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Benefits, Intentions, and the Principle of Fairness

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In its simplest form, the *principle of fairness* tells us the following. If a number of people are producing a public good that we benefit from, it is not morally acceptable to free ride on their backs, enjoying the benefits without paying the costs. We owe them our fair share of the costs of the production of that good. The principle of fairness, defended by Rawls in *A Theory of Justice* and widely discussed subsequently, is sometimes invoked in various areas of applied ethics, such as environmental ethics, social ethics, etc.

As it stands, the principle of fairness offers an account of a particular type of moral obligation that obtains if certain conditions are satisfied. For example, the good produced must be a particular type of good, the scheme in which it is produced must itself be fair, and so on. This account inspired a wave of discussions, which set the tone for the debate on the principle of fairness, about two decades ago. A series of counterexamples were provided in which all the conditions required by the principle are satisfied, but the situation does not generate an obligation. Counterexamples were followed by replies that revised and defended the principle.¹

1 See Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books 1974), 93. A representative response to Nozick's polemic is Richard Arneson, 'The Principle of Fairness and Free-Rider Problems,' *Ethics* 92 616-33. Other discussions include G. Cullity, 'Moral Free Riding,' *Philosophy and Public Affairs* 24.1 (1995) 3-34 and A.J. Simmons, *Moral Principles and Political Obligations* (Princeton NJ: Princeton University Press 1979).

The phenomenon is strikingly analogous to the debate in epistemology that followed Gettier's counterexamples against the account of knowledge as justified true belief.² As is well-known, Gettier offered a set of counterexamples in which a given knowledge claim satisfies all the conditions required by the account of knowledge as justified true belief but is not, in fact, knowledge. This gave rise to a series of replies that modified the account. However, each time that philosophers thought that they had settled the matter, a new counterexample would be offered making the issue of an account of propositional knowledge relevant again. I will not discuss the Gettier problem in this paper, but what the Gettier problem reminds us is that the search for the necessary and/or sufficient conditions of a given principle, whether epistemic or moral, is a central concern of philosophical research.³ A seemingly plausible account may turn out to be not plausible at all when put under critical scrutiny, and this realisation may occur just when we think that the issue was already settled.

Nozick's counterexample in *Anarchy, State and Utopia* had a particular focus. It focused on the *conditions of consumption* of public goods, which shaped most of the debate on the principle of fairness. Indeed, philosophers have discussed extensively the moral relevance of the voluntary acceptance of benefits (and what counts as voluntary acceptance) to understand the limits of the applicability of the principle, and interesting as well as convincing replies have been made (e.g. Arneson, Klosko). There is little to be gained, at this point, in our understanding of the principle of fairness by bringing back the debate over Nozick's counterexamples and objections.⁴ However, the debate regarding the necessary and sufficient conditions of the principle of fairness that seemed more or less settled may become relevant again in a new light. Focusing on the *production* of public goods opens up a whole new class of questions

2 Edmund Gettier, 'Is Justified True Belief Knowledge?' *Analysis* 23 (1963) 121-3. See also R. Shope, *The Analysis of Knowledge* (Princeton: Princeton University Press 1983).

3 For an interesting discussion of the parallel between problems in moral theory and epistemology, and particularly in relation to the Gettier problem, see Andrew Latus, 'Moral and Epistemic Luck,' *Journal of Philosophical Research* 25 (2000) 149-72.

4 There are nevertheless recent contributions, which have evolved from the initial debate, that are worth mentioning. See George Klosko, 'Political Obligations and the Natural Duties of Justice,' *Philosophy and Public Affairs* 23.3 (1994) 251-70; Alan Carter, 'Presumptive Benefits and Political Obligations' *Journal of Applied Philosophy* 18.3 (2001) 229-43 and John Simmons, *Justification and Legitimacy* (Cambridge: Cambridge University Press 2001).

regarding the principle and may generate potential counterexamples and objections against some of its applications.

In this paper, my aim is to shift the focus from the conditions of consumption to the conditions of production of public goods to examine the scope and limits of the principle of fairness. I will examine whether the *intentions* behind the production of a public good can limit the applicability of the principle of fairness. The question I will be concerned with is this:

If a public good is produced by a number of people who engage in an activity they already prefer or enjoy doing, is the resulting “involuntary” production of this public good sufficient grounds to limit the obligations generated by the principle of fairness?

I begin with explaining how public goods and the principle of fairness are to be understood. In section II, I discuss two standard requirements that limit the applicability of the principle. Section III raises the question whether there are further requirements that a public good has to satisfy by focusing on the production of public goods. I distinguish between intended and unintended public goods and propose to examine what might be called an ‘intentional production condition.’ Section IV queries whether or not the distinction is morally relevant. Section V proposes an argument that says that it is morally relevant and says that the duty of fair play does not extend to cases of unintended public goods. This view appeals to the intuition that we do not think we have obligations to reward those who do things that they already enjoy because rewarding them would give them extra rewards, which would itself have unjust consequences. Section VI analyses that argument and shows that it does not hold. Finally, in section VII, I consider an objection to my analysis and provide a response.

