated as a supplementary to the second condition and not as a genuine,

(ii) *The discretionary good objection*: one may object to the validity or soundness of the indirect and the institutional argument that are designed to justify the governmental provision of discretionary goods along with presumptive goods. I will discuss the errors and strengths of both the indirect and the institutional argument and will submit a new way of how the provision of discretionary goods can be defended.

(iii) *Simmons's objections*: Simmons has marshaled a series of objections in his *Fair Play and Political Obligations: Twenty Years Later* (Simmons, 2001). I will consider these objections and show that all of them are wanting.

(iv) *The presumptively beneficial good objection*: one may raise reservations as to the deeper meaning of the notion of presumptive goods. There may be a suspicion that under closer scrutiny this notion becomes untenable. I will demonstrate how the notion of presumptive goods can be salvaged.

(v) *The particularity objection*: one may have misgivings about Klosko's (alleged) resolution of the particularity problem. I will argue that the particularity problem can be resolved by Klosko despite many difficulties.

(vi) Finally, *the objection from redistribution*: if the receipt of indisputable benefits is in the heart of Klosko's account of the fairness theory, and if non-excludability of this receipt (along with the cooperative nature of the source of the benefits) generates political obligations, then

separate and requisite condition. Consider, for instance, the following: "all people who receive essential benefits from institutions should support and comply with the institutions – even if this is costly to themselves" (Klosko, 1994, 262). Klosko seems to be resolute about the claim that essential benefits are always more valuable than the costs involved in their production.

how is it possible to explain that those, who are well-off, are obligated to acquiesce in redistribution of their taxes towards the worse-off? Put simply, a well-to-do individual can have an obligation to pay through taxes for security and enforcement of contracts, but why should he be obligated to pay for the governmental aid programs? Surprisingly enough, Klosko does not address these questions squarely. Though he discusses the fairness of cooperative schemes, what he submits is not enough to answer the above questions. I will argue that this objection is a serious one and cannot be dealt with within Klosko's theory, unless this theory is modified.

I have enumerated the objections which I will be concerned with in what follows. I will start from the first objection: the first condition objection. But before I will really come to grips with this objection I evaluate Wolff's objection. This evaluation will ensure a better understanding of the first condition objection.

SECTION 4.2. WOLFF'S OBJECTION

Let us suppose, for the sake of argument, that Klosko's main argument establishes what Klosko asserts it does. This is to say that from (i) the goods that the government furnishes must be worth the recipients' effort to obtain them⁹³, (ii) the goods must be presumptively beneficial, and (iii) the scheme ensuring the provision of the goods must be fair, it indeed

⁹³ Some authors insist that this condition is to be supplemented by the claim that all other ways of spending resources are less attractive for the agent than the way of supporting the governmental provision. In other words, it is not enough to show that option O1 is worth agent A's effort to obtain it. I also has to be shown that other options O2, O3, O4, ... will not be more beneficial than option O1 (cf. Soper, 2002, 145). Yet, Klosko second condition (ii) about presumptively beneficial goods largely preempts the need for this supplementation. At any given time slice, paying the taxes and having protection and order is, for example, preferable to buying more ice-creams and forsaking protection and order. If, however, the supplementation means that agent A may seek another organization than the state to fill the role of the provider of indispensable and essential goods, then Klosko declares that such quest for another organization is likely to lead to disappointment. See Klosko's *The Natural Basis of Political Obligation*, 2001b, for thorough discussion of this issue. Another meaning is that O2,

follows that "the principle of fairness is able to generate powerful obligations to contribute to nonexcludable schemes" (Klosko, 1992, 39).⁹⁴ Now, are all the parts of the argument truly needed for the argument to work? Is it not possible to jettison one of the conditions in Klosko's design of the argument and still reach the same conclusion?

Jonathan Wolff, in his recent article⁹⁵, gives the *negative* answer to the above two questions. He believes that there is a substantial redundancy in the number of conditions and argues that the condition (ii) should be done away with. This means that Wolff maintains the claim that Klosko's argument can produce the same conclusion with the same strength without the condition that the goods, which the government provides, must be presumptive goods. For the generation of relevant obligations, it is sufficient that *only* (i) and (iii) hold.⁹⁶

The results of the proposed reduction of Klosko's main argument would be the contention that "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" (Klosko, 1998a, 62). Both Klosko and Wolff acknowledge that the statement that a package of goods is beneficial to an individual and worth its costs differs from the statement that an individual is of the opinion that the package is beneficial and worth its costs. And both concur that the subjective beliefs of the individual should *not* prevail over the objective assessment of whether he gains benefits or not. There is no denying that there is the "important and very difficult matter of proof here" (Wolff, 1995,

O3, and O4 are different ways to provide vital benefits. This problem is resolved through invocation of democratic procedures (see Klosko, 1992).

⁹⁴ Let me be clear here. I am convinced that this argument goes through and nowhere in this chapter I criticize it. However, it does not follow that this argument cannot be improved. Neither does it follow that 'obligations to contribute' are to be political obligations. For the latter assertion Klosko owes us an additional argument, which he in fact offers by saying that the content of obligations to contribute can be no other than that of political obligations. I discuss this additional argument below.

⁹⁵ Wolff, 1995.

⁹⁶ See Wolff, 1995, 93.

96). This demanding and potentially formidable matter will reappear in Klosko's response to Wolff. Now, let us see how Klosko is prepared to overcome Wolff's expostulation that we can dispense with condition (ii).

Klosko claims that he has *two reasons* to offer in the defense of condition (ii). I will argue that one of the offered reasons is too tame and indecisive to be significant. Also, I will argue that if the other reason is acknowledged, this opens an unwelcome possibility of raising an objection to the presence of condition (i).

SECTION 4.3. THE FIRST REASON

The first reason Klosko offers is that if we retain condition (ii), we will lessen "the difficulties of showing that a package is worth its cost" (Klosko, 1998a, 62). Klosko reminds us that people's tastes differ and different people find valuable different things. With this thought in mind, we can indeed acquiesce in the proposition that it is an onerous task to prove that various missions the government carries out and various goods it distributes are worth their costs. If, however, it is assured that presumptive goods are present in some package of benefits, the task of showing that this package is worth its costs becomes nearly unproblematic. Klosko avails himself of the law and order example and says that costs of administration and enforcement of law and order "pale in comparison to having to live in a situation devoid of law and order" (Klosko, 1998a, 63).

There is no much to disagree with Klosko on this score. Indeed, it may fairly well be presumed that the reference to presumptive goods makes the task of ascertaining and evaluating of the costs less complicated and troublesome. However, the reason under

consideration is only a pragmatic one. If something facilitates reaching some end, it is not a proof that it is necessary for that end. It may be desirable for practical purposes to keep condition (ii) in the argument, but if we drop it, it does not seem that the argument's conclusion will undergo any substantial changes. Being *truncated*, the argument will still work. And if we take philosophical parsimony seriously enough, we may be convinced that condition (ii) can indeed be done away with.

SECTION 4.4. THE SECOND REASON

But, perhaps, Klosko's second reason for retaining condition (ii) will fare better. Klosko holds that "[i]f 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" (Klosko, 1998a, 63, italics in original).

I want to argue that the initial plausibility this reason has is dispelled when we realize that Klosko equivocates on the meaning of "powerful obligations to contribute to nonexcludable schemes" (Klosko, 1992, 39). On the one hand, Klosko speaks as if we have to do with any non-excludable scheme of cooperation (not necessarily the state as such a scheme). On the other hand, he gives to understand that his sole concern is with a specific non-excludable scheme, that of the state.

Let me be precise about what is going on here. Wolff suggests that from (i) the goods that the government furnishes must be worth the recipients' effort to obtain them, and (iii) the scheme

ensuring the provision of the goods must be fair, we can draw the conclusion that the fairness principle gives rise to *obligations to contribute* to the scheme. Does Klosko want to give the lie to the correctness of this truncated argument? The aim he pursues is not to negate the correctness of the above argument but to prove that it is not capable of establishing *political obligations*.

The main thrust of Klosko's reasoning is as follows. If we insert "public radio broadcasting", for instance, into the above argument as the input for the goods, then we have as the output the inference that there is no way to determine *the exact content* of the obligations to contribute to the scheme producing public broadcasting. Klosko holds that it occurs because different people lay different value-prices on the benefits they receive from the public radio broadcasting. For some the broadcasting is incredibly important and they would be ready to sacrifice a lot to have it carry on. For others it may be a trifling thing, which is sometimes amusing but may be forgone without qualms. Hence, it would be only fair that the content of the obligations to contribute to the scheme in question reflected those differences. And Klosko concludes that the content would have to be tailored to the level of personal benefit each individual derives from the functioning of the scheme.

Klosko's main worry at this point is that in order to establish 'who should contribute what' we will have to rely on the *personal judgments* of individuals.⁹⁷ This reliance on personal judgment prompts Klosko to compare the situation in hand with the situation when someone has a duty of gratitude to reciprocate for the services rendered. And by making such a comparison, Klosko betrays the *mistakes* in his understanding of the principle of fairness.⁹⁸

⁹⁷ See Klosko, 1998a, 63.

⁹⁸ It should not be inferred from this that the gratitude theory gains any additional credit. There is an intellectually stimulating exchange between Klosko and Walker as to the status of the gratitude theory of political obligation (Klosko, 1989, Walker, 1989). Walker made an attempt to revive this theory in 1988

That an agent is required to decide by himself about the nature and time of his reciprocal action, is one of the defining features of the duty of gratitude. In the case of gratitude, indeed, the agent has the *discretion* regarding how he will show his appreciation to his benefactor. The case of fairness is, in this respect, *radically different*. Recall that the moral requirements stemming from the principle of fairness come to the picture when we have to do with *cooperation*. Cooperation is an activity governed by *rules*. The more sophisticated the pattern of cooperation is, the greater is the need that everybody does what he is supposed to do as specified by the rules. Advanced cooperative schemes have complex systems of rules and regulations. When we take the excludable schemes as examples, the obligations of the scheme members are distinct and usually there is no leeway for personal judgment. If the membership in an excludable scheme is acquired through consent or agreement, then, *a fortiori*, this evidence obviates the need for any further explanation about why the obligations of the members are specific. But even if the obligations of fairness are acquired without the resort to the notion of consent⁹⁹, still the participants of the scheme are bound by moral requirements with specific content.

A difficulty is encountered when we tackle non-excludable schemes. Often, the proper obligations of fairness are generated when the differentiated or graded packages of costs-benefits are offered. Above, I have discussed Nozick's objection to the fairness principle and the ways to overcome it. It has been concluded that those who receive benefits from a scheme are obligated to do their part in it if it is true that the enjoyments from benefits exceed the inconveniences (or simply costs) of contributing to the scheme. Likewise, those who listen to

(Walker, 1988). There are, however, lingering problems with it and those problems disqualify the gratitude theory as a cogent theory of political obligation (cf. Klosko, 1991).

⁹⁹ "[I]t seems clear that a man *can* accept benefits from a scheme, and be a participant in that scheme, without giving his consent to the scheme" (Simmons, 1979a, 126, italics in original).

radio are obligated to pay for the broadcasting, though the amount of payment is determined through consulting how much one really benefits from the service in question.¹⁰⁰

However, to say that personal judgment plays a role in whether or not a fairness obligation is generated in a concrete case, is *not* the same as to say that the content of this obligation is entirely up to the agent to determine. Klosko confuses the factors which *trigger fairness obligations* and ones that *specify their content*. In the radio broadcasting example, the listener is sent 'a blank bill' on which he puts the sum that reflects, as he reckons, the level of benefit he has received. Think of it as a rule. And notice that this rule quite distinctly delineates what the individual has to do, though it does not demand that he pays one fixed amount.

Therefore, the *real* concern of Klosko should not be that if we put 'public radio broadcasting' in the truncated argument we will obtain obligations without specific content, but that we will obtain obligations whose generation depends on personal judgment. Klosko implicitly acknowledges this since he admits that the public radio broadcasting scheme is likely to terminate its existence not because one listener would *mow* the scheme's director lawn, another would *water* his plants, etc. instead of *paying* for the service, but because of the free-rider problem.

Klosko says that "[a]llowing ... recipients to determine their own contributions could result in the scheme's collapse inadvertently. ... Unless people's own determinations correspond with

¹⁰⁰ It should be remembered that non-excludable goods are grouped into avoidable and non-avoidable. (They are also divided into rivalry and non-rivalry goods, but this is not important at the moment.) The radio broadcasting is an avoidable public good. Hence, if one does not possess a radio he should not be obligated to pay for broadcasting at all. (To be sure, some may bring up the notion of indirect benefit. In our example, it would simply mean that those who do not listen to the radio are benefited because their interaction with those who listen is enhanced by the fact that the listeners have either a better mood or greater and updated knowledge of current affairs. I think that the notion of indirect benefit is too arcane and dubious to be used in the discussions on the matter in hand. At any rate, I choose not to employ it in the dissertation.)

what the scheme in fact requires, it is possible that it will have to close down" (Klosko, 1998a, 64). Though Klosko speaks only about a possibility that the scheme in question will have to stop operating, the overall tone of his words signifies that he does not believe a scheme can carry on for long being sustained only by voluntary contributions from its supporters. There is no point in quibbling with Klosko as to whether schemes with voluntary contribution systems can last for a long time and flourish or they cannot.¹⁰¹ An important matter here is to notice that there is *no harm in closing down* the scheme which no longer bears support from its participants. If the cost paid for the service which the scheme provides outweighs the benefit which a participant of the scheme receives, we cannot insist, within the fairness theory, that this participant should persist in his backing up the scheme. It is perfectly acceptable that a scheme, which does not satisfy those to whom it applies, is to be abandoned. It is morally admissible that one does not do his part in a scheme, as long as he is genuinely content with the situation where everyone forsakes his contribution.

In fact, a morally unacceptable scenario would be one which Klosko does not mention. According to this scenario, there would be many beneficiaries who free-rode on the others' efforts to keep the scheme going. Those who contributed would have to do more than their fair share was. This would indicate that we had in hand an example of exploitation. The free riders would be exploiting the interest of the contributors in making the scheme preserved.

Thus, what is the basis of Klosko's real demurral to accede to the truncated argument? The basis is, as Klosko emphasizes it at several places, the absence of *bargaining power* on the part of the supporters of the scheme:

¹⁰¹ The church might be an example of a scheme with an enduring and thriving history. Many of course would immediately jump down my throat for such a suggestion. They would insist that the church has regularly used proselytizing, coercion, and sheer brute force to extract resources for its protracted and prosperous existence. To

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 their 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 (Klosko, 1998a, 64).

To any threat of liquidation of the scheme, an incorrigible non-contributor may respond that he does not care. And as long as he does not care, he is not morally blameworthy for his refusal to contribute, since he leaves open for others to choose the option of non-contributing too. He is not in fact a free rider. And if the outcome is that the scheme winds up, so much worse for the scheme.

SECTION 4.5. THE ENFORCEABILITY REASON

Finally, we have come to *the essence* of Klosko's second reason against Wolff's suggestion to shorten Klosko's core argument. Klosko holds that if condition (ii) (the condition about presumptive goods) is forsaken, there is no way to pose a threat to those who neglect or ignore doing their part in the scheme. There is no *guarantee* that one will not take at ease the dissolution of some scheme which does not have presumptive goods in the list of the items it provides. Moreover, we can go further and interpret Klosko in a manner favorite to him to the effect that in the absence of condition (ii) *the enforceability* of fairness obligations has a flavor of *oppression*. If, however, the scheme produces presumptive goods, no one who

this, I would reply that at least nowadays it is true that many religious communities support their spiritual institutions by mainly voluntary donations.

enjoys those goods can earnestly maintain that he is ready to forgo the goods and, with light heart, continue not to contribute. If one maintains his indifference to the presumptive goods, he is not ingenuous and can be forced to make his contribution. And, Klosko might conclude, without there being the grounds to enforce obligations of fairness, political obligations cannot be construed as subspecies of fairness obligations.

To this, Wolff might reply as follows. Nothing in the truncated argument prohibits thinking about a scheme as one which supplies presumptive goods to its members. All Klosko's objections hinge on the counterfactual "If a package of benefits does not contain presumptive goods...". Under this condition, it is indeed the case that personal judgment plays an important role and that enforceability cannot be substantiated. However, this condition is artificially brought from outside to the truncated argument. It is only natural that if Klosko sticks to it, he will obtain what he intends to. But Wolff might deny the relevance of this condition. He might say that the real work in the moral reasoning is done by (i) and (iii); these two conditions ensure that the principle of fairness applies and gives rise to serious moral obligations. Moreover, these two conditions being satisfied create enforceable obligations of fairness. In the light of this, Wolff might say that condition (ii) is needed *only to make sure* that the obligations of fairness are really enforceable.

Interestingly enough, but Klosko might concede Wolff's reply. At the same time, he might notice that since his focus is on *governments* and on the goods they provide, the inclusion of condition (ii) seems to be *inevitable*. He might agree that the moral work is done by (i) and (iii), i.e. these two conditions constitute the material from which obligations of fairness are created. However, since we never know whether condition (i) is met without there being

condition (ii), the presence of condition (ii) is *indispensable* if we want to have the enforceable obligations of fairness at the end of the chain of argumentation.

SECTION 4.6. THE FIRST CONDITION OBJECTION

The proposed response is convincing. However, it brings us to another objection. Why, then, cannot condition (i) be dispensed with? Condition (ii) will guarantee that costs are always smaller than benefits and condition (iii) will ensure that the scheme which produces those benefits is not morally tainted. From the perspective of achieving what it is supposed to achieve, Klosko's core argument without the first condition seems to be a complete argument. Klosko cannot demur as in the case of Wolff's objection that, reduced in this way, the argument may fall prey to the personal judgment and to the enforceability objections. The presence of condition (ii) will rule out such objections.

Although this new objection improves on Wolff's one, it can still be parried by Klosko. He can do this by giving us an evocative and poignant example:

[I]n 1836 the defenders of the Alamo were surrounded by a powerful Mexican army and asked to surrender. The defenders decided to resist and were wiped out. Under these circumstances, the group cannot obligate a dissenting individual to cooperate in resistance. Here too the benefits to be gained by successful resistance are (we will assume) presumptive, but the chances of success are so slight that the burdens of cooperating outweigh them. ... Hopeless causes require volunteers (Klosko, 1992, 55-56).

By this example, Klosko wants to persuade us that, albeit rarely, there may be situations when to stand by the continued provision of presumptive goods may be too costly for an individual.

The reference to presumptive goods turns out to be not sufficient to thoroughly shape our moral obligations. Without condition (i), people may be strongly required to perform acts that are seen from the perspective of ordinary morality as entirely supererogatory. To avoid such cases, even though it is understood that they are exceptional cases, Klosko might suggest that condition (i) should be preserved in the original argument.

SECTION 4.7. SUMMARY

In sum, it has been shown that Klosko's position has enough resources to rebut the charge that Wolff made against it - viz., the charge that condition (ii) is surplus, i.e. inessential for the success of Klosko's core argument. Klosko's own reasons to retain condition (ii) have turned out to be either weak (as the reason about the facilitating role of the condition) or misguided (as the reason that without the condition in question the content of moral obligations is vague and arbitrary). However, I have shored the Klosko's position with an additional reason, that about enforceability of moral requirements stemming from the principle of fairness. With this reason fully acknowledged, Klosko's position ceases to be open to Wolff's charge. Furthermore, it has been shown that Klosko's position is impregnable against the charge that condition (i) is redundant. The invocation of rare but gravely serious cases, in which condition (i) is crucial for establishing which requirements are really morally binding, has been instrumental in refuting the charge at issue.

CHAPTER 5. THE DISCRETIONARY GOOD OBJECTION

SECTION 5.1. WHY BOTHER ABOUT DISCRETIONARY GOODS?

To begin with, let me explain why Klosko broaches the term "discretionary goods" and is at pains to account for their place in his theory. Let us not forget that Klosko's perspicacious insight was that the acceptance condition might be sidestepped if we could show that all people had a vital interest (or an indispensable preference, or a necessary need) in a set of goods which the state, as an institution, would readily supply. Suppose Klosko's arguments establishing citizens' obligations towards the state that provides them with the essential goods are accurate. Does it straightforwardly follow that the problem of political obligation is no longer a riddle? Does it follow that the general obligation to obey the law and support state institutions is no longer dubious? It would be too hasty and superficial to draw an inference from Klosko's arguments, as presented so far, that would give the affirmative answers to the above questions.

One reason why such an inference would be misguided is that the modern states, as a cursory glance around and a moment of reflection would tell us, are the providers of not only strictly necessary goods (i.e. presumptively beneficial public goods), but also of a host of non-vital goods like the road network or education.¹⁰² Those non-vital (but still public) goods Klosko proposes to call *discretionary goods*. Discretionary goods are not presumptively beneficial goods; they are merely beneficial goods. If they are merely beneficial goods, they may be wanted by some people, while remain indifferent to others or others might even prefer that

¹⁰² To be precise, education is not, strictly speaking, a non-excludable good. However, we perceive serious moral reasons to make it non-excludable. We recognize that instances of injustice are likely to take place once education is left to the mercy of market forces. This, of course, concerns the primary education. Whether the

they would not be furnished. In other words, the utility function for every individual with respect to some discretionary good is *not always* eminently *positive*. Unlike the utility function with respect to any presumptively beneficial good, the discretionary good utility function may slightly exceed the zero point or may also lapse into the negative area.¹⁰³

SECTION 5.2. MEETING THE DISCRETIONARY GOOD CHALLENGE

Thus, why should people be obligated towards the state that makes them contribute to the projects which may happen to be detrimental to their interests? Why any compliance is owed to the institution that provides anything beyond strictly necessary goods like public defense or air pollution control¹⁰⁴? Klosko attempts to meet the challenge posed by these questions by relying on two arguments¹⁰⁵. The first argument is *the indirect argument*. This argument tells us that though some merely beneficial goods are not directly necessary for people's lives, they are nevertheless pivotal for the adequate provision of presumptive goods. Klosko puts this idea in the following passage: "the crucial point is that presumptive public goods cannot, practically speaking, be furnished by some government unless a certain range of discretionary public goods is furnished as well" (Klosko, 1992, 87). The next step may be readily envisaged. If a discretionary public good is believed to be practically indispensable for the satisfactory provision of some presumptive public good, people should not have grievances that the government makes them collectively pay for the provision of this discretionary public good. It is worth remembering that presumptive public goods are goods like law and order,

high education should also be non-excludable is the question which we tend to answer negatively (if only because of economical reasons: in most cases, countries cannot fully subsidize colleges and universities).

¹⁰³ The above description of discretionary public goods denotes what one can make out from Klosko's comments on the issue. Unfortunately, Klosko omits presenting a straightforward definition of a discretionary public good.

¹⁰⁴ I agree that it is an arguable matter whether the provision of air pollution control is a vital good. I take it for granted, however, that in developed liberal democracies the problem of air pollution is so acute in some cities that the clean air becomes a presumptive good. Because no crucial element of Klosko's theory turns on whether we use the air pollution example as one describing a presumptive good or not, I believe I may go on with using it for the explanatory means.

the absence of hostile environment, or bodily security. These are really key public goods and it seems to be a plausible suggestion after all that if the provision of any of presumptive public goods is jeopardized by under-supply of a certain public good, this public good should be taken care of by the government, so that the threat to the presumptive public good is annihilated.

The second argument which Klosko deploys to meet the challenge at issue is *the institutional argument*. This argument is designed in the way that stresses "the benefits received from law and order and the existence of a working social decision process" (Klosko, 1992, 101). It is evident that unless a great many people comply with what the law prescribes¹⁰⁵, the benefits of the functioning legal system will not accrue to the members of the state. But if in general people do comply, then one is obligated to comply as well, since otherwise he would "profit from the sacrifices of other people" because "similar advantages cannot be extended to them" (Klosko, 1992, 101).

Klosko himself gives us a synopsis of the institutional argument: "The gist of the institutional argument is that, within certain limits, the fact that the decision-making bodies in scheme X, which supplies A with presumptive public goods, pass a law concerning a given policy creates a strong obligation for him to comply" (Klosko, 1992, 101). Klosko gives to understand that the policy at issue is not itself part of some presumptive public good. The idea is that it is not the merit of the policy that determines whether or not A has the obligation. What determines his obligation is something else. This something else is connected to the assertion that if such policies were not to be complied with, the highly valuable presumptive good of law and order

¹⁰⁵ Klosko, 1992, ch. 4.

¹⁰⁶ It is a different problem of how many should comply so that a legal system could continue to be effective and beneficial (notice that a legal system may be effective but not beneficial: under a dictatorship a legal system is

would fall apart. Thus, "[t]he main reason why individuals must obey the law is the corrosive effects of disobedience" (Klosko, 1992, 101).

SECTION 5.3. WHAT I WILL DO NEXT

Now, what are errors and strengths of these two arguments of Klosko, i.e. of the indirect and the institutional argument? Do they achieve what they are meant to? Do they make Klosko's theory tenable? These are broad questions. And as it is about all broad questions in political philosophy (perhaps everywhere?), they defy uncomplicated answers. The least what can be said without going into specific details at this stage is that these two arguments are problematic. I will briefly explain why they are problematic and then I will turn to one argument which is dismissed by Klosko as surely unsuccessful for his purposes. I will call this argument *the package argument*. I will show that Klosko is incorrect: far from being unsuccessful, the package argument is *engrained into* the logic of Klosko's theory. Moreover, Klosko might have left aside the indirect and the institutional argument and instead he might have focused on the package argument and this would have brought him to the conclusion that he wanted to draw - viz., the normative consequences of presumptive public goods can be extended to discretionary public goods.

To be sure, even if the package argument is accurate, it does not give us grounds to infer that Klosko's theory in the whole is unerring. Below (i.e. in further chapters) I will grant that the package argument does its job (and in this chapter I will show in which way it does). However, I will also show that Klosko's theory is vulnerable to serious criticisms directed at

likely to be highly effective in terms of extracting total obedience, though for the related reasons it is unlikely to be beneficial). I do not tackle this problem here.

some other elements of its structure. But first let us see what is wrong with the indirect and the institutional argument.¹⁰⁷

SECTION 5.4. THE INDIRECT ARGUMENT

Take the indirect argument. Is it not the case that if we have a strong preference for defending ourselves from external enemies, we should back up the governmental policies and expenditures concerning reconstruction of a road and highway network? Klosko quotes Stalin who professes the view that without metallurgic industry the Soviet Union would have been defenseless against foreign enemies. Klosko endorses this view and stipulates that "success in modern conventional warfare requires a strong industrial economy" (Klosko, 1992, 88). But let us look into the argument and establish precisely what it contends. It contends that the provision of discretionary public goods is justified only if it is shown that those discretionary goods are vital for a satisfactory level of maintenance of presumptively beneficial public goods. The backdrop vision of how discretionary public goods are justified is such: (a) there is a new bill to be enacted or a new policy to be implemented, according to which some new discretionary public good is about to be supplied; (b) people look at the essence of the proposed public good and if it is found that indeed some presumptively beneficial public good is compromised or put at risk without the provision of the discretionary public good in question, then such provision is given green light.

The problem with the indirect argument is that the above vision depicts only part of a possible scenario. For, instead of looking at the newly proposed discretionary public goods, people may start to examine the validity of those which are currently being provided. If so, then it

¹⁰⁷ As has just been said, in this chapter I will focus on three arguments: the indirect, the institutional, and the

may happen that there are many discretionary public goods that no longer pass the test. Moreover, the vision presupposes that to show that some good, which is usually conceived as being in the purview of the state authority, is indispensable for some presumptive public goods is a relatively easy matter, which might not be so in fact. Let me quote den Hartogh who puts this point in a succinct fashion:

According to Klosko's principle, the state can only make any requirements on its subjects, if it considers in good faith that those requirements are efficiently conducive to the production of necessary goods. It follows that any time a government initiates the production of a merely beneficial good for its own sake, it forfeits the legitimacy of its decision, for it does not base this on "reasonable considerations". It may only build public roads which are required for transporting the army. ... In restricting the justified production of merely beneficial goods to whatever is instrumental to the production of necessary ones, Klosko has not at all "extended" the principle of fairness to merely beneficial goods (den Hartogh, 2002, 97).

