

The State is Not a Radio Station:

Reciprocity, Presumptive Benefit and Political Obligation

Abstract: Using a series of examples involving radio stations and thrusting books into people's unwilling hands, Nozick critiques Hart's reciprocity principle that grounds the theory of fair play. If the principle entails that we become bound to our benefactors, we would be at their mercy in potentially oppressive ways. However, Nozick uses goods that are not reasonably necessary for an acceptable life. If we vary Nozick's setup to involve goods that everyone is presumed to need—basic subsistence, shelter and protection from harm—our intuitions about reciprocity change.

I explore why presumptive goods can generate obligations. When something is obviously beneficial, we find it hard to believe claims that someone does not want it or refuses to reciprocate. However, we could easily test for this by building into the scheme protections against strategic misrepresentation. This results in a Millian account of provisional paternalism, which still leaves our beliefs about autonomy intact.

The Theory of Fair Play states that “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”.¹ What this means is that the members of the enterprise owe their obligation to the other members who also cooperate in the scheme because it is cooperation that makes it possible for any individual to enjoy the benefits of the practice.

¹ Hart, “Are there any natural rights?”, *Philosophical Review* 64 (2), 1955, p. 185

As a theory of political obligation, the theory of fair play is quite straightforward, intuitive² and appealing in its citizen-to-citizen model.³ However, Nozick's famous critique of the theory of fair play has left it crippled and without much support from the philosophical community, many of whom may think that there is no solution to the problem of political obligation.⁴ Furthermore, other recent issues in political philosophy, such as global citizenship, climate change and social justice have pushed the debate about what grounds political obligation into the realms of obscurity. However, the issue of political obligation remains and is necessary to answer many of these more recent questions. As such, it is still imperative that the question of obligation remains live in political discourse.

In this paper I will attempt to revive the theory of fair play as a viable account of political obligation. In doing so, I will address Nozick's objection to the theory and show how his objection can be sidestepped by examining his use of non-essential goods as obligation-generating. In addition, I will offer a structure for showing how

² There is evidence that we have an inbuilt or intuitive sense of fairness, which the theory of fair play seems to accord with. See, for example, the results of the ultimatum game in experimental economics. In that game, there are two players, one of which has a sum of money. That player proposes how to divide the sum between them, and the second player can either accept or reject this proposal. If the second player rejects the first player's proposal, then neither player receives anything. If the second player accepts it, the money is divided according to the proposal. Although one would think that the 'rational' thing to do, on a real net cost, would be for the responder to accept any offer that pays more than nothing, evidence from experimental economics has shown that respondents playing this game typically refuse anything below 20% of the original sum, suggesting that people tend to have an inbuilt sense of fairness: if a deal is seen as being unfair, the responders will punish the proposers in the only way that they can. They will refuse to accept the deal, resulting in no money for either party. This explains why a 90-10 division between two players would not *ceteris paribus* be considered "fair" while a 50-50 (or even 60-40) one would be: Camerer, C. F. and Thaler R. H., "Anomalies: ultimatums, dictators and manners", *Journal of Economic Perspectives*, 9 (2: Spring), 1995, pp. 209-19.

³ This can be contrasted with the consent theory model, which is often described as being a model where citizens have their obligations directly to the state. In the theory of fair play the citizens technically owe their obligations to each other via the state as their facilitator.

⁴ The two primary theories of political obligation are consent and fair play. However, both of these are rife with criticism and as such neither is clearly the most popular or well-supported theory of political obligation.

the principle of reciprocity (as it pertains to the theory of fair play) provides us with a means by which we are obliged in the realm of public goods.

Nozick's Radio Station and the critique of reciprocity

In its most basic format, the theory of fair play relies on a notion of one's reciprocating upon conferral of a benefit. As the theory goes, if your neighbors are contributing to some cooperative scheme, from which you receive a benefit, then it is only fair that you also contribute to the scheme so that they can equally benefit.⁵ To receive the benefits, but not reciprocate in contributing to their provision, is free riding and considered morally wrong.⁶

Nozick's critique centers on the point of reciprocity.⁷ His famous public radio station example is as follows: suppose that we are members of a community of 365 people who find the components for a radio station. The community establishes the station, and each citizen is assigned one day in the year to run it by playing music on a public radio system. Nozick claims that, although I may enjoy the music that is played, when the assigned day comes for me to run the radio station, there is no obligation that has been generated to compel me to go and work for the benefit of everyone else.