I Public Goods and the Principle of Fairness

The principle of fairness has been formulated, initially by H.L.A. Hart and then by Rawls, to ground a principle-based understanding of the distribution of burdens and benefits regarding the production of public goods in a fair scheme of cooperation.⁵ Let me begin by explaining how

5 H.L.A. Hart, ‘Are there any Natural Rights,’ in A. Quinton, ed., *Political Philosophy* (Oxford: Oxford University Press 1967) and John Rawls, *A Theory of Justice* (Oxford: Clarendon Press 1972).

I understand the terms 'public goods' and 'principle of fairness.' Many definitions of 'public goods' have been given, and they include various properties.⁶ For the purposes of the present examination, let us assume that such goods possess the following four features:

- (i) The contribution of some but not all the members of a group is sufficient to secure the good.
- (ii) If secured, the good will be available to all, even those who did not contribute to its production.
- (iii) It is either impossible or too costly to prevent persons (including non-contributors) from enjoying the good.
- (iv) The individual's contribution to the production of the good is a burden (or cost) to that individual.

Examples include clean air, unspoiled environment, and protection from threatening or hostile environment, although these examples are not exhaustive.

The principle of fairness grounds a moral obligation not to free ride as part of a fair scheme of cooperation, also called 'the duty of fair play.' The principle is standardly summarized as follows. If some people are contributing to the production of a public good, one should not simply enjoy the benefits without doing one's share in the production of that good. This is a non-consequentialist moral obligation for the underlying rationale is guided not so much by a desire to avoid the bad outcome of under supply as to set a standard of justice to aspire to. The underlying intuition is that it would be an injustice to those who contribute to the

6 A similar, slightly larger, list is also provided by Paula Casal, 'Environmentalism, Procreation, and the Principle of Fairness,' *Public Affairs Quarterly* 13.4 (1999) 363-76. For a larger list of characteristics see Cullity, 'Moral Free Riding,' where he includes jointness in supply, non-excludability, jointness in consumption, nonrivalness, compulsoriness, equality, indivisibility. Philosophers are far from being univocal about which ones of these properties are definitive of publicity. Some have also derived sub-categories, and distinguish 'collective goods' from public goods, e.g. David Miller, 'Social Justice and Environmental Goods,' in Andrew Dobson, ed., *Fairness and Futurity: Essays on Environmental Sustainability and Social Justice* (Oxford: Oxford University Press 1999) and W. Beckerman and J. Pasek, *Justice, Posterity, and the Environment* (Oxford: Oxford University Press 2001). Others refer to those public goods that have the compulsoriness feature as 'pure public goods,' e.g. Arneson, 'The Principle of Fairness.' A useful guide to the public goods literature is found in the appendix of Cullity, 'Moral Free Riding,' 32-4.

production of the public good if some of those who benefit from it turn out to be, in a patterned fashion, those who do nothing for its production.

The principle can be invoked to justify some social and political obligations. Indeed, it is often invoked in various areas of applied philosophy, for example in environmental ethics in support of unspoiled environment or other environmental goods, in science and engineering ethics in favour of subsidies for scientific research, in social ethics in support of services that is normally associated with good government or in response to some of the inequalities generated by the globalizing economy etc.⁷

II Two Standard Requirements and the Limits of Obligations

The principle does not have unlimited application. Two standard requirements limit the range of its application. One requirement, which Rawls himself has identified, is formal and states that the scheme itself should be fair, i.e. it should meet Rawls' two principles of justice. If the scheme is unfair in its distribution (or if it is ill-advised), then it does not generate obligations.⁸ I will refer to this as the *formal requirement*. Although it may be possible to question the viability of the formal requirement,⁹ I will assume that the principle of fairness cannot be plausibly justified in schemes that are themselves unjust.

The second requirement, which might be called the *substantive requirement*, states that for the principle of fairness to be applicable, the public good itself has to be both of a certain kind and has to confer a certain degree of benefit. This requirement is 'substantive' because it is not merely concerned with the structure of the scheme (whether it is fair or not) but requires an account of the benefit one gains from a given public good.

Consider a group of amateur orchid enthusiasts who decide to rent part of a public park in a neighbourhood and build a greenhouse, where they can each bring in their own collection of orchids and create a space where a large collection can be maintained. Because orchid culture is a

7 Cf. Casal, 'Environmentalism'; George Klosko, Michael Keren, Stacy Nyikos, 'Political Obligations and Military Service in Three Countries,' *Politics, Philosophy, Economics* 2.1 (2003) 37-62; Philippe Van Parijs, 'Linguistic Justice,' *Politics, Philosophy, Economics* 1.1 (2002) 59-74; Hillel Steiner, 'Double-Counting Inequality,' *Politics, Philosophy, Economics* 2.1 (2003) 129-34.

8 Arneson, 'The Principle of Fairness,' 620.

9 Cf. Simmons, *Justification and Legitimacy*, ch. 1.

difficult enterprise requiring fragile environmental equilibria hard and costly to artificially create and maintain, it would be more cost-effective, the orchid enthusiasts collectively decide, to share an artificially created eco-system specially designed for orchid culture. They also decide to make the greenhouse open to public, say because they are not commercially minded and want to create an environment that the rest of the inhabitants of the neighbourhood will enjoy whilst they are pursuing their common interest. As a result of these collective efforts, the inhabitants of the area have in their neighbourhood an open and ongoing exhibit, which is part of an already existing public park and which includes a set of the finest instances of rare types of orchids. This development, many of the inhabitants appreciate, is an enjoyable addition to their neighbourhood that they can enjoy at no cost.

