

Fair Play, Reciprocity, and Natural Duties of Justice

GEORGE KLOSKO*

Abstract. In this paper, I respond to what is currently the most significant criticism of the principle fair play as a basis for political obligations. In a series of cases in which obligations appear to be established by fair play, important scholars contend that the moral principle at work is not fair play but a natural duty of justice to provide essential benefits to *other* people. Such natural duty accounts strikingly ignore requirements of reciprocity, to make appropriate return for benefits received. In addition, careful examination of possible natural duty explanations of such cases indicates severe difficulties explaining exactly to whom the natural duties in question are owed and why they may require significant costs.

1. Introduction

It is now more than sixty years since H. L. A. Hart presented the principle of fair play (or fairness), as a basis for political obligations (Hart 1955). During this period, the principle has been worked into a developed theory—actually, a family of theories—and scholars hold that that such a theory is now the most promising approach (Green 2002, 530; Soper 2002, 103). In this paper, I respond to an important criticism of fair play, which concerns its underlying moral logic. Prominent theorists argue that the moral principle at work in cases that are alleged to turn on fair play is actually a natural duty of justice. Because of the importance of these critics and the consistency of their criticisms, it is necessary to respond. In addition, while my purpose in this paper is not to refute natural duty theories of political obligation, I believe that viewing them against a backdrop of fair play affords important insight into their workings and difficulties they must overcome.

The principle of fair play defended in this paper centers on a requirement of reciprocity. On this interpretation, it is a “self-benefit” principle (Arneson 1982). In a well-known work, Lawrence Becker (1990, 3) describes reciprocity as follows:

We ought to be disposed, as a matter of moral obligation, to return good in proportion to the good we receive and to make reparation for the harm we have done.

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This construal is clear in Hart's (1955, 185) initial formulation:

[W]hen a 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.

These points are important, because the scholars I critique focus on benefits owed to *other* people rather than received by the obligee herself.

The specific version of fair play I defend may be described as "nonvoluntarist." (I will refer to this as FP, for short.) One reason FP is important is its ability to generate requirements to reciprocate even when benefits are not voluntarily accepted. Because the benefits are public goods that are received by all members of the community, all incur obligations almost without regard to what they do or think or believe. Such a theory is able to overcome the problem of "generality" that plagues other theories of obligation, notably ones based on consent. Because individuals receive the relevant public goods from particular cooperative schemes, the "particularity" condition is satisfied as well.¹ If these points are accepted, then central questions of political obligation may be viewed as largely solved.

2. Nonvoluntarist Fair Play

As indicated, FP is centrally concerned with moral requirements to contribute to the supply of public goods. While the principle's workings in these cases are subject to controversy, there are fewer difficulties with "voluntarist" versions of the principle. Voluntarist theories concern excludable goods, which can be accepted in the usual sense. Consider a potluck supper. (Call this *Potluck*.) Assume that Alice's neighbors organize a potluck dinner, and it is understood that each neighbor is to bring a dish. If she comes to the dinner without bringing a dish but eats food others had brought, clearly she is doing something wrong. *Potluck* illustrates the wrong of accepting benefits without doing one's fair share of the effort involved in producing them. In the literature, it is generally agreed that the principle of fair play establishes moral requirements to contribute in regard to excludable goods.² Although they have the considerable advantage of clarity, voluntarist interpretations of the principle are of limited usefulness in regard to political obligations, because the most important benefits provided by the state are public goods, which cannot be "accepted" in any usual sense.³ Familiar goods or benefits that fall under this description are national defense, law and order, environmental protection, and public health.⁴ In addressing

¹ A requirement along these lines is discussed at length, below. For discussion of these criteria and, more generally, the criteria theories of political obligation should satisfy, see Simmons 1979, chap. 1; Klosko 2005, 9–12.

² I should note that the precise nature of the wrong can be interpreted as turning on consent or fair play, depending on how one fills in the examples.

³ In an influential discussion, Simmons (1979, chap. 5) argues that public goods can be "accepted" in a sense, if they are taken "knowingly and willingly." For criticism of this view, see Klosko 1992, 50–4.

⁴ Exactly where we draw the line between excludable and nonexcludable goods is subject to argument, as the latter category could also include roads, airports, and other public accommodations. Although it is possible to exclude people from their use, in practice it is often prohibitively expensive or inconvenient to do so.

how fair play establishes obligations to contribute to these goods, I follow the approach laid out in my previous work, according to which obligations are generated if three main conditions are met. The goods supplied must be (i) worth the recipients' effort in providing them; (ii) presumptively beneficial, that is, they may be assumed to be indispensable for satisfactory lives; and (iii) have benefits and burdens that are fairly distributed (Klosko 1992, chap. 2). Consider an example:

National Defense. Anne receives national defense, which is necessary for a satisfactory life, from the burdensome efforts of the inhabitants of Community C.

