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# The Principle of Fairness and Free-Rider Problems

*Richard J. Arneson*

In a celebrated essay, H. L. A. Hart briefly calls attention to a situation he calls "mutual restriction" and claims that "political obligation is intelligible" only once it is understood exactly how this situation gives rise to obligation.<sup>1</sup> To clarify this matter Hart proposes a principle of mutual restriction: "... when 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." According to Hart, the rights of the rule followers here entail a corresponding obligation on the part of the beneficiaries. This principle has been taken over by John Rawls, renamed the "principle of fairness," and reformulated as follows: "... when a number of persons engage in a just, mutually advantageous, cooperative venture according to rules and thus restrain their liberty in ways necessary to yield advantages for all, those who have submitted to these restrictions have a right to similar acquiescence on the part of those who have benefited from their submission."<sup>2</sup> One of the more promising minor achievements of Robert Nozick's *Anarchy, State, and Utopia* is its vigorous polemic against this principle. Nozick writes, "The principle of fairness, as we stated it following Hart and Rawls, is objectionable and unacceptable."<sup>3</sup> As we shall see, some of Nozick's criticisms are well taken, but they appear to motivate revision of the principle rather than its abandonment. Nozick, however, leaps from his criticisms to the conclusion that no reformulation of the principle of fairness would obviate the need for actual individual consent to social requirements before those requirements can rightly be deemed obligations binding on that individual and enforceable by others. Others have endorsed Nozick's leap.<sup>4</sup> Since

1. H. L. A. Hart, "Are There Any Natural Rights?" *Philosophical Review* 64 (1955): 175-91; see esp. p. 185.

2. John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), pp. 108-14. The formulation quoted in the text follows the suggested phrasing of Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 90.

3. Nozick, p. 93.

4. Frank Miller and Rolf Sartorius, "Population Policy and Public Goods," *Philosophy and Public Affairs* 8 (1979): 148-74; see esp. pp. 165-67; A. John Simmons, "The Principle of Fair Play," *Philosophy and Public Affairs* 8 (1979): 307-37 (this is a shortened and revised version of chap. 5 of his *Moral Principles and Political Obligations* [Princeton, N.J.: Princeton University Press, 1980]).

Hart at any rate proposed the principle in order to correct the tendency of the social contract theorists to assimilate all sources of obligation to voluntary consent of the sort found in promise making. Nozick's conclusion jettisons the project of explaining and justifying political obligation by tracing its origin to mutuality of restriction.

The present article salvages this project. Section I explores Nozick's criticisms to see if the principle of fairness can be revised to accommodate them. Section II argues that a principle that Nozick cannot disavow without disavowing central commitments of his political philosophy requires acceptance of a revised principle of fairness. Section III raises the issue whether those of us who are not attracted to Nozick's style of libertarianism or committed to its principles must nonetheless acknowledge that there are strong reasons for accepting a principle of fairness very much along the lines Hart has mentioned.

## I

It will be useful to state in summary form the main objections to which the principle of fairness as quoted above appears to be liable:

1. The principle incorrectly allows that if some persons organize a cooperative scheme that demands a certain contribution from each beneficiary of the scheme, each beneficiary is obligated to make this assigned contribution, even if the cost to him of making the contribution (including the opportunity cost) exceeds the benefit he gains from the scheme.

2. The principle incorrectly allows that an ongoing cooperative scheme that distributes benefits unevenly among individuals can impose on individuals an obligation to make an equal contribution toward the scheme, even though one beneficiary benefits greatly from the scheme while another receives benefits that barely exceed the cost of his contribution.

3. The principle incorrectly allows that a person may be obligated to contribute to a particular scheme, even though he has disinterested, conscientious reasons for opposing the scheme and is working to gain recognition for a substitute scheme.

4. It is not in general true that one acquires the right to coerce somebody by bestowing some benefit on him and then demanding reciprocal payment. "You may not decide to give me something, for example a book, and then grab money from me to pay for it, even if I have nothing better to spend the money on," Nozick observes. "You have, if anything, even less reason to demand payment if your activity that gives me the book also benefits you; suppose that your best way of getting exercise is by throwing books into people's houses, or that some other activity of yours thrusts books into people's houses as an unavoidable side effect. . . . 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>5</sup>

5. Nozick, p. 95.

This list is a motley. One might quibble that the term “just” inserted into Rawls’s formulation of the principle rules out at least objections 1–3. More fundamentally, 1–3 do not seem to strike at the core idea of the principle but only against the principle construed as generating reasons for ascribing obligations that no counterconsideration could ever override. In contrast, objection 4 urges that satisfaction of the terms of the principle of fairness gives no reason at all to hold that a person is under an obligation as specified by the principle. In what follows I concentrate my attention on 4. I simply assume that 1 through 3 are roughly correct; and, when I attempt a revised statement of the principle of fairness, the revisions accommodate these points.

Taking a cue from Nozick’s mention of a book as a benefit whose distribution one might regulate by the principle of fairness, we concede straightaway that the principle is plausible only if its application is restricted to particular types of benefits. There is a distinction between gift and exchange which the unrevised principle threatens to collapse. Consider a neighborhood gift-giving association. According to the rules of the association, whenever a resident of the neighborhood has a birthday the other residents are all bound to contribute toward the purchase of a nice present for him. The members of the association cite Hart’s principle when a justification is demanded for their forcing residents of the neighborhood to comply with the rules of the organization. But by showering me with gifts you do not succeed in creating an obligation on my part to lavish gifts on you or your friends in return. The members of a neighborhood gift-giving club who initially include me on their list of recipients can simply cross my name off the list, excluding me from future gifts, when I fail to contribute my assigned share to the birthday celebrations of others. The others are free to carry on the scheme without my participation. In such circumstances the idea of mutuality of restriction has no proper application.