Thus, there are two possibilities *overlooked* by Klosko that loom large from the ramifications of the indirect argument. *First*, it may happen that traditionally governmental tasks will no longer be legitimate, i.e. their implementation will no longer be coupled with morally required citizens' support. This may happen when there are grounds to doubt whether the given task is really related to the preservation of some presumptive good. *Second*, it may happen that the government will have to carry out a project which ensures that some public good is provided but this public good may not necessarily be beneficent. The fact that a good is instrumentally valuable for the provision of some presumptive good is a sufficient reason for the government to embark on its provision and, therefore, to insist that citizens comply with the regulations

package argument. In the next chapter, where I will discuss Simmons's objections, I will return to some other aspects of the discretionary good problem (see section 6.9).

enabling this provision. Whether this good is also directly propitious and valuable for the whole society is altogether a contingent matter.

It might be envisaged that Klosko would be unwilling to accept these two possibilities. Certainly, he would try to prove that either they would not obtain or they would not have the effects referred at above. Whatever strategy he picks, it is clear that the indirect argument needs some further elaboration if it is to stand at all.

SECTION 5.5. 'NON-TRANSITIVITY OF OBLIGATIONS' OBJECTION

There is another objection to Klosko's indirect argument. The critical evaluator may hold that there is an underlying premise of Klosko's position which is misguided and should be exposed as false. This misguided premise is that if there is a moral obligation to do action 1, and if this action 1 is unattainable unless action 2 is performed (action 2 being not directly required), the agent, who stands under the obligation to do action 1, also bears the obligation to do action 2. Why would the critical evaluator believe that this premise is incorrect? He might use Green's example to convince us that he was right in believing in the incorrectness of the premise.

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 of their fulfillment (Green, 1994, 393).

Similarly, as the critical evaluator might insist, there is no obligation to support the production of some discretionary public good if it happens that this discretionary good is necessary for the continued and undisturbed production of presumptively beneficial public goods (or at least

of one of them). Hence, the critical evaluator might challenge Klosko's whole project concerning grounds for the governmental supply of discretionary public goods. Relying on Green's example, he would kick out the cornerstone from the edifice of Klosko's argumentation for discretionary goods.

Formulated in this manner, the objection potentially looks very dangerous. Indeed, this objection poses serious charges against Klosko's entire position. However, despite appearances, this objection can be overcome. Klosko might do this in two steps. First, he might demonstrate that the objection in question wins our hearts only if it is expressed in a slightly different way. If I do not want to renege on my promise and, as in Green's example, I want to turn up on time for lunch, and *if there are various ways of getting to the place*, it seems only natural that I am free to pick up one of the means of transportation and to hurry up to my friend. I do not have a moral obligation to use a particular means of transportation, providing I have not signed an agreement (or otherwise contracted) with the owner of some means of communication to the effect that I have obligated myself to use only this specific means. I think, many of us who read Green's example subconsciously fall back on the default view that the ways we redeem our promises are not predetermined or narrowly restricted to a few or only one option. Indeed, if I have promised to proofread my friend's manuscript, I have incurred a strong moral obligation which I am supposed to fulfill within a certain period. However, whether I will proofread it while lying on a sofa, or sitting at a desk, or sunbathing on the shore, is entirely up to me to decide. It is part of being full-fledged moral agents that we treasure our capacity of figuring out by ourselves what would be the most effective and suitable ways of discharging liabilities, assignments and obligations incumbent upon us. We often take pride in delivering our promises in the ways no one has anticipated or foreseen. In a sense, part of the allure in purposely binding ourselves lies in securing our own paths of

executing our obligations. Thus, if Green's example contained the rider about 'various ways of fulfilling our promises', then indeed it would be true that "obligations are not transitive across the means of their fulfillment".

The second step of Klosko might consist in indicating that Green's example in fact does not contain the rider about availability of various means of promise fulfillment. Green distinctly highlights that taking a taxi is the only possible way to get for lunch on time, i.e. the only viable way available to avoid breaching the promise. He broaches the factor of necessity and completely ignores the possible ramifications the presence of this factor may have on the conclusions he draws from his example. Klosko might hold to this factor of necessity and argue that once it is allowed to bear, people are not at liberty to pick the means of fulfillment of their obligations. In short, Klosko might deny that the agent in Green's example ought not to go by taxi. Contrary to Green's assertion, he would insist that the agent has a moral obligation to look for and take a taxi, since in this particular case going to the place by taxi precisely means discharging the given promise. The process of discharging any promise is filled with a content. Usually, people have a possibility of maneuver if it comes to the contours of this content. However, if such a possibility is removed by the introduction of the necessity factor, then the content becomes uniquely determined. *And when it becomes uniquely determined, the moral bindingness of the promise spreads to the exclusive way of its fulfillment.*

To support his contentions, Klosko might invoke Simmons's example. For how can we make out the following passage: "I do not act wrongly in taking your car without permission (and so violating your property rights) or failing to deliver the product I sold you (violating your

contractual rights), if these acts and omissions are necessary to save someone from great and unmerited harm" (Simmons, 2001, 61)?

Let us spotlight one aspect of the above passage. Simmons tells us that the agent has an obligation not to use the car without permission and an obligation to convey the sold product. However, these obligations are overridden by a new and stronger obligation the agent encounters: the obligation to rescue someone from undeserved peril. But what in particular does it mean? It means that somebody's right to have his car at his disposal or somebody's right to enjoy the product delivered on due time is outweighed by the agent's obligations to swiftly use the car or to stop delivering the product and offer the help. Since the use of the car or the divergence from the course of delivery is necessary for the fulfillment of the obligation of rescue, there is no doubt that it itself is obligatory. Had the agent had a chance to rescue someone from "great and unmerited harm" without resorting to the transgression on the property or contractual rights, then there would have been no moral obligation to use the car or to cease the delivery procedure. However, as Simmons acknowledges, to use the car or to cease the delivery procedure is the only option for the agent to discharge the overriding obligation of rescue. Therefore, it is a morally *mandatory* option. If it were not a mandatory option, the property or contractual right would not be overridden.

Thus, Klosko is capable of defending his argument against the critical evaluator's objection. If a discretionary good is a necessary element in a scheme of provision of presumptive goods, the obligation to contribute to the scheme extends to the obligation to back up the production of this discretionary good.

SECTION 5.6. THE INSTITUTIONAL ARGUMENT

The institutional argument fares no better, in fact it does worse. Klosko is confused as to the actual mechanism of moral reasoning in this argument. On the one hand, he holds that one "should not profit from the sacrifices of other people if similar advantages cannot be extended to them" (Klosko, 1992, 101). On the other one, he maintains that "[t]he main reason why individuals must obey the law is the corrosive effects of disobedience" (Klosko, 1992, 101). It means that first he refers to the principle of fairness and then he turns to the principle of undesirable consequences.

Klosko might meet this objection by saying that it is exactly the point that these two principles are *complementary* of each other.¹⁰⁸ He would insist that far from being confused, he deliberately invoked the two principles so as to emphasize that law and order are presumptively beneficial, and that compliance with some law, which may not be favorable to some people, still strengthens the system as a whole, and non-compliance is unfair as long as others comply. This is how it is put in Klosko's own words:

In a large society, A's disobedience of a given law, whether major or minor, is unlikely appreciably to affect the degree of adherence to law and order throughout society as a whole. If he disobeys minor laws, his 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 law and order exists in his society and nonadherence by others would weaken their commitment to it, A benefits from their obedience, and the advantages of his noncompliance cannot be extended to them. Thus A should not disobey minor laws; because general disobedience of even minor laws would

¹⁰⁸ This would be the strongest rendering of Klosko's possible rejoinder.

undermine law and order throughout society, it would be unfair of him to disobey them (Klosko, 1992, 103).

Now, I will elucidate what are the underlying mechanisms in Klosko's institutional argument. First, let us consider the individual's compliance with *important laws*. What are important laws? As Klosko admits, "[l]aws that are important ... include prohibition against physically harming other people, taking their property, and defrauding them (Klosko, 1992, 102). It is easy to notice that these important laws are backed up by robust and weighty moral duties, like the duty of refraining from doing harm or the duty of refraining from deceiving others. The laws which embody such duties directly sail to the hearts of people, figuratively speaking. In other words, there is no need in bringing up any recourse to the institutional argument in order to account for their moral significance. Klosko concedes that important laws belong to "the core range" and thus constitute the presumptive good. Therefore, to see the relevance of the institutional argument we'd rather turn to minor laws.

What are exactly the reasons for compliance with minor laws? As we have learned from the quotation, the *actual consequences* of non-compliance cannot be, in the majority of cases, of great significance. This is so in a double sense. No serious ill-effects are likely to be produced by disobedience with a minor law. Also, no serious impact on the general adherence to the legal system is likely to result from an instance of minor non-compliance.¹⁰⁹ Thus, actual consequences are ruled out. Then, the two reasons remain on the scene. The *first* is related to fairness and the *second* to the *rough generalized consequence analysis*. It is worth noting that the former reason is, in a sense, based on the latter one. It is the combined force of these two reasons that is claimed to carry the day.

¹⁰⁹ Raz contends that it is a "melodramatic exaggeration" to suppose that every disobedient act seriously damages legal order (see Raz, 1986, 102).

To put it simply, Klosko's idea hinges on 'whether the benefits that the free rider reaps can be extended to others'. Consider an example. Here is a minor law. You have disobeyed it. What if everybody would do the same? If it turned out that no really much harm would ensue or, better, no harm would ensue at all, then the rough generalized consequences analysis would tell us that there is no unfairness in your disobedience. Others can do the same if they are ready to bear the risk related to the corresponding sanction for breaking the law. Notice that if there is a situation in which everybody abides by a given law only because it is self-interestedly rewarding to do so, then those who are sufficiently intrepid to face the hazard of non-compliance cannot be blamed for acting unfairly. They leave open the chance for others to probe their luck.¹¹⁰

However, if a given law were vital for the production of some presumptive good, then the rough generalized consequences analysis would tell us that the one who disobeyed cannot invite others to behave in the manner he did. If everybody disobeyed, the presumptive good would not be furnished and this would constitute a serious harm to many.

It is agreed that the significance of consequences is in the heart of morality itself, not only in the kernel of utilitarianism.¹¹¹ We do believe that killing innocent people is appallingly wicked because, among other things, death marks something that is irretrievable, i.e. its consequences are irrevocably and woefully ruinous. Similar considerations (i.e. ones based on consequences) apply to the fairness theory: we do think

¹¹⁰ "I am not free riding if I choose to risk sanctions that others are simply too timid to incur - they could have run the risk, too; instead they chose a different course" (Soper, 2000, 160).

¹¹¹ As Samuel Freeman argues, "the teleology/deontology distinction does not mark a contrast between moral conceptions that take consequences into account and those that do not. No significant position has ever held consequences do not matter in ascertaining what is right to do" (Freeman, 1994, 236). He also contends that

that to evade paying taxes is more unfair than not to stop at red lights on a crossroads at 3 a.m. as well as we believe that not to pay for a ticket at all is more unfair than to pay only for a two zone ticket while traveling three zones. In both cases the rough generalized consequence analysis tells us that we are correct in our moral opinions and that law should follow suit (as it presumably does).

This being conceded, one can still press the issue and ask why tax evasion is treated more harshly than, say, voting abstention or unwillingness to assist policemen. If we generalized the behavior of abstainers, we would obtain that some sort of a nasty political turmoil would be bound to occur. This appears, at least at first sight, to be not a lesser evil than an empty budget for the treasury. By the same token, reluctance to co-operate with police forces or unwillingness to inform public or governmental agencies about, say, avalanches may also have weighty consequences, quite on a par with tinkering with taxable incomes or earnings.

Klosko would answer that such controversies are the matter of public policies, not of political philosophers. He would insist that in principle we are capable of differentiating between more blameworthy and less blameworthy violations of the rules. The crucial test is that of comparing and appraising the corresponding burdens and benefits. In a case of misdemeanor they are likely to be benefits for the culprit and burdens for the society.¹¹²

Notice that the rough generalized consequences test must necessarily include the considerations about *the basic rights of people*. Let me explain. If we go for a picnic and I do

"[t]he importance of the teleology/deontology distinction ... is that it marks a division between views that rely on some idea of a single rational good, and those that do not" (Freeman, 1994, 237).

all the work required to set a fire while you bask in the sun, you act unfairly (providing you enjoy grilled sausages when the fire is set up). In essence, this is the same unfairness as when one evades paying his taxes. What then accounts for our intuition that the tax evader is more blameworthy than you in the picnic story? I believe, and this is not recognized by Klosko, that the reason lies in the fact that if you do not help me to set fire and do not enjoy sausages later, no one is to complain; whereas if one does not pay taxes and allows for the others to follow suit, then there are at least the disabled people to *legitimately complain* on one's behavior. In short, the underneath rights of some party make some unfair behavior more morally condemnable than another.¹¹³

Let us yet grant that Klosko successfully stirs between possible objections to the rough generalized consequences test. Also, let us accept that the considerations of fairness and the considerations related to the rough generalized consequences test do indeed reinforce each other. Is, then, the institutional argument impregnable? The answer to this question is negative and below I explain why.

In its inner logic the institutional argument is akin to the indirect argument. The relevant difference is only in the character of goods they deal with. The objects of the institutional argument are exclusively legal regulations and legal institutions, whereas the benchmark examples of objects of concern for the indirect argument are road networks (at least those which do not have strategic significance), education (apart from the primary), the maintenance of cultural heritage (except, perhaps, the core cultural values), the ecological

¹¹² Having said this, he has committed himself to the view that there is a special metric according to which we can measure the badness or goodness of consequences. Many would say that wherever it might lead us to, it would certainly lead us away from the principle of fairness towards the utility principle.

¹¹³ More discussion along these lines will be presented in chapters 9 and 10.

measures (if they go beyond the level necessary for survival).¹¹⁴ And the basic similarity is that in both arguments the threat to indispensable goods and laws is reduced by a satisfactory level of provision of minor goods and laws.

This similarity makes the institutional argument vulnerable to the same objection that was so effective against the indirect argument. For many laws and regulations may be shown to have no capacity to cause, in the case of their absence, any weighty ramifications for the important laws. If any new enactment or statute were assessed as to whether without this enactment or statute any menace to the important laws would emerge, perhaps few enactments or statutes would really be issued. Moreover, in order that the principle of fairness really enjoined us to abide by the legal code currently in use, it would have to be proven that the existing rules and acts which do not belong to the class of important laws, are indeed essential for the preservation of the important laws. It is only to be expected that the results of such evaluation may not be favorable for Klosko's understanding of which elements the body of law should contain.

In simplest words possible, the objection states that the individual says to himself, 'I benefit from the important laws which prohibit murder, rape, assault, etc. and I am bound by fairness to contribute to their maintenance. However, I do not really care about laws and rules regulating the duration of a working day, the hunting seasons, the advertising content, etc. Thus, it is not fair to demand from me that I follow them, especially that I do not see how the law on advertising is indispensable for the effective functioning of the important laws'.

¹¹⁴ Den Hartogh provides similar examples as he discusses the merely beneficial public goods. Cf. den Hartogh,

SECTION 5.7. THE BAD HABIT ARGUMENT

However cogent this objection might look to be, Klosko has a suggestion how it can be met. His strategy is to fall back on 'the bad habit argument'. He writes: "In spite of ... exceptional cases, the institutional argument supports obligations to obey all laws. 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" (Klosko, 1992, 105).¹¹⁵ The erosion of one's habit of obedience has two dimensions. To elucidate these dimensions, let me make use of the classical example of stopping at the red light on a deserted crossroads. The first dimension is related to the following reasoning: if one does not stop when one crosses the deserted juncture disregarding the red light, then one cultivates a bad habit which may lead one to cross a juncture in the city during the rush hours. The second dimension is characterized by the reasoning as follows: if one flouts the traffic law, then one becomes likely to defy another laws; eventually, one may overstep the mark and violate one of the important laws.

One reply to Klosko's solution may easily be anticipated. If an individual disobeys the traffic code at 3 AM, how can it be shown that he is likely to become a maniacal driver and that he infringes on the status of the important laws? Consider, for instance, a quotation from Joel Feinberg:

Many duties of obedience imposed by legal rules are not "owed" to other persons, but rather to some wholly impersonal authority like "the law" or a painted stop sign. When a traffic signal directs me to stop, it is difficult to find an assignable person who can plausibly claim my stopping as his own due. The original legislators of the traffic ordinance may be long dead, and if vision is clear and no other

2002, 98.

motorists are in sight, there is no other person to whose right of way I owe respect (Feinberg, 1973, 63).

The above quotation tells us that if one ignores the red light at a crowded intersection, then one distinctly violates the right of other motorists to proceed safely through the juncture. However, the problem arises when one fails to heed the red light and there are no other motorists around. How, then, can it be plausibly contended that one should nevertheless stop, if no one is going to complain and no important law is transgressed?

Klosko would say that the answer rests on understanding the reasons behind enacting the traffic regulations. It might be assumed that while devising these regulations, the lawmakers probably argued that traffic lights should always be obeyed, since it is important for drivers to develop *habits* which assure that they will stop at red lights in crowded crossroads. Ignoring a red light on the deserted crossroads in the midnight would weaken our habit of stopping at other red lights and, hence, increase the likelihood that we might ignore a red light at a crowded crossroads. In other words, if one does not behave law-abidingly at a deserted crossroads, then one does not fulfill one's obligation not to injure some *future* motorist.

Thus, the closer scrutiny of Klosko's solution has brought us to the considerations of *future occasions*. This, however, poses an additional problem. How is it possible to have an obligation towards someone who may not even be born yet? The contractarians, for instance, would insist that non-existing people cannot be parties to an agreement. Subsequently, they would deny that any genuine moral obligation can be held towards non-existing humans. But even if we take only the existent people into account, it still seems to make no sense to claim

¹¹⁵ And of course the habit of obedience is a commendable habit, while its erosion is fraught with negative effects. Cf. Soper, 1984, 42.

that one's *present* disobedience of the traffic code violates important rights of some individual in the *future*.

To this, I think, Klosko would answer that there is a moral duty not to unnecessarily endanger people and their life-plans. This duty normatively empowers the obligation to refrain from doing something which can cause great harm to others. Further, Klosko would maintain that there is a clear causal link between one's forming unsafe driving habits today and a precipitated accident one commits in the future.

In response, one may demur that it is not enough to stipulate that there is undoubtedly the duty not to unnecessarily endanger others. It should, in addition, be shown that there is an obligation not to perform an action if it is known that this action may lead to detrimental effects. At this juncture, two problems arise. How serious should the effects be? And with what probability should it be known that the effect will occur? These questions matter and before they are answered, we cannot speak that the obligation at issue is genuine.

I will not go into details of specifying the degrees of seriousness and probability. It would lead me too far from my main concern in this chapter. However, I want to add two considerations which, being combined, make a strong case against the habit argument.

The first consideration is that it is only a part of the story to calculate which deleterious effects may follow if people take to disobeying laws. The other part is to figure out what pernicious consequences may follow *if the laws are blindly obeyed*. Governments may prescribe regulations which are devastatingly discriminating for some groups. To abide by such regulations would be morally wrong. In this respect, the habit of obedience may lead to a

danger that people condone iniquitous laws. Moreover, if people make a habit to follow rules and directives of the government, and if it is common knowledge that such a habit is pervasive, then the governmental officials may be exceedingly tempted to abuse their power. This should also be taken into reckoning about the habit of obedience.

The second consideration is that the bad habit argument relies on a mistaken psychological understanding of people's reasoning.¹¹⁶ According to this argument, "people are better able to follow a simple rule like 'do what the authority tells you to do' without any exceptions (irrespective of the question whether following the rule in the particular case can be seen to be justified or not), than to follow the rule when it applies, and to make an exception when it is clearly warranted" (den Hartogh, 2002, 108). But even if people do possess such a proclivity as to better grasping the essence of a simple rule than a complex one (and it seems only natural that this proclivity exists), it is laudable that they try to identify the justifiable exceptions to the rule. After all, is it not worth changing a rule if too many exceptions regarding its following are licensed and morally permitted (or even approved of)? Consequently, if people think about justifiable exceptions and express their concerns in relevant ways, they will live under a better legal system than if they painstakingly abide by simple but crude legal commands.¹¹⁷

¹¹⁶ Cf. den Hartogh, 2002, 108.

¹¹⁷ Notice that the talk is here not about breaking a serious law. Surely one should not commit a murder not because such an act will contribute to his habit of disobedience (though it may contribute to some extent). The relevant example to keep in mind is 'a red light at a deserted intersection in the middle of night'. Perhaps, the traffic rule should have an exception to the effect that a red light under such circumstances is to be interpreted as a flashing yellow light.

SECTION 5.8. AN INTERMEDIATE SUMMING-UP

To sum up, by employing the institutional argument Klosko aspires to give us an account of why we should conform to minor laws. This argument, however, bumps into two troubles: minor laws may not be directly related to presumptive goods and the actual consequences of disobedience with minor laws may not be catastrophic. Klosko discerns these troubles and submits an argument which is very much in spirit with his theory: if you violate a law while others abide by it, you benefit from and abuse the compliance of others. This is palpably unfair. But this argument is flawed because we may ask, 'Where exactly does unfairness stem from?' And upon Klosko's answer that unfairness in this case stems from the impossibility to extend to others the benefits of non-compliance, we can ask again, 'But why is it impossible?' Remember that we deal with a minor law and, therefore, there might be many who would say to the law: 'Let it be gone!' Thus, once Klosko's argumentation is shifted to minor laws, Klosko loses the recourse to the non-viability and non-desirability of extending the fruits of non-compliance to others. Confronted with a presumptive good an individual could not say 'let us throw it out, we can do without it'. In contrast, while trespassing a minor law, the individual may invite others to follow suit and may not fear that his life will radically worsen if others do follow him.

To salvage his stance, Klosko brings up another argument, which runs like this: if you stop to ponder of some minor law and your reckoning tells you that you may well do without it and that you may disobey it, then, even if you are right in your calculations, you start acquiring the habit of disobedience which is likely to lead to future trespasses on important laws. Consequently, Klosko urges us not to disregard minor laws and observe their guidelines. However, as we have seen, this argument also stands open to serious charges. The critic might

remark that an obligation to comply with a minor law is not based on fairness because one allows others to follow suit; it is based on harming the future others (or behaving in future unfairly to others). But the obligation not to harm 'future people' is problematic: there are difficulties with establishing causal links. Also, the habit argument itself is questionable: Hartogh's evaluative commentary at the end of the preceding section gives evidence to this.

In view of complications involved in defending the institutional and the indirect argument against the presented objections, I suggest that we turn to an additional argument. I will call this argument: the package argument.

SECTION 5.9. THE PACKAGE ARGUMENT

Let us once more turn to the basic question of "Why should we busy ourselves with discretionary goods at all?" As it was intimated above, we are to be concerned about discretionary goods because it is not true that everybody wants them at the price they are supplied. Unlike presumptively beneficial goods, discretionary goods lack the characteristic of being indispensable for the prospects of leading a good life.¹¹⁸ There may be people who indeed benefit from the provision of some discretionary good. However, they may realize that an alternative scheme of its provision would be even *more beneficial* to them. There may also be those who simply *suffer a loss* if the discretionary good in question is provided. Put differently, there is a likelihood that some people would prefer a given discretionary good to be provided in some other way or would prefer that it is not provided at all.

¹¹⁸ I put the expression 'a good life' instead of the customary 'a minimally satisfactory life' since in the light of what follows it may turn out that it is well-nigh impossible to have a minimally satisfactory life without some assortment of discretionary goods.

Having said that discretionary goods do not resemble presumptive goods in the respect that they are not essential for having a satisfactory life, and having said that many would want discretionary goods to be provided at different costs (if at all), it seems unreasonable to take away from people *a chance to decide* by themselves about whether this or that discretionary good should be furnished. The imposition of discretionary goods by the government would seem to be a blatant infringement on the freedom and liberties of the citizens. The straightforward inference which might be drawn from the above is that governments should be 'minimal' in the sense Nozick gives to this notion in his *Anarchy, State, and Utopia*.¹¹⁹ But why not to say that people have wider obligations than only to support the provision of presumptive goods, due to the reason that their support for presumptive goods cannot be *separated* from their support for discretionary goods? What if it is 'bookkeepingly' impossible to hold separate the two different tracks: the expenses on presumptive goods and the expenses on discretionary goods? To these questions, Simmons has the following reply.

We are ... entitled to presume that an individual retains his obligation (to support provision of presumptive goods) even when a scheme starts providing discretionary goods. But we are not entitled to equate being "still obligated" with having new obligations (to support provision of discretionary goods). Perhaps the problem is that our burdens are indivisible "packages" ..., so that we cannot separate our support for presumptive goods from our support for discretionary ones. But tax payments (the most familiar burden of citizens) seems perfectly divisible. ... If a provider of goods *can* provide presumptive goods only, it seems plausible to claim that if he *chooses* to provide discretionary goods also, this should be at his own risk. He should either provide them free or try to make them excludable; what he may *not* do is impose them on others at price set by him. Having provided presumptive goods as well seems a poor justification for this kind of tyranny (Simmons, 1987, 274-275, italics in original).

¹¹⁹ This inference is acknowledged by Klosko (cf. Klosko, 1992, 85).

Thus, the type of defense built on the indivisibility of presumptive and discretionary goods fails to achieve its end. This failure prompts Klosko to turn to the indirect and institutional arguments. However, on the way to these arguments, he dismisses an argument, which, as I contend, is by far more successful in its purposes than the two arguments Klosko employs. I propose that we call this argument *the package argument*. Here is how Klosko crisply describes the essence of this argument:

Though the members of scheme X, which provides a single discretionary public good, cannot demand that A contribute, if the functions of X were multiplied so that it provided numerous discretionary goods, at some point A would become obligated. ... [T]hough by definition no single discretionary good is presumptively beneficial, when a large number of such goods are provided together, the package as a whole becomes presumptively beneficial. Though clean streets, or public education, or public transportation are not each by themselves presumptive public goods, through some transformation of differences of quantity into differences of quality, the collection of such goods becomes presumptive (Klosko, 1992, 85).

What faults does Klosko find with this argument? The first fault, which Klosko tells us about, is that it would be practically difficult to "elucidate the requisite mechanism of transformation" (Klosko, 1992, 86). The second fault is a more important one, according to Klosko. He spells out his worry in the following way: "if A cannot justly have his liberties infringed on by being obligated to contribute to the provision of one good he could do without, it seems tyrannical to infringe on his liberties still more by demanding that he contributes to other similar goods in addition to that one" (Klosko, 1992, 86).

There are, however, reservations as to whether these two objections of Klosko to the package argument win the day. For take, as an example, an individual's lack of preference for clean streets ('clean streets' being an example of pure discretionary good). The individual may insist that the governmental scheme aiming at keeping streets clean takes away from him resources which he is willing to spend in another manner. He may go on and claim that his autonomy is encroached and unjustifiably restricted. Granting that the individual does not tell a lie, and we assume transparency of preferences, is it the case that such a lack of preference for clean streets is pandemic? Is there no one who wants that the government carries on with the task of making streets tidy? It can hardly be accurate to say that indeed there is *no one* who cares for clean streets and accepts the costs of the cleaning scheme. This is so because we assume that we deal with governments in the states which can be characterized as liberal democracies. Important features of liberal-democratic regimes are accountability (at least a significant degree of it) and free and conscious voting (at least sufficiently free and conscious). Given these features, a situation when a discretionary good is being provided despite the fact that no single individual wants this good (at the price it is provided) is effectively ruled out.

Having established that each discretionary public good has at least some advocates, it is safe to venture the claim that each individual receives benefits from the existence of some discretionary goods, while remains indifferent or antagonistic to others. Moreover, it is also likely that all discretionary goods as a package bring, on balance, more benefits to each particular individual than losses.¹²⁰ A possible disadvantage which one discretionary good may impose on the individual is amply offset by the assets which accrue to the individual from the operation of another discretionary good.