Why is this? Nozick claims that if the reciprocity principle entails that we become bound to those who benefit us, we would effectively be at the mercy of would-be benefactors to the point at which it becomes oppressive. In cases, such as the radio

⁵ I am using the term "equally" here in a very loose sense. All I am meaning here is that there is some benefit that is also being conferred upon the other members of the scheme, not that the degree of benefits have to be strictly identical for each member.

⁶ While I will not discuss this at length, one reason that free riding is deemed to be morally wrong is that it is a failure to treat all the citizens impartially. See for example, Cullity, G., "Public Goods and Fairness", *Australasian Journal of Philosophy*, 86: 1, pp. 3-5.

⁷Nozick, R., *Anarchy, State and Utopia*, Belknap Press 1968.

station scenario, where a member of the scheme will more or less receive a publicly generated good regardless of what he does, he cannot decide whether or not to receive it. As such, receipt of the good cannot be what generates an obligation for him to contribute to the scheme. However, voluntarily consenting or voluntarily accepting the benefits of the scheme will, in these cases, be sufficient to generate an obligation.⁸ Consequently, the claim is that the applicability of theory of fair play in explaining obligations is severely limited to cases where the members of the scheme have consented to it.⁹

Nozick's radio station example is so well known that it has almost overshadowed Hart's original theory. In fact, this is probably why the theory of fair play has often been so readily disregarded. However, although several responses that have been offered by defenders of the fair play position, none of them have taken much prominence. While I will examine them, my main argument will be as follows. Surely Nozick's point generally is correct, in that one cannot foist some benefit on me and then take (what they think is) appropriate payment or demand reciprocity on my part. However, fair play is not such a simple theory of benefits and obligations. There are several nuances in the account which Nozick has not taken into account with his oversimplification of the theory.

⁸ Rawls discusses the difference between the acceptance and mere receipt of a benefit: Rawls, J., *Theory of Justice*, pp. 111-12. See also Dagger, R., *Civic Virtues*, pp. 72-73.

⁹ Klosko refers to this as the "limiting argument" in the literature. However, while the term is used within the political obligation literature, it is not as common outside it. As such, for ease of understanding I will refer to the objection as the "radio station argument" (or something similar to it): Klosko, G., "Presumptive Benefit, Fairness and Political Obligation", *Philosophy and Public Affairs*, Vol 16, No 3, 1987, p. 244.

Presumptive benefits as reasonably necessary for an acceptable life

One common approach in responding to Nozick's radio station argument is to say that public goods (such as the rule of law or clean water) are things that people would agree to, if presented with the option to do so.

Klosko notes that the examples Nozick uses are extremely trivial. Thrusting books into people's hands, playing music in their vicinity and forcing them to imagine dirt as they sweep the street are not things that we see as being as vital to a community's functioning as, say, national security or the rule of law.¹⁰ If, however, we were to envision the distribution of essential goods, such as clean air and water, national defence and political order, our intuitions about Nozickean obligations change.

Klosko calls these "presumptively beneficial" goods in that they are benefits that "every man is presumed to want".¹¹

Consider the following example. Suppose that a community is stranded on a desert island and needs to dig a well to avoid dying of thirst. It is hot, and the water table is extremely low. In order to avoid death, the members of the group have agreed to dig the well in shifts around the clock.¹² Failure of any one member to do so would mean that the shift could not meet its required efforts, the entire enterprise would fail and everyone would die. In this case, it is clear that each member has an obligation to help dig the well. Prevention of death is something that we assume that a reasonable person would want, and we would want to ensure, if necessary by coercion, that other

¹⁰ Ibid. p. 246.

¹¹ Ibid. Also, see Rawls' conception of primary goods for a similar definition: *Theory of Justice*, p. 62.

¹² For the purposes of fairness, let us also assume for these purposes that all the members are equally able-bodied, and there are an equally divisible number of them for the shifts.

members also did their part to help us obtain that good. As such, the well and the provision of water would be a presumptively beneficial good.