Some, but not all, benefits are appropriately regulated by the principle of fairness. Which ones? A start here is to distinguish private from public goods. For a given group of persons, a good is public according to the degree to which it exhibits three features: (1) a unit of the good consumed by one person leaves none the less available for others (jointness), (2) if anyone is consuming the good it is unfeasible<sup>6</sup> to prevent anybody else from consuming the good (nonexcludability), and (3) all members of the group must consume the same quantity of it. The logical relations among the three features are that 3 entails 2 but 2 does not entail 3, and 1 and 2 are quite independent of one another. A television broadcast signal that can be received by any TV set, when TV sets are as common as mud, exhibits 1 but not 2 or 3. A scrambled television signal that can be received only by a TV set equipped with a special unscrambling device, not easily

6. “Unfeasible” here is to be understood as straddling “impossible” and “extremely costly.” There is a vast economic literature on public goods, most of it concerned with analyzing the required conditions for efficiently supplying such goods.

copied, exhibits 1 and 2 but not 3. National defense for those residing in a geographically unified nation is a stock example of a good for which 1, 2, and 3 all hold to a high degree. It will prove handy to introduce two more labels: we will say a good characterized by 2 is a *collective good*, and a good characterized by 3 will be referred to as a *pure public good*.

Notice that, once a pure public good is supplied to a group of persons, there cannot really be any voluntary acceptance or enjoyment of the benefit by individual consumers. One cannot voluntarily accept a good one cannot voluntarily reject. A person can choose not to watch a television program broadcast over the airwaves, but he cannot opt out of the security that a system of national defense provides—at least not in the present state of warfare technology. Of course, a person made uncomfortable by his enjoyment of national security could choose to emigrate to a remote land with no provision for national security, but declining to shoulder the immense costs of emigration does not render one's acceptance of national security truly voluntary.<sup>7</sup> It is also true that people form plans and projects whose success is contingent upon the continued supply of pure public goods such as national defense or safety from epidemic disease, but forming such projects and relying on the continued supply of pure public goods do not count as voluntary acceptance either.

The Hart and Rawls formulations of the principle of fairness assert that those who submit to the rules of cooperative enterprises have a right to similar submission from those who have benefited from their cooperation. In these formulations, the wording does not settle whether a person can qualify as benefiting from a cooperative enterprise without having voluntarily accepted those benefits. In explicating the principle, Rawls does make it plain that he understands "benefited" to mean "voluntarily benefited," but his reason is a matter of definition: he restricts the term "obligation" to refer only to moral requirements that arise from voluntary action undertaken by the person who thereby binds himself. Hart leaves the matter undecided. Textual exegesis aside, it is clear that the principle of fairness cannot fulfill the philosophical ambitions assigned to it by Hart unless it is interpreted as regulating schemes that distribute pure public goods. Hart announced that his principle can help elucidate the character of a range of obligations, including political obligation, which the social contract theorists had tried unsuccessfully to assimilate to the class of obligations deliberately undertaken via promises and contracts. Several of the goods standardly supplied by state authority—for example, military defense, police protection, and the rule of law—are such that all citizens within a given territory must consume pretty much the same amount of them. For practical purposes, significant variety in consumption levels is ruled out. Yet it is in virtue of providing such goods that governments acquire legitimate authority over their citizens; neither Hobbes nor Locke would say a citizen is obligated to obey a government

7. For the sense of "voluntary" invoked here, see H. L. A. Hart and A. M. Honoré, *Causation in the Law* (Oxford: Clarendon Press, 1959), pp. 38-41.

that fails to establish minimal conditions of personal security. Hence any principle such as Hart's that is offered to explain the nature of political obligation, if it is to be interpreted sympathetically, must be taken as intended to apply to those paradigm cases of political obligation.

Further examples will trace out in more detail the limited, tenuous connection between voluntary acceptance of benefits and the generation of obligations under the principle of fairness. Recall the neighborhood gift-giving association. Presented with a gift from the associated neighbors, one has the option to accept or reject. But voluntary receipt of such gifts from the association, even as mediated by its rules, does not generate obligations in the recipient. Even if the rules are common knowledge, and they state unequivocally that acceptance of a gift is tantamount to pledging that one will contribute to future gifts for others, one can always cancel the implied pledge by announcing beforehand that one's acceptance of a gift in this case is *not* to be understood as tacit acceptance of an obligation. Once again the key feature seems to be excludability. In these circumstances the members of the gift-giving association are still free to exclude this open noncontributor from the benefits. If they do choose to give him a gift anyway, they are doing just that: bestowing a gift and not imposing an obligation.

