

FAIRNESS, BENEFITS, AND VOLUNTARY ACCEPTANCE

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Edward Song
George Fox University

The principle of fairness suggests that it is wrong for free-riders to enjoy cooperative benefits without also helping to produce them. Considerations of fairness are a familiar part of moral experience, yet there is a great deal of controversy as to the conditions of their application. The primary debate concerns whether cooperative benefits need to be *voluntarily accepted*. Many argue that acceptance is unnecessary because such theories are too permissive and acceptance appears to be absent in a variety of cases where considerations of fairness nevertheless seem applicable. In this paper, I defend the claim that acceptance is necessary by suggesting that these worries can be disarmed, and that theories that deny the necessity of acceptance face deep challenges in articulating an understanding of cooperative benefits that does not also appeal to a person's acceptance of them.

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Consider the following example. A group of parents band together to form a daycare cooperative where all of the parents share in the childcare duties. The children meet daily at a local public park, watched over by a rotating group of ten parents. The parents who are not on duty that day, drop their children off in the morning and pick them up in the afternoon. The rules are clear to all, the children are well-cared for, and the system runs smoothly. A Freeriding Parent routinely makes use of the system, dropping off her children every morning. She, however, never helps. Her job provides her with enough flexibility where she could easily fulfill her responsibilities, but she never does. Because the park is large, and there are a number of parents supervising the children, no one ever notices her absences, and she happily free rides on the efforts of others, accepting the benefits they provide, but never willing to help. The additional burdens that the Freeriding Parent's absences

place on the other parents are negligible as they are borne by a number of people, and so no one is really harmed. Nevertheless, her actions seem wrong.¹

The most obvious way to capture what is wrong with the Freeriding Parent's actions is to invoke the *principle of fairness*. The general idea, as described by John Rawls, is that "when a number of persons engage in a mutually advantageous cooperative venture according to rules, and thus restrict their liberty in ways necessary to yield advantages for all, those who have submitted to these restrictions have a right to a similar acquiescence on the part of those who have benefitted from their submission."² In other words, it is wrong for people to free ride on the efforts of others by enjoying benefits from a cooperative scheme without also assisting in the efforts necessary for their production.

This is an intuitive principle, familiar in moral experience, and examples of its application abound. In addition to scenarios like the daycare cooperative above, we can think of other cases of medium-sized, moderately formal schemes of social cooperation like neighborhood watches, or parent-teacher organizations that rely on the efforts of volunteers. Cooperative schemes might be considerably smaller and more informal like an arrangement among roommates that they will share housekeeping duties in the house, or carpooling arrangements among workers or schoolchildren. They can also be considerably larger, such as widely shared social conventions that organize communal behavior. Traffic conventions, such as the practice of rows of cars alternating back and forth as they merge onto a crowded highway, or social norms governing standing in line might all be understood in this way.

While the principle has been invoked to make sense of a great variety of topics in moral philosophy, the vast majority of the work on fairness has been conducted by political philosophers,

¹ Thanks to Kory DeClark for suggesting this specific example to me.

² *A Theory of Justice* (Cambridge, MA: Belknap Press, 1971), 112.

who invoke the principle as a way to justify political obligations. These discussions, however, tend to put the cart before the horse by generating accounts of fairness that are specifically tailored toward resolving the problem of political obligation (in one way or the other) without first explaining how fairness as a general moral principle operates. This state of affairs can distort an understanding of fairness and leaves this central moral concept underexplored on its own terms.³

While there are many controversies with regard to the most cogent formulation of the principle, the largest theoretical issue is whether the benefits produced by a cooperative scheme need to be *voluntarily accepted* in order for considerations of fairness to be operative. This is the position advanced by Rawls, who writes that a person must have “voluntarily accepted the benefits of the arrangement or taken advantage of the opportunities it offers to further one’s interests”⁴ to be obligated by fairness. The vast majority of contemporary theorists, however, seem skeptical about this requirement,⁵ and one would be very hard pressed to find many contributors to this debate who offer unqualified endorsements of the acceptance requirement.⁶ Theories that deny the

³ Daniel Koltonski, for example, has criticized the acceptance-based accounts of fairness that John Simmons and Robert Nozick have offered precisely because they “deprive the principle of any real political significance.” See his, “The Principle of Fairness, Political Duties, and the Benefits Proviso Mistake,” *Journal of Moral Philosophy* 13 (2016): 265-293, p. 268.

⁴ Rawls, *A Theory of Justice*, 111-12.

⁵ Some prominent examples of such skepticism about the necessity of voluntary acceptance include Richard Arneson, “The Principle of Fairness and Free Rider Problems,” *Ethics* 92 (July 1982): 616-633; Garrett Cullity, “Moral Free Riding,” *Philosophy and Public Affairs* 24 (1995): 3-34; Garrett Cullity, “Public Goods and Fairness,” *Australasian Journal of Philosophy* 86 (2008): 1-21; George Klosko, “Presumptive Benefit, Fairness and Political Obligation,” *Philosophy and Public Affairs* 16 (Summer 1987): 241-259.

⁶ Among those that do offer unqualified endorsements of the acceptance requirement are A. John Simmons, *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979), and Edward Song, “Acceptance, Fairness, and Political Obligation,” *Legal Theory* 18 (July 2012): 209-229. Interestingly, there have been a number of recent theories that flirt with the idea of acceptance, though always in highly qualified ways. So, for example, Justin Tosi has argued the principle of fairness is usefully compared to consent, while also coyly maintaining that “mere receipt is sometimes sufficient as a commitment mechanism for fair play obligations” (“Rethinking the Principle of Fair Play,” *Pacific Philosophical Quarterly* 99 (2018): 612-631, p. 615.) Massimo Renzo’s account is meant to be a middle ground between Simmons’s acceptance account and Klosko’s concern with presumptive benefits (“Fairness, Self-Deception and Political Obligation,”

necessity of voluntary acceptance—what I will call *pure benefit theories*—hold that considerations of fairness are applicable when benefits have merely been received under the appropriate conditions, even if they have not been voluntarily accepted.