Yet, it would be odd to invoke the principle of fairness and ask the inhabitants to contribute to the costs of the public greenhouse either in cash or by taking turns to check temperature and humidity, or supplying fertilizers. It seems plausible to hold that the benefit of the 'orchid-house' simply does not generate obligations of fair play, as appreciated as it may be.

This example is akin to the case of the fashionable pedestrians given by Richard Arneson. It may be plausible to assume, Arneson tells us, that fashionable pedestrians produce a public good that others can enjoy.¹⁰ But even if stylish pedestrians decided to get cooperatively organized, Arneson adds, it is implausible to assume that they can demand 'the right to enforce a charge against ogling pedestrians.'¹¹ It seems intuitive that neither the orchid-house nor Arneson's fashionable pedestrians can be a basis for the application of the principle of fairness.

Can this intuitively sound view be given a rational explanation? For Arneson, the principle of fairness cannot be applied because the benefit

10 One could object that there is a fundamental difference between this example and the example of the orchid enthusiasts, for the stylish pedestrians dress well independently of each other whereas orchid enthusiasts put their orchids together in a green house by agreement, although not necessarily with the intention of producing a public good. But for the purposes of the present discussion such difference can be ignored, for the discussion is concerned with the resulting benefits.

11 Arneson, 'Principle of Fairness,' 621. It is important to clarify here the difference between moral obligations and enforcement issues. The principle of fairness grounds a moral duty in a scheme of cooperation. However, the duty imposed on agents is constrained by the moral limits of state action, which define the scope of the applicability of the principle. As a result, any discussion of the limits of the principle's applicability, as it is the case in this paper, is concerned with the moral limits of state action.

conferred by the fashionable pedestrians is not substantial enough to justify the obligations of fair play. The benefit simply makes a very small change in people's lives, too small really to justify obligations. Put this way, the substantive requirement is of a *quantitative* nature, implying that the duty of fair play kicks in if the benefit conferred by the public good hits a minimum quantity.

Phrasing the substantive requirement this way, i.e. in quantitative terms, remains inadequate however. For although it is plausible to assume that very small benefits cannot justify the duty of fair play, it cannot be assumed that the substantive requirement consists solely of a quantitative requirement.¹² A benefit may satisfy a quantitative requirement but it may nevertheless fail to justify the application of the principle of fairness. It is possible, for example, to imagine a community where fashionable persons are greatly appreciated overall. In such cases, it would not be farfetched to hold that fashionable pedestrians bring a significant benefit. But even in such contexts the organized fashionable pedestrians' enforcing a fee to ogling pedestrians remains implausible. This is so because there is a second, *qualitative*, component to the substantive requirement. Only certain kinds of goods are eligible as the sort of public goods that generate the duty of fair play. For distributive justice is not concerned with all kinds of goods but certain kinds of goods, namely 'primary goods' as Rawls calls them.¹³ These are goods that we can plausibly assume all would want when placed in a suitably framed situation of choice.

The problem with the orchid house is that the good it confers is not a good that we can assume all would want. Some people attach positive value to the sight of orchids or other exotic plants. They may well find the greenhouse worth making part of their leisurely activities. Others are entirely indifferent to plants, let alone orchids. They may rather spend their time doing another leisurely activity, such as watching an action film at a commercial cinema. It is not merely because the orchid-house is not sufficiently beneficial that it does not generate the duty of fair play, but also because we cannot hope to achieve reasonable agreement over the benefits it confers.¹⁴

12 I wish to thank an anonymous referee for bringing this to my attention.

13 Rawls, *Theory*, 92-5, 407-16

14 Ronald Dworkin has worries about subsidizing the arts on similar grounds. See Ronald Dworkin, 'Can a Liberal State Support Art?' in *A Matter of Principle* (Cambridge, MA: Harvard University Press 1985).

One could also claim that the common pursuit of the orchid enthusiasts is in fact an expensive taste. Each orchid enthusiast puts value to his pursuit, one can argue, because he has developed an expensive taste¹⁵ and the orchid-house project as a collective venture can be qualified as a 'collective' expensive ambition. The fact that it is a collective venture, however, does not entail that everyone who enjoys the benefits is morally obligated to contribute to the efforts of maintaining the greenhouse. The aim of distributive justice is not to compensate the inequalities in the distribution of burdens and benefits that arise from choices motivated by expensive tastes.