It comes almost as an undeniable truth that if there were no discretionary goods furnished by the government, the lives of the government's subjects would be impoverished in many respects. And due to this impoverishment the value of autonomy would be compromised. Here is how this idea is aptly captured by den Hartogh:

So for the disadvantages, the utility curve declines with packaging, for the advantages it climbs. At a certain point the threshold will be reached at which the principle of fairness can be invoked without qualms. The production of some package of merely beneficial goods is a necessary good (den Hartogh, 2002, 98).

Of course, in some state, a group of people might legitimately hold that a particular package, which is in operation, could be improved. It might even happen that there would be possible ways of improvement which were Pareto-efficient. Then, it would surely be a commendable move to change the scheme of discretionary good provision for a better one. None the less, so long as the current scheme producing discretionary goods is overall-beneficial and rests on fair principles of cooperation, it should be treated as *an additional presumptive good*. Hence, it should trigger the obligation to do one's part in it.

The above lays grounds for the claim that Klosko commits a mistake when he says that the imposition of a package of discretionary goods would constitute an act of tyranny. On the contrary, the result of such an imposition would be greater freedom and autonomy of individuals. As to Klosko's worry regarding the difficulties in specifying the exact mechanism of transformation of some discretionary goods into a package which obtains the status of being a presumptive good, those difficulties can be overcome. It is clear that one should not

¹²⁰ An additional support for this statement comes from considerations about economy of scale. These considerations point to the invariable attractiveness of discretionary good packages.

expect that there will be one single list of preferences for discretionary goods. Different individuals will have different lists. Unanimity is by far not a likely option here. However, the absence of such a match is not a sign that any attempts to establish the articles of a possible package are doomed to failure. For consider how it is in real life: people may have different rankings of values; still, they (often) come to an agreement about what ought to be done in a given situation or how to appraise a given state of affairs. Similarly, people may disagree about the importance of various discretionary goods. Nevertheless, through *discussion* and *arbitration* they may positively come to some generally adequate set of discretionary goods. Anyway, this is a task of politics to ensure that they do come to such a set.

Remember that a presumptive good is a good which everybody has reason to ensure that it is provided. The vitality and indispensability of presumptive goods are pillars of Klosko's account. Then, the idea that discretionary goods form a package which becomes itself a presumptive good should look congenial to the spirit of Klosko's contentions. By developing this idea, Klosko would have been spared the troubles with trying to hold on to the indirect and the institutional argument.

One additional consideration is the following. Suppose there is a state which effectively supplies presumptive goods. A citizen of this state cannot say: "I do not want those goods and I do not want to contribute". The option of non-provision of presumptive goods is not available to him for the reasons we have already discussed. Similarly, if the citizen says "I reject and decline to receive in the future the state services aiming at helping the needy and I do not want to chip in to ensure their provision", he can obtain the answer that option not to support and not receive the help-oriented state services is not available either because one ought to contribute on moral grounds (more about this issue in chapters 9 and 10). Now, if it

comes to discretionary goods, the citizen does have the option of refusing to obtain a certain discretionary good and to back up its production. My idea has been that the provision of the whole package of discretionary goods ceases to suffer from the threat of being rejected by the citizen. Nowadays no one can lead a satisfactory life without roads, communication networks, sewage systems, etc.¹²¹

CHAPTER 6. SIMMONS'S OBJECTIONS

SECTION 6.1. INTRODUCTION

In his *Fair Play and Political Obligations: Twenty Years Later* (2001) Simmons marshals a series of sundry arguments against the fairness theory in general and against Klosko's account of the fairness theory in particular. Here, I will consider the most important Simmons's objections and conclude that none of them poses an invincible hurdle for Klosko's account. There are *four* such objections. I will tackle them, each at a time, below.

SECTION 6.2. CONGRUENCE IN UNDERSTANDINGS OF THE FAIR PLAY PRINCIPLE

At the outset, I want to admit that there is no conceptual difficulties in comparing the fundamental understandings of the principle of fair play held by Simmons and Klosko. Like Klosko, Simmons believes that "the principle of fair play asserts that those who benefit from the good-faith sacrifices of others, made in support of a mutually beneficial cooperative venture, have a moral obligation to do their part as well" (Simmons, 2001, 29). Analogously,

¹²¹ If my idea remains not persuasive enough, I want to indicate that at least I have pointed out, in this section,

we find in Klosko: "The moral basis of the principle of fairness is the mutuality of restrictions. The sacrifices made by cooperators in order to produce benefits ... also benefit noncooperators, who do not make similar sacrifices According to the principle, the situation is unfair. Individuals who benefit from the cooperative efforts of others have obligations to cooperate as well" (Klosko, 1992, 34).

More significantly, both Klosko and Simmons recognize that "[t]he kind of unfairness condemned by the principle is that involved in *taking advantage of* or *exploiting* the sacrifices of persons who have freely assumed the burdens associated with maintaining mutually beneficial schemes" (Simmons, 2001, 29-30, italics in original). It is accentuated by both that the instance of taking advantage of the efforts of the members of a cooperating scheme may not be directly *harmful* to those members.

Simmons stresses that "in many cases of unfair advantage-taking, the moral wrong done involves no harming at all, but only ... unfair 'self-selection' - in which individuals select *themselves* for the privilege of doing the limited amount of free riding that the cooperating scheme can tolerate without harm" (Simmons, 2001, 30, italics in original). He goes on explaining where unfairness stems from: "The unfairness lies in the way that self-selection exploits or takes advantage of others' good-faith sacrifices - an advantage-taking that occurs ... only when one freely takes the benefits of cooperation with the requisite beliefs and preference structure, *not* when one merely unavoidably received those benefits while going about one's normally permissible business" (Simmons, 2001, 30-31, italics in original).

the trouble with Klosko's reasoning about the package argument: no tyranny can ensue from piling up discretionary goods, at least not in liberal democracies.

To agree with Simmons's assertion above, Klosko would have to add some qualifications about (i) the way one *freely* takes the benefits of cooperation, about (ii) *the requisite beliefs*, and about (iii) *the preference structure* of the beneficiary. It will be clear below what Klosko has to say about (i), (ii) and (iii). Here, it is sufficient to notice that both Simmons and Klosko converge on the claim that "What makes considerations of *fairness* an issue is not mere benefaction from the efforts of others, but benefaction where failure to reciprocate would *take advantage of others*" (Simmons, 2001, 33, italics in original).

Now I will be turning to Simmons's first objection - one which casts doubts on the claim that a state is an adequate cooperative community.

SECTION 6.3. THE FIRST OBJECTION (A STATE IS NOT A COOPERATIVE COMMUNITY)

As it has been stated above, a member of a group of people abiding by the rules, the existence of which brings benefits to all, who knowingly and purposely breaks these rules for obtaining more benefits through not contributing his share, is liable, according to the principle of fairness, to moral deprecation. Now, it has long been acknowledged that if the state had been counted as *a mutually advantageous cooperative venture regulated by rules*, the problem of political obligation would have been solved. The solution would have borne the requisite features of *a particularized solution* (due to the transactional character of the participation in the venture). It would also have been an improvement on the consent theory by not depending upon the vagaries of individual consent.

Further, it has been widely granted that *the primary complication* consists in the fact that the state cannot be construed as such a venture. There are many reasons which mark out the state from a genuine cooperative venture for mutual advantage. In his seminal book *Moral Principles and Political Obligations* (1979) Simmons shows the deficiencies of the fairness theory when it is applied to big social and political bodies. By implication, he denies that political obligations can be founded on the fairness basis. The essence of Simmons's criticism is that the fairness theorist trying to derive political obligations from the principle of fairness is confronted with the similar impediments that the consent theorist is in his endeavor to substantiate political obligations. Within the boundaries of the consent approach, a free choice of an individual is the fundamental basis for any moral requirement, curbing the individual's freedom, to arise. Likewise, a free choice of an individual is presupposed in the fairness theory. If it is presupposed, then the fairness theory falls prey to the same objection as the consent theory - the impossibility to prove that the requisite choices are truly made by a sufficient number of people in a political association.

But is it really the case that the fairness theory essentially hinges on the individual choice? Simmons argues that the choice is embodied in the acceptance of benefits. He distinguishes the acceptance of benefits and their mere receipt. Since, in a Simmons's view, only the acceptance is morally relevant, the fair play theorist is doomed to strive against the same critical attacks as the consent theorist, *even though acceptance does not always signify consent*.¹²² What are Simmons's reasons to think of the acceptance as a choice of an individual? Simmons holds that for an individual to be a member of some scheme the following conditions must be met: non-acceptance of benefits is a viable and free-from-negative-consequences option, and the individual has in fact willingly accepted the benefits.

¹²² See Simmons, 1979a, 126.

With regard to modern states, Simmons maintains that the public goods (i.e. "open" benefits, such as national defense or police protection) provided by the state are not easy to refuse. Hence, it cannot be said about the subjects of the state that they have accepted public goods in the strong sense demanded by the fairness principle. In general, "we ought not to think of modern political communities as essentially or in part large-scale cooperative ventures" (Simmons, 1979b, 140). The conclusion is that the state is not a cooperative venture in the sense required by the fairness principle. The state is rather viewed by Simmons as simply a very large vendor from which services are bought and paid for by taxes.¹²³

In *Fair Play and Political Obligation: Twenty Years Later* Simmons returns to the idea that a modern state lacks the features which make it a *cooperative* enterprise and recapitulates it with revived emphasis.¹²⁴ He explains that what is going on is the following process: we drag along our visions and judgments formed while participating in a small-scale, closely cooperative ventures and impose them on political, allegedly cooperative, schemes. We might be right in believing that we owe something to our fellow-members of a local cooperative ventures and that we are obligated to deliver what we owe. However, in Simmons's view, we should test those initial judgments of ours against the following pictures of a big 'cooperative' scheme: massive impersonality and habitual reception of the benefits, coercive enforcement of the scheme's rules, mindless reverence for law and authority, and the relatively widespread inclination to non-compliance with the rules of the scheme.¹²⁵

Simmons asks the question, "in cases where no perceived *independent* wrong is at issue, how many of your fellows do you think would comply with law were it not for habit, the threat of

¹²³ See Simmons, 1979a, 139.

¹²⁴ Actually, this idea is a favorite one in Simmons's arsenal against the fairness theory. See, for instance, Simmons, 1987.

¹²⁵ See Simmons, 2001, 41.

punishment, or mindless reverence for law?" (Simmons, 2001, 41, *italics in original*). He is sure that the only forthcoming answer is that a great many fellow citizens would not comply with law. And he suggests the conclusion: "[v]ery little of the motivation that produces the coordination of action on which rests claims of a political 'cooperative scheme', then, can realistically be said to be of the sort necessary to the presence of a strongly cooperative venture" (Simmons, 2001, 41).

Doubts as to whether the modern states may be construed as huge cooperative enterprises have also been expressed by other political philosophers. Most notably, Horton has argued that the "problem for proponents of the fair-play theory of political obligation is that while there are many micro-situations within a society which provide clear examples of schemes of social cooperation in the stronger sense required by the fair-play theory, it is less clear that a society or state can plausibly be so conceived" (Horton, 1992, 93). He has also contended that "it is far from clear what 'working together' or 'co-operation' requires" (Horton, 1992, 92). Along with palpable and incontrovertible examples of co-operation there are examples of business competition on the market and of waging war. The latter examples can, according to Horton, "involve co-operation only in the most attenuated form" (Horton, 1992, 92).

Now, let us distil what is the essence of Simmons's objection. Simplifying the matter to some extent, it may be said that (a) Simmons believes that people do not view their compliance with laws and official directives as the expression of their contribution to some communal effort, and (b) Simmons assumes that without "proper motivation" there cannot be "true cooperation", and finally, (c) Simmons thinks that those who are under duress cannot constitute a cooperating body within which the principle of fairness can operate.

What does Klosko have at his disposal in order to answer the above objection of Simmons? Surprisingly enough, we find little in Klosko's writings what can be used in the way of answering Simmons's objection. More problematically even, it should be admitted that Klosko often jumps from small-scale examples of cooperation to examples concerning political dimensions of cooperation, and in so doing he does not pause to justify the substitution of the large schemes for small ones. Apparently, Klosko does not see a serious complication in such a substitution. This may be explained, I think, if we thoroughly appreciate Klosko's stress on the public character of goods the state furnishes. Since the goods are public they are cooperatively produced. In particular, presumptively beneficial public goods are definite outcomes of a long-term and comprehensive cooperation of the insiders of the cooperative scheme.¹²⁶

The public character of presumptive goods can indeed be used by Klosko in his defense of the state as a cooperative venture. This course of reasoning may bring fruitful results. However, I will claim that Klosko is able to directly criticize Simmons's objection by arguing against (a), (b), and (c) outlined above.

SECTION 6.4. THE EMPIRICAL MATTER

For what does (a) tell us? It tells us that in general people do not treat the state they live in as a cooperative enterprise. Moreover, their attitude towards the required contribution is that this contribution is either extracted from them by force and threat of punishment or that this contribution is to be made due to other moral reason than fairness. But is there such an

attitude indeed among citizens? And do people indeed fail to recognize cooperation in their dealings with the state institutions and other fellows citizens?

The answers to the above questions are not readily forthcoming. Klosko's survey findings, for instance, contradict Simmons's opinions. In his *Political Obligation: The Empirical Dimension* (2001a) Klosko writes that there is "strong evidence that the perceived strength of the obligation to obey the law varies with the level of benefits a government provides its citizens" (Klosko, 2001a, 17). He further accentuates that "[w]hat the results do suggest - quite strongly - is that a reciprocity-based theory of obligation, such as fairness or gratitude, played an important role in [the respondents'] thinking" (Klosko, 2001a, 17).

On the basis of his survey findings, Klosko may challenge Simmons's conviction that impersonality, coercion or mindless reverence for law and authority are sufficient to destroy the cooperative spirit in large-scale enterprises. Of course, Klosko cannot but acknowledge that there are significant differences between those two scales of cooperation: the small and large. The mere fact that in small-scale schemes people are usually familiar with each other serves as a distinguishing factor in the small-versus-large scheme juxtaposition. But Klosko may deny that personal acquaintance is necessary for cooperation to take place. At any rate, Klosko may insist that the whole matter needs further empirical testing to be resolved more or less decisively.

SECTION 6.5. THE SIGNIFICANCE OF RULES

¹²⁶ The terminology of 'insiders' and 'outsiders' with regard to a cooperative scheme was developed in Simmons, 1979a and further used by many, most notably by Waldron, 1993b. Who was the initial author of this terminology I am in straits to tell.

More interesting reasons Klosko may offer against Simmons's second assumption, the assumption (b). First, Klosko may point out that Simmons commits a fallacy when he jumps from the proposition that a mere accidental coordination or an inadvertent working together is not an instance of cooperation to the proposition that cooperation requires correct understandings of the situation, proper beliefs in who is contributing what, and motivations to maintain the cooperative scheme. He may claim that here we have to do with *a false dilemma fallacy*.

To recognize that the fallacy occurs, we have to remind us what are conditions for the fairness principle to enter the picture. In the section *What is Klosko's Account About?* (section 3.2) I have partly discussed them. Still, it would be instrumental to bring them up again, assorted in a strict order.

The first condition for the principle of fairness to be applicable is that some good, which everybody (or nearly everybody) desires, can be produced if almost all (or sufficiently many) do their part in the scheme of its production. If not enough people contribute, the desired good is forgone. This provides everybody with an interdependent reason concerning contribution. The reason is interdependent because it exists only if sufficiently many others share the burden of production of the good. The second condition simply tells us that the benefits that accrue to the participants of the scheme should outweigh the costs of production.¹²⁷ The third condition is about the possibility of free riding. If enough people do their part in the producing scheme, some individuals can unilaterally withdraw their contributions. Usually, the withdrawal is not associated with direct harm to the contributors or with significant decrease

¹²⁷ There is more depth in this condition than it has been stated. For there may be cooperating enterprises aiming at rescuing some people in dire needs or at fulfilling some other collective duty. Then, the benefits understood materially will not outweigh the costs on the majority of occasions. I will deal with these aspects of the second condition in chapters 11 and 12.

of the scheme's efficiency. Finally, there is the fourth condition. This is the condition of *interdependent awareness*, so to speak. Here is how den Hartogh formulates this condition: "Each of the participants expects the others to make their contribution, and knows the others to expect the same from her, and knows the others to know her expectations, and so on" (den Hartogh, 2002, 81). This condition is important because if one is not assured that others will follow him in his effort to produce the good, he'd better not start the production. Others will be justified in not contributing, providing it can be shown that the individual does not have the grounds to suppose that they will join in.¹²⁸

Now, judging from the above conditions, we can say that indeed unwitting and accidental performances of people that yield some beneficial goods cannot be tantamount to a cooperative and planned production of those goods. This is so because in the case of unintentional production at least the fourth condition is not met. People do not rely on each other in their attainment of the goods. However, at the same time, the above four conditions can be satisfied in situations which are considerably looser than a rule-governed close cooperation with proper motivations on the part of the insiders. Admittedly, the modern liberal democracies do satisfy, in general, the listed conditions and therefore can be regarded as the schemes in which the principle of fairness is applicable. Closeness, personal acquaintance, congruence of motives may facilitate the triggering of the fairness principle. Nevertheless, they are not to be necessarily present in each and every situation that gives rise to the considerations of fairness.

¹²⁸ These four conditions can be found with greater or smaller emphasis in Hart, 1955, 185-186; Rawls, 1964, 9-11; 1971, 111-114; Smith, 1973, 954-959; Nozick, 1974, 90-95; Wasserstrom, 1975, 379-382; Pateman, 1979, 121-129; Simmons, 1979a, 101-142; Arneson, 1982; Soper, 1984, 70-73; Dworkin, 1986, 193-195; Greenawalt, 1987, 121-158; Gans, 1992, 57-66; Horton, 1992, 89-98; Klosko, 1992; Wellman, 1996, 213.

Simmons's requirements are exaggerated when he demands that there should be "conscious sacrifice for the common good" (Simmons, 2001, 40) in order for the fairness principle to become engaged. And Simmons envisages that such conscious sacrifice is likely to occur only in cases of national disaster or war.

In our most hopeful or idealistic moments - or in those moments when the spirit of self-sacrifice for the common good is most evident in public life - we may imagine that real political societies (in the West, of course) live up to the conditions that would subject us all to political obligations of fair play. After all, it is hard not to be moved by the sight of the young men voluntarily marching off to defend the homeland or to preserve democracy. But it is at precisely that moment that the citizen's understanding of his true situation is most likely to be emotional and unsound (Simmons, 2001, 42).

Thus, Klosko would hold that Simmons is incorrect when he restricts the scope of the fairness principle's applicability only to intimate, close-knit groups or to communities cemented by the tide of overwhelming emotions experienced by nearly everyone. Moreover, he might argue that it is precisely in situations of great danger or imminent threat from an aggressor that the fairness principle tends to retreat and play a second role, allowing that other moral principles prevail. This way or another, Klosko would insist that Simmons underestimated the real range of bearing and application of the principle in question.

Also, Klosko might be in a position to answer Horton's objections intimated above. Horton called attention to difficulties in identification of cooperation in cases of competition. To this, Klosko might reply that not only cooperation games, but also coordination, assurance, division and competitive games are based on rules. As long as players stick to rules they do not illegitimately take advantage of each other.

However, when they deviate from the prescribed rules, their conduct can be condemned from the perspective of fairness principle. To use Horton's example, two firms on a competitive market are striving to wipe each other out. As long as their strategies and endeavors are molded by the existent regulations on the market no one is to grumble and make a fuss. Yet, at the moment any of the regulations is transgressed, an unfair advantage is gained. Hence, we observe that the fairness principle is at work here, excoriating violation of the established rules.

SECTION 6.6. FORCED COOPERATION

Finally, Klosko might express his expostulations regarding (c), i.e. regarding the claim that those who are under duress cannot constitute a cooperating body within which the principle of fairness can operate. He might argue that there was some confusion both in Simmons's example (concerning galley slaves) and his conclusions from it. In brief, he might hold that the assertion declaring that forced cooperation is not cooperation, is incorrect.

To substantiate his claim about discarding forced cooperation, Simmons offers us the example about galley slaves. He says that we can, only in a fairly attenuated sense, claim that the slaves *cooperate* in their effort to propel the galley. And he also says that this weak, attenuated sense cannot vindicate the application of the fairness principle. If there is a master with a whip, as surely there is one in charge of the slaves, the slaves' efforts in propulsion of the galley cannot fall into the class of cooperative activities.

On this point, Klosko might simply disagree. He might say that if some of the slaves shirk, the others will have to take up the slack. This would be a clear-cut instance of shrinking from

what one has to do and shifting one's burden on one's colleagues. We should not forget, Klosko would remind us, that if some slaves only pretended that they pulled oars, then the others would have to exert extra efforts to keep the course of the galley steady. Why should the others put themselves out to offset the sluggishness of the pretenders? Surely, Klosko would insist, those who did not apply themselves to rowing would exploit those who spared no effort to propel the galley at the demanded speed.

Having said that, let us be clear on the following. Of course, Klosko would be in assent with those who condemn slavery. He would also concur that the galley slaves had a right to protest against such a treatment and even to go for a mutiny or revolt. However, he would still maintain that the fairness principle pertained to the situation of the galley's propulsion. Apart from what has been said above, Klosko might point out that Simmons himself provided us with reasons supporting his (Klosko's) contention. In his *Moral Principles and Political Obligations* Simmons writes that the justice condition (requiring that a scheme be just in its distribution of benefits and burdens with regard to each and every participant) is not necessary for the fairness principle to be applied.¹²⁹ Taken as it is, this assertion of Simmons shores up Klosko's contention that forced cooperation is still a framework within which fairness considerations take place. If the slave overseers and the slaves derive different benefits from the working together, then this establishes that they are supposed to contribute in different ways to the scheme. Apparently, it would be required that the overseers contributed more than the slaves. From the fairness principle's perspective, there should be just a satisfactory congruence between the benefits derived and the costs spent.

To this, Simmons has a response:

¹²⁹ See Simmons, 1979a, 109-114.

As for the apparent result that the unjustly treated are still bound to support the scheme (even if to a lesser degree) which discriminates against them, this result can also be seen to be mistaken. For if we remember that benefits must be *accepted* in order for an individual to be bound under the principle, the unfairly treated have the option of refusing to accept benefits, hence sparing themselves the obligation to support a scheme which treats them unfairly The idea, then, is that only if they willingly accept the benefits of the scheme are participants bound to bear the burdens of cooperation, and only then in proportion to the benefits allocated to them (Simmons, 1979a, 113-114, italics in original).

Thus, we can have Simmons claiming that from his proposition (which I have suggested that Klosko might underline and use) that "[w]hile we can ... agree ... that intolerably unjust schemes ought not to be furthered ..., there is no logical difficulty ... in holding that we may sometimes have obligations of fair play to cooperate within unjust schemes" (Simmons, 1979a, 114), it does not follow that the slaves, in the example at issue, will be obligated to do their part. From all we know from history, the slaves would *never accept* their status and therefore the obligations of fairness would not arise.

Klosko might nevertheless defend his position against Simmons's response. He might emphasize three problems overlooked by Simmons. The *first* one concerns the question, "What is the relevant group within which the fairness principle operates?" If we combine the slaves and their masters, we will obtain a group which delineates the domain where the fairness obligations perhaps do not arise. Whether they arise or not may be put aside and not discussed here. The reason for this is that the relevant group is not the one encompassing both the slaves and the masters, but only the slaves. If we focus only on the slaves, then it seems that we can justifiably conclude that it is wrong that some slaves free ride on the efforts of their mates.

Second, the above conclusion is backed up by the observation that there can be found cases where the fairness principle is legitimately applied but the acceptance on the part of the members of a scheme is definitely missing. As I have already stressed at several places of the thesis, and as I will stress in more detail in the pre-concluding chapter, the notion of benefits is to be understood broadly. Except the direct material gains, there may be another types of benefits. Imagine there is a situation in which two individuals are shouldered with the obligation (stemming from the duty to help people in dire needs if it can be done without an excessive loss) to help the third one. If one of these two shirks, the other one does more than his own share, which is patently unfair. Thus, once the meaning of benefit is perceived inclusively enough, the acceptance of benefit becomes a sufficient but not a necessary condition for the principle of fairness be in force.

Third, there is a problem of circularity related to the acceptance condition. This is exactly the bone of contention whether this condition is to be always met or not. Klosko's endeavor aims at showing that willing acceptance should not be presupposed from the outset as a necessary factor triggering the fairness principle. Hence, if Simmons's response ultimately depends on the validity of the acceptance condition, he is committing the circular reasoning fallacy.¹³⁰

In sum, the first objection of Simmons can be overcome by Klosko. Let us now turn to the other objections against the fairness principle.

¹³⁰ Compare with section 1.2, where I also charge Simmons with assuming what is to be proved.

SECTION 6.7. THE SECOND OBJECTION (FRESH WATER IS A PRESUMPTIVE GOOD)

I will analyze the remaining objections, as I have analyzed the first objection, i.e. from the perspective of their being threats to Klosko's account of political obligations. As we remember, Klosko's claim is that there are situations in which 'the mere receipt of benefits' is enough to bind one to the cooperating enterprise which provides these benefits. The situations at issue encompass ones where the state ensures the provision of benefits, among which there is at least one presumptive good. It is worth underscoring that Klosko is clear on the matter about the number of state-secured presumptive goods that are requisite to trigger the obligations towards the state: "As long as a cooperative scheme supplies [an individual] with *at least one* presumptive public good - and satisfies the other necessary conditions - then he can be presumed to have strong obligations to it, whatever other functions it assumes" (Klosko, 1992, 114, italics in original).

Simmons's remaining objections are largely based on the example he offers - viz., the example of an isolated settlement afflicted by drought. The example runs as follows:

Suppose there is a severe drought in my rural neighborhood, where we are all dependent for water on our wells, wells that are now drying up. I am hard at work, successfully digging a new, much deeper well in my backyard to supply my family. But my neighbors, instead of doing the same, opt to dig a long trench along our neighborhood road and beyond, diverting water from a river several miles away, so that all will have access to running fresh water in front of their homes. If I decline to participate in my neighbors' scheme, have I breached an obligation of fair play by benefitting as a free rider? It seems plain to me that I have not (Simmons, 2001, 34).

This example is meant to show that in spite of the provision of a distinct benefit, that of the availability of fresh water, the person who digs his own well (hereafter, the outsider to the communal scheme of diverting river water) does not take unfair advantage of others and, therefore, is not a free rider and his behavior cannot be denounced as a scandalous and unfair utilization of the efforts of others. In the above example, the presumptively beneficial good, the water supply¹³¹, is received (though not accepted) by the outsider. For Klosko this is enough to hold that the outsider has an obligation to support the water-providing scheme. For Simmons, however, it is evident that if the outsider shirks and does not support the scheme, he cannot be deemed a free rider. From the presence of a presumptive good and the absence of an obligation of fairness, Simmons infers that the conception of presumptively beneficial goods advanced by Klosko misses the mark and runs aground.

To make his inference (constituting the essence of the objection under consideration) more convincing, Simmons draws our attention to the agent's preference structure. In short, any free rider is determined by examination of his preference structure:

One does not breach an obligation of fair play unless one chooses to take advantage of ... the cooperative sacrifices of others. Free riders take the benefits others provide without reciprocating, while at the same time preferring receipt of the benefits at the prescribed price to doing without the benefits altogether or to trying to supply them independently in an alternative fashion (Simmons, 2001, 34-35).

Whatever is a value of a benefit supplied by some scheme, if an individual wants nothing to do with the scheme and does not actively utilizes the scheme's benefit, it is wrong to impose

¹³¹ Clearing up a possible confusion it should be said that in this particular case the availability of clean water is deemed by Simmons to be a presumptive good. Simmons believes that the setting of the case under

on him the burdens and costs of the maintenance of the scheme. Simmons puts the accent on the claim that "[t]he magnitude of the benefit, or the number of people for whom it counts as a benefit, seems quite irrelevant to the intuitive force of the arguments" (Simmons, 2001, 34).

