

## The Obligation to Contribute to Discretionary Public Goods

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The principle of fairness, first introduced by H. L. A. Hart in 1955, is able to support a workable theory of political obligation upon liberal premises. In a previous paper, 'Presumptive benefit, fairness, and political obligation', I argued that the principle can establish general obligations to cooperate in the provision of 'presumptive public goods' (that is, public goods that are indispensable to the typical member of society). Because a wider range of governmental services is necessary for the provision of presumptive goods, the principle also supports obligations to support 'discretionary public goods' (goods that are desirable but not indispensable). The 'indirect argument' developed in this paper counters the criticisms of my previous paper presented by A. John Simmons in 'The anarchist position: a reply to Klosko and Senor'.

Though it has been widely argued in recent years that no suitable theory of political obligation can be grounded upon liberal premises,<sup>1</sup> I believe that the principle of fairness, first formulated by H. L. A. Hart in 1955, can support an acceptable theory. In a previous paper I have argued for an important set of political obligations;<sup>2</sup> in this paper I shall attempt to extend that argument to cover a range of obligations more in keeping with what modern governments actually do.<sup>3</sup>

### I

Hart's original formulation of the principle of fairness is as follows:

When a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions

\* I am indebted to B. J. Diggs, Julian Franklin, Rolf Sartorius, A. John Simmons, M. B. E. Smith and various anonymous readers for acute criticisms, comments and suggestions with regard to various versions of the material presented here. A previous version of this paper was presented at the 1988 meeting of the Midwestern Political Science Association, in Chicago, Illinois. My research was greatly helped by a University of Virginia Sesquicentennial Grant.

<sup>1</sup> A. J. Simmons, *Moral Principles and Political Obligations* (Princeton, Princeton University Press, 1979); C. Pateman, *The Problem of Political Obligation* (New York, University of California Press, 1979); M. B. E. Smith, 'Is there a *prima facie* obligation to obey the law?', *Yale Law Journal*, 82 (1973); J. Raz, *The Authority of Law* (Oxford, Oxford University Press, 1979), Ch. 12.

<sup>2</sup> G. Klosko, 'Presumptive benefit, fairness, and political obligation', *Philosophy and Public Affairs*, 16 (1987).

<sup>3</sup> The governments I have in mind are those that we are most likely to regard as legitimate, that is, the western democracies.

when required have a right to a similar submission from those who have benefited by their submission.<sup>4</sup>

The principle expresses the idea of mutuality of restrictions. Individuals who benefit from the cooperative efforts of others have an obligation to cooperate as well. As analysed by recent scholars, the principle of fairness rests upon a more general moral principle, referred to by David Lyons as 'the just distribution of benefits and burdens'. According to John Rawls: 'We are not to gain from the cooperative labors of others without doing our fair share'.<sup>5</sup> To take perhaps the clearest case, in situations of national defence an individual who benefits from the protection provided by his fellow citizens can be obligated to cooperate in their efforts; that is, he can be obligated to serve in the armed forces and/or to help finance them by paying taxes.

In order for the principle to support political obligations, it must be refined in various ways.<sup>6</sup> Because of the strong presumption of individual liberty within the liberal tradition, individuals should be free to decide for themselves whether they will cooperate in assuming the burdens connected with various benefits, whenever this is possible. Thus the applicability of the principle of fairness should be confined to what can be termed 'non-excludable' or 'public goods', benefits that, if provided to certain members of a given community, cannot easily be withheld from the other members.<sup>7</sup> If the benefits provided by some cooperative enterprise are excludable, and so can be denied to specific community members, then individuals will not ordinarily acquire obligations to help provide them, unless they willingly accept them or otherwise seek them out. When it is possible for scheme *X* not to provide *A* with a given benefit, ordinarily, he should be able to choose whether to receive it and assume the accompanying burdens. Non-excludable benefits are more complex. Because they must be provided to individuals more or less regardless of their behaviour in reference to them, they are not ordinarily pursued and so the possibility of unwanted obligations arises.

<sup>4</sup> H. L. A. Hart, 'Are there any natural rights?', *Philosophical Review*, 64 (1955), p. 185.

<sup>5</sup> D. Lyons, *Forms and Limits of Utilitarianism* (Oxford, Oxford University Press, 1965), p. 164; J. Rawls, *A Theory of Justice* (Cambridge, MA, Harvard University Press, 1971), p. 112. The underlying moral principle is well discussed by R. Arneson, 'The principle of fairness and free-rider problems', *Ethics*, 92 (1982).

<sup>6</sup> The argument presented in this section is drawn from Klosko, 'Presumptive benefit'. The distinctions I present will allow us to counter the major criticisms of the principle of fairness in the literature, especially those of Simmons, *Moral Principles and Political Obligations*, Ch. 5; R. Nozick, *Anarchy, State, and Utopia* (New York, Basic Books, 1974), pp. 90-5; Rawls, *A Theory of Justice*, pp. 113-14; Pateman, *The Problem of Political Obligation*, pp. 121-9, and others. The argument in 'Presumptive benefit' criticizes the views of Rawls, Nozick, and Simmons. Simmons is also criticized in G. Klosko, 'The principle of fairness and political obligation', *Ethics*, 97 (1987). Additional important discussions of the principle of fairness are found in Arneson, 'The principle of fairness'; Lyons, *Forms and Limits of Utilitarianism*, pp. 161-77; K. Greenwalt, 'Promise, benefit, and need: ties that bind us to the law', *Georgia Law Review*, 18 (1984); and J. Rawls, 'Legal obligation and the duty of fair play', in S. Hook (ed.), *Law and Philosophy* (New York, New York University Press, 1964).

<sup>7</sup> As the term is generally used, 'public goods' are characterized by non-excludability and 'non-rival consumption', that is, that one individual's consumption of a given good does not affect the amount available for others. On public goods, see J. Head, *Public Goods and Public Welfare* (Durham, NC, Duke University Press, 1974). For the purposes of this paper, an additional characteristic is important; as I use the term, public goods also require the cooperation of large numbers of people if they are to be produced.

Prime examples of non-excludable benefits are the rule of law, national defence and various public health measures, for example, the control of air pollution.

That there are difficulties in generating obligations from the provision of non-excludable goods has been shown especially by Robert Nozick. He asks us to consider a case in which neighbours band together to set up a public address system that provides music and other broadcasts for their neighbourhood. Assume that there are 365 neighbours, each of whom runs the system for a day. Is *A*, who has listened to the broadcasts and so benefited from them, obligated to give up a day to run the system when her turn comes? What if *A* does not believe that the broadcasts are worth the inconvenience of having to run the system for a day?<sup>8</sup> Nozick presents additional examples of non-excludable goods that do not appear to generate obligations. And so these must be countered by proponents of the principle of fairness.

I believe that the principle can generate political obligations if three major conditions are satisfied.<sup>9</sup> In addition to being non-excludable, the benefits provided by cooperative enterprises must be:

- 1 worth their costs to (typical) members of the scheme;
- 2 presumptively beneficial;
- 3 fairly distributed, along with their accompanying burdens.<sup>10</sup>

The condition of greatest concern in this paper is (2). Nozick's examples share a crucial feature: the goods supplied are of relatively little value. If we confine the principle to cooperative enterprises that provide benefits that are of much greater value, it can generate obligations. Benefits that can be shown to be indispensable to the lives of typical individuals can be termed 'presumptively beneficial' – because of the strong presumption that individuals benefit greatly from their receipt, regardless of how they behave in reference to them, or of their beliefs about them.<sup>11</sup> Since we are concerned throughout this paper with public goods, we shall concentrate on presumptively beneficial public goods, 'presumptive public goods', for short. The most obvious presumptive goods centre upon physical security: the rule of law and protection from foreign aggressors. Other similar benefits are also indispensable to individuals' well-being. But for our

<sup>8</sup> Nozick, *Anarchy, State, and Utopia*, pp. 93–5.

