



## Presumptive Benefit, Fairness, and Political Obligation

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*Philosophy and Public Affairs*, Volume 16, Issue 3 (Summer, 1987), 241-259.

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GEORGE KLOSKO

## Presumptive Benefit, Fairness, and Political Obligation

In this article I explore the possibility of grounding general political obligations upon the principle of fairness. Recent scholars have forcefully criticized the traditional arguments in favor of political obligation, calling into question the possibility of a general theory of obligation founded upon the assumptions of liberal political theory.<sup>1</sup> These scholars criticize the principle of fairness, and I will attempt to respond to their objections.<sup>2</sup> I am especially concerned with countering one specific argument which I call the "limiting argument," variations of which are advanced by numerous scholars, including Rawls and Nozick. Section I briefly examines the principle of fairness and presents the limiting argument. Section II counters objections to the principle, including the limiting argument, and discusses the circumstances under which the principle is able to create prima facie political obligations. Section III applies the principle to wider questions of political obligation.

I wish to thank Michael J. Smith and the Editors of *Philosophy & Public Affairs* for valuable criticisms and suggestions.

1. A. J. Simmons, *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979); C. Pateman, *The Problem of Political Obligation* (New York: Wiley, 1979); also J. Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), pp. 113–14.

2. Simmons, *Moral Principles and Political Obligations*, chap. 5; Pateman, *Problem of Political Obligation*, pp. 121–29. (Pateman refers to the argument based on the principle of fairness as the "benefits argument.") For Rawls's criticism, see below. Important discussions of the principle of fairness are found in Rawls, *Theory of Justice*, secs. 18 and 52; Rawls, "Legal Obligation and the Duty of Fair Play," in *Law and Philosophy*, ed. S. Hook (New York: New York University Press, 1964); R. Arneson, "The Principle of Fairness and Free-Rider Problems," *Ethics* 92 (1982); R. Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 90–95; D. Lyons, *Forms and Limits of Utilitarianism* (Oxford: Oxford University Press, 1965), pp. 161–77. For further references, see G. Klosko, "The Principle of Fairness and Political Obligation," *Ethics* 97 (1987).

## I

The principle of fairness was originally formulated by H. L. A. Hart in 1955:

[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.<sup>3</sup>

The main thrust of the principle is that those who benefit from the cooperative efforts of others have an obligation to cooperate as well. As analyzed by recent scholars, the principle of fairness rests upon a more general moral principle, referred to by Lyons as “the just distribution of benefits and burdens.”<sup>4</sup> According to Rawls, “We are not to gain from the cooperative labors of others without doing our fair share.”<sup>5</sup> As we shall see, the principle applies rather differently to cooperative schemes providing different kinds of goods, and so we must sort out different goods and consequent differences in the principle’s application.

To begin with, goods provided by cooperation can be termed “excludable” or “nonexcludable.” Excludable goods can be provided to some members of a given community while being denied to specified others. Familiar instances of such goods abound. For instance, A, B, C, and D can combine forces in order to dig a well for their own consumption, and deny access to the well to E. Or they can combine their resources to build an auditorium and not let others enter. Nonexcludable goods, in contrast, cannot be denied to specified others. Frequently, if provided at all, they must be provided to all members of some community. Familiar examples of nonexcludable goods are the rule of law, relief from various forms of pollution and other environmental hazards, and national defense.<sup>6</sup> These goods and others like them that also depend upon the cooperation of large numbers of people are often referred to as public goods. The two main

3. H. L. A. Hart, “Are There Any Natural Rights?” *Philosophical Review* 64 (1955): 185.

4. Lyons, *Forms and Limits of Utilitarianism*, p. 164.

5. Rawls, *Theory of Justice*, p. 112; the underlying moral principle is analyzed by Arneson, “Principle of Fairness.”

6. The dividing line between excludable and nonexcludable goods is of course rough. Many familiar goods that are generally regarded as nonexcludable (e.g., access to public roads and sidewalks) could conceivably be denied to specified people. However, in cases in which denying access would be prohibitively expensive or inconvenient, the goods in question should be viewed as nonexcludable.

features of public goods are (a) that they are nonexcludable and (b) that they depend upon the cooperation of large numbers of people.<sup>7</sup>

The principle of fairness applies rather clearly to cooperative schemes that provide excludable goods (“excludable schemes”). If A, B, C, and D cooperate to dig a well, for instance, others who partake of the benefits have an obligation to share the burdens. Thus the cooperators would be justified in refusing to provide benefits to E, who did not share in the labor. This would be especially clear if E had been asked to cooperate but had declined. Similarly, E would possess a clear entitlement to the labors of his fellows only if he had shared in that labor. The nature of E’s expected contribution would of course depend upon the nature of the scheme in question and would vary with different sorts of schemes; it might consist, for example, in physical labor, restraints on his pattern of consumption, or financial contributions. But in general, such contributions are necessary to justify receipt of excludable goods, and it is apparent that individuals attain obligations to excludable schemes only when they actively pursue the benefits such schemes provide. There is a strong presumption that individuals should decide for themselves whether they will be forced to make sacrifices or have their liberty curtailed. Thus the decision whether E will join in digging the well should be made by E rather than by the members of the well-digging scheme. Because E can be excluded from the benefits, he incurs obligations only if he chooses not to be excluded. Excludable schemes are readily viewed as voluntary associations, membership in which has strong contractarian overtones.<sup>8</sup> These aspects of excludable schemes render the application of the principle of fairness relatively trouble-free.