Moreover, Simmons extends his example and says that given that the outsider's well dries up, it is natural to suppose that he will have to use the river water furnished by the communal scheme. But if the outsider

genuinely cannot do without a public good, supplied as it is and at the price demanded for it, then [he] will probably freely accept it. But then the basis of [his] obligations is [his] free acceptance of the [good] The value or importance of the goods is irrelevant. ... [I]t is free acceptance, not presumptive value, that does the moral work in the argument (Simmons, 2001, 35).

What would be Klosko's response to this objection? I think Klosko would hold that Simmons's argument on which his objection is based is begging a question. For it roughly states that from (a) if one does not avail himself of a presumptively beneficial good, he does not owe any support to the scheme which provides this presumptive good, and (b) if one cannot but make use of a presumptively beneficial good, then one freely accepts this good, it follows that the mere receipt of a presumptive good is not obligation-generating. Klosko would draw our attention to premise (b) and would insist that this premise preempts a conclusion about the moral significance of receiving essential benefits. He would accentuate that it is altogether too easy for Simmons to stick to premise (b), further, to remind us how few subjects of any state do really express their acceptance of the goods furnished by the government, and then to wind up with the negation of 'mere receipt of benefits'.

consideration justifies treating clean water as a presumptive public good. Incidentally, Klosko names clean water on the list of discretionary public goods (see Klosko, 1992, 88).

Moreover, apart from pointing out the circularity of Simmons's argument, Klosko would challenge premise (a). He would urge us to go back to his definition of the concept of presumptively beneficial goods. He would underline the indispensability of presumptive goods. Simmons thinks that if a good is non-excludable it may qualify as a presumptive good. Klosko would deny this. He would keep repeating that apart from being non-excludable, a presumptive good is supposed to be a vital, indispensable, essential good.¹³²

Simmons compares the presumptive good in his example (the availability of river water) with such a good as the hospitals' availability.¹³³ Klosko would argue that both the availability of river water and the availability of hospitals are not proper examples of presumptive goods. Especially, this concerns the availability of river water. For the outsider, the trench with river water can be counted as an additional water source or, perhaps, as a more convenient water supply. What it cannot be counted as, according to the example, is an *indispensable* and *only* source of water. Klosko would clinch this contention and use it to disqualify the trench water supply as a presumptive good.

¹³² Incidentally, the good in the example, i.e. the water trench, is avoidable (see section 3.6 for the discussion on avoidable and non-avoidable goods). It is a good rule of thumb to think of presumptively beneficial goods as both non-avoidable and non-excludable (here, wanting to express myself eloquently, I have committed a mistake: there is no need to indicate that some good is *both* non-avoidable and non-excludable since a non-avoidable good is non-excludable by definition). Notice that defense, police, and air-pollution control are both non-excludable and non-avoidable. Compare them with radio-broadcasting, street lighting, the availability of telephone booths and hospitals, which are non-excludable but avoidable. (In passing, contract-enforcement is a tricky good. It is usually listed among presumptive goods, but technically is both excludable and avoidable. I think that the way out of this confusing situation is to conceive of contract-enforcement as a sort of good like air-pollution abatement - one simply cannot live without making contracts.)

¹³³ See Simmons, 2001, 34.

SECTION 6.8. THE THIRD OBJECTION (COERCIVE PROHIBITION OF ALTERNATIVE PROVISION)

Having defused Simmons's second objection, Klosko has to turn to the third one. This third objection is based on an elaboration of Simmons's initial example.

Return now to my drought-burdened rural neighborhood and imagine the change in the story that makes the example more closely analogous to actual political cases. Suppose that when my neighbors dig their trench to bring in fresh water, they dig it over the only place on my property where I could have dug an adequate well (a well, let's say, that I had planned to begin digging the next day); and when I attempt to divert the trench so that I can dig my well, I am forcibly prevented by my neighbors from doing so. In such a case collective action has *precluded* the possibility of private provision (or non-provision) of the public good in question. When I proceed to use water from the trench, having no viable options permitted to me, does fair play require that I make appropriate trench-related sacrifices (say, maintaining and dredging out the trench)? While I have benefitted in significant ways from cooperative sacrifices of others, there is something deeply unconvincing about the claim that I *owe* my neighbors reciprocation for essential goods that they, in effect, *forced* me to take from them, denying me the option to provide the goods for myself or to do without (Simmons, 2001, 36, italics in original).

Simmons puts forward the above change in the example because he believes that "the most important public goods received from the workings of our political societies are normally provided in conjunction with the coercive prohibition of alternative efforts at self-provision" (Simmons, 2001, 36). Hence, the amended example is supposed to play a role of an analogy to the modern state.

It should be added that Simmons allows for a possibility that the outsider is obligated (fairness-bound) to contribute to the water supply scheme. It may happen only if his preference for receiving benefits from the scheme is in fact stronger than his preference for managing to get water by himself. Again, the decisive factor in whether the outsider stands under an obligation originating from fairness, turns out to be 'the structure of preferences'.

Klosko might dispel whatever is unconvincing about the claim that the outsider should do his part in the upkeep of the scheme by offering two reasons. *First*, Klosko might reject the analogy by pointing out that the state institutions do not operate in the way that they encroach on what is *rightfully owned* by the citizens. In other words, Klosko might contend that an air of persuasiveness, which the amended example has, is totally dispersed if we take away the motive of the wronging of the outsider. Simmons contrives his example in such a fashion that we are left to believe that the outsider is a *victim* of some unwarranted and unlawful action of the scheme members. This, however, is an unjustified assumption.

Klosko might insist that a better analogy would be established if, instead of speaking about how the outsider is forcefully deprived of the possibility to dig his own well, we assumed that the terrain, through which the trench were to run and on which the outsider wanted to dig his well, had belonged to no one and the scheme members were the first to occupy it, thus preempting the outsider's claim of ownership to it.¹³⁴ In this case, the outsider might feel disappointed and even upset. However, given that he used the trench water, he would be in pains to seriously justify his unwillingness to contribute to the provision of the water. At any rate, rendered as above, the example does not yield the results favorable for Simmons. For we would say that whatever grudge the outsider might bear against the scheme members for

occupying the terrain in question, and whatever preference structure he might have held, he would be under an obligation to reciprocate for the enjoyment of fresh water.¹³⁵

It is true that Simmons might, in his turn, raise an objection to Klosko's alteration of his example. For instance, he might staunchly adhere to the view that the state is incorrigibly and irredeemably coercive in its nature. Thus, he might stand firm that any time the state provides a presumptive good it infringes upon somebody's rights. To this, Klosko would give a quick reply. He would say that from the statement that any state possesses a characteristic of a coercive institution does not follow that the subjects of a state are *wronged* by any of the state's actions. In other words, coercion does not necessarily mean abuse, ill-treatment and unjust and unjustified harm.

Let us now turn to the *second* reason of Klosko. He might concede that Simmons's amended example bears some resemblance to an actual state. Nevertheless, he might wonder how could it be possible that the outsider could claim that the scheme members should provide him with fresh water for free as a compensation for his not digging his own well? Even if the outsider were to be compensated, still it would seem excessive that he could enjoy the benefits of the fresh water and do no part *at all* in its provision. Klosko would suggest that the outsider should receive a singular indemnity and from that time on he should participate in the maintenance of the water supply scheme. It is difficult to see how Simmons would undermine this suggestion of Klosko.

¹³⁴ For completeness, it should be added that there was no other suitable place to dig a well for the outsider. This brings us close to the considerations of the Lockean appropriation and his famous proviso. For the sake of brevity, however, I do not expand on these considerations.

¹³⁵ Notice that in Simmons's elaborated example the outsider indeed has, at the beginning, two options: to dig the well himself or to use water and pay. Scheme members, however, take one (the first) option away from him,

SECTION 6.9. THE FOURTH OBJECTION (OPTIONAL GOODS?)

Simmons's fourth objection is based on yet another alteration of the initial example:

Suppose that in my rural neighborhood, residents have long been taxed ... by a neighborhood committee in order to pay for various public projects ..., and these tax revenues seem fully adequate to fund the projects in question. Nonetheless, residents are still expected to make various further cooperative sacrifices, contributing to the maintenance of the projects, and the like. When I use the water trench or playground or roads - things for whose construction and maintenance I have already paid my fair share in tax dollars - but decline to make any of the further cooperative sacrifices expected of residents, can I then be counted as a free rider, as one who unfairly takes advantage of others? (Simmons, 2001, 36).

Simmons anticipates that our answer to his question would be negative. It is, however, not easy to confirm his anticipation on the spot. The problem of being obligation-bound to pay for the services and goods one does not want or does not directly make use of, is a complex one. Klosko devotes to it much attention in the fourth chapter of his book *The Principle of Fairness and Political Obligation*.¹³⁶ I have examined his discretionary good conception, which he constructs there, in the preceding chapter. I have concluded that the conception in question is not as effective, to say the least, as Klosko wants it to be, and that the state provision of discretionary goods can be substantiated by the argument Klosko does not consider - viz., the package argument.

hence coercion. But in the example I have offered the outsider does not initially have two options. He does not really have an option to dig for himself: the terrain does not belong to him. Hence, there is no coercion.

¹³⁶ Klosko, 1992.

Does this then mean that Simmons's fourth objection misses the target? In a sense it does, but here I suggest that we interpret Simmons's fourth objection in a way which helps it regain some strength. The suggested interpretation does not make Simmons's objection the most biting one, but it does render this objection worthy of consideration. Thus, let us say that Simmons's fourth objection does not raise charges against the status of discretionary goods in Klosko's account. This means that the fourth objection is not about whether or not some goods are related to the provision of presumptive goods. It is about optional goods like museums and operas. Remember that the package argument, which I put forward in section 5.9, applies to goods that a great many people, if not all, want to be furnished. Though these goods are not vital for a minimally acceptable life, they enjoy endorsement of many. Optional goods are different. It is commonly the case that they are not sought by the majority and that they are not indirectly connected to presumptive goods.

Let me be clear on the questions of how optional goods fit the division of goods into presumptive and discretionary ones and of whether optional goods are a species of discretionary goods. As I indicated it when I discussed the discretionary good objection (see chapter 5), Klosko never offers a precise definition of discretionary goods. Though it is clear that discretionary goods do not directly affect vital elements of an individual's well-being, it remains obscure if 'proper' discretionary goods are only those which can be shown to be valuable for the sustainable provision of presumptive goods and 'improper' discretionary goods are all the rest public goods. This distinction bears on the question of whether sponsorship for the arts can be counted among discretionary public goods or not. Here I adopt the view that *there are presumptive public goods and the other public goods are discretionary*. And in the pool of discretionary goods, some can be shown to be effectively linked to presumptive goods and, thus, can potentially be objects of governmental provision,

while the others cannot be shown to seriously influence the provision of presumptive goods and, thus, cannot be objects of governmental provision. Usually, the former are favored by many, while the latter are appreciated only by few. This latter class of goods I will also call *optional goods*. Hence, sponsorship of the arts is a discretionary public good, but since it cannot be linked to presumptive goods and many have reservations concerning footing the bill for the arts it is an optional good.

Now, we may take Simmons's fourth objection to mean that since modern governments require our contributions to finance projects which often have nothing to do with presumptive goods, we may be freed from supporting them. Simmons urges us to withdraw our doing our share until this share is reduced to maintaining only essential public projects. What might be Klosko's answer to this objection? Klosko might want to highlight several points. *First*, he might indicate that on the basis of the fourth objection we cannot say that people are morally absolved from discharging any of their fairness-rooted obligations. Since it is indubitable that people benefit from the receipt of presumptive goods (this is true by definition), they will be obligated to contribute to the production of these benefits. Whether it can feasibly be arranged that people pay their taxes only to the extent which corresponds to the level of their enjoyment of presumptive goods, is a separate question.¹³⁷ It remains unscathed, however, that some contribution will be justifiably required from them.

Second, Klosko might underline that the questions of 'Which precisely goods are presumptively beneficial?' and 'What is the morally justifiable scope of governmental activity?' are answered after we bring to light the answer to the question about "basic features of one's overall views concerning the nature of man and society" (Klosko, 1992, 90). No

¹³⁷ Simmons gives the affirmative answer to this question, see Simmons, 1987.

doubt, this does not defuse Simmons's fourth objection. However, with conjunction with the first point this makes the fourth objection less severe.

Third, Klosko might openly admit, as he does, that

there are limits to the range of discretionary public goods that a society can justifiably provide. ... [B]eyond a certain point, charitable functions cannot be justified by the principle of fairness and require the introduction of other moral principles. A range of other, familiar governmental function would also be excluded. For instance, it would be difficult to argue that the maintenance of cultural institutions - such as museums and symphonies - is a necessary cost of presumptive public goods. ... Other governmental practices are similarly difficult to justify. One must ask how far the state is justified in paying for certain kinds of educational programs, or research in certain subjects. Though education in science, mathematics, and engineering are clearly necessary for a sophisticated defense establishment and so social survival, the same is less easily said of the study of literature, the arts, and other humanities (Klosko, 1992, 98).

Thus, Simmons's fourth objection has not taken Klosko by surprise. On the contrary, Klosko has anticipated it and signaled the way the fairness theory could be salvaged. This way is to concede that where the fairness principle does not reach or where it is not applicable, the other moral principles may be in force. These other moral principles will fill the void, i.e. will supply the reasons for keeping the state provision of familiar auxiliary benefits unaltered. If however, "we assume for a moment that these other moral arguments are not readily forthcoming, then the perpetuation of [provision of auxiliary benefits] by government is illegitimate and citizens do not have obligations to support [it]" (Klosko, 1992, 98-99). However we assess Klosko's last statement, one thing is clear: justification of the provision of all state-furnished goods does not rest exclusively on the fairness principle. Yet, this does not

diminish that fact that at least part of the provision is vindicated by reference to the principle of fairness.

The appeal of Simmons's fourth objection depends, in some measure, on the assertion that classical music or medieval art, for instance, are by no means the necessary ingredients in the chain of the presumptive good production. The first, second and third points tackle, if only partially, this assertion. The upshot is that it is not fatal for the fairness theory that it cannot account for *all* goods provided by the state (as well as it cannot account for the fact that some important goods are not being furnished). At least, it accounts for the sustaining provision of the most essential goods. Additional reasons, stemming from another moral principles, may enter the picture and defend the extended provision.

To sum, Klosko has enough resources available to him to defend his position against Simmons's objections. None of the objections is sufficiently convincing to warrant abandoning Klosko's project. Though some objections reveal difficulties with Klosko's account of political obligations, the overall conclusion is that the account withstands Simmons's criticism.

CHAPTER 7. THE PRESUMPTIVELY BENEFICIAL GOOD OBJECTION

SECTION 7.1. SPECIFYING WHAT I AM UP TO

In chapter 3 (especially in section 3.8) I have tried to present the concept of presumptively beneficial goods in the most faithful way, following the overall spirit of Klosko's account of the fairness principle and of political obligations. It has been emphasized that presumptive

goods “are indispensable to everyone, all individuals can be presumed to benefit greatly from their receipt, regardless of their voluntary actions in reference to them” (Klosko, 1994, 266). The indispensability of presumptive goods compels us to believe that an individual would either always *prefer* to receive a presumptive good or always *need* this good. Here, I have followed Janos Kis and made a distinction between preferences and needs of individuals.¹³⁸ I would like to sustain this distinction and then to argue against Janos Kis who maintains that regardless which interpretation we embrace, either the preference interpretation or the need one, the concept of presumptive goods can be shown to be seriously flawed. My contention will be that one version of the preference interpretation can hold out against Kis's charges.

SECTION 7.2. THE NEED INTERPRETATION

Let us first consider the need interpretation. According to this interpretation, the fact that different people invariably opt for presumptive goods is explained by the claim that they need these goods. They cannot but want presumptive goods to be provided because they need them. This interpretation is substantiated by an initial impression one gets when one tries to fathom the definition of presumptively beneficial goods. No minimally acceptable life is possible to conduct unless such goods are offered by the government. Also, this interpretation is corroborated by the emphasis on indispensability of presumptive goods. It is true that none of the components in the definition of presumptive goods singles out precisely this interpretation, but at least none undermines it. The need interpretation sits well with the concept of presumptive goods and with overall thrust of Klosko's account.

¹³⁸ See Kis, 2002. Apart from this paper, in making this distinction I have relied on personal conversations.

Having admitted that the need interpretation is one of the plausible renderings of the concept of presumptive goods, we have showed nothing towards justification of this interpretation. And Kis holds that despite possible advantages of this interpretation (e.g. it would be relatively easy to demonstrate that everybody needs basic security or defense against aggression), it is untenable. Its major flaw consists in the inscrutable difficulty with bringing the moral dimension into this interpretation.

SECTION 7.3. NEEDS AND WANTS

Let us see what is really at stake here. First, let us clarify one point. The need interpretation should not be read as the want interpretation. It is important here to differentiate between *needs* and *wants*. It is undeniable that, especially nowadays, it is increasingly difficult to carry out this differentiation with adequate credibility.¹³⁹ None the less, such differentiation is feasible and should be conducted lest we should have very weird presumptive goods. For instance, if it turns out that in a given society all men and (indirectly) women want Viagra to be provided by the governmental institutions, this should not, as we may judge, attest to arising of a new presumptive good. Or imagine that there is a society where all men want to have a chin of Kirk Douglas and all the members of the gentle sex want to have breasts of Merlin Monroe. There is something odd in suggesting that a state which levies extra taxes on its subjects and provides corresponding plastic operations is really in the business of furnishing a presumptive good.

As an additional assumption we should suppose here that nearly every man is not born with a dimpled chin and nearly every woman needs breast correction. What about those whose chins

¹³⁹ The task of differentiation is compounded and obstructed by the complexity of modern societies.

and breasts sufficiently resemble the ideals? The same as with those who can secure his own safety and can fare without police force (as multi-millionaires in all likelihood can). Two reasons come to the fore at this point: their contribution is required as a matter of justice (see chapter 11 and 12 for a detailed discussion) and the permission not to contribute hinges on not deriving benefits from the whole package of presumptive goods, not on not deriving benefits from one presumptive good taken separately.¹⁴⁰

We will still return to the needs-wants differentiation at the discussion of the preference interpretation. At this point, let us decide to stick to the notion of needs.¹⁴¹ Let us also remember that Kis's complaint says that the need interpretation is not strong enough to offer us serious moral reasons necessary for triggering the obligations of fairness.

SECTION 7.4. MORAL REASONS INVOLVED IN THE NEED INTERPRETATION

Does Kis want to argue that needs of people cannot provide us with moral reasons to do something to alleviate those needs? No, he does not. People's needs are in the very heart of morality. In fact, the most strikingly obvious moral duties are related to depravation, destitution, distress and exigency, i.e. to acute and urgent needs of people. Consider the following example. A homeless vagabond will not survive till the morning if an affluent financier does not offer him some help (either food and shelter or money). Here, we do not deal with a case of charity. The condition that the vagabond is in serious danger makes the

¹⁴⁰ Here I should express one additional and important caveat. The Douglas-Monroe example is meant to make us sensitive to differences between needs and wants. However, as it is formulated it cannot be an example of a species of presumptive goods. And this is not on account of the fact that it stretches our imagination too far (in philosophy we are used to incredible analogies and illustrations) but because presumptive goods must also be supplied only through *large-scale cooperation, coordinated by government*. Thus, if we want this example to go through we have to assume, on top of everything, that only centrally coordinated common efforts can guarantee the smooth functioning of surgery services. (I am grateful to George Klosko for explaining me this point.)

¹⁴¹ Incidentally, the criticism, to which the interpretation in question will be subjected, will not lose its potency if we substitute wants for needs.

example resemble a case of deliverance from imminent death rather than a case of charitable distribution of alms. The duty to rescue someone from serious peril (with the rider about the avoidance of excessive loss) is incumbent upon the financier. Given the circumstances of the example, this duty generates, on the part of the financier, the obligation to take care of the vagrant. Thus, the considerations referring to needs of people give rise to genuine moral reasons.

Having acknowledged that needs pertain to the conditions triggering numerous moral requirements, Kis might nevertheless object that moral requirements stemming from *the principle of fairness* have anything to do with needs. As it has already been indicated several times in the text, the principle of fairness is associated with instances of *exploitation* and *taking advantage of others*. What kind of taking advantage of others can we observe if one refuses to pay (or otherwise reciprocate) for the provision of some good which he needs but which he would have declined to receive had he been asked? *There is no unfairness in not repaying to the scheme that provides one with the goods which one objectively needs but which one definitely does not wishes to receive*. To sharpen the above assertion, we may imagine a situation in which an individual, even being in pressing need, turns down the help of those whom he despise. Some people balk at a thought to incur a debt of gratefulness or reciprocation to their enemies. Hence, Kis is right in claiming that a sound conception of presumptive goods cannot rest on the need interpretation.

SECTION 7.5. THE PREFERENCE INTERPRETATION

Let us now examine how the preference interpretation fares. It gets along well with the above objection to the need interpretation. For the preference interpretation assumes that people are

actually inclined to have the presumptively beneficial goods supplied. In other words, "any person P who receives the good actually ranks higher obtaining it (at the price of contributing his part to the cooperative efforts) than being free to refrain from contributing (at the price of forsaking the good) (Kis, 2002, 8). Since the agents, by assumption, favor the provision of presumptive goods, they do not reject it. Whether they need the presumptive goods the government furnishes or not, is not a matter here. What lies in the *core* of this interpretation is the agent's *actual preference*.

Kis suggests that we look deeply into the structure of this interpretation. To set up his criticism, he proposes to distinguish between two readings of the preference interpretation. The first reading Kis calls *the actual preference reading* and here is how he deftly characterizes it:

Suppose the scheme of public provision has a hypothetical counterpart where the same good is excludable and marketable. And suppose the counterfactual switch to this hypothetical scheme leaves everything else fixed, including P's structure of preferences, and his access to information. Now, let the following two statements be true. First, in the actual world, P does not express any sincere dissatisfaction with receiving the benefit at the cost of being made to contribute to the cooperative efforts. Second, P, if sincere, agrees that in the hypothetical world he would choose the good at a price equivalent to doing his part in the cooperative scheme, and he is sufficiently well-informed to make a reliable assessment as to his counterfactual preference. In this case, we are justified to claim that P actually prefers the good (at the cost of contributing to its provision) in the real-life situation (Kis, 2002, 8-9).

The second reading is called *the hypothetical preference reading* and its essence is vividly and pithily expressed in the following passage:

Suppose ... that as part of the switch to the market counterpart of the public provision the choosers themselves undergo significant changes: they become ideally rational and completely informed. In this case, we identify the relevant preferences of P not with those she actually holds but with the ones she would hold if she were ideally rational and in possession of complete information. The claim that a good is presumptively beneficial is transformed into one holding that for any member of the society in question, it is rational to prefer that good. So understood, the claim does not entail that the person who accepts the good in the counterfactual case does also accept it in the actual case. She might be irrational, underinformed after all. What the present account maintains is that to each really existing person one can add an ideal shadow person whose properties are exactly the same as hers except that the shadow person is supposed to be perfectly rational, completely informed, etc. Whatever the shadow person would prefer, we are allowed to say it is rational for the actual person to prefer or it is in the interest of the actual person (Kis, 2002, 9).

Now, it is only to be expected that the preference interpretation misses the mark if it is based on the hypothetical preference reading. For, as Horton notices with regard to the hypothetical consent theory:

[t]he crux of hypothetical consent is that it is hypothetical: that is, it does not involve showing that consent is in fact given; only that it would or should be given. Hypothetical consent, therefore, needs to be supported by arguments which establish that such consent is rationally or morally required in the appropriate circumstances (Horton, 1992, 82).

Mutatis mutandis, the same remarks are applicable to the hypothetical preference reading. One may never have been asked if one does prefer obtaining some good, but had he been asked and had he been completely informed and sensible, he might have chosen receiving the good. It might be *rationally compelling* for an agent to accept receiving the good. While this

is not an act of expressing one's actual preference, it may amount to the claim that one may *form the disposition* to prefer that good after one has carefully weighed all pros and cons. However, this claim does not make the hypothetical preference reading any more promising. This reading is helpless in explaining the generation of *moral* obligations. The actions of the ideal shadow person, who is endowed with perfect rationality and briefed on every detail, cannot determine the moral status of the really existing person. What is rational to do may not coincide with what is morally required to do. Here is how Kis captures this point:

The willing acceptance of a good binds one to reciprocate. The mere rationality of accepting the same good has no binding force. Hypothetical acceptance, to paraphrase a celebrated expression by Ronald Dworkin, is not simply a pale form of actual acceptance - it is not acceptance at all (Kis, 2002, 10).

With the hypothetical preference reading running aground, Klosko's position can be defended only by reference to the actual preference reading. Yet, though this reading is available to Klosko, it founders, according to Kis, as definitely as the hypothetical preference reading does. What objections does Kis level against the actual preference reading? In contrast to the hypothetical preference reading that tells us what an agent would be rationally compelled to accept, the actual preference reading is about what an agent is *actually* prepared to accept should he be given a chance. It makes the actual preference reading impregnable against the objection raised to trounce the other reading. Acknowledging this, Kis brings up a new objection specifically designed to show the flaws of the actual preference reading. This objection is based on *empirical* data and its aim is empirical refutation of the reading in question.¹⁴²

¹⁴² Apart from the empirical objection, Kis mentions the objection that "[i]n its actual preference account the theory is not genuinely nonvoluntaristic" (Kis, 2002, 9). Kis believes that the actual preference reading allows for a choice and hence does well without the reliance on a natural duty. I fail to see how this objection can cause a dent in Klosko's theory. Moreover, it is arguable whether the actual preference reading has anything to do with

The essence of Kis's empirical objection is compressed in the following assertion: "[i]t is simply not true that almost all people on almost all occasions prefer the necessary goods (at the given price of these) to not paying the price (and not having the good)" (Kis, 2002, 9). To buttress this assertion, Kis invites us to ponder over the so-called Case of the Culture of Slimness:

In country C the local culture defines an ideal of body constitution of which the overwhelming majority fall short if they are [not] on a minimally adequate diet. Suppose in C a special head tax is devised with the aim of funding government provision of adequate meal to all. The food provider is up to the taste of everybody. As things stand, almost everybody reveals a preference for "free" meal over becoming ideally slim. Now the theory of presumptively beneficial goods would predict that almost everybody persists in the same preference in a counterfactual world where the "meal for tax" scheme is replaced by food markets. But in C the prediction goes wrong. Once they have the choice between being properly [nourished] at the cost of paying the market price for the food plus falling short of the ideal of slimness ..., or becoming ideally slim plus saving money at the cost of being underfed, a very large part of the population will choose the second option (Kis, 2002, 9-10).

The immediate reaction to Kis's example is that it describes a situation which is exceptionally atypical. It seems unbelievable that many would go starving in order to match the canons of what is beautiful (or rather what is deemed to be beautiful at a moment, i.e. what is in vogue). To this, Kis has a robust answer. He points out that the Culture of Slimness is by far more

voluntary choice. ("Because the principle of fairness grounds obligations on the receipt of benefits rather than voluntary actions by recipients, it is not forced to construe political relationships as voluntary assumed" (Klosko, 1992, 148). Remember that we differentiate between 'the agent wants to receive benefits' and 'the agent wants to obligate himself by taking benefits', i.e. between the intention to use benefits and the intention to obligate oneself by using benefits. Voluntaristic theories are associated with the latter, while Klosko's account with the former.) Furthermore, had it really been conceivable to treat the actual preference reading as embodying the true choice on the part of an individual, Klosko would only have been happy about this. Klosko would articulate that the considerations of fairness form the foundation of his theory, not that of natural duties.

ubiquitous than it is usually reckoned. Recent research shows that it holds sway in Great Britain and is on the increase all around the world.¹⁴³ However dangerous to health this Culture might be, the fact remains that many are the followers of the Culture's trends. In short, the Case is not as atypical as it might be supposed to be on first thought.