<sup>9</sup> The obligations under discussion in this paper are 'prima facie' obligations, as opposed to 'absolute' or 'unconditional' obligations. *Prima facie* obligations can be overridden by competing moral requirements. See the classic discussion of W. D. Ross, *The Right and the Good* (Oxford, Oxford University Press, 1930), pp. 19–20. An excellent general account of obligations is found in Simmons, *Moral Principles and Political Obligations*, Ch. 1. Because questions of coercion cannot be discussed in this paper, in general I assume that if *A* has obligations of a given strength to cooperative scheme *X*, then the members of that scheme have a right to force him to comply.

<sup>10</sup> Conditions (1) and (2) are discussed in more detail in Klosko, 'Presumptive benefit'. Throughout this paper I assume ordinary circumstances. I do not deny that more unusual circumstances are possible and so the existence of possible counter-examples to my claims. But in general, these will be so rare as to have few practical implications.

<sup>11</sup> The concept of presumptive goods, is based on Rawls's idea of 'primary goods', *A Theory of Justice*, especially pp. 62, 90–5; cf. the account of primary goods in J. Rawls, 'Kantian constructivism in moral theory', *Journal of Philosophy*, 77 (1980), pp. 526–8. It should be noted, however, that the concept of presumptive goods, which is tied to a strong conception of indispensability, is narrower and so less subject to controversy than the concept of primary goods.

purposes we can focus on national defence and the rule of law. It is not necessary to explore the contents of the class of presumptive public goods in detail.

As long as a cooperative scheme provides non-excludable goods that are presumptively beneficial – and conditions (1) and (3) are also satisfied – it can be shown to generate obligations for all who receive the benefits to cooperate in their provision. This conclusion receives strong intuitive support from both specific examples and analysis of the moral principle involved. Assume that territory *X* is threatened by foreign invaders who express the intention of massacring the *X*-ites. If a number of *X*-ites sufficient to deter the invasion band together and take effective measures, then there is a strong presumption that *A* is obligated to bear a fair share of the burdens. Were he to benefit from their cooperative efforts without doing his fair share, he would clearly be a free-rider. Because of the overwhelming importance of the benefits *X* supplies *A*, this conclusion holds whether or not he has sought the benefits out, or regardless of what he thinks about them. As we have noted, the question of pursuing benefits here is complicated by the fact that non-excludable goods such as national defence are ordinarily supplied to all members of a given community whether or not specific people pursue them. However, these benefits are so obviously central to *A*'s well-being that it would not be rational for him not to pursue them – if pursuit were necessary to insure receiving them. Similarly, because of the great importance of these goods, *A*'s obligations hold without regard to his particular attitudes or beliefs about them.<sup>12</sup>

In many cases, cooperative schemes providing presumptive public goods satisfy the other necessary conditions as well. Because of their great importance, presumptive public goods can frequently be shown to be (1) worth the costs of supplying them. As for condition (3), because such goods are non-excludable and so cannot be denied to specified members of the community, their benefits can be distributed in a manner that is non-controversially fair. (On this, more in the following section.) In many cases, then, the principle of fairness would appear to generate strong obligations. It is notable that these cases correspond closely with prime situations of political obligation within the liberal tradition.

The moral basis of the principle of fairness is also intuitively clear. According to an alternative formulation presented by Rawls, the principle 'requires one to abstain from an advantage that cannot be distributed fairly to those whose efforts have made it possible'.<sup>13</sup> In cases such as our example, it is incumbent that the community provide the benefits in question. The consequences of not supplying national defence (or the rule of law, or similar presumptive public goods) would be catastrophic, and so the advantages of non-cooperation cannot be extended generally to the community's members. Nozick's public address system differs from national defence in that the consequences of not supplying public broadcasts would not be catastrophic – though they could well be unpleasant for many community members. A given individual could always refuse to cooperate with public broadcasts, then, on the grounds that she is willing to extend the advantages of non-cooperation to other prospective broadcasters as well. But in a case of national defence, this alternative is foreclosed. Presumptive public

<sup>12</sup> This is in response to the view of Simmons, *Moral Principles and Political Obligations*, Ch. 5; see my articles cited above in note 6.

<sup>13</sup> Rawls, 'Legal obligation', p. 17.

goods *must* be supplied. If a given good requires large-scale cooperation (the united efforts of most but not all community members) and all benefit from its provision, then *A* would clearly behave unfairly in receiving the benefits of others' cooperation without being willing to cooperate herself. If the cooperation of many but not all is required to provide the benefits, why should *A* rather than other individuals enjoy the advantages of non-cooperation – unless there is a morally relevant distinction between her and them?

## II

The theory of political obligation discussed so far confronts a serious difficulty. Though the principle of fairness is able to ground obligations to contribute to presumptive public goods, it does not create obligations to help provide goods that are of lesser value. We can refer to goods that are desirable but are not indispensable to individuals' well-being as 'discretionary goods'. Again, since our concern is with public goods, we shall concentrate on discretionary public goods. Though repairing roads, for example, is generally viewed as a basic function of government and has been so for many years, the principle of fairness, as formulated so far, does not obligate individuals to cooperate in this regard.<sup>14</sup> We must examine then how the principle can be developed to cover discretionary public goods as well.<sup>15</sup>

The solution to this problem lies in extending the functions of cooperative schemes that provide presumptive public goods. Nozick's examples show that individuals cannot simply combine their efforts in order to provide some discretionary public good and then declare that *A* is also obligated to contribute. But Nozick has not shown that the principle cannot establish obligations to help provide discretionary goods if a given scheme *also* provides presumptive public goods. There are important differences between the initial infringement upon *A*'s liberty when he is obligated to cooperate in providing presumptive public goods and the added infringement when he is required to help with discretionary public goods as well.

If cooperative scheme *X* provides both presumptive and discretionary public goods, then under certain conditions these goods comprise an indivisible package.<sup>16</sup> As we shall see, it is because of the status of discretionary goods in benefit packages that individuals can be obligated to support them. Now, the existence of such packages has been questioned, most notably by A. John Simmons, who argues along the following lines. Assume that scheme *X* provides national defence and demands that *A* contribute his share by paying certain taxes. If *X* then undertakes to supply roads as well and raises taxes to pay for them, not only can *A*'s road payments be distinguished from his defence payments, but he can pay the latter without the former.<sup>17</sup>

<sup>14</sup> This important objection was first brought to my attention by Brian Barry.

<sup>15</sup> The dividing line between excludable and non-excludable goods is of course rough. Many familiar goods that are generally regarded as non-excludable could conceivably be denied to specified people, for example, access to public roads and pavements. However, in those cases in which denying access would be prohibitively expensive or inconvenient, the goods in question should be viewed as non-excludable.

<sup>16</sup> Klosko, 'Presumptive benefit', pp. 255–7.

<sup>17</sup> A. J. Simmons, 'The anarchist position: a reply to Klosko and Senor', *Philosophy and Public Affairs*, 16 (1987). I also acknowledge my gratitude to the members of the University of Virginia Philosophy Department, who forcefully made similar objections when I presented 'Presumptive benefit' to them, in March 1987.

I believe that an answer can be given to Simmons's argument. My response rests heavily upon a few points concerning political decision procedures. These will be discussed here, before we return to discretionary public goods in Section III.