There are also cases in which nonexcludability prevails and yet voluntary acceptance of benefits does not incur obligation. Consider a case in which a cooperative scheme supplies a collective good—perhaps a plane is hired to write pleasant sayings in the sky—but the scheme is ill-advised (i.e., total costs are greater than total benefits) or significantly unfair in its distribution of the burdens of cooperation. In either of these circumstances, the scheme does not generate genuine obligation. The individual consumer can decide whether or not to enjoy the good here supplied; he can avert his eyes and refrain from peeking at the skywriting (to simplify, let us stipulate that this aversion of eyes involves no inconvenience). Yet it is plausible to hold that in these circumstances the consumer is at liberty to enjoy the collective good without placing himself under obligation to those who ill-advisedly or unfairly supply it. Enjoying the skywriting boosts one's own happiness by a jot and lowers no one else's. If consumption of collective benefits from ill-advised and unfair schemes generated individual obligation to contribute to the scheme, then persons who are simply trying to minimize the losses in happiness from a botched project would willy-nilly generate obligations in themselves to continue support of the scheme.

Where nonexcludability prevails, the scheme is worth its costs, and the division of burdens is fair, yet the good supplied is not a pure public good, voluntary acceptance of the benefits of the scheme by the individual will generally be sufficient to place him under obligation.

So far I have urged several claims about how features of public goods affect our understanding of the scope of the principle of fairness. Where pure public goods are supplied, voluntary acceptance of benefits is impossible and so unnecessary to generate obligations according to the princi-

ple of fairness. Mere receipt of benefits may suffice to obligate. Where goods are characterized by jointness, but it is feasible to single out any desired person and exclude him from consumption, even voluntary acceptance of benefits may be insufficient to obligate. Where exclusion of anybody from consumption is unfeasible but individuals may choose whether to engage in consumption—that is to say, where the benefits of cooperation are collective but not pure public—voluntary acceptance of benefits is generally sufficient to generate obligation, provided the cooperative scheme is fair and not ill-advised. So far this is all just counterassertion against Nozick's assertion. My strategy has been to render the principle of fairness less controversial by revising it so that dubious implications no longer follow from it. This retrenching permits a response to Nozick's challenges quoted under 4 above: while it is not in general true that bestowing a benefit on somebody places the beneficiary under an obligation, the circumstance that collective goods are in the offing creates a special situation. A group of individuals cooperating to supply a collective good cannot supply themselves without allowing all other individuals for whom the good is collective to consume some of the good if they choose. If the cooperators may not enforce collection of a charge amounting to a fair price from all consumers, they must either add private incentives to the scheme so that each beneficiary is induced to contribute his fair share of its cost, or forgo the collective benefit altogether, or allow free riders to enjoy the benefit of the scheme without helping defray its cost. The first of these alternatives is often unfeasible and the latter two are often morally repugnant.

Public goods are ubiquitous, but in many cases the benefits they supply are small change that is insufficient to justify imposition of coercion. A handsomely dressed man or woman walking down the street supplies a public good to those in the vicinity who relish the sight of a fashionable pedestrian. But cooperatively organized fashionable dressers cannot claim the right to enforce a charge against ogling pedestrians, because the value supplied is less than the disvalue of enforced collection of costs. When I was very young my mother and I, along with other neighbors, gathered near the local railroad tracks to watch the midmorning freight train roll by, but we would have scoffed at the idea of the railroad charging us for this sight. Neither the people watchers nor the freight watchers in these examples are free riders.

Free-rider conduct as I shall understand it emerges when the following conditions hold:

a) A number of persons have established an ongoing cooperative scheme supplying a benefit *B* that is collective with respect to the members of a group *G*.

b) For each member of *G* the benefits of *B* are greater than the cost to him of contributing a fair share of the costs of supplying *B* (including the cost of such coercion as may be required to sustain the scheme).<sup>8</sup>

8. The costs of coercion will include the harms imposed on each person who suffers coercion under the scheme, as well as the costs of paying for a coercing agency.

c) The actual ongoing scheme distributes the cost of supplying B to all beneficiaries in a manner such that the payment requested of each individual beneficiary is fair. In particular, no beneficiary who has a disinterested motive for not contributing to the scheme for supplying B is required to contribute.<sup>9</sup>

d) It is unfeasible that the cooperative scheme be arranged so that private benefits are supplied to each beneficiary of B in sufficient quantity to induce all beneficiaries to contribute their fair share of the costs of the scheme.<sup>10</sup>

e) Each member of G finds his assigned fair share of the costs of supplying B to be burdensome or to involve disutility.

f) The choice by any individual member of G whether to contribute to the cooperative scheme supplying B or not is independent of the choice of every other member. That is, no member's choice is made under the expectation that it will influence any other member's choice.<sup>11</sup>

g) No single member of G will derive such great benefits from B that it is to his advantage to contribute the entire cost of supplying B in the absence of contributions by others. Nor will any coalition of a few members of G find it possible to divide the costs of B among the members of the coalition so that each member of the coalition will find the benefits of B to him outweigh the cost to him of contributing toward the supply of B according to the terms of the coalition. A large number of persons must contribute toward the supply of B if the benefits each receives are to overbalance the cost of each one's contribution.

When conditions a-g hold, each person who benefits from the cooperative scheme supplying B can correctly reason as follows: either other persons will contribute sufficient amounts to assure continued provision of B, or they will not. In either case, the individual is better off if he does not contribute. (The razor-edge possibility that the individual's personal contribution might make the difference between success and failure of the scheme has a probability so low that it can be ignored in the individual's calculation of what to do.) If this reasoning induces an individual not to contribute, he counts as a free rider.