Greater complexity is encountered when we turn to schemes providing nonexcludable goods (“nonexcludable schemes”). Because the benefits provided by such schemes are nonexcludable, individuals are no longer able to decide whether or not to receive them. Accordingly, the contrac-

7. Other features of public goods, especially “nonrival consumption,” are of less immediate concern; on public goods, see E. and J. Browning, *Public Finance and the Price System* (New York: Macmillan, 1979), pp. 21–24; M. Olson, *The Logic of Collective Action* (Cambridge: Harvard University Press, 1971), pp. 14–15, with numerous references. Throughout I assume that public goods are produced by “large” groups; in Olson’s terminology, in such groups the contribution of any given member does not perceptibly affect the burdens or benefits of the other members (*Logic of Collective Action*, chap. 1). See also J. Buchanan, “Ethical Rules, Expected Values, and Large Numbers,” *Ethics* 76 (1965).

8. But as Simmons shows, the principle of fairness does not collapse into a principle of contract (*Moral Principles and Political Obligations*, pp. 126–27).

tarian implications of the receipt of such benefits are blurred. Several commentators argue that because the benefits in question will be provided to E more or less regardless of what he does, receipt of the benefits does not obligate him to participate in the scheme's labors. We can refer to this as the "limiting argument," because it severely limits the principle's applicability in important ways. Rawls, for one, argues in this way. According to him, the principle of fairness entails that one is not obligated to contribute to a cooperative venture unless one "has voluntarily accepted the benefits of the arrangement or taken advantage of the opportunities it offers to further one's interests."<sup>9</sup> Because he is unable to identify the requisite binding actions that create general political obligations, Rawls believes that the principle of fairness does not give rise to such obligations.<sup>10</sup>

The principle of fairness can be used most plausibly to establish political obligations by appealing to society's provision of important public goods. But because the recipients of public goods are not free to accept or reject them, according to the limiting argument, receipt of such goods does not create obligations to help provide them. If the principle is to have important political implications, the limiting argument must be defused.

## II

It seems that the force of the limiting argument can itself be limited if we look more closely at its application to public goods. But before examining this subject directly, we must establish an important preliminary point. Whether or not the principle of fairness is able to ground obligations to contribute to nonexcludable schemes, it is evident that the principle (or some functional equivalent) is necessary for the proper maintenance of such schemes. As we have noted, public goods (a) are nonexcludable and (b) require the cooperation of large numbers of people. If we assume that the cooperation in question is viewed as burdensome by those asked to cooperate and that the number of people required to provide the goods in question is sufficiently large, because the goods are nonexcludable and will be provided to individuals whether or not they cooperate, it is in

9. Rawls, *Theory of Justice*, pp. 111–12.

10. *Theory of Justice*, pp. 113–16; similarly Nozick, *Anarchy, State, and Utopia*, p. 95; F. Miller and R. Sartorius, "Population Policy and Public Goods," *Philosophy & Public Affairs* 8 (1979): 166; N. Bell, "Nozick and the Principle of Fairness," *Social Theory and Practice* 5 (1978).

their interest to enjoy them without cooperating. In other words, it is in their interest to be “free riders.”

The problem of free riders—otherwise referred to as the problem of the commons, or the prisoner’s dilemma—has of course been widely discussed in recent years.<sup>11</sup> The dilemma is clear. In a large group, if  $n$  people must cooperate for some benefit to be provided, there are two possibilities. If  $n$  others will cooperate, the benefit will be provided whether or not A cooperates. In this case it is in his interest to enjoy the benefit without sharing the burden. If  $n$  others will not cooperate, the benefit will not be provided; by cooperating A would simply bear useless burdens. Even if A were not selfish and wished to contribute his share, it would not be rational for him to do so, unless he were assured that  $n$  others would also contribute. Of course if everyone acted on the basis of this reasoning, the benefits in question would not be provided. Thus to ensure that the benefits are provided, a sufficient number of individuals must somehow be induced to cooperate. The obvious solution, as stated by Hardin, is “mutual coercion, mutually agreed upon.”<sup>12</sup> But coercion will ensure that goods are provided only if nonagrees can be forced to cooperate, and it is not just to coerce them unless they have obligations—rooted in the principle of fairness—to cooperate.<sup>13</sup>