Because the benefits of defense are unavoidable public goods, they are received by Anne without regard to whether she pursues them, while it is not clear how she could pursue them even if she wished to. However, because the benefits are indispensable to her welfare, we may presume that she *would* pursue them and bear the associated costs, even if these were high, if this were necessary for their receipt. Because the benefits are required for an acceptable life, it would not make sense for her not to agree to this arrangement. But her obligation to the providers of defense does not stem from hypothetical consent—that she would consent to receive the benefits under some circumstances—but from a need to make appropriate return for benefits she receives, which are produced by the burdensome cooperative efforts of her fellow citizens. Because she benefits in this way, Anne may be presumed to have a moral requirement to contribute to the cooperative scheme that supplies the benefits, while fairness requires that she bear burdens comparable to those of other contributors.

I believe this train of reasoning provides the most persuasive account of central political obligations. But this claim has been criticized.

3. Duties of Justice Accounts

Prominent scholars present alternative interpretations of cases such as these, claiming that they turn on a natural duty of justice rather than fair play—whether or not obligations are generated. We will look at three presentations of this view.

First, A. John Simmons subscribes to a particular construal of fair play as requiring a strong, conscious sense of cooperation if a cooperative enterprise is to be genuinely cooperative (Simmons 2001, 38–42). He believes this is clear in the workings of fair play in excludable schemes. It is because the scheme in *Potluck* is genuinely cooperative in this way that Alice's failure to bring a dish is unfair and subject to criticism. Because similar senses of cooperation may be presumed not to exist in the large organizations that provide indispensable public goods, they do not establish fair play obligations. He therefore believes a natural duty of justice is actually at work. I find it puzzling that, after rejecting FP, Simmons finds it necessary to invoke an additional moral principle, although this, too, apparently fails to establish obligations. But perhaps he simply views natural duty as less objectionable than FP. However we interpret his motives, Simmons rejects my FP argument in favor of a natural duty of justice:

George Klosko's prominent recent defense of a fair play theory of obligatory obedience [...] seems actually to be far less concerned with fair play, properly understood, than with the needs of those who depend on the public goods states provide. It is the value or importance of these public goods (their "presumptive" status)—and *some unacknowledged natural duty to help make them generally available in our society*—that seems to ground required obedience in Klosko's

theory, not (as should be the case if fair play is really the issue) our acceptance of benefits, our free participation in a genuinely cooperative scheme, or the ways in which refusal to obey would take advantage of others. (Simmons 2005, 189–90; similarly, 190 n. 3)

I have italicized the central moral claim in Simmons's interpretation. In order to assess his account, we must become clear about the purported natural duty and reasons for believing it is more convincing than a fair play account.

An interpretation similar to Simmons's is presented by John Horton. Like Simmons he believes that the cases turn on a duty to provide important goods to other people:

For what matters about presumptive goods is simply that, because of their importance and their public character, we should do what is necessary to ensure that everyone has them, not that they should necessarily be provided *fairly*. So [...] in arguing for the fundamental importance of peace and security, I do not claim that the provision of such a good has anything in particular to do with fairness. (Horton 2010, 95; his emphasis)

Leslie Green, also arguing against my position, provides a similar interpretation. In addition to a depiction of the natural duty in question similar to that of the other scholars, he presents additional arguments against FP that I must briefly address:

[A]lthough Klosko sees his doctrine of presumptive goods as an elaboration of fairness, its logic actually pulls away from that theory. [...] [a] If law's benefits really are so important, then we should not remain indifferent to their provision. If there are things that everyone desperately needs, and if co-operation is needed to provide them, then surely it is wrong to fail to provide them. [b] While the principle of fairness prohibits free-riding, it does not show that one must enter any given scheme of cooperation in the first place. Those who jump turnstiles are free-riders and violate their obligation to pay their share; but those who walk instead of taking the subway do not. Klosko's argument for the crucial importance of presumptive goods [...] thus has little in common with a fairness-based theory. (Green 2002, 537–8; divisions supplied)

As we can see, Green combines specific objections to fair play with this appeal to a natural duty. His criticisms may be dispensed with readily. To take his two points in reverse order, first, (b) Green's appeal to subway turnstiles is not applicable in this context, because, as he depicts the example, riding the subway is an excludable benefit, which has to be pursued. In regard to his second point, in examples like defense and clean air, there is no question of "enter[ing] a scheme of co-operation in the first place." Recipients do not "enter" schemes or perform other voluntary actions in regard to them. Once again, the benefits in question are public goods that are unavoidably received by all inhabitants of the community. Green's more important argument is that labeled (a), which aligns his interpretation with those of Simmons and Horton, although he apparently disagrees with Simmons, believing that obligations are generated in such cases.

Because these three prominent scholars argue along lines that are so similar, we must see how well FP can respond. As it seems to me, the positions of the three scholars are motivated by the fact that they intuitively believe that obligations are generated in circumstances such as those in *National Defense*.⁵ If FP cannot explain them, then another explanation must be sought, and so the invocation of natural duties. The main circumstance in these cases are:

⁵ As noted, Simmons differs on this point.