Free-rider reasoning contrasts with two other closely related rationales for individual refusal to contribute to mutual benefit schemes supplying collective benefits. The *nervous cooperator* desires to contribute his assigned fair share of the costs of supplying B, provided that enough

9. This requirement is intended to ensure that the principle of fairness will not lay obligations upon those who are genuinely conscientious objectors to the scheme for supplying public goods. My understanding of the requirement is that, in order to have a disinterested motive, the beliefs which give rise to the motive cannot be acquired or sustained in a culpably irrational fashion. See Sec. III below.

10. The rationale of d is simply that, if one can secure the needed public good in a fair manner and without coercion, one should not resort to coercion.

11. No single individual's decision is expected to influence the decisions of others, but note that this is compatible with individuals basing their choices on expectations about what the aggregate of others will decide.

other persons also contribute to keep the scheme viable. He fears that other individuals will fail to contribute to the required extent, that the scheme will collapse, and that B will not be supplied regardless of his own contribution. Accordingly he declines to contribute. The *reluctant cooperator* desires to contribute his assigned fair share of the costs of supplying B, provided that all others (or almost all others) also contribute their fair share. He fears that in fact it will not be the case that all or almost all individuals will contribute their assigned fair share. In this situation, if he contributes he will be assisting the provision of the fruits of cooperation to people who do not contribute their fair share. Accordingly, he declines to contribute. The nervous cooperator does not want to waste resources in support of a lost cause, and the reluctant cooperator is unwilling to allow himself to be, as he thinks, exploited by free riders. What crucially distinguishes the nervous cooperator and the reluctant cooperator from the free rider is that the desire to benefit from the cooperative behavior of others without paying one's fair share of cooperation forms no part of the motivation which induces the former two types to refuse to contribute, while just this desire does loom large in the reasoning of the free rider. While the conduct of each of these types may threaten the stability of cooperative enterprises, the nervous and reluctant cooperators do not seem blameworthy.

Where free-rider conduct is possible, there obligations arise, under the principle of fairness, prohibiting such conduct. Borrowing pertinent provisions from *a* to *g* above, we may state a revised principle of fairness: where a scheme of cooperation is established that supplies a collective benefit that is worth its cost to each recipient, where the burdens of cooperation are fairly divided, where it is unfeasible to attract voluntary compliance to the scheme via supplementary private benefits, and where the collective benefit is either voluntarily accepted or such that voluntary acceptance of it is impossible, those who contribute their assigned fair share of the costs of the scheme have a right, against the remaining beneficiaries, that they should also pay their fair share. A moral obligation to contribute attaches to all beneficiaries in these circumstances, and it is legitimate to employ minimal coercion as needed to secure compliance with this obligation (so long as the cost of coercion does not tip the balance of costs and benefits adversely). This revised formulation preserves the root insight that accepting or even simply receiving the benefits of a cooperative scheme can sometimes obligate an individual to contribute to the support of the scheme, even though the individual has not actually consented to it. The principle of fairness thus streamlines social contract theory by eliminating that theory's awkward dependence on dubious accounts of tacit consent.

## II

I have alluded to a gap in Nozick's argument between his objections to the unrevised principle of fairness and his conclusion that patching the prin-

principle to meet these obligations is impossible short of acknowledging that an individual must actually consent to a cooperative scheme before he incurs obligations under it. In this section, I will argue that repairing this gap will strain Nozick's system to the point of tearing his fundamental doctrine of private ownership.

Imagine a Lockean state of nature in which neighbors are living peaceably prior to the emergence of private ownership. No government regulates their dealings with one another. Each neighbor is deemed to have the right to use the surrounding land freely, but the exercise of this right occasions frustration, since what one individual sows, another may reap. One day Smith has the novel idea of claiming a chunk of land as his private property. He explains that this act of appropriation gives him exclusive right to use the land and to transfer this same exclusive right to others if he chooses. Smith further holds that, like other rights, the right to property carries with it a right to enforcement: a right to coerce others not to trespass on what is now his land, not to damage it, not to interfere in certain ways with his use of it. In justification of his assertion of a right to property, Smith notes that his appropriation on balance leaves no person worse off than he was previously under the system of free use, since the improvements he intends to install on the land will indirectly benefit the community as well as himself and will in effect compensate each person for the loss of the old—and little valued—right of free use.<sup>12</sup>

On another day a large number of neighbors band together and institute a mutual benefit scheme, say, a police patrol. They set up a fair plan for apportioning the costs of this scheme among all its beneficiaries, who compose a larger class than the organizing cooperators. Some persons offer their assigned contributions to the scheme. Others do not. The organizing cooperators institute a system of penalties for failure to pay one's assigned dues, these penalties being coercively enforced. In justification of their action, they point out that the scheme is beneficial to all affected by it, even taking into account the assigned costs including the costs of enforcement. They further point out that the coercion is not arbitrarily imposed but is necessary to secure the valuable cooperative scheme, since reliance on voluntary contribution renders the scheme extremely fragile and occasions resentment against the noncontributors. To those beneficiaries of the mutual benefit scheme who complain that they are being coerced to share its cost despite the fact that they never consented to this imposition of coercion, the organizing cooperators point out that neither did they actually consent to neighbor Smith's appropriation of land as his private property, nor did they consent to the coercion required to sustain this appropriation. Yet private property backed by coercion is now widely thought to be acceptable. Consider a person, Jones, who is newly threatened by coercion at the hands of Smith and at the hands of the organizing cooperators. The question then arises, is there any plausible justification available to a modern follower of Locke, such as Nozick, that will dis-

12. See Nozick, pp. 174-82, esp. p. 174.

criminate between these instances of coercion, holding coercion buttressing private ownership rights to be morally acceptable but the coercion supporting mutual benefit rights to be morally unacceptable?

