

# ACCEPTANCE, FAIRNESS, AND POLITICAL OBLIGATION

Edward Song\*  
*Louisiana State University*

Among the most popular strategies for justifying political obligations are those that appeal to the principle of fairness. These theories face the challenge, canonically articulated by Robert Nozick, of explaining how it is that persons are obligated to schemes when they receive goods that they do not ask for but cannot reject. John Simmons offers one defense of the principle of fairness, arguing that people could be bound by obligations of fairness if they voluntarily accept goods produced by a cooperative scheme. Simmons, however, thinks that such a theory will do little work in justifying political obligations, since virtually no one voluntarily accepts state goods. This paper attempts to advance just such a theory by arguing that states are in fact genuine cooperative schemes and that Simmons is overly pessimistic in his appraisal of whether the majority of citizens accept the goods provided by their states.

---

The problem of political obligation—whether or not citizens are obligated to support and obey the laws of their state—is among the most venerable of philosophical puzzles and remains a central problem within contemporary legal and political philosophy. At issue here is not whether citizens sometimes have good reasons or are morally obligated to obey the law, for the law often places legal requirements on people to do what is already morally required. The question is whether they have a duty to obey the law just because it is a law, at least up to a point.<sup>1</sup> Despite a general intuition that citizens are in fact so obligated, it has remained difficult to explain why this

---

\*I am very grateful for the comments and assistance of Ian Cruise, Kory DeClark, Annette Denton, David Lefkowitz, Justin Tosi, and an anonymous reviewer for *LEGAL THEORY*.

1. More specifically, as William Edmundson suggests, following Michael Kramer, the debate over political obligation concerns whether or not there are “prima facie, comprehensively applicable, universally borne, and content-independent,” general obligations to obey a society’s legal norms. Such obligations are prima facie in the sense that the duty is not absolute but defeasible by other moral considerations, comprehensively applicable, in the sense that it applies to all of a society’s laws, universally borne, in the sense that it applies to all of the members of a polity, and content-independent, in the sense that the obligation is tied not to the particular content of the law but rather to the mere fact that it is a law. See Michael Kramer, *Moral and Legal Obligation*, in *BLACKWELL GUIDE TO PHILOSOPHY OF LAW AND LEGAL THEORY* 179 (Martin Golding and William Edmundson eds., 2005); and William Edmundson, *State of the Art: The Duty to Obey the Law*, 10 *LEGAL THEORY* 215–259 (2004) at 215–216.

is so, and it appears as if skepticism about political obligation is currently the majority view in the field.<sup>2</sup>

Among the most dominant strategies to justify widespread political obligations are those that appeal to the *principle of fairness*. First mentioned by H.L.A. Hart<sup>3</sup> and John Rawls,<sup>4</sup> the principle revolves around the idea that when persons benefit from a cooperative scheme, considerations of fairness demand that they participate in the production of those benefits by taking on the burdens of membership in that scheme. Theorists who make use of the principle of fairness to generate an account of political obligation claim that states (or at least some kinds of states) are cooperative schemes that produce shared goods, and it would be unfair for citizens to enjoy those benefits without supporting their states and obeying their laws.<sup>5</sup>

The challenge for these theories is to explain how it is that persons are obligated to schemes when they receive goods that they do not ask for, do not think are worth the cost, or perhaps do not even want. This is especially true when the goods in question are public or nonexcludable—that is, when there are no practical ways of limiting access to the good in question to committed participants. This challenge is canonically articulated by Robert Nozick, who imagines a neighborhood public entertainment system whereby residents are assigned one day a year to provide some kind of entertainment that will be broadcast throughout the neighborhood. Is a person who has not previously agreed to participate in the scheme, but who nevertheless enjoys the entertainment that it provides, obliged to fill her slot? Nozick claims that she obviously is not and that such examples show that there is no principle of fairness, that persons cannot be bound by special obligations against their will, and that any putative examples involving fairness in fact collapse into consent.<sup>6</sup> Subsequent defenders of the principle of fairness have offered a variety of strategies for responding to Nozick's objection, but these debates remain contentious.

One of the more interesting and surprisingly ignored<sup>7</sup> of these alternatives can be found in John Simmons's voluntarist version of the principle of fairness, which stresses the importance of *voluntary acceptance* of cooperative goods. That such a defense of the principle of fairness can be found in Simmons's work might be thought surprising, since his book *Moral Principles and Political Obligations* is the locus classicus for contemporary

2. CHRISTOPHER MORRIS, *AN ESSAY ON THE MODERN STATE* (1998), at 214. See also Edmundson, *supra* note 1, at 218.

3. H.L.A. Hart, *Are There Any Natural Rights?* 64 *PHIL. REV.* 185 (1955).

4. John Rawls, *Legal Obligation and Fair Play*, in *LAW AND PHILOSOPHY* (S. Hook ed., 1964); and JOHN RAWLS, *A THEORY OF JUSTICE* (1971), at 111–112.

5. Among contemporary attempts to justify the principle of fairness, see Richard Arneson, *The Principle of Fairness and Free Rider Problems*, 92 *ETHICS* 632 (1982); Garrett Cullity, *Moral Free Riding*, 24 *PHIL. & PUB. AFF.* 9 (1995); George Klosko, *Presumptive Benefit, Fairness and Political Obligation*, 16 *PHIL. & PUB. AFF.* 241–259 (1987).

6. ROBERT NOZICK, *ANARCHY, STATE AND UTOPIA* (1974), at 90–95.

7. An exception is Gregory Kavka, who offers some brief remarks on such an approach in GREGORY KAVKA, *HOBBESIAN MORAL AND POLITICAL THEORY* (1986), at 410–412.

political-obligation skepticism. He nevertheless argues that a person can be bound by the principle of fairness if she has voluntarily accepted cooperative benefits, where “acceptance” is understood to amount to taking the benefits “willingly and knowingly.”<sup>8</sup> Thus one can voluntarily accept or reject goods provided by cooperative schemes even if they are public and nonexcludable. For such goods, persons will receive them regardless of their attitude toward them, but they will not become obligated to such cooperative schemes unless they willingly and knowingly accept them. For Simmons, however, such a principle will cut little ice with regard to political obligations, since he thinks that virtually no one accepts the goods provided by states in this way. As he says, “at the very best the principle of fair play can hope to account for the political obligations of only a very few citizens in a very few actual states; it is more likely however, that it accounts for no such obligations at all.”<sup>9</sup> Thus, while there is a defensible principle of fairness, it cannot provide a general account of political obligations because the conditions necessary to generate such obligations do not exist in actual political societies.