- (i) The subject receives essential public goods,
- (ii) which are provided through the cooperative efforts of virtually all members of society.
- (iii) These efforts are burdensome,
- (iv) and all members of society benefit similarly.⁶

Under these circumstances, it is intuitively clear that people who benefit from these efforts have obligations to contribute as well, unless their circumstances are somehow exceptional. In this paper, my main focus is the turn to natural duties. Rather than being primarily concerned with the scholars' reasons for rejecting FP, I examine claims concerning the superior plausibility of natural duty explanations.

From FP's point of view, there is an immediate problem with the natural duty accounts. They fail to acknowledge, let alone to account for, reciprocity.⁷ Focusing on requirements to provide benefits *to* other people, all three accounts overlook the fact that individuals receive essential benefits *from* other people's burdensome cooperation. Consider *National Defense*. In this case, it is clear that Anne not only has an obligation to contribute to defense, but this obligation is owed to the members of C who supply the benefit. Similar reasoning would hold in other cases in which essential benefits are provided and other conditions of FP satisfied. But according to natural duty interpretations, reciprocation is not a factor. Anne's obligation is owed to people generally, whether or not they contribute to the particular cooperative scheme that provides her benefits. Let us alter the circumstances:

Defense Not Received. As in *National Defense*, Anne receives benefits of national defense from the efforts of inhabitants of Community C. However, Ben is not protected by the defense scheme. Assume that he lives outside the protected area.

In this example, are the obligations of Anne and Ben similar, as would be the case if they were grounded in moral requirements to provide indispensable benefits to other people? I believe the answer is clearly no. One can see immediately that we respond differently to the two scenarios, which tells strongly against a natural duty account. Assume that both Anne and Ben do not contribute to defense and the members of C complain about this. Would the complaint have equal force against both persons? Again, it seems obvious that Anne would be more culpable. Both of these differences indicate the role of receipt of benefits in grounding obligations. If the requirement to provide defense in *National Defense* stemmed from a natural duty of justice, the fact that Ben did not receive defense would not differentiate his requirements to provide it from those of Anne.

The importance of reciprocity is supported by additional considerations in regard to whom duties to provide benefits are owed. Let us alter the example once again.

⁶ We may also assume that the benefits produced are worth their costs and that the burdens and benefits of cooperation are distributed fairly.

⁷ Becker believes obligations of reciprocity hold in regard to benefits that are not voluntarily accepted (Becker 1990, 73, 124–30), and that in regard to receipt of public goods, one should do one's fair share in contributing to the efforts that made the benefits possible, which can require obedience to the law (ibid., 114–5, 252–62).

Defense Alternative Provision. Assume circumstances like those in *National Defense*, but Carl lives in D-land and so does not receive the benefits of defense from the inhabitants of Community C but from those of D.

Under these circumstances, unlike Ben's position in *Defense Not Received*, it is clear that Carl has a requirement to contribute. But to whom is this owed? Clearly, according to our intuitions, provision of defense generates obligations to contribute to the scheme that provides one's defense. Obligations to C are owed by people who, unlike Ben and Carl, actually receive the benefits of defense from C's scheme. The people who have requirements to contribute to defense in D-land are people who benefit from D-land's defense.

4. Natural Duty Theories

While I believe the reasoning in the last few paragraphs is convincing, supporters of natural duty views disagree. We must therefore examine their alternative explanations, which they view as more plausible than FP.

Although the positions of the three scholars are similar, Simmons's differs in two respects. In addition to the fact that he believes that obligations are not generated in the circumstances described, he restricts the scope of his natural duty. In the passage quoted above, he describes it as "some unacknowledged natural duty to help make [essential benefits] generally available *in our society*." Elsewhere, he describes this as "an unstated moral duty to help supply essential goods *locally*" (Simmons 2005, 190 n. 3). Simmons does not explain how the scope of this natural duty is restricted. That it is restricted is puzzling in view of his well-known arguments concerning the difficulty of restricting them. As we will see, other natural duty accounts have similar difficulties with this problem.

Setting these matters aside, I will focus on a general claim that a natural duty explanation is more plausible than FP, in accounting for the feeling that there is an obligation in the circumstances described. In assessing the natural duty accounts, we confront difficult issues of interpretation. As we will see below, no natural duty is able to establish the relevant obligations without additional assumptions that qualify and focus it. All three scholars refer to natural duties on a general level, without indicating how the views they have in mind should be filled in.⁸ I will therefore examine different ways this can be done. As we will see, all natural duty approaches we examine confront two problems. With natural duties of justice owed to other people, we must determine exactly who these others are. Call this the problem of *Specification*. To a large extent, criticisms along these lines are familiar from the work of Simmons, who first called attention to the problem of "particularity," which besets natural duty views (Simmons 1979, 31–5). In discussing this issue, I build upon his criticisms and develop certain points further.⁹ The second problem is *Costs*. While natural duties to assist others are generally viewed as holding only if not overly costly, political obligations can impose significant costs. They may require high tax payments and, more

⁸ Simmons (2005, 190 n. 3) is an exception in this way also. He claims that my position is "indistinguishable in its foundational assumptions from theories like Wellman's," although it is not clear whether he means more than that I am committed to a natural duty view. In view of the difficulties with Wellman's position, as discussed below, there is little reason why a proponent of FP would accept its distinctive qualities, even unconsciously.