In the one case Jones is supposedly obligated not to trespass on privately owned land, and in the other case he is supposedly obligated to contribute toward the cost of a cooperative scheme. A possible asymmetry here might be thought to lie in the fact that, whereas Jones is obligated to perform some "positive" act to help the cooperative scheme, he is obligated to refrain from action with regard to Smith's property. The truth of this might be subject to doubt. But even waiving suspicion about the truth of this claim, I doubt much can be made of it. Suppose Jones formerly tramped to work across what is now Smith's land, so the "negative" act of avoiding trespass requires extra steps, and the inconvenience might be equal to the inconvenience of contributing one's dues to the coop scheme. At any rate, considerations of greater or lesser inconvenience will not draw a sharp and fixed line, between acceptable and unacceptable coercion, of the sort Nozick requires.

Jones might reflect that, when Smith claims a chunk of land as his property, he implicitly cedes to Jones the right to claim similar chunks of land as his property. Similarly, the organizers of the mutual benefit scheme might point out that, in claiming the right to institute a cooperative scheme and to require all beneficiaries (with certain exceptions) to contribute, they implicitly grant to Jones the right to band with others and do likewise. In neither the private-property case nor the collective-benefits case need anybody be claiming rights of a sort he is in principle unwilling to concede to others. Also, in both cases, the acts of the first takers of the right to some degree preempt the possibilities of later similar acts. Once Smith stakes out a claim, there is that much less land left to appropriate, and given that there is a fairly small list of collective benefits that are noncontroversially benefits to all, worth their cost, the acts of the initial cooperators limit the alternatives of later would-be cooperators.

Although a private-ownership system has great advantages compared with a free-use system, many of these advantages are due to very general features of a Lockean ownership system that are shared with other possible ownership systems. For example, it is convenient to have a more clear specification of who has the right to use the land at any given moment than a free-use system can provide. But a system in which people lease land from the community for set periods of time would also possess this advantage.<sup>13</sup> Or one might have a semiprivate-ownership system, in which private-property rights are limited by welfare rights of the indigent and disabled to a share in the produce of the land as improved by private initiative. And so on. What justifies the specific choice of Lockean-style ownership? Pondering this question, Allan Gibbard has proposed a principle I will call the *self-benefit principle*: "The principle behind the choice

13. J. S. Mill mentions this possibility in *Principles of Political Economy*, in *Collected Works* (Toronto: University of Toronto Press, 1965), 2:227.

of the Lockean rule seems to be something like this: moral rules should be so constructed that, if the rules are obeyed, the acts of each person benefit or harm only himself, except as he himself chooses to confer or exchange the benefits of his acts."<sup>14</sup>

This principle must be construed as a counsel of perfection, an ideal which we are enjoined to satisfy as far as lies within our power, rather than as a strict requirement. For if interpreted as a strict requirement, it will not justify Lockean appropriation. One person's act of appropriating previously unclaimed land as private property *does* slightly damage the position of other persons who (a) formerly were at liberty to use the land and (b) had the option of appropriating it themselves. According to Nozick's version of Lockean appropriation, a must be counterbalanced by the utilities flowing from private ownership, if appropriation is to issue in genuine property rights, but b need not be. Also, under a private-ownership system it often happens that what a person does with his property spreads external benefits on others. These are benefits to others for which for some reason payment cannot be extracted from those others. At most, Lockean private ownership very roughly approximates satisfaction of the self-benefit principle.

The idea, then, must be that Lockean property rules satisfy the self-benefit principle to a greater degree than alternative appropriation rules or than a system of free use and no permitted appropriation at all. In what follows, I assume this claim to be true. I do not argue for it. Nor do I offer any extended argument to the effect that it is in fact the self-benefit principle that gives the most convincing rationale of Lockean private ownership. Toward the end of this section, I indicate evidence in Locke's text that he had something like the self-benefit principle in mind. I claim that, insofar as the self-benefit principle serves to justify a Lockean principle of private ownership, it serves equally to justify a revised version of the principle of fairness. If I am right about this, anybody who wants to reject the principle of fairness while retaining a commitment to private ownership must supply an alternate justification driving a wedge between the rights of owners and the rights of cooperators. I suspect such an alternate justification is not to be had.

How does the self-benefit principle bear on the justification, within a Lockean or Nozickean framework, of the revised principle of fairness? First, let us suppose that cooperative schemes supplying collective benefits must make their way by voluntary contributions or not at all. Consider such a scheme in which the beneficiaries may be divided into those who cooperate to share the costs and those who choose not to cooperate. Here the cooperators must willy-nilly confer benefits on the noncooperators even though they do not voluntarily choose to confer benefits in this fashion. The greater the number of beneficiaries who are not also cooperators in any given cooperative scheme, the greater is the nonvoluntary conferral of benefits. This violates the self-benefit principle. One could