Now, according to the limiting argument, the principle of fairness does not create obligations for nonagrees to contribute to nonexcludable schemes. This conclusion is supported by a series of ingenious examples presented by Nozick. For instance, Nozick describes the case of a group of neighbors who band together and institute a public address system designed to provide the neighborhood with entertainment and other broadcasting. If there are 364 other neighbors, each of whom runs the system for one day, is A obligated to take over the broadcasts when his day comes? Nozick assumes that A has benefited from the scheme by listening to the broadcasts but would prefer not to give up a day.<sup>14</sup> Another example concerns a neighborhood street-sweeping association. Must A

11. It is discussed in regard to the principle of fairness by Arneson, “Principle of Fairness.”

12. G. Hardin, “The Tragedy of the Commons,” *Science*, n.s. 162 (1968); Buchanan, “Ethical Rules.”

13. I do not of course wish to rule out the possibility that some other moral principles could create such obligations. Questions of coercion will not be discussed here. I assume that if nonagrees have obligations to cooperate, at least some of which correspond to commonly recognized political obligations, some coercion is justified.

14. Nozick, *Anarchy, State, and Utopia*, pp. 93–94.

sweep the street when his turn comes, even if he does not care a great deal about clean streets? If he refuses to do so, must he “imagine dirt” as he crosses the street so as not to benefit as a free rider?<sup>15</sup> Nozick clearly believes that A is not obligated in cases of this sort: “One cannot, whatever one’s purposes, just act so as to give people benefits and then demand (or seize) payment. Nor can a group of persons do this.”<sup>16</sup> According to Nozick, the principle of fairness does not “serve to obviate the need for other persons’ *consenting* to cooperate and limit their activities.”<sup>17</sup> Nozick presents additional examples, but they are similar to the ones we have noted.<sup>18</sup>

What is striking about Nozick’s examples is that they concern the provision of goods that are of relatively little value. To some extent Nozick’s choice of such examples is probably rhetorical. But I think it is more than that. If we were to substitute examples of schemes providing more significant benefits, the force of Nozick’s arguments would be blunted.

The principle of fairness is able to generate obligations to contribute to nonexcludable schemes if certain conditions are met. The main conditions are that the goods in question must be (i) worth the recipients’ effort in providing them and (ii) “presumptively beneficial.”<sup>19</sup> The implications of (i) will be discussed below. As for (ii), by “presumptively beneficial” goods (or presumptive goods) I mean something similar to Rawls’s primary goods, “things that every man is presumed to want.”<sup>20</sup> Since we are concerned with public goods, we can confine our attention to presumptively beneficial public goods (presumptive public goods). These are public analogues of Rawls’s primary goods. Basically, such goods must be necessary for an acceptable life for all members of the community. To apply Rawls’s description of primary goods, presumptive public goods are things it is supposed that all members of the community

15. *Anarchy, State, and Utopia*, p. 94.

16. *Anarchy, State, and Utopia*, p. 95.

17. *Anarchy, State, and Utopia*, p. 95; Nozick’s emphasis.

18. Cf. Simmons’s similar examples in *Moral Principles and Political Obligations*, pp. 133–35.

19. The approach developed here is first suggested in Klosko, “Principle of Fairness.” An additional condition is that the overall distribution of benefits and burdens in any given scheme must be fair; this is discussed briefly below. The complexities here will be set aside, except where they are unavoidable.

20. Rawls, *Theory of Justice*, p. 62.

want, whatever else they want, regardless of what their rational plans are in detail.<sup>21</sup>

The notion of presumptive public goods is still undoubtedly unclear in various respects. But we need not attempt to explicate the precise contents of this class. Certain goods can be named that can be presumed to be necessary for an acceptable life for all members of the community. Though the number of these goods is perhaps small, such things as physical security, protection from a hostile environment, and the satisfaction of basic bodily needs appear obviously to fit the bill. For our purposes, it is not necessary to extend the list into more controversial areas. Providing presumptive public goods such as these is widely recognized as a central purpose of government.<sup>22</sup>

The principle of fairness applies more readily to the provision of presumptive public goods than to the provision of public goods in general. As we have noted, there is a strong presumption that individuals should decide for themselves whether they are going to be required to make sacrifices. The cooperative schemes on which we will concentrate provide public goods that are indispensable to the welfare of the community. In these cases the indispensability of the goods overrides the outsider's usual right to choose whether he wishes to cooperate.<sup>23</sup>

21. *Theory of Justice*, p. 92.

22. The identification of certain goods as presumptively beneficial depends upon at least a minimal background of suitable values and beliefs. The question of deciding whether all members of a given community *actually* benefit from a given good raises severe problems that cannot be discussed here. In general, the criterion to be employed is a rough standard of "reasonable" beliefs. To say that good G is essential to community C is tantamount to saying that there are strong, reasonable grounds for believing that the members of C regard (or should regard) G as necessary for acceptable lives. One cannot rule out the possibility that because of unusual beliefs (and other extenuating factors), certain members of C might find G of considerably less value. In cases in which it could not be shown that a given good benefits a particular individual to the requisite extent, he would be freed from obligations he would otherwise have. The specific factors involved in such cases, however, will generally be so peculiar as to confirm the presumption of benefit in more usual cases. For some suggestions bearing on these problems, see the remarks below in Section III concerning burden of proof.