As noted in the last section, in order for cooperative enterprise *X* to generate obligations through the supply of presumptive public goods, the goods must satisfy the three necessary conditions. Let us assume that *X* supplies *A* with the benefits of the rule of law and then demands that he contribute. Because the *X*-ites wish to limit *A*'s liberty, it is up to them to show that the three necessary conditions are satisfied. In many cases (1) and (2) would give them relatively little trouble. The rule of law is obviously (2), presumptively beneficial, and so important to *A*'s well-being that in many cases (1), it is undoubtedly worth its costs. But (3), the requirement that the benefits and burdens connected with the rule of law be fairly distributed, raises severe difficulties. The fairness of a given package of benefits and burdens must be assessed according to an accepted standard of fairness. But *A* is likely to disagree with the members of *X* (and they are likely to disagree with one another) as to what constitutes fair distribution. 'Fairness' is an 'essentially contested concept'.<sup>18</sup> There are a number of defensible principles of fair distribution – distribution according to various utilitarian standards, according to Rawls's principles of justice, according to the free market, and so on – and it is unlikely that *A* and the *X*-ites could easily be brought to agree on one, or on a specific combination of them.

In keeping with the views of many liberal theorists, I believe that various questions that do not lend themselves to satisfactory substantive solutions can be resolved by fair procedures.<sup>19</sup> In the case under discussion, a fair decision procedure can be used to select a principle of fair distribution, and the means through which that principle can be implemented throughout society. There is a powerful objection to this approach however, as it could be argued that the appeal to fair procedures merely pushes the problem back one level. As public choice theorists have shown, no decision procedure is non-controversially fair. All procedures work to the advantage of certain members of the community and to the disadvantage of others.

There is a response to this objection, and so a means of selecting an acceptable principle of fair distribution, although no selection procedure can be completely fair. First, though no selection procedure will be viewed as non-controversially fair, a few characteristics should generate relatively little controversy. Perhaps the clearest assumption is that an acceptable procedure should be democratic, granting each individual the right to have his opinion considered. In addition, the procedure must come from the class of procedures that are generally recognized as suitably fair – and so are widely utilized – and so one for which good arguments can be adduced. (To simplify matters, I also assume that decisions should be made according to a basic principle of majority rule, whether through direct voting or a system of representation.)

One advantage of democratic procedures is that they allow *A* to work to change the system to one more to his liking. There is something of a regress here,

<sup>18</sup> W. B. Gallie, 'Essentially contested concepts', *Proceedings of the Aristotelian Society*, 56 (1955–56); W. Connolly, *The Terms of Political Discourse* (Princeton, Princeton University Press, 2nd edn, 1983), Ch. 1.

<sup>19</sup> For example, S. I. Benn and R. S. Peters, *Social Principles and the Democratic State* (London, Allen and Unwin, 1959), Ch. 12; Rawls, *A Theory of Justice*, Secs 14, 36, 54.

as *A* would have to work through existing procedures in order to change them. But the fact that the decision procedure in *X* ultimately rests upon the wishes of the majority should not be minimized. In addition, *A* has a variety of means at his disposal to influence policy, whether he wishes to alter specific policy outcomes or the rules of the process. These range from arguing with other *X*-ites, to running for political office, peaceful protest, civil disobedience, conscientious refusal to obey specific laws, and armed revolt.

Aside from these relatively mild suggestions, the procedure can be tightened by requiring that its outcomes be subject to an independent check. In other words, the process under consideration is not pure procedural justice. A principle of fair distribution should not be accepted simply because it is chosen by the relevant procedure. It must also be defensible with reasonable arguments. In addition to being selected by reasonably fair procedures then, a principle of distribution must come from the class of principles that are generally recognized as fair. I assume that this indicates their defensibility. Perhaps, if we had some guarantee that a given procedure were completely fair, its outcomes would not have to be subject to independent tests. But we have no means of devising such procedures.

Finally, it should be noted that the standard of fairness employed in the kind of case under discussion is tolerable fairness, rather than perfect fairness. Because we live in an imperfect world, we should be willing to tolerate some injustice.<sup>20</sup> Along similar lines, in the case under consideration, the task the *X*-ites confront is of a certain kind. In justifying their decision procedure, they need not demonstrate that it is the best possible but only that it is acceptable. *A*'s obligation to *X* will stem from his receipt of indispensable goods, rather than from his right to participate in a just political process. *A*'s evaluation of the procedure in any given case will of course depend upon the particular factors involved; such assessments should be made on a case-by-case basis. But in many cases, *A* should conclude on the basis of all relevant evidence that the benefits and burdens are distributed with tolerable fairness, and so that he should accept the procedure's outcome, even though he can imagine other procedures that he would regard as more fair or more to his liking.

In the case under consideration then, *A* should go along with the decision reached by *X*'s procedure in regard to a principle of fair distribution because first, the procedure satisfies certain basic, non-controversial standards of fairness, secondly, the mechanism employed is not pure procedural justice, and so the outcome is subject to independent check, and thirdly, the standard here is tolerable rather than perfect fairness; the question under discussion is not whether the procedure in *X* is the best possible, but whether it is acceptably fair.

In many cases, once a suitable principle of fair distribution has been selected, the *X*-ites will be able to demonstrate that their package of presumptive public goods satisfies condition (3). A great advantage of supplying presumptive public goods is that their distribution occasions *relatively* little controversy. Because the benefits concerned are non-excludable, in many cases they can be distributed in a manner that is non-controversially fair. For example, the benefits of physical security provided by the rule of law are enjoyed by all alike. Many of the costs of such benefits can be distributed in a manner that is also non-controversially fair. The major cost of the rule of law is obeying the law, a requirement that can be

<sup>20</sup> Rawls, *A Theory of Justice*, p. 112; Sec. 53.

imposed upon all alike. There are other costs as well, most notably the financial costs of the criminal justice mechanism that is required to enforce adherence to the law. But as long as these are distributed according to a principle of fair distribution that is selected by the kind of procedure indicated, their distribution can be sufficiently fair to allow the distribution of the overall benefits and burdens of the rule of law to be tolerably fair. Because circumstances are similar with other presumptive public goods, acceptable procedural solutions can be forthcoming in their regard as well.<sup>21</sup>

I conclude then, that in certain cases the *X*-ites will be able successfully to show that the presumptive public goods that they supply satisfy the three necessary conditions and so that *A* has an obligation to comply. This process of proof however, confronts an additional complexity.

In the supply of presumptive public goods, questions of fair distribution are not alone in involving essentially contested issues. In order to impose obligations upon *A*, the proponents of *X* must be able to defend their specific measures. This is an aspect of the supply of such goods that has been omitted from discussion thus far for the sake of simplicity. In regard to the provision of defence, for instance, there are numerous ways in which *X* can provide benefits and distribute costs. The *X*-ites can resort to various means to staff the armed forces, drafting people of different ages, for different lengths of service. They can confine the draft to men or draft both men and women. Or they can decide to field a volunteer army. The *X*-ites can invest in a variety of weapons systems, on land, sea and air, conventional and nuclear. Or they can provide a range of defensive systems, from a Maginot Line to a Strategic Defence Initiative. If we assume that various combinations of these measures will be able to ward off foreign aggressors, it will be difficult to say with assurance which particular combination is best. Because such debates are notoriously difficult to resolve, they too should be settled by tolerably fair procedures. As long as the procedures in question are tolerably fair, and as long as the *X*-ites choose their solutions from the class of acceptable defence alternatives – in this case, those that satisfy conditions (1), (2) and (3) – tolerably fair procedures provide an acceptable way of resolving otherwise unresolvable disputes. The principle that tolerably fair procedures can be used to choose the specific form in which a given presumptive public good can be provided – and paid for – can be referred to as the 'options rule'.