Now, consider a similar scenario, where the effort of everyone is not essential. There are already several wells, and the group has decided to build a fountain to brighten up the townscape. Suppose that, instead of helping to build the fountain, you spend your time getting a tan on the beach. When the fountain is completed, do you have an obligation to, say, help maintain it? Perhaps not. Since you already contribute to the overprovision of essential goods as necessary for an acceptable life, and the members of the group are all receiving them, then it is hard to justify your obligation for an additional good. Of course, should all the other wells dry up and this fountain were the only source of water to prevent you from dying of thirst, you would then be obliged to help maintain it. This is because the fountain is now necessary for an acceptable life for the members of the community, and as such becomes a presumptively beneficial good.

Nozick's examples of book-thrusting and radio stations are versions of this second case. They are instances of goods that we are not reasonably expected to want or need. Unless we can somehow show that giving people books and playing music are presumptively beneficial, it is difficult to see why we would be obliged to reciprocate. However, when the goods provided are presumptively beneficial (and therefore necessary for an acceptable life), our intuitions that we should be obliged to reciprocate become a lot more apparent.¹³

¹³ I have outlined this account as one where presumptively beneficial goods are ones that reasonable people would deem as necessary for an acceptable life. Of course, an objection here might be that there are questions of preferences. While I do not want to address the problem of expensive taste here, it might be that there are at least some sort of benefits that should be adjudged not in terms of

While I think that this reply to Nozick sufficiently distinguishes his use of trivial and non-obligation-generating goods from essential and obligation-generating goods, the question remains as to why fair play theorists think presumptive goods fall within the scope of Nozick's argument that consent gives rise to the obligation to reciprocate.

While it may be true that only cooperative schemes to which the parties have consented can give rise to fair play obligations, it could still be argued, following Dworkin, that hypothetical consent to cooperate does not amount to consent at all.¹⁴

In these cases, it is still questionable what the force of the claim for presumptive goods is for being able to generate obligations. Just because something which we want or need is necessary does not, in itself, explain why I have an obligation to help provide it.

Beneficence, samaritanism and reciprocity

Of course, the obligation to provide goods might exist, but just not as a duty of reciprocity as Hart envisioned. Kant specifies two types of duties: the first are perfect duties as they attach as proscriptive of specific kinds of actions, and violating them is morally blameworthy. Politically speaking, they attach in virtue of membership in a constituted political order. The second are imperfect duties; these attach to us in virtue of being human. These duties are prescriptive and open-ended, but cannot be enforced

idiosyncratic personal subjective preferences, but rather in terms of something else: maybe 'objective lists of what is considered good'. James Griffin's book *Well Being* gives a good discussion on objective list theory and may be applicable here; or if this is too strict a requirement, perhaps a 'common consensus across the community' of what goods are beneficial would be sufficient. So while this is not exactly an objective list, it is an 'intersubjective' one that transcends personal peculiarities and might override individual dissenters: Griffin, J., *Well-being: its meaning, measurement, and moral importance*, Clarendon Press, Oxford 1986.

¹⁴ Dworkin uses this query to critique the idea of hypothetical consent theory. Although this is a distinct account of political obligation from the theory of fair play, the fact that presumptive benefit relies on a similar form of counterfactual makes his account salient here: Dworkin, R., *Taking Rights Seriously*, Cambridge University Press 1977, p. 151.

against us should we fail to do them.¹⁵ One such imperfect duty is the prescription of beneficence. That is, we have a duty to help provide others with what they need, if we are in a position to provide it.

If we have something that others need, and we have a duty (even an imperfect duty of beneficence) to help provide them with what they need, then we should contribute to providing the good. Of course, this doesn't appear to be an account of reciprocity per se, but we can easily conceive of it as one. Obviously, on its own, a duty of beneficence is extremely demanding on an individual—as is morality generally.¹⁶ I cannot reasonably be expected to help everyone that requires it of me, given realistic limitations on my time, effort and resources. However, we don't have to do so, as individuals. This is for two reasons: firstly, the majority of us do not live in isolation, and as such can call upon the help of others if necessary. Secondly, others also have the duty of beneficence, and can use it either to help us help those in need, or help those who need it directly. Principles of samaritanism suppose that we have a duty in virtue of respecting people as moral agents to help them in need, but if that duty applies in virtue of being moral agents, then it is reciprocal in that they also have to help us in our times of need. As such, if others' contributing to doing what is right makes it easier for me to do what is right, then maybe I owe them a duty of reciprocity (or gratitude) for that, over and above whatever I normally owe to the people toward whom the original duty was owed.