23. Strong evidence that the obligations discussed below arise from the principle of fairness and not from some other moral principle is the connection between the obligations A incurs and the behavior of *others*. Fairness obligations are distinctive in that they stem from the behavior of others, as opposed to the performances of the individual himself that are generally necessary to ground other obligations. (The need for such performances provides the basis for the limiting argument.) Because the questions discussed in this article concern "political obligation" as traditionally regarded, I see no need to confine the



The examples discussed by Nozick concern the provision of goods that are clearly not presumptively beneficial. We can refer to goods that are of less value—goods that may be desirable but should not be viewed as essential to people's well-being—as “discretionary” goods. Nozick's presentation of the limiting argument appears to work because there is something inherently questionable about restricting an individual's liberty in order to give him something that he could easily do without, even if the benefits of receiving such goods outweigh the burdens of helping to provide them. Accordingly, if we look at similar examples, but substitute presumptive public goods, we will come to different conclusions.

In criticizing Nozick, Simmons focuses on the fact that the nonagrees in Nozick's examples do not appear to participate in the schemes in question in the proper sense.<sup>24</sup> Simmons writes: “Certainly, it would be peculiar if a man, who by simply going about his business in a normal fashion benefited unavoidably from some cooperative scheme, were told that he had voluntarily accepted benefits which generated for him a special obligation to do his part.”<sup>25</sup> In his own account of the principle of fairness, Simmons attempts to overcome this difficulty by explicating the concept of “accepting” a public good in such a way that, by “accepting,” the individual comes to participate in a given cooperative scheme in some meaningful sense.<sup>26</sup> On the whole, “accepting” excludable benefits is a less troublesome notion. In most cases this can be explicated as voluntary pursuit of given benefits. The connection between acceptance of some benefit and participation in a cooperative scheme is also generally clear here, as, by pursuing the benefit, A would seem meaningfully to participate in the scheme. Simmons's attempt to elucidate a concept of “accepting” a nonexcludable benefit that also entails meaningful participation can be read as an attempt to circumvent the limiting argument. Because of his emphasis upon participation, Simmons

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term “obligation” to self-imposed moral requirements; see R. B. Brandt, “The Concepts of Obligation and Duty,” *Mind* 73 (1964): 384–93. Cf. Pateman, *Problem of Political Obligation*, pp. 28–30 and passim; also H. Beran, “Ought, Obligation and Duty,” *Australasian Journal of Philosophy* 50 (1972). Excellent general discussions of obligation may be found in Brandt, “Concepts of Obligation and Duty,” and Simmons, *Moral Principles and Political Obligations*, chap. 1. Cf. the discussion of people's attitudes towards various obligations in Klosko, “Principle of Fairness.”

24. Simmons, *Moral Principles and Political Obligations*, p. 122.

25. *Moral Principles and Political Obligations*, p. 131.

26. *Moral Principles and Political Obligations*, pp. 129–36.

proposes that public goods are not “accepted” unless the acceptor has certain attitudes and beliefs, and especially unless he is aware of the status of the benefits as products of a cooperative scheme.<sup>27</sup> These aspects of Simmons’s position need not be discussed here. I believe that they are questionable, and they have been criticized before.<sup>28</sup> For our purposes it is sufficient to note that Simmons’s focus on the bystander’s degree of participation appears to be misplaced. A more important aspect of the principle is the magnitude (or lack thereof) of the benefits provided. As the following examples will show, as long as the benefits in question are sufficiently large, someone “who by simply going about his business in a normal fashion” benefits unavoidably from a cooperative scheme does indeed incur an obligation to contribute to the scheme.

Example 1. Let us assume that A lives in a small territory, X, that is surrounded by hostile territories, the rulers of which declare their intention of massacring the X-ites. Accordingly, the X-ites band together for their joint protection. Since the circumstances in which they find themselves are similar to those the Israelis believe themselves to confront, let us assume that they institute measures similar to those in practice in Israel: compulsory military service for men and women; mandatory service in the reserves, including a substantial period of yearly active duty until a relatively advanced age; provisions for rapid mobilization of reservists; and so forth. Because these provisions are obviously burdensome to all affected, A, who would prefer to go about his business as usual, decides not to comply. Under these circumstances, assuming that a number of X-ites sufficient to ensure the safety of X and its inhabitants do comply, A would obviously be a free rider. Though the mutual-protection scheme has simply sprung up around him, there can be little doubt that he has an obligation to do his part. Now, the circumstances sketched here do not rule out the possibility of other factors in A’s situation that would justify his failure to comply. For instance, A might be a conscientious objector, or his health might not be equal to the rigors of military service. However, these circumstances do not rule out an obligation to serve. Obligations are not necessarily binding; they can be overridden by conflicting moral claims. The circumstances sketched in this example present A with a *prima facie* obligation to do his part, which, in the light

27. *Moral Principles and Political Obligations*, pp. 131–32.

