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RESEARCH ARTICLE

Fair Play and Discretionary Response

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Abstract

In recent years, scholars argue that, although the principle of fair play is able to establish obligations to reciprocate for benefits received, these do not include political obligations. They contend that recipients themselves should be able to determine the form their recompense takes. I examine different cases of benefit provision and identify instances in which the principle of fair play does not allow such discretion. An important consideration is epistemic difficulties that can be avoided only if citizens accept the judgment of law and follow it. In familiar political obligation cases, disagreements about benefits and burdens should be resolved by democratic procedures. Following decisions arrived at is necessary to avoid problems of two kinds: moral, making sure burdens of cooperation are distributed in ways that are fair to all participants; and empirical/sociological, making sure important benefits are provided.

Keywords: fair play; political obligations; discretionary response; indispenable benefits; democracy

In recent years, scholars who believe that the principle of fair play (or principle of fairness) is able to generate requirements to reciprocate for benefits received question whether these include political obligations. As generally understood, political obligations concern moral requirements to obey the law. The arguments we will consider do not question fair play's ability to establish obligations. They address the kind of obligations these are.

The moral basis of the principle of fair play is mutuality of restrictions. Under specified conditions, the sacrifices made by members of a cooperative scheme in order to produce benefits also benefit noncooperators, who do not make similar sacrifices.[1] According to the principle, this situation is unfair, and it is intended to justify the obligations of noncooperators. The underlying moral principle at work in such cases is described as "the just distribution of benefits and burdens."[2] In society, production of important benefits is organized by the state and supported by law.

[1]H. L. A. Hart, *Are There Any Natural Rights?* 64 175 Philosophical Review (1955) at 185.
[2]David Lyons, Forms and Limits of Utilitarianism (1965) at 164.

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Accordingly, it is widely argued in the literature that the principle of fair play is able to ground moral requirements to obey the law.[3]

Since fair play's inception, its main controversy has centered on whether recipients of benefits must accept them in order to incur obligations. This is especially important because crucial benefits provided through state action are public goods, which cannot be accepted in the usual sense of the term.[4] However, the criticisms we will consider grant that receipt of benefits does generate moral requirements to reciprocate, even if the benefits are not accepted. But critics argue that recipients themselves should be able to determine the form their recompense takes. Allowing people to determine their own reciprocation nullifies fair play as a basis for political obligations. As Jiafeng Zhu puts this, there is "a justificatory gap" between the principle of fair play and political obligation. The principle "cannot preempt the citizen's liberty to reciprocate fairly in ways other than obeying the law."[5] More recently, a similar line of argument has been taken up by Brookes Brown.[6]

In this paper, I criticize this view. I argue that, under certain circumstances, the obligations generated by the principle of fair play do require that benefit recipients follow the rules of cooperative schemes. The schemes in question include the large-scale cooperative schemes (what I call "collective schemes") that are central to political obligations. As we will see, allowing discretionary responses risks problems of two kinds, moral and prudential: the possibility of unfair responses, and disorganization that will lead to benefits not being provided. By considering different kinds of cooperative schemes, I will attempt to identify the distinctive characteristics that allow certain schemes to ground requirements to follow the rules and so to avoid these problems and contrast them with others that allow discretionary response. The principle of fair play generates obligations to follow the law only when certain conditions obtain, which I will attempt to delineate.

As we will see, epistemic issues play an important role in attempting to determine if different responses to benefits received are appropriate. If benefit providers and recipients have different opinions about specific responses, it may be difficult to know which side is correct and how to determine this. For political obligations, this is a significant problem. If particular obligations are to be enforced, it is necessary to be able to know exactly what they require. As we will see, epistemic difficulties are further complicated by cognitive defects and biases to which people are prone. While different kinds of cooperative schemes can be seen to vary in regard to the responses they require, I argue that, in certain collective schemes, resolution of these problems should be moral rather than epistemic. Disagreements should be resolved by treating people fairly in democratic processes, rather than by attempts to determine which views are correct. Participants must follow the rules decided upon if they are to cooperate fairly and efficaciously.

[3]Richard Arneson, *The Principle of Fairness and Free-Rider Problems*, 616 Ethics 92 (1982); George Klosko, The Principle of Fairness and Political Obligation (1992); Richard Dagger, Playing Fair: Political Obligation and the Problems of Punishment (2018).

[4]Cf. A. John Simmons, Moral Principles and Political Obligations (1979) chap. 5.

[5]Jiafeng Zhu, *Fairness, Political Obligation, and the Justificatory Gap*, 12 J. of Moral Philosophy 290, 293 (2015).

[6]Brookes Brown, *Reciprocity Without Compliance*, 48 Philosophy & Public Affairs 382 (2020); Brookes Brown, *Impartiality and Fair Play Revisited*, 31 J. of Political Philosophy 315 (2023).

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Discussion is in eight sections. Section I addresses proportionality conditions that should be satisfied by responses to receipt of benefits. Epistemic issues concerning how we can know if these conditions are met and cognitive disabilities that get in the way of determining this are the subject of Section II. Epistemic issues in regard to different sorts of schemes are discussed in the following sections: cooperative schemes that provide excludable goods, in Section III; schemes that provide non-excludable goods, in Section IV; schemes that provide indispensable benefits, in Section V. I argue for democratic means of adjudicating benefit recipients' requirements in Section VI. Section VII addresses the need for authoritative coordination to provide particular benefits. Section VIII is a conclusion.

I. Proportionality Requirements

I begin with a paradigm case of a fair play obligation.

> *National Defense.* Alicia lives in a country that is well defended by its armed forces. When she turns 18, she is required to begin two years of military service.

How should Alicia respond? Does she have discretion to respond in a way that she chooses, perhaps allowing her to film documentaries to publicize the military's exploits? Would this be fair to her fellow citizens? Or alternatively, is being required to serve as the state dictates unfair to her?

Although this may appear to be a straightforward case of a fair play obligation, there are a number of complexities lying beneath the surface. In order to examine these, we begin with simple, small-scale cases in which benefits are provided and requirements to reciprocate are apparently generated. These cases appear to allow recipients discretion in their responses. But as we will see, there are particular reasons for this, which are not found in other cases, especially the collective cases that are of greatest interest to us. Consider a case discussed by both Zhu and Brown:

> *Walkway:* As a runner, John benefits from a cooperative scheme to clean communal walkways every Saturday. He explicitly refuses to join in. However, to avoid free-riding, he bakes cakes weekly, leaving them in the community center for participating neighbors to enjoy—which they very much do.[7]

In this case, John's behavior seems unexceptionable. In return for the benefit he receives, he provides a benefit of his own choosing. But we must ask if his response is appropriate. The principle of fair play requires some degree of proportionality between the sacrifices others make to provide one with benefits and what one does in return.[8] Call this the *Proportionality Requirement.*

[7]Zhu, *supra*, note 5 at 294–295, simplified; Brown 2023 *supra* note 6 at 322.