⁹ A related problem, which I also include under *Specification*, is determining the content of the obligations in question, exactly what they require.

extreme, military service, which could cost the subject his life. A suitable natural duty must be able to require such significant burdens.

This problem may be illustrated with examples:

Swimming Pool. April sees Bob drowning in a swimming pool. Other things equal, she would be subject to severe condemnation if she walked by and allowed him to drown.

While certain scholars may doubt the existence of a duty of rescue in cases such as this, I view it as intuitively plausible, and will accept it for the sake of argument.¹⁰ But it is important to note that, in the Anglo-American tradition, duties of rescue are generally held to bind only if not overly costly.¹¹ Thus in *Swimming Pool*, if April does not rescue Bob because she is worried about ruining her shoes, she will be condemned. But consider an alternative scenario:

Burning Building. Carol is trapped in a burning building. Dan is the only person who is in a position to rescue her, but does not do so, because the building might collapse any minute, which would cost him his life.

Even though Carol's life is presumably as valuable as Bob's, it is not clear that Dan is morally required to risk his own life to save her. Although he would not be praised for this failure to rescue, he would likely not be condemned. If Dan did attempt the rescue, his efforts would be viewed as supererogatory, over and above what his duty required.

For ease of reference, let us say that a duty of rescue or other natural duty is a weak duty if it is qualified in regard to costs, and a strong duty if it holds without cost restrictions. Granted that political obligations may demand costly sacrifices, a theorist who wishes to defend a natural duty account bears the burden of demonstrating how it can require these.

As noted above, because it turns on requirements of reciprocity, FP has clear answers to *Costs*. Because the subject receives benefits from cooperative schemes, reciprocity requires that she bear burdens comparable to those of other participants. Because the benefits are necessary for a satisfactory life, her assigned burdens may still be worth their costs, even if they are heavy. *Specification* is dealt with readily. Because the benefits the subject receives are produced by particular cooperative schemes, her obligations are to members of those schemes.

As it seems to me, in the literature at the present time, the most plausible directions we may take in working out a natural duty view are as follows:¹²

- (a) a natural duty of justice, as presented most familiarly by John Rawls;
- (b) a principle of samaritanism, as argued by Christopher Wellman;
- (c) a duty to provide other people with the necessary conditions for enjoying central human rights, as presented especially forcefully by Allen Buchanan.

¹⁰ An excellent defense of such a duty is provided in Feinberg 1984, 126–86.

¹¹ For discussion of duties of rescue in different countries, see Klosko 2005, 95–7.

¹² References for the theories are given below. A fourth possibility, which I do not consider, is based on Kant's argument in *Metaphysics of Morals*, which turns on not violating the rights of others. Kant argues that one must leave the state of nature and submit to a state, in order to achieve "a rightful state" (Kant 1996, 85–90). For a powerful, recent treatment, see Stilz 2009. For purposes of this paper, this view is not applicable, as the duty on which it rests is to avoid committing injustice, rather than to confer benefits on other people. We should note that because this is a negative rather than a positive duty, it will likely deal more easily with *Costs*.

In interpreting the three positions, I assume that, in order to fulfill their duties of justice, people must submit to the laws of particular states, and so that the different accounts provide what may be characterized as theories of political obligation.

5. Rawls's Natural Duties of Justice

I begin with Rawls's natural duties of justice. Earlier in his career, Rawls had subscribed to the principle of fair play, but only if the relevant benefits were voluntarily accepted (Rawls 1964, 9–10). In *Theory of Justice*, claiming that this condition is not widely met, Rawls rejects fair play as a basis for general requirements to obey the law and turns to natural duties. As we will see, his responses to the two problems are unsatisfactory. He is able to deal with them only at the cost of violating the strictures of natural duties. In other words, he faces a dilemma. Either he can present forceful responses to the two problems or he can present a natural duty account, but not both. Although he does not acknowledge this—and may not recognize it—these difficulties push Rawls towards a position based on reciprocity, along the lines of the principle of fair play he had earlier rejected.

Rawls argues that natural duties of justice are moral requirements that hold in regard to all people. They are unlike obligations, which bind only people who incur them and are owed to only certain people. While a promise is owed only by the person who makes it and owed only to the person designated by it, duties such as mutual aid and not to harm others are owed by everyone to everyone (Rawls 1999, secs. 19 and 51). An important natural duty Rawls presents is functionally equivalent to political obligations:

From the standpoint of the theory of justice, the most important natural duty is that to support and to further just institutions. This duty has two parts: first, we are to comply with and to do our share in just institutions when they exist and apply to us; and second, we are to assist in the establishment of just arrangements when they do not exist, at least when this can be done with little cost to ourselves. (Ibid., 293–94; similarly, 99)

For ease of reference, I will refer to the parts of this duty as first duty and second duty. The two parts together may be referred to as the “political duties.”