This paper will defend the voluntary acceptance requirement for the principle of fairness by responding to two common criticisms of such an account, and suggesting that pure benefit theories in fact face a decisive problem. The first section of the paper will clarify and develop a version of an acceptance-based account of the principle of fairness that has been offered by John Simmons. Section II will address a concern that acceptance accounts are too tolerant of irrational judgments that people might make about cooperative benefits, thereby absolving them of any fairness obligations. Section III will argue that proposed counter-examples to acceptance accounts, where voluntary acceptance appears to be absent in a case where obligations of fairness seem to exist, are deceptive. Section IV will raise a worry for pure benefit theories. A striking feature of this debate is that an analysis of what it is for something to count as a benefit is almost completely missing in the fairness literature. But on inspection we will see that it becomes very difficult to articulate why someone genuinely benefits from a cooperative good in terms that do not also rely on that person's subjective pro-attitude of acceptance towards that benefit. In short, the very idea of something being a benefit for a person implies that it is accepted by her. The paper will conclude with some reflections about how the idea of voluntary acceptance helps to explain what is wrong with unfair actions, and the significance of judgments about fairness in the modern world.

Philosophical Studies 169 (2014): 467-488.) Daniel Koltonski offers a theory of fairness that turns on a person's "exercising her agency in a particular way," though it is meant to be a theory that is an alternative to acceptance accounts ("The Principle of Fairness, Political Duties, and the Benefits Proviso Mistake," p. 279.)

I. Fairness and Voluntary Acceptance

The morality of fairness is rooted not merely in the receipt of benefits, as when one person does a favor for another, but rather is uniquely tied to cooperative social activity. Such a principle might seem unusually specific, but on reflection it should come as no surprise that moral demands attached to mechanisms of human cooperation are significant for a species in which such cooperation is so essential to our flourishing. While there is a great deal of controversy as to the necessary conditions that give rise to considerations of fairness, there appear to be five central issues that are recurrent subjects of debate. These conditions are:

- (1) **The Cooperation Condition:** there must be a scheme of intentional and public social cooperation.
- (2) **The Rules Condition:** the scheme of social cooperation is organized according to a set of rules, general adherence to which is necessary for the scheme to function.
- (3) **The Benefit Condition:** this scheme of social cooperation generates benefits of some kind that are enjoyed by the obligee.
- (4) **The Justice Condition:** the rules guiding social cooperation or the distribution of benefits need to be reasonably just or fair.
- (5) **The Acceptance Condition:** a person becomes subject to the rules or demands of social cooperation only when the benefits produced are voluntarily accepted.

Debates about the nature of fairness turn on which of these conditions is necessary for considerations of fairness to be applicable in a given situation, and how each condition should be understood.

The most controversial aspect of fairness theories concerns the acceptance condition—whether or not the benefits of social cooperation need to be *voluntarily accepted* in order for considerations of fairness to be binding. For those who affirm this condition, it is not enough that persons merely *receive* benefits, but they must willingly *accept* them. Thus, for these acceptance theorists, persons could genuinely benefit from the goods produced by a cooperative scheme and

be left better off by them, while nevertheless *not* being obligated to participate in it, perhaps because for whatever reason those benefits are not worth the cost to them. This is in contrast to those who advocate pure benefit theories of fairness that deny the necessity of voluntary acceptance and argue that persons can become obligated if they have merely received cooperative benefits in the appropriate way.

While Rawls is the first to specifically recommend the necessity of voluntary acceptance for considerations of fairness, the most fully developed version of an acceptance-based account comes from John Simmons. Simmons argues that a person is only obligated by considerations of fairness to participate in a cooperative scheme when two conditions are satisfied. A person must both *knowingly* and *willingly* accept its benefits. To knowingly accept a benefit on this account is to “understand that the benefits are provided by a cooperative scheme.”⁷ Knowing acceptance occurs when people know that they are receiving some good, that the good is generated by a system of cooperation, and they are well-aware of the requirements that acceptance entails. A person is not obligated to a scheme, for example, when she does not realize that she is receiving a benefit, or that those benefits are produced by an active and intentional scheme of social cooperation.

Simmons suggests that willing acceptance occurs when we do not “regard the benefits as having been forced upon us against our will, or think that the benefits are not worth the price that we must pay for them.”⁸ This gloss on willing acceptance is intuitive and illuminates the most common kinds of considerations that might make a person’s acceptance voluntary. It is also, however, imprecise. Strictly speaking, it seems as if acceptance could still be willing even if a person regarded the benefit as being forced on her or not worth the cost. A person might feel pressured into accepting a good, but still actively want it despite the fact that she does not really have a choice.

⁷ A. John Simmons, *Moral Principles and Political Obligations*, 132.

⁸ *Ibid.*

Similarly, a person might think that a good is not really worth the cost of undertaking the burdens of participation, but nevertheless accept the good for other reasons. Say, for example, a person takes the costs of participation in a cooperative scheme to be a bad deal for her—it takes a lot of work and the corresponding benefits are meager—but she might nevertheless be willing to voluntarily accept the good because she has a sense of pity for or solidarity with the cooperative parties, which ultimately motivates her to accept the good in question even though the specific intended benefits are not worth the cost to her. Of course, one might argue that participation *is* worth the cost in this scenario. The value that she gets from indulging her pity, or her feeling of solidarity make it worth the cost.