[8]Lawrence Becker, Reciprocity (1986). In simple interchanges between people, notably when organized cooperative schemes are not involved, person A should respond proportionately to benefits from B, in accordance with some idea of reciprocity. But in simple cases, it is unlikely that the operative moral principle is fair play. Rather, a broader idea of *fairness* may be at work. Very briefly, as commonly understood, fairness is a general quality of distributions or procedures, centering on equal or similar treatment of similar cases. Fair play is a subset of fairness with the distinctive features familiar from collective cases.

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While proportionality is a complex idea, an obvious way to assess this in the cases that interest us is in regard to the nature of the sacrifices required to provide the relevant benefits. In *Walkway*, John's efforts appear to be suitable, or at least, it's not apparent that they are not. So it is plausible to assume that he satisfies a proportionality condition. But intuitive simplicity masks possible complexities. Consider a simpler case.

> *Airport.* Alex drives Beth to the airport. She reciprocates by picking up his mail when he is out of town.

Given the differences between the two contributions, it is difficult to determine if the efforts are proportional. But this is plausible once again on an intuitive level. Alex does something for Beth, and she does something for him. As long as Alex and Beth are satisfied with the exchange, there seems to be no grounds for claims of unfairness. But before considering other cases, we should note an additional reason for intuitive clarity here. On the assumption that Alex and Beth are friends, it goes against the nature of their relationship to look too carefully at the relative weights of their contributions. As long as their respective efforts satisfy some rough overall proportionality standard, it would likely weaken their friendship if one friend counted up utility units she supplied and demanded the same number of units in return. In the collective cases with which fair play is primarily concerned, the cooperative schemes are large, and so the likelihood of friendship obscuring matters is lower.

The two cases we have seen appear to allow discretionary responses as long as they appear proportionate or are not clearly nonproportionate. Further support for allowing discretion in these cases is provided by examples in which benefit providers demand specific responses when these appear to be unfair. There are two immediate ways in which required responses can be objectionable. In each case it will be an "unfair demand." First, it is when scheme members demand a response that is more costly than the benefit they provide. In order to make sure that a required response is not unfair in this way, we can posit what we may call a "benefit condition," which is roughly as follows.

> *Benefit condition*: Someone who benefits from the efforts of others will be treated fairly only if the benefits she receives are equal to or outweigh the costs of what she is required to do in return

As indicated above, it is important to note possible difficulties in determining this, especially epistemic problems. What if a recipient thinks that the benefit is not worth the costs, while those who proved the benefits think it is? How should such differences be resolved?

A second way in which a required response can be unfair is if it is determined by benefit providers rather than or without input from the recipient, even if the amount of effort required is proportionate to the value of the benefit received.

> *Tree Trimming.* Clara's neighbors spend a weekend trimming the trees in their neighborhood. This is a benefit to Clara, who cares about how the neighborhood looks. The neighbors demand that she reciprocate by painting the firehouse red.

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Why is the neighbors' demand unfair? Assume that the benefit condition is satisfied. The value to Clara of neatly trimmed trees outweighs the costs of painting the firehouse. But the demand could still be unfair if Clara preferred to do something other than trim trees. In addition to the benefit condition, an additional factor is who gets to decide on the required response. If Clara prefers to do something else while the neighbors get to do something that they prefer to do, then her burden is unfair. Their preferences are met, while hers are not. If the neighbors decide on the form of their cooperative effort will assume without including Clara, there is an initial or immediate unfairness to this situation. They get a say, while she does not. It is not unlikely that, if the demands are unfair in this way, they will also be unfair in regard to content. It is likely that benefit providers will arrange things in ways that they prefer, without regard to whether Clara's preferences are met, even if the required response satisfies the benefit condition. For Clara, the other participants' infliction of their preferences on her is obviously unfair.

II. Epistemic Issues

The cases we have looked at raise various proportionality requirements that fair cases should satisfy. The problem is knowing if they have been met. On such questions, people will likely disagree. For instance, Clara and the neighbors may have quite different views concerning her painting the firehouse. She thinks it was unfair not to consult her, while they point out that the amount of effort required of her is similar to their contributions. Under these circumstances, who is right, and how do we tell?

Consider a more troublesome case.

> *Carpool.* Dolores' neighbors take turns driving their kids to school. Dolores does not like to drive. She reciprocates by writing a poem in honor of her neighbors.

Are her efforts proportionate to theirs? People may have different opinions. Perhaps if a given neighbor likes the poem, she will believe Dolores is returning benefit for benefit and her effort is proportionate. But what if another neighbor thinks less of the poem? Dolores may view writing a poem as hard work, but other people may disagree. Under these circumstances, is requiring that she too take a turn driving an unfair demand?

While *Carpool* raises these issues in a rather stark manner, reflection will show that they are present, though less apparent, in the other cases as well. Even in simple cases, fairness requires some means to assess the value of costs and benefits and so what constitutes appropriate return. In examples such as *Walkway, Airport*, and *Carpool*, circumstances are so simple that this need may not be apparent. Moreover, as noted, if participants are friends, it is likely important to their relationship that they not look too closely. But as we will see, as cases become more complex, involving larger numbers of people, which makes differences between them and so the likelihood of accompanying disagreements greater, epistemic questions take on added complexity. I should note that, from the fact that people disagree about the appropriateness of some effort, it does not follow that it is not possible to determine whether some party or other is in fact correct. However, in many cases, the disputed facts are so complicated and depend so heavily on subjective factors that for all intents and

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purposes there is no truth beyond what people feel.[9] This is especially clear in a case such as Carpool, but can also be seen in additional cases.

Granted the importance of being able to decide if standards of appropriateness are satisfied, we should recognize the likelihood of additional complications caused by psychological factors. We have noted that in different cases people may well disagree. An important factor that makes disagreement more likely is cognitive difficulties to which people are prone. These are well-known and documented by extensive empirical studies.[10] Two that bear directly on our concerns are "self-enhancement bias" and "self-serving bias." Through the former, people tend to evaluate their own performance in highly favorable ways, apparently motivated by concerns of self-esteem. According to self-serving bias, when people perform moral judgments on matters that concern their own interests, they tend to evaluate circumstances in ways that are beneficial to themselves. This tendency is especially relevant here. To quote Albert Venn Dicey:

> [M]en come easily to believe that arrangements agreeable to themselves are beneficial to others. A man's interest gives a bias to his judgment far oftener than it corrupts his heart…. He overestimates and keeps constantly before his mind the strength of the arguments in favour of, and underestimates, or never considers at all, the force of the arguments against ….[11]

This tendency is reinforced by self-enhancement bias. Clear instances in which these tendencies come into play are, once again, the collective cases with which questions of political obligation are generally concerned. If citizens are left to decide for themselves what they should contribute, even those who are well disposed to make appropriate contributions can easily misconstrue what is required of them.

Two basic kinds of problems may result. Different people may contribute in ways that are unfair to others. They may choose to bear burdens that do not satisfy proportionality standards—although they believe that they do. A second problem is that, with people deciding for themselves how to contribute, it is possible that they will coordinate their activities in ways that will cause important public goods not to be provided.