SECTION 7.6. KIS'S CONCLUSION

Hence, Kis's example represents a situation in which a clearly presumptive good (adequate nourishment) is not really preferred by a great many citizens of a given state. If it is not preferred, then there is something wrong with the actual preference reading as the conception of presumptively beneficial goods. *Since there may be found empirical cases where a presumptive good would not be chosen if it were up to people to decide, the actual preference reading falls flat.* This is what Kis concludes.

SECTION 7.7. REMARKS AVAILABLE TO KLOSKO

I think Kis's conclusion is accurate. Indeed, there may be instances in which some presumptive good (basic nutrition or another) is not preferred as much as it should be in accordance with the conception of presumptively beneficial goods under consideration. However, I also think that this conclusion is not damaging to the actual preference reading in particular and to Klosko's account of the fairness principle in general. To show this, Klosko, as I believe, might put forward two remarks.

¹⁴³ Apart from the references provided by Kis, Etcoff's *The Survival of the Prettiest* (2000) and especially Wolf's *The Beauty Myth* (2002) may be consulted.

The first remark concerns the nature of adequate nourishment as a good provided by the government. As far as it can be imagined, this good is only *non-excludable* (in the setting of Kis's example). It is *not non-avoidable*, however. Someone may be levied with the tax and still may not consume the "free" meals. The individual cannot avoid being exposed to a possibility to feed himself properly and free of charge. Nevertheless, he may never make use of that possibility. If presumptive goods fell into the category of avoidable goods, Kis's example would incline us to radically reconsider the value of the reading in question. However, the essential goods, Klosko has in mind, are emphatically non-avoidable. National defense, public order, and environmental control are impossible to refuse once they are delivered. Unlike eating "free" meals, one cannot stop enjoying safety and preservation of bodily integrity. Hence, Klosko might just challenge the relevance of the Culture of Slimness case to this theory.¹⁴⁴

The first remark, just presented, is of a limited power, however. It is effective against the particular example brought up by Kis. Should there be found another (allegedly) presumptive good, being this time evidently non-avoidable (think, for instance, of law and order) but also not passing the test of actual preferences, the reliance of the avoidability versus non-avoidability distinction will not be helpful. There is no a priori guarantee that such a good cannot be found. The absence of this guarantee would keep Klosko's theory in constant jeopardy. To eschew this uncomfortable state of affairs, Klosko might offer the second remark.

The second remark says that the actual preference reading gains credibility if we focus not on a *single* presumptive goods but on a *package* of such goods. Kis's correct observation was that

¹⁴⁴ As I have noted (see chapter 3) Klosko, when he tries to broaden the range of examples for presumptive

not all people on all occasions prefer each presumptive good separately. It is true that in some political associations adequate nourishment is often forgone and unhealthy slenderness pursued. However, from this it does not follow that the great majority of people on almost all occasions do not actually prefer a package of presumptive goods that the government furnishes. Even if it is imaginable that someone actually lacks a preference for law and order, it is hugely improbable that at the same time he lacks preferences for national defense and environmental control. And Klosko might accentuate that what really matters is not a single preference for a particular presumptive good but an overall preference for a comprehensive package of such goods. Hence, Klosko might conclude that only in truly exceptional cases¹⁴⁵ is it possible to assert that an individual does not hold a preference for any of the supplied presumptive goods.¹⁴⁶

SECTION 7.8. KIS'S ANSWER TO THE SECOND REMARK

To this remark, Kis might answer that it is not the point that only those who inhabit the fringes of a society are indifferent towards a package of presumptive goods provided by the government. He might concede that there will indeed be only few who cancel out from the list of presumptive goods all items as such which they do not prefer having furnished. The point, he might insist, is that there is something incongruous within the concept of presumptive goods if a clearly indispensable good (as adequate nourishment is) turns out not to be

goods, is not entirely clear as to whether presumptive goods cannot also be avoidable. I think, however, that a correct interpretation of his position is to insist on non-avoidability of presumptive goods.

¹⁴⁵ And exceptional or bizarre cases do not pose a threat to Klosko's theory. As Kis admits, "the theory allows for the presumption of beneficial nature of basic goods to be open to rebuttal". And he further adds, "[s]o long as it comes to be rebutted in the case of eccentric people only, the theory holds" (Kis, 2002, 10). Incidentally, the fact that the theory does not demand and does not hinge on the claim that absolutely all must benefit from the provision of presumptive goods, is *an advantage overlooked by Wellman*. He believes that Klosko's theory cannot tackle the problem of "rugged individuals or members of larger separatist groups" (Wellman, 2001, 739). That "some citizens ... would prefer that the existing cooperative (sic) not continue" (Wellman, 2001, 739) makes Klosko's theory realistic rather than seriously flawed.

preferred by many people. There is no doubt that a package of presumptive goods is very likely to be preferred by everyone. But what lies in the kernel of Kis's objection is the very definition of a presumptive good. Kis might say, 'Here is a good, without which it is hardly possible to lead a satisfactory life, and it is not preferred. Thus, there can be a presumptive good which is not preferred. But this is a patent contradiction within the actual preference reading. Therefore, the reading must be rejected'.

SECTION 7.9. TIGHTENING THE DEFINITION OF PRESUMPTIVE GOODS

Klosko might deal with this criticism by making the definition of presumptively beneficial goods less fuzzy. One way to do that is to emphasize that being indispensable does not amount to being presumptively beneficial. Many would agree that friendship and love, for instance, are indispensable for a satisfactory life. This, however, does not motivate a government to invest in the schemes that declare their readiness to provide friendship and love to the citizens. Klosko might go on maintaining that for a good to be presumptively beneficial it must meet three conditions: (a) it must be non-excludable and, moreover, non-avoidable¹⁴⁷, (b) it must be vital for a decent life, (c) it must be preferred by the bulk of the population of a country.¹⁴⁸ (I take it for granted that presumptive goods are produced by

¹⁴⁶ This remark bears similarity with the package argument in the case of discretionary goods that I have discussed in section 5.9.

¹⁴⁷ It seems that only if we are prepared not to count the satisfaction of basic bodily needs among presumptive goods (and remember that Klosko records this goods as presumptive), can we insist on the condition of non-avoidability. But I want to venture the claim that despite appearances the satisfaction of basic bodily needs is in fact a non-avoidable good. Normally one cannot entirely stop eating, drinking and washing. Though theoretically these activities can be avoided by an agent, practically they cannot, or at least cannot for a long period. Thus, the satisfaction of basic bodily needs is non-avoidable. This claim should not run counter to the contention that in Kis's example the provision of 'free' meal is avoidable. It is absolutely possible for a citizen of country C to eat somewhere else than at the 'free' meal scheme.

¹⁴⁸ These three conditions may be satisfied by a good which people want rather than need. Recall the example about the state provision of plastic surgeries (section 7.3), so that men acquire the look of Kirk Douglas (with a dimpled chin) and women the look of Merlin Monroe (with ample breasts). This good may be non-excludable and non-avoidable (in the sense as the satisfaction of basic bodily needs is) because (i) without a plastic surgery one's life becomes tragically miserable and (ii) for everyone it is a pleasure to see 'attractive' people in streets (the point I owe to Gijs van Donselaar). It may be vital, since without the Douglas chin and the Monroe breasts

cooperative effort of many people; hence, 'the cooperative nature of a good' condition does not figure in the above list.¹⁴⁹) Looking at Kis's criticism, Klosko might hold that in country C the provision of 'free' meal is not a presumptive good since conditions (a) and (c) are not met. Meeting condition (b) alone does not suffice to render a good presumptively beneficial. Therefore, as Klosko might conclude, no matter how pernicious and insidious malnutrition could be by "endangering the required protein intake and normal fat metabolism" (Kis, 2002, 10), the 'free' meal scheme is not a presumptive good.

In addition to the above, it is worth stressing that neither choice (the occurrence of which it would be unlikely to establish) nor preference (which is a mere disposition to choose) is the basis on which obligations of fairness in Klosko's account spring up. The basis is the receipt of vital and indispensable goods and benefits. People are presumed to want such goods to be delivered. If this presumption leaves out some weird individuals living on the margins of society, Klosko's theory still holds good. If, however, a considerable number of people start declining the continued receipt of some essential good, then probably this good has ceased to be essential. Yet, if the society remains dangerously divided as regards some 'indispensable' goods, then, as has been indicated, perhaps the best way out is to stick to democratic decision-making procedures and underscore the importance of the whole package of vital goods.¹⁵⁰

people would feel stigmatized. And of course it may vehemently be sought by everybody. And, in addition, it may be supplied only through centrally-governed coordination (the important condition accentuated by Klosko and often overlooked by the commentators of his work). Now, if this incredible sequence of events happens, we will accept that the plastic operation scheme is a distinct presumptive good. But such acceptance will not undermine Klosko's theory. People will be castigated and punished if they do not contribute to the scheme at issue. And this will be fair.

¹⁴⁹ It is worth noting that according to Klosko's understanding of the principle of fairness (and this is a correct understanding), cooperation stands for a common effort in production and consumption of benefits that cannot (or, I may add, should not) be produced or consumed in any other way than jointly. Cooperation does not necessarily mean the existence of personal bonds. It follows from this that "such related notions as emotional ties or feelings of solidarity within the group are not required for the creation of obligations" (Klosko, 1992, 62).

¹⁵⁰ Here is a problem: can those who are dissatisfied with some vital good claim that they agree to forgoing the provision of this good and to terminating their support for it? Remember that one of the features of presumptive

SECTION 7.10. TAKING STOCK

To sum up, in this chapter I have shown that Klosko has enough resources to rescue his account of the principle of fairness from the presumptively beneficial good objection, to which it has been subjected by Kis. The concept of presumptive goods, if understood along the lines of the need interpretation, succumbs to the objection which says that if an individual objectively needs something but refuses to receive it, then the scheme which attends to this need cannot claim that the individual stands under an obligation of fairness to reciprocate. The status of 'being in need' may trigger a natural duty of assistance to come to the fore. However, by itself, this status does not generate the obligations of fairness.

Further, I have discussed the preference interpretation which falls into two readings: the hypothetical preference reading and the actual preference readings. The former has been found wanting on charges that the hypothetical preference is not a form of acceptance, but rather a form of specification of other moral principles.¹⁵¹ The latter has been defended against Kis's objection, which holds that some governmentally supplied goods, usually conceived of as surely presumptive, may turn out not to be such under closer scrutiny. It has been argued that Klosko's reply to this objection might be twofold. In the first situation: if it becomes clear that a good, hitherto held as presumptive, ceases to be such, then it has to be dropped from the list of presumptively beneficial goods furnished by the government. In the second situation: if a good, listed as presumptive, is sincerely found by some (not the majority) people as redundant, i.e. one they can do without, then this good is not

goods has been the feature that such an alternative is not really available. Let us hope, however, that cases when people of one state are at variance with each other over which goods are essential, will be exceptionally rare.

¹⁵¹ The principle of fairness does not work in cooperative enterprises where some part of actually willing participants suffers objective losses or is objectively denigrated and abused. The appeal to hypothetical acceptance helps to better delineate the range of the principle of fairness. (Hypothetical choice, for instance, is linked with reasonableness in Klosko, 1992, 75). The similar thought was hinted at by den Hartogh (2002, 67).

automatically downgraded. If such a situation really takes place (and it is expected to be rare), then those people, for which the good is unnecessary, are asked to consider the package of all presumptive goods as the foundation of their obligations of fairness. Since Klosko's theory assumes that there will be no persons who decline the whole package (except bizarre cases), it is safe from sporadic renouncements of a certain presumptive good by a certain small group. And, as it was stressed in section 5.9, the composition of presumptive good packages is a matter of politics. Given that political struggles take place in sufficiently liberal and democratic states, we may be fairly sure that this composition will not exhibit despotic or other morally condemnable tendencies.

Now, I will turn to presenting the last two objections which Klosko's theory runs into. The first one is the particularity objection. It will be argued that this objection can be tackled by Klosko and shown not to be dangerous. The second one is the objection from redistribution. This objection will turn out to be a serious one to the extent that Klosko will have to modify his account in order to answer it. I will proceed to discuss the particularity objection and then I will take on the objection from redistribution.

CHAPTER 8. THE PARTICULARITY OBJECTION

SECTION 8.1. THE PARTICULARITY REQUIREMENT

As I have indicated in section 2.5, a cogent theory of political obligation must satisfy the particularity requirement. In the same section, I have expounded on what this requirement signifies. Here, it suffices to recall that "we are only interested in those moral requirements

which bind an individual to one *particular* political community" (Simmons, 1979a, 31, italics in original). To meet the particularity requirement means to "characteristically mention special relationships with the state into which an individual can enter" (Simmons, 1979a, 34).

What kind of special relationships does Simmons have in mind here? Simmons is clear that such special relationships may be exemplified by promising, consenting or willing acceptance of benefits.¹⁵² For what happens when an obligation of fulfilling a given promise is incurred? The individual that stands under this obligation owes it to a specific agent (be it another individual or institution¹⁵³). This specific agent is singled out from all conceivable agents by the fact that the promise is given to him/it. Consenting or willing acceptance of benefits are similar in this respect. In the cases under consideration, it is impossible to incur an obligation without creating a special link between the obligee and the obligor. This brings us to acknowledging that *voluntarily assumed obligations are all special* in the sense that they all satisfy the particularity requirement.

SECTION 8.2. OBLIGATIONS ARE PARTICULAR MORAL REQUIREMENTS

Now, let us pause for a moment. In chapter 2 I have touched upon the characteristics of moral obligations. One of the characteristics has been a *one-to-one* relationship between the party that owes an obligation and the party that has a right to see the obligation discharged. Moral obligations have been proposed to be seen as particularized moral duties. Upholding this characteristic, we should say that *all moral obligations are special whether they are assumed voluntarily or not*. Thus, what is the meaning of Simmons's particularity requirement when it

¹⁵² See Simmons, 1979a, 34.

¹⁵³ To avoid possible misunderstandings (like bringing upon oneself an obligation to a non-human agent), remember that we treat institutions as organized bodies of people (even though the set of people of each institution may change, and will change, in the course of time).

is assessed from the perspective which states that all moral obligations establish *particular* bonds between the related parties? For if there are political obligations, then they are, by definition, particular and therefore the particularity requirement is *trivially* satisfied.¹⁵⁴

SECTION 8.3. THE FALSE CONSCIOUSNESS CLAIM

Simmons does have an answer to the above question and it is quite surprising. He says that in fact people *do not have* political obligations and the widespread belief in political obligations is explained away by the reference to *false consciousness*. Put differently, Simmons argues that no theory in political philosophy is capable of substantiating political obligations.¹⁵⁵ As a result, the moral bond between the states and their subjects cannot be conceived of as political obligation. Simmons claims that some laws and governmental instructions (probably a great many of them in liberal democracies) should be abided by because they are independently required by basic moral precepts ruling in a society.¹⁵⁶ That many people are convinced that their political obligations are incumbent on them is nothing else but a consequence of indoctrination. As Simmons plainly asserts in *Moral Principles and Political Obligations*, "[f]or what belief can better serve the interests of one's political leaders than the belief that all are specially bound to support their government and obey the law?" (Simmons, 1979a, 195). In his further writings he remains non-abating in his negation of political obligation and in his support for the false consciousness claim:

¹⁵⁴ It must be clear by now that indeed if we can uphold the claim that citizens of a given state bear political obligations towards the state's government, then the particularity requirement is met. The primary difficulty is, of course, to vindicate the above claim.

¹⁵⁵ This is the main conclusion of his *Moral Principles and Political Obligations* (Simmons, 1979a).

¹⁵⁶ "[W]e often have reasons, or even duties, to do what the law requires, quite apart from its being commanded by law" (Simmons, 1979a, 194).

[While] beliefs in political obligation (and the habits of obedience, subjection, or loyalty such beliefs engender) clearly serve the interests of particular powerful classes of persons (those possessing ... political power, those endeavoring to coercively impose their favored moral or religion vision, and so on) our more basic moral beliefs (e.g. in the wrongness of murder or the injustice of slavery) quite plainly do not (Marxist claims to the contrary notwithstanding). Suggestions of manipulation and inculcation as the source of our beliefs are thus far more convincing in the former case (of beliefs about political obligation) than in the latter. Beliefs about political obligation (insofar as we actually have any) are, I think, "suspect" as a kind of "false consciousness" that it serves the interests of powerful others to induce in us (Simmons, 1996a, 34-35).

Klosko takes an effort to deflate Simmons's claim that people's beliefs in political obligation are the fruits of purposeful and insidious brainwashing. What I will do next is to briefly indicate in which way Simmons's false consciousness claim is found defective by Klosko and to elucidate why Klosko is so adamant in showing that this claim is specious and unsustainable.

It seems plausible that those who control power would try to entrench their positions by the inculcation of views, notions and dogmas that are favorable to their retaining to hold sway. Certainly, such a temptation is open to them.

'Education and artifice of politicians', to quote Hume, have long been used to foster people's sense of obligation to their governments. This is overwhelmingly clear in countries in which educational systems are tightly controlled by the government, but a good case could be made for its existence in liberal societies as well (Klosko, 1992, 25).

However, from the statement that a government might have manipulated its subjects' political beliefs it does not follow that it did. Moreover, it also does not follow that the manipulation would bring the effects it was meant to. It may happen, for instance, that a totalitarian state with its ideology permeating all aspects of social life is helpless to change people's judgement that it is a corrupted state. Thus, all that Simmons achieves is to raise a suspicion towards the prevailing political beliefs. And this much can be granted by Klosko without retreating from his position by a iota.

Klosko impugns Simmons's claim in another way too. He submits that we extend Simmons's idea and agree that "most (if not all) of our moral and political ideas are the result of societal conditioning" (Klosko, 1992, 25). Having extended the sphere of manipulation, we encounter the problem: if all our moral and political views are socially conditioned, then we should throw out all of them; but this is both morally undesirable and practically impossible. Therefore, our views, despite being socially conditioned, are to be seriously treated. Klosko writes:

Theorists ... are forced to rely on the general facts of our moral experience, unless they can clearly distinguish between our convictions in general and some class of them that are suspect for various reasons. For instance, the intuitions of people who are drunk or deranged, or who have direct personal interests in the cases under consideration, should be given less weight than those of disinterested, sober people who are not mentally ill. Clearly, the intuitions of indoctrinated individuals fall into this class. Therefore, [a moral theorist] will not be able to argue from the intuitions of indoctrinated people (Klosko, 1992, 25).

That much conceded, Klosko launches an attack by asking how does Simmons intend to differentiate between those who are indoctrinated and those who are not? As long as

Simmons's answer to this question is not forthcoming (and it is not), we are not justified to disregard people's political views, unless it is manifestly shown that some of them are seriously tainted, as in the above example: the intuitions of people with vested interests are sullied. In other words, we should give admission to all views, save for those which are shown to be kept on clearly unjustifiable grounds (like the white slaveholder's view in the early nineteenth century America that black women should labor in fields because they breed with incomparably greater ease than white women and without any complications¹⁵⁷). Hence, Simmons's accusation that the belief in political obligation ought to be discarded simply because it is a fruit of indoctrination is untenable.

It is important for Klosko to show that Simmons is wrong giving prominence to the false consciousness claim because Klosko does think that what people believe gives support to his theory. For one thing, as it has recently been demonstrated, people construe political obligations along the lines of reciprocity and fairness.¹⁵⁸ And this piece of news lends support to Klosko's account. For another thing, it is indubitable to Klosko that "the existence of particularized political bonds is one of our basic political beliefs" (Klosko, 1992, 25). And this gives a rationale for Klosko's overall research. To be sure, Klosko is distinctly aware of the fact that a believed (however enthusiastically) proposition *is not necessarily* a true proposition. What decides on the correctness of a proposition has nothing to do with whether or not this proposition is deemed to be true by whatever number of people. However, it is also Klosko's opinion that in moral matters popular beliefs should be consulted with and should be used as indicators of where we should look for accurate answers.

¹⁵⁷ Bush, 1990, 15.

¹⁵⁸ See Klosko, 2001.

Let me make the following remark now. It should be clear by now that Klosko challenges both Simmons's assertions: that there is no cogent theory of political obligations and that we should jettison our beliefs in political obligations because there is a suspicion that they are inculcated in us by people who have rather evil intentions. Against Simmons, Klosko argues that we should pay attention to our basic political beliefs and that we can defend a persuasive theory of political obligations.

SECTION 8.4. THE COHERENCE METHOD AND KLOSKO'S LINE OF REASONING

Once more, Klosko is unwavering that "the existence of strong general feelings that we have political obligations ... is supported by our most basic feelings about politics" (Klosko, 1992, 22). And he takes it as obviously true "that most people believe they have obligations to their governments" (Klosko, 1992, 22).

Further, Klosko subscribes to the validity of *the coherence method* when it comes to judgments on moral issues. This method is an outcome of the centuries-long development of thought in political and moral philosophy. I would sidetrack my reasoning in this chapter if I paid detailed attention to what the coherence method consists in. I will constrain myself to a few remarks. The coherence method is about analyzing our underlying moral convictions and comparing them with current moral judgments. Within this method, it is assumed that (a) a possibility to distill our fundamental moral rationales for assessment of human actions exists (though the result may and need not be perfect); and (b) new moral evaluations which stem from our everyday moral experience can (satisfactorily, not necessarily perfectly) be harmonized with those fundamental rationales into one coherent system. The process of distillation results in the discovery of moral principles capable of guiding our behavior. Those

who use the coherence method pursue *an adequate degree of consistency* between our moral intuitions and the principles we accede to.

Now, what Klosko does is like the following: he proposes to look at our political beliefs and derive principles that would support them. He notices that people believe that they have political obligations and also that those obligations are particular, i.e. owed to a concrete government. Then, he makes a case for the principle of fairness as the most well-balanced principle fitting the system of those beliefs. Klosko constructs an elaborated argument to support the view that people bear political obligations towards their states. In the dust of the battle, Klosko forgets to test his account against the particularity requirement. By inertia, he rightly assumes that if he has shown that the receipt of certain public goods (like physical security or the provision of basic health measures) generates moral obligations with specific content, he has also resolved the particularity problem. The task of this chapter is to show that indeed Klosko's account of political obligations can resist criticism rooted in the particularity requirement.

SECTION 8.5. A REMINDER OF THE POLITICAL OBLIGATIONS WE ARE AFTER

Below I want to augment Klosko's account and argue that this account is indeed capable of overcoming the hurdle posed by the particularity requirement. Before I do that, I will remind two things. First, in this dissertation my interest is confined to political obligations understood first and foremost as obligations to obey the law of a given country and to follow its regulations. Along with Klosko, I do not make use of the thick understanding of political

obligations.¹⁵⁹ Hence, within this context, to show that the particularity requirement is satisfied is to demonstrate why an individual is obligated to comply with orders of some particular government (and not with orders of any other one). To demonstrate, in addition, the existence of feelings of loyalty or commitment on the part of the individual is considered here not to be a *sine qua non* of a cogent theory of political obligation. The individual's loyalties and commitments towards his political association are *extra* qualifications. Second, I do make a distinction between the resident aliens and citizens. The latter are supposed to stand under more obligations than the former. Also, the obligations themselves are supposed to be weightier for citizens than for aliens.¹⁶⁰

SECTION 8.6. KLOSKO'S ACCOUNT AND THE PARTICULARITY TEST

How does Klosko verify his account? How does he show that the particularity test is passed? What evidence does he gather to confirm the success on the test? We can proliferate questions, but we can hardly find adequate answers to them in Klosko's oeuvre. As I have said above, his views on the particularity requirement are scarce and he hardly tries to help us grasp what his precise position on that matter is. The following quotation is fairly characteristic:

Though a legitimate government can justly claim a right to be obeyed by its subjects, it remains to be explained why this is so. The problem of particularity is especially severe here. In the last paragraph are listed a number of governments that I ... take to be legitimate. But which one of these does a given individual have an obligation to obey? In some sense, it is clear, one's obligation is to obey the

¹⁵⁹ For the definition and differences between the thick and the thin understandings, see section 2.1. As to Klosko's views on political obligations, see Klosko, 1992, ch. 1.

¹⁶⁰ See chapter 2 for additional details.

legitimate government that 'applies' to one. But if this is true, obviously, we must explain how a given government applies to one (Klosko, 1992, 70).

I will not expand on the criteria of legitimacy Klosko adheres to. It suffices to admit that when a government meets standards of both substantive and procedural justice (and these standards are to be reasonably moderate), it is deemed to be legitimate¹⁶¹. Surely, many governments in Western Europe, for instance, may fulfill these standards and qualify as legitimate. Now, in the passage quoted above what is most interesting for us is Klosko's reference to the application condition. *The problem of particularity is resolved if it can be shown that the application condition is satisfied.*¹⁶² And because Klosko is convinced that his account of the principle of fairness does not have problems with the application condition, it is clear that he thinks that the particularity requirement is met within the account.

What makes Klosko believe that the application condition is unproblematic for his account? I suggest that Klosko derives confidence from *the view that once the acceptance condition is met, the application condition is met a fortiori*. For if an individual willingly and knowingly

¹⁶¹ Klosko follows Pitkin (1966) in his view on a good account of legitimacy (Klosko, 1992, 69-70). It is worth noting that there are debates about the proper criteria of legitimacy. There are those who would never adhere to what Klosko posits (e.g. Simmons, see Simmons, 2001) and those who embrace Klosko's criteria (e.g. Wellman, 1996, or Waldron, 1993b, with additional emphasis on capability and salience of states; but see Waldron, 1993a, where Waldron favors a concept of legitimacy which may be characterized as consent-based). There are also those whose concept of legitimacy is at great distance from Klosko's (e.g. the Weberian legitimacy, which does not belong to the species of concepts of moral legitimacy, see Simmons, 2001 for the arguments against the Weberian concept of legitimacy; or Nozick's legitimacy, which is based on the notion of pedigree and is hardly moral in its essence as well, see Nozick, 1974). My remarks on legitimacy are scant since I focus on the problem of political obligation. Those who stand by the correlativity thesis will regard legitimacy as inherently connected to political obligation (cf. Dworkin, 1986, 191), whereas those who deny the thesis will try to substantiate the two concepts separately (cf. Copp, 1999, Wellman, 1995, 2001). I presume the accuracy of the correlativity thesis (see section 2.2), none the less I leave open the question of how much of what I argue in the dissertation concerning political obligation is germane to the discussions on legitimacy.

¹⁶² This is a message to remember after reading Simmons, 1979a, 30-35 and chapter VI. To be sure, the statement that the satisfaction of the application condition brings about the passing of the particularity requirement, is almost a deductive corollary from the signification of the particularity requirement. What is not evident, however, is whether the application condition can be satisfied by other means than voluntary acts of agents. Simmons, as has been admitted already, is of opinion that only promising, consenting, active and willing acceptance of benefits and the like are relevant examples of instances when the application condition is met (see Simmons, 1979a, 147-152).

accepts the benefits, which some organization is ready to bestow on him, does it not establish that this organization applies to him? Certainly, out of all organizations capable of securing the benefits in question, this particular organization becomes salient in virtue of being chosen by the individual. Since it is chosen, there is little doubt that it applies to the individual.¹⁶³

The attentive reader may notice, however, that the satisfaction of the acceptance condition was not straightforward in Klosko's theory. There was no talk about 'choosing'. Klosko did not tackle the excludable schemes. Instead, he focused on big, non-excludable schemes, in which the acceptance condition was met only because they provided presumptively beneficial goods that every individual was supposed to prefer to be served. Hence, it may be said that the mentioning of 'choice' should be quite unsettling for what Klosko argues for.

Klosko might give the following answer to the attentive reader. It is true that the overwhelming majority of people do not choose their governments in the sense of traveling around the globe and picking one they like most. However, the acceptance condition is not that much stringent as to require such traveling. To satisfy it, it is enough to show that most people in a given territory actually prefer to have certain goods supplied to them by a given institution. People value safety and choose to be protected. They value their health and choose to have the pollution-abatement agency. I have explained above, in chapter 3, that Klosko's resounding emphasis on presumptively beneficial goods forestalls doubts as to whether people will accept those goods. Thus, since an individual actually prefers the presumptive goods, he

¹⁶³ What would happen if the individual chose to avail himself of the benefits of one organization at time t1 and right after that, at time t2, he turns his back to this organization and accepts benefits from another organization, and then at time t3 he decides to say "Good Bye" to the second organization and waits for the benefits from yet another organization? What this example points to is *the ambiguity of the notion of 'choice'*. It is better to think of choice not only as an act located at one point on the time axis (e.g. choosing a dish from a menu), but also as a temporarily extended act (e.g. choosing a friend). Thus, if the individual receives and accepts the benefits produced by some organization for a sufficiently long time, this means that that individual chooses the organization in question.

accepts their provision. And since he accepts their provision, the institution, which provides those goods, applies to him. In short, the application condition is satisfied if we deal with presumptively beneficial goods.