Of course, one could argue that the quantitative and qualitative components of the substantive requirement are intimately related to one another. If the benefit made a sufficiently important change in people's lives, then it would count as a 'primary good' regardless of personal preferences. In that situation, diverging personal preferences would become irrelevant. For example, you may have a personal preference for urban living and may find idyllic wildlife scenery rather boring. But you would agree that the protection of a clean and unmolested natural environment is a good in which all have an interest, including future generations, regardless of your personal preference. Similarly, if the benefit made an important change in people's lives, it would no longer be viewed as an expensive ambition, but an indispensable asset. For example, large sums of money are needed to design and build effective steel mills that produce high quality steel with the least possible chemical waste. The state may choose to provide tax incentives to companies planning to spend money on building effective mills (even if doing so proves more expensive in the short run than not encouraging the replacement of old, ill-functioning steel mills). What the state would not do is to dismiss such projects on grounds that it is an expensive taste of enthusiastic engineers, if the project is indeed economically viable and environmentally sound.¹⁶ Therefore, the distinction between the quantitative and qualitative requirements of the substantive requirement is not clear-cut. However, this does not disprove my claim that a benefit, to generate the duty of fair play, has to meet *both* the quantitative and qualitative requirements. It merely shows that the set of primary goods is not rigid, but is the object of continuous re-assessment.

15 I use the term 'expensive taste' akin to Dworkin's use, i.e. as including 'expensive ambitions.'

16 This is what Klosko calls 'presumptive benefit,' which, consistent with Rawls' primary goods, means benefits that everyone is presumed to want. See Klosko, 'Presumptive Benefit,' 246.

In sum, the formal and substantive requirements together set the minimum constraints that limit the application of the principle of fairness. This is not to say that if a public good satisfies these requirements, the principle of fairness is applicable. What it means is that the principle of fairness cannot be applicable if these requirements are not satisfied.

III Intended and Unintended Benefits

Having clarified these two standard requirements, the question that remains to be asked is whether there are further conditions that place constraints on the obligations generated by the principle of fairness. In the initial debate following Nozick's polemic, the questions that set the tone for the debate were of the following sort: 'Is the voluntary acceptance of benefits morally relevant, and if so, to what extent?' As a result, the philosophical discussion focused almost exclusively on the *consumption* of benefits to identify further conditions that may constrain the applicability of the principle. It is nevertheless an interesting question whether the conditions of *production* of a public good should matter in the rational assessment of the applicability of the principle of fairness.

I will investigate whether constraints can be placed on the principle by focusing on the production of public goods. I will consider one possible constraint, which I will call the *intentional production condition*. This constraint, if viable, would tell us that a public good does not generate obligations if it is not produced *intentionally* by those who are producing it. Let me explain. Suppose a public good happens to be, not the result of conscious efforts to produce a public good, but the *by-product* of activities that some people engage in simply because they value or enjoy these activities. These people may well have reasons to value these activities, but the reasons are independent from the production of the public good. The intentional production condition would tell us that this limits the applicability of the principle of fairness, and that the scope of the principle of fairness does not extend to cases of *unintended benefits*, as I will call them.

In the recent moral and political philosophy literature, this issue has been identified and discussed by Paula Casal and Rolf George.¹⁷ According to George, the larger society should cover the costs of having and raising children on grounds that procreation produces a public good that we all benefit from. The argument stands on the assumption that chil-

17 Rolf George, 'Who Should Bear the Costs of Children?' *Public Affairs Quarterly* 1 (1987) 1-42 and Casal, 'Environmentalism.'

dren produce a public good. Population growth boosts economic growth, enlarges the tax base, increases the supply of capital, and so on. If the empirical claim is true (and it may not be, for population growth also reduces the gdp per capita), even those who do not have children benefit from others' having children. But children are also capital investments; they cost a substantial sum of money. This generates a duty, the argument concludes, to help parents to pay the costs of having and raising children, on grounds of fair play.

In contrast, Casal is of the view that even if we suspend any doubt regarding the empirical assumption, i.e. even if it were true that procreation produces a public good, there are reasons to cast doubt on the applicability of the principle of fairness. For a distinction needs to be drawn between *intended* and *unintended* benefits. Parents do not normally decide to have children in order to produce a public good. They are doing something they already prefer and enjoy doing, regardless of larger potential benefits for others. The beneficial effects for others, if they exist at all, are unintended consequences of their decision. Nor do they view having children as a cost, though worth paying for the sake of producing benefits for others. They attach a positive value to having children.¹⁸ Although intentions and costs appear to be two separate points, costs can be lumped together with intentions for the following reason. Most people would recognize, when asked, that having and raising children is costly. The costs can be of two types: (a) sums of money that need to be set aside or (b) restriction on one's liberty that comes from responsibilities of parenthood. Having children would restrict my liberty, for example, to spend all my time writing philosophy or to travel without keeping a stable home, if these were things that I value or prefer. Some consciously choose not to have children because they view the costs too high. Those who have children, assuming that they deliberated on the issue, usually do so because the value they attach to having children outweighs the costs.

From the considerations above, the following obtains. Parents typically view the costs of having children worth paying (i.e. they view the sacrifices they have to make worth making) because of the value they attach to having children. What they do not do is to make the sacrifices that parenthood involves in order to produce a 'public good,' or generally benefit a larger crowd. The reasons to value having children, for those who hold this value, are independent from the production of a public good. Casal asks us to contrast this with environmentally aware

18 Casal, 'Environmentalism,' 367

individuals who fit a catalytic converter. They do not attach a positive value to the fitting of the converter in itself. They do so with the intention of maintaining a better, less polluted environment. Two distinct ways of producing a public good seem to emerge then: some public goods are produced intentionally others are produced unintentionally.¹⁹

IV The Moral Relevance of Intended and Unintended Benefits

Now the question is this: Are the intentions behind the performing of an act that contributes to the production of public goods morally relevant? It may seem intuitive to hold that intended and unintended benefits are *not* morally on a par. In fact, it is this very view that motivates Casal's argument. When environmentalists fit a catalytic converter, they do not attach a value to the existence of converters in themselves.