This paper attempts to develop just such a theory. It articulates and defends a principle of fairness rooted in voluntary acceptance but argues that Simmons is overly pessimistic about whether the citizens of most states (or at least most reasonably just states) accept the goods that their states provide. The problem of political obligation is one of the most central in all of legal and political philosophy and is connected to a variety of pressing issues regarding legitimacy, state authority, sovereignty, and other issues of global justice and international law.<sup>10</sup> A successful account is a notable achievement in its own right, as skepticism about political obligation abounds. But what is particularly distinctive about this approach is not only that it purports to offer a successful account of political obligation but also that it does so in terms that ought to make voluntarists happy.

Section I defends and develops Simmons’s voluntarist version of the principle of fairness. Section II looks at one objection to this strategy that attempts to show that political societies could not generate obligations of fairness because they are not genuine cooperative schemes. Section III presents a body of empirical data to show that the conditions that are necessary to activate considerations of fairness are relatively widespread and that therefore the principle of fairness can account for political obligations. Section IV responds to objections concerning the philosophical significance of these empirical data.

8. JOHN SIMMONS, *MORAL PRINCIPLES AND POLITICAL OBLIGATIONS* (1979), at 129.

9. *Id.* at 141.

10. For an example of how such a voluntarist approach might be applied to issues of state sovereignty and the conditions of justifiable intervention, see Edward Song, *Subjectivist Cosmopolitanism and the Morality of Intervention*, 41 *J. SOC. PHIL.* 135–151 (2010).

## I. ACCEPTANCE AND THE PRINCIPLE OF FAIRNESS

Most versions of the principle of fairness reject the idea that fairness requires voluntary acceptance of a good and instead focus on the idea of mere receipt of cooperative goods under the appropriate conditions—what Garrett Cullity calls “extended” versions of the principle of fairness.<sup>11</sup> George Klosko, for example, argues that citizens are obliged to their states because the goods they provide are so “presumptively beneficial” that no rational person would choose to go without them, even if they are not in fact voluntarily accepted.<sup>12</sup> The justification for any particular extended account will always depend upon its persuasiveness, but one general problem for such accounts is the difficulty that they face in explaining why there appears to be an important difference between cases involving excludable and nonexcludable goods.

With excludable goods—where receipt of benefits can easily be limited to committed participants—there is almost never any question as to whether a person who makes use of them is obligated to the scheme. In contrast, with nonexcludable goods, there is often a great deal of controversy. For proponents of an extended principle of fairness, the normative logic of fairness is driven solely by *receipt* of cooperative goods, and so there should be no interesting theoretical difference between excludable and nonexcludable goods. But clearly there is an important difference. If a person goes out of her way to make use of some excludable cooperative good, she is clearly obligated to the scheme. If the good in question is nonexcludable, it becomes far more controversial as to whether she is bound by obligations of fairness.

Defenders of an acceptance-based account have an easy explanation about why this is so. When an excludable good is involved, there can be no question that a person has voluntarily accepted it, since she would not have it if she had not voluntarily gone out of her way to get it. In contrast, cases with nonexcludable goods are often controversial precisely because voluntary acceptance is not immediately obvious or can be difficult to ascertain, as she will have the good regardless of whether she wanted it or not. Thus acceptance-based versions of the principle of fairness have an advantage, since they have a natural explanation that tracks this distinction. The difference between the two kinds of goods just shows the importance of acceptance to our intuitions about fairness. Extended versions might well be able to provide some account for this distinction, but this at least provides a *prima facie* reason to think that acceptance matters to our intuitive judgments about fairness.

In developing his own version of the principle of fairness, Simmons argues that persons voluntarily accept goods if they “have taken the benefit willingly

11. Cullity, *supra* note 5, at 9.

12. Klosko, *supra* note 5.

and knowingly.”<sup>13</sup> To take a benefit “willingly,” he suggests, “we cannot, for instance, regard the benefits as having been forced upon us against our will, or think that the benefits are not worth the price we must pay for them.”<sup>14</sup> To take them “‘knowingly’ seems to involve an understanding of the status of those benefits relative to the party providing them. Thus, in the case of open benefits provided by a cooperative scheme, we must understand that the benefits *are* provided by the cooperative scheme in order to accept them.”<sup>15</sup>

Several theorists, however, raise worries about these conditions. Richard Arneson, for example, argues that the account is too forgiving of culpable ignorance in its account of both willing and knowing acceptance. If a person’s acceptance of some cooperative good was unknowing only because she assiduously avoided such knowledge for fear that she might become obliged, then it seems as if the person’s ignorance is culpable, and she would be obligated to participate in the scheme if she willingly accepted the good. Similarly, Arneson argues that culpable ignorance regarding whether a good is really worth the cost can vitiate unwilling acceptance of a good. For example, he considers a case of someone “who is racially prejudiced and believes, for no good reason, that it is unfair that the ratio of benefits to costs flowing from the cooperation should be the same for whites and blacks.”<sup>16</sup>

The first kind of culpable ignorance only qualifies the conditions noted above. Willful ignorance where one purposefully avoids or fails to avail oneself of easily accessible information that would oblige one to a cooperative scheme clearly involves a culpable kind of ignorance and such a person would be obliged to the scheme even if he were technically unknowing. This qualification, however, is easily accommodated and does not seem to threaten the coherence of an acceptance condition for a principle of fairness.

The second kind of ignorance relating to irrational beliefs presents a more substantive challenge. Here, a person does not think the benefits are worth the price of cooperation because she has racist beliefs that lead her to think that the burdens of cooperation should not be distributed equally. Arneson argues that a person in the grip of this kind of irrationality should be bound by obligations of fair play even if she fails to accept the goods voluntarily. This would be an important concession for an acceptance-based account, since

13. John Simmons, *The Principle of Fair Play*, 8 PHIL. & PUB. AFF. 327 (1979). Simmons also thinks they can be bound by the principle if they have “tried to get (and succeeded in getting) the benefit” (id. at 327), but this condition seems superfluous. For if they have tried to get the benefit, then they have done so willingly and knowingly. It is this latter condition that really seems to matter.

14. *Id.* at 330.

15. *Id.* To be clear, the object of knowing acceptance is the cooperative good itself; to be obligated by considerations of fairness, we must know that we have received benefits produced by a cooperative scheme. The claim is obviously not that we are obligated only when we subjective believe that we are obligated.