In considering the options rule, we encounter a basic principle of democratic theory, which we must discuss. (This has also been seen above, though less clearly, in regard to selecting an acceptable principle of fair distribution.) With the institution of a tolerably fair decision procedure, in certain cases the individual surrenders her right to decide important questions of policy for herself. Though she might disagree with some decision the process renders, she should give it precedence over her own view. I shall refer to this principle as the 'precedence rule'.

The precedence rule can be seen more clearly if we examine and defend it from a well-known argument presented by Richard Wollheim. Wollheim asks why *A*, who believes that some policy, *p*, is best for society, should change his mind and

<sup>21</sup> Though alternative means of resolving questions of fair distribution are unlikely, I do not rule them out. Tolerably fair procedures provide one means of satisfying condition (3), though not necessarily the only one.



come to prefer  $q$ , when  $q$  rather than  $p$  is chosen by the society's procedural mechanism: 'How can the citizen accept the machine's choice, which involves his thinking that [ $q$ ] ought to be enacted when . . . he is of the declared opinion that [ $p$ ] ought to be enacted?'<sup>22</sup> Wollheim's paradox rests upon a misconstrual of democratic decision procedures. Such procedures are not constructed to answer ethical or epistemological questions of the order 'what is the best thing to do?' or 'what is the correct answer to a given question?' They are to select social policies. They do not, as Rawls says, 'reconcile differences of opinion into an opinion to be taken as true . . . but rather [decide] whose opinion is to determine legislative policy'.<sup>23</sup> Thus  $A$  should not be regarded as confronting the problem of what to believe; his task is to reconcile competing *prima facie* principles. The first principle is his belief that  $p$  is the right thing to do. When the social decision procedure, to which we can assume he is committed, recommends  $q$ , he faces a conflict between doing what he thinks is best – following his conscience, if you will – and acceding to his commitment to his society's decision procedure. Such conflicts are resolved by weighing the competing principles.  $A$  should follow the stronger principle.<sup>24</sup> Thus when conditions warrant,  $A$  should set his personal views aside and accept those of the majority.

Returning to our example,  $A$  disagrees with the  $X$ -ites about the proper set of defence policies but he should follow the precedence rule and set his own view aside in favour of the majority's, as long as their decision falls within the bounds of tolerable fairness (as discussed above). The precedence rule holds even though the decision procedure is not perfectly fair. The  $X$ -ites earn the presumption that  $A$  accept their view by supplying him with the benefits of national defence. Because defence is a presumptive good,  $A$  cannot do without it. If it is to be supplied, it must be supplied in *some* fashion. The decision procedure in  $X$  is designed to select one defence alternative from the set of acceptable approaches held by all the  $X$ -ites,  $A$  included. If the procedure is tolerably fair and takes  $A$ 's views into consideration along with others, then he should accept the view of the majority.  $A$  is doubtless treated unfairly to some extent in that the decision here is made according to a decision procedure that he has had no say in selecting. But because the defence alternative chosen must be shown to satisfy the necessary conditions, and the procedures employed must come from the class of procedures that are generally recognized as fair, a standard of tolerable fairness should be satisfied.

The precedence rule also plays a role with regard to the  $X$ -ites' need to satisfy condition (3). As we have seen, a majority of  $X$ -ites choose a principle of distributive justice through tolerably fair procedures. According to the precedence rule,  $A$  should subordinate his own views about distributive justice to those of the majority. This conclusion is supported by the considerations we have just discussed, which need not be recounted. According to the options rule, the  $X$ -ites must not only choose their defence alternative through tolerably fair

<sup>22</sup> R. Wollheim, 'A paradox in the theory of democracy', in P. Laslett and W. G. Runciman (eds) *Philosophy, Politics and Society* (Oxford, Basil Blackwell, 2nd Series, 1969), p. 78.

<sup>23</sup> Rawls, 'Legal obligation', p. 8; my remarks here are indebted to Rawls.

<sup>24</sup> I cannot discuss complex issues concerned with weighing competing moral principles, including *prima facie* obligations. I assume that in many cases *prima facie* obligations are of sufficient weight to determine what is the right thing to do, when all moral considerations are taken into account.

procedures but it must receive independent support. It must be shown to satisfy the three necessary conditions. In many cases this should be possible for the  $X$ -ites to demonstrate. The argument given above on pp. 202–3, applies here as well. Because of the value of the goods in question, in many cases (1) and (2) can be seen to hold. However, (3) again causes more problems. But because only the financial component of the package of benefits and burdens is subject to real controversy and the standard that must be satisfied is tolerable fairness, under many circumstances the  $X$ -ites should be able to make their case. Thus we see that disagreements about fair distribution and about the specific form that presumptive public goods should assume can be resolved by tolerably fair procedures.

### III

Having completed our detour into important political matters, we can return to the question of discretionary public goods. We can assume that the majority of scheme  $X$ , which supplies  $A$  with presumptive public goods, decides to furnish discretionary goods as well. The question is whether  $A$  should be obliged to undertake the added contributions, even if (as we shall assume) for him the added benefits are not worth having or not worth their costs.

At first sight it might appear that  $A$  does not have an additional obligation. According to condition (3), if a given scheme does not distribute benefits and burdens fairly, then an individual does not have obligations to it. If the majority of scheme  $X$ , which was created to provide some presumptive public good, decides to provide some discretionary public good as well, we can assume that they benefit from their added cooperation. If  $A$  does not benefit from the added cooperation, the cooperative scheme would not appear to be sufficiently fair to ground an obligation for him to cooperate.

Additional factors, however, should be taken into account. The case discussed in the last two paragraphs 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 why he should make additional contributions to a scheme to which he already has an obligation.<sup>25</sup> I believe that the fact that  $A$  has obligations to support scheme  $X$ 's provision of presumptive goods creates a powerful presumption that he has obligations to support its provision of other benefits as well. This presumption can be defended on the basis of what I shall call the 'indirect' argument.<sup>26</sup>

The indirect argument rests upon the *practical indispensability* of certain discretionary public goods. As discussed above, presumptive public goods are necessary for an acceptable life for all members of society. Defence, security, the rule of law, certain public health provisions, and so on are unquestionably necessary and so fall into this category. Though discretionary public goods are by definition not necessary for people's lives, the crucial point is that presumptive public goods cannot, practically speaking, be furnished by some government unless a certain range of discretionary public goods is furnished as well. In other

<sup>25</sup> The temporal language used throughout the discussion here should be taken to indicate logical rather than temporal relationships.

<sup>26</sup> An additional argument could be given as well, which I call the 'institutional argument'; this relies on the inherent value of obeying the law. Considerations of space preclude discussing it here.

words, though discretionary public goods are not directly required for individual well-being, they are required indirectly.<sup>27</sup>

Important discretionary public goods include transportation and communication facilities, other public health measures, such as sewers and clean water, some level of public education, and measures to ensure the stability of the overall economy, for example, stable currency, sound banking, and so on. A basic societal infrastructure, the individual components of which are not themselves presumptively beneficial, is necessary for a functioning society and so for the provision of presumptive public goods.

In the case of national defence, for example, it is evident that adequate defence requires the existence of sophisticated transportation and communication facilities. Though highways, railroads, airports, bridges, and harbours are not themselves presumptively beneficial, it is difficult to imagine how a country could maintain an adequate level of national defence without them. Similarly, success in modern conventional warfare requires a strong industrial economy. It is arguable that America's victory in the second world war, the last serious threat the country faced, can be attributed to its industrial might. Without a certain level of industrialization, a country will not be able adequately to defend itself. In a famous 1935 address to graduates of the Red Army Academies, Stalin expressed this point rather well. Replying to those who believed that the Soviet Union should have invested more of its resources in consumer goods, Stalin argued:

But with such a 'plan' we would not now have a metallurgical industry, or a machine-building industry, or tractors and automobiles, or aeroplanes and tanks. We would have found ourselves unarmed in face of foreign foes.<sup>28</sup>

<sup>27</sup> It could be argued that, if discretionary public goods are also necessary for the continued functioning of society, then because they too are indispensable, the distinction between presumptive and discretionary goods would appear to be blurred – if not eroded entirely. (This objection was first brought to my attention by B. J. Diggs.) However, the two kinds of goods differ in that obligations to support presumptive goods can be established directly, while those for discretionary goods must be based on their indirect contribution to presumptive goods.