Simmons larger point is that willing acceptance is ultimately about the complex set of psychological dispositions—our beliefs, attitudes, preferences, desires, volitions—that lie at the heart of human agency. Debate about such accounts are, of course, contentious, but however one wants to ultimately describe this complex moral psychology, at the end of the day, for whatever reasons, we tally up all of the costs and benefits and we either want something or we don't. Let us skirt these controversies as to whether this is best understood as the strongest desire, a desire/belief pair, a second-order desire, or some pure act of volition. Willing acceptance is *a cumulative pro-attitude* toward a good, or as Calvin Normore puts it, following Peter Abelard, “an inward readiness.”⁹ It is not merely a desire for a good, but rather the desire for the good weighed against the cost of obtaining it. It is the answer to the question, “Do you want this good at this price”? Willing acceptance is in this way a brute psychological state, and it is difficult to specify what willing entails beyond the simple psychological state of freely wanting something all things considered.

⁹ Calvin Normore, “Consent and the Principle of Fairness,” in Gerald Gaus, Kristi Favor, and Julian Lamont (eds.), *Essays on Philosophy, Politics, and Economics: Integration and Common Research Projects* (Stanford, CA: Stanford University Press, 2010), 225-241, 238.

Simmons's voluntary acceptance account of fairness applies to cases involving both public and private goods. A *private* or *excludable* benefit is one where access to the good in question is easy to control or limit, or it is otherwise easy to distinguish between those who properly participate in the scheme and those who do not. In the daycare example above, the Free-riding Parent's actions seem unfair precisely because she has gone out of her way to make use of a private cooperative good that she had no intention of helping to produce. The good of daycare is private because people would not have it if they had not gone out of their way to get it.

Such cases, however, are quite different from those where there are no practical ways of controlling access to the cooperative goods in question. Call these goods *public* or *non-excludable*. While there is a certain degree of debate as to how exactly to characterize such goods¹⁰, in general public goods are distinguished by "jointness in supply" (in the sense that supplying the good to anyone means supplying the good to everyone) and "jointness in consumption" (in the sense that one person's consumption of a good does not impinge on the supply of the good to others).¹¹ Consider, for example a Secure Homeowner, who lives in a neighborhood where residents have recently instituted a neighborhood watch. Residents are asked to join a patrol for one evening a month, and these patrols have the effect of reducing crime in the whole neighborhood. The Secure Homeowner does not participate in these patrols even though she benefits from the increased security throughout the whole neighborhood. Given the nature of the good that is produced by this cooperative venture, it is impossible to ensure that the security that is produced by the cooperative scheme is enjoyed only by active participants. Cases involving public goods produce challenges for accounts of fairness in trying to discriminate the conditions under which people may

¹⁰ For a fuller discussion of these nuances, see Garrett Cullity, "Moral Free Riding," 3-5, 32-4.

¹¹ Garrett Cullity, "Public Goods and Fairness," 9.

or may not be obligated to a cooperative scheme even if they will inevitably receive the good that it produces.

With private goods, fulfillment of Simmons's knowing and willing conditions is obvious since people would not enjoy these goods unless they actively went out of their way to get them. Thus, it is clear that the Freeriding Parent both knowingly and willingly accepts the good of childcare since she would not enjoy the benefit if she had not gone out of her way to get it. In contrast, people will receive a public good regardless of their attitude toward it, but on an acceptance account they are obligated only if they knowingly and willingly accept it. Thus, in the neighborhood watch example, the Secure Homeowner will receive the good of reduced crime in her neighborhood regardless of whether she does her fair share and fully participates in the scheme. But she is obligated to participate in the patrols by considerations of fairness only if she really wants that good. Perhaps she has already invested in an elaborate security system, and feels that the additional security provided by the watch, while real, is nevertheless unnecessary. Or perhaps she simply does not regard the security that the watch provides to be worth the inconvenience of participating in a patrol in the middle of the night. She knows that she receives the good, but she genuinely does not want it. If it were possible for her to go without it she would. On this account then, she is not obligated to participate. Obligations of fairness only arise when a person knows about and genuinely wants the cooperative good.

II. The Objection from Irrationality

Voluntary acceptance accounts of the principle of fairness, however, are subject to a variety of objections. One of the most prominent of these worries is that such accounts are too permissive, wrongly excusing people from the demands of fairness in cases where willing and knowing

acceptance is absent because of a person's irrational or insincere judgments or beliefs. Richard Arneson, for example, imagines:

...someone who is racially prejudiced and believes, for no good reason, that it is unfair that the ratio of benefits to costs flowing from cooperation should be the same for whites and blacks. Or consider someone who is disgruntled with what he takes to be the disproportion between the benefits he receives and the contributions he must make compared with others, but who has never bothered to check this imagined perception even against such factual evidence as is readily available just by perusing the daily newspaper.¹²

Consider a variation on the neighborhood watch example. Crime is rampant in a neighborhood and residents band together to patrol the neighborhood. An Insincere Neighbor does not voluntarily accept this benefit because she does not know about the evening patrols. This ignorance, however, is carefully cultivated. The Insincere Neighbor does not know about the watch and the benefits she receives only because she assiduously avoids such knowledge for fear that she would become obligated. She suspects that such a scheme exists and has produced the noticeable decrease in crime in her neighborhood, but she studiously avoids reading the notices that her neighbors leave on her door for fear that knowing about it would oblige her to participate. Or perhaps noticing the marked increase in security, and hearing the patrol walk through her neighborhood at night, she simply *should* know that such a scheme exists, and wanting its benefits, ought to participate in it. According to the acceptance account of fairness, it appears as if she is not obligated because the knowing condition is technically not satisfied.

Or perhaps the Insincere Neighbor knows about the watch, but rejects its benefits only because she has a wholly irrational view about how safe the neighborhood actually is. She frequently sees thieves climbing out of her neighbors' windows carrying expensive flat screen TV's, but thinks that they are only television repairmen. Or she regularly hears gunshots at night, but naively thinks

¹² Richard Arneson, "The Principle of Fairness and Free Rider Problems," 632.

that they are fireworks. If she knew how dangerous her neighborhood actually was, she would happily join the patrols, but because of her irrationality she does not participate in the scheme. Thus, the knowing and willing conditions are unsatisfied and she is not obligated to participate.