14. Allan Gibbard, "Natural Property Rights," *Nous* 10 (1976): 77-88; see esp. p. 84.

deny that there is a nonvoluntary transfer of benefits, but one would be mistaken. Suppose we said: nobody is forcing the cooperators to initiate their scheme and confer collective benefits on everybody. They do it voluntarily. That this is wrong becomes plain when we notice that the same may be said about the diffusion of benefits in a free-use system. Nobody forces Smith to plant crops which, in the absence of private ownership, Jones and others are at liberty to harvest or to trample for fun. Under free use, Smith is free to choose to plant or not to plant, but he has not got the option of planting and excluding others from the benefits of his labors. Similarly without the protection of the principle of fairness, the cooperators can choose to initiate a mutual benefit scheme or not, but, given the nature of collective goods, they are not at liberty to initiate a scheme and limit the benefits to those who are willing to contribute to their costs. Simplifying somewhat, let us assume that the initial cooperators and those who would voluntarily contribute a fair share of the cost of the scheme under a noncoercive arrangement willingly confer the benefits of their actions on all those who pay their fair share of the scheme.

Permitting cooperators to coerce beneficiaries into contributing their fair share remedies the above situation to some extent. If the revised principle of fairness<sup>15</sup> is adopted and enforced, it is no longer the case that cooperators must bestow the benefits of their activity on others against their will. Also, the persons we identified as nervous and reluctant cooperators will welcome the coercion that forces all beneficiaries to pay their fair share of the costs. Nervous and reluctant cooperators are desirous of contributing their fair share provided certain guarantees are met. Enforcement of the revised principle of fairness provides these guarantees, so nervous and reluctant cooperators will not find themselves in the position of being required to confer benefits on others against their choice. The would-be free riders now dragooned into contributing to the cooperative scheme will, of course, have a different story to tell. They would prefer to reap the benefits of the scheme without contributing to it. Under the principle of fairness, their actions are orchestrated to benefit others against their will. The situation of the free riders, however, seems to be parallel to the situation of those who chafe at the restrictions of private property and wish to garner for themselves the benefits of the labor and abstinence of others. Private-ownership rules force such individuals to respect the property of others, and these actions and forbearances may also be said to be a residue, within a system justified by broad appeal to the principle of self-benefit, of actions that confer benefits on others against the will of the doers. Given this close parallel between would-be free riders and covetous nonowners, we can see the self-benefit principle to be imperfectly but closely approximated under private ownership and under the revised principle of fairness.

Further reflection on the rationale of Lockean private property strengthens the parallel case for the revised principle of fairness. Of some-

15. Or something close to it. I am appealing to the general outline, not the detail.

body who covets the parcel of land another has improved by his labor, when there is enough and as good land remaining unappropriated, Locke says " 'tis plain he desired the benefit of another's Pains, which he had no right to."<sup>16</sup> The point of Lockean property rules is to frustrate such desires and to "guarantee to individuals" the "fruits of their own labour and abstinence."<sup>17</sup> This norm would seem to have straightforward application to the desires of would-be free riders to benefit from cooperative schemes without paying a fair share of the costs. The revised principle of fairness encapsulates the moral conviction that it is legitimate to frustrate the desire to benefit from the pains of others when one has no right to the fruit of their pains.

The fact that, in many instances, collective benefits are such that consumption by one individual does not lessen the amount of the good available for the consumption of others may seem to complicate, and threaten, the analogy between mutual benefit schemes and private ownership. If the covetous non-property owners succeed in devouring the benefits of others' pains, it may be said, there will be that much less left for owners, but the situation is different in many cases of free-rider activity. Why restrict individuals from consuming a good if their consumption does not harm anybody else?

To answer this query, we note that in many cases private ownership of goods gives owners control over goods that, once produced, are costless to supply to others across a relevant range of consumption. Suppose I stage a small circus for my family in our front yard, and a curious crowd gathers. The sight of this minicircus is such that, for the crowd of persons anxious to watch, one person's consumption is nonrival with another's. Yet in this situation, my private ownership of my land permits me to make a fast buck by moving the family circus to the backyard or inside a tent and charging admission. Somebody who attempted to sneak into the tent without paying would be, in a sense, desirous of the benefits of another's pains, namely, mine, in designing the circus. The sneak is not, in this situation, taking benefits so that less is left for others to consume, but he does seek benefits while striving to evade the payment of a fair equivalent for those benefits. There is, then, a sense of *seeking the benefit of another's pains* which applies with equal propriety to free-rider activity under conditions of joint consumption and to those who chafe under the restrictions of private ownership where goods privately controlled exhibit jointness.

To repeat a point made earlier, instituting a private-ownership system does not fully achieve satisfaction of the self-benefit principle. Under private ownership, neighbors clustered near the edge of my property may

16. John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1963), "Of Property," par. 34, p. 333. Cf. Lawrence Becker, "The Labor Theory of Property Acquisition," *Journal of Philosophy* 83 (1976): 653-64.

17. These phrases are quoted from J. S. Mill, perceptive critic of Locke, in *Principles of Political Economy*, 2:208.

enjoy the sweet-smelling smoke wafting from a fire I build on my land. The paint I apply to the exterior of my house may please my neighbor's aesthetic sensibilities and raise the property value of their houses. And so on. But the self-benefit principle justifies private property insofar as the latter does conform to it, and insofar as no feasible system does better on this score; and the self-benefit principle justifies the revised principle of fairness for like reasons.