28. Arneson, “Principle of Fairness,” p. 228; G. Kavka, review of *Moral Principles and Political Obligations* by A. J. Simmons, *Topoi* 2 (1983): 228.

of the gravity of the situation indicated, would seem likely to be overridden by only the most stringent extenuating circumstances.

Example 2. Here we can consider less extreme circumstances. Let us assume that the territory of Y is beset by severe air pollution, generated primarily by automobiles. People with certain lung conditions already find it difficult to breathe, and if things keep up, the more general population will soon be affected similarly. The Y-ites therefore band together to impose various restrictions on driving privileges and decree that all automobiles must be modified to cut down on pollution. Again, because these restrictions are burdensome, B would prefer not to comply. But again, assuming that a sufficient number of his fellows do comply, if he does not, he will be a free rider. Under these circumstances, B incurs an obligation to comply. Though, again, this obligation could be overridden by a variety of mitigating circumstances, the obligation is no less real for that.

Example 3. Let us assume that the territory of Z is in an arid region and so heavily dependent upon irrigation for its agriculture. Let us also assume that all inhabitants of the territory depend upon agriculture for their livelihood, either directly or indirectly: some are farmers; others work in food-processing facilities; others sell things to the farmers or food processors; and so forth. Finally, let us assume that Z is beset by drought and that the irrigation system will not be able to supply enough water to save the year's crop unless the community's water consumption is drastically curtailed. Accordingly, the Z-ites band together to draw up a set of guidelines restricting the use of water: no lawn watering, no car washing, showers instead of baths, dishwashing once a day, and so forth. C would of course prefer not to comply, but again, assuming that a sufficient number of Z-ites do comply, if he does not, he will be a free rider. Again, I think it is clear that C has an obligation to comply, though this obligation too can be overridden by other factors.

In all three examples, the goods in question satisfy both conditions (i) and (ii) above. They are (i) worth their costs to their recipients as well as (ii) presumptively beneficial. In regard to condition (i), the benefits and burdens under consideration are those of the relevant community as a whole, rather than of each particular member.<sup>29</sup> Many important co-

29. Many problems can arise in defining the community relevant to the provision of particular benefits. These must be set aside. In general, we can assume that a given community can be identified as the collection of individuals who benefit directly from the

operative schemes involve complex forms of cooperation, in which the burdens borne by different individuals may differ appreciably. The principle of fairness requires not that the burdens people bear be identical, but, in Lyons's words, only that they be "associated as integrated elements in a co-operative scheme."<sup>30</sup> In an army, to take an obvious example, those individuals who are killed or severely wounded in action bear heavier burdens than other soldiers, some of whom may have relatively pleasant duties. But this in itself would not free the former from their obligation to serve, as long as there were good grounds for assigning both groups their tasks and the assignments were fair.<sup>31</sup>

These points can be illustrated by examples. A situation in which condition (i) would appear not to be satisfied is the account of the city of Melos described in Book V of Thucydides, from which I extrapolate certain details. Let us say that the Melians are willing to fight for their freedom, which is a supreme good in their eyes (Thucydides V. 112). They are confronted, however, by an irresistible Athenian force, and if they resist and are defeated, they are all likely to be killed (V. 101-3). Under circumstances such as these, the Melians could organize measures for their defense. But because these measures are highly unlikely to succeed, I do not believe that the individual citizen has an obligation to cooperate. Along similar lines, in 1836 the defenders of the Alamo were surrounded by a powerful Mexican army and asked to surrender. The defenders of course decided to resist and were killed. Under these circumstances, I do not believe that the group can 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. It is interesting to note that Colonel Travis, the defenders' commanding officer, did not require that his men stay and resist. He offered

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cooperative scheme in question. By "directly" here, I mean in contrast to various "spillover" benefits that often unavoidably affect other parties. For instance, the existence of law and order in community P could well be construed as beneficial to the inhabitants of neighboring community Q, in that Q is freed from certain problems associated with bordering upon an anarchical society. (I borrow this example from the Ph.D. dissertation of Scott Lowe [University of Virginia, 1986].) Interesting questions could be raised about whether the communities discussed in this article must be antecedently identifiable as such, without reference to the provision of public goods. These issues cannot be explored here.

30. Lyons, *Forms and Limits of Utilitarianism*, p. 164.

31. Lyons, *Forms and Limits of Utilitarianism*, pp. 164-77.

anyone who wished to escape the opportunity to do so. Hopeless causes require volunteers.