If they wanted converters anyway — say, because they developed a converter fetish — and converters happen to have the unintended beneficial effect of reducing pollution, should we think that the principle of fairness applies?²⁰

The thesis that emerges is that we should not think that the principle applies if people wanted converters anyway. This is an instance of the application of the intentional production condition to a specific problem.

What motivates this claim is an intuitive moral belief that one may invoke to guide interpersonal conduct. Let us examine then how this moral intuition may be formulated in person to person dealings before exploring the way in which it may be extended to illumine individual responsibility in relations to collective actions in cooperative schemes. According to the intuition, we do not usually think that we are under an obligation to reward people for a benefit they produced unintentionally, when doing something they already prefer or value, an activity that is not a burden,²¹ but an enjoyable experience.

19 It may be either true or false that raising children produces a public good, but if it is true it is clear that the produced good qualifies as an unintended good as I have defined it.

20 Casal, 'Environmentalism,' 367

21 This assumes that the statement 'x is costly (or burdensome) for y' does not necessarily mean that x has an absolute cost (or is burdensome in absolute terms), but that y's valuing or enjoying x overrides the cost or burden entailed by x.

One way of rationally making sense of this intuition is this: people who engage in an activity they enjoy already find that activity rewarding. If they were to receive assistance for that activity, the assistance would confer extra rewards to them that come on top of some amount of reward they already receive. The intuition is that it is morally questionable that those people top up the rewards while others who do not take the same enjoyment from engaging in similar activities do not enjoy such extra rewards. One then may be inclined to hold that those *who do not* readily enjoy some rewards but engage in an activity because it is the right thing to do are the ones who have a claim for assistance to defray the burdens. Let us call this intuitive belief *the moral relevance view*. If cogent, this belief can be extended to collective actions and distributive justice, and thereby constitute the core normative statement of the intentional production condition. But it remains to be seen if the belief is cogent.

V Benefits with Additional Rewards

The crux of this limiting argument that I have been considering is that unless intentions are factored in, the principle of fairness might increase the reward some people get from engaging in certain activities. Let us now see how the moral intuition applies to the production of public goods. Suppose that in a given situation the production of an unintended public good benefits s and p equally, where s belongs to the class of producers of the good and p belongs to the class of those who only benefit (i.e. free-riders). When s engages in activity a at time t , she already finds a rewarding. Assume that this fact gives her one unit of reward and define reward as satisfaction one gets from doing something one has reasons to value. At time t' , a redistribution takes place and everyone contributes their fair share, in other words free-riding is eliminated, as a result s gets an additional reward on activity a that was already giving her one unit of reward. The costs, for example, she was willing to pay prior to redistribution are alleviated. This makes the performing of activity a even more enjoyable (therefore more rewarding) than it was at time t . By contrast, p does not get extra reward of the sort s did from the redistribution, on the contrary he has to make a sacrifice by putting his fair share. At the end of the day, although costs and benefits are redistributed on a seemingly fair basis, the argument states, s in fact gets additional reward that p doesn't. The appeal of the intentional production condition, then, is that it eliminates this outcome by making the principle of fairness applicable only to types of public goods that do not top up the rewards for those who are producing it when the principle is applied, assuming that the other requirements (formal and substantive) are satisfied.

The topping up of the reward is where the justification to resist the obligation of fair play lies. The intentional production condition, which I have been considering so far, assumes that the redistribution of costs and benefits in light of the principle of fairness in fact turns out to be unfair in some cases when we factor in the reward level of those who produce the benefits. The constraint would be that in those cases, the principle of fairness ought not to apply. On this view, however good the outcome of her action is for others, the resulting benefit is, as it stands, a happy surprise and there is no normative basis to demand extra assistance.

VI Distributive Benefits and Personal Rewards

Despite its *prima facie* appeal, there are reasons to be sceptical about this reasoning. The main reason, which I will now explain, is distributive and concerns the scope of morality in distributive justice. The topping up of the reward, as I will now show, is in fact *not* morally relevant in the framework of distributive justice. And insofar as the principle of fairness is a principle of distributive justice, then the topping up of the rewards should not affect the applicability of the principle.

In order to see this we need to distinguish between two categories of gains that agents may derive from their actions. There are, on the one hand, benefits that are measurable (in relation to costs) within a distributive scheme. Let us call these *distributive benefits*. On the other hand, we have what I will call the *personal rewards* one may derive from an action, or course of action. Let me illustrate. Jones wants to go to university to study philosophy and is considering different programs. When making his decision, as a rational agent, he makes an assessment of the costs and benefits of pursuing university studies in philosophy. He considers, for example, the actual costs entailed by his plan, such as the tuition that he has to pay, the living expenses that he has to assume during his studies. In his deliberations, Jones assesses these costs in relation to the benefits that he thinks he may derive from the studies. The benefits may be actual benefits, or opportunities that his studies could open to him. Suppose now that what Jones really wants is to pursue a career in law and his choosing to study philosophy is instrumental to this goal. Then, in his cost-benefit analysis, he may compare the costs (e.g. tuition, living expenses) with the opportunities (e.g. qualifications that will make him eligible for a range of positions and skills that will increase his chances to pursue further career goals, such as law school).