Moreover, a set of related characteristics distinguishes the two classes of goods, some but not all of which are present in any specific case. Presumptive and discretionary goods differ in (a) the kinds of uses to which they are put, (b) the kinds of problems that they are designed to overcome. To begin with (a), presumptive public goods have more specialized uses than discretionary goods. In general, presumptive goods are directly employed in the performance of specific, indispensable functions. Discretionary goods have more varied uses, especially a wide range of uses in addition to those bearing upon essential services. For example, the major components of national defence are armed personnel and weapons systems. The components of the criminal justice system, which enforce the rule of law – police, jails, courts, parole boards, and so on – are closely and obviously tied to the performance of specific functions. The discretionary goods required for the maintenance of national defence and the rule of law include such things as transportation and communication facilities, public education, and a wide range of public health measures. These items are obviously less closely bound up with specific indispensable functions.

As for (b), presumptive and discretionary public goods address different kinds of problems. Presumptive public goods are intended to alleviate critical, pressing problems. If such goods were not supplied the results for the community would be catastrophic, in a direct and immediate sense. In contrast, if discretionary public goods were not supplied, the results would be no less catastrophic, but a longer time frame would be involved. Non-supply of roads would make it more difficult for the X-ites to defend themselves, and eventually, one can surmise, they would be overcome. Similarly, without roads X's police force would have a more difficult time battling crime, and would perhaps be unable to protect the population. But again, the results would take longer to show up – as opposed to a situation in which the police force and other elements of the criminal justice system simply disappeared.

<sup>28</sup> J. V. Stalin, *Problems of Leninism* (Peking, Progress, 1976), p. 769.

Along similar lines, in the era of modern weaponry, national defence requires some measure of scientific sophistication. Though a sophisticated science establishment is not presumptively beneficial, it is indirectly necessary for the maintenance of national defence. Similarly, at the local level, such essential services as police and fire protection require the existence of adequate transportation and communication facilities. In addition, a society will not be able to function smoothly without governmental coordination of activities such as driving. In this case the precise form regulations take is not as important as the fact that there be regulations that are widely known and followed. Numerous similar requirements of modern society could be named.

When we consider the relationship between discretionary and presumptive public goods, we enter upon an area that is fraught with difficulty. An attractive feature of presumptive goods is that they are so important that people can agree about them without undue difficulty. However, as we have seen, a given presumptive public good can be furnished in numerous different forms, which invite controversy. The indirect contribution of discretionary public goods required by a specific recipe of presumptive goods is bound to be even murkier. Though it is obvious that some form and level of transportation are required for national defence, it is not easy to identify that form or level, a situation that is further complicated by the fact that the specific means through which national defence is provided are subject to change over time. The crucial point, however, is that *some* level of transportation and other discretionary public goods is indirectly indispensable.

Determining the precise form the provision of discretionary public goods should assume is a political task like those discussed in the last section, and so can be tackled by tolerably fair decision procedures. As fair procedures can be used to select a principle of fair distribution and specific options bearing upon presumptive goods, so similar means can be employed to settle questions concerning the supply of discretionary public goods. Representative bodies can be empowered to ensure that everything necessary for the provision of presumptive goods is done. As part of this task, they should be able to decide upon the discretionary public goods required for the provision of presumptive public goods.<sup>29</sup>

Decisions of this sort involve matters of great complexity. In many cases it will be arguable that an extensive level of discretionary public goods must be furnished. In the case of national defence, one could argue for the need for extensive government involvement in transportation and communication, heavy industries, education, and other aspects of society as well. The case is similar in regard to other presumptive public goods. Looking at the matter from different points of view one could defend various packages of discretionary public goods as necessary for different presumptive public goods. Exactly where one draws the line in regard to governmental responsibility depends upon basic features of one's overall views concerning the nature of man and of society. Proponents

<sup>29</sup> Cf. the classic formulation of the 'necessary and proper' clause of the US Constitution (Article I, Section 8), presented by John Marshall in *McCulloch v. Maryland* (4 *Wheat*, 316 [1819]): 'The government which has a right to do an act, and has imposed on it, the duty of performing that act, must, according to the dictates of reason, be allowed to select the means; and those who contend that it may not select any appropriate means, that one particular mode of effecting the object is excepted, take upon themselves the burden of establishing that exception'.

of a minimalist government would argue for little beyond the provision of presumptive public goods, for the provision of defence, the protection of property, and the enforcement of contracts. But proponents of other views could defend much more extensive governmental activity. They could surely go so far as to argue that some measure of economic redistribution is necessary to guarantee a functioning society, that a society sharply divided between rich and poor cannot possibly be stable and harmonious, and so well equipped to defend itself.

This line of argument provides a response to various objections. For instance, a libertarian ('L') could argue that only minimal functions of government are legitimate. For example, government cannot provide roads and then force individuals to pay for them, because roads could be provided by the private sector without the use of coercion. If members of the community wish to use the roads then they can pay user fees. Moreover, a strong case can be made that the private sector is more efficient than government, and so would provide better roads at less cost. Similar arguments can be made for other discretionary functions of government, and so L believes that governmental provision of a wide range of discretionary goods is unjust (and inefficient).

L undoubtedly has a powerful argument, which may or may not be true (a question about which reasonable people will disagree). But there is an obvious response. L is surely entitled to her opinion, and if community X has a democratic decision process, she is also entitled to have her opinion considered along with other competing opinions. But because the X-ites are likely to disagree sharply about the package of discretionary goods that is required for the performance of X's presumptive functions, this question should be settled through the employment of tolerably fair procedures. As long as the procedures are tolerably fair, and the result is defensible with reasonable arguments, there is a strong presumption that all the X-ites, L included, should go along with it. L is not alone in disagreeing with the outcome of the decision procedure. According to the precedence rule, she should join the other dissenters in subordinating her opinions to those of the majority.

Thus a majority of the X-ites could argue for and implement a wide range of social services. Existing governments of course perform numerous services, including the provision of various forms of social insurance for the elderly and the unfortunate. In this regard however, an important range of exceptions should be noted. An adequate theory of political obligation should justify social functions that can be described as 'charitable'. In virtually all governments, certainly the ones we are most likely to regard as legitimate, public measures are taken to feed the hungry, house the homeless, care for the sick and destitute, and so on. Beyond a specific point, however, such measures are difficult to justify as necessary for the provision of presumptive public goods. Because these functions are assumed by virtually all governments and are intuitively legitimate, we must justify their provision.

It seems to me that, in order to account for these functions, the principle of fairness should be supplemented with other moral principles, especially the natural duty of justice.<sup>30</sup> To some extent these functions could be justified by the

<sup>30</sup> For points in my discussion here, I am indebted to Julian Franklin. On the natural duty of justice see Rawls, *A Theory of Justice*, pp. 114–17. This is one important area in which the principle of natural duty appears to work. For reasons well explained by Simmons, *Moral Principles and Political Obligations*, Ch. 6, among others, it does not appear to be able to ground an overall theory of political obligation.

indirect argument, as large numbers of the hungry and homeless could pose a threat to social stability. But such charitable functions are usually defended on humanitarian grounds, rather than on grounds of social stability.<sup>31</sup> They therefore appear to fall largely beyond the range of the argument of this paper. It is possible that, in order to cover the entire range of governmental functions, the principle of fairness must be supplemented in other ways as well.<sup>32</sup> There is nothing in the principle to preclude such supplementation, though the principle's claim to ground a suitable theory of obligation is of course weakened to the extent that it must appeal to additional principles. At any rate, the legitimacy of charitable and other functions that are not easily accounted for by the indirect argument does not affect the indirect argument's ability to generate obligations concerning a broad range of discretionary governmental functions.