The fact that proponents of discretionary response do not recognize these difficulties leaves their positions vulnerable to criticism.[12] Cognitive defects and biases increase the possibility that the problems noted in the last paragraph will result. In addition, these factors make it more likely people will disagree about these issues, e.g., whether Dolores's poem is a proportionate effort. Problems that arise when people

[9]In many cases, circumstances are so involved and subject to different interpretations that they possess the kind of complexity described in W. B. Gallie's discussion of "essentially contested concepts"; Gallie, *Essentially Contested Concepts*, 56 Proceedings of the Aristotelian Society. New Series 167 (1955–56).

[10]Valuable discussion is Noam Gur, *Normative Weighing and Legal Guidance of Conduct*, 25 Canadian Journal of Law and Jurisprudence 373 (2012), which has extensive references and to which I am indebted.

[11]Albert V. Dicey, Lectures on the Relation Between Law and Public Opinion in England During the Nineteenth Century, 2nd ed. (1914), at 15; I owe the quotation to Gur, *supra* note 10 at 377.

[12]In Brown 2020 and 2023, *supra* note 6, Brown notes concerns along these lines in her conclusions as problems that remains to be addressed, but otherwise does not discuss them (Brown 2023 at 335; Brown 2020 at 420).

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are free not to follow the rules of cooperative schemes lend support for requirements to follow the rules and not to have license to contribute as one prefers.

These epistemic problems raise a host of difficult issues. Even granted that they are present in the collective cases we will examine, it is not clear what is distinctive about these cases. Similar problems are encountered in almost any moral interaction. Assume A makes a promise to B; in many cases, they are not unlikely to disagree on whether A has fulfilled her obligation. But, one could argue, in spite of their disagreement, isn't there a fact of the matter in regard to who is right?[13] If this is true, why isn't there a similar fact of the matter in collective cases? To respond, I note the distinctive features of collective cases: the size of the relevant enterprises, the large numbers of participants, and, as noted below, in many cases, the stakes involved and the need for authoritative coordination. In other words, these are not just any cases. Combine the inherent complexity of many policy issues with the large numbers of people involved, and intense disagreement is especially likely. Even if, in theory, a fair solution exists, in practice, it is not likely to be identified, and people are unlikely to converge on it.

To sum up here, our brief examination of apparently simple cases reveals important complexities. First, we have identified a proportionality criterion, which benefit recipients should satisfy. In addition, we have noted that, ordinarily, in order to generate obligations to reciprocate, benefits provided must outweigh the costs of reciprocating. We have also seen that in cases in which benefit providers decide on burdens to be borne by recipients, there is danger that the former will make these decisions in ways they prefer, and so risk violating proportionality standards. In addition, we have noted difficulties in making the relevant determinations when people disagree and that cognitive difficulties to which people are prone will likely increase these problems. While similar epistemic problems are encountered throughout the moral world, the collective cases on which fair play obligations largely depend are characterized by factors that make determining appropriate responses especially difficult.

III. Excludable Schemes

In spite of the problems discussed in the last section, there are still cooperative schemes that allow their participants discretion in how they respond. Because cooperative schemes differ in many ways, it is unwise to generalize from particular instances. I will identify certain kinds of cooperative schemes that allow discretion and others that do not and point out the reasons why. Although the survey here cannot be exhaustive, we will be able to identify clear instances of each category. We begin with a kind of cooperative schemes that allow discretion under certain circumstances, schemes that provide excludable goods ("excludable schemes").

The working of excludable schemes is thoroughly analyzed in the literature.[14] Such schemes are relatively uncomplicated. In liberal political theory, there is a general presumption in favor of liberty. People should not have moral requirements thrust on them, absent strong reasons. Because the goods excludable schemes produce can be accepted, potential recipients should have discretion whether to accept them at

[13]I am grateful to an anonymous reader for pressing me on this issue.

[14]Simmons, *supra* note 4, chap. 5; Klosko, *supra* note 3, chap. 2.

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prescribed costs. In the literature, it is generally agreed that, if one accepts benefits from a cooperative scheme, the principle of fair play establishes moral requirements to contribute to their provision. In some cases, beneficiaries have wide discretion in how to respond, as long as their responses are appropriate. Consider a potluck supper. (Call this *Potluck*.) Assume that Elvira's neighbors organize a potluck dinner, and it is understood that each neighbor is to bring a dish. If she comes to the dinner without bringing a dish but eats food others had brought, she clearly does something wrong. *Potluck* illustrates the wrong of accepting benefits without doing one's fair share of the effort involved in producing them. Of course, if Elvira decides that she does not want the benefits at prescribed costs, she can choose to forego receiving them. Because it is possible for given individuals to decide if they wish to incur obligations, they should be allowed to do so. I should note that the precise nature of the requirements in such schemes can be interpreted as turning on consent rather than fair play, depending on how one fills in the examples. Because benefits must be accepted, some element of consent is necessarily required. But the *content* of required appropriate response depends on what others are contributing, and so on fair play.[15]

Because of their voluntary nature, excludable schemes allow ready means to settle the epistemic problems we have noted. In this case, Elvira has considerable discretion about how to respond, as long as her response is proportionate. Assume that she wants to attend the supper but prefers to do something other than bringing a dish. If we grant that her response must satisfy the proportionality requirement, there must be some way to determine whether it does. One possibility is that she can contact whoever makes the relevant decisions and ask if it's ok for her to sing a song for the guests or play a piece on her cello or do whatever she would like to. The event organizers can then decide if her return is appropriate. In such cases, questions of appropriateness can be settled by negotiation between benefit providers and potential recipients. If the deciders tell Elvira that her entertainment alternatives are not proportionate, that she must contribute proportionately in some other manner, her original suggestions are foreclosed. One might ask, what gives them the power to decide which responses are or are not proportionate? The answer is that they provide a benefit which people may choose to pursue.[16] Elvira's wish to participate in the scheme indicates that she views this as a benefit. If she wishes to reciprocate in some alternative way, then she must accept scheme members' judgment about the latter's appropriateness.[17]

[15]See Simmons, *supra* note 4 at 126–127 for an argument that requirements in regard to such schemes do not collapse into consent.

[16]Participation in an excludable scheme involves acceptance (tacit or otherwise) of an epistemic sacrifice similar to those discussed below in the conclusion to this paper. But this too involves fairness, as all participants make similar epistemic sacrifices.

[17]Additional factors could complicate circumstances in this and similar cases. For example, Evira's negotiating position would be stronger if she had some right to be included in decisions about provision of goods. But it seems clear that in most circumstances, agreement to participate in excludable scheme implies evidence of acceptance of benefit at required cost. It is possible that the scheme members' view of appropriateness might constitute an unfair demand. In such a case, Elvira need not accept it and so not attend the potluck. The fact that we may assume that she does not need the benefit for a decent life and it is possible for her not to receive it distinguishes this case from the collective cases discussed below. Additional complexities could be noted as well, although they cannot be discussed in this context. I am grateful to an anonymous reader for pressing these points.