Cases such as Melos and the Alamo should be distinguished from more complex cases in which benefits outweigh burdens for the relevant community, but not for particular individuals. Thus in a military campaign, it may be necessary to sacrifice some soldiers for the good of the larger unit. As long as the military enterprise as a whole satisfies conditions (i) and (ii), the immediate benefit of this unfortunate group's mission is sufficiently large, and the members of the group are chosen fairly, the circumstances would not affect their obligation to serve.

A nonmilitary example concerns the enormous benefits that would result if scientists were allowed to experiment upon human beings, especially unwilling ones. Let us assume that the resulting benefits would be nonexcludable and that all members of society would benefit equally. Though the benefits in question here are presumptive, the costs involved are so severe as to make one question the desirability of instituting the necessary measures. However, if we were to alter the circumstances of this example so that the members of the community were faced with some terrible plague, which threatened to kill a high percentage of them and which also could probably be averted if scientists were able to experiment upon unwilling human subjects, then perhaps the necessary measures should be undertaken and individuals would be obligated to comply. (This case suggests institutions not unlike those described by Shirley Jackson in "The Lottery.")

As these examples suggest, there are serious practical difficulties to be overcome in deciding whether condition (i) is satisfied in any given case. These difficulties can be lessened to some extent by the requirement that for condition (i) to be satisfied, the benefits must obviously outweigh the burdens (for the community as a whole, and so for the typical individual). Since individuals bear significant burdens simply by being required to comply with cooperative schemes, the obligation to comply should cease when the burdens themselves merely approach the benefits. The question of assessing the relative magnitudes of benefits and burdens is pursued in Section III, though numerous aspects of this complex subject cannot be discussed in this article. We will set such problems aside, under the assumption that the overall position is clear.

I conclude, then, that if conditions (i) and (ii)—and the condition mentioned in the next paragraph—are met, then individuals have obligations

to contribute to cooperative schemes that provide nonexcludable goods. Examples 1–3 show that an individual's degree of participation in a scheme does not necessarily affect his obligations towards it. Nor does it seem that Nozick and other proponents of the limiting argument are correct in asserting that the individual incurs obligations only by consenting to schemes.

Before moving on to the next section, we should note an additional condition that schemes must satisfy. Because obligations to support cooperative schemes are grounded upon a broad principle of the fair distribution of burdens and benefits, they hold only as long as the costs and benefits of the schemes in question are fairly distributed.<sup>32</sup> We can say that a scheme in which this condition is met passes the “fair distribution” test and so is “fair.” Because of the complexity of the distribution of benefits and burdens in actual schemes, however, it may be difficult to say whether any given scheme passes this test. Similarly, it may be difficult to say at exactly what point the pattern of distribution in a given scheme moves from being fair to being unfair. But it is clear that at the point at which a given scheme begins to fail the test, individuals' obligations to it are dissolved.<sup>33</sup>

### III

Considered as a basis for political obligation the principle as discussed so far has an obvious weakness. Though it obligates individuals to contribute to the provision of presumptive public goods, it does not create obligations to help provide discretionary public goods. Though repairing

32. This is emphasized by Rawls (*Theory of Justice*, pp. 111–12, 342–43); see Simmons, *Moral Principles and Political Obligations*, pp. 109–14.

33. Pateman's criticisms of the principle center upon the unfairness of the distribution of important goods in existing societies (*Problem of Political Obligation*, pp. 121–29). Her arguments require the establishment of controversial factual claims, whereas I do not believe that the factual issues bear directly upon the theoretical validity of the principle—unless one were to argue that, in principle, no society could satisfy the fair distribution test. Thus though Pateman's arguments suggest that the overall distribution of presumptive public goods is unjust to certain groups, especially minorities and the poor, I do not believe that she has shown that the overall distribution in most societies is so unfair as to dissolve all obligations. Similarly, even if she were able to show that certain individuals are treated so unfairly in existing societies as to dissolve their obligations, this would not necessarily entail that the overall distribution of presumptive public goods is so unfair that obligations sufficiently widespread to satisfy Simmons's criterion of “generality” (*Moral Principles and Political Obligations*, pp. 55–56) would not remain.

roads, to take an obvious example, has been a function of governments for thousands of years, the principle of fairness, as formulated so far, does not obligate individuals to do (or to pay) their fair shares in this regard.<sup>34</sup> So we must consider whether the principle can be extended to cover discretionary public goods as well.<sup>35</sup>

One conclusion that might be drawn from our discussion is that the principle of fairness justifies obligations to support only governments providing only presumptive public goods, that is, minimalist governments. This is similar to the conclusion reached by Nozick in *Anarchy, State, and Utopia*, though his means of getting there are quite different. I believe, however, that the principle can establish wider obligations. There are many difficult problems connected with these extended obligations that cannot be discussed in detail here. The remainder of this article will present what I believe is a defensible approach.