But in both of these cases, this seems wrong. It seems like the Insincere Neighbor ought to be obligated even if the knowing and willing conditions are technically unsatisfied. Gregory Kavka wondered why an account of fairness should “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.”¹³ As Arneson says, “There must be some reasonable basis for skeptical beliefs if they are to block obligations from arising under the principle of fairness.”¹⁴

As Simmons himself points out,¹⁵ however, the irrationality involved in these sorts of examples, is similar to cases of *culpable ignorance* for which a person could be held responsible even if under different circumstances their ignorance might serve as an excuse. A person is not ordinarily blamed if she, say, hits another person while opening a door, not knowing that someone was on the other side. But this is different if a person lacked such knowledge, but should have known better, or flung the door open recklessly. Persons can sometimes be culpable for their own ignorance. Similarly, if the knowing and willing conditions are not satisfied in a particular case only because a person’s beliefs about the existence of a cooperative scheme, or the worth of its benefits, is shaped by culpable ignorance or irrationality, then she would fail to be excused and is obligated

¹³ Gregory Kavka, review of *Moral Principles and Political Obligations* by A. John Simmons, *Topoi* 2 (1983), 228.

¹⁴ Arneson, “The Principle of Fairness and Free Rider Problems,” 632.

¹⁵ A. John Simmons, “Fair Play and Political Obligation: Twenty Years Later,” in his *Justification and Legitimacy* (Cambridge: Cambridge University Press, 2001), 32.

to participate. A neighbor who is intentionally ignorant of a cooperative scheme, or a racist who is unwilling to participate alongside people of different ethnicities might well be obligated to participate by considerations of fairness.

Some instances of culpable ignorance are more straightforward than others. What we might call intentional ignorance where persons purposively avoid knowledge that might excuse them from obligations—as in the *Insincere Neighbor* case—is the simplest since it has all of the hallmarks of the kind of intentional action for which it is easy to ascribe responsibility. More complicated are cases in which a person’s failure to know about a cooperative scheme or unwillingness to participate in it is not easily traceable to an intention to evade responsibility. Such cases might involve negligence in the formation of a person’s beliefs. Perhaps relevant information was easily available but ignored, or flawed information was accepted too credulously. Still more complicated are instances of self-deception, in which people deceive themselves into thinking that they do not want a cooperative good when deep down it is really desired, or instances of irrational beliefs that fly in the face of all available evidence, as with Arneson’s racist, who rejects a cooperative scheme because the burdens of cooperation are distributed equitably. Is such a belief always culpable? What if she was raised in a deeply racist community and was never exposed to alternatives? Is the mere fact that a person holds an irrational belief sufficient to render that belief culpable regardless of how that belief was actually formed?

There is a great deal of controversy regarding the conditions under which a person might be found culpably ignorant. Indeed, some doubt whether the conditions of culpable ignorance are satisfied with any frequency.¹⁶ But an acceptance account of fairness is neutral on all of these

¹⁶ Michael Zimmerman and Gideon Rosen, for example, are skeptical about the extent to which ignorance is something for which we can be held responsible. See Gideon Rosen, “Skepticism about Moral Responsibility,” *Philosophical Perspectives* 18 (2004): 295-313, and Michael Zimmerman, “Moral Responsibility and Ignorance,” *Ethics* 107 (1997): 410-26. See also, William J. FitzPatrick, “Moral Responsibility and Normative Ignorance: Answering a New Skeptical Challenge,” *Ethics*

controversies. If it turns out that on the best account of culpable ignorance the conditions for such belief are almost never satisfied, then proposed counterexamples like Arneson's racist lose their teeth. If it turns out that we are frequently responsible for ignorance or irrational beliefs, then this account can explain why the racist is obligated to the cooperative scheme even in the absence of knowing and willing acceptance. Either way, these worries about irrationality can be accommodated in such a way as to avoid Arneson's worry.

III. The Objection from Cases

More generally in the literature on fairness, much of this debate about the necessity of voluntary acceptance is rooted in disagreements about counterexamples and various thought experiments that purport to provide cases where a person is bound by considerations of fairness even when voluntary acceptance appears to be absent. Garrett Cullity, for example, imagines a scenario where pollution from fishing boats has become serious enough to threaten the catch, and subsequently every fisherman except one agrees to stop polluting the lake and to contribute to its maintenance. A Recalcitrant Fisherman argues that, "I have not chosen to receive these benefits nor have I misled you into conferring them on me. I am simply going on as I always have done. If you do not want to benefit me find another lake."¹⁷ Cullity argues that intuitively it seems as if the fisherman refusal to cooperate is unfair even though he does not voluntarily accept the benefits of a cleaner lake. Cases such as this are meant to show that knowing and willing acceptance is not necessary for considerations of fairness to be applicable.

Of course, intuitions about cases can be contentious, and an acceptance theorist might simply deny that there is anything unfair about cases like the Recalcitrant Fisherman. Going beyond

118 (2008): 589-613, and James A. Montmarquet, "Zimmerman on Culpable Ignorance," *Ethics* 109 (1999): 842-5.

¹⁷ Garrett Cullity, "Moral Free Riding," 11.

this, however, these sorts of counterexamples can be deceptive since they almost always fail to describe the considerations that shape peoples' rejection of a cooperative good, making it seem like their rejection is insincere. The Recalcitrant Fisherman *says* he does not want to have anything to do with the benefit in question, but because the benefit is so presumptively attractive, and because there is nothing in the description of his motivations to explain why his rejection of the benefits is sincere, it is hard to understand why he would rather do without the benefit if he could. Because the goods in such cases are generally the kind of thing that any rational person would want, it is hard to make vivid the idea that they are sincerely unwanted even if one cannot avoid receiving them. Such persons come across as irrational or disingenuous, preferring to free ride on the efforts of others, rather than participating in the burdens of social cooperation. That, of course, would be unfair.