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We are able to see reasoning along these lines in the examples discussed above. For instance, in *Walkway*, members of the path-clearing scheme get to decide if John's contribution satisfies proportionality requirements. If they believe it does not, they can negotiate an appropriate response with him. If the two parties cannot come to an agreement, then John should find some other place to walk.[18]

Similar reasoning can be applied to Dolores' poem in *Carpool*. If the scheme members do not view this as appropriate response, then they can negotiate with her.[19] Once again, if the parties are not able to agree on an appropriate response, she may have to find another way to get her kids to school. If they do come to an agreement, then whatever is decided upon is what Dolores should do. She will not have discretion to do anything else, unless the agreement is that she can respond as she thinks appropriate.

IV. Nonexcludable Schemes

Although they have the considerable advantage of clarity, excludable schemes are of limited usefulness in clarifying the workings of the principle of fair play in regard to political obligations. The most important benefits provided by the state are nonexcludable, public goods, which cannot be accepted in any usual sense.[20] One of the above examples, *Tree trimming*, concerns a nonexcludable scheme, in which benefits cannot be accepted. Nicely trimmed trees are a public good; people cannot be prevented from enjoying them, short of fantastical arrangements to make them walk around with blinders or the like. As noted above, in the literature, the main problem confronted by fair play theories traditionally concerns whether recipients of nonexcludable goods incur moral requirements in regard to the relevant schemes, although they have not accepted the benefits. But again, the criticisms of fair play addressed in this essay grant that receipt of nonexcludable benefits is sufficient to establish moral requirements to reciprocate, although, of course, the critics argue that recipients should enjoy discretion. And so, what of *Tree Trimming*? Assume that, rather than painting the firehouse, Clara prefers to work on a community vegetable garden. Is this an appropriate response? In this case too, she could come to an agreement with the scheme members and settle the matter. But what if she does not? Does the fact that Clara benefits from their efforts ground a requirement to reciprocate as scheme members demand, or does she have discretion?

Simple resolution of epistemic issues available in excludable schemes is impeded in nonexcludable ones. Because the members are unable to withhold their benefit from Clara, it is possible that she could simply work in the garden and still benefit from their efforts, believing that she is behaving appropriately, whether or not they think this is a proper response. The epistemic issue is clear here: who gets to decide? Is working in the garden an appropriate response, or must she paint the firehouse red? Once again, how can we know what is right?

Granted the cognitive problems noted above, we must consider the possibility that Clara's belief that garden work is appropriate is due to these factors. If this is the case,

[18]I assume that these are ongoing arrangements, not one-time transactions. In addition, this is assuming the walkway is actually an excludable good, and he does have a real choice whether or not to use it. If he is not able to avoid it or it is prohibitively inconvenient for him to do so, the walkway may be a nonexcludable good.

[19]Or perhaps, they might just let the matter go to avoid a confrontation between neighbors or acquaintances and spare hard feelings; but this would amount to tacit consent to accept her response as acceptable.

[20]Cf. Simmons, *supra* note 4, chap. 5.

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then, if she chooses this response, she does not fulfill her obligation. But it is also possible that the scheme members are misled by their preferences for seeing the firehouse painted red. If this is the case, then requiring this would be an unfair demand. In order to assess situations along these lines, we must look more closely at different benefits provided by cooperative schemes.

Three aspects of benefits provided should be kept in mind. First, returning to the idea of appropriate response, is whether a given benefit is worth the required costs. The related epistemic question is how we can know this. Second is who gets to determine the form of the required response, the recipient in question or scheme members? Obviously, if the former obtains, discretionary response is acceptable. In order to rule this out, we need a strong argument against it. Third, there is an appeal to real-world consequences, whether or not allowing the scheme in question to collapse, in which case the benefit would not be provided, would be acceptable.

While we have seen that excludable schemes generally allow clear resolution of the relevant epistemic issues, we have seen that nonexcludable schemes are more complicated. Because the would-be participant receives the benefit whether or not she cooperates, the significance of nonparticipation is less clear. It is open to the subject to argue that the benefit is not worth the costs, as this could absolve her of unwanted obligations.[21] Because we have stipulated that receipt of nonexcludable benefits generates moral requirements to reciprocate, she should still make what she views as an appropriate return. In many cases it is open to her to provide this as she prefers. Should the scheme members complain that her effort—e.g., Clara's garden work—is not appropriate effort, it is open to her to claim that it is, because she believes the benefit is of less value than they say it is. Even if benefit recipients have moral requirements to reciprocate, before a nonexcludable scheme can demand a specific form of response as appropriate, it requires a convincing argument that the benefit condition is satisfied.

Proper responses to nonexcludable benefits may remain problematic, even if allowing discretionary responses threatens to collapse the cooperative scheme. Consider National Public Radio. If we grant that this is a benefit that cannot easily be withheld from people, then it is difficult for its providers to dictate how listeners should reciprocate. In my geographical area—this may vary with public radio stations—during its semiannual fund drives, the station I listen to requests that people donate $10.00 a month to the station. But this is a donation; it is voluntary, and it is likely that many people listen without donating, while others donate less than the requested amount. Whether these forms of non-contribution are right depends on the value of the service provided. Because people's tastes and preferences vary widely, it would be difficult for the providers to make a convincing argument that all people in the relevant area receive more than $10.00 a month in value. Even a regular listener may convince herself—or actually believe—that her benefit is worth less than $10.00 a month. The psychological tendencies we have discussed increase the likelihood of beliefs of this sort. Recognizing these tendencies, scheme members can contend that the benefit condition is actually satisfied, although Alex's cognitive impairments prevent him from recognizing this. But Alex has a clear response. Rather than conceding his own difficulties, he can argue that the scheme members are misled

[21]For complexities in regard to cases such as this, see George Klosko, *Fairness Obligations and Non-Acceptance of Benefits*, 62 Political Studies 159 (2014).

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by *their* biases, that he is the one who is correct, and the benefit condition is not satisfied. A requirement that he pay $10.00 a month is an unfair demand.

The possibility remains that the station, call it Q, can appeal to listeners on grounds other than that contributing less than $10.00 is unfair. The station can argue that, unless a designated number of people make what it views as the appropriate response, the station will collapse, depriving everyone of a valued service. Such an argument is unlikely to succeed. Because of the logic of public goods provision, if we assume that Q is sufficiently large, then Alex should recognize that his contribution will likely have extremely small or no effect on the preservation of the scheme. Still, Q can appeal to the generalized consequences of Alex's conduct. Although Alex's own conduct will have little or no effect on the viability of the station, what would happen if everyone else behaved similarly? Since its inception, the principle of fair play has been known to be closely related to the moral response: "what if everyone did that?"[22] To anticipate cases we will examine, imagine that Alex is found not to have paid his taxes. He responds that his required tax payment is so small that the damage done to the federal treasury if he does not pay is infinitesimal or undetectable. But the tax authorities may respond that, if everyone did that, the tax system would collapse, with catastrophic effects for all concerned. Such an appeal, however, does not work for NPR. We have seen that Alex does not value the service highly. Even if everyone else behaved similarly and NPR collapsed, that would not be an unacceptable outcome. Even though Alex and others listen to NPR, they can live without it, and once again, do not value it at $10 a month. Accordingly, if scheme members are not able to show that the benefit condition is satisfied, appeal to collapse of the cooperative scheme may not be enough to uphold their requested contribution. Even if Alex contributes less than the requested amount while recognizing that if everyone else behaved similarly the station would collapse, it is not clear that he is behaving unfairly, as long as he believes this amount is appropriate.

