

# WILEY

---

The Principle of Fair Play

Author(s): A. John Simmons

Source: *Philosophy & Public Affairs*, Vol. 8, No. 4 (Summer, 1979), pp. 307-337

Published by: Wiley

Stable URL: <http://www.jstor.org/stable/2265067>

Accessed: 05-05-2018 09:54 UTC

---

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <http://about.jstor.org/terms>



JSTOR

Wiley is collaborating with JSTOR to digitize, preserve and extend access to *Philosophy & Public Affairs*

## I

The traditional consent theory account of political obligation can be understood as advancing two basic claims. (1) All or most citizens, at least within reasonably just political communities, have political obligations (that is, moral obligations or duties to obey the law and support the political institutions of their countries of residence). (2) All political obligations are grounded in personal consent (express or tacit). Today most political philosophers (and non-philosophers, I suspect) are still prepared to accept (1). But (2) has been widely rejected largely because it entails, in conjunction with (1), that all or most of us have undertaken political obligations by *deliberate consensual acts*. And this seems not even approximately true. If it is not true, then (1) requires a defense employing a more complex account of special rights and obligations than the one offered by consent theory.

One popular way of defending (1) relies on what has been called “the principle of fair play” (or “the principle of fairness”).<sup>1</sup> Advocates of this principle argue that promises and deliberate consent are not the only possible grounds of special rights and obligations; the ac-

1. These are John Rawls’ two names for the principle, from “Legal Obligation and the Duty of Fair Play,” *Law and Philosophy*, ed. S. Hook (New York: New York University Press, 1964) and *A Theory of Justice* (Cambridge: Harvard University Press, 1971). The same principle was alluded to by C. D. Broad in “On the Function of False Hypotheses in Ethics,” *International Journal of Ethics* 26 (April 1916), and developed by H.L.A. Hart (see below).

ceptance of benefits within certain sorts of cooperative schemes, they maintain, is by itself sufficient to generate such rights and obligations. It is these arguments I want to examine. I begin with a brief discussion of the principle of fair play as it has appeared in recent philosophical literature. From there I proceed to a more general evaluation of the principle (in Sections II and IV) and of the theory of political obligation which uses it (in Sections III and V).

The first concise formulation of the principle of fair play was provided by H.L.A. Hart:

A third important source of special rights and obligations which we recognize in many spheres of life is what may be termed mutuality of restrictions, and I think political obligation is intelligible only if we see what precisely this is and how it differs from the other right-creating transactions (consent, promising) to which philosophers have assimilated it.

Hart's explanation of the "special transaction" he has in mind runs as follows:

When a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission. The rules may provide that officials should have authority to enforce obedience . . . but the moral obligation to obey the rules in such circumstances is due to the cooperating members of the society, and they have the correlative moral right to obedience.<sup>2</sup>

While Hart does not refer to this source of special rights and obligations in terms of fairness or fair play, he does note later that "in the case of mutual restrictions we are in fact saying that this claim to interfere with another's freedom is justified because it is fair."<sup>3</sup> We can understand him, then, to be claiming that, in the situation described, a beneficiary has an obligation to "do his fair share" by sub-

2. "Are There Any Natural Rights?" *Philosophical Review* 64 (April 1955): 185.

3. *Ibid.*, pp. 190-191.

mitting to the rules when they require it; others who have cooperated before have a right to this fair distribution of the burdens of submission.

Hart's brief account of the principle of fair play, of course, leaves many important questions unanswered. What, for instance, are we to count as an "enterprise?" Are only participants in the enterprise obligated to do their part, or do obligations fall on all who benefit from the enterprise? Why is a set of rules necessary? Clearly a fuller treatment of the principle is essential for our purposes, and John Rawls provides one in his 1964 essay, "Legal Obligation and the Duty of Fair Play."<sup>4</sup> There Rawls builds on Hart's account to give both a more complete account of the principle of fair play and an extensive discussion of its application to constitutional democracies. His central presentation of the principle echoes Hart's:

The principle of fair play may be defined as follows. Suppose there is a mutually beneficial and just scheme of social cooperation, and that the advantages it yields can only be obtained if everyone, or nearly everyone, cooperates. Suppose further that cooperation requires a certain sacrifice from each person, or at least involves a certain restriction of his liberty. Suppose finally that the benefits produced by cooperation are, up to a certain point, free: that is, the scheme of cooperation is unstable in the sense that if any one person knows that all (or nearly all) of the others will continue to do their part, he will still be able to share a gain from the scheme even if he does not do his part. Under these conditions a person who has accepted the benefits of the scheme is bound by a duty of fair play to do his part and not to take advantage of the free benefits by not cooperating.<sup>5</sup>

The context within which obligations (or duties—Rawls is not very concerned here with the distinction between them) of fair play can

4. See fn. 1 above. The versions of the principle which Rawls presents elsewhere do not differ substantially from this 1964 version; however, contrary to his claims in this version he does argue in *A Theory of Justice* that this principle cannot be used to account for political obligations.

5. "Legal Obligation and the Duty of Fair Play," pp. 9-10.

arise, as described by Rawls, can be seen to exhibit three important features, parallel to those we can discern in Hart's account.

(1) There must be an active scheme of social cooperation. This does not really advance us much beyond Hart's "enterprise," but I think that both writers clearly intended that the principle cover a broad range of schemes, programs, and enterprises differing in size and in significance. Thus, both a tenant organization's program to improve conditions in an apartment building and an entire political community's cooperative efforts to preserve social order seem to qualify as "enterprises" or "schemes of social cooperation" of the appropriate sort. Rawls does set two explicit conditions, however, which help us limit the class of "schemes" he has in mind. First, they must be "mutually beneficial." This condition is, I think, implicit in Hart's account as well; indeed, the principle would be obviously objectionable in its absence. Second, the schemes must be just. This condition is nowhere alluded to by Hart, and I will consider it carefully in Section II.

(2) Cooperation under the scheme involves at least a restriction of one's liberty. Rawls does not mention here, as Hart does, that this restriction must be in accord with a system of rules which govern the scheme by determining the requirements of cooperation (although his later "institutional" language does follow Hart's requirement). Frankly, I can see no good reason to insist that the enterprise be governed by rules. Mightn't an enterprise be of the right sort which, say, assigned burdens fairly but not in accord with any preestablished rules? Cannot doing one's part be obligatory under considerations of fair play even if "one's part" is not specified by the rules?

(3) The benefits yielded by the scheme may be received in at least some cases by someone who does not cooperate when his turn comes; here Rawls again makes explicit a condition which Hart clearly has in mind (since "free riding" is a problem only when this condition obtains). But Rawls adds to this the condition that the benefits in question can be obtained only if nearly all of the participants cooperate. I confess that I again do not see the necessity of this condition. Would it be any less unfair to take the benefits of the cooperative sacrifices of others if those benefits could still be obtained when one-

third or one-half of the participants neglected their responsibilities towards the scheme? Would this make that neglect justifiable? Surely not. A scheme which requires uniform cooperation when only 50 percent cooperation is needed may perhaps be an inefficient scheme; but it is not clear that this would make considerations of fair play inapplicable. Consider a community scheme to preserve water pressure. This scheme prohibits watering lawns in the evening, when in fact if half of the members watered their lawns there would be no lowering of water pressure. Surely this is an inefficient plan, compared to alternatives. But once the plan was instituted, would a member be any more justified in watering his lawn in the evening than if only a few people's so doing would lower the water pressure? I think it is clear that he would not be. Certainly free riding is more dangerous to the scheme's successful provision of benefits when Rawls' requirement obtains; it may then be even more objectionable in those cases. But this additional objectionable element seems to have nothing to do with considerations of *fair play*.<sup>6</sup>

Rawls' account seems to conform to either the letter or the spirit of Hart's account fairly consistently. One significant addition Rawls makes, however, is to move beyond Hart's simple requirement that an individual must benefit from the scheme in order to become bound. Rawls specifies that the obligation depends on "our having accepted and our intention to continue accepting the benefits of a just scheme of cooperation. . . ."<sup>7</sup> We have, then, a move from mere benefaction in Hart's case, to a positive *acceptance* of benefits in Rawls' ac-