Recall Nozick's objections to the enforcement of the principle of fairness. They are equally objections to the enforcement of private ownership. "You may not decide to give me something, for example a book, and then grab money from me to pay for it, even if I have nothing better to spend the money on. You have, if anything, even less reason to demand payment if your activity that gives me the book also benefits you; suppose that your best way of getting exercise is by throwing books into people's houses, or that some activity of yours thrusts books into people's houses as an unavoidable side effect."<sup>18</sup> Similarly, why is it legitimate for you to restrict my liberty, excluding me from the use of chunks of the earth, on the ground that your private appropriation of those chunks indirectly benefits me by providing me with economic opportunities or the like? I never requested those benefits or consented to the accompanying restriction of my liberty. In these circumstances, what justifies private appropriation? If the appeal is to a self-benefit principle incorporating the conviction that property rules should not permit individuals to enjoy the benefits of the labor of others without their consent, that appeal will justify the revised principle of fairness as much as the principle of private ownership.

### III

The foregoing may seem to be of limited interest. I have claimed that the self-benefit principle, which must be Nozick's background principle that marks off his line of defense of private ownership, will equally serve to defend the revised principle of fairness. This may commit Nozick to the defense of fair cooperative schemes supplying collective benefits, but the argument relies on the self-benefit principle, which many will reject. Some reasons for this rejection are worth mention, for they may help to orient us toward a less controversial rationale for the principle of fairness. Many people of liberal and socialist persuasion believe that, in emergency situations, people who are so situated that, with modest expenditure of effort and at modest risk to themselves, they can avert great harms that threaten others are under strict obligations to tender such Good Samaritan aid. These Good Samaritan obligations may be seen as strict obligations of charity so long as it is remembered that they may be owed to particular persons or groups who have a corresponding right against particular persons who happen to be well situated to help. Many people also believe that able or naturally gifted economic agents are under strict

18. Nozick, p. 95. Cf. Becker, pp. 659-60.

moral obligations to contribute to the welfare of the less able or less naturally gifted. The exact amount of such obligations that is owed as a matter of strict obligation is subject to dispute, but anyone who accepts that the better endowed are under any obligation to contribute to the welfare of the less well endowed is registering disagreement with the self-benefit principle. I wish to abstract from these disagreements by supposing that some clearly specified principles of Good Samaritanism and of welfare obligations are widely accepted. Society has arrived at a consensus about the extent to which its members disagree with Locke.

Consider this revision of the self-benefit principle: moral rules should be so constructed that if they are obeyed, each person's acts benefit or harm only himself except as he either (*a*) chooses to confer or exchange the benefits of his acts or (*b*) is acting in fulfillment of an obligation of strict charity. This liberal revision of the self-benefit principle will considerably affect our understanding of the principle of fairness. For one thing, since to the obligations of the able there correspond rights of the non-able, it will no longer be possible to give unequivocal sanction to the Lockean criticism that any person desirous of the benefits of another's pains is blameworthy. The non-able will be entitled to the benefits of some of the pains of the able, and emergency victims will be entitled to the benefits of some of the pains of those who are in a position to give aid. This result may well leave us wondering whether the modern liberal outlook is not fundamentally at odds with the Lockean conservative idea that each individual is entitled to the fruits of his own labor and abstinence. Does the liberal self-benefit principle mix oil and water?

How much room remains under the liberal self-benefit principle for Lockean feelings to hold sway will depend on the stringency of the liberal principles of charity. At the extreme, requirement *b* could hold that the more fortunate ought always to give as much help as possible to the less fortunate, which would render *a* otiose, but nobody believes the requirements of charity are so severe as that. If charitable obligations are limited, then the liberal self-benefit principle expresses a compromise in which the Lockean rule is tempered but not melted away. This compromise still supports the principle of fairness, provided that some adjustment is made for liberal requirements of charity. I can think of two ways in which this adjustment might readily be forthcoming. One would be to restrict the application of the principle of fairness to situations in which requirements of charity are not in question. If a cooperative scheme is in operation, and we are tracking down the obligations it generates, we ask whether the benefits supplied by the cooperators to noncontributors are owed to these noncontributors as strict requirements of charity. If not, the principle of fairness applies. (On the other hand, quite apart from the cooperative scheme, the noncontributors may already strictly owe charity to the persons who happen to be the contributors; and here the requirements of charity may reinforce the requirements of the principle of fairness.)

Another way to adjust the principle of fairness to bring its requirements into line with liberal principles of charity would be to stipulate that the fair division of burdens and benefits which is prerequisite to the generation of obligations under the principle of fairness must incorporate requirements of charity. Insofar as the able or well-off members of society strictly owe charity to the less able or well-off, a fair division of benefits and burdens in public goods schemes adjusts for these requirements. Liberal and Lockean conceptions of the self-benefit principle will surface in controversy as to what constitutes a fair division of the burdens and benefits of cooperation. The point on which I wish to insist is that, even where substantial disputes persist as to the appropriate contribution of the able and the non-able to cooperative schemes, it is noncontroversial that those who scramble to attain an altogether parasitic relation to cooperative schemes are legitimate objects of coercion. There is a distinction between quibbling about the amount of dues one owes and balking entirely at the idea of paying one's dues. The balker exhibits the classic free-rider mentality. For the less able or less well-off, desiring some of the benefits of others' pains may be rendered acceptable by liberal extensions of welfare rights, but desiring the benefits of others' pains without being willing to reciprocate the benefit at all brings one afoul of the principle of fairness backed by the liberal self-benefit principle.<sup>19</sup>