Accordingly, a rough conclusion is that discretionary response may be appropriate for nonexcludable schemes, unless benefit providers are able to argue convincingly that their required contribution satisfies the benefit condition, even if their scheme might collapse if everyone behaved similarly. Given people's different tastes and preferences, such an argument seems difficult to make.

V. Indispensable Benefits

In spite of the argument of the last section, a subset of cooperative schemes that provide nonexcludable goods can justify specific contributions. For a scheme to demand specific contributions is for it to require that recipients follow its rules. What is distinctive of the schemes in question is that: (i) they clearly allow the benefit condition to be satisfied, and (ii) allowing them to collapse would be unacceptable.

The cooperative schemes I have in mind provide benefits that are necessary for decent lives. These benefits include rule of law, national defense, protection from environmental dangers and deadly infectious diseases, and the like. We may refer to

[22]C. D. Broad, C. D., *On the Function of False Hypotheses in Ethics*, 26 International Journal of Ethics 377 (1916).

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these as "indispensable goods."[23] It is not a coincidence that, throughout the history of Western political theory, questions of political obligation have centered upon provision of benefits of this kind. We have stipulated that receipt of public goods generates requirements to contribute, even if the benefits are not accepted. Our question is whether these requirements can be satisfied by discretionary response.

I believe they cannot. Because of the great importance of indispensable goods, it is likely that they will satisfy the benefit condition for all or almost all citizens. If the alternative to receiving these benefits is Hobbes' state of nature, then almost any alternative is preferable, as Hobbes argued. Return to the example presented at the beginning of this paper:

> *National Defense.* Alicia lives in a country that is well defended by its armed forces. When she turns 18, she is required to begin two years of military service.

As noted, she would prefer to make documentaries about the military, which she views as an appropriate response. In this case, the military has strong arguments for requiring her to follow its rules. Unlike the situation in regard to NPR, national defense can be presumed to satisfy the benefit condition for citizens generally. Discretionary response raises the two problems we have noted. There is an immediate problem that Alicia's chosen response will be unfair. She claims that the effort of making documentaries is proportional to serving in the military. But the military may well disagree, and once again, we need some way to determine who is right. More than this, in this case, collapse of the scheme would be catastrophic. In order not to be unfair, Alicia has to grant the same leeway concerning discretionary response to everyone else. But if everyone is able to respond in this way, there will be a significant likelihood that defense will no longer be provided. Such an outcome would be unacceptable. Unlike National Public Radio, national defense is something that we need.

Our preliminary conclusion, then, is that a nonexcludable scheme that provides indispensable public goods can demand specific responses. Because of the great value of the goods it provides, it is generally able to satisfy the benefit provision. To counter recipients' claims in favor of discretionary response, it can appeal to both the possibility that discretionary response will be unfair and unacceptable consequences for the scheme if large numbers respond as they please. I should note that the scheme's arguments are not necessarily conclusive. The benefits it provides enable it to establish *presumptions* that recipients must follow the rules. These presumptions are rebuttable. Should recipients have strong responses, they may still be able to justify discretionary responses.

A possible response open to Alicia turns on the ostensible uniqueness of her situation. She can argue that making movies is appropriate, because defense is *already* being provided. Therefore her contribution to the military per se is not necessary. According to the logic of public good provision, in order for a given good to be provided, a certain number of persons must contribute. Unanimity is not necessary; the benefit can still be provided if some number of people do not contribute. We should note that it is this set of circumstances that led to the development of the

[23]In previous work, I refer to them as "presumptively beneficial" goods (e.g., Klosko, supra note. 3). David Estlund argues that benefits of this kind are necessary to avoid the "primary bads," and so can be justified to everyone (Democratic Authority, 2008, chap. 9).

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principle of fair play in the first place. The principle is intended to establish requirements for those non-contributors to contribute. In some hypothetical case in which unanimous contribution is necessary for a given benefit to be provided, the principle of fair play would not be applicable, as there would not be benefit recipients who were not cooperating. Imagine that national defense required the designated contributions of *everyone*. Call this *National Defense 2*. If one person did not cooperate or respond as she pleased rather than according to the rules, defense would not be provided. The country would stand naked and unprotected against its enemies. Under these circumstances, each person's only appropriate response would be to follow the rules of the defense scheme. But of course, *National Defense 2*'s unanimity requirement is fanciful. Recognizing this, Alicia could still respond that making movies is appropriate. She would maintain that it satisfies proportionality requirements, while proof that granting her discretion would not be harmful is that defense was *already provided* without her contribution.

Alicia's argument opens the way to both significant unfairness and possible collapse of the relevant cooperative scheme. In defending her position, Alicia could note that her claim to discretionary response is qualified. She should be free to exercise her discretion as long as she is confident that enough of her fellow citizens are obeying the rules to make sure the benefits are provided.[24] If this condition is met, as long as she makes beneficial contributions to the community—of her own choosing—her behavior is appropriate. Under other circumstances, she could be required to follow the rules.

It is clear immediately that her position risks significant unfairness. Given what we have seen of cognitive difficulties, it is not unlikely that she will misconstrue the situation. Because of her desire to reciprocate in her own way, Alicia could make mistakes in regard to whether this would satisfy proportionality conditions. If it did not, then her actions would obviously be unfair. She would be doing less than her fellows while receiving similar benefits.

Her argument also misconstrues the manner in which many important public goods are provided. Provision of defense, as other essential public goods as well, is not a one-time accomplishment. Return to *Tree Trimming*, with an added assumption that the trees do not have to be trimmed more than once every ten years. Call this *Tree Trimming2*. In a case such as this, Ferdinand would have a strong argument for it being appropriate for him to work instead in the community garden. His labor in helping to trim trees can be seen not to be necessary, because the trees have already been trimmed. His behavior could still be judged unfair if working in the garden did not satisfy proportionality conditions, but he could respond by doing extra-heavy garden work. Defense, however, is different. This must be provided on an ongoing basis. As time passes, new challenges arise, which have to be dealt with. Even if crises A, B, and C have been overcome, others are sure to arise. Circumstances are similar to other indispensable public goods: clean air, environmental protection, law and order, etc. Each of these must be dealt with on a continuing basis, with the implication that appropriate responses are also ongoing. Thus in regard to *National Defense*, it is not open to Alicia to argue that the problem has been solved once and for all. She cannot make an argument similar to Ferdinand's, because her situation is different.

[24]Brown 2023, *supra* note 6, at 325.