But when we try to make such cases more vivid by imagining a more sincere set of reasons behind the rejection of a cooperative good, the accusation that the actions are unfair and that this thought experiment represents a genuine counter example to an acceptance-based account becomes less persuasive. Consider this variation on Cullity's Recalcitrant Fisherman example. A lake is the only source of water for a community. An algal bloom, however, has taken over the lake, rendering the water unpalatable and producing uncertain long term health risks. A filtration system is invented to remove these toxins. The only thing that works, however, is a membrane derived from the stomach lining of cows. The filtration system is maintenance free, but the villagers must cooperate one day out of the month to butcher the cows and harvest their stomachs for the filters. A Recalcitrant Vegetarian finds this all morally abhorrent. She thinks the slaughter of the cows is morally equivalent to human murder. She would genuinely rather do without the filtration system entirely, and live with the polluted water and its associated long term health risks, but this is impossible. The filtration system is a public good, and because there are no other lakes, she has no

choice but to drink the filtered lake water. Correspondingly, she in fact receives all of the benefits of the cleaner water, and because there are many hands to do the work, her failure to participate does not impose any appreciable harms on others.

When the details of a person's rejection of a public cooperative good are fleshed out in this way, making it clear that her rejection is sincere, and that she genuinely does not want the good and would avoid it if she could, it seems far less obvious that her actions are unfair in any way, even if she genuinely benefits. Cases like the Recalcitrant Fisherman appear to be counterexamples to a voluntary acceptance account of fairness only because they are described in such a way as to make the rejection of the good seem to be disingenuous.

Cullity's own pure benefit account of fairness can accommodate the Recalcitrant Vegetarian case because it includes a specific exception if a person is "raising a legitimate moral objection to the scheme."¹⁸ This condition turns on the actual "raising of a legitimate moral concern,"¹⁹ rather than the mere existence of a legitimate moral concern. Thus, if a person raises no objection to a cooperative scheme that is morally suspect, she can still be obligated by fairness to participate in it. Even "gangsters can free ride on their extortion rackets."²⁰ But Cullity could say that the Recalcitrant Vegetarian example does not involve unfairness, not because there is no voluntary acceptance, but because she raises a legitimate moral objection to the scheme.

The example, however, can be reconstructed in such a way as to avoid this response. We can imagine the Recalcitrant Vegetarian to be the kind of vegetarian who is personally opposed to the killing of animal—the idea produces a very strong guttural reaction—but she is not so convinced of the arguments that she necessarily finds it objectively wrong. Thus, she raises no "legitimate moral objection." The idea of participating in such a system is so distasteful, that she

¹⁸ Ibid, 19.

¹⁹ Ibid.

²⁰ Ibid.

would genuinely rather do without the benefit if it were possible. But because the good is public, this is impossible. She benefits from the system, yet her unwillingness to participate still does not seem unfair. Other variants on this example abound. The considerations driving a person's rejection of benefits might be aesthetic, or rooted in a person's history or sense of personal identity—any kind of sincere reason that might cause a person to reject a good that would otherwise benefit them.

A more general answer to these kinds of responses to the objection from cases is to suggest that in these revised versions of the thought experiments, the Recalcitrant Vegetarian lacks an obligation to participate *not* because acceptance is absent, but rather because the cooperative scheme fails to provide her with a benefit.²¹ Thus, the Recalcitrant Vegetarian is not obligated to the scheme because her deep aversion to the use of cows to filter the water makes it such that the benefits for her are actually not worth the price of participation. Given her convictions, she has not benefited from the scheme and so is not obligated by fairness to participate in it.

There are two problems with this response, however. First, even if this is a possible explanation of the case, it does not revive it as a counterexample to acceptance accounts. Remember that the point of the original Recalcitrant Fisherman case was that it aimed to offer an example in which obligations of fairness were operative even when voluntary acceptance was absent. It is possible that we could construe this revised case as one in which a person lacks a fairness obligation because no benefit has actually been enjoyed. But this revision does not revive the original case as an example of fairness without acceptance. So, it still fails as a counterexample to acceptance accounts.

Second, the response actually highlights deep puzzles for pure benefit theories with regard to how we should think about benefits. It seems plausible, at least at first glance, to suggest that a

²¹ I'm grateful to an anonymous reviewer for raising this specific interpretation of the case.

vegetarian who has deep concerns about the use of cows to filter water is not actually benefiting from their use, all things considered. But what we actually need here is a full account of benefits that can precisely explain how it is that we can compare the weighty health benefits of cleaner water over against the personal scruples or conscience of someone who has a deep aversion to the slaughter of cows. How are these benefits understood and measured? As we shall see, this is actually a deep problem for pure benefit accounts.

IV. The Problem with Benefits

So far, I have attempted to respond to two frequent concerns about acceptance accounts of the principle of fairness. In this final section, I shall try to raise a worry for pure benefit accounts regarding the challenges that they face grounding an account of fairness solely in the receipt of benefits with no reference at all to a person's subjective acceptance of them.

The notion of someone benefitting from the goods produced by a cooperative scheme seems so basic and intuitive that it is subject to very little scrutiny by theorists working on the problem of fairness. These questions are obviously central to these debates, yet they are virtually never addressed by anyone theorizing about it. In fact, the idea of a benefit is anything but simple.

Derek Parfit has suggested that there are three distinct ways of thinking about what is good or bad for us.²² On a *hedonistic* view, something benefits me just when it gives me happiness. On a *desire fulfillment* view, something benefits me when it fulfills my desires or preferences. On an *objective list* view, something being good or bad for me is completely independent of my subjective attitude towards it. On this view, there is some objective list of good-making items that are constitutive of human well-being—say, knowledge, meaningful relationships, or the development of one's

²² Derek Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1984), 4, 493-502.

abilities—even if we have no desire to pursue them or they do not give us any pleasure or happiness.