¹⁵ Kant, *Groundwork*, 422-3, 429-30.

¹⁶ See, for example, Williams' discussion of the demandingness of morality: Williams, B., *Ethics and the Limits of Philosophy*, London, 1993.

Helping people under duties of beneficence or Samaritan principles may involve providing some of the presumptively beneficial goods that I have outlined above. Wellman claims that one such need that we have is to be saved from the “perils of the state of nature”, which presumably involves threats to personal safety, a lack of property ownership and security and so on.¹⁷

There is, however, a way that we can reciprocally save each other from such perils. The state has a special function to coordinate our actions and prevent us from regressing into a state of nature (avoidance of which is a benefit we can reasonably expect is necessary for an acceptable life), and this can only be done if we all do our fair share to obey the law. As such, if states can carry out this function of rescuing us from the state of nature only when its members comply with its laws, it looks as if our duty to the state is based on a Samaritan duty to prevent the perils of our fellow citizens falling into the state of nature. Political obligations, then, are simply our fair share of an overall Samaritan duty.

Consequently, it might be the case that I have an obligation to provide goods independently of reciprocity (because it's a duty of beneficence or samaritanism). If this is so, we need not bother enquiring whether there is also a duty of reciprocity; however, as Nozick's argument pertains to the issue of reciprocity and obligation, the question at the heart of the discussion that follows will be whether there is a duty of reciprocity, as such.

Presumptive benefit and the risk of strategic misrepresentation

¹⁷Wellman, C.H. and Simmons, A.J., *Is there a duty to obey the law?* Cambridge University Press 2005, chs. 2-3.

From the previous section, it seems that there are certain goods necessary for living an acceptable life which we all presumably have to seek. In Nozick's radio station case, the person who refuses to reciprocate does so by invoking his own particular preferences and saying that "I didn't benefit" by reference to them. Naturally, if this is the first time we are aware of this, we may suspect him of free riding. In cases where the goods are necessary, our suspicions may be heightened. It may be that when something is a basic need or obviously beneficial (such as food, shelter or safety), we find it hard to believe when someone claims that he does not want it or refuses to reciprocate.

However, this tension can be easily resolved by testing for issues of "strategic misrepresentation". We can do this by building into the scheme protections against such things. For example, it may be as straightforward as having an opportunity to refuse the benefit, or, if the scheme is underway, to provide evidence of efforts to refuse to participate in the scheme at all. In the radio station case, we could seek evidence that our non-reciprocator actually took steps to refuse the benefits. Did he wear earplugs when the others were broadcasting, so as to avoid hearing (and potentially enjoying) the radio show? When the group found the materials for the broadcasting service, did he raise his concerns about the scheme, relative to his own preferences? Did he register his objection well in advance of the day he was supposed to be on radio station duty?

The fear of a strategic misrepresentation in the radio station case is not unreasonable. Given that (according to Nozick's example) no other members of the group have objected, we may wonder why our one non-reciprocator refuses to contribute, and so

late in the game. In the case of presumptively beneficial goods, larger and clearer steps have to be taken to show that the non-reciprocator did not want the goods. This is because, unlike non-essential goods such as books and radio entertainment, the very definition of a presumptively beneficial good is that we are reasonably expected to want or desire the good. Consequently, the onus is on the individual who does not want it to indicate that this is the case. Otherwise, to refuse a good that would be necessary for a reasonably acceptable life appears to be justifiably questionable.

An additional difficulty arises in the application of preventative measures to prevent misrepresentation. It is certainly true that a non-reciprocator cannot wait until it is his turn at the radio station and then announce his dissent. But that implies—wrongly—that a non-reciprocator should be let off the hook only if he had the foresight to announce it well in advance. Of course, that would be an undesirable outcome for my argument. Even if he thought of this strategic misrepresentation well ahead of time, we still want to say that the non-reciprocator is bound by duties of reciprocity if the goods are essential enough. Depending on how strong our grounds are for presuming what we did for the person to have been good for him, we might set very high the standard for what counts as persuasive evidence from him that it was not.¹⁸

So how can we distinguish a genuine case of dissent from a misrepresentation?