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Granting people discretion in regard to benefits such as defense would be especially risky. Not only is defense an ongoing necessity, but we may assume that it requires complex patterns of cooperation among myriad actors, and so a carefully assembled plan. Alicia is one person. But if she is allowed to respond as she pleases, other people should be as well. To allow this would jeopardize provision of defense.

Once again, it is not open to Alicia to say that she is not asking that *everyone* have discretion. But could she claim discretion for people who are confident that enough others are cooperating to make sure the benefit in question will be provided?[25] This response, however, would be a clear case of free-riding. The provision of effective defense allows a certain number of people to respond as they wish. But the benefits of being allowed to do so should be distributed fairly. For instance, if it is necessary that only 50% of eligible adults serve in the armed forces, then 50% of people can be let off. The question, then, is who gets to enjoy this benefit. In the case under discussion, Alicia cannot fairly allocate this benefit to herself. That is the very essence of free-riding. Rather, the benefits should be distributed through some fair mechanism, e.g., a draft lottery. In addition, once again, the cognitive difficulties we have seen increase the possibility that Alica will miscalculate in regard to these matters, and believe that she is justified in responding in her preferred way.

VI. Democratic Determination

The cognitive difficulties we have discussed raise an additional problem for cooperative schemes. Consider a simple case.

> *Painting.* Residents of an apartment building combine their efforts to paint the public areas. Godfried does not like to paint and so contributes by making lunch for the group.

We have seen that cognitive biases raise the possibility that Godfried will behave unfairly. He could believe his contribution is more demanding than it actually is, in accordance with self-enhancement bias. Or he could have a low opinion of the burdens of painting, as a result of self-serving bias. In considering these possibilities, we must deal once again with epistemic issues: how do we know if these contentions are true or not? To complicate matters further, Godfried is not alone in possibly being hampered by cognitive defects. The other residents could also be biased. Their opinion that his chosen response is not proportionate could be due to their biases.

The impasse here raises a central problem for fair play. Because of an overall requirement of fair distribution, everyone who benefits from labors of a cooperative scheme should contribute to the benefit and should do so appropriately. We have seen that this generally means that everyone should follow the rules of the scheme. But proponents of discretionary response can also defend their position. Imagine that Alicia believes her contribution is appropriate, while scheme members disagree. We have noted the possibility that her view is affected by bias. But it is also possible that their view is instead. Why should we prefer their opinion over hers?

Along similar lines, I have argued that to allow discretion to everyone would risk the scheme's collapse. This is presumably the position of the scheme members as well. But once again, Godfried believes they are wrong. He is not alone in regard to

[25]Brown 2023, *supra* note 6, at 325.

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cognitive errors. Because scheme members too could be affected, it is possible that their opinion on this matter is incorrect. Once again, why should their opinion take precedence over his?

I believe that the response to these epistemic problems is moral rather than epistemic. If we recognize that there are differences of opinion in regard to the workings of a cooperative scheme and the possibility that people's opinions on the matter will be affected by cognitive biases, we can see how difficult it would be to establish a set of rules for the scheme that would be fair to all participants. The solution to this problem, as generally with other instances of disagreement in politics, is democratic decision-making.[26]

Democratic decision-making can be defended on various grounds. For the most part, these reasons are not only not incompatible but are mutually reinforcing. Included are epistemic properties of democracy and democracy's ability to curb power.[27] An egalitarian or fairness defense of democracy[28] turns on three main propositions. The first concerns disagreement on important moral and political questions, with no foolproof way to overcome them. Second is the fact that, in areas where common policies are necessary, people have interests in having these reflect their own values. The third proposition is a basic requirement that people be treated equally—with "equal concern and respect," as Ronald Dworkin famously put this.[29] Combining the propositions gives us the need for decision procedures that treat people fairly, and so democracy.[30]

In order for people to be treated fairly in regard to disagreements, they should each receive a vote and opportunities to participate in the process of opinion exchange that is central to democracy. If people disagree about matters bearing on public good provision, then these matters should be resolved democratically. Matters about which people might disagree include the manner in which public goods should be provided. For instance, in regard to defense, some people may believe the best policy is to have a volunteer army, while others may prefer a draft. People may also disagree about standards of fair distribution in regard to benefits and burdens. How should costs be allocated? People will likely hold different opinions about the conception of fairness that should be used. For instance, should taxes be flat or proportional, meaning that people with greater resources will pay more? Similar irreconcilability holds for other important goods provided by government, including law and order, the means through which threats to public health should be combated, and the environment protected. In spite of these disagreements, common solutions must be implemented if the necessary benefits are to be provided. Add on to this situation questions of

[26]Because the moral underpinnings of the principle of fair play is fair distribution of benefits and burdens, non-democratic decision-making processes could be ruled out immediately by the need for cooperative scheme to be sufficiently fair.

[27]Estlund, *supra* note 23; Hélène Landemore, Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many (2012); Ian Shapiro, The State of Democratic Theory (2003).

[28]For defenses along these lines, see Thomas Christiano, The Constitution of Equality (2008); and Daniel Viehoff, *Democratic Equality and Political Authority*, 42 Philosophy & Public Affairs 337 (2014).

[29]Ronald Dworkin, Taking Rights Seriously (1977) at 273.

[30]Lottery systems should not be ruled out, as long as they are suitably fair; see Alexander Guerrero, *Against Elections: The Lottocratic Alternative*, 42 Philosophy and Public Affairs 135 (2014); Alexander Guerrero, *The Epistemic Pathologies of Elections and the Epistemic Promise of Lottocracy*, in Political Epistemology at 157 (Elizabeth Edenberg and Michael Hannon eds., 2021).

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discretionary response. While the defense establishment may view Alicia's proposed response as inappropriate, she may well believe that they are biased in their own ways. Although Alicia may believe that the authorities' position in regard to her desired discretionary response is due to cognitive error—as they believe hers is—on the assumption that their position has resulted from a fair democratic process, she should recognize that their opinion should be implemented, not because it is correct, but because it is supported by more votes than is hers. For her opinion to prevail and be implemented would be unfair to the majority of people who have voted for it.

Accordingly, we have seen that epistemic problems are solved in different ways in different sorts of schemes. For simple schemes like some discussed above, these do not raise significant problems, because of intuitive clarity, or perhaps because of friendship or the like. For excludable schemes, similar problems are solved by the choices of would-be participants. In contrast, for the large-scale collective schemes necessary for the provision of indispensable goods determinations should be made democratically. In general, if a given scheme provides benefits that people need and can be shown to satisfy the benefit condition, decisions regarding contributions should be made democratically, with concerns of fairness requiring that everybody follow the rules that are decided upon.

VII. Authoritative Coordination

As noted throughout this paper, an important reason everyone should follow the rules of collective schemes that provide indispensable benefits is that these can be provided only through complex patterns of coordination. While making sure benefits are provided is not a matter of fairness per se, fair play obligations require that benefits be produced and received. Arguments that give people permission not to comply should be viewed as inimical to fair play obligations. My discussion here involves complex sociological and political matters that I can only touch on in this context. But discussing a few instances should illustrate the general direction in which I believe the overall argument should move.