These political duties confront difficulties in regard to the two problems. To begin with, in regard to *Specification*, Rawls's position is criticized by Simmons. If one is bound to help other people, it is not clear why one should aid the inhabitants of one's own country, as opposed to people in other countries who may be more needy. As we see in the above quotation, Rawls limits the first duty to institutions that “apply” to one, but it is not clear exactly what this means. As Simmons famously argued (1979, chap. 6), in order for institutions to “apply” to Abe, there must be some special relationship between him and them, based, e.g., on consent or acceptance of benefits. Such relationships could account for duties towards his own countrymen. But if this is the case, then the moral work of grounding his obligation is done by these factors rather than by the natural duty.

Rawls's difficulties in tying obligations to specific institutions are exacerbated by the question of costs. Rawls generally presents his natural duties as limited in cost. Thus the duty of mutual aid is to help others when they are in need, “provided that one can do so without excessive risk or loss to oneself” (Rawls 1999, 98). The duty to

bring about a great good holds “only if we can do so relatively easily” (ibid., 100). As noted above, I view it as a basic fact of political life that contributing to essential public goods provided by the state can be costly. Accordingly, we must see if the natural duties of justice can overcome this problem.

Because of the overall argument in *Theory*, the problem of costs must be approached in a particular way. In the literature, theorists generally decouple the natural duties from other aspects of Rawls’s theory and discuss them as moral principles that hold in their own right. But their status in *Theory* does not rest on their being familiar or intuitively clear, but on the fact that they would be adopted by the representative individuals in the original position. Because the representative individuals are motivated by rational self-interest rather than benevolence, the natural duties must be shown to be in their interest. For many natural duties, this requirement is clearly met. For instance, the benefits of a general rule of mutual aid clearly outweigh its costs. The gains to the person in need far outweigh the costs to those who help him, while it is almost as likely that one will be a beneficiary some time as a benefactor (ibid., 298). Similarly, the benefits of living in a society in which individuals treat each other with mutual respect outweigh the costs of having to show others respect (ibid., 297).

But this requirement is more troublesome for the first political duty. While the second duty, the duty to help establish just institutions, is qualified in regard to costs, this is not true of the first. This contention commits Rawls to the position that the benefits of the first duty outweigh its costs, even if these are substantial.

Rawls likely recognized that the first political duty must be strong. Presumably, this is why he left off the cost qualifier attached to the second one. Accordingly, only if a country’s institutions apply to one, is it cost-effective to make significant sacrifices on its behalf. One is required to aid other states or states in general only if this is not unduly burdensome. We are able to explain the relevant connections here in accordance with the central tradition of liberal political theory. In the original position, the representative individuals possess basic information about how societies function (ibid., 119). Thus they know that certain services provided by government are necessary if they are to achieve their ends. In order for a system of rights and liberties to exist, society must be stable and orderly; the individual citizen must be free from coercive interference, and the populace safe from foreign aggressors. Similarly, a functioning property system requires law and order. The need for these and other attributes of society are basic assumptions of liberal political theory and major features of the representative individuals’ social knowledge.

Although Rawls does not discuss these points in the context of political obligations, he clearly assumes them. This is seen in his discussion of liberty of conscience, which is limited, “everyone agrees, by the common interest in public order and security.” Defending this limitation, Rawls notes that “public order is understood as a necessary condition for everyone’s achieving his ends whatever they are” (ibid., 186–7). Rawls defends the need for conscription along similar lines, as justified in order to defend the system of liberties as a whole (ibid., 333–4). In short, then, because of the need for the state to provide benefits such as these, individuals are required to make extensive sacrifices when necessary—as in cases of conscription.

Rawls is not unusual in viewing the state and its benefits as indispensable. Like traditional theorists, he also believes these benefits require general political obligations, binding on all or nearly all members of society. But Rawls lacks faith in

traditional bases of political obligation to establish these. As I have noted, in *Theory of Justice*, he rejects the principle of fair play that he had supported previously, because he does not believe it can bind people generally. His turn to the natural political duty is because he believes it is able to do this. He therefore makes the requirement to support just government a duty, pertaining to all persons, rather than an obligation, incurred by voluntary actions (*ibid.*, 295–7). Accordingly, the reasoning underlying the first political duty turns on the need for essential state benefits, which must be provided by cooperative efforts that are general.

With Rawls's grounding the obligation to obey the law on a duty (in this sense) I have no quarrel. But the additional step of making it a *natural* duty is questionable. Natural duties differ from obligations not only in not being self-assumed through voluntary acts, but also in not being owed by or to specific individuals. But on this basis, we can see that the first political duty is not actually a natural duty. In order for this duty to be worth its costs to Abe, it is not owed to people generally, but only to the other people who are under institutions that "apply" to him. Although Rawls does not explain exactly what he means by this, the institutions in question are the ones that supply Abe with the essential preconditions for liberty and decent lives that we have seen. Accordingly, if we limit the natural political duty in this way it is no longer a natural duty, but tied to the kind of cooperative activity that distinguishes obligations from duties.