These three categories are somewhat inexact. Many argue, for example, that hedonism is best understood not as a distinct type of theory, but actually as a kind of objective list theory.²³ On this view, pleasure is the only thing that is objectively good for human well-being; it is a single-item objective list. Others argue that because the “essence of objective list theories is attitude-independence,”²⁴ it is best to think of two kinds of theories of well-being, which turn on the question of whether it is necessary that the benefits that contribute to a person’s well-being are the object of some kind of “pro-attitude”²⁵ by that person. While there is a great deal of debate as to the best way to characterize these competing accounts, I will follow the rough consensus and suggest that *subjectivist* accounts of human goods are those that hold that, as Dale Dorsey puts it, “in explaining why ϕ is good for x , one must appeal to the x ’s *agential endorsement* of ϕ ,”²⁶ where agential endorsement is understood to refer to some desire, preference or pro-attitude for the good in question. *Objectivist* accounts deny this: “Objectivism does not require that purported goods be ratified or endorsed from the evaluative perspective of the agent in question.”²⁷ Equally, there are hybrid views according to which our well-being consists in being benefited by objective goods that are also desired or experienced as being pleasurable.²⁸ Richard Kraut, for example, argues that

²³ See for example, Chris Heathwood, “Desire Fulfillment Theory,” in Guy Fletcher (ed.), *The Routledge Handbook of Philosophy of Well-Being* (Routledge, 2016), 135–147, 138; and Shelly Kagan, “The Limits of Well-Being,” *Social Philosophy and Policy* 9(1992): 169–189.

²⁴ Guy Fletcher, “Objective List Theories,” in Guy Fletcher (ed.), *The Routledge Handbook of Philosophy of Well-Being* (Routledge, 2016), 148–160, 151.

²⁵ *Ibid.*, p. 148.

²⁶ Dale Dorsey, “The Hedonist’s Dilemma,” *The Journal of Moral Philosophy* 8 (2011): 173–196, p. 174. See also, See Richard Arneson, “Human Flourishing versus Desire Satisfaction,” *Social Philosophy and Policy* 16 (1999), 113–142.

²⁷ *Ibid.*, p. 175. See also, Chris Heathwood, “Desire Fulfillment Theory,” 135; and Guy Fletcher, “Objective List Theories,” 151.

²⁸ See, for example, Ronald Dworkin, “Foundations of Liberal Equality,” in Grethe B. Peterson’s (ed.) *The Tanner Lectures on Human Values* 11 (Salt Lake City: University of Utah Press, 1990); James

“what makes one’s life a good one is one’s caring about something worth caring about.”²⁹ But if such a view requires that such goods must also be the objects of subjective agential endorsement, it counts as a subjectivist view on this way of characterizing the debate.

Objectivist accounts of well-being are attractive in part because they can account for the way that our desires or other subjective pro-attitudes can be directed at things that are bad for us, despite our desire for them. I might desire to smoke, but there is a pretty clear sense in which doing so is bad for my overall well-being. Objectivism is also, however, controversial. Among these controversies is the worry that objectivist accounts allow a peculiar alienation between a person’s good and her interest in it. As Peter Railton puts it, “it would be an intolerably alienated conception of someone’s good to imagine that it might fail in any way to engage us.”³⁰ From the objectivist’s perspective, a person could be living her best possible life while having no desire or pro-attitude whatsoever for the goods that constitute her well-being.

There are other ways of characterizing this debate, and they might well have certain advantages in resolving overall questions about well-being.³¹ But this way of characterizing the issues highlights an important distinction that is useful for the narrower question about benefits and fairness. Note that the subjectivist/objectivist distinction is *exclusive*. A theory must either think

Griffin, *Well-Being* (Oxford: Clarendon Press, 1986); Derek Parfit, *Reasons and Persons*, 501-2; L.W. Sumner, *Welfare, Happiness, and Ethics* (Oxford: Oxford University Press, 1996); Christopher Woodard, “Hybrid Theories,” *The Routledge Handbook of Philosophy of Well-Being*, 161-174. For problems with such views see Thomas Hurka, “On Hybrid Theories of Personal Good,” *Utilitas* 31 (2019) 450-462.

²⁹ Richard Kraut, “Desire and the Human Good,” *Proceedings of the American Philosophical Association* 68 (1994), 39-54, 44.

³⁰ Peter Railton, “Facts and Values,” *Facts, Values, and Norms* (Cambridge: Cambridge University Press, 2003), 19.

³¹ Guy Fletcher, for example, offers an alternative taxonomy, where some theories focus on *enumerating* what kinds of things contribute to our well-being, and others focus on *explaining* why they do. See his, “A Fresh Start for the Objective List Theory of Well-Being,” *Utilitas* 25 (2013): 206-220. See also, Roger Crisp, *Reasons and the Good* (Oxford: Oxford University Press, 2006), 102.

that goods must be the object of a person's agential endorsement in order to count as a benefit for her, or they do not.

In Section I, voluntary acceptance of a good produced by a cooperative scheme was characterized as a cumulative pro-attitude toward it. It is not merely a desire for the good for I might desire a good that I do not ultimately want because the price of participation in the scheme is too high. Rather, I voluntarily accept a good when I make it the object of my subjective agential endorsement. I want it at the price of participation in the scheme.

It should be clear by now that getting clarity on these questions about benefits has a profound effect on debates about fairness. Pure benefit theorists deny that such agential endorsement is a necessary feature for someone to be bound by considerations of fairness. Consequently, they must be objectivists about benefits. For subjectivists maintain that a good must be the object of a person's agential endorsement in order for it to count as good for her, but this is the very thing that pure benefit theorists deny. If pure benefit theorists deny the necessity of agential endorsement for fairness, they must also deny the necessity of any kind of agential endorsement to an account of benefits. That is just what objectivism is.