Because the indirect contribution of discretionary public goods is a difficult subject, it is unlikely that a set of general rules could be developed to apply to all cases. Specific cases have a large and unavoidable empirical component; the particular discretionary goods necessary for some programme of presumptive public goods will obviously depend upon specific circumstances. However, because the need for *some* infrastructural package of discretionary goods can be easily justified, A will have an obligation to cooperate in providing the package that is recommended by the elected representatives of his society, provided that it can be defended with strong reasonable arguments.

As developed here, the indirect argument has a Humean structure. Briefly, in the *Treatise of Human Nature*, Hume argues that man cannot live outside society, the maintenance of which requires the introduction and observance of certain rules, which Hume calls rules of justice. The three main ones are respect for the institution of property, the transfer of property by consent, and the observance of promises. What interests us here is Hume's contention that adherence to the rules is not always beneficial to the adherent or to society as a whole. It is not clear that a single act of justice – for instance, a poor man returning a dropped purse to a wealthy miser – benefits the poor man, who can use the money. Similarly, because having the money would mean more to him than to the rich man, it is not clear in this case that society benefits from observance of the rules of property. However, Hume believes that, regardless of the immediate consequences of specific acts of justice – for both individuals and society – maintenance of the system of justice as a whole is indispensable:

... however single acts of justice may be contrary, either to public or private interest, 'tis certain, that the whole plan or scheme is highly conducive, or indeed absolutely requisite, both to the support of society, and the well-being of every individual . . . And even every individual person must find himself a gainer, on ballancing the account; since, without justice, society must immediately dissolve, and every one must fall into that savage and solitary

<sup>31</sup> For illustration, I quote Hubert Humphrey: 'The moral test of government is how it treats those who are in the dawn of life – the children; those who are in the twilight of life – the aged; and those who are in the shadows of life, the sick, the needy and the handicapped' (my emphasis).

<sup>32</sup> Additional services commonly provided by governments that are difficult to justify with the indirect argument and therefore require additional moral principles include the provision of cultural and recreation facilities and various conservation measures. Numerous others could also be named.

condition, which is infinitely worse than the worst situation that can possibly be suppos'd in society.<sup>33</sup>

For Hume then, the rules of justice benefit people indirectly. 'Society is absolutely necessary for the well-being of men; and these are as necessary to the support of society'.<sup>34</sup>

Hume's position has implications for the way just acts should be assessed. As we have seen, evaluated in its own light, any single just act might not appear to be beneficial. However, the action's indirect consequences should also be taken into account. Just acts do not stand by themselves; they also support the overall social fabric. Thus Hume holds that the return of the miser's purse is actually beneficial to society, and to the poor man as well, despite appearances to the contrary. The act's indirect contribution to the stability of the property system outweighs its immediate disadvantages.<sup>35</sup>

Returning to the question of discretionary public goods, we can apply the results of our brief excursion into Hume. The assessment of the value of specific discretionary goods, like the assessment of the consequences of specific acts of justice, should be made in the light of the overall context. Though viewed in isolation a given discretionary public good ('G') might not appear to be worth its costs to A, G's indirect consequences should also be considered.<sup>36</sup> As we have seen, discretionary good G is chosen by the representatives of X as part of a system of discretionary goods that are necessary for the provision of presumptive public goods and so for the welfare of society and its members. If the important indirect consequences of G are taken into account, then it will be much easier for the X-ites to maintain that G's added benefits are worth the added costs.

At the beginning of this section, we considered what happens when scheme X votes to provide discretionary as well as presumptive public goods, while A, who receives the presumptive goods, would prefer not to undertake the added contributions. I noted that cases of this sort involve *added* infringement upon A's liberty rather than initial infringement. The importance of this difference has now become clear. As we recall, in Nozick's example of the public address system, A believes it is unfair for him to be required to contribute, even though he enjoys the broadcasts, because he believes that they are not worth their costs. However, if we change the circumstances of the example so that the broadcasts originate from a national public radio system that is set up by scheme X and financed with tax revenues as part of a justifiable system of public education, then A should

<sup>33</sup> D. Hume, *A Treatise of Human Nature*, edited by E. Mossner (Harmondsworth, Penguin, 1969), III, ii, 2, pp. 548-9.

<sup>34</sup> Hume, *Treatise*, III, ii, 6, p. 578.

<sup>35</sup> It should be noted that Hume appears to overstate the probable consequences of particular acts of injustice. In a large society, a single act of theft should ordinarily have undetectable consequences for the stability of the property system. Thus (arguing from a utilitarian standpoint) one could conclude that society would gain more from the poor man keeping the purse than from his returning it.

<sup>36</sup> In order to be as clear as possible, I shall emphasize that the principle of fairness does not ground obligations to contribute to discretionary goods on self-interest. In the immediate context, the assessment of the value of good G is important for its bearing upon the fairness of scheme X. Because the fact that the majority benefits from G but A does not will call the fairness of the scheme into question, if it can be shown that A benefits significantly as well, this objection loses its force. If indirect as well as direct consequences of specific goods are taken into account, the differences between the benefits different individuals receive should diminish appreciably.

recognize an obligation to contribute, even if he *doesn't* enjoy the broadcasts, because of the broadcasts' indirect contribution to the supply of presumptive public goods.

#### IV

In order for A to have obligations generated by the principle of fairness to support scheme X, which supplies a given good, the good must be shown to satisfy the three necessary conditions. For discretionary goods, of course, demonstrating this would be a problem. However, as noted in Section II, in many cases discretionary goods are parts of indivisible benefit packages and can be shown to satisfy the necessary conditions for this reason. The indivisibility of the packages has been established by the indirect argument. The supply of roads, for example, should not be viewed as a distinct function of government, apart from other functions. Roads play a necessary role in the presumptive benefits of the rule of law and national defence. Thus the X-ites can justify obligations to support discretionary goods by showing that the overall benefit packages in which they are contained satisfy the necessary conditions.

The task of justifying a given package will be facilitated by the indispensability of its presumptive goods and the nature of their benefits. Now, daunting technical difficulties are encountered in assessing the benefits and costs of a package of goods according to a single standard. These questions cannot be pursued here. However, arguing from a rough standpoint of common sense,<sup>37</sup> in many cases the X-ites will be able to show that the package satisfies (1) and (2) with relatively little difficulty. Once again, condition (3) will create more difficulties. But again, these can be overcome.

The argument here is similar to the justification of the fairness of presumptive public goods in Section II. Because of the presumptive goods contained in the benefit package in question, certain of its benefits and costs can be distributed in a manner that is non-controversially fair. Greater real controversy centres upon other components. While the benefits of national defence fall evenly upon all inhabitants of a given society, this is not true of various discretionary goods. A given road, for instance, will clearly benefit those who use it more than those who do not. Moreover, if a set of discretionary public goods is attached to a set of presumptive goods, they must be paid for, and so the economic components of the benefit package will be relatively larger – and so subject to more controversy – than those of a benefit package that does not contain discretionary goods. Assessing the fairness of the package of benefits and costs supplied by an existing government is obviously a formidable task. Because of the enormous number of particular factors involved, such assessments should be made on a case-by-case basis. But a set of rough considerations indicate how the X-ites could establish their points. Their task will be greatly assisted by the precedence rule, discussed in Section II. As we saw, A should be willing to subordinate his own views in regard to standards of fair distribution to the view selected by the majority, as long as the selection procedure is tolerably fair and the principle the majority chooses comes from the class of principles that are generally recognized as suitably fair, and so can be defended with reasonable arguments. Again, as we saw above, A is

<sup>37</sup> On a public conception of reason, see Rawls, 'Kantian constructivism', pp. 535-43.



undoubtedly treated unfairly to some extent in that the selection procedure is not perfectly fair and was presumably set up without any input from him. But again, the *X*-ites earn the presumption that *A* substitute their view for his own by supplying him with presumptive goods, which he cannot do without. Because the other considerations discussed above apply here as well, *A* should accept the precedence rule and so be willing to have the overall benefit package assessed according to the majority's preferred principle of fair distribution.