These costs and benefits are of particular relevance to distributive justice. Of course, I have presented them as they are taken into consideration by individuals when making choices, such as career plans. But

they are nevertheless relevant to distributive justice. Distributive justice in the liberal tradition is not concerned with the actual choices made by the individuals regarding life plans. On the contrary, it leaves these choices up to the individual to decide for herself. What distributive justice is concerned with, however, are the conditions of one's choices. It aims to ensure, for example, that some persons are not disadvantaged when making life choices due to factors that they have not chosen and that are morally arbitrary. Philosophers working in this area deeply disagree over how fair conditions are to be achieved, but they agree that justice is concerned with the conditions of choice rather than the choices themselves. The costs and benefits that I have presented thus far affect the conditions of choice. For example, of the children in public care only a very small percentage end up going to university.²² If Jones, the agent of our hypothetical example, grew up in foster homes the costs-to-benefit ratio of enrolling in his chosen program would be more prohibitive than if he were from a well-to-do family. Distributive justice is therefore concerned with how costs and benefits regarding life plans break down for individuals given their conditions. It inquires about how unfair disadvantages can be addressed.²³

But there is another category of gains that I have not taken into account in the hypothetical cost-benefit considerations above. Call this other category *personal rewards*. Suppose now that Jones decides to follow his plan and enrolls in a philosophy degree program in order to increase his chances to go to law school. He meets Smith, who, unlike Jones, is there to study philosophy not as instrumental to another goal he has, but because he finds studying philosophy itself personally rewarding. Of course, Smith also had to make a rough cost-benefit analysis before enrolling in to the program to make sure that it is the right decision. But additionally, Smith finds that puzzling over philosophical problems gives him a particular kind of personal satisfaction. Both Jones and Smith do well in the program, but at the end of the day Smith finds his studies more personally rewarding than Jones. This category of gains, which I have called personal rewards, does not count in considerations of distributive justice. That is, the concern for distributive justice is whether Jones and Smith can make informed choices about their life plans (and pursue them) as equals, or whether one suffers unfair disadvantages that the other doesn't when making these choices. What distributive justice

22 Cf. Jonathan Wolff, 'Addressing Disadvantage and the Human Good' *Journal of Applied Philosophy* 19.3 (2002), 207.

23 For a recent discussion, see Wolff 'Addressing Disadvantage.'

is not concerned with whether one gains more personal rewards at the end of the day than the other as a result of their respective choices. For the purposes of distributive justice, Smith is not better off than Jones, all things being equal, just because he ends up deriving more personal satisfaction than Jones, although he may consider himself luckier, but this is precisely what distributive justice is neutral about.

Before moving on to the examination of how this distinction sheds light on the scope of the principle of fairness, let us get a firmer grip on the category of personal rewards. The reason why personal rewards should be classified as a separate category of gains is because they cannot be explained in terms of the standard distributive costs and benefits. Although they may have a role in the decisions individuals take, which may sometimes be important decisions about life plans, personal rewards cannot be reduced to distributive benefits. If activity *a* is something *s* has reasons to value personally, what she finds personally rewarding in it cannot be reduced to costs and benefits. Her reasons to value *a* may be either intrinsic or consequence-based. But whether intrinsic or consequence-based, the reason to value that activity may be independent from costs and benefits. High costs may deter us from doing something we find personally rewarding (or benefits may encourage us to engage in it), but what we find rewarding and our reasons to find it so are not shaped by costs or benefits. Whatever the additional personal rewards we receive (or fail to receive) from an activity, if we happen to derive extra rewards, we usually consider ourselves lucky. If we don't, then we tend to consider ourselves less lucky. But either way, we cannot appeal to distributive justice to equalize the gains that some derive from activities that they find personally rewarding.

Why can personal rewards not be assessed in relation to distributive benefits? Why can they not be lumped together? There is one short and one longer answer to this question. The short answer is that there is no common metric of comparison between distributive benefits and personal rewards. The longer answer is that distributive justice, grounded in non-consequentialist morality, simply is not sensitive to the amount of personal rewards (or personal fulfilment) individuals may derive from given activities. This is not the concern of public morality, which makes comparing benefits and personal rewards impossible.