Here we may note Hart's comment that, in the situations of mutuality of restriction, the moral obligation to obey the rules is owed to "the co-operating members of the society, and they have the correlative moral right to obedience."<sup>20</sup> This comment, along with Rawls's expansion of it, has stimulated the idea that the principle of fairness is meant to apply only in situations where one can discern cooperation in some fairly full-blooded sense of that term, and where the beneficiaries who are obligated must accept the benefits of cooperation in some way that extends beyond mere receipt of benefits. Miller and Sartorius insist that voluntary acceptance is required if the principle of fairness is to give rise to obligations, and they comment, "The principle is surely unacceptable if it permits some to foist obligations upon others by providing benefits not freely chosen and forcing participation in whatever scheme of social cooperation is required to produce them."<sup>21</sup> Simmons suggests that *accepting a benefit* must involve "either (1) trying to get (and succeeding in getting) the benefit, or (2) taking the benefit willingly and knowingly."<sup>22</sup> In the important case of pure public goods, there can be no question of trying to get, so we are reduced to 2. Simmons gives this elaboration of what it is to accept pure public goods willingly and knowingly: (i) We cannot regard

19. A necessary qualification here is that, in the case of the totally handicapped who can make no contribution whatsoever to the provision of public goods, good intentions are sufficient reciprocation. A totally handicapped free rider is one who would not contribute even if he could.

20. Hart, p. 185.

21. Miller and Sartorius, p. 166.

22. Simmons, p. 327.

the benefit as "having been forced upon us against our will." (ii) We cannot think "the benefits are not worth the price we must pay for them." (iii) "And taking these benefits 'knowingly' seems to involve an understanding of the status of those benefits relative to the party providing them."

These subjective requirements are stringent, and once he has imposed them, it is easy for Simmons to show that obligations arise under the principle of fairness much less frequently than is commonly thought, and that the principle of fairness will certainly not account for the central range of political obligation it was invoked to explain.

But the subjective requirements i-iii are too stringent. A situation that otherwise issues in an obligation on the part of Jones to contribute to a mutual benefit scheme will not fail to generate obligation just because Jones does not fully understand that the rule-following behavior of individuals under the mutual benefit scheme supplies the good in question. Suppose Jones thinks that national defense is manna from heaven. Individuals have some obligation to acquaint themselves with morally pertinent facts of their situation. If Jones's ignorance is excusable, he is entitled to a description of the facts of the matter upon being presented with a bill for cooperative benefits. If Jones has a deeply entrenched belief grossly at variance with the facts, and this counts as negligent or culpable ignorance, his obligation stands. Just having bizarre beliefs about the origins of the collective benefits one enjoys does not relieve one of the obligation to pay one's fair share.

Similar remarks apply to ii, the requirement that one must believe that the costs one is required to pay are fair and in proportion to the benefits one receives. Consider somebody who is racially prejudiced and believes, for no good reason, that it is unfair that the ratio of benefits to costs flowing from cooperation should be the same for whites and blacks. Or consider someone who is disgruntled with what he takes to be the disproportion between the benefits he receives and the contributions he must make compared with others, but who has never bothered to check this imagined perception even against such factual evidence as is readily available just by perusing a daily newspaper. And similarly for i: at a minimum there must be some reasonable basis for skeptical beliefs if they are to block obligations from arising under the principle of fairness.

I think Simmons goes wrong in supposing that a spirit of developed cooperation must pervade a mutual benefit scheme, extending to all affected by it, before the principle of fairness properly generates obligations. It is obvious that a spirit of cooperation cannot fill persons who do not fully recognize the cooperative nature of the enterprise in which they are required to participate. But a spirit of camaraderie or solidarity is not essential. When Hart says the obligation is owed to the cooperating members, he is pointing to the ongoing character of the scheme, whereby the rule-following and benefit-providing behavior of some continually generates reciprocal obligations in others. Under cooperation, the indi-

vidual shares in a collective benefit from which there is no way of excluding him (and from which he is unable to exclude himself in the case of pure public goods). If the benefit is uncontroversially a benefit for all, if the division of its costs is fair, the individual beneficiary of an ongoing scheme is required to pay his dues. These conditions themselves are stringent and suffice to guarantee that the principle of fairness will not be an engine of justification of endless regimentation. Querying the relevance of the principle of fairness to actual situations of political obligation, Simmons says, "I do not think that any of us can honestly say that we regard our political lives as a process of working together and making necessary sacrifices for the purpose of improving the common lot."<sup>23</sup> I think one can wax overly skeptical about this possibility. Especially given the contentiousness of the collective goods disbursed and the manifest injustices of their financing, citizens in modern states seem to me to manage to sustain perhaps more of a sense of common collective purpose than is warranted. In any event, the core idea of the principle of fairness is even more prosaic than is conjured up by the idea of common sacrifices to improve the common lot. The basic idea is even simpler and more Lockean—namely, we owe a fair return for services rendered to those who supply the services. The moral intuition here is at bottom the same intuition that it is right to pay the grocer for our groceries or to pay rent for the use of land improved by the landowner, only because of the fact that collective goods come in large nondivisible chunks, coercive provision of such goods is necessary.

23. *Ibid.*, p. 336.

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### <sup>16</sup> **The Labor Theory of Property Acquisition**

Lawrence C. Becker

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