Because presumptive goods are contained in the benefit package, in many cases the *X*-ites should be able to present strong arguments for its tolerable fairness. Because they are able to employ their own standard of distributive justice, they should be able to make their case, as long as the benefits and burdens of the package as a whole are reasonably in accord with the standard they selected.

An example can perhaps make the argument here more clear. Consider benefit package *Y*, which contains the presumptively beneficial rule of law, and a set of discretionary goods that are indirectly necessary to the rule of law, comprised of transportation and communication facilities. As we have seen, because these discretionary goods are necessary for the rule of law, they cannot be assessed independently but must be viewed as parts of an inseparable benefit package. Because of the great importance of the rule of law, in many cases the providers of *Y* will be able to argue that it satisfies conditions (1) and (2). Of course, they will have more trouble demonstrating that it satisfies (3), but in many cases they will be able to do this as well.

As we saw above, the benefits of the rule of law – which are the most important benefits in *Y* – fall out evenly on all community members. We can assume that the package's other benefits, those stemming from the discretionary goods, fall out less evenly. The major costs of obeying the law also fall out evenly on all concerned, as all can be required to obey. As for the financial burdens of the rule of law and providing the discretionary goods, these can be assessed according to a defensible principle of fair distribution selected by *Y*'s decision procedure and implemented accordingly throughout the community. As long as this principle (which we can assume is a principle of sharply progressive taxation) is selected by tolerably fair procedures – of the kind discussed above – *A* should follow the precedence rule and subordinate his own views to it. As long as the principle is worked throughout the society with tolerable efficiency and fairness, this component of the costs of *Y* should be sufficiently fair to allow the benefits and the burdens of the package as a whole to satisfy a standard of tolerable fairness. Again, in making this case the suppliers of *Y* are aided by the precedence rule. If *A* prefers a flat tax, he will be likely to view the financial side of *Y*'s costs as flagrantly unfair and so will probably find that the overall burdens of the package are not tolerably fair. But again, as long as the progressive principle is chosen by tolerably fair procedures and is intellectually defensible, *A* should accede to the precedence rule and allow the burdens of *Y* to be assessed according to it.

## V

Before we conclude, there is a troubling objection to the account of fair distribution discussed throughout this paper that should be addressed. Because I have made no attempt to demonstrate the fairness of existing societies, one can question the applicability of fairness theory to practical political concerns. This is

a troubling objection, which I do not wish to minimize, nor am I suggesting that political theorists should wax complacent about the unfairness present in existing liberal societies, including unfairness in the rule of law and other elements of physical security. However, I do not believe that it is necessary to discuss this objection at length in the present paper. As noted above, at the present time it is widely argued that no adequate theory of political obligation (proceeding from liberal premises) exists. It seems to me that fairness theory has been shown to be a workable theory, which holds for at least some existing societies. Difficult empirical issues must be dealt with before it can be shown that societies such as the United States or Great Britain satisfy the three criteria, especially (3). But on an intuitive level it seems clear that *one can make a reasonable case* that these societies meet the standard.

If one can make a reasonable case that actual societies meet the standard, then fairness theory would appear to be stronger than other theories of political obligation. At the present time there is no other theory for which a comparable claim can be made. Certainly, one cannot make it for the two major traditional theories, based on consent and consequentialism; one cannot construct a defensible version of either of these and then make any sort of case that existing societies measure up. Because of disagreement concerning the notion of 'tolerable injustice' relevant to questions of fair distribution, people with different political beliefs will undoubtedly disagree as to whether distribution in the United States or Britain is tolerably fair. But on an intuitive level it seems that there are other liberal societies, perhaps the Scandinavian societies, in which distribution is more fair, and so in regard to which the principle of fairness can more easily justify obligations. If benefits and burdens in these societies are more obviously distributed with tolerable fairness, then the empirical issue should be manageable in these cases. For these societies then, and less clearly in others, fairness theory appears to work. Though empirical questions concerning the distribution of benefits and burdens in the United States, Britain, and other societies are interesting and important, they can be set aside for further study.

An additional point here is that empirical objections along these lines do not admit neat theoretical solutions. It is notorious that questions such as, whether the government in society *X* has become so unjust and oppressive that the obligations of its citizens are dissolved, are unavoidably messy. Different people will disagree as to what constitutes intolerable oppression and whether the standard is met under different circumstances. Once the basic standards in question have been set out, there is no theoretical way around these difficulties. But despite its limitations in these respects, I believe that fairness theory makes an important contribution in spelling out exactly what the empirical issues bearing on political obligation are.

In closing, I should note that throughout this paper I have discussed only the extent to which the principle of fairness can generate obligations. I have not discussed the limitations upon these obligations; adequate discussion of these would take another paper. But a moment's reflection will reveal their nature. To begin with, the theory of obligation I have sketched is only one component of a full political theory. Obligations generated by the principle of fairness are *prima facie* obligations and so can be overridden by other moral requirements, for example, various people's rights or natural duties of justice. In addition, obligations generated by the principle of fairness are inherently limited, because

the goods supplied by scheme *X* must satisfy the three necessary conditions, especially (3). Accordingly, as we have seen, the decision procedures in *X* must be tolerably fair, according rights of participation to all *X*-ites. This provision excludes obligations (based upon the principle of fairness) to any government that does not have such procedures. In addition, the principle of distribution selected by a given procedure must be defensible with reasonable arguments and must be implemented throughout society with tolerable fairness. This condition precludes obligations to the many governments that distribute their benefits and burdens with flagrant disregard for any defensible principle of justice. Thus I believe that a developed theory of political obligation based on the principle of fairness would be intuitively sound in limiting obligations as well as in establishing them.

## International Peacekeeping: The Disputants' View

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International disputants often have reservations about inviting a peacekeeping body to help them contain or settle their conflict. Either or both sides might worry about certain international consequences of this course. Thus, one side might want to refrain from implying that an international issue really exists; both disputants might be concerned that a peacekeeping body could interfere with their freedom of action; and also that it could furnish critical reports about their behaviour. Then, too, there are certain adverse international possibilities which are special to potential host states. They might be conscious that having a peacekeeping body on their soil could give an impression of weakness or doubtful probity, and also of being less than fully sovereign. There are, additionally, certain domestic complications which might ensue for a host state. It could be concerned about the relations of the peacekeepers with its people, about the presence of such a group becoming a controversial political issue, and about the danger of a peacekeeping force ignoring the ground rules of peacekeeping and behaving in a manner which threatened the government's interests.

In keeping with its non-threatening nature, the device which has become known as international peacekeeping rests on the consent of the state or states on whose territory the peacekeepers operate. If any such operation is to maximize its contribution to the maintenance of peace it must also have the cooperation of all the relevant disputants, whether or not they happen to be host states. It is, in other words, the parties who provide the essential context for peacekeeping.