16. Arneson, *supra* note 5, at 632.

one might argue, as George Klosko does, that rejection of the cooperative goods produced by a state counts as irrational and that subsequently such persons would be obliged to participate even if they in fact reject the goods.<sup>17</sup> Irrationality would make quick work of the acceptance condition. Gregory Kavka calls this kind of irrationality “objective” and contrasts it with what he calls “subjective” irrationality.<sup>18</sup> As he says:

Why apply a subjective standard, as Simmons does, and say one must perceive the practice as cooperative and “worth it” to be bound by duties of fair play? It seems more reasonable to apply an *objective* standard and say that a participant is bound if the benefits actually exceed the burdens (for him), whether or not he agrees with this accounting or realizes from whence the benefits flow.<sup>19</sup>

There is admittedly something unattractive about arguing that irrational racist beliefs might free a person from obligations of fairness. In defense of this conclusion, it is worth pointing out that the racist’s beliefs are no less odious or irrational, even if her actions are not unfair. If fairness requires acceptance, and such a person, given her beliefs, cannot accept the good in question, then there can be no unfairness. While her irrationality is objective, her beliefs are such that they lead to a conclusion that she cannot accept. In this regard, it can at least be said that the racist’s rejection of the good in question is genuine: she is not trying to make an exception of herself and evade the burdens of fairness. She genuinely does not want them, given the conditions.

Something similar could be said of instances of consent, which is relevant for the kind of theory that is defended here, since both are voluntaristic. A person might be objectively irrational in refusing to agree to some contract, but her irrationality does not give anyone license to force her into the contract or make it binding on her against her will. If she rejects it, however poor her reasons, there is nothing more to be said about the bindingness of the contract. She can be criticized, but no contract is genuinely binding without her voluntary consent, no matter how bad her reasons.

The comparison to consent is illuminating since it helps to explain why both the willing and the knowing conditions matter for acceptance. Consent is morally binding only when it is given freely under conditions of full information. If a person is coerced into agreeing to a deal, then no genuine agreement has been made. If she is tricked into making a deal, not being apprised of its genuine features, then she is not obliged. It is no surprise then, that voluntary acceptance would have similar willing and knowing conditions. Acceptance, of course, is different from consent. It does not involve an explicit contract scenario or agreement. But being *voluntary*,

17. Klosko, *supra* note 5.

18. Gregory Kavka, Book Review (reviewing A. JOHN SIMMONS, *MORAL PRINCIPLES AND POLITICAL OBLIGATIONS*), 2 *TOPOI* 228 (1983).

19. *Id.*

acceptance requires similar conditions of being both free and informed. The normative significance of any kind of voluntary commitment is rooted in subjective factors. Objective irrationality, while troubling for other reasons, does not override the absence of voluntary acceptance with regard to the demands of fairness so long as the rejection of the benefits is genuine. Such an account of acceptance might seem narrow, but it is no more narrow than consent. Both are essentially subjective. Genuine voluntary acceptance depends upon subjective factors.

Thus a person voluntarily accepts some cooperative good and so is bound by obligations of fairness to participate in that cooperative scheme just when she does so knowingly (or is culpably ignorant) and willingly. A person knowingly accepts some cooperative good when she knows that she is receiving it, knows that the good is generated by a system of cooperation, and knows that the system entails certain requirements. Simmons argues that acceptance is willing when persons do not regard the benefit as being forced on them or not worth the cost. This explanation of willing acceptance is probably only offered to illuminate the kind of considerations that would make a person's acceptance willing. Strictly speaking, it seems as if acceptance could still be willing even if a person regarded the benefit as being a bad deal. But such a case is admittedly unusual. Willing acceptance is a brute psychological state, and it is difficult to specify what such willingness entails beyond the simple psychological state of being willing to accept something. It seems possible that one could withhold voluntary assent in such a way as to be in bad faith. That is, a person could deceive herself into thinking that she does not want some good, when in fact she does. Such cases are mysterious, but it is important not to confuse epistemological worries about how we can know whether someone has actually willed to accept some good with more substantive worries about the coherence of the account. It is sometimes difficult to tell when rejection is genuine and when it is in bad faith, but this fact by itself is no argument against the importance of voluntary acceptance to the principle of fairness.

## II. ARE STATES COOPERATIVE SCHEMES?

While Simmons defends a voluntarist version of the principle of fairness, he does not think that such a principle can be deployed as a successful account of political obligation. The problems are twofold. First, he argues that virtually no citizen voluntarily accepts the goods provided by her state in the way that would make it morally significant. Second, he argues that states are not genuine cooperative schemes since they lack the kind of "consciousness of cooperation" that he thinks characterizes real cooperation. Simmons argues that "where there is no consciousness of cooperation, no common plan or purpose, no cooperative scheme exists."<sup>20</sup> Thus the question of whether

20. Simmons, *Principle*, *supra* note 13, at 336.

the willing and knowing conditions are satisfied is a moot point, since states lack the kind of cooperative nature that brings considerations of fairness into play.

Taking the second and more fundamental of these worries first, are states genuine cooperative schemes? While states produce benefits and require the fulfillment of certain responsibilities, it seems relatively clear that they lack the kind of common purpose and spirit of cooperation that seem to characterize paradigmatic instances of cooperation. States seem more often characterized by self-interest and competition for scarce resources. Indeed, one might want to say that if societies were genuinely cooperative, people would not need states.

But why think that genuine cooperative schemes must be cooperative in this thick sense? Why is a scheme genuinely cooperative only when there is a shared sense of common purpose, common goals, and an overall spirit of cooperation and shared sacrifice that suffuses the effort? This is a worry that a number of theorists have raised against Simmons. Both Richard Arneson and Richard Dagger argue that Simmons's thick sense of cooperation is not necessary to activate normative considerations of fairness.<sup>21</sup> Arneson, for example, argues that:

citizens in modern states seem to me to manage to sustain perhaps more of a sense of common collective purpose than is warranted. In any event, the core idea of the principle of fairness is even more prosaic than is conjured up by the idea of common sacrifices to improve the common lot. . . . We owe a fair return for services rendered to those who supply the services.<sup>22</sup>

Simmons has more recently defended the necessity of these thick conditions. He argues that:

*Genuine* cooperation between persons requires far more than a (broadly) successful coordination of their actions, with no considerations given to the *motives* of the “participants.” There is a vast moral difference between a genuinely collaborative effort for mutual benefit—a case of “working together”—and a competitive practice governed by conflict-limiting rules, observed by most (for their own reasons), even where such limitations are preferable to its absence.<sup>23</sup>

The suggestion here is not only that genuine cooperation involves more than the fact that people's coordinated actions have produced benefits but also that our intuitions about fairness and cooperation involve more than “fair return for services rendered,” to use Arneson's phrase. Specifically, Simmons has in mind three examples of coordination that clearly do not

21. Arneson, *supra* note 5, at 632–633; RICHARD DAGGER, *CIVIC VIRTUES: RIGHTS, CITIZENSHIP, AND REPUBLICAN LIBERALISM* (1997), at 47–74.