Because provision of important public goods requires large-scale, complex patterns of cooperation, it cannot be assumed that people will organize themselves spontaneously. A general plan or planning agency must be able to issue commands and to assure compliance. Once again, according to the logic of public goods provision, it is in people's interest to receive benefits without contributing. Means must therefore be found to assure their contributions. While proponents of discretionary response recognize requirements to contribute appropriately, in order for their contributions to be fair, they must be willing to afford the discretion they enjoy to everyone alike. Because of the need for careful coordination, general implementation of their view could undermine basic institutions.

Whether or not a benefit is necessary should also be determined democratically. If a given service is found to be indispensable, then its provision should be insured, with all alike following the rules. To consider a prominent recent instance, in the COVID-19 pandemic, efforts to coordinate the activities of the population through such means as mandatory closings, mask-wearing, social distancing, and vaccine mandates were intended to mitigate the effect of the disease and so save large numbers of lives. Whether these policies would be effective was a question for experts. But even if there was agreement among the experts, in view of tradeoffs policies would require,

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what appropriate measures were and how they should be implemented were political questions to be decided by elected officials. Consider a familiar example. When the pandemic hit, Denmark and Sweden pursued different courses. Denmark largely locked down, while Sweden attempted to remain largely open. Bars and restaurants were not closed, nor were schools, although measures were taken to protect the aged and vulnerable. The two countries are similar culturally and demographically. Sweden's population is some 10.4 million, in comparison to Denmark's 5.87 million. As of January 2023, Sweden suffered some 22,645 covid deaths, while the figure for Denmark was 8,013.[31] Rate of deaths per 100,000 for Sweden was approximately 235.43; for Denmark, the figure was 132.[32] Thus at this point in the pandemic, death rates in Sweden were significantly higher than in Denmark. These contrasting paths represent different ways in which essential benefits of public health could be provided. On which path is preferable, people are likely to disagree. Some might believe that the extra freedom Swedes enjoyed was not worth a higher death rate. But others might believe these costs were outweighed by the fact that schools stayed open, benefiting both students and their families. As for Denmark, while its population was protected from the virus, this was at the cost of having many usual activities prohibited. Proper response to such circumstances raises political questions, which should be resolved democratically. But however the political leaders decide, their populations should follow the rules laid down, and government should ensure compliance. To allow people discretionary response would undermine necessary policies.

As a dramatic example of the need for authoritative coordination, consider American military production in the dire circumstances of World War II (WWII). After Pearl Harbor the relevant authorities determined the need for large-scale weapons production. Much of the economy was reorganized, with impressive results. For instance, the relatively small American aviation industry at the beginning of the war was able to produce some 300,000 planes by war's end. Other necessary armaments were produced at similar rates.[33] This impressive achievement required contributions from numerous actors.[34] But the crucial point is that it was accomplished only under the authoritative direction of the War Production Board, established in 1942, which "[e]xercised general direction over federal war procurement and production programs."[35] It is difficult to imagine how armaments production would have reached anything like that level without government requiring specific actors to cooperate in specific ways. To get an idea of the industrial transformation this effort required, consider that, in 1941, the American automobile industry produced some 3,000,000 cars. During the entire war, as automobile factories were

[31]Conor Stewart, Cumulative number of coronavirus deaths in the Nordics 2023 (June 2023). https://www.statista.com/statistics/1113834/cumulative-coronavirus-deaths-in-the-nordics/.

[32]Johns Hopkins University of Medicine, Mortality in the most affected countries (June 2023). https://coronavirus.jhu.edu/data/mortality

[33]National WWII Museum, Out-Producing the Enemy: American Production During WWII National WWII Museum (December 2020). https://www.nationalww2museum.org/sites/default/files/2017-07/mv-education-package.pdf.

[34]As Brown 2020, *supra* note 6 argues.

[35]National Archives. Records of the War Production Board (January 2020). https://www.archives.gov/research/guide-fed-records/groups/179.html#179.1

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converted to military production, only 139 cars were added to this total.[36] Once again, it seems inconceivable that anything like this could happen without government's authoritative direction.

A proponent of discretionary response could perhaps contend that defense is a special case, given the vast scale of the necessary public goods. But as consideration of the pandemic demonstrates, the difficulties in question are not confined to defense. One complaint about government response to the pandemic concerned failure to invoke the Defense Production Act for production of necessary protective equipment, as, without more authoritative government direction, provision of essential services was somewhat slipshod.[37] Addressing other important public goods, including such things as clean air and dealing with water shortages, requires similar patterns of coordinated activity.

As Brown argues, provision of necessary benefits such as these involves more than direct authority of law.[38] For instance, adequate defense requires cooperation of myriad actors: industrial corporations, scientists, large number of workers, and, during WWII, regulation of much of the economy. While much of this activity must be mandated by law, other kinds of incentives can mobilize other components. For example, appeals to patriotism could move many actors, while economic incentives could motivate others. Brown argues that benefit recipients can satisfy their obligations to reciprocate for benefits by contributing to such complex patterns of activity through means other than what the law mandates, and so enjoy discretion in how they respond.[39]

However, recognizing the complexity of benefit-producing systems does not support discretionary response to fair play obligations. In examining complex processes of benefit production, it is important to distinguish those that are able to ground fair play obligations from others. Because fair play establishes requirements to reciprocate for the burdensome cooperative activity of other people that leads to production of benefits, its effects are limited to those aspects of benefit-producing systems that have these characteristics. For reasons we have discussed, exactly how one is required to reciprocate in these areas is determined by law, and fair play obligations are to follow the law. Different moral requirements could be incurred by different aspects of overall systems. For instance, citizens can have obligations of gratitude towards people whose contributions are exceptional. In the US, it is common to thank people in the military "for their service." Exactly what the relevant moral principles commit people to must be worked out on a case-by-case basis. But while one may have additional moral requirements to reciprocate for benefits received, to the extent that other areas of benefit-producing systems do not have the characteristics noted, one will not have fair play obligations in regard to them. While one may have discretion in regard to how one responds in these other areas, this is not discretionary response to fair play obligations.

[36]David Vergun, During WWII, Industries Transitioned From Peacetime To Wartime Production, (September 2025). https://www.doncio.navy.mil/chips/ArticleDetails.aspx?ID=13326

[37]Andrew Jacobs, Despite Claims, Trump Rarely Uses Wartime Law in Battle Against Covid, *New York Times*, September 22, 2020 (December 2020). https://www.nytimes.com/2020/09/22/health/Covid-Trump-Defense-Production-Act.html.

[38]Brown 2020, *supra* note 6; Brown 2023, supra note 6; Brookes Brown, *Political Obligation and the Unitary State*, in Oxford Handbook of Political Obligation at 33 (George Klosko, ed., forthcoming).

[39]Brown 2020, *supra* note 6; Brown 2023, *supra* note 6; Brown forthcoming, *supra* note 37.