SECTION 8.7. THE APPLICATION CONDITION IS TOO EASILY SATISFIED

The attentive reader, being critically disposed towards Klosko's account, may persist with his objections to the claim that Klosko's account passes the particularity requirement. This reader may drive our attention to the observation that the application condition is satisfied too easily, so to speak. In other words, the critically minded reader may say that if we accede to what Klosko asserts in the above paragraph, then there will follow ramifications which wipe out our confidence (if there was any) in successful resolution of the particularity problem by Klosko. To substantiate his claim that the application condition is too easily satisfied, the reader may proceed along the following lines.

Imagine state X, which is legitimate according to Klosko's standards. People who live under its jurisdiction enjoy the provision of presumptive goods and the ways the state institutions function are reasonably just. Imagine next that a neighboring state Y conquers and occupies state X. Afterwards, government Y establishes its rule of law and supplies all other essential benefits. Also, it changes the previous state institutions but the new are similarly just and fair. (It goes without saying that principles of justice can be administered in many different, but equally satisfactory, ways. Cf. Waldron, 1993b.) Should citizens of state X obey now government Y? As Klosko's theory stands, we cannot find in it reasons why they should not. As far as the theory's tenets are concerned, the basis for political obligation is the receipt of indispensable and vital goods. Government Y effectively facilitates their provision. It would

be unfair if individual A would make use of the supplied benefits and would not do his part in the scheme which produces these benefits.¹⁶⁴

This example is meant to show that where we expect no obligations to exist, Klosko's theory tells us that the obligations are present. Think of the following: a man loves a woman; the latter dies; next day the man meets another woman and begins to love her. What would be our reaction to the man's behavior? Under normal circumstances, we would say that the man did not really love the first woman if he has so easily entered into another affair. Similarly, if X-ies are supposed to be obligated to government Y, then there was something wrong with their obligations to government X, or, alternatively, they do not really have obligations to government Y. The ease with which the obligations to government X are ceased and obligations to government Y are acquired is meant to exert a serious blow on the edifice of Klosko's theory.

What might be Klosko's answers to the example about state X? First, Klosko might say that the invasion of a neighboring country renders government Y illegitimate, therefore no obligations towards it on the part of citizens of state X can be detected. Second, Klosko might notice that after the change of governments, many X-ites may, as a matter of fact, not comply with the laws of the new rulers; and if the majority disobey, it will be unfair to require from an individual that he be obedient.

¹⁶⁴ Compare this example with what is advanced by Copp: "Imagine that a drug-smuggling cartel organizes a coup and overthrows the democratically elected government of Exemplar. ... Suppose that the rogue state serves the goals of its residents just as well as did the former state of Exemplar. Then ... the rogue state would be just as legitimate as Exemplar. But our intuition is that although Exemplar was legitimate, the rogue state ... was not. To have the right to rule is to have a moral property importantly different from that of being efficient in ruling How could efficiency give the rogue state the right to rule. Many things that we are good at doing we have no right to do" (Copp, 1999, 3 and 22).

However, the critic of Klosko's account might press his point and reply to Klosko's first answer that the non-occupation of a neighboring state does not figure among the criteria of legitimacy, as Klosko lists them.¹⁶⁵ Thus, the problem with legitimacy can be ruled out. His reply to the second answer might be that it is an entirely contingent matter of how many people follow the laws of the new government. He might agree that many are likely not to abide by new authority's directives (especially immediately after the occupation), but what if the majority do comply? It seems that from the resources available to Klosko within his theory, he cannot parry the fault-finding remarks of the critic.

It appears as if Klosko faced a *dilemma*: either he holds on to his conception of acceptability and then the application condition is satisfied in cases where it should not be satisfied, or he makes the conception of acceptability more rigorous (through the concentration on the wills and performances of agents) and then this account of the fairness theory boils down to some theory of voluntary obedience. Klosko's situation also seems to be exacerbated by realizing that the above dilemma is a genuine one. There is no third way. The conception of acceptability can either involve the voluntary actions (like consenting to having the benefits conferred) or not involve these actions. Can Klosko, nevertheless, escape this dilemma?

I will argue for the affirmative answer to the above question. The dilemma can be surmounted by contending that its first horn is defective. Klosko might say that we should give more thought to the example about occupation. This example is designed in such a way as to extract

¹⁶⁵ A minor remark: the non-occupation of a neighboring state should not be confused with the peaceful co-existence with neighboring states. Occupation is a short-term action, whereas peaceful co-existence is extended in time. From the fact that some state (or part of it) was annexed, occupied, or in any other way attached to another state, it does not follow that peace is necessarily compromised, though often it may be. For instance, the partition of Poland in the eighteenth century improved the relations between three contemporary superpowers: the Austro-Hungarian Empire, Prussia and the Russian Empire. The partition dissolved the tension between these countries and brought about steady economic growth (on the Polish territory included). Thus, while the peaceful co-existence requirement may reasonably be added to Klosko's standards of legitimacy, the non-occupation requirement need not to.

from us a feeling of indignation toward being obligated to comply with the invaders' commands. Of course, being conquered by an aggressor and being thrown into submission do not incline one to growing a positive attitude towards plunderers. Also, it is entirely plausible that instead of obeying the new rulers, the citizens of the invaded state are likely to revolt against them.

Having depicted the picture in this way, Klosko might maintain that there is a serious equivocation with regard to the nature of the new authority. On the one hand, the example about occupation tells us that the new government takes all possible measures to run the country justly. Moreover, it is deemed capable of providing all essential public goods to the full extent. The image of the new authority, coming out from this perspective, is compatible with a situation when a venal and indictable government is overthrown by a just and democratic neighboring state. At any rate, the stress is put on the positive qualities of the new administration and on its capacity to mete out justice in its territory. On the other hand, the example about occupation can be interpreted by using the words like 'aggressor', 'invaders', 'plunderers', etc. From the perspective of this interpretation, the new authority can be envisaged as ruthless, brutal, and villainous.

Now, Klosko might contend that the most important feature of the two interpretations of the example about occupation pertains the question about *support*. Viewed from the first perspective, the new authority bears all chances to be backed by a great deal of people. Viewed from the second perspective, however, the new authority is hardly able to command general support. The question about support is decisive here. Remember that according to the tenets of the fairness principle, an individual is not obligated to go on with contributing his

share to an enterprise, from which he derives benefits, if some critical number of the members of the enterprise are freeloaders.¹⁶⁶

Thus, contrary to what the example about occupation (allegedly) inclines us to believe, Klosko may insist that if the new government establishes just institutions and issues just laws and directives, and if many abide by those laws and directives, then one is fairness-bound to do his part and to defer to the commands. The logic is simple: if one shares in benefits which allow one to lead an acceptable life, one ought to share in burdens which must be borne so that the benefits accrue. And if some think that the application condition is too easily satisfied, then they should be given the answer that it does not matter how easily the condition is satisfied - what matters is that it is satisfied in a justifiable way.

SECTION 8.8. THE MASON OBJECTIONS

Klosko's defense of his theory might be found erroneous by those who, like Mason, construe political obligations as obligations which include the obligation "to participate fully in public life ... to vote, to take one's turn at jury service, and to keep a watchful eye on government and speak out when it acts unjustly" (Mason, 1997, 428).¹⁶⁷ They would be disappointed by the way Klosko handles the occupation example. For one thing, they would claim that the group of compatriots is the *only* relevant group in which political obligations arise. And since

¹⁶⁶ There is a difficulty here that can be expressed as follows. What if an enterprise's aim is to save someone from imminent death? Is the individual justified in this case too if he stops trying to help, given that the others have stopped before him? The next two chapters seem to be a more appropriate place to discuss this difficulty. Thus, I will put it off till then.

¹⁶⁷ It is true that Mason speaks about special obligations to compatriots and does not use the term 'political obligations'. Yet, it would not be uncharitable to interpret his obligations to compatriots as political obligations. One indication supporting this assertion may be the fact that Mason refers to Parekh when he characterizes the special obligations to compatriots. And Parekh describes precisely political obligations when he writes that citizens are obligated "to take an active interest and to participate in the conduct of public affairs, to keep a critical eye on the activities of the government, to speak up against the injustices of their society, to stand up for

the annexation does not automatically extend the group of compatriots, the initial group remains unchanged. Thus, there cannot be political obligations going beyond this group. And this seems to contradict Klosko's suggestion that the people from the annexed territory have political obligations towards the new authorities which represent the population as a whole. For another thing, they would claim that it is implausible that the feelings of connectedness, of loyalty, or of relatedness can emerge in a short period of time. And since without those feelings one cannot fully participate in public life and give priorities to the needs of one's compatriots, no special political obligations can exist in the occupation example.

Before I show why the above charges should be lifted, I want to draw attention to two qualifications. First, in this dissertation I do not consider theories of political obligations based on associative obligations.¹⁶⁸ The way Mason and Parekh conceive of political obligations approaches the way political obligations are seen by the theorists of associative obligations. As a philosopher, I appreciate the view that we cannot account for political obligations unless we start from the thick conception of political obligations and proceed along the associativist lines. However, I am also convinced that the mentioned view is deeply flawed and at the end of the day is fruitless in grounding political obligations. Thus, whatever I am going to say about Mason and Parekh's view on political obligations, I will not touch upon the associativist aspects of this view. Second, I acknowledge that neither Mason nor Parekh directly argues against Klosko's account of political obligations. I take these thinkers as ones who merely indicate the position from which the objections at issue can be raised.

How, then, might Klosko respond to Mason? One way available to him would be to start quibbling over four points: (a) what the term 'compatriot' really stands for? (b) whether it is

those too demoralized, confused and powerless to fight for themselves, and in general to help create a rich and

really the case that the annexation does not extend the group of compatriots? (c) how much time it requires for the feelings of connectedness to get rooted? or (d) whether one cannot indeed participate in public life and give priorities to the needs of his compatriots without feelings of relatedness and affiliation? Notwithstanding the seriousness of these questions, Klosko might submit that we put them aside. His suggestion might be that we embark on another way. Specifically, he might posit the claim that if we stick to the thin conception of political obligations (as Klosko does from the beginning), then we are released from the task of replying to the objections in question because those objections simply miss the target. In other words, if we adhere to the conception of political obligation as primarily the obligation to obey the law, we will not be liable to 'the compatriot charges', so to speak.

Evidence supporting Klosko's claim can be drawn from the meaning Mason infuses into the notion of 'compatriot'. It is true that he differentiates between a compatriot as a co-national and a compatriot as a co-citizen. However, he refuses to see that if we take a compatriot to mean a co-national, then problems will abound.¹⁶⁹ And if we take a compatriot to mean a co-citizen, then Mason's objections lose their cutting edge. For consider what Mason has against Waldron's defense of the natural duty of justice account.¹⁷⁰ Not going into particulars, it can be said that Mason merely overlooks Waldron's point that the central issue is the obligation to obey the law, while the patriotic devotion and allegiance are set aside. Waldron is clear that the ties of loyalty "must be explained by reference to the idea of *nation* rather than polity, and

lively community" (Parekh, 1993, 243).

¹⁶⁸ See Simmons, 1996b for a concise, insightful and critical analysis of theories of associative obligations.

¹⁶⁹ For what obligations the constituents of, for instance, Belgium, Ukraine, Estonia, or Latvia would have? Given that these states are homelands for at least two national groups, how would it be possible to derive from national bonds the obligations which may stand as political ones? Further, notwithstanding the fact that one does not choose his nationality (with possible exceptions like a child being born in a mixed family), national bonds are the product of commitment and loyalty and, thus, they are largely related to personal attitudes. And it is clear that political obligations cannot depend on whether a person feels that he belongs or does not belong to a certain nation. Next, from the claims that nationality is part of one's identity and that the endeavors to help one's nation to flourish are laudable do not follow that there are *enforceable* political obligations.

¹⁷⁰ On pages 436-437 in Mason, 1997 Mason tries to find fault with Waldron, 1993b.

birth and acculturation rather than any juridical connection" (Waldron, 1993b, 19, italics in original). Hence, *Mason awaits in vain that Waldron would throw light on extensive obligations of patriotism*. In brief, it is unjustifiable and often fruitless to demand explication of extensive obligations to compatriots from those who set out to unfold the problem with the obligation to obey the law.

SECTION 8.9. THE SPILL-OVER BENEFIT OBJECTION

At the end this chapter I will consider one more objection to the statement that Klosko's theory is capable of withstanding the criticism aiming at showing that the particularity requirement forms an impassable barrier for it. I will call this new objection *the spill-over benefit objection*. Here is how it can be formulated. In Europe, as elsewhere, there are countries which can fairly be described as small ones. They are small not only in the sense of the territory they occupy, but also in the sense of resources they possess and goods they produce. It would not be unreasonable to name Luxembourg or Liechtenstein among such countries. Given their size, product output, historical and geographical circumstances, one may argue that to a large extent the defense system of Luxembourg depends on the defense systems and international politics of France, Belgium and Germany, like the defense system of Liechtenstein depends on the similar factors related to Italy, Switzerland and Austria. Moreover, the ecological policies adopted in France, Belgium and Germany seriously affect the level of pollution in Luxembourg, just as the analogous policies in Italy, Switzerland and Austria bear on how much water is contaminated and food adulterated in Liechtenstein. In short, with sufficient confidence one may claim that citizens of Luxembourg and Liechtenstein enjoy benefits which result from the activities of the neighboring states. Some of these benefits may be quite significant. If so, then, as one may contend, citizens of

Luxembourg and Liechtenstein would be under an obligation to reciprocate for the receipt of those benefits. And there would be no weighty difference between them and citizens of their neighboring states. The same political obligations would be incumbent upon everybody. And since this is not a conclusion Klosko would enthusiastically embrace, his theory is faulty.

This objection might be dismantled by Klosko from different angles. *First*, Klosko might disagree that the spill-over benefits can correctly be described as presumptively beneficent. He might not be at variance with the claim that the benefits the people of Luxembourg and Liechtenstein receive from their neighbors are of considerable significance. However, to be significant is not the same as to be indispensable and essential. Hence, no obligations, which are the subject of Klosko's interest, will be generated.¹⁷¹ *Second*, Klosko might point to the problem of specification of whom the putative political obligations would be owed to. Would a citizen of Luxembourg hold political obligations towards France, Belgium or Germany?

Finally, Klosko might put forward his most powerful counter-objection. He might simply ask 'How can a citizen of Luxembourg support Germany as a state?' More precisely, 'How can he possibly obey the German laws?' The German laws are designed for Germans (as well as for visitors and theoretically even for the citizens of Luxembourg, but those laws would not constitute the core of the legal code and would not be pertinent to political obligations). And since it is impossible for a citizen of Luxembourg to comply with the German legal precepts, he cannot bear political obligations towards Germany.¹⁷²

¹⁷¹ This conclusion should not overshadow the claim that people of Luxembourg and Liechtenstein are to redeem their duties of gratitude towards their neighbors. Indeed, the inhabitants of Luxembourg and Liechtenstein might be held liable to disapproval if they did not appreciate the received external benefits.

¹⁷² Compare the following quotation from Christiano: "The particularity of the obligation to obey ... laws simply follows from the particularity of the laws themselves. Those who do not come under the laws don't have an obligation to obey them; indeed, they cannot obey those laws. It is not possible for me to obey French tax law or even French criminal law, for instance. Even if I were to send the proportion of my income to the French government that I would be required to pay were I a French citizen, I would still not be obeying French tax law, and therefore I would not be acting on the basis of an obligation to obey French tax law. And this holds even if I

One may demur that Klosko's last counter-objection has a defect. The question is not whether it is feasible for a citizen of Luxembourg to follow German laws. The real question is *not* a *legal* one, it is *moral*. Given that the external benefits crucially contribute to the well-being of the Luxembourgers or the Liechtensteiners, are they morally obligated to do their part in the production of those benefits?

To this, Klosko might respond that as it stands, the above question is answered negatively. The simple explanation is that one cannot be morally obligated to do what one cannot do. If there is no way one can carry out his obligation (no way one can do *his* part in the production), there is no point to insist that one has to fulfill it. But perhaps the question implies that there is a backdrop condition stating that Germany has altered its legal code and enabled Luxembourgers to conform with the German rules and instructions. In this case the answer is still negative as long as we assume that Luxembourg is a state in its full meaning and therefore is the provider of presumptively beneficial goods. It may happen that some presumptive good is furnished in cooperation with another state or due to another state's activities. But it does not change the starting premise that the state is the *main* provider of presumptive goods. For had the Luxembourg government done nothing to ensure that its citizens are protected and safe, Luxembourg would hardly have been called a state. Having said that, Klosko might add that the chief moral consideration which is at play here is the consideration about by-products. If what Germany produces and provides as a state is meant to benefit Germans but incidentally benefits also a neighboring state, the citizens of the

act because I like France and believe that its tax laws are just. And all of these claims remain true regardless of how good French tax law is. They also hold true of any other kind of law. Even if the reason for obeying a law is that it is a good law, this cannot provide any reason for someone who is not under the jurisdiction of that law to obey it. No further special relation between citizen and state is necessary to explain an obligation to obey that law and no other" (Christiano, 1999, 178).

neighboring state cannot be fairness-bound to reciprocate because the receipt of *by-products* do not trigger the generation of fairness obligations.

Some may still be doubtful whether Klosko's answers are convincing enough. To dispel their hesitating mood I want to throw light on one particular ramification of Klosko's account. In the modern world of ever increasing significance of international organizations it may occur that people would bear obligations to submit to the commands of one of them. Take, for instance, a plausible situation when several states enter into an agreement on a common defense program. Since a reliable defense system is a presumptive good, the citizens of those states will be morally bound to participate in costs related to the maintenance of that system. This will signify that one function of a state is delegated to the 'upper' organization.

In general, there is nothing incongruous in Klosko's account to allow for transferring a part of citizens' political obligations to other organizations than the state. It should be kept in mind that the underlying moral principle of the account is the principle of fairness. And if it can cogently be shown that the state provides law and order and requires that the citizens abide by its instructions, organization O1 provides the clean air and fresh water and correspondingly requires that the citizens follow its regulations concerning ecological control, and organization O2 provides the defense from external aggression and requires that the citizens comply with its directives, then according to Klosko's account the citizens will be obligated to adhere to all those instructions, regulations and directives. For law and order, public defense, and environmental supervision are essential collective aims which people cannot attain by acting each separately from others. Some organization (or organizations) should guide them and arbitrate in disputes. Due to historic circumstances the state embodies all possible organizations capable of providing vital goods. But time passes and it is probable that soon it

will be a widespread picture that not all essential benefits will be furnished by the state. And this change will be followed by a change in people's political obligations.

To be sure, within this emerging picture we will encounter two immediate problems. First, what if the orders from the state contradict the orders from organization O1 or O2? Second, what happens to the particularity requirement if divided political obligations are accepted? The first problem can be resolved by pointing out that the state's functions and organization O1 or O2's functions will not overlap. The state and organizations O1 and O2 will have authority over different domains and thus their orders should not be conflicting. A possible resolution of the second problem can run along the following lines: the essence of particularity requirement is to ensure that the same theory does not recommend a group of people to obey instructions of state S1 and state S2 at the same time. The particularity requirement is not designed to screen out the theories which endorse the view that people may have moral obligations to state S1 and to some international organizations at the same time. Thus, it is not contrary to the particularity requirement that the divided (in the above sense) political obligations may exist.¹⁷³

SECTION 8.10. PARTICULARITY IS PREDICATED ON NECESSITY

I will end this chapter by analyzing the claim that particularity is predicated on necessity. More specifically, one may argue that since a modern democratic state cannot function if its citizens are not bound to obey its laws, the citizens owe their obligations precisely to this

¹⁷³ To appreciate this conclusion fully, it is instructive to think of political obligations as moral obligations that people hold to each other while they attempt to produce vital public goods. People of state S2 do not expect people of state S1 to participate in their production of public goods. In contrast, all people under the jurisdiction of international organization O1 are supposed to contribute to O1's aims. In the former case, people of S1 may receive spill-over benefits from state S2 but spill-over benefits are by-product ones and do not give rise to

state. People may be willing to support various states and organizations, but they should first obey the commands of the government of the country they live in.¹⁷⁴ Thus, it is necessary that people are 'attached' to particular states in order for the system of democratic states to do its job.

I will not embark here on a full-fledged discussion of the argument from necessity. It has tortuous lines of reasoning and does not easily lend itself to thumbnail outlines. However, I do want to indicate why necessity-based considerations are fruitless in the discussion of the particularity requirement. First, those considerations can potentially validate only very *limited* scope of governmental activities that are to be supported by citizens. Any goals of a government that diverge from what is strictly necessary for the preservation of liberal democracy, are to be abandoned. Hence, even if necessity can substantiate citizens' obligations towards their states, these obligations will not be adequate.

To be sure, there is a huge question regarding how 'what is strictly necessary' is to be interpreted. Perhaps, it might be possible to prove that democracy is sustained only if a sufficiently large range of governmental initiatives is backed up by the citizens' obedience and other contributions. Still, the necessity-based considerations will be defective on *another* score. Those considerations will fail to explain why *everybody* should obey and contribute. The realities are such that it is never the case that only if *all* people comply with instructions of the democratic government does life run smoothly. Usually, many can and will shirk, but the state will nevertheless function properly. Therefore, unless the necessity-based

obligations of fairness. In the latter case, the talk about by-product benefits is not appropriate and the setting allows for the obligations of fairness to crop up.

¹⁷⁴ Kleingeld, for one, holds this position. (What she calls a civic duty is a political obligation. This can be inferred from her review of Waldron's contentions.) See Kleingeld, 2000. Consult also Honore, 1987.

considerations are supplemented with some other moral reasons, they are incapable to account for unabridged political obligations which meet the particularity requirement.

SECTION 8.11. SUMMING UP

In this chapter I have considered reasons for denying that Klosko's account of the fairness theory succumbs to the particularity objection. I have pointed up the robustness of political obligations: if we show that political obligations do obtain, we will not have to worry about the particularity requirement. It will certainly be satisfied. Then, I have responded to imputations that our beliefs in political obligations are to be discarded wholesale. I have indicated that Klosko maintains that these beliefs can be buttressed by his account of the fairness principle. Next, I have discussed how the satisfaction of particularity requirement is related to meeting the acceptance and the applicability condition and to acknowledging the concept of presumptive goods.

I have also considered the critique that the application condition is too easily satisfied in Klosko's account. And I have shown how this critique can be found wanting. Further, I have relied on the thin conception of political obligation to shove out the attacks from 'the compatriot camp'. I have then inspected the spill-over benefit objection and revealed its defects. While discussing this objection, I have demonstrated how international organizations can bear on our political responsibilities and advocated the notion of divided political obligations. Finally, I have analyzed the relevance of the argument from necessity to the satisfaction of particularity requirement. All in all, I have championed the claim that the particularity objection poses no insurmountable charges for Klosko's account.

CHAPTER 9. THE OBJECTION FROM REDISTRIBUTION

SECTION 9.1. FOREWORD

Thus far we have been witnesses of how strong and resourceful Klosko's account of fairness theory is. Various objections have been leveled against this account and all of them have been found unsuccessful. At several places it has been important to concentrate on packages of goods furnished by governments as opposed to individual goods, however significant the latter may be severally. I have submitted that the words 'essential' and 'indispensable', which are constantly used by Klosko in his conceptualization of presumptively beneficial goods, refer to those packages rather than to isolated goods. Many other points of Klosko's account have been clarified and augmented in the tour through the objections we have considered so far.

Now, we have come to an objection which cannot be accommodated within Klosko's account without serious revisions of and additions to it. I will call this objection *the objection from redistribution*. Though the objection's name gives us some understanding of what this objection is about, the meaning of this objection still remains enigmatic. To dispel the enigma I will presently offer a short description of the objection at issue. Later, all other necessary details will be filled in.

SECTION 9.2. A SHORT DESCRIPTION

Let us recall what forms the skeleton of Klosko's theory. Every time Klosko turns to portraying his position, he mentions the following:

when three main conditions are met, the principle of fairness is able to generate powerful obligations under which individuals should contribute to cooperative schemes that provide nonexcludable benefits. These conditions are met when the public goods supplied (1) are worth the costs required for their provision, (2) are indispensable for satisfactory lives, and (3) have benefits and burdens that are fairly distributed (Klosko, 2001, 97).

Thus, the three conditions in the quoted passage constitute the kernel of what Klosko argues when he speaks about the fairness theory. I have already analyzed them in chapters 3 and 4 and will not repeat myself here. However, for my present purposes it is important that we see once more how significant a role the *vital* goods conferred by the state play in the whole structure of Klosko's account. The key part of that role consists in the *indispensability* of the vital goods. The indispensability ensures that the duties of fidelity and moral considerations in favor of reciprocation will transform into moral obligations, i.e. strong moral requirements whose execution may be coercively demanded. Here is how Klosko describes the benefiting impact of vital goods on an individual:

if something is indispensable to Jones's welfare, then we can assume that he benefits from the mechanisms that provide it, even if he has not sought out their services. This is especially important in the case of public goods bearing on security, for one receives these goods without having to pursue them. Because of the importance of such goods, unusual circumstances must obtain for Jones not to benefit from receiving them. Though the class of indispensable public goods is perhaps small, it undoubtedly encompasses those crucial goods mentioned above as being necessary for physical security (Klosko, 2001, 98).

We may infer from the above quotation that physical safety prominently stands out as the most crucial of goods the state can furnish. This being acknowledged, we may tread one step further and agree that the defense system, law and order, public health measures and pollution abatement are all essential for physical safety and therefore are to be supplied by the state, if the state endeavors to be the organization it purports it is. As we have seen in previous chapters (see chapter 3 and 5), Klosko does make this step and includes into the category of presumptive goods the goods just listed.

However, very soon it becomes clear that the state is in business of providing not only presumptively beneficial goods, but also goods which do not strike us as immediately essential. Why ought an individual to contribute to the provision of non-vital goods? I have shown how Klosko grapples with this problem and what are strengths and weaknesses of his stance about discretionary goods (as non-vital goods are called by him). Without reiterating what has already been said, I want to draw attention to the fact that the class of discretionary goods does not, as a rule, comprise *unemployment benefits, allowances for the disabled people, single-mother (-parent) support programs, additional payments to elderly people, government subsidies for endangered (or dying out) industrial branches (like mines or heavy industry in some regions), and international aid.*

The goods Klosko locates under the heading 'discretionary' are best exemplified by road networks, bridge constructions, or sponsorships for the arts.¹⁷⁵ In Klosko's own words:

Important discretionary public goods include transportation and communication facilities, other public health measures, such as sewers and clean water, some level of public education, and measures to

¹⁷⁵ It is worth reminding that sponsorship for the arts is an optional good. See section 6.9 for more particulars.

ensure the stability of the overall economy, such as stable currency and sound banking (Klosko, 1992, 97-88).

Notice, however, that Klosko comes to the conclusion that governmental funding of the arts falls beyond what can reasonably be linked to presumptive goods and, hence, justified as part of governmental activity.¹⁷⁶ Thus, while the expenditures on road networks and bridge constructions can be shown to belong to the justifiable expenditures, the expenditures on the arts cannot be demonstrated to be necessary for the maintenance of any presumptive good.¹⁷⁷

Therefore, the underlying idea in Klosko's defense of the state's extended provision is that the supply of presumptive goods alone cannot be sustained without spending money and recourses on some supplementary goods. To the extent that a supplementary good is key and imperative for the provision of presumptive goods, it is subsidized by the state. This underlying idea is tightly connected to the overall thrust of Klosko's argument: the state provides essential goods, an individual actually and unavoidably benefits from them, as a result, he ought to do his part in the production of those goods. The individual would not be obligated to contribute if the state were unable to carry out its tasks. And, given the real state of affairs, the state's first and foremost task would be compromised if certain discretionary goods were not provided. Thus, actual benefits and political obligations are entangled into one knot. Political obligations are owed by those who benefit from the state provision. And the core of what political obligations are about is to abide by the rules of the organization which confers vital benefits.