22. Arneson, *supra* note 5, at 633.

23. John Simmons, *Fair Play and Political Obligation: Twenty Years Later*, in *JUSTIFICATION AND LEGITIMACY* 39 (2001).



amount to cooperation: (1) “individuals could completely *unwittingly* act in a coordinated manner that quite accidentally produced benefits”; (2) persons could intend to benefit themselves at a cost to others, but “act on *misinformation* sufficient to accidentally produce a beneficial coordination”; or (3) “they could deliberately collaborate to charitably benefit others with no expectation whatsoever—indeed with horror at the very idea—that others will feel obligated to make reciprocal sacrifices.”<sup>24</sup>

These examples clearly show that not every instance of collaboration or corporately produced benefit counts as genuinely cooperative in the way necessary to generate obligations of fairness, and they prove particularly potent against Arneson’s account, where voluntary acceptance is unnecessary and all that matters is mere receipt of benefit (under the appropriate conditions). For Arneson there are no subjective conditions, no awareness that the good in question comes from a cooperative scheme, in order for the demands of fairness to come into play.

But Simmons’s own account recognizes the importance of subjective considerations and denies that mere receipt of benefits or the existence of unrecognized or unconscious coordination is sufficient for fairness. Simmons rightly denies that “groups of individuals [who] completely *unwittingly* act in a coordinated manner that quite accidentally produced benefits for themselves or others” or persons who “deliberately collaborate to charitably benefit others . . . with no expectation whatsoever . . . that others will feel obligated to make reciprocal sacrifices”<sup>25</sup> count as genuine instances of cooperation. But does this mean that the demands of fairness are in play only when there is cooperation in the thick sense?

There are good reasons to doubt this. Consider, for example, athletic competitions. Such examples are precisely the kinds of activities that Simmons wants to rule out as being genuinely cooperative (“competitive practice governed by conflict-limiting rules”) and they are obviously very distant from paradigmatic examples of cooperation and shared sacrifice. What matters, however, is not whether athletic competitions are examples of the deepest and most attractive kind of cooperation but whether they are cooperative enough for considerations of fairness to come into play. With athletic competitions, considerations of fairness certainly seem appropriate.<sup>26</sup> A tennis player might be praised for her fairness when she overrules the umpire’s

24. *Id.*

25. *Id.*

26. As Simmons himself suggests in another text:

Consider a simple case like joining a game of baseball. Many writers have held that although in joining the game I do nothing which could be construed as giving my consent . . . nonetheless, by participating in the activity I may be bound to be so governed. . . . The analysis of the ground of this moral bond, however, would appeal to something other than the performance of a deliberate undertaking, focusing instead on, e.g., the receipt of benefits from or the taking advantage of some established scheme.

SIMMONS, MORAL PRINCIPLES, *supra* note 8, at 89.

judgment that her opponent's ball landed outside the lines. Or a soccer player's actions might be called unfair because she cheated and broke the rules. These judgments do not seem to be just a way of talking or a way to make some extended use of the idea of fairness. Such particular judgments, as well as the general notion of fairness, seem to turn on the same idea: it is wrong for a person to give herself preferential treatment because this is to make an exception of oneself, which shows disrespect to others.<sup>27</sup>

Consider what is going on with these accusations. A player's actions are unfair because she broke a shared set of rules, general adherence to which is necessary in order for the game to be played. Such actions are unfair because the player made an exception of herself, and sought to exploit an advantage over the other participants. The unfairness in this example seems identical to the kind of unfairness that one finds in paradigmatic instances of cooperation, even though it is only a "competitive practice governed by conflict-limiting rules," and there are no shared goals and spirit of cooperation between the teams.<sup>28</sup>

Some might think that this example is inapt because it is believed that the obligations associated with athletic competitions arise out of not the principle of fairness but rather the consent of the participants, who voluntarily agree to abide by the rules. This is a mistake, however, that comes from an overly broad understanding of when consent is genuinely binding. Paradigmatic instances of consent involve explicit contract scenarios in which the terms of the deal are made clear to all parties and participants are at liberty to offer or withhold their consent. But there is virtually never any kind of explicit contract or agreement before athletic competitions, either formal or informal. Participants are almost never presented with an explicit set of rules and asked if they consent to them.<sup>29</sup> It might be thought that the contract in such scenarios entails tacit consent, but this also involves a misunderstanding. With tacit consent, it is not the *contract* that is tacit, but rather the *consent*, as when someone publicly announces in the appropriate circumstances that unless participants clearly opt out, they will be considered to have consented to some arrangement.

While the act of consent can be tacit, the contract must be explicit if it is to issue in genuinely binding normative demands.<sup>30</sup> Explicit contracts appear

27. As Garrett Cullity suggests. See Cullity, *supra* note 5, at 24.

28. Other examples abound. Consider, for example, certain kinds of trade organizations that are made up of companies competing in the same marketplace that nevertheless cooperate with each other for mutual benefit. Such organizations might lobby on behalf of the whole industry or create shared standards or technologies, as often happens in the computer industry. Being composed of companies in fierce competition, such organizations would seem to lack the kind of thick spirit of cooperation and shared sacrifice that is characteristic of certain kinds of cooperative ideals. But if a company willingly and knowingly accepts the benefits of cooperation, then it would be unfair for it to fail to participate, even if these thick conditions were absent.

29. An exception might be boxing competitions, where there remains the tradition of bringing both fighters to the center of the ring to make sure that they are clear about the rules.

30. For more on this, see SIMMONS, *MORAL PRINCIPLES*, *supra* note 8, at 75–83.

to be entirely absent in the vast majority of athletic competitions, and so whatever obligations bind competitors in such events are better understood to arise out of considerations of fairness. Further, to reiterate the point above, violations of the rules are greeted with concerns rooted in fairness. When someone cheats, the accusation is that he is acting unfairly, not that he has broken his promise to abide by the rules.