One possible solution to our problem is as follows. Though the members of scheme X, which provides a single discretionary public good, cannot demand that A contribute, perhaps if the functions of X were multiplied so that it provided numerous discretionary goods, at some point A would become obligated. The intuition here is that, though 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 parks 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 presumptively beneficial. I do not believe that this approach is promising. First, it is unlikely that we would be able to elucidate the requisite mechanism of transformation. More important, if A cannot justly have his liberties infringed upon by being obligated to contribute to the provision of one good he could do without, it seems tyrannical to infringe upon his liberties still more by demanding that he contribute to other similar goods in addition to that one. Though the package of discretionary public goods provided by a modern government might make A's life much easier or more pleasant, the fact that he could do without them seems crucial here.

34. This important objection was first brought to my attention by Brian Barry.

35. On reasons for regarding the repair of roads as nonexcludable, see note 6 above. Because the other examples discussed in this section are similar, the relevant qualifications need not be added in regard to each.

A more promising solution lies in extending the functions of cooperative schemes that have been set up to provide presumptive goods. Nozick's examples show that a group of individuals cannot band together to provide some discretionary public good and then declare that A is also obligated to contribute. Even if the principle cannot obligate individuals to support schemes that furnish *only* discretionary goods, however, Nozick has not shown that it cannot generate obligations to help provide discretionary goods if a given scheme also provides presumptive goods. There are significant differences between the initial infringement upon A's liberty when he is obligated to help provide presumptive goods and the added infringement when he is obligated to help with discretionary goods as well.

In regard to the provision of discretionary public goods, we can divide recipients into two classes: those for whom it is and those for whom it is not the case that the added benefits received outweigh the added burdens of cooperating. Obviously, if members of the second group can be shown to have obligations to contribute, then the same is true of members of the first. So in the following discussion I concentrate on members of the second group.

Now it is at first sight unclear that these individuals have such obligations. As we have noted above, if a given scheme fails to pass the fair distribution test, the individual's obligations to it no longer hold. Let us assume that B, C, and D, who have banded together to provide presumptive public goods, decide also to provide a discretionary public good. In such a case we can presume that they benefit from their added cooperation. Thus if the added cooperation required of A is not beneficial to him, the cooperative scheme cannot be fair, and he should not be obligated to cooperate.<sup>36</sup>

It seems, however, that additional factors should be considered. The case discussed in the previous paragraph concerns *added* infringement, rather than initial infringement. In cases of added infringement, the problem is not to explain why A should contribute to a scheme that does not (yet) command his support, but rather why he should make additional

36. A cooperative scheme can be unjust for reasons other than lack of fairness in the distribution of benefits and burdens, e.g., if it requires the commission of injustice, as for example in a gang of thieves. Or a scheme can be unfair even if each member's participation benefits him. This would hold if some members benefited much more than others. In the interest of clarity, I avoid such complexities in the subsequent discussion.



contributions to a scheme to which he is already obligated.<sup>37</sup> For the obligations already imposed on A to be justified, it must have been shown that the scheme in question has a legitimate claim to his support. For A not to be obligated to cooperate in this additional task, then, it must be possible to demonstrate that because the scheme has taken on this added task, participation in it will no longer be beneficial to A, or that the scheme has become sufficiently unfair to suspend his obligations.

In the kind of case under consideration, the additional benefits A receives are parts of a package of benefits that scheme X provides, some components of which he cannot do without. We saw above that if X provides presumptive public goods, the indispensability of the goods overrides A's usual right to decide for himself whether he wishes to accept the benefits and burdens of cooperating with X. I see no reason why this set of circumstances is overturned by the fact that X has also undertaken to supply discretionary public goods, unless it can be shown that because of the assumption of these added functions, cooperation with X will no longer benefit A, or that because of these added functions the scheme is no longer fair.

Showing the unfairness of the scheme in such cases does not promise to be easy. The task is not to show that if A is asked to contribute to a given discretionary good his added burdens would outweigh his added benefits or that in regard to this particular good the scheme is unfair. The benefits and burdens associated with X are packages, and ordinarily, it will be difficult clearly to distinguish the added burdens required by a given discretionary good from the existing burdens required by the presumptive goods.<sup>38</sup> Thus it must be shown that if X takes on this added function, the scheme as a whole will no longer satisfy the requisite conditions.

It seems, then, that if it can be shown that X is justified in infringing

37. The temporal language used throughout the discussion here should be taken to indicate logical rather than temporal relationships.

38. There are exceptions here, especially cases in which A is asked to undertake particular tasks, generally manual labor, associated with the provision of particular goods. Not only are burdens of this sort easily distinguished from other components of one's package of burdens, but they are particularly onerous in that they are generally comprised of labor that many people find unpleasant (e.g., sweeping streets, mowing lawns)—i.e., that verges on forced labor—and also disrupt people's normal routines. Thus it is not surprising that the examples presented by Nozick and other opponents of the principle often entail burdens of this sort (see also note 18 above).

upon A's liberty by providing him with presumptive public goods, it will be difficult to demonstrate that A is not obligated to undertake the added burdens associated with the provision of discretionary goods. Obviously, it will be easier for proponents of X to justify commanding the support of individuals like A if the discretionary goods X provides are limited to those (a) that are clearly in the interest of everyone and (b) the benefits and burdens of which tend to fall out fairly.<sup>39</sup>

We are left with the following position: If A is obligated to contribute to the provision of some presumptive public good(s) supplied by scheme X, then he is also obligated to support X's provision of discretionary public goods *a*, *b*, *c*, and so forth, unless it can be shown that his costs in cooperating with X outweigh his benefits, or that X is unfair.