Contrasting this with utilitarianism may help us clarify this point. Utilitarians are especially interested in counting the amount of personal rewards in the normative evaluation of the morally right course of action, or rule, or policy proposal. Of course utilitarians disagree over what kind of personal rewardingness should count (whether it is happiness or the satisfaction of preferences etc.), nor do they agree over how these can be quantified. But what brings utilitarians together is the principle that what is morally right is what brings the highest ranking

overall utility according to some plausible criterion. Given this, counting in the personal satisfaction, rewardingness as I have called it, would be appropriate if one is a utilitarian. But this is precisely where distributive justice, in the non-consequentialist liberal framework, departs from utilitarianism. Indeed, Rawlsian liberalism departs from utilitarian political morality in order to accommodate the separateness of persons, and their individual interests and prerogatives.²⁴

Given the direction that the analysis of the problem has been taking, a question may be raised. How are we to determine, it may be asked, which 'goods' (or 'benefits') should be included in our account of costs and benefits that distributive justice is concerned with, and which 'goods' or 'benefits' should be excluded? What are the criteria that allow us to make such a distinction? This is an important higher-order question of liberal morality and distributive justice. Although it is impossible to provide a full-fledged analysis of this higher-order question in this paper, a rough and ready answer is available in liberal theories of justice. The sort of goods or benefits that distributive justice is not concerned with are those that are the result of our individual conceptions of the good life, whatever they turn out to be, and over which we cannot reasonably hope to achieve general consensus (as noted in section II). Liberal egalitarianism requires one such space of choice, within the constraints of what justice permits. So, one way to construe a criterion is to appeal to the choice space and reasonable agreement.

Let us now re-examine the rationale of the intentional production condition in light of these considerations. An increase in personal rewards may be a by-product of the cost-sharing scheme in cases of unintended public goods. But if the personal rewardingness of the activity is irreducible to costs or benefits, if it is indeed a separate matter, it should not be included in the assessment of the fairness of the distribution of costs and benefits. It may well be a happy coincidence that some people's reward level is increased, but the requirements of justice in cost-sharing schemes, as they stand, should remain the same. In other words, the extra reward is a happy surprise, not a trump.

Recall that the intentional production condition was supported by the intuition, which I have called the moral relevance view. But now, what emerges from the considerations above is that there is another intuition that competes with this one. We do not usually think, in other domains of action, that additional units of personal reward are objectionable from a moral point of view, we view them as morally irrelevant. For exposi-

24 Rawls, *Theory*, sections 5 & 6.

tory convenience, let us call this competing intuition *the moral irrelevance view*. Imagine *s* and *p*, two equally qualified individuals, have the same job and the same income. If *s* finds her job rewarding and *p* doesn't, *s* gets extra rewards in addition to her income from doing her job and *p* gets no extra reward. But, assuming that the overall income distribution is fair, we do not infer that *s* is unjustified to receive the same income as *p* on grounds that *s* already finds her job rewarding. Nor do we infer that *s* should give up a proportional part of her income to equalize the reward level with *p*. Egalitarian liberals are not concerned to equalize gaps in the distribution of this type of reward. Instead, most such egalitarians would be inclined to think that the extra reward *s* receives compared to *p* is a pleasant surprise, a matter of luck. Not every kind of luck matters morally. This kind of luck appears to be of the sort that *ought not to* make a moral difference in the distribution of burdens and benefits. Why should we think the opposite for obligations of fair play?

It could be objected that all I have done is to identify an intuitive moral belief that competes with the intuition that motivates the intentional production condition, but that finding a competing intuition does not entail that it is necessarily an overriding one. I should therefore take a moment to explain on what basis the considerations above trump the intentional production condition. The moral irrelevance view is overriding in the applications of the principle of fairness because it is backed up with the view that distributive justice is not concerned with the category of gains that I have called personal rewards. To accept the moral relevance view would be to disregard the limits of distributive justice. Insofar as the principle of fairness is a principle of distributive justice, then, the topping up of the rewards should not modify the applicability of the principle. Seeing the scope of the principle of fairness this way is plausible. This is so because, construed thus, my argument remains consistent with the two standard requirements that I have outlined in section II, in particular with the qualitative component of the substantive requirement. As a result, it coheres with the other beliefs we hold regarding the principle of fairness.

If I am right, the place of the 'pleasant surprise' shifts. According to the intentional production condition, the benefit generated by a public good, if it is unintended, was advanced as a pleasant surprise and the proposal was that the fact that it is a pleasant surprise could be sufficient reason to resist the obligation to contribute (i.e. the application of the principle). By contrast, the current analysis shows that, if the benefit is indeed a primary good, the pleasant surprise should be placed rather on the personal rewardingness of the activity, if at all, received by those who produce the good, not on the net benefit that everyone enjoys. What these considerations highlight is that there is no justification, as it stands, to

factor in the reward level when we make a judgement about the distribution of costs and benefits about public goods.

There is another reason to be skeptical about the intentional production condition, which may be worth mentioning for it provides additional support for my argument. It concerns the empirical traceability of intentions (and the degree of personal rewards that they may generate in individuals) in actual situations. Concrete cases may often include a combination of motivations. Certainly when I recycle, I do it to contribute to a public good (a scheme that is going to help us regain some of what we have already used), not because I like the existence of blue and black boxes in my kitchen as decorative items. But suppose that a group of enthusiastic engineers are working, in their free time, on a water recovery and recycling system. It may well be the case that some of the more environmentally minded engineers are doing this to produce a public good, but others may be doing it just for the sheer pleasure of pursuing their interests or the excitement of successfully applying their skills in new projects.²⁵ But all of them by putting their efforts to the development of economically and environmentally valuable technologies produce a public good. There is ground to argue that the fact that they are contributing to the development of valuable technologies warrants some public support. Yet, if we were to find out in each case what is really going on in people's minds when they do something that produces a public good, we are likely to find out that it is either unfeasible or too costly to trace intentions behind benefits. This is not merely a pragmatic claim, although the pragmatic concern is real, but it is in part a normative claim. For we cannot expect the state to go into the heads of individual citizens to find out what their true motivation is. Nor should we have any such expectation in order to make a conception of distributive justice hold.