Simmons is surely right to suggest that cooperation involves more than people simply producing benefits—that subjective factors and the motivations of the actors are important components of what make a venture genuinely cooperative—but this by itself does not show that the necessary subjective components are only those involved in instances of cooperation in the thick sense. The willing and knowing conditions are subjective conditions whose presence with regard to cooperative schemes seems sufficient to explain the obligations associated with fairness. Indeed, one can ask why it is even tempting to think that the further thick conditions are necessary. If judgments about fairness arise out of the disrespect shown to others when one makes an exception of oneself, then it is not clear what relevance the thick conditions have. All that would appear to matter is that there is a general cooperative scheme that in fact produces benefits and requires participation, and that the relevant parties know about such a scheme and are willing to accept it. To know about the scheme and to want the benefits without also undertaking the associated responsibilities of membership is to make an exception of oneself. The thick conditions seem irrelevant to all this.

### III. THE WILLING AND KNOWING CONDITIONS

What, however, of Simmons's first worry that the vast majority of citizens either do not knowingly accept state goods or do not do so willingly, and so fail to accept voluntarily any state goods in the kind of way that would bind them by considerations of fairness. With regard to the knowing condition, Simmons argues that "many citizens barely notice (and seem disinclined to think about) the benefits they receive."<sup>31</sup> However, while this is quite possibly true, the knowing condition requires that persons must be nonculpably ignorant about the origin of the societal benefits they receive, and this seems less plausible. While it might be the case that citizens speculate little about the depth of benefits they receive from participating in cooperative systems, they must at least recognize that their basic safety and security do not fall upon them like manna from the heavens. Doubtlessly, most persons have a relatively unsophisticated view of the myriad and complex ways that they have benefited, and they might well "barely notice" and "be disinclined to think about" these benefits. But this does not mean that they

31. Simmons, *Principle*, *supra* note 13, at 335.

lack knowledge or are nonculpably ignorant about the sources of these benefits in ways that conflict with the knowing condition.

Does their acceptance, however, satisfy the willing condition? Here Simmons argues that “many more faced with high taxes, with military service. . . , or with unreasonably restrictive laws governing private pleasures, believe that the benefits received from governments are not worth the price they are forced to pay.”<sup>32</sup> Or many think of state benefits “as purchased (with taxes) from a central authority, rather than as accepted from the cooperative efforts of our fellow citizens.”<sup>33</sup> “Such beliefs may be false,” Simmons writes, “but they seem nevertheless incompatible with the ‘acceptance’ of the open benefits of government.”<sup>34</sup>

This is a harder question, and many philosophers will find to be obviously true Simmons’s appraisal of most citizens’ attitudes toward their state, just as many others will find his appraisal obviously false. It is perhaps dangerous to allow philosophers to speculate too freely from their armchairs over brute empirical facts. There is, however, a substantial body of empirical research that can illuminate these issues.

Most relevant to this particular question of willing acceptance of the goods provided by the state is the body of empirical research on state legitimacy. For political scientists, as for political philosophers, legitimacy is a normative concept focusing on the moral authority of states to rule. It focuses, as the political scientist David Easton writes, on “the conviction on the part of the member that it is right and proper for him to accept and obey the authorities and to abide by the requirements of the regime.”<sup>35</sup> Unlike political philosophers, however, the interest in legitimacy could be described as second-order. The fundamental question is not whether citizens are *in fact* obliged or whether they are justified in believing that they are obliged but whether they *believe* they are obliged and how perceived obligation or state legitimacy connects with legal compliance, political stability, or other political behavior.

With regard to these questions, Easton distinguishes between *specific* and *diffuse* support for a regime. Specific support refers to the positive behavior or attitudes that citizens might express toward the particular policies and actions of a regime. In contrast, diffuse support focuses on the general political system in place.<sup>36</sup> It “encompasses affect for the entire political system, affect which is not contingent upon specific rewards or deprivations.”<sup>37</sup> Thus a citizen might express little specific support for the particular ruling party or officials that are in place within a system of government while

32. *Id.*

33. *Id.*

34. *Id.*

35. DAVID EASTON, *A SYSTEMS ANALYSIS OF POLITICAL LIFE* (1965), at 278.

36. *See id.* at 67–277, 278–288; and David Easton, *A Re-Assessment of the Concept of Political Support*, 5 BRIT. J. POL. SCI. 436–437 (1975).

37. Shanto Iyengar, *Subjective Political Efficacy as a Measure of Diffuse Support*, PUB. OPINION Q. 249 (1980).

nevertheless having substantial diffuse support for the system as a whole. As Easton writes, diffuse support consists in “a reservoir of favorable attitudes or good will that helps members accept or tolerate outputs to which they are opposed or the effect of which they see as damaging to their wants.”<sup>38</sup>

With regard to questions about legitimacy, it is diffuse support directed toward the underlying political system that is particularly relevant.<sup>39</sup> The topic is fraught with questions about how to operationalize and measure diffuse support for a regime or what significance it has in explaining political behavior. Nevertheless, the general evidence of widespread diffuse support in well-ordered nations such as the United States is overwhelming and uncontroversial. Measures of pride or support in the governmental system—what Gabriel Almond and Sidney Verba term “system affect”<sup>40</sup>—are consistently high. For example, looking at data from a National Elections Survey (NES) pilot study, Stephen Craig, Richard Niemi, and Glenn Silver write that:

Although there is disagreement as to whether the negativism that emerged in the United States during the 1960s and 1970s represented a loss of confidence in something other than the incumbent office holders . . . no one believes that it involved a substantial erosion of support for the political system and the constitutional order. . . . Supportive sentiments also were very common among respondents in the pilot study. More than 95% agreed—either strongly or somewhat—that “the American form of government is still the best for us” . . . and almost as many indicated that they “would rather live under our system of government than any other.”<sup>41</sup>

Ninety percent of respondents in the study cited by Craig and his colleagues rejected the statement that “there is not much about our form of government to be proud of.”<sup>42</sup>

Other standard measures of diffuse support for the political system are equally high. In collected data from the General Social Survey from 1972 to 2006, 95.7% of respondents stated that it was “very” or “somewhat important” to vote in elections.<sup>43</sup> Only 4.4% thought that it was “not important.” And 95.1% thought that it was “very” or “somewhat important” to serve on a jury.<sup>44</sup> Only 4.9% thought it was “not important.” On a seven-point scale, where 7 is important and 1 is “not at all important,” 91.4% responded with between 7 and 5 with regard to the importance of paying one’s taxes.<sup>45</sup>

38. EASTON, SYSTEMS ANALYSIS, *supra* note 35, at 273.

39. Easton, *Re-Assessment*, *supra* note 36, at 450–451.

40. GABRIEL ALMOND AND SIDNEY VERBA, *THE CIVIC CULTURE* (1963).

41. Stephen C. Craig, Richard G. Niemi, and Glenn E. Silver, *Political Efficacy and Trust: A Report on the NES Pilot Study Items*, 12 POL. BEHAV. 296 (1990).