¹⁷⁶ "[I]t would be difficult to argue that the maintenance of cultural institutions - such as museums and symphonies - is a necessary cost of presumptive public goods. The same could be said of public parks and playgrounds, or the preservation of historical monuments"(Klosko, 1992, 98).

Now, following the drift of Klosko's reasoning, we can come to the view that the rich people of a state are not obligated to pay that part of their taxes that goes to support the disabled, elderly, unemployed, etc. Those who are well-to-do ought to pay for presumptive goods (like defense and environmental management) and for the discretionary goods which can have an effect on those presumptive goods, but they should be exempt from paying for the aid to the poor. In other words, they should be exempt from the taxes which are designated for the redistributive measures. The reason for that is simple: the wealthy citizens do not benefit from those measures and those measures are not crucial for the maintenance of presumptive good provision.

Now, the objection under consideration points up that since we cannot accept the above view, we cannot accept Klosko's account of fairness theory either. Below I will analyze possible ways of how Klosko might tackle this objection. But first let us not fail to ascribe to Klosko the anticipation of the objection we are dealing with.

SECTION 9.3. KLOSKO ANTICIPATES THE OBJECTION

We should not fail to give credit to Klosko for anticipation of the redistribution objection. He quotes the compelling words of Hubert Humphrey which tell us that "the moral test of government is how it treats those who are in the dawn of life - the children; those who are in the twilight of life - the aged; and those who are in the shadows of life, the sick, the needy and the handicapped" (Klosko, 1992, 108). And he also squarely states as follows:

¹⁷⁷ Just to remind: according to Klosko, an expenditure on a good is justifiable if it can be shown how this good crucially contributes to the set of presumptive goods (Klosko, 1992, ch. 4).

An adequate theory of political obligation should justify social functions that can be described as "charitable". In virtually all governments ... public measures are taken to feed hungry, house the homeless, care for the sick and destitute, etc. Beyond a specific point, such measures are difficult to justify as necessary for the provision of presumptive goods. Because these functions are assumed by virtually all governments and are intuitively legitimate, we must reconcile them with fairness theory (Klosko, 1992, 91).

Thus, Klosko realizes that something should be done in order to accommodate the governmental redistributive courses of action. Reluctantly, he allows for another moral principle to enter the picture. In his opinion, "fairness theory should be supplemented with other moral principles, especially a natural duty of justice" (Klosko, 1992, 91). However, Klosko does absolutely nothing in order to show us how the extended governmental measures can be reconciled with his account of the fairness theory and how the natural duty of justice can be constructive in this reconciliation.

One may hope that even though Klosko is reticent about his real answer to the objection from redistribution, he has in his mind a clear plan of how this objection can be shown to be unsuccessful. It would hardly be wise to quarrel over what Klosko has in mind. The matters of Klosko's subjective world should be left entirely to him alone. However, charges may be brought against Klosko's *indication* of where and how a possible answer to the objection at issue can be found. For instance, it may be argued that to invoke the natural duty of justice is a misguided undertaking at least as long as the extended governmental functions are seen as charitable. The natural duty of justice theory, if it purports to be relevant to the problem of political obligation, is to rely on strong moral requirements, i.e. moral obligations. And moral requirements involved in charitable actions are imperfect duties rather than moral obligations. In other words, as long as Klosko regards redistributive measures as *charitable* functions of

the state (as he does, cf. Klosko, 1992, 91) a possible answer to the objection from redistribution, which he may develop, will inherently be unsatisfactory.

For the objection from redistribution is more robust than Klosko presumes. It is not enough to venture a suggestion that the fairness theory is compatible with some other moral principles. Given what we know of the moral realm, it is rather obvious that it is. It is also clear that apart from political obligations various other moral requirements will be incumbent on every individual. Sometimes these moral requirements may even override political obligations since the latter are defined as only a *prima facie* obligations.¹⁷⁸ It is, in fact, requested that we show how people bear moral *obligations* (as opposed to mere duties) to support the redistributive measures. The emphasis on moral obligations is important here because governments use *coercion* to enforce the laws about redistribution. Certainly, the help that the homeless, sick, disabled and poor need is not left to mere charity, it is provided by state institutions (at least to a certain extent). Charity may still be a significant factor in alleviating the plight of the disadvantaged. However, the basic aid to ease the deprivation is furnished through the state by means of its legislative and executive bodies. And the state claims that contribution to that aid is *mandatory*. If there were no moral *obligations* to contribute, the state would not be justified in claiming that the contribution to the aiding policies is mandatory. Therefore, remaining within the scope of charity, Klosko will never be able to meet the objection from redistribution.

In sum, from what Klosko contends it can be accepted that the fairness theory does need the support of another moral principle. However, it cannot be accepted that through adding charity to fairness we will end up with a complete and defensible theory of political

¹⁷⁸ The *prima facie* nature of political obligations has been discussed in section 2.10.

obligation. A lesser aim will not be attained either: even with the help of charity, Klosko is not capable of meeting the objection from redistribution.

SECTION 9.4. NO PRESUMPTIVE GOODS WITHOUT REDISTRIBUTIVE MEASURES

Before looking for any assistance from another moral principles, however, it may be advisable to examine whether the fairness theory on its own cannot muster enough resources to deflect the objection under consideration. Below I will deal with two responses which Klosko might give to the advocates of the objection.

First, we have to examine one straightforward response Klosko might make in order to defuse the redistribution objection. He might insist that redistribution is important because *if no redistributive measures were taken, many presumptive goods would be put in jeopardy*. Klosko might offer two reasons by way of supporting the above claim. *First*, the wealthy citizens are to back up the redistributive schemes since otherwise social unrest and even revolution may endanger their existence.¹⁷⁹ Put differently, redistributive measures are necessary for the maintenance of social stability. People have a critical interest in living in the ordered and predictable environment. Thus, if the absence of redistributive measures destroys such environment, the state has to introduce them. And the fortunate members of the political community will have to pay for this type of the state's activity, since without social stability the preservation of continued supply of presumptive goods is inconceivable.

The *second* reason is that those who are rich ought to contribute to redistributive schemes because in modern, highly integrated economies the drop in people's purchase capacity leads

¹⁷⁹ "[L]arge numbers of the hungry and homeless could pose a threat to social stability" (Klosko, 1992, 91).

to an inexorable slump. Put simply, the profits that the rich people turn depend on how many sales are made. And the number of sales depends on the availability of money in hands of possible purchasers. Hence, by giving money to the indigent, the well-to-do prevent their own economic catastrophe. And an economic catastrophe may result in impairing police protection (through not having enough money to employ as many officers as the solid protection would require), undermining ecological control, etc., i.e. an economic catastrophe may cause the disorderliness and hamper the provision of presumptive goods.

The above response of Klosko can, however, be quickly ruled out. With regard to the first reason it can be said that *the state does not predicate a degree of redistribution on a likelihood of social upheaval*. Moreover, it is our deep conviction that it *should not* predicate it in that manner. For if a degree of aid hung on the probability of disrupting events, there might be situations when a great many people would starve to death or die unassisted. Or, in the inverted scenario, if the likelihood of a turmoil were very high, redistributive policies, by far more substantive than we think proper to have nowadays, would be implemented.

With regard to the second reason it can be replied that the link between how much the less-fortunate possess and how much the wealthy gain is blurred and obscure. Even if it were true that the latter cash in on what the former have to spend, it would be irrelevant to 'the presumptively beneficial good model' of political obligations. For to guarantee a high level of income is *not* among the crucial tasks of the state. And none of presumptive goods directly hinges on how much money the destitute people allot to spending on certain articles. An implausible situation in which the economy grinds to halt due to the fact that the poor lack money, is what it is - an implausible situation. Those belonging to the middle and upper class can fare well without paying notice to the plight of the disadvantaged.

SECTION 9.5. THE SCHEME IS TO BE FAIR

Klosko might draw lessons from the judgments we have reached so far and claim that he could defend his position in a better way than the one above. He might venture to suggest that the objection under consideration is answered by the presence of condition (3) in his position. That is to say, Klosko might argue that from the statement that burdens and benefits are fairly distributed by the state (as a cooperative scheme) it follows that some (adequate) level of redistribution is present.

It bears mention that remarks concerning the significance of condition (3) and difficulties related to it can frequently be spotted in Klosko's book, *The Principle of Fairness and Political Obligation* (1992), as well as in his articles tackling the problem of political obligation.¹⁸⁰ The upshot of these remarks can be expressed in one sentence: "Conditions (i) and (ii) are likely to cause relatively few problems, while condition (iii) should cause more severe difficulties" (Klosko, 1992, 78).¹⁸¹ Let us just analyze a sample of those difficulties.

SECTION 9.6. INTERDEPENDENT AND UNILATERAL REASONS

At the outset, there is a problem of, as I will call it, '*unilateral* versus *interdependent* fairness'. The crux of this problem can be expressed in the question: 'Should an individual count a

¹⁸⁰ Cf. Klosko, 1987b, 1998a, 2001b. It is worth noting that in his basic articles on the problem of political obligation Klosko indeed acknowledges the weightiness of condition (3), but, surprisingly enough, he does not move any further. He simply says that there are obvious difficulties with establishing which scheme passes the test, i.e. satisfies condition (3) and with indicating "at exactly what point the pattern of distribution in a given scheme moves from being fair to being unfair" (Klosko, 1987b, 253). And while discussing other issues he tends to assume that condition (3) is met (for instance, Klosko, 1998a, 61). Klosko elaborates on condition (3) only in *The Principle of Fairness and Political Obligations*.

scheme as fair when it is fair towards him personally, or when it is fair to all the members?' The question may look innocent at first sight and may seem to admit a straightforward answer. It may be said that blatant and grievous unfairness of the scheme will cancel the individual's obligations towards it; whereas in any other case his obligations persist, given that *he* is treated fairly. Notwithstanding the popularity of this answer¹⁸², I want to undercut its cogency with regard to the problem of political obligation by pointing to the consequences stemming from it that are usually overlooked.

In the above answer, 'an obligation which is canceled' is meant to be overridden. This is to say, the individual still have an obligation of fairness, however some other obligations happen to be stronger and more decision-influencing. Those other obligations override the obligation of fairness. Hence, there is an individual, whose moral status towards the scheme is determined by the benefits he receives and burdens he is required to bear (i.e. it is determined unilaterally), and the outer world which occasionally influences that moral status. Now, if this is a plausible description of the relationship between an individual and a scheme, then this relationship cannot be a basis of political obligation. As I mentioned in chapter 2, the notion of 'political obligation' does not have roots only in what is an obligation; it should also be rooted in what is *political*. It is not easy to delineate the signification of 'political', but one thing stands out clear. 'Political' as opposed to 'personal' rests on *interdependent* reasons for

¹⁸¹ It is not my whim to denote the three conditions first by Arabic numbers and then by Roman ones. Such specifications are of Klosko's own coinage. Of course, these different marks bring no confusion whatsoever. It is obvious to everybody that (1), (2) and (3) correspond to (i), (ii) and (iii).

¹⁸² Simmons, for one, says that "[w]hile we can ... agree ... that intolerably unjust schemes ought not to be furthered ..., there is no ... difficulty ... in holding that we may sometimes have obligations of fair play to cooperate within unjust schemes" (Simmons, 1979a, 114). The position like this is underpinned by two assumptions: (a) "benefits must be *accepted* in order for an individual to be bound under the [fairness] principle" (Simmons, 1979a, 113-114, italics in original); and (b) "each is bound to cooperate to the extent that he is allowed to benefit from a cooperative scheme" (Simmons, 1979a, 113). Notice that the acceptance assumption (a) and the proportionality assumption (b) tend to bring the fairness obligations closer to the conceptual framework of the consent theory. At any rate, these assumptions help construe the relationship between an agent and his scheme as a unilateral relationship. (It is worth noting that in the consent theory the obligations held by the agent are predicated on his personal performances which are to be informed and consciously undertaken.

action. If whatever an agent undertakes does not affect others, then the agent's action does not belong to the realm of political. If, by contrast, he embarks upon an action which influences the others and whose success depends on others, then the agent is engaged in political activity.

I concede that the above characterization of 'political' is very scanty. But it is not my aim here to go into details about this concept. My aim here is to demonstrate how Klosko overcomes the problem at issue. Klosko agrees that there may be the view that "in order for A to incur an obligation to scheme X, it is only necessary that *he* be treated fairly, regardless of the benefits and burdens of the other scheme members" (Klosko, 1992, 63, italics in original). But he chooses to adhere to another view - namely, the view that *fairness of a cooperative scheme is determined by reference to its all members*, not to specific individuals. Klosko demands that a cooperative scheme as a whole is to be fair.

Hence, according to Klosko the moral status of an agent towards a cooperative scheme hinges on interdependent reasons rather than on unilateral ones. Moreover, Klosko adds a sentence which squarely bears on the discussion in this section. He says that "condition (iii) is not likely to be satisfied in regard to particular individuals unless the cooperative scheme as a whole is reasonably fair" (Klosko, 1992, 63-64). As a result, one may think that 'reasonable fairness' entails the societal aid to the poor, handicapped, and disease-stricken. Below, I will, however, show that this conclusion cannot be supported by evidence found in Klosko's writings.

They can be described as unilateral obligations, i.e. obligations independent of what others do, save for the

SECTION 9.7. PROCEDURAL FAIRNESS

Klosko devotes one chapter of his book to the discussion of condition (iii).¹⁸³ He cautiously and rightly avoids getting bogged down into debates over the fundamental principles of justice. He just takes it for granted that "[i]t is unlikely that theorists will be able to present a single conception [of fair distribution] that would be acceptable to most people, or one that could be shown conclusively to be preferable to all alternative conceptions" (Klosko, 1992, 64). Further, he makes a discerning and shrewd decision to regard as a satisfactory distribution of benefits and burdens such a distribution which (a) is the outcome of fair procedures and which (b) belongs to the class of defensible distributions.¹⁸⁴

To be sure, Klosko realizes that procedural fairness is also a disputable matter, but he claims that "though the notion of procedural fairness is essentially contested, proponents of different particular views would likely agree on certain aspects of decision mechanisms" (Klosko, 1992, 65). For instance, it would be egregiously unfair if the future of some group of people in a given state would be decided without having considered any opinion of this group. Also, there is no denying that perfect fairness is unattainable on the scales such as a society and therefore a certain degree of unfairness may always be detected. This is envisaged by Klosko and in response he contends that "[b]ecause A cannot do without presumptive public goods, it would be unreasonable for him not to wish to receive them, even if a certain degree of unfairness accompanied the distribution of their burdens and benefits" (Klosko, 1992, 66).

situation where others are bent on doing something wicked, but then the obligations are void *ab initio*.)

¹⁸³ Klosko, 1992, ch. 3.

¹⁸⁴ "The main point ... is that in addition to being chosen by fair procedures, a given outcome must come from the class of generally accepted principles of distributive fairness" (Klosko, 1992, 71).

SECTION 9.8. THE PRECEDENCE AND OPTIONS RULES

Starting from procedural fairness Klosko introduces two rules which complete his discussion of condition (iii): the *precedence rule* and the *options rule*. The precedence rule is articulated in the following way:

The argument that condition (iii) can be satisfied by tolerably fair procedures rests heavily on an important principle of democratic theory. With the institution of a tolerably fair decision procedure, in certain cases the individual surrenders her right to decide important questions of policy for herself. Though she might disagree with some decision the process renders, she should give it precedence over her own view. I will refer to this principle as the *precedence rule* (Klosko, 1992, 72, italics in original).

There is nothing unusual in the precedence rule. Its main message is that in liberal democracies there are state instructions which are mandatory for citizens. Citizens are supposed to vigorously participate in the creation of an instruction or law, but once it is enacted the citizens ought to abide by it, substituting their own opinions by what the instruction or law commands.¹⁸⁵

The formulation of the options rule proceeds along the following lines:

A has a strong obligation to support the specific package of benefits and burdens connected with some presumptive public good[s], if this package is arrived at through tolerably fair procedures and satisfies

¹⁸⁵ For how the decreed legal commands figure in our reasoning see Raz, 1979. See also section 2.4 about content-independence.

the necessary conditions. Thus the options rule affords a mechanism for making complex decisions concerning the provision of presumptive goods (Klosko, 1992, 81).

This rule is introduced to screen out possible difficulties related to the fact that there are always several equally good ways to provide some presumptive good. The options rule says that this should not be a trouble, i.e. the availability of various alternative ways of provision should not alter the obligation to contribute incumbent upon the recipients. Klosko elaborates on the meaning of the options rule by examining an example about a defense program.

Before a specific defense program can be put in place, a suitable program must be chosen from the large class of acceptable programs. Just as [an individual's] need for workable defense (and/or other presumptive goods) overrides his usual right to choose whether he wishes to contribute, so his need for defense overrides his usual right to choose the specific measures to which he contributes - as long as the resulting program is acceptable and he has a reasonable fair say in selection. Because no specific strategy for pursuing defense is likely to be agreed on spontaneously by all members of society, all citizens should accept the strategy recommended by the political process (Klosko, 1992, 81).

One lesson we can draw from the above passage is that the doctrine of presumptively beneficial goods is stronger than initially might be expected. The actual preference for presumptive goods leads not only to an obligation to do one's part in the provision of those goods, but also to an obligation to conform with the means of this provision that has been singled out through acceptable democratic processes.

SECTION 9.9. CONDITION (III) AND DISCRETIONARY GOODS

Now, keeping in mind what has so far been said about condition (iii), let us try to fathom what is the cardinal thrust of Klosko's argumentation. One judgment related to this thrust, a judgment which seems to be quite tenable, is that the reliance on procedural fairness, on precedence and options rules can ensure us that condition (iii) is met in the case of presumptive goods. Another tenable judgment is that nothing, in principle, precludes the satisfaction of condition (iii) in the cases when presumptive goods are mingled with relevant discretionary goods. Indeed, Klosko acknowledges an increased difficulty of the task, but regards it as manageable.

Even if discretionary goods can be shown to form indivisible benefit packages along with presumptive public goods, their presence aggravates problems of fairness. As we have seen, question concerning the fair distribution of the benefits of presumptive public goods are often relatively uncontroversial. But circumstances are less clear with some discretionary goods. ... While there are formidable difficulties in showing that any given package of burdens and benefits passes the fair distribution test, the presence of presumptive goods in a given package should make it possible (Klosko, 1992, 96).

Two points are worth emphasizing. First, the presence of only presumptively beneficial goods leads to the fulfillment of condition (iii). Second, condition (iii) is easier met in the case of pure presumptive goods as opposed to the case when discretionary goods are added because the benefits from presumptive goods are *evenly allocated* in a society, whereas the benefits from discretionary goods *fall unevenly upon* members of the society.¹⁸⁶

SECTION 9.10. THE OBJECTION FROM REDISTRIBUTION REMAINS UNCHALLENGED

We have come to the end of quite a detailed journey through intricacies of Klosko's view on condition (iii). There is no doubt that Klosko has made a strong case in favor of the assertion that condition (iii) can be fulfilled when we are concerned with presumptive goods and concomitant discretionary goods. Notwithstanding this assertion, we must admit that the objection from redistribution is left *unchallenged*. For the advocate of this objection can agree that procedural justice and democratic mechanisms can ensure the satisfaction of condition (iii), but still insist that it remains unclear why an individual ought to part with a fraction of his income in order to feed the hungry and shelter the homeless. In other words, meeting condition (iii) is necessary for establishing a moral obligation on the part of an individual to contribute to the cooperative scheme which provides him with presumptive (and pertaining discretionary) goods. Remember that presumptive goods are goods preferred by all.¹⁸⁷ Everybody benefits from their provision, hence everybody should share the costs of this provision. The stress on the *benefiting impact* of the goods is crucial for establishing a moral *obligation*.

Now, this *benefiting impact is missing* in the case of the aid programs for the disabled, indigent, etc. However fair we can distribute the benefits and burdens in a given state, within Klosko's framework we will not be able to attend to the needs of the less fortunate. To be sure, by means like the progressive tax system, tax dispensation, etc. (which are supposed to be incorporated in condition (iii)), it is possible to assuage the plight of the poor and improve their conditions. Hence, in the course of fulfillment of condition (iii) the material status of various social strata is taken into account. However, the problem is that the state policies

¹⁸⁶ Cf. Klosko, 1992, 96.

directed towards helping the disadvantaged are *by far larger* than the mentioned measures (like the progressive tax system). And Klosko is incapable of showing how those policies can be justified.

CHAPTER 10. HOW KLOSKO'S ACCOUNT MAY BE ENHANCED

SECTION 10.1. THE OPENING STATEMENT

Until the last objection Klosko's account of fairness theory has fared well under the scrutiny to which it has been subjected. However, as has been shown in the preceding chapter, it yields to the objection from redistribution. When a philosopher encounters a serious objection to his position which cannot be overcome by its own resources, he is bound either to alter this position or abandon it altogether. I will argue that Klosko need not abandon his account of fairness theory. The objection from redistribution can be answered *if we modify the notion of benefit*. This chapter is devoted to demonstration of how this modification can be achieved.

SECTION 10.2. THREE GROUPS OF BENEFITS

We do not run into a concise definition of 'benefit' in Klosko's writings. Nevertheless, it can reasonably be inferred that under this heading three groups of things are hidden. One group comprises *essential benefits*. These are benefits of bodily integrity, of pollution abatement, of elimination of the constant threat of being killed, etc. It is easy to see that essential benefits

¹⁸⁷ To sail in safe waters we may add the qualification to the effect that the *package* of presumptive goods as opposed to a single presumptive good is preferred by all (consult chapter 7).

are connected to the provision of presumptive goods. The primary task of the state is to ensure that essential benefits are provided.

The second group includes *material benefits*. These are benefits which are put on the agenda when, for instance, the technicalities of the provision programs are discussed. Ownership of resources, money, stocks and shares come to mind when we think of material benefits. But there are other material benefits - those of legal and institutional settings. The existence of certain laws and organizations inevitably favors some people over the others. For instance, many consumer safety regulations (about food or beverages) put some companies in a better position than others. Notice, however, that here we do not speak of discriminatory regulations. Needless to say, discrimination in any of its instances should be spotted and eliminated. We speak here of a simple matter: *the mere existence of one set of regulations impedes the functioning of another*. Though everybody is interested in having some set of regulations in use, opinions may diverge as to which one should be enacted. Thus, both money and institutional backgrounds constitute this group of benefits.

The third group embraces benefits related to an individual's *self-esteem*. Here, examples are sundry and various. If certain occupations are symbolically privileged, those who work in them can derive benefits from this fact. Or if one follows some vogue trend, one may feel benefited by so doing. In contrast to the benefits from the other groups, the benefits of this group are often only subjectively valuable.¹⁸⁸

¹⁸⁸ Presenting this taxonomy I have partially drawn on Rawls's conception of primary goods. See Rawls, 1971.

SECTION 10.3. THE DISTINCTIVE ROLE OF ESSENTIAL BENEFITS

When Klosko writes about benefits (e.g. in the staple phrase 'benefits and burdens') which exactly benefits does he have in mind? The correct answer will be that all types of benefits are meant by him at that moment. To be sure, essential benefits are always in the front row, but material and symbolic benefits play a significant role as well. If person P lives in a modern liberal democracy, he enjoys an environment safe from external enemies, law and order, fresh water supply, clean air, etc., i.e. he receives essential benefits. Moreover, P can make profit at the stock exchange, on the market, through trading, selling, producing, creating, inventing, etc. All these profit-making channels are material benefits. P may belong to a party which has just won an election and his identification with this party's victory may be a source of elevated joy for him.

Having said that all the types of benefits are dear to Klosko, we should be careful to stress that in one, but crucial, respect the essential benefits are more important than the others. They are important in particularizing the moral duty of fair play and activating the obligation of fairness. Without presumptive goods and essential benefits the obligations of fairness cannot be activated within Klosko's account. Remember what has been said about the terms of meeting the acceptance and application conditions.¹⁸⁹ Owing to presumptive goods and essential benefits, the duty to reciprocate is transformed into the obligation to contribute. And given the nature of the cooperative scheme (the state), this obligation is enforceable and infused with a special content. The material and symbolic benefits do not possess the activating power similar to that of essential benefits. This is understandable if we realize that

¹⁸⁹ See sections 3.3, 3.7, 3.8, 3.11 and 8.6.

not all people are bound to make profit on the market and not all are bound to become elated due to some recent events in party politics.

SECTION 10.4. A SERIES OF EXAMPLES

Now, I want to suggest that we enlarge the number of benefit types. To the three types already mentioned I propose to add a type which embraces 'moral benefits'. This group of benefits will consist of benefits connected with *having one's moral duty fulfilled*. Below I will list a series of examples which are meant to elucidate the concept of moral benefits.

The first example is a worn-to-threads example of two persons lost in the middle of the sea in a safety raft after their ship has sunk. Both persons have to row in turn because there is only one oar. Both are similar if it comes to physical capability, strength and other pertinent factors. Both have a prevailing preference of getting quickly to the shore. And both have to take part in rowing since one person becomes dangerously exhausted if he rows for a long while. As it is contrived, the example tells us that 'a cooperative scheme' of the two persons has a *definite aim* - viz., to survive and reach the land. This aim corresponds to *the essential benefit* the two persons most care about in that situation - namely, self-preservation. Also, according to this example, *no one can shirk*; both persons' effort is needed to succeed in rescuing themselves.

The example becomes more interesting for a moral theorist if we relax on the condition of 'both having to row in order to come out alive'. Suppose that each of the two persons alone can, albeit with great difficulty, propel the safety raft to the shore. And suppose that one of the two does not want to take his turn at rowing. What does the other person have to say then?

Clearly, he can say that it is conspicuously *unfair* that he has to do all the work by himself. He can insist that they both have a problem and that both are in *similar circumstances* and, therefore, no one has a moral right to shrink from doing his part in the endeavor.

As the analysis of the above example shows there is little room, if ever, for application of the notion of moral benefit. The *crucial ingredients* of the example are the following: the perspective of the essential benefit for the two persons involved in the story (essential benefit), the absence of indisputable characteristics which put one of them in a privileged or morally different situation (similarity of description), and the absence of circumstances in which one person may easily (and imperceptibly) avoid doing his part in the mission (no shirking).

Let us, then, consider an example where moral benefits become visible. There has been a plane crash in a desert. Only two persons have survived. Each of them takes a container filled with water and sets out for a long journey to the nearest inhabited area. Soon, one of the company loses his container (or his container leaks and all water drips away from the container). The other realizes that this is the moment when he ought to discharge his duty of helping someone in dire need. The fact that his colleague will die if not helped gives rise to the obligation of letting the distressed man drink from his container.

If we examine this example, we can notice that the person that is burdened with the moral task to help his fellow-survivor does not pursue any essential (or material for that matter) benefit for himself if he shares his water. There is also no talk about 'shirking' or 'being in a similar situation'. The example under consideration hardly differs from the drowning child one. In

both examples the moral obligation to save somebody's life is activated through particular circumstances.

Let us increase the complexities. Suppose we start as in the preceding example. Only this time there are ten survivors. One, as before, finds himself without water. If we assume that a *necessary* condition for pulling through their plight is that *all* the nine possessors of water share their water with the one without a container, then no one can shrink from doing his part. In principle, the situation will be *analogous* to that above, i.e. to the situation with two survivors.

Suppose, however, that only if *nearly all* agree to share their water with the person who has lost his container, can they all reach the destination alive. This assumption brings something new to the picture. For imagine that one of the nine individuals who have their containers filled with water does not allow the individual who has lost his container to drink from the container he holds in his possession. As a result, the others have to parcel out their water in order to rescue that who otherwise would perish from dehydration. Consequently, they have less to drink per person, as compared to the situation in which everybody shares the water from his container.