The position sketched here can be further supported if we turn briefly to the question of placing the burden of proof in the cases under consideration. Because of our general belief that individuals should not have obligations imposed upon them against their wills, there is a strong presumption that in all cases in which a nonagreer is confronted with obligations, the scheme's members must show that the goods produced are presumptive, the (typical) nonagreer's gains would outweigh his losses, and the scheme is fair. The nonagreer did not ask to join the scheme; he can be presumed not to be obligated to it, unless its members can justify their demands. The presumption here is consistent with our discussion so far. In regard to excludable schemes, the placement of the burden of proof is not ordinarily a pressing issue. In general, A's obligation to such a scheme depends upon his voluntary pursuit of the benefit it provides. We can assume that he will pursue a given benefit only when he believes that it outweighs the accompanying burden and he also believes that the scheme is fair. We have seen the conditions that nonexcludable schemes must satisfy. It seems that in general proponents of such schemes would be able to meet their burden of proof. As we have noted, A will be obligated to support scheme X only when it provides

39. Enormous gray areas are encountered in the provision of discretionary public goods. Because such goods are not presumptively beneficial, they are likely to be viewed quite differently by different members of society, and many familiar discretionary goods benefit some members of society more than others. The formidable difficulties associated with determining (1) exactly what goods should be supplied and (2) exactly how they should be supplied in those common cases in which there are possible alternatives, cannot be discussed here. It should be noted, however, that the procedures through which such decisions are made must be fair to all participants.

goods that are presumptively beneficial. The importance of such goods should be recognized by agreeers and nonagreeers alike. The provision of even presumptive public goods does not create obligations unless the (average) individual's benefits outweigh his burdens in cooperating and the scheme is fair. Here too, the importance of presumptive goods should lessen the difficulty of demonstrating that they justify their costs, while the nature of such goods, especially their being characterized by nonrival consumption, should lessen the difficulty of showing that they are distributed fairly. Still, in any given case, the burden of proof rests upon the scheme's members.

Nozick appears to agree with this placement of the burden of proof, though he does not mention presumptive goods or the need to show that schemes are fair. He writes: "At the very least one wants to build into the principle of fairness the condition that the benefits to a person from the actions of the others are greater than the costs of doing his share."<sup>40</sup> Nozick's language suggests that a scheme's members must show that the benefits outweigh the costs—not that an individual A whose support the members demand must show that they do not.

The cases examined in the two previous paragraphs concern *initial* infringements upon A's liberty. In each of these cases A is asked to support a scheme to which he is not already obligated, and the burden of proving that the scheme is presumptive, beneficial, and fair falls upon its supporters. However, when we turn to cases of *added* infringement the burden of proof shifts. Whereas, in our previous cases, A can be presumed not to be obligated unless the scheme's members can show that he is, in cases of added infringement A can be presumed to be obligated unless he can show that he is not. Though X has undertaken to perform additional functions, it still supplies a package of goods some components of which are presumptively beneficial. Thus we can presume that A is still obligated to X. Moreover, for A to have incurred his original obligations to X, its proponents must have been able to demonstrate that X satisfies the necessary conditions. Their arguments can be presumed to stand, unless it can be shown that the relevant circumstances have changed. Because the proponents can be presumed to have met their burden of proof and A is still presumed to be obligated, it is incumbent upon him to show that the nature of the scheme has changed in important respects

40. Nozick, *Anarchy, State, and Utopia*, p. 94.

and that because of this, the presumption of obligation no longer holds. Unless A can satisfy both of these conditions, his obligation to X remains.

Therefore, in order for A, who is obligated to scheme X, which provides presumptive goods, not to be obligated to do his share in helping X to provide additional, discretionary goods, it must be possible to demonstrate that if X assumes these added functions, it will no longer satisfy the requisite conditions. Moreover, not only must it be possible to show this, but the burden of showing it rests upon A.

Modern societies are of course enormously complex, with governments that undertake wide ranges of discretionary functions, not all of which meet the criteria discussed above. But there can be little doubt that many discretionary functions do meet them. Among such functions are tasks we have come to expect that governments perform—for example, support of transportation and communication, regulation of health and safety, provision of parks and recreation facilities, and public education. Thus if the principle of fairness does not create obligations to support everything that modern governments do, it does appear to create obligations for most citizens to support an important range of functions that we have come to associate with good government.