Perhaps what needs to be done is to examine the requisite elements necessary in considering whether a representation is genuine or not. It might be the case that we

¹⁸ The standard, presumably, would be contingent on the type of good, its availability and so on. For example, assuming that clean, drinkable water is a presumptively beneficial good, we can imagine that, if there were only one source for this good then the standard would be extremely high to rebut the presumption of benefit. However, if there were multiple sources of a good, or an alternative was available, this would lower the standard necessary to rebut the presumption. For example, national defence might be something we presume is beneficial, but those who are able to defend themselves to the same degree might be able to rebut the presumption of benefit.

can presume that the goods are beneficial (and that the members of the scheme are therefore obliged to reciprocate) unless the following contain:

- The non-reciprocator does not believe the good is a benefit: the non-reciprocator must subjectively not value the good (or see it as a benefit);
- The non-reciprocator has sought to refuse the good being conferred upon him: this can be done either by refusing to accept the good when it is offered to him, or avoiding the distribution of the good;
- The refusal must have been public: If we are concerned about the distribution of public goods the refusal must be at least in a form such that the members of the scheme can be aware of the refusal; and
- The good can be sought elsewhere by the non-reciprocator: if a good is so valuable and necessary for an acceptable life, it might be the case that people simply need it for basic survival. As such, there must be an alternate source of it for the non-reciprocator.¹⁹

Of course, the above is not supposed to be a necessary or sufficient list of how a presumption for a beneficial good becomes displaced. What it is, however, might be a way to generalize examples where people genuinely do want to refuse goods that are presumptively beneficial. Hermits and people living on the frontiers of a society may be able to adequately provide their own goods for a reasonably acceptable life.²⁰ I do not want to disregard these kinds of groups from my account, and I concede that there are some who will fall outside the realm of being obliged through reciprocity.

¹⁹ However, where the non-reciprocator would get such a good from, if not from the group, would presumably be outside the consideration of the group. Perhaps all that is relevant here is that the group is aware that there is another source of the good available.

²⁰ Some anarchists have claimed that people living in small, closeknit, remote communities would be able to function without the need for coercion to reciprocate. While this may be counterfactually true, Wellman points out that this is unrealistic and doesn't help with looking at what our actual world is like today: Wellman, *op cit.*, ch. 1.

However, for most of us, we (individually) are unable to provide what we want and need for ourselves, and as such we live in large, generally anonymous polities. We have formed reciprocal benefits precisely because we need a cooperative scheme to provide us with essential goods.

Consequently, a second way of approaching the problem of strategic misrepresentation is to claim that presumptive goods warrant presumptive obligations of reciprocity generally, but the latter can be overridden by particularized evidence that the person really did not want the good. This is consistent with the intuition that most political theorists have about political obligations being moral obligations that could be overridden by other (perhaps conflicting or stronger) claims.²¹ In other words, in the case of presumptively beneficial goods we can begin from the position that everyone wants them and therefore would be obliged to reciprocate, and then the presumption can be displaced on an individual basis where someone does not wish to be part of the cooperative scheme.

This would result in something similar to a Millian account of provisional paternalism.²² For example, we are being paternalistic if we initially prevent someone about to cross an unsafe bridge by obstructing his path and telling him the bridge is unsafe. However, if he really wants to cross the bridge and insists on doing it anyway, then we would let him cross at his own risk. This way, we have taken steps to do something presumptively beneficial for him, but our actions will still leave our beliefs about autonomy intact should he insist on crossing the bridge.

²¹ Klosko, *op cit.*, pp. 249-250.