42. *Id.*

43. More specifically, 79.7% of respondents stated that it was “very important” to vote in elections, and 16% stated that it was “somewhat important.”

44. More specifically, 65.5% thought that it was “very important” to serve on a jury, and 29.6% thought that it was “somewhat important.”

45. More specifically, 73.3% responded with 7, 10.5% responded with 6, and 7.6% responded with 5.

Only 4.3% rated it between 1 and 3. Finally, 71.3% thought that democracy worked well in America, and 79.9% said that they were either “very” or “fairly” satisfied with the way democracy works in America.<sup>46</sup>

Taken together, these indices suggest extremely widespread diffuse support for the underlying political regime of a well-ordered, reasonably just state such as the United States. The significance of these data does not lie in any one finding but in the totality of all these indicators of diffuse support. There is consistent evidence that measures of system affect in the United States remained high even through the social turmoil of the sixties and seventies. It is plausible to think that the evidence generalizes to other similar states. Of course, these sentiments are not quite unanimous. It appears that 5% of the population lack these attitudes, but the overall level of support would seem to satisfy the universality requirement for a theory of political obligation, even if it is not exactly universal.<sup>47</sup> On this account, these people would *not* be bound by political obligations, though they would be obligated on the basis of wider moral duties to obey a great number of laws—such as those prohibiting murder or theft—and might have other reasons to think that states do much good, even if, strictly speaking, these citizens are not obligated to them.<sup>48</sup> In any case, they show that an acceptance-based version of the principle of fairness might justify political obligations for more than “a very few citizens in a very few actual states.”<sup>49</sup>

#### IV. THE RELEVANCE OF THE EMPIRICAL DATA

The empirical evidence is overwhelming, but one might worry about its philosophical significance or what conclusions can be rightly drawn from it.<sup>50</sup> More specifically, two objections might be raised. The first questions the data themselves and how seriously we should take empirical studies based

46. More specifically, 17.3% were “very satisfied,” and 62.6% were “fairly satisfied.”

47. See SIMMONS, *MORAL PRINCIPLES*, *supra* note 8, at 56.

48. *Id.* at 196–201.

49. *Id.* at 129.

50. The best-known use of empirical data for these purposes is offered by George Klosko, who argues that moral theorizing ought to proceed via a process of reflective equilibrium in which “moral beliefs must be justified on the facts of our moral experience”; see GEORGE KLOSKO, *THE PRINCIPLE OF FAIRNESS AND POLITICAL OBLIGATION* 16 (1992). In other words, moral theorizing ought to begin with our considered moral intuitions and offer systematic justifications for them. On this basis, Klosko argues that skeptical accounts of political obligation ought to be abandoned simply because they conflict with widely shared and deeply held intuitions supporting widespread political obligations that are repeatedly born out in empirical studies. This approach is criticized by Leslie Green, who argues that it confuses different approaches to theory-building; see Leslie Green, *Who Believes in Political Obligation?*, in *FOR AND AGAINST THE STATE* 1–18 (John T. Sanders & Jan Narveson eds., 1996). I am sympathetic with Green’s critique of Klosko on this particular point. It is important to note, however, the way in which this paper’s use of empirical data is different from Klosko’s. For Klosko, empirical evidence of widespread belief in political obligations is taken to be an important fact that any plausible theory needs to be able to explain. In contrast, the theory defended here advances an acceptance version of the theory of fairness. For this approach, empirical evidence of support or perceived obligation is not a fact that needs to be explained but rather is evidence that citizens willingly accept the

on self-reported questionnaires and polling data, since it seems like there is a gap between what people report and how they actually behave. In other words, this objection suggests that the specific findings of the polling data provide no accurate measure of diffuse support. The second accepts the data as evidence of widespread diffuse support but questions their relevance to the willing condition that is necessary for this account of the principle of fairness.

According to the first of these objections, the data in the kinds of studies noted above provide little insight into the actual attitudes of citizens, since participants in studies like these are likely to supply the answers that they think pollsters want to hear. This is especially true when there is evidence that seems to contradict the sentiments expressed in the surveys. For example, if 95.7% of respondents think that it is at least somewhat important to vote, why are actual levels of voting participation so low? Would not people's actual behavior be a more accurate indicator of their attitudes toward political institutions than the answers they give in artificial polls? Simmons also makes a similar point about people's motivations for legal compliance. As he writes:

In cases where no perceived *independent* wrong is at issue, how many of your fellow citizens would comply with the law were it not for habit, the threat of punishment, or mindless reverence for law? How many would drive at excessive speeds, cheat on their taxes, consume legally prohibited substances, engage in legally prohibited sexual relations and so on.<sup>51</sup>

Simmons's answer to these questions is "not many," and this intuition is supposed to show that regardless of what they say to pollsters, most citizens simply lack the attitudes that are characteristic of cooperative schemes.

Three things might be said in response. First, this skepticism about people's willingness to constrain their actions because of political obligations seems unreasonably strong, especially since there is also evidence to the contrary. Summarizing the results of sixteen studies on the relationship between support for a regime and compliance with the law, the social psychologist Tom Tyler writes that "the results of these studies support the hypothesis that behavior is strongly influenced by legitimacy. . . . Citizens with higher levels of support for the authorities are less likely to engage in behavior against the system."<sup>52</sup> Tyler notes that this relationship is "reasonably strong," with an average variance of 18% ( $r = 0.42$ ) for those studies that reported correlations.<sup>53</sup> These findings were affirmed in Tyler's own research: "Those who regard legal authorities as having greater legitimacy

benefits of the state and so become obligated to it. Evidence of widespread acceptance is not a constraint on an acceptable theory; it is what shows that the theory is true.

