Debate

Obligation and consent

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Author's abstract

It is often supposed, as in Professor Kluge's article (1), that one can only acquire an obligation by free consent. This paper argues that although this is true of some types of obligation, including the ones discussed by Professor Kluge, it is by no means true of all. In particular, it is argued, society may legitimately impose obligations on us without our consent, if the obligations are reciprocated, or if it is simply enforcing an already existing moral obligation.

In a most interesting article in the December 1988 number of the *Journal of Medical Ethics*, Professor Kluge (1) states that 'it is a fundamental ethical principle that an obligation cannot be imposed unilaterally. The person who acquires the obligation must be able to refuse it'. This raises a very important question, which I would like to discuss: is there in fact such a principle?

First we should note that no society has ever obeyed this principle in practice: we are not given the option whether or not to pay taxes or to obey the law, or even, in the case of young men with no conscientious scruples, to join the armed services. There are social contract theorists who have argued that by residing in a particular country one has given tacit consent to all such obligations: but this is both implausible and proves too much – implausible because most people do not have the ability to emigrate, even if they wish to, and proving too much because it would follow that one has automatically consented to any act of the government, however repugnant to one's conscience. Professor Kluge's claim that 'in no other case does society insist that someone must assume a certain obligation without any choice' is either mistaken or requires some special restricted use of the term 'obligation', which there is no obvious way of supplying.

It might be objected that this point relates only to legal obligation and not to moral obligation; and that the appropriate conclusion is simply that all societies impose obligations which are morally unjustified but

nevertheless enforced. It is true that the point is more plausible when applied to moral obligation; but there are still two objections to it. The first is that the concept of obligation carries no such implication: there is no absurdity or self-contradiction in asserting that someone has an obligation they did not wish or choose to assume. There is indeed a connection between obligation and freedom, inasmuch as 'ought' implies 'can': a person cannot be obligated to do something not in their power, or, for that matter, something they cannot avoid doing – rivers are not obligated to flow towards the sea. Moreover, many obligations, such as those arising from promises and contracts, do depend on free consent: one is not obliged to keep a promise extorted by force or fraud. A similar point could probably be made regarding obligations that arise from a choice of a marital or sexual partner or of a means of livelihood: the victim of rape has no obligations towards the rapist. But obligation as such has no logical connection with free consent.

To this one could reply that, although the principle is not a logically necessary one it is nevertheless true, and the cases just mentioned are evidence of its truth. But there are counter-examples to this, of at least two sorts. One is the obligation to members of one's family: one may choose one's spouse, and choose to have children, but one does not choose one's parents or siblings. Yet, although it is a matter of argument as to what one's obligations are, it is hard to deny that one has some obligations, or that they are partly unilateral: one may have fewer obligations to a cruel and neglectful parent, but one still has some which are unavoidable.

Secondly, some obligations arise simply by one's having certain skills or capacities, or by being in a certain place at a certain time. Obvious examples would be the obligation to save someone from drowning, if one can swim, or the obligation on the rich to help the poor – for example, our obligations to the underdeveloped part of the world. Those who would deny the existence of such obligations have to adopt the odd position that one is obliged not to push a person into the water, but not obliged to pull them out, even if the result is the same.

However, a further reply to this is possible. These examples relate to obligations which arise in the course

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of nature, not ones which are imposed by society. It is true that, as we have seen, society does impose numerous obligations on us without any obvious by-your-leave. But it could be claimed that although they may be unilaterally imposed, they are not *unilateral obligations*; or at least that they can only be *justly* imposed if they are multilateral, rather than unilateral. A 'multilateral' obligation, in this sense, would be one which binds at least two people, and in such a way that *either* 1), although they may not in practice all benefit from its existence, they all may well do so, *or* 2), for each of them, other people have towards them the same obligations as they have towards others. Conscription for a defensive war would be an example of the first kind of obligation, parts of the criminal law, such as the obligation not to murder, of the second. It might be conceded that the imposition of obligations of this type can be just, and also conceded that purely unilateral obligations may arise in the course of nature; but it could still be argued that it cannot be just for any person or any human authority to impose, without consent, such a unilateral obligation without any reciprocal rights or benefits. Indeed, perhaps this is how Professor Kluge's claim should be interpreted, as a claim that, although there can be moral obligation without consent, there cannot be the just imposition of a unilateral legal or quasi-legal obligation unless there is the consent of the person acquiring the obligation.

It is certainly true that it is not easy to find a counter-example to the principle when formulated in this restricted way. Many instances of such behaviour by societies – such as the one-sided obligations imposed by law on slaves, by economic pressure on the proletariat, or by custom, economic pressure and law on women or Black people – are manifestly unjust. Some other instances are in fact multilateral: for example, given that no rich person can know for certain that they will not one day be destitute, to impose, via taxation or other means, an obligation on the rich to help the poor is not in fact to impose an obligation that is unilateral in principle, although it may be so in practice. But there are examples, such as the taxation of people in the wealthy countries to help those in the poorer ones, where, unlike the redistribution within one country, there is no reciprocal element, even in principle: if the world's balance of wealth changed, the newly rich might or might not help the newly poor. Yet many people feel that, so far from this being unjust, it is a major injustice

that there is so little of it.

The existence of this counter-example suggests the following. It is unjust to impose a unilateral legal obligation unless there is already a unilateral moral one, and one which involves the public rather than the private sphere of morality. This is, I think, why Professor Kluge is entirely right to say that 'society has the obligation to allow each woman, insofar as this is materially possible, access to techniques and/or devices for preventing pregnancy in the first instance, or to terminate a pregnancy before the fetus has become a person' (although if a fetus is a person, or human, at conception, this second clause might have no application). But this is true, not because obligation requires consent, but because this is not the sort of obligation that society has any right to exact. It would be a unilateral legal obligation without any prior moral obligation, since a woman is not morally obliged to have children – or, if she is, it is not an obligation that society would have any claim to enforce.

I conclude that the imposition of a legal obligation is unjust only if *in addition* to the absence of consent, explicit or implicit, it is the case that 1) there is no adequate reciprocal obligation *and* 2) there is no already existing moral obligation to act (or refrain from acting) in the way required. In many cases the absence of consent is sufficient to prevent these conditions from obtaining, as in the case of a promise exacted by violence or deceit. But this is not always so; and hence, while one may well agree with the conclusion of Professor Kluge's paper, one should acknowledge that the ethical principle on which it is based is more complex than that 'an obligation cannot be imposed unilaterally'. There is such a principle, but it applies only to certain types of obligation.

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References

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