Similar points hold in regard to the first political duty's bearers. Natural duties such as mutual respect and mutual aid are owed by all individuals without regard to voluntary actions or institutional relationships. But according to the line of argument developed here, the first political duty is generated by the receipt of benefits and so owed only by recipients.

It appears, then, that far from being a moral requirement owed by everyone to everyone, a workable political duty is owed by recipients of essential state benefits to their fellow citizens who provide them. These connections between benefit providers and recipients amount to reciprocity. Accordingly, in spite of Rawls's turn away from this principle earlier in his career, his position in *Theory* is tantamount to an argument from fair play. All that is required to transform the first political duty into a moral principle extensionally equivalent to FP is clear acknowledgment of a requirement that each person do his or her fair share of the burden connected with supplying essential public goods. From the perspective of the original position, this additional proviso is clearly justified.¹³

Accordingly, if we accept this line of argument, we can see that an account of *National Defense* and other similar examples based on natural duties is not more plausible than one based on fair play. We have seen Rawls's difficulties with the problem of *Costs*. The problem of *Specification* is similarly unwieldy. If our reconstruction is correct, then the means through which Rawls limits the natural duty the subject must support to his own institutions is through the latter's supply of essential public goods. But this confronts Rawls with the dilemma we have noted. In order to overcome the problems of *Specification* and *Costs*, Rawls must limit the natural political

¹³ From the point of view of the original position, it is difficult to understand why Rawls differentiates people who accept public goods from others who do not and so rejects the principle of fair play on this basis. For the goods under consideration, acceptance in the ordinary sense of the term is of course not possible.

duty to institutions that supply the subject with essential benefits. But so limited, the duty in question is no longer a natural duty, but one that holds because of a special relationship with the subject. Far from providing a more plausible explanation of cases such as *National Defense*, Rawls's position is essentially a variant of FP.

6. Samaritanism

Christopher Wellman's principle of samaritanism is related to the duty of mutual aid posited by Rawls. Like the critics of FP quoted above, he bases his natural duties on benefits owed to other people. But Wellman is not hampered by claiming that his principle must be justified in the original position.

In support of his position, Wellman argues against FP on the grounds that it is objectionably paternalistic. He rejects "any account that justifies nonconsensual coercion in terms of potential benefits to the coerced." He appeals to the "privileged position of moral dominion over [each person's] own self-regarding affairs," which "entails that each of us must be allowed to choose which benefits to pursue" (Wellman 2005, 18–9). In a case such as *National Defense*, the problem is that Anne does not choose to accept the public goods she receives. Wellman maintains that an alternative view is able to avoid this difficulty.

As noted, Wellman's samaritanism generates obligations from benefits the state confers on other people rather than on the obligee herself. He claims that people have strong moral requirements to come to the aid of others who are in peril or dire need. The dangers on which he focuses, a Hobbesian state of nature, can be alleviated only by state coordination, supported by coercion, and so citizens can justly be forced to obey the law in order to rescue others from these dangers. A theory of obligation based on samaritanism also requires the principle of fair play, but construed on altruistic lines. While FP is a "self-benefit" principle, Wellman holds that it is in order to fulfill one's samaritan duties that people must do their fair shares in the complex, coordinated activities necessary for state provision of benefits. This each person does by obeying the law.

I believe Wellman's criticism of FP is flawed. He is not able to maintain his own position and to reject FP on this basis. The two positions rest on common assumptions. Rejecting one entails rejecting the other.

Wellman's samaritan theory requires positing what we may call "objective interests." Consider *Swimming Pool* once again. April's moral requirement to rescue Bob rests on a clear assumption about what is of value. Ordinarily, one reason we believe she has this duty is his strong interest in being rescued. I will use the term "objective interests" for people's strong interests about which there is little or no doubt. In a case of this sort, and the kinds on which Wellman focuses, the interests are not only objective but ultimate. While there are great difficulties in laying out a theory of objective interests and specifying the contents of this class, such questions need not concern us. The interests we will consider are matters of life and death as in *Swimming Pool*, although we should not rule out the possibility of additional interests as well.

Analogous assumptions concerning objective interests are encountered in Wellman's samaritanism argument, although he does not explore them. While he objects to the state deciding what is beneficial to obligees in regard to political obligations, he overlooks the fact that the state is making similar judgments about the people obligees are required to rescue. As a simple, working definition, let us say that

paternalism is interfering with another person without her permission, based on assumptions one makes about her values or needs, rather than on the basis of how the person herself views her needs.¹⁴ If we accept this definition, Wellman's samaritanism cannot avoid the paternalism that he attributes to the self-benefit principle. Compare these construals of a case such as *National Defense*:

Self-Benefit Case. The state makes judgments about benefits Anne requires and on this basis imposes obligations on her to contribute to provision of these benefits. This is paternalistic, because Anne is not consulted about benefits she requires.

Samaritan Case. The state makes judgments about benefits Betty requires and on this basis imposes obligations on Charles to rescue her by providing her with these benefits. This is also paternalistic, because Betty is not consulted about benefits she requires.