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Deciding which components of overall benefit-producing systems must be regulated by law should be in the hands of government. On this, as on other matters, people will have different opinions, and so the results of democratic determination should be conclusive. For instance, as long as effective defense is provided, people should recognize this and follow the rules. Turning decisions over to democratic processes does not entail that decisions will be made correctly or will prioritize particular values over others.[40] Once again, I defend democracy on grounds of fairness rather than because it produces correct decisions. However, the political leaders decide, their populations should follow the rules laid down. As we have seen, for individuals to attempt to reciprocate in their preferred ways risks both the possibility of unfairness and that important public goods will not be provided.

VIII. Conclusion

In conclusion, I return to the epistemic issues on which the criticisms of discretion we have seen largely depend. Given differences and disagreements in society and cognitive biases to which people are prone, allowing individuals to respond as they think appropriate threatens both unfair distribution of burdens and benefits and the existence of important institutions. In addition, allowing people to have discretion about their own contributions while requiring that others follow the rules affords the former individuals the benefits of free-riding. It allows them to assume advantages for themselves that cannot be accorded to others. To avoid these difficulties, people must follow the rules of cooperative schemes, which are intended to ensure just distribution of benefits and burdens and that important goods will be produced.

Attempts to allow discretion raise additional issues we should note. In addition to the burdens of having to make appropriate contributions for benefits received, the principle of fair play requires an additional sacrifice. Because people disagree about moral and empirical matters and are beset by cognitive difficulties, it is necessary that they accept the authoritative determinations on these matters with which they are confronted. This is an epistemic sacrifice.[41] One cost of participating in cooperative associations is the need to put aside one's own views in favor of the judgment of the authority designated to make the relevant decisions. This proviso is subject to various qualifications. For instance, the distribution of benefits and burdens must be tolerably fair and allow the scheme to function in such a way that relevant benefits are, in fact, provided. In addition, authoritative decisions should be made through procedures—e.g., democratic procedures—that treat participants fairly. These requirements open the way to additional difficulties, as members of society are likely to disagree about whether the standards are satisfied. But it seems clear that, under ordinary circumstances, people should defer to the authorities; they should accept a

[40]There are possible qualifications in regard to failure to provide necessary goods and great unfairness or injustice. In such cases, political obligations may not be generated or may be obviated by these factors, while conscientious refusal or civil disobedience could be justified. This complex subject cannot be discussed in detail in this paper. But as an example, consider arguments to the effect that governmental responses to the great dangers of climate change have been so inadequate as to undermine legitimacy, with the implication that responses such as civil disobedience are justified. See Ross Mittiga, *Political Legitimacy, Authoritarianism, and Climate Change*, 116 American Political Science Review 998 (2022).

[41]Justin Tosi makes similar arguments, Rethinking the principle of fair play, 99 Pacific Philosophical Quarterly 612 (2018).

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presumption that the measures in place are effective, unless the relevant decisions are egregiously unfair or incompetent.[42]

However, these points will not go unchallenged. A critic might respond that, in a paper that relies heavily on epistemic difficulties and disagreements, in claiming that one should defer to authorities, the argument falls back on something that sounds like objectivity when it is convenient to do so.[43] As I have noted, benefit providers are as likely as recipients to suffer from cognitive problems. In disputes between them, why assume that providers are correct? If specific contributions are mandated, how can we know that they are actually fair? Similarly, if disagreements are addressed by democratic procedures, can we assume that these too will be fair to recalcitrant recipients? But then again, holding that these questions can be answered with assurance appears to conflict with the epistemic wariness on which the paper generally relies. If there are real facts of the matter in regard to the fairness of required contributions, why can we not simply rely on them?

These are difficult issues, which cannot receive the detailed treatment that they merit in this paper. But a brief response can indicate the direction in which I believe further discussion should develop. As these questions indicate, this paper occupies a space between intense disagreement and conclusions that must be accepted. Because of disagreements, we must be leery of the latter. But then again, political realities make definite conclusions necessary. Once again, these should be supplied by democratic procedures. To make this position clear, I will elaborate upon a few basic assumptions on which it depends. For the most part, these assumptions are noted in the body of the paper, but it is important to spell them out here. I believe these assumptions are basic to liberal political theory and so should be viewed as at least probable. Two immediate assumptions are that people have essential needs which must be satisfied if they are to lead decent lives and that these can be satisfied only through the assistance of the state. People will disagree about the exact list of needs and the precise form efforts to meet them should assume. But the existence of such a list can hardly be doubted. As I have noted, because of the great importance of these goods, in many cases their provision should satisfy the benefit condition for most or all citizens. Along similar lines, it is generally recognized that the state is required to provide the needed benefits. This contention is rejected by various theorists, e.g., libertarian anarchists.[44] But such alternative positions are generally viewed as highly improbable. If the state is required to satisfy such needs, the programs it puts forth must assume definite forms. These too will be subjects of disagreement. In claiming that such disagreements should be addressed democratically, I do not assume special epistemic competence for democracy. Rather, democracy is defended as necessary to treat people equally in addressing their disagreements.[45] Any alternative method will likely treat people unequally, which is especially problematic in a defense of the principle of fair play, the moral basis of which is equal treatment. This is not to say that democratic procedures are not capable of erring. But when they do, political obligations established on their basis may be dissolved.

[42]Note once again, the points made in footnote 39.

[43]I am grateful to an anonymous reader for raising this issues, and others considered in this concluding section.

[44]E.g., Michael Huemer, The Problem of Political Authority: An Examination of the Right to Coerce and the Duty to Obey (2013).

[45]Christiano, *supra* note 28; Viehoff, *supra* note 28.

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This last contention raises issues that are fraught with difficulty. In liberal political theory, it is generally argued that people have obligations to obey only legitimate states, while legitimacy is generally held to be bimodal, requiring that states successfully provide essential needs and treat people reasonably justly.[46] Like other political obligations, those from fair play are pro tanto or prima facie obligations. They bind other things being equal. But if the relevant procedures or political system are not reasonably just, people may not be bound to comply. Similarly, since fair play obligations depend on production of benefits, if the benefits are not in fact produced, the relevant obligations may not obtain. If states fall short, remedies available to citizens may include civil disobedience or more extreme responses, such as rioting or even revolution. Determinations in regard to questions in this area may be extremely difficult—and extremely contested—and so an additional assumption is again some measure of epistemic deference in approaching them. If a state is in fact legitimate, this deference is warranted.

Political obligations hold only if a reasonable case can be made that necessary conditions are satisfied, while determinations in regard to whether they are actually satisfied depend on the facts in particular circumstances and are possible only on a case-by-case basis. But in spite of difficulties encountered in making the relevant determinations, in many cases agreement, should be possible, and so political obligations are believed to hold. For reasons we have seen, accepting state determinations is necessary to avoid difficulties inherent in discretionary responses. Only if people respond as the state says they should and obey the law can these problems of unfairness and possible non-production of benefits be avoided.

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[46]E.g., Hannah Pitktin, *Obligation and Consent, Part Two*, 60 American Political Science Review 39 (1966); Arthur Applbaum, Legitimacy: The Right to Rule in a Wanton World (2019); David Beetham, The Legitimation of Power, 2nd ed. (2013).

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