There are, of course, other requirements. Someone, or somebody, has to make the necessary arrangements and take the appropriate decisions, for peacekeeping represents the involvement in a dispute of a third (and impartial) party. Among these arrangements will be the provision of personnel, almost always military, for the quasi-military tasks of peacekeeping. This means that some states have to volunteer such people. Some states, too, have to finance the affair, and while the parties are not to be excluded from this role, it is unlikely that they will be either able or willing to provide all the necessary money. But generally speaking it is the parties who play the crucial role not only in respect of the success of a peacekeeping mission but also in its creation. If they are agreed on the desirability

\* This article is based on a paper written at the invitation of the International Peace Academy for delivery at the December 1988 Workshop in Oslo co-sponsored by the Academy and the Norwegian Institute of International Affairs. The writer expresses his appreciation to the Academy for its permission to reproduce the paper in this revised form, and also to the Editor of *Political Studies* for his assistance in its revision.



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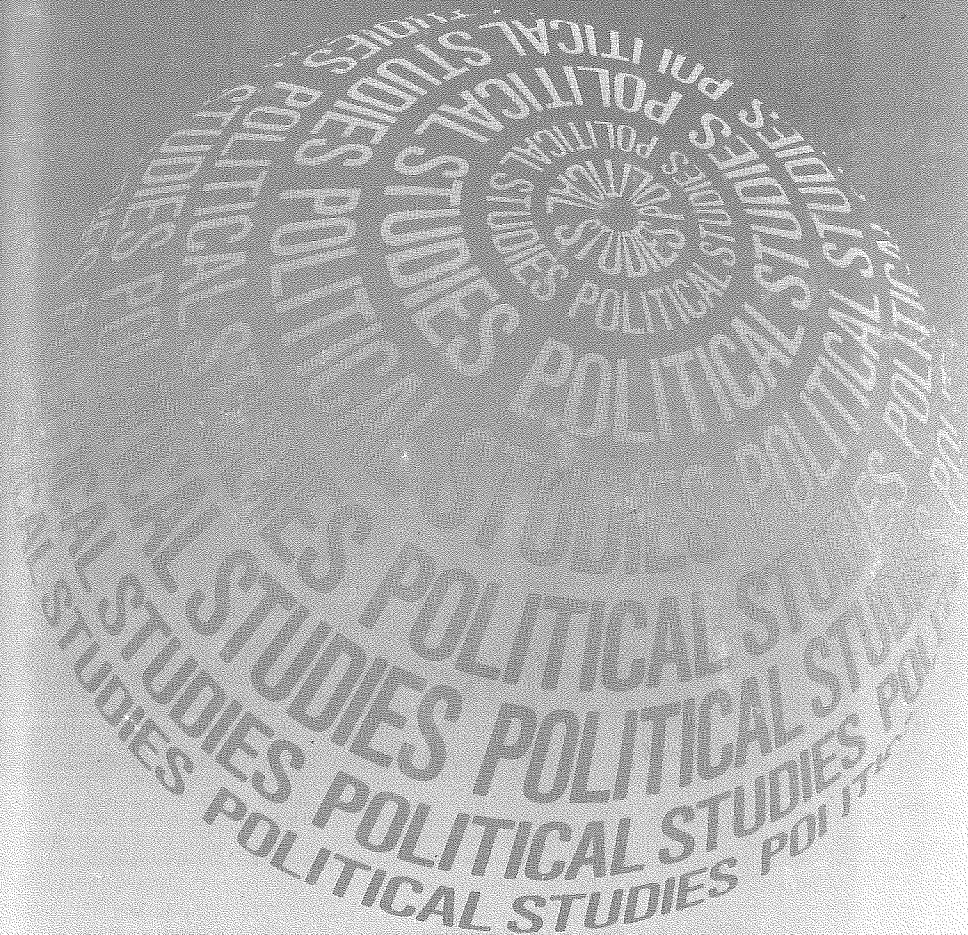
ISSN 0032-3217

Typeset by Megaron, Cardiff and printed by Page Bros., Norwich

Rm.  
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# POLITICAL STUDIES

Volume XXXVIII Number 2  
June 1990



**Basil Blackwell**

The Journal of the Political Studies Association of the UK

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*Political Studies* is published four times a year, in March, June, September and December.

Subscription Prices 1990	UK	Europe	Rest of World	North America
Institutions	£41.00	£45.00	£48.00	£79.50
Single Issues				
Institutions	£10.75	£11.75	£12.50	£21.00

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The journal is available on microfilm (16mm or 35mm) or 105mm microfiche from the Serials Acquisitions Department, University Microfilms Inc, 300 North Zeeb Road, Ann Arbor, MI 48106, USA.

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ISSN 0032-3217

Political Studies

Volume XXXVIII Number 2 June 1990

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Articles appearing in this journal are indexed in *ABC POL SCI* and *PAIS Bulletin*, abstracted in *Sociological Abstracts*, *SOPODA*, *Historical Abstracts* and *America: History and Life* and abstracted and indexed in *Human Resources Abstracts*, *Sage Urban Studies Abstracts*, *Sage Public Administration Abstracts*, and *International Political Science Abstracts*.

## Liberalism and the Best-Judge Principle

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The central tenet of liberalism has been taken to be value agnosticism, operationalized in the rule that each person must be taken to be the best judge of his own interests. There are, however, various ways to take that 'best-judge principle'. The strongest form of the claim is here shown to be untenable. The most defensible weaker form is shown to provide only equivocal support at best for the sort of *laissez-faire* policy prescriptions standardly associated with liberal and neo-liberal political theory.

Just as the Enlightenment brought a tightening up of the canons of scientific proof in matters of empirical fact, so too did it bring a slackening of the unprovable dogmas of metaphysics and morality. Liberals, the proudest progeny of the Enlightenment, make much of their value-neutrality. They take pride in the fact that theirs is an ideology free of dogma and cant. Indeed, arguably the defining feature of liberalism is its agnosticism as regards matters of ultimate personal values.<sup>1</sup> Still – and paradoxically, intimately connected to that value agnosticism – there is at least one point that liberals hold virtually as an article of faith. This goes by several names, and admits of various formulations. But in its most familiar guise, it is the 'best-judge principle' – the proposition that each individual is the best judge of his own interests. Virtually all the major policy prescriptions associated with classical and neoclassical liberalism flow directly or indirectly from the best-judge principle and typically from it almost exclusively. Without it, or something very much like it, classical and neoclassical liberals' arguments for political democracy and economic markets, the 'liberty principle' and vested rights would all require considerable recasting.

Sometimes that best-judge principle is urged as an axiom of the liberal value system, as the unexamined and unexamined premise on which all the rest must build. Sometimes it is treated as if it were in principle an empirical proposition, albeit perhaps one on which we can never expect to have conclusive evidence. Here I shall identify four versions of the 'best-judge' argument. The empirically based version provides strong support for liberal and neo-liberal policy

\* An earlier version of this article was read at the University of York and recast while visiting the Leyden Institute for Law and Public Policy. I am grateful for comments of those colleagues, and particularly for the incisive remarks of Andreas Kinniging, Richard Lindley, Sue Mendus, David Miller, Andy Reeve and referees for this journal.

<sup>1</sup> Whether this claim of neutrality and value-agnosticism is tenable, and whether that even is true to the historical roots of liberalism, are of course open questions. Ronald M. Dworkin, 'Liberalism', in S. Hampshire (ed.), *Public and Private Morality* (Cambridge, Cambridge University Press, 1978), pp. 113-43; cf. Joseph Raz, *The Morality of Freedom* (Oxford, Clarendon Press, 1986) and Robert E. Goodin and Andrew Reeve (eds), *Liberal Neutrality* (London, Routledge, 1989). For purposes of this article however, I propose simply to take these contentious issues for granted.