²² Goodin, R. E., "Democracy, preferences and paternalism", *Policy Sciences*, Vol 26 No. 3, 1993

Provisional paternalism also has some parallels with the presumptive benefits account. The provisionality, of course, is the same in that I presume that what I have done is of benefit to you, but you are authoritative on that and can always disabuse me of that impression if the case arises. That way, you retain some autonomy in thinking that you can judge what is best for yourself.²³

The paternalism, on the other hand, is slightly different, but not by much. Here, it is a matter of ‘foisting’ something on a person, presuming it to be good for him. Of course, this is done with the expectation that he will reciprocate, and that his reciprocity is also presumptively good for me. But, if I genuinely did not think that the good was beneficial to him, I cannot morally have a (reasonable) expectation that he will reciprocate.²⁴ Perhaps this is why presumptive benefits have to be things that we can reasonably expect are necessary for an acceptable life. We have to start from the assumption that the good we are foisting is actually beneficial—hence the presumptive benefit—and this can only be done if we can reasonably expect it to be so. It may be of no coincidence that we all seem to want or need similar things. Perhaps it is the case that, in the past, alternate goods were used, or different methods for living were tested, and it just turned out that the more successful results converged on roughly the type of lifestyle that we have now.

²³ Again, this is not without (several) exceptions. Goodin argues that some groups, such as children, the mentally incompetent, those affected by drugs and alcohol etc. are not in any position to make decisions about what is best for them. As such, we are justified in acting paternalistically towards them: *ibid.*

²⁴ Exceptions to this might be based on convention, such as when we exchange gifts for birthdays or holidays. Such practices might have developed so that if I give you a gift at Christmas, I can expect that you will reciprocate. However, if you don’t reciprocate, I cannot enforce your gift-giving by appealing to an obligation for you to do so.

However, this is not to say that we can no longer explore alternate ways to live. This might be similar to Anderson's discussion of Millian "experiments in living".²⁵ Although Anderson is focusing more on the development of Mill's conception of the good and the development of his account as distinct from Bentham's in that paper, she notes that "to discover a superior conception of the good, we must be free to explore different ways of life under conditions of toleration."²⁶ A similar story can be told here: in deciding whether a good is really beneficial to us, we should be encouraged to explore a range of options before deciding on what would be the best. In other words, while we may all (generally) expect to need presumptively beneficial goods, we should each independently and thoughtfully consider if this is really the case. If it isn't, and we insist on withdrawing our membership in the scheme, then we should be allowed to do so. Again, we could build mechanisms into the scheme to ensure that the appropriate balance between obligation and autonomy is struck.

So far, what we have seen is that presumptively beneficial goods are things that we can reasonably expect to be necessary for an acceptable life. While this is a response to Nozick's critique of the theory of fair play, the question remained open as to why something that is presumptively beneficial is sufficient to generate an obligation of reciprocity. I have argued that the risk of strategic misrepresentation (and therefore free riding) is possible in the cases of refusal to reciprocate, and this is much more apparent in the examples involving presumptively beneficial goods. If these goods are, by definition, presumptively beneficial, then the onus is on the individual who does not want to receive the benefit to make that refusal apparent. This would be

²⁵ Anderson, E. S., "John Stuart Mill and experiments in living", *Ethics* 102, 1991, pp. 4-26.

²⁶ *Ibid*, p. 25.

something similar to an account of presumptive paternalism, which would still accord with our idea that individual autonomy should be respected.

Conclusion

The objection proposed by Nozick's radio station has been challenging for fair play theorists to address because of its intuitive force. We generally do not want to say that conferral of any benefit would generate an obligation to reciprocate. For example, there may be other ways to explain our obligation, such as beneficence or samaritanism, but they can also be restructured into arguments for reciprocity.

However, we can take away much of the force of Nozick's claims that reciprocity cannot generate political obligations by re-examining his argument using goods that are presumptively beneficial—that is, goods that one could reasonably expect to be necessary for an acceptable life. If this is the case, then we can say that, were we faced with the option of accepting the cooperative scheme, the vast majority of us would do so. Of course, there may be cases where someone would not accept the scheme, and may claim that they have not benefited and as such are under no obligation to reciprocate. We may be suspicious of such cases as strategic misinterpretation, but we could build in conditions and mechanisms into the scheme to displace the presumption of benefit and dispel our suspicions of free riding. By acting in a way which allows for individualized preferences and desires to be acknowledged, we have an account of presumptive benefit while maintaining a respect for individual autonomy. As such, not only do we find that certain goods, including the rule of law, are necessary for an acceptable life, but it turns out that

Nozick's argument can be easily sidestepped if we simply reconceptualize what kinds of goods can generate obligations to prevent free riding on duties of reciprocity.