One strategy that a pure benefit theorist might pursue to resist this conclusion is to assert that while some kind of subjective endorsement is a necessary part of what it is to be benefited, the level of subjective endorsement does not rise to the level of voluntary acceptance. Thus, they could suggest that a benefit must be *desired* in order to count as a genuine benefit. It does not, however, need to be *wanted* in the sense that a person possesses a cumulative pro-attitude toward it. But this does not seem plausible. Consider the Recalcitrant Vegetarian example or one of its variants noted above. She desires the benefit of clean water, but does not want it at the price of the sacrifice of cows. If merely desiring the benefit was sufficient for the water to count as a benefit then it seems as if the Recalcitrant Vegetarian *is* benefited by the cooperative scheme despite her

objections to the process of filtration. What seems to matter is not a narrow desire for a benefit conceived in the abstract, but the cumulative desire for the benefit at the cost of its provision. Does the Recalcitrant Vegetarian want the clean water at the price of the slaughter of cows? But this is just how voluntary acceptance was characterized. Something similar could be said for other any other weaker subjective state.

It seems then, that one cannot be both a pure benefit theorist and a subjectivist about benefits. This would be a surprisingly conclusion by itself, even if it is the case that it so far would not discomfit those pure benefit theorists who are objectivists.³² It is important to point out here, however that, in the first instance, this objectivist/subjectivist debate is fundamentally about the correct way to think about the goods that constitute *overall human well-being*. It is different, in this way, from the specific debate about what notion of benefit is relevant to debates about the principle of fairness. The distinction is a useful one for thinking about such cooperative benefits, but an acceptance account of fairness is neutral on the larger debate between subjectivist and objectivist accounts of overall human well-being. One can be an acceptance theorist about fairness and an objectivist about well-being.

But, while objectivism might offer a compelling account of overall human well-being, it provides an implausible way of thinking about the benefits that are relevant for considerations of fairness. The problem here is that the potential alienation that exists between a person's desire or other pro-attitude of endorsement for something and whether or not it actually conduces to her good seems more pronounced in cases involving cooperative benefits than it does in cases about a person's overall well-being. It is easy enough to think of examples of goods that help to contribute

³² For example, Richard Arneson's positions on these questions is consistent. See his "The Principle of Fairness and Free Rider Problems," "Human Flourishing versus Desire Satisfaction," and "Cracked Foundations of Liberal Equality," in Justine Burley's (ed.), *Ronald Dworkin and His Critics*, (Oxford: Basil Blackwell, 2004), 79-98.

to peoples' overall well-being in which their subjective attitudes towards them seem quite separate from their being actually beneficial. We can desire things that are clearly bad for us all things considered (e.g. fatty, highly-processed foods), and not desire things that are clearly good for us (e.g. exercise).

But the problem of alienation seems more severe if we are instead talking about whether the goods generated by a cooperative scheme count as an actual benefit for a person. Consider the Recalcitrant Vegetarian example again. There is a clear objective sense in which she benefits from the water filtration system, though it is also not clear that clean water counts as a net benefit for her given the fact that participation in the scheme comes at the cost of a severe violation of her scruples. But how could we possibly evaluate whether she ultimately benefits from such a scheme without also appealing to what she thinks about such things? What is the notion of benefit that will allow us to objectively evaluate whether the health benefits of clean water are outweighed by the violation of her moral scruples? There does not appear to be any plausible objective criteria that can settle this question, without appealing to fundamentally subjective considerations and what she ultimately wants to do—her desires, preferences, attitudes, and volitions? But this is precisely what an objectivist cannot do.

If objectivism about cooperative benefits is false, then subjectivism must be true. But this is just to say that part of what it is to be benefitted by a cooperative scheme is that a person must *want* the goods produced by the scheme, not just to have been benefitted by it in some objective, alienated, and detached way. But to want a benefit is just to have the kind of comprehensive pro-attitude towards it which is characteristic of acceptance accounts of fairness. Thus, if someone actually has benefitted from a cooperative good, it is only because she *wanted* the benefit in question. This just shows that when we are thinking about fairness, it is not about people being actually benefitted in some objective way; it is about what people *want*.

With this more careful analysis of the notion of a benefit, we can now also see why pure benefit accounts seem plausible in the first place: the very notion of something being a benefit tends to smuggle in voluntarist intuitions about peoples' desire for those benefits. For part of what it is to be benefitted by a cooperative scheme is to want the benefits in question. When we separate out these intuitions, we are left with an objective sense of cooperative benefit that does not plausibly lead to a conviction that such persons are bound by considerations of fairness. Indeed, what all of this shows is that the normative considerations of fairness has nothing directly to do with benefits at all, but is rather about whether we *want* them. Thus, rather like consent or contract, the moral bindingness of fairness does not involve whether these arrangements are good for a person, but rather turn on whether or not a person voluntarily participates. Of course, we typically want to enter into such an arrangement precisely because they benefit us, but the normative engagement comes from the voluntary commitment—not the benefit—as with consent.

V. Conclusion

Pure benefit theories typically have a technical intricacy about them, as they build in ever more complex conditions in order to correctly account for our intuitions about cases. They must go to great lengths to negotiate all of these issues, leading to theories of extraordinary complexity.³³

One example of this, is the way in which pure benefit accounts struggle to explain the difference between cases involving public and private goods, sometimes artificially distinguishing

³³ Richard Arneson's pure benefit account of fairness for example requires the fulfillment of seven separate conditions ("The Principle of Fairness and Free-Rider Problems," 621-2). On Garrett Cullity's account, persons are obligated by considerations of fairness when "a person is benefitted by a scheme that makes fairly distributed requirements, the benefit is worth its cost, and it is not the case that practically everyone would be made worse off by the practice of regarding as obligatory those further requirements that must in fairness be regarded as obligatory if the requirements in question are regarded as obligatory" ("Moral Free Riding, 14).

between the two kinds of cases as if there are two principles of fairness.³⁴ For if voluntary acceptance is unnecessary to explain our intuitions about fairness, it is hard to see why the difference between public and private goods is so obviously salient. For proponents of a pure benefit 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 cases of public and private goods. But clearly there *is* an important difference, for in cases involving private goods, there is never any question about whether a person's actions are unfair.