It is true that the cases are not exactly parallel. Anne is coerced on the basis of benefits she does not choose, a circumstance not encountered in the second case. But in that case Charles is coerced to rescue Betty for reasons he does not choose, while she receives benefits she does not choose. Why these differences allow the second case to avoid paternalism is not clear. Accordingly, if this argument is correct, then Wellman cannot justify replacing FP with a samaritan version of fair play on this basis.

If we dismiss Wellman's critical argument, we must defend the superior plausibility of his samaritan principle on other grounds. How well, then, does it deal with the two problems we have noted? At first glance, it might seem that Wellman deals effectively with *Specification*. The duty to rescue is generally directed at a specific person, as in *Swimming Pool*. But as formulated by Wellman, samaritanism is a peculiar moral principle, which departs from a duty of rescue in important respects.¹⁵ Duties of rescue are generally formulated as concerned with some irregular or emergency situation in which the obligee has a perfect duty to rescue the person in peril, because she is the only person able to do this.¹⁶ Once again, we see these factors in *Swimming Pool*. But as it functions in Wellman's theory, the duty of samaritanism is not directed at irregular emergency circumstances, but at general features of the human condition. In this way, it is closer to a duty of charity than to a duty of rescue. As ordinarily understood, a duty of charity is directed at what we may regard as regular conditions of long duration. Definite recipients of individuals' efforts ordinarily are not identifiable, and so charity is an imperfect duty. Ben is able to contribute to any charity he chooses. He may contribute to Doctors Without Borders or the American Heart Association or discharge his moral duty in some other way that he chooses. As Simmons (2005, 183–5) argues, Wellman's samaritan duty is an unwieldy combination of these elements. Although Wellman presents it as a duty of rescue, reversion to a state of nature is a constant threat to all societies. Because it affects everyone, it is not inherently directed at specific persons in immediate danger. Because it lacks these factors, Wellman must address the problem of *Specification* through some other means, but these he does not provide.

¹⁴ This roughly follows Dworkin 2020.

¹⁵ Discussion on this point is indebted to Simmons 2005, 183–5.

¹⁶ Perfect duties are generally understood as specific in regard to both what is required and the person or persons at whom the duty is directed. Imperfect duties are indeterminate in these respects; what is required and the recipient are left to the discretion of the duty's bearer.

Wellman also has difficulties with *Costs*. We have noted that duties of rescue are ordinarily weak duties, unable to require costly sacrifice. To circumvent this difficulty, Wellman argues that, in considering the costs of a rescue, one should deduct benefits received from the costs.¹⁷ Thus in *Swimming Pool*, if Bob will reimburse April for the value of the shoes she will ruin, her costs are lower, and her failure to rescue him less easily excused. Accordingly, in *National Defense*, although Anne is required to make costly sacrifices, she receives the benefits of national defense, which are of great value. Taking this into account makes the costs she is required to bear much less weighty.

There is, however, a problem with this argument, which, once again, turns on Wellman's wavering between duties of rescue and other moral principles. As just noted, the costs of April's rescue in *Swimming Pool* are lessened if she will be reimbursed for her efforts. In this case, the factors that reduce her costs are inherently bound up with the rescue activity. Accordingly, because April will receive money for her shoes only if she rescues Bob, this benefit directly reduces the cost of her action. Such connections do not exist in cases concerned with provision of public goods under discussion in this paper. Return to *National Defense*. Assume that Anne is confronted with being drafted into the army, which is a significant burden. But, Wellman responds, she receives the offsetting burden of national defense. However, in this case, there is no direct connection between her service and the benefits she receives. In a case such as this, we may assume that her society is so large that whether she serves or doesn't serve will make no detectable difference in regard to whether national defense is provided. Because the benefits of defense do not depend on her service, they should not be deducted from the costs of her service. If we accept this line of argument, then samaritanism is not sufficiently robust to support weighty requirements people must bear.

7. Buchanan's Natural Duty of Justice

Even though samaritanism has severe difficulties with both problems, the situation for natural duty theories may be less dire than it appears. As David Lefkowitz (2007, 10) argues, a natural duty position can be rescued, if we are able to substitute a more plausible principle for Wellman's, and so allow the overall argument to proceed. Accordingly, is there another natural duty principle that avoids Wellman's difficulties and is able to deal successfully with the two problems?

A strong possibility is a natural duty of justice developed by Allen Buchanan. Buchanan bases this duty on the importance accorded to human rights, which grounds a duty to support them for people who have them already and to make them available to people who do not. Because human rights can be secured only by political institutions, Buchanan describes this natural duty as "the moral obligation to help ensure that all persons have access to institutions of justice—understood as institutions that protect their basic human rights" (Buchanan 2004, 73). The importance of human rights is manifested in the strength of prohibitions against violating them. It is generally held that we may not do this even if it would be beneficial for society as a whole, as in suppressing an unpopular religious view. Similarly, it is

¹⁷ Criticism of Wellman on this point is also indebted to Simmons 2005, 181–2.

generally viewed as wrong to violate other people's human rights to advance our own important ends, even to save our lives. The strength of this negative prohibition justifies a requirement to make significant sacrifices in the service of human rights.