How can those eight people who have taken part in rescuing the dejected person condemn and criticize the individual who has not shared his water? They can do that on the grounds of the fairness principle. How is it possible that they have reason to denounce the behavior of the non-contributor? Given the circumstances of the case, the contributors have doled out more water than their fair share was. Thus, they have endangered themselves and suffered more than they might have if the non-contributor had not kept his container only for his own use.

The non-contributor *has received the benefit* of having his duty fulfilled (the duty being 'to help someone in urgent need') but he has not reciprocated for that benefit.¹⁹⁰

To make the picture clearer, let us go through the ingredients mentioned at the analysis above. What is the aim of the cooperative scheme in the plane crash example? Surely, the aim is to help the individual without a water container remain alive. This aim involves no essential, material, or self-esteem benefits. But it involves a distinct moral benefit - namely, the benefit of redeeming one's duty of rescue. Next, are there any relevant differences between those nine persons with filled containers? No, there are not. All of them carry, to a similar extent, a moral burden to rescue the tenth person. Finally, can some persons shirk without being noticed? No, they can not. Shirking results in throwing on others' shoulders an additional load and constitutes a striking instance of unfairness.¹⁹¹

Let us now move to another example which can boast being closer to such a cooperative scheme as a modern liberal state is. For notice that in the above example the people were linked by a moral requirement of fulfilling a duty. The aim of their cooperative endeavor was to save the life of the person without water. There was no essential benefits and no material gains, also shirking was easily detectable. A modern state is different in this respect. It is acknowledged that the state provides essential benefits and establishes a propitious framework for reaping material rewards. It is also recognized that the state secures a structure within which an individual can fully realize himself; consequently, an individual can obtain benefits

¹⁹⁰ Notice that this benefit is non-excludable.

¹⁹¹ To clarify the issue of obligations: the wretched survivor without water does not have a right to demand water from anybody out of the group. No one can help him alone, hence no one has a moral obligation to rescue him alone. However, all nine individuals with water have a moral duty to come to the aid of the tenth individual. Thus, the nine individuals acquire an obligation to contribute to the rescue scheme. This obligation is powered by the principle of fairness. If no morally pertinent differences between the nine individuals arise, no one of them can avoid contributing without being deprecated.

related to self-esteem. And it is beyond doubt that there is within the state a vast area of possibly shirking activities.

Thus, let us consider an example where the above observations are taken into account. Suppose there was an earth-quake on one of the islands in the Pacific ocean. A significant group of people managed to survive it by escaping on a ship. At present, they need to reach another island where they can be in safety. In order to reach this island, however, nearly all of them have to take part in a sophisticated effort of propelling the ship.

We will analyze this example by going through 'our ingredients' as before. The aim of the common effort is to get to the land. This aim brings about essential benefits for everyone. And these essential benefits are non-excludable. Further, it is probable that there are weighty differences among the members of the group. For instance, some are stronger than others, some may be ill, there may be children, women and elderly people. Let us, however, assume, for the sake of argument, that the differences are acknowledged and dealt with, i.e. the cooperative load is proportionally distributed. Then comes the question about shirking. Surely, some may avoid doing their part in propelling the ship and still the ship will reach its destination. But would it be morally permissible to shirk? No, it would not. I would be glaring unfairness if some were sunbathing and resting while others were working hard. Those who work may demand from those who shirk to stop dodging their tasks.

Finally, we have approached our last example, that of the state. To some extent, the state resembles the case of the ten people in the desert mingled with the case of the earth-quake survivors on the ship. The former highlights the receipt of moral benefits, whereas the latter emphasizes the receipt of essential and material ones. Going for the last time through 'the

ingredients' we can say that the state as a cooperative scheme pursues various aims. The state's activities and policies are diverse and multifarious. In contrast to all the above examples, the state-run cooperative scheme does not have only one dominant aim. This complicates the application of the fairness principle. However, it is incontestable that the state, among other things, provides all *four* types of benefits.

Next, the problem of similarity. Of course, the state embraces people who do differ in morally pertinent aspects. But at the same time, those differences are recognized in the state's directives and regulations. And, at the end, the question about shirking. It is indisputable that free-riding may be and often is ubiquitous. However, as Klosko's theory purports to show, free-riding is to be morally condemned.

SECTION 10.5. WHY OBEY?

In the previous section I have illustrated what moral benefits are. Also, I have analyzed the state as a cooperative scheme with varied aims, with members who possess differing properties (and those different properties ground different levels of their contribution to the scheme), and with ample opportunities for shirking. Now, I want to focus on moral benefits in the way which resembles Klosko's treatment of essential benefits. More specifically, I will concentrate on the following three questions: 'Why should one obey?', 'Why should everybody contribute?' and 'Are moral benefits presumptive or discretionary goods?'

In this section I will tackle the first question, i.e. the question of 'Why should one obey?' Let me first decipher what this question signifies. I will begin by positing the claim which stirs little disagreement: we ought to do our best to discharge our moral duties. Next, I will submit

the claim that an individual has moral reason to contribute to a scheme that helps him to discharge the moral duties which are incumbent on him. This claim, too, is hardly controversial. In certain situations it can also be reformulated and can obtain the following shape: it is fair to reciprocate for the services rendered or for the benefits acquired. The benefits which figure in the last claim are meant to be moral benefits. Thus, we have come to the claim that if one receives moral benefits, one ought to give something in return.¹⁹²

To the critical reader the claim which concludes the above paragraph may look quite innocent. He may willingly accept it and deny that anything consequential can be inferred from it. Wishing to be exact and detailed, the critical reader may add that there are two challenges that anybody has to face and overcome in order to incorporate moral benefits into Klosko's theory. The first challenge is to explain how someone finds out that a certain obligation is incumbent on *him*. The second challenge is to explain why should the obligation to reciprocate be the obligation *to obey*. I will deal with these two challenges in turn.

There are some circumstances in which the need to explain why a certain moral obligation is incumbent on a certain individual is obviated. For instance, if the individual is in the *unique* position to deliver help he is obligated to do so. By way of illustration, we can once more invoke the drowning child example where the passing individual is uniquely positioned to save the kid yelling for help. The positive moral obligation, which we find so conspicuously emphasized in the drowning child example, is a particular obligation owed by the potential

¹⁹² In fact, even this modest claim is contested by McDermott (2004). He attempts to prove that the fair-play theory cannot generate obligations (as opposed to weak moral reasons, which it brings into being). Throughout his article McDermott inclines us to believe that moral considerations stemming from the fairness principle are similar to those arising from gratitude, charity, and generosity (which clearly cannot be grounds for obligations, i.e. one-to-one strong moral relations between two parties). His main conclusion is that the cooperation, the acceptance, and the benefit conditions are not sufficient to establish genuine obligations of fairness. McDermott is, however, in error. He misconstrues the way the fairness principle is applied to resolve the problem of political obligation. In addition, even if he were correct about moral insignificance of the above mentioned conditions,

rescuer to the endangered child.¹⁹³ To be sure, the duty of rescue falls on everybody (it follows from its status of a natural duty), but it does not compel people to go around and seek drowning children. This duty is dormant. Special circumstances have to occur (like being able to pull a baby out of water or from the flames) in order to render the duty of rescue activated and particularized. And 'being in the unique position to offer aid' is in the core of those special circumstances.

Some authors have posited *proximity* as a valid criterion regarding assigning moral obligations to particular individuals.¹⁹⁴ However, as Kis persuasively argues¹⁹⁵, *the natural proximity rule* works well only in cases where the salient or unique position of some individuals is incontrovertible. Hence, it turns out that *the proximity criterion* is predicated on *the uniqueness criterion*. In situations where no individual naturally stand out as the most suitable for the fulfillment of the duty of rescue, the proximity rule is underdetermined. Here is how Kis captures this point:

Sometimes the situation is such that it is natural for everybody to act on a particular selection rule. Suppose one and only one adult is conspicuously closer to the scene of the accident than anybody else. Then, a natural proximity rule applies: it is the person nearest to the drowning child who should run to its rescue. Everybody can safely expect everybody else to follow this rule. But suppose those on the beach are all at an equal distance from the drowning child. Then, the proximity rule cannot possible apply. There are many other rules which compete for application but none of these has natural salience. The duty to save the life of someone in mortal danger cannot effectively guide action in such

still he would commit a fallacy of composition (a categorical fallacy). That those conditions cannot separately substantiate the obligations of fairness does not mean that taken together they will fail to do so.

¹⁹³ Murphy says that in this situation the obligation is contingent "upon the existence of a special relationship between the agent and the object of the obligation" (Murphy, 1993, 292).

¹⁹⁴ See Dan Egozon, 1999, 155, Lucas, 1995, 55, Trusted, 1995, 297.

¹⁹⁵ See Kis, 2000, 101-112.

situations, unless one of the competing rules is made salient by institutional convention (Kis, 2000, 101).

Of course, if among those on the beach in the above example there is a guard who is specially designated to help people when they are in peril while in water, he is supposed to be the person who would bring the child back to the shore. Here we encounter another instance of particularization of the natural duty of rescue - namely, that of *voluntary acceptance of certain responsibilities*. One of the classic examples of voluntary acceptance of certain responsibilities is a promise.

The critical reader may point out, however, that if we deal with the homeless and unemployed of a certain country, we fail to see how someone is uniquely positioned to help those homeless and unemployed, or how someone can be in vicinity of a particular group of the homeless and unemployed if they are at the other end of the country, or, finally, how someone voluntarily accepts to be responsible for the homeless and unemployed if in fact he does not. None of the obligation-generating criteria mentioned above seem to apply here.

To answer this objection, it is advisable to take a broader view on the problem at hand. It should be clear that we want to avoid two conclusions. One is that the positive moral duties give rise to moral obligations to help everyone who needs help regardless how far the needy person is from a potential helper and which relationships exist between them.¹⁹⁶ The second conclusion is that the positive moral duties do not give rise to moral obligations whatsoever;

¹⁹⁶ It is worth noting that there are relationships which, we are sure, should not become feeble with distance: the relationships of friendship and love, for instance, are not supposed to wither when distance increases. Kis elegantly and succinctly summarizes this point: "Duties of assistance fade away with distance, unless the needy person and the potential helper are related in some specific, obligation-generating manner. Whenever an individual bears a duty to aid another individual far away from him, it must be the case that the two are bound to each other by special ties. Common humanity is not a sufficient ground for the claim of duty in such cases, particular bonds must intervene as an additional factor" (Kis, 2000, 113).

they are entirely at an individual's discretion and it is up to him to decide who and to which extent he is willing to offer aid. These two conclusions are both unacceptable. The first conclusion is to be ruled out because it allocates a huge and unjustifiable burden on people's lives. The problem of overdemandingness emerges.¹⁹⁷ The second one is to be rejected because it is our deep conviction that the duties of assistance do give rise to moral obligations. Should it be otherwise, our lives would be too ruthless, too brute, too callous, too precarious after all.

To avoid the pernicious influences of any of the two conclusions mentioned above, we have to accede to two claims: (a) people may have positive moral obligations and (b) there is a limit of how much is demanded from an individual in way of discharging his duties of assistance. One suggestion which fits these two claims is that an individual ought to come with aid when the poor, sick, and disabled of *his country* are concerned. Below I want to defend this suggestion.

Consider the known example about the river, the flood, and the embankment. Unless the dwellers of the villages nearby the river build the dam, the flood may destroy their households. No one individual alone is, of course, capable of carrying out the task. Raising the obstruction against water is a collective task which requires cooperation. Suppose a certain pattern of cooperation is established and this pattern cannot be deemed unfair or unjust. Now, if some people shrink from doing their part, the others have to shoulder more work, beyond their fair share.¹⁹⁸ Consequently, measures may be taken against the shirkers since they do not discharge their obligations and try to take advantage of the others.

¹⁹⁷ Cf. Section 1.2 where I discussed the accumulation problem.

¹⁹⁸ Here, as in section 10.4, I mention the unfairness of shirking along with forcing others to do more than they are supposed. I want to make it clear that unfairness arises not only when one shirks and others, as a result, have to do more than their initial share. In the case of big schemes, shirking of some people might be imperceptible

Imagine, however, that individual A says: 'I want to contribute to the erection of the dam, but I want to do that by beating the drum. Why should I do more if I beat the drum the whole day?' How can the others react to A's statement? They can respond that it is nice of him to think of providing amusement. However, by doing so, he shifts on others the completion of his share of the task. All the others have to step up their work in order to build the dam. And unless the others agree to such an arrangement, the drum beater is unjustified in deviating from what is assigned to him in the cooperative effort.

I have brought up this transparent example since I want to argue that an analogous example can be constructed where moral benefits substitute essential and material benefits entailed in the dam building example. Suppose there is a country and in this country there is a functioning scheme of cooperation that aims to provide aid for the needy. Think of Great Britain, for instance. Suppose also that the terms of cooperation are sufficiently fair and just, as it is the case in Great Britain. Now, if individual A, a UK citizen, declares that he will not contribute to that scheme because he has decided that he would rather support some African country directly by sending a corresponding sum of money to its government, can his decision be vindicated? No, it cannot. Individual A receives moral benefits of having his duties towards the British indigent and handicapped people fulfilled, but he does not want to reciprocate for those benefits. As the drum beater above, A shifts on the others additional burden. And this is manifestly unfair.¹⁹⁹

and might have no influence on the shares of others. Still, unfairness would be there because the shirkers have taken advantage of those who have contributed. They have denied others the benefit they have enjoyed themselves.

¹⁹⁹ This role of the fairness principle is often overlooked. Kleingeld, for example, writes: "if one lives in a democratic state with a just and well-functioning political structure and one does the things that are required of a citizen, it is not *a priori* morally better to direct one's beneficent efforts to one's own country or nation rather than to distant strangers to whose cause one is devoted" (Kleingeld, 2000, 339). Indeed, it is not *a priori* better to help strangers than one's fellow citizens, but after some analysis and after invocation of the principle of fairness it becomes visible that there is a moral difference.

One may oppose the above conclusion by claiming that A does not have moral obligations to help the needy people of Great Britain, i.e. A does have moral duties to help but not moral obligations.²⁰⁰ To this there is a response analogous to that in the dam building example. In this example, there is a *social convention* which establishes who counts as a dweller of a nearby village. Once this convention is in use, expectations are created on the part of the people who live near the river. And as it is wrong to ignore expectations of people in the case of promise-giving²⁰¹, it is wrong to disregard and frustrate expectations in the dam building example. Similarly, in the example about a citizen of the United Kingdom, the British can hold that they expect that everybody within their country contributes to the common endeavor of aiding the destitute and the handicapped. One more remark: in justification of social conventions an important role is played by what I called above 'similarity of description'. And 'similarity of description' is related to fairness: it is fair that those, who are under similar circumstances, bear similar costs.

Let me be clear here. I am not developing an answer to the most baffling problem for the natural duty of justice theory – viz., how to explain to whom a certain duty applies and how it is transformed into an obligation without resorting to voluntary undertakings of agents. My contention is the following. The existence of a political association (the state) is given. This association provides vital benefits to a group of people living in the territory under the state's jurisdiction. The receipt of these benefits by an individual determines that this individual is within the scope of the fairness principle operating in this territory. In other words, those people have obligations of fairness to reciprocate for the obtained essential goods, who have

²⁰⁰ Kleingeld, for instance, conceives of the positive duty of civic patriotism as an imperfect duty (Kleingeld, 2000). Of course, those who adhere to such a view cannot explain how this positive duty of civic patriotism can be enforced. (Note that 'the positive duty of civic patriotism', for Kleingeld, stands for 'the positive part of political obligation'.)

actually obtained them. But the existence of a working scheme of social cooperation, aiming at production of presumptive goods, does more than only delineating the boundaries of a group of people who are bound by obligations of fairness stemming from the receipt of these presumptive goods. This scheme also tells us who is to count as a partner in collective fulfillment of positive duties. The existence of a scheme providing essential benefits contributes to the establishment of a one-to-one relation between beneficiaries of that scheme – the relation required in order to particularize the duties of assistance.

In a way, I reverse the associativist argument: I claim that first we have a cooperative scheme supplying people with presumptive goods; and then these people recognize their mutual dependency and their mutual expectations and rely on each other in their endeavor to take care of the needy. Note also that the principle of fairness operates on both stages. It is unfair to receive presumptive goods and to abstain from contributing; and it is unfair to have one's duties of assistance discharged and to refrain from supporting the scheme which does this.

The critical reader may still insist on the second challenge. Even if individual A ought to contribute to alleviating the plight of the needy, why cannot he do that as he figures suit? Why should he abide by the commands of the authorities? In order to answer these questions we will again have to invoke the principle of fairness. The understanding of the cooperative task of helping people is that it is a task of allowing some groups of people, like the poverty-stricken and disabled, to live a minimally decent life. This understanding also entails that the reliable assessment has been conducted and an effective strategy has been adopted with regard to how best this cooperative task can be carried out. Now, if someone dodges his part in the task, this means that the others have to step up their contribution to the task in order that the

²⁰¹ Cf. Scanlon, 1990.

task be successfully completed. And this is unfair. Therefore, one ought to comply with regulations and directives of the cooperative scheme which provides assistance to the needy.

There is an additional problem here. What if many people avoid doing their part in the cooperative scheme in question? Should individual A still contribute if many do not? It is reasonable to claim that individual A ought to contribute as long as others' shirking does not endanger the success of the whole project. If only a few shirk, then the execution of the task is not put in jeopardy, since it is a feature of any big cooperative scheme that its success does not depend on *everybody's* contribution. It is also plain that if nearly everybody defects the remaining contributors are released from dragging the scheme out. However, an interesting question arises when many begin to shrink from what they ought to do. Those who still abide by the rules of the scheme will have to increase their contributions; otherwise the scheme will not attain its goals. Now, some believe that the rule-abiding citizens indeed have to make greater sacrifices. However, others deny this. Cohen, for instance, says that "no-one is morally required to take on more than his fair share of a burden because someone else defects" (Cohen, 1981, 76).²⁰² I want to eschew taking a stance on this issue. Whether or not the contributors should step up their help, it is indubitable that the *non-contributors violate their obligation* to do their part.

SECTION 10. 6. WHY SHOULD EVERYBODY CONTRIBUTE?

After what has been said in the preceding section, the question of 'Why should everybody contribute?' admits of a straightforward answer. Everybody should do his part because

²⁰² Compare also Murphy's statement: "Each agent is required to act optimally - to perform the action that makes the outcome best - except in situation of partial compliance with this principle. In situation of partial compliance it is permissible to act optimally, but the sacrifice each agent is required to make is limited to the level of sacrifice that would be optimal if the situation were one of full compliance" (Murphy, 1993, 280).

otherwise there is unfairness. Those who avoid contributing take advantage of those who do not. The non-contributors receive the moral benefit of having their duty towards the needy discharged, but they do not reciprocate for this benefit.

One may raise an objection to the effect that individual A is not obligated to help the needy if the others can manage to provide the help by themselves. However, as it has been argued in section 10.4, A ought to do his part in the aid scheme because fairness demands this. Given that A is in a *similar* position as the others, he does not have a justifiable excuse for hiding from bearing his share of sacrifice.

Individual A cannot also evade doing his part by maintaining that there are neither the poor nor the disabled people in his neighborhood, and that since these groups of people are absent in his vicinity, he does not receive any moral benefits. This response fails because the duties of assistance are potentially unbounded. In fact, for all practical purposes we increasingly count them limitless. However, the obligations which stem from these duties do have limits. Usually, those limits coincide with boundaries of a state, not with the neighborhood fences.²⁰³ The established state-run cooperative scheme particularizes the duties of assistance and makes it an obligation to participate in it. It is worth reemphasizing that the emerged moral obligation is held by an individual towards the other members of the cooperative scheme, not

²⁰³ Notice, however, that in cases of extraordinary cataclysms or disasters people from nearly all the world become obligated to come quickly with aid. In our moral reasoning we do distinguish between 'the everyday need' and 'the exceptional need'. One explanation for this distinction may be that our sympathy is evolutionary conditioned and we *instinctively* hurry up with help to those who have undergone a catastrophe. Another explanation may be that we help those who happen to be in a situation in which we may probably find ourselves as well. And we tend to disregard the plight of those who are in a situation in which we have no chances to end up. Yet another explanation is that the world hunger and sickness constitute an enormous problem and if one were to strive to eliminate famine and curable diseases from the surface of earth, one would quickly get overwhelmed by the colossal proportions of the task. At the same time, the cases of disasters are, as a rule, manageable. A task still be massive but its costs would pale in comparison with the costs involved in the elimination of such scourges of mankind as hunger and preventable diseases. Of course, one should focus on the reduction as opposed to elimination of these scourges. And complying with one's own government's regulations aiming to provide aid to the needy is an important step in this endeavor.

towards the needy. A recipient of aid does not have a right to demand a direct help from any particular individual. However, the fellow members of the scheme do have a right to demand that everybody who is within the scheme bears his share of the burden. Once more the principle of fairness comes into play here.²⁰⁴

SECTION 10.7. ARE MORAL BENEFITS PRESUMPTIVE OR DISCRETIONARY GOODS?

The benefits we are concerned with in this chapter are moral benefits. Typical examples of such benefits are aid policies addressing the needs of the poor, homeless and sick. Do these benefits correspond to presumptive goods? Let us suppose that moral benefits can be compared to presumptively beneficial goods. Like the latter, they are *non-excludable* and *cooperatively produced*. Unlike the latter, however, they are not essential for self-preservation of all people except the needy, to put crudely. This last feature tells us that it is not the case that everybody will want to receive moral benefits. Some well-educated, rich and healthy citizens of a wealthy and powerful country may tend to reject the receipt of moral benefits. Hence, it may seem that moral benefits do not fit the bill. It appears that they cannot be categorized among presumptively beneficial goods.

There are two ways to deal with the above expostulation. The first one is to attempt to incorporate moral benefits in the category of discretionary goods that are the object of governmental provision.²⁰⁵ In order to succeed in this attempt one would have to show how moral benefits can effectively influence the provision of presumptive goods. However, it is implausible that one could make a strong case in favor of the special link between moral

²⁰⁴ It is worth observing that the fairness theory is superior to the natural duty of justice theory in this respect. For instance, within the natural duty of justice theory one might ask: 'If others can manage, why should I help?' And it would be difficult to tell him why. How the natural duty of justice theory can benefit from the fairness theory is discussed in two articles of mine (Pukas, 2005a, 2005b).

benefits and presumptive goods. The provision of presumptive goods can hardly be jeopardized if 'moral goods' are not furnished.²⁰⁶

The second way consists in maintaining that it is not fatal for the concept of moral benefits that they are not wanted by all. For the crucial point is that moral benefits *ought to* be sought after. People inherently bear positive moral duties. And once these positive moral duties are transformed into moral obligations, people cannot but fulfill those obligations, i.e. people become *obligated* to fulfill them.

Remember that we put the stress upon universal willingness to receive the package of presumptive goods because we had to meet the acceptance condition. Hence, the underlying goal is not to show that everybody wants some group of goods, but to show that the acceptance condition is satisfied. If so then the fact that moral goods are not desired by everybody does not automatically dismiss them from further consideration. If moral goods pass the acceptance condition, then they can be categorized among presumptive goods.

And there is good reason to believe that moral goods do pass this condition. Recall that the significance of the acceptance condition lies in screening out situations where moral obligations should not be generated. But in the case of moral goods there is no need for such screening. Moral goods are innately connected with moral obligations. Regardless whether individual A has agreed to discharge his positive moral obligation or not, if it is shown that such an obligation is a genuine one, A ought to carry it out. Therefore, the acceptance condition is not an obstacle on the way of treating moral goods as a species of presumptively beneficial goods.

²⁰⁵ See section 6.9 for the distinction between the discretionary goods that are the object of governmental provision and those that are not the object of such provision.

²⁰⁶ There has been more on that issue in section 9.4.

The upshot of the above discussion is that moral benefits are to be counted among presumptive goods that the state furnishes. Once it is settled that moral benefits are presumptive goods, it becomes clear that we should support the production of discretionary goods related to moral benefits since the latter can be under-supplied unless a number of discretionary goods are in operation. And what has been held in chapter 5 about Klosko's conception of discretionary goods, applies here as well.

CHAPTER 11. CONCLUSIONS

The concluding chapter is a place where it is appropriate to review what has been achieved in the whole thesis and to indicate in which way we can go forward from the reached position. Usually, this is also a chapter which is difficult to write for the author and is easy to read for the reader. The reader is happy that arcane expositions of philosophical stances and detailed examinations of tortuous arguments are behind and now he can draw a breath, take a refreshed look at the entirety of the dissertation and calmly form his own judgment. In contrast, the writer is agitated. It seems to him that he has little to tell in addition to those who have conscientiously perused the above chapters and that he can hardly illuminate all the contended points to those who have not bothered themselves with convoluted considerations in the middle of the text and jumped straight to the last chapter.

To those who belong to the former group and have been convinced by my arguments that we can justify political obligations within a political community by reliance on a modified version of Klosko's theory I will express my deep satisfaction. At the same time, I will warn them that the articulated version is likely to attract renewed criticism from the anarchists, the associativists, and advocates of other theories. In my subsequent work, I hope I will be able to

answer that criticism and fortify the position I have presented here. Specifically, it seems undeniable that the conception of moral benefits broached in this dissertation requires further elaboration.

Those who, despite inspecting my arguments, have remained non-budged and continue to hold on to their skeptical attitude regarding prospects of vindication of political obligations I will invite to point to me my slip-ups, oversights, and blunders. I will be grateful for constructive criticism: there is barely anything else that is so helpful for a philosopher in carving out his own views as incisive and critical observations of his colleagues. In addition, I urge them to remember what has lately become the obvious: "The absence of political obligations ... will not *entail* that disobedience or revolution is justified" (Simmons, 1979a, 194, italics in original).²⁰⁷ And those who have carefully read the above chapters but have remained at their view that the proposed revision of Klosko's theory has to founder this way or another, and that some other theory is capable of justifying political obligations, are invited to voice this view louder and await for my, or some other philosopher, assessment.

To those who have spared themselves the reading of the text or only idly flipped through it, I will have to boast that no one before me has analyzed Klosko's account of political obligations as comprehensively as I have in my dissertation. I have reviewed and thrashed out such components of the account as the notion of presumptively beneficial goods, the status of discretionary goods, the relevance of considerations about the overall fairness of a scheme, conceptual coherency, and applicability to actual circumstances. It has been stressed that the account in question is steadfastly resilient to many serious objections. It has also been underlined that it does yield to criticism stemming from the objection from redistribution: it

²⁰⁷ See Simmons, 1996a for a thorough discussion of possible ramifications of philosophical anarchism.

runs into trouble with explaining why certain governmental programs (that which bring help to the needy) should generally be supported. Finally, it has been shown how by modification of the notion of benefit Klosko's account can be rescued, i.e. can get this account back on its feet.

To some readers what has been achieved in the dissertation might look like the welding of the fairness theory and an abridged version of the natural duty of justice account. The weaknesses and strengths of the natural duty of justice account I have discussed elsewhere.²⁰⁸ Here it suffices to admit that indeed the thrust of my argumentation has been that considerations of fairness alone are incapable of upholding and buttressing the grounds for our political bonds. They are to be supplemented by considerations arising from the duties of assistance. These two types of considerations form a powerful tandem. Due to this tandem we can explain why a similarly situated individual should join his mates in a help mission: it is only fair that he bears part of the burden. Also, we can throw light on the question of why an individual that is disposed to act fairly is obligated to contribute to the state's activities which do not assist him but assist others: he receives a benefit of having his duty fulfilled, hence he ought to reciprocate for this.

The explorations of links between the fairness and natural duty of justice theories constitute a path along which the ideas expressed in this dissertation can be developed. It is interesting and symbolic to note that John Rawls, at different times, held to and championed both of the above theories. What I have done and plan to do is what presumably Rawls had in mind but what never took shape in his writings: the fusion of what we are obligated to do because we are human beings and what we ought to do as similar participants of the same undertaking.

²⁰⁸ See Pukas, 2005a and 2005b.

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