VII Objection and Response

Objections against my argument can be raised. One objection could be formulated as follows. Why should we assume that the benefits to those who produce public goods are not simply the standard benefits assumed by liberal theory? Why assume, in other words, that the reasons for engaging in activities that produce public goods are anything other than reasons rooted in wanting more wealth or income or other primary

25 Cf. Mike Martin, 'Personal Meaning and Ethics in Engineering' *Science and Engineering Ethics* 8.4 (2002) 545-60.

goods? These reasons might not (wholly or partially) have anything to do with 'personal rewards.' Suppose that a hegemon fosters international peace in order to ensure its own safety. (Those who want the example to be an instance of a collective venture can imagine a set of organized hegemons fostering peace for their own interests.) The fostering of international peace creates a global public good; it secures financial stability, which protects jobs, wealth, and the interests of all. However, the hegemons engage in activities that serve their own interests, and which as a by-product benefit others. Yet the benefit to the actors is not some esoteric good like personal reward or fulfilment but the staple kind of benefit (such as wealth, income, stability) which should be factored into any theory of distributive justice.²⁶ Given this, my objector would argue, it would be incorrect to conclude that the rewards of the activity to the actors should not be included in the assessment of the fairness of the distribution of costs and benefits.

The response to this objection is that the scheme of the hegemon will not pass the formal requirement (noted in section II), i.e. it can be shown that the scheme itself is not fair or that it is ill-advised. The achievement of such a peace, through hegemonic means, would either entail policies that would violate basic individual liberties that a liberal would find objectionable or otherwise ill-conceived. In that case, the principle of fairness could not apply on the grounds that the formal requirement is violated, regardless of whether the intention of the hegemon is to selfishly acquire the standard benefits assumed by liberal theory.

A selfish powerful agent who somehow managed to satisfy the formal requirement (and make the scheme obviously not unfair or ill-advised), would not present a major counterexample to my claim. If some people produced public goods and enjoyed extra benefits from it that count from the point of view of distributive justice, then this would clearly be counted in the distribution of costs and benefits.²⁷ This reveals something interesting: it is possible to conceive of a class of 'extra rewards' that are calculable from the point of view of justice. Cases that involve these

26 I wish to thank an anonymous referee for bringing this to my attention.

27 It could be argued, for example, that these kinds of extra benefits may be an incentive for people to continue producing the public good or contributing to it significantly, provided that the scheme is fair. Rawlsian egalitarianism certainly endorses this kind of incentive. This is not to say that such incentives always benefit the worse off. But if they did in addition to benefiting everyone generally, they could be permitted as part of a fair scheme of cooperation. Over-rewarding the agent this way might then be shown to be acceptable if the outcome furthers justice more generally.

kinds of rewards would call for a cost-benefit calculation to decide how the principle of fairness should be applied, and in those cases the extra benefits could be factored in. But this does not contradict my thesis, which consisted in stating that the extra benefits that are subjective and not calculable from the point of view of justice, should not be factored in in the application of the principle of fairness. In this paper, I was concerned with the subjective gains agents get from engaging from certain personally enjoyable activities, and I tried to show that these gains do not have an objective metric of measure and, as a result, cannot be included in a conception of distributive justice. Whether there is a separate class of personal gains that can be assessed on an objective scale of costs and benefits is a separate question that is well worth pursuing, but not one that could be investigated within the framework of this paper. A fully fledged analysis of this type of benefit, and how it should be factored in would require a separate analysis that may complement the one that I have just provided.

VIII Conclusion

In this paper, I have examined the scope of the principle of fairness by focusing on the production of public goods. Most of the literature on the principle of fairness focuses on the consumption of benefits. I have engaged in a discussion of the principle by focusing on the production of public goods. What I have shown is that for those public goods that are produced as a result of actions that some people engage in simply because those actions give them personal enjoyment does not rule out the duty that falls on others to contribute their fair share for the production of that good. I came to this conclusion by testing the principle of fairness in light of competing moral intuitions. Nothing I said here suggests that the principle of fairness is necessarily applicable because it can meet the intentional production condition challenge. What my analysis indicates is that attempts at limiting the principle by appealing to the moral relevance of unintended benefits remains wanting. This advances our understanding of political obligations and potentially sheds light on debates in applied philosophy. For example, it may well be possible to resist arguments such as the extension of the duty of fair play to procreation, but not by invoking the intentional production condition.

What we learn from this discussion is that the conditions of production raise philosophically significant questions regarding the applicability of the principle of fairness. These questions are worth pursuing and may contribute to the advancement of our understanding of the principle of fairness in particular and distributive justice more broadly construed.

We have also seen that an adequate assessment of the applicability of the principle of fairness from this angle requires identifying the type of benefits that are tangible for distributive justice.

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