This is only a rough sketch of Buchanan's argument, but it should be adequate for our purposes. On the surface, this position might provide satisfactory responses to the two problems. However, in spite of its strengths, it too has difficulties. I begin with *Specification*. Exactly who are the other people one is required to help? They cannot be people generally, if the problem of particularity is to be avoided. One possible solution to this issue is to appeal to a principle of locality. One must support the institutions that govern the people with whom one regularly interacts (e.g., Waldron 1993). But this response is problematic. The people with whom one has regular contact can be quite different from those with whom one shares political institutions. Assume that Allen lives in El Paso, Texas, and has a natural duty to support institutions that protect other people's human rights. But why should his efforts be directed at furthering the human rights of people in Bangor, Maine, rather than those in Juarez, Mexico, whose need is much greater? Beset by the horrific violence of the Mexican drug cartels, people in Juarez would seem to be more obvious candidates for his assistance. El Paso and Juarez constitute an integrated metropolitan area, and so inhabitants of the two cities do in fact live "side by side."

Rather than invoking a principle such as locality, Buchanan bases his position on democracy. He acknowledges the particularity problem, and argues that appeal to democracy can answer two fundamental questions: why particular people are justified in wielding power over others; and why these others should comply with the coercive powers in their states (Buchanan 2004, 255–6). He contends that support for democracy can be traced back to the same commitment to moral equality that underlies concern for human rights (*ibid.*). However, this argument does not eliminate the problem of *Specification*, determining *which* democratic processes specific people are bound to. Numerous different democracies exist in the world, and in many specific geographical areas. But which of these must Allen support? (see Simmons 2016). If democratic institutions in Washington, DC, make some decision, why is this binding on him rather than what is decided by institutions in Juarez? As with Rawls's natural duties of justice, democratic institutions bind an individual only if they "apply" to him. Because Buchanan does not explain why particular individuals are bound by some specific democratic institutions rather than others, he does not deal adequately with *Specification*.

Buchanan's position also has problems with *Costs*. Once again, he claims that the importance of the values associated with human rights is evidence for strong duties to support them. But this is not obviously true, and, in his discussion, Buchanan wavers in regard to the natural duty's strength. While he frequently states that commitment to human rights requires "significant" or "serious" costs (*ibid.*, 89–90), his formal argument for these costs establishes a weaker principle. He argues, basically, granted the significance we accord negative duties not to violate human rights, it is implausible to affirm "that we have no significant obligation, not even a limited one, to do what is necessary to help ensure that [...] rights are not violated" (*ibid.*, 91).¹⁸ As

¹⁸ Similarly, on p. 92, he describes the positive duty as "an obligation to bear some costs." In the following paragraph he notes the common view that the Natural Duty of Justice "is a limited duty" (*ibid.*)

one can see, the conclusion of this argument is a weak principle rather than a strong one. I believe Buchanan would have difficulty establishing a duty that is stronger. As noted above, the great importance of a given object does not necessarily translate into a strong duty to help achieve it. In *Swimming Pool*, if April does not rescue Bob because of some relatively minor costs she will bear, she will be condemned. But it is not clear that Dan has a duty of rescue in *Burning Building*. The fact that the object of his rescue is unquestionably of great value does not alter this. Because he must risk his own life to save another person, he is not required to do this.

8. Conclusion

With all these natural duty positions beset by severe difficulties, it seems improbable that a natural duty account of the obligations that interest us is more persuasive than one based on FP. If this is true, then it must be explained why natural duty theorists prefer their approach. Consider an additional example:

Clean Air. In a community in which the air would otherwise be severely polluted, Adam receives the benefit of clean air from the efforts of his compatriots, who use catalytic converters, severely restrict their driving, and engage in other costly practices. Because the community is large, no one will be able to detect changes in air quality if he does not behave similarly. In order for the community to have acceptable air, most but not all people must act in this way. In refusing to do so, he is not hurting anyone.

Still, if Adam refused to cooperate, we would intuitively view this as prototypical free riding. Why should he rather than other people not have to contribute, when he benefits in the same way they do? While FP provides a ready explanation for this assessment, the natural duty theorists presumably dismiss FP, because the benefits of clean air are not *accepted*. This contention is strongly supported by Nozick's famous arguments many years ago (Nozick 1974, 93–5). However, even if a natural duty theorist agrees with Nozick, she still must provide an alternative explanation for Adam's clear moral requirement to contribute. But the natural duty accounts we have looked at do not seem to be able to do this.

In-depth discussion of whether the principle of fair play requires that public goods be accepted is not possible in this paper. The fact that FP is a nonvoluntarist principle of course indicates my position on this issue. The point to note here is that the difficulties with natural duty explanations suggest that their proponents should take another look at this question. Because FP provides a ready explanation of Adam's wrong while also dealing effectively with the problems that bedevil natural duty views, it should not be dismissed in favor of such views.

Department of Politics
University of Virginia
PO Box 400787
Charlottesville
VA 22904
Email: gk@virginia.edu

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