Defenders of an acceptance-based account, however, have an easy explanation about why a good being public or private is significant. When a private or excludable good is involved, there can be no question that a person has voluntarily accepted it, since she would not have it if she did not voluntarily go out of her way to get it. In contrast, cases with public or non-excludable goods are complex precisely because voluntary acceptance is not immediately obvious or can be difficult to ascertain. Indeed, one of the reasons why acceptance accounts are more controversial than they ought to be is that people seem to confuse epistemological questions about how we know whether or not a person has in fact voluntarily accepted a good, with substantive questions regarding the coherence of the theory. It is hard to determine whether a person has in fact accepted a public good since such acceptance is fundamentally an internal subjective matter, but this does not mean that the principle is incoherent. The stark difference in clarity between cases involving public and private goods just shows the importance of acceptance to our intuitions about fairness.

Acceptance accounts have other advantageous features about them that help to make sense of moral life and fairness. Voluntarist accounts help to explain why it is that unfair actions are wrong. As Cullity notes, what seems to be at the heart of accusations of unfairness is that people

³⁴ As Klosko does, "Presumptive Benefit, Fairness and Political Obligation," p. 243.

are making exceptions of themselves by giving themselves “objectionably preferential treatment.”³⁵ But this is precisely what it is to knowingly and willingly accept a benefit while failing to fulfill the terms of cooperation. When free riders want benefits, know that they are produced by a cooperative scheme that imposes certain requirements on participants, but wish to receive those benefits without also participating in the scheme, they are making an exception of themselves. Free riders are in the same class of persons who are committed participants insofar as all of them want the benefit, but exempt themselves of having to participate in the scheme. But this is rather different from the condition of persons who receive benefits that they genuinely do not want. Thus, they are not making exceptions of themselves, but are rather the unwilling recipients of benefits that they would rather do without.³⁶

I suspect that part of the deep motivation of these pure benefit theories of fairness is a desire to articulate stringent moral standards in order to help ensure that schemes of human cooperation are not exploited by those who desire to enjoy the benefits of social cooperation without also bearing the burdens necessary to uphold them. The need to help protect schemes of social cooperation is all the more pressing in a modern world where so many extraordinarily dire social problems can only be resolved through delicate social cooperation requiring widespread participation. Whether we are thinking about climate change or global pandemics, it is clear that issues of free riding and unfairness are not matters of mere moralistic finger wagging.

³⁵ “Moral Free Riding,” p. 22.

³⁶ Cullity actually argues that the problem with acceptance theories is that they cannot provide any principled rationale for why free riding is unfair even in less controversial, paradigmatic cases of unfairness. The problem for acceptance-based accounts of fairness is that they need to explain “*how* one’s deliberately taking, rather than merely receiving a benefit contribute to making one’s treatment of oneself objectionably preferential” (Cullity, 24). But the answer here seems reasonably clear: in merely receiving a good I am not intentionally making an exception of myself. This only happens when I intentionally want the good, but fail to take on the burdens of participation in the cooperative scheme.

It is true that voluntary acceptance accounts of the principle of fairness are more permissive and less demanding than pure benefit theories. Because the obligations of fairness turn on the vicissitudes of human subjectivity, those bound by obligations of fairness will surely be fewer under acceptance theories than they would under pure benefit ones. Under an acceptance theory, there will be persons who are not obligated because they reject cooperative goods, who would be obligated under a different kind of pure benefit theory. But it is also important to note that the only people who are excused by the kind of acceptance theory defended here are those that sincerely reject such cooperative goods. They are not merely trying to exploit a system or shirk their public responsibilities.

Further, while it might be the case that persons would be excused from participating in a cooperative scheme because they sincerely do not want the good, this does not mean that there are no other moral reasons to be critical of their non-participation. Consider the rather pressing issue of mask wearing or vaccinations in the midst of a global pandemic. Some might irrationally reject the public good of health and safety that comes with wearing a mask in public or receiving a protective vaccination. On the acceptance account defended here, if they sincerely reject this good (and their belief is non-culpable—a tricky question) they are *not* acting unfairly, and are under no obligation of *fairness* to participate in the cooperative public health scheme. But this does not mean that their rejection of masks or vaccines is wholly justifiable. For while they might not be acting unfairly, their actions can be criticized on other grounds. What is really worrying about such behavior is not that it is *unfair*, but rather that it imposes *harms* or risks on others. Masks and vaccines obviously do not only protect the individuals who make use of them, but they also protect those around them. It is one thing for a person to reject benefits for themselves; it is quite another to behave in ways that impose harms on others.

Of course, these latter points are secondary for a philosophical examination of fairness. The most important thing is to get to the truth of the matter with regard to the nature of obligations of fairness. This paper has argued that voluntary acceptance is necessary, that it is essential to explain what is wrong with unfair actions, that the chief objections to such theories can be defeated, and that pure benefit theories face insurmountable problems in trying to characterize cooperative benefits without reference to a beneficiary's subjective desires, preferences, or other pro-attitudes of acceptance. Free riding is wrong when persons intentionally try to make an exception of themselves by wanting and enjoying cooperative benefits without also undertaking the cooperative burdens that are necessary to produce them. But they only do this when they genuinely *want* those benefits.³⁷

³⁷ I'm very grateful for comments from Mark Nelson, David Vander Laan, Jim Taylor, Sameer Yadav, and two anonymous reviewers.