51. Simmons, *Fair Play*, *supra* note 8, at 41.

52. TOM TYLER, WHY PEOPLE OBEY THE LAW 33 (2006).

53. *Id.*

are more likely to obey the law in their everyday lives.”<sup>54</sup> In Tyler’s study, respondents’ legitimacy scores broke up into about ten equally sized groups, and there was a striking linear relationship between beliefs about legitimacy and compliance.<sup>55</sup> Apparently one’s attitudes about a state’s legitimacy do make at least some difference for legal compliance.

Second, the gap between peoples’ behavior and the attitudes that they express to pollsters can be interpreted in a variety of ways. One is that these professed attitudes are disingenuous. A second, however, is that these attitudes are sincere, but that people are not particularly good at meeting their own ideals. This is certainly common enough in a variety of different kinds of cases. In this particular case, it seems implausible that respondents are simply lying to pollsters, that they in fact think that voting is a worthless activity but say otherwise because, for whatever reason, they feel pressured into telling pollsters what they want to hear. It might be said then that these attitudes are superficial and that they reveal little reflection or commitment. This is perhaps true, but the superficiality of such attitudes does not undermine their normative significance nor their ability in the context of cooperative schemes to give rise to obligations. Consent can be giving unreflectively but still obligate a person. For the purposes of this theory, what matters is that citizens have an attitude of willing and knowing acceptance, not whether this attitude is deep and reflective. As it is, these attitudes seem reasonably durable, persisting even through periods of social turmoil and dissatisfaction with the ruling regime. But the claim here is only that such attitudes exist. An unreflective attitude of diffuse support is an expression of diffuse support nonetheless.

Third, the gap between people’s professed attitudes toward political institutions and their behavior is particularly tolerable for an account of political obligation rooted in the principle of fairness. The demands of fairness allow for a certain degree of slippage between what the rules of cooperation might explicitly demand and what participants are in fact obliged to do.

Rarely would drivers receive speeding tickets for going over the posted speed limit by only a few miles per hour. Here the law is extremely clear, but it seems overly stringent to suggest that in going one mile per hour over the speed limit a driver violates a *moral* obligation to obey the law. With at least some aspects of the law, there is slippage between what the law demands and how those demands are enforced, or how most people understand what our political obligations demand in terms of compliance. Certainly some laws are very strictly enforced, or there is a sense that a citizen violates a moral obligation in failing to comply with certain kinds of laws. But not all laws are like this, and it seems overly strict to suggest that deviations from

54. *Id.* at 57.

55. *Id.*



the exact demands of one's political obligations are evidence that citizens do not have attitudes of willing acceptance.<sup>56</sup>

Such slippage between the letter of the law and what most people think fairness obliges them to do is a familiar part of many cooperative schemes. In some instances, this slippage arises because the rules are not explicitly laid out. A parent teacher organization at a school might have general expectations that parents assist in their programs but not make explicit exactly what such expectations are. If a parent were a genuine participant in the scheme, then she would be obliged to support the group, though the specific demands of such obligations might be unclear. It is often the case that there are more than enough hands to do the work, so the demands might be quite minimal and can be satisfied at the discretion of the individual parent. A parent with a newborn child might rightly claim that she ought to be excused from the demands of membership, at least for a time. In such instances, when the rules of cooperation are not spelled out, there can be a great deal of slippage, though this does not mean that free riding is impossible.

In other kinds of situations, slippage might arise even when the rules are extremely well articulated. This often happens in sporting competitions. In baseball, the strike zone of a batter is officially prescribed as extending above home plate from the midpoint between the batter's shoulders and the top of his pants to the hollow below his knees. In practice, it is nothing like this. The issue is not just that there is a great deal of difficulty in determining precisely where these lines begin and end. While this is true, umpires do not even pretend to enforce anything like the official rules and instead enforce an unofficial understanding that usually extends from the waist to the knees. This is not to say that claims of unfairness are out of place in baseball, but it is to say that there is a great deal of slippage between the official rules and the rules to which participants in fact adhere. Such slippage is possible because a certain level of deviation can be tolerated with no threat to the integrity of the cooperative system or because the official rules are articulated too stringently. Official rules can be broken without violating the demands of fairness when there are widely held conventional deviations—the real rules that matter from the perspective of cooperation and fairness are often not the official rules.

Such slippage is a familiar phenomenon in a variety of cooperative schemes from social organizations to the state. It would be unusual to think that a political obligation would oblige a person to obey every aspect of the official extant law, and consequently the lack of compliance for certain kinds of laws need not entail anything with regard to whether citizens have accepted state cooperative goods and so are obliged by considerations of fairness. Thus failure to uphold the specific demands of political obligations is not by itself evidence that citizens lack diffuse support for their state.

56. For more on this, see WILLIAM EDMUNDSON, *THREE ANARCHICAL FALLACIES* (2007), chs. 1–3.

But what of the second objection: that citizens might well have these attitudes of diffuse support but that this reveals nothing about the specific attitude of willing acceptance? Such an objection in fact highlights an important gap. Diffuse support for a political regime is quite distinct from willing acceptance of cooperative goods. It is possible that citizens have strong feelings of support and yet lack the attitude of willing acceptance of cooperative goods that activates normative considerations of fairness. One might, for example, strongly agree with the NES poll question above that “the American form of government is still the best for us,” and that one “would rather live under our system of government than any other,” while nevertheless failing to accept voluntarily whatever goods the state was providing. One might agree with both of these statements only because one believes that other governments are likely to perpetrate even more injustice than the American system does. This hardly indicates willing acceptance.

The kind of diffuse support that these data explore is admittedly distinct from willing acceptance. It is certainly conceptually possible that a person could support a regime but fail to accept its goods willingly. This gap between support and acceptance, however, is narrow, and it is hard to imagine how the two might come apart in practice. The significance of these empirical data does not lie in any particular finding but rather in the totality of what they say about attitudes of legitimacy. Taken all together, they suggest extremely high levels of support for the state. What psychological outlook could explain how someone can have such general positive dispositions toward their state yet refuse to accept the goods that it provides?

Consider a revised version of Nozick’s thought experiment. Imagine a neighborhood entertainment system that is widely supported by its residents. The good provided is, of course, a nonexcludable one, and consequently no one is in a position to avoid it even if they wanted to. But support for the system is extremely high. Upward of 95% of residents say that fulfilling their various roles to support the system is important. Residents believe that their neighborhood is the best for them. They would rather live there than in any other neighborhood, and there is a great deal of pride in their shared entertainment system. Of course, being busy, the residents sometimes miss shifts, but these delinquencies do not threaten the system’s function, and the entertainment is regularly programmed and predictable. (Indeed, the robustness of the system is part of what makes these delinquencies insignificant.) While there are occasional and sometimes heated debates over how the system is operated, virtually no one suggests that it should be eliminated and replaced by another system or no system at all. By all measures, the foundation of the system itself is widely supported.

Is there any question as to whether the residents voluntarily accept the goods the system provides? It is true that perceived obligation and support are not the same thing as voluntary acceptance, but it is hard to see how they might come apart in these circumstances. People might reject the goods provided by the system but still think that their neighborhood is the

best for them only because they think that every other neighborhood is worse. But this seems inconsistent with the way in which so many rate the fulfillment of their various responsibilities as important, as well as the pride that they take in their entertainment system. Again, what is particularly relevant is not just any one indicator of support but the total of them put together. The cumulative effect of all of these indicators together makes it hard to believe that residents could so consistently and powerfully assert them while nevertheless rejecting the entertainment system.

Something similar could be said about states. If citizens think that state benefits are not worth the price they are forced to pay, then why do so many claim that fulfilling their various responsibilities as citizens is important? This is especially true for responsibilities such as voting, where there is no obvious general moral duty or instrumental reason for persons to undertake them. Or if they support their state only because they think that every other state is worse or because they think the goods provided have been purchased through taxes, why do they express pride in it? The totality of the empirical data suggests a widespread attitude of support for the state that is hard to reconcile with anything other than an attitude of voluntary acceptance. While it is *conceptually* possible for citizens to support their state but reject its goods, it is *psychologically* improbable. At the very least, in the absence of countervailing empirical data that citizens in fact reject the goods provided by their state, it should be taken as reasonably compelling evidence that they accept them and so are obliged to support their state and obey its laws.

## V. CONCLUSION

It might seem as if the theory of fairness rooted in acceptance succeeds only because so many of its elements are watered down. At the end of the day, superficial acceptance of goods produced by thinly cooperative schemes only produces political obligations that citizens should sometimes obey, and this certainly seems very distant from the robust demands of political obligation. For a citizen to have a political obligation to her state is for that state to have the right to enforce its laws coercively against her. It is for the state to be entitled to exercise its full powers against her will. The demands of the view defended here might seem relatively toothless by comparison.

In a certain sense, this criticism is valid. For one thing, the account of acceptance that this theory relies upon can indeed be superficial. It might, as Simmons and other critics sometimes worry, be rooted in habit, mindless reverence, or ideology. It is often given with little critical reflection. This does not mean, however, that it lacks moral significance or fails to obligate. By comparison, consent can be similarly mindless or habitual but still obligate as long as it is given under the rather minimal requirements of freedom and adequate information. While both acceptance of a cooperative good

and consent can be offered uncritically, this does not mean that neither is a road to a genuine, binding, moral obligation.

Moreover, the demands of political obligation can be overstated. While some theorists understand them to place binding obligations on citizens, this does not seem necessary. For one thing, on almost any account of the nature of moral obligations, such obligations will be defeasible under the appropriate circumstances. So, for example, a person who breaks a promise to meet a friend for lunch because he stopped to help the victims of a horrific car accident that he saw on the way does no wrong. Similarly, a person who flouts an unjust law does no wrong, and the state is wrong to punish him. But more than the general defeasibility of moral obligations, our ordinary understanding of what political obligations entail allows for some slippage with regard to compliance. This is not to say that the account of fairness and political obligation defended here is toothless. If people have accepted the goods that the state has provided, then they are obliged to support the state. Such support is not absolute or indefeasible, but it is real and places genuine moral demands on such citizens. They are obliged to support the state, and the state does no wrong in requiring compliance.

A further worry that might be raised concerns the way in which the account defended here simply takes for granted John Simmons's acceptance-based account of the principle of fairness, which has itself been the object of a fair degree of skepticism.<sup>57</sup> However, while the primary aim of the paper has been to clarify and apply the theory, some attempts have been made to defend it against specific objections and to provide some *prima facie* reasons to think that it is plausible. To reiterate, if acceptance does not matter to the principle of fairness, it is difficult to understand why it is easy to make determinations of fairness with excludable goods and difficult to do so with nonexcludable ones. The simplest explanation for this is just that recipients of excludable goods have clearly knowingly and willingly accepted them because they would not have them if they had not gone out of their way to get them. With nonexcludable goods, one cannot so easily tell whether the goods in question have been voluntarily accepted. Further, the primary source of dissatisfaction with Simmons's acceptance-based accounts comes from those who attempt to justify political obligations by employing extended versions of the principle of fairness. If Simmons's voluntarist version of the principle can itself provide a satisfying explanation for political obligations, then much of the motivation for skepticism about it evaporates.

Something similar could be said of the kind of voluntarism that undergirds this account. This view, that political obligations could arise only out of some kind of voluntary act, is often associated exclusively with consent theories, and consequently it is thought to lead inexorably to skepticism about political obligation. For it seems reasonably clear that virtually no one consents to her state under the conditions that would make such

57. See, e.g., Arneson, *supra* note 5.

consent morally binding. Such a voluntarist approach is nevertheless attractive because it expresses a strong view about individual liberty and is able to reconcile coercive political power with the ideals of liberty and equality.<sup>58</sup> But the resulting anarchism is usually seen as being too high a price to pay, and such an approach is dismissed as being “utopian in the worst sense,” as Allen Buchanan says.<sup>59</sup>

This paper attempts to show that it is a mistake to associate voluntarism exclusively with consent theories and that there is a kind of voluntarist theory that need not necessarily lead to skepticism about political obligation. An acceptance-based account of the principle of fairness is a voluntarist account. The obligations of political membership can be acquired voluntarily only through the free and informed will of an individual, and such a person cannot otherwise be under the authority of any other entity against her will. Further, such voluntary acceptance is all but universal in the United States and, one can plausibly assume, equally widespread in the other well-ordered states that people usually think of as legitimate. Voluntarism is usually rejected simply because it seems to lead only to skepticism about political obligation. But this paper attempts to show that this worry about voluntarism is misplaced. In short, one can have one’s voluntarist cake and eat it, too. The most demanding kind of theory of political obligation is also the one that is fully realizable.

58. See Edmundson, *State of the Art*, *supra* note 1, at 224–226, for a helpful discussion of this “presumption of liberty.”

59. Allen Buchanan, *Political Legitimacy and Democracy*, 112 *ETHICS* 699 (2002).