6. This argument also seems to me to provide an effective response to a recent attack on the principle of fair play made by M.B.E. Smith, in "Is There a Prima Facie Obligation to Obey the Law?" *Yale Law Journal* 82 (1973). Smith argues that failing to cooperate in a scheme after receiving benefits is only unfair if by this failure we deny someone else benefits within the scheme. But my example is precisely a case in which the failure to cooperate may not deny anyone else benefits within the scheme. And still it seems clear that failure to cooperate is unfair, for the individual's failure to do his part *takes advantage* of the others, who act in good faith. Whether or not my cooperation is necessary for benefiting other members, it is not fair for me, as a participant in the scheme, to decide not to do my part when the others do theirs. For these reasons, Smith's argument is unpersuasive.

7. "Legal Obligation and the Duty of Fair Play," p. 10.

count. (The “intention to continue accepting benefits” seems quite beside the point here, and Rawls drops that clause in later versions; I shall ignore it.) While the distinction between benefiting and accepting benefits is usually not easy to draw in actual cases, that there is such a distinction, and that it is of great significance to moral questions, is undeniable. Suppose that I am kidnapped by a mad doctor and dragged to his laboratory, where he forces on me an injection of an experimental drug. When I discover that as a result of the injection my intelligence and strength have greatly increased, it is undeniable that I have benefited from the injection; but it would be a simple abuse of language to say that I had “accepted” the benefits which I received. It seems clear, then, that we can distinguish, at least in some cases, between mere receipt and positive acceptance of benefits. And it seems equally clear that this distinction may play a crucial role in determining whether or what obligations arise from my having benefited from another’s actions.

To have accepted a benefit in the right sense, I must have wanted that benefit when I received it or must have made some effort to get the benefit or, at least, must not have actively attempted to avoid getting it. I will try to be more precise about this distinction later; here I want only to suggest that Rawls apparently does not see mere benefaction as sufficient to generate an obligation of fair play. He stresses instead the necessity that the benefits be voluntarily accepted by the beneficiary.

## II

I want now to return to consider briefly another of Rawls’ conditions for the generation of obligations of fair play. The condition states that only when the scheme or institution in question is just can any obligations of fair play (relative to that scheme) arise. This claim is part of a more general thesis that we can never be bound to support or comply with unjust arrangements. Although Rawls never advances this general thesis in so many words, it follows from his (unacceptable) claim that *all* obligations are accounted for by the principle of

fair play, conjoined with the absence of any natural duties which could account for such a bond.<sup>8</sup>

Rawls' requirement that the scheme of cooperation be just is put forward quite casually in the essay we have been considering; and although he calls it an "essential condition," as far as I can see he offers no defense of this claim. Even in the more recent statement of this requirement in *A Theory of Justice*, we are given little in the way of justification. While he suggests that the condition is necessary to guarantee the requisite "background conditions" for obligation, he elaborates on this point only by suggesting a (strained) analogy with the case of promise-making: "extorted promises are void ab initio."<sup>9</sup> I have argued elsewhere that this observation is quite irrelevant.<sup>10</sup> It is a failure in terms of voluntariness that renders extorted promises non-binding, and the injustice of an institution need not affect the voluntariness of either consent to its rules or acceptance of benefits from it. Rawls' only argument for his "justice condition," then, seems to be a non sequitur.

As Rawls supplies us with no real argument for the justice condition, let us try to construct some for him. Two sorts of arguments suggest themselves as defenses of this condition; the first concerns the purpose of the scheme or the ends it promotes, while the second more directly concerns distribution within the scheme. Our first argument would run as follows: we cannot have obligations to do the morally impermissible, or to support schemes whose purposes are immoral or which promote immoral ends. Since unjust schemes fall within this category, we cannot have an obligation to cooperate within unjust schemes. Now there are a number of difficulties with this as a defense of Rawls' justice condition. One obvious problem is this: why does Rawls only disqualify *unjust* schemes, rather than all schemes which promote or aim at *immoral* ends? Why does Rawls not include the more general prohibition?

The reason is, I think, that while these immoral ends of the scheme

8. *A Theory of Justice*, p. 112.

9. *Ibid.*, p. 343.

10. A. John Simmons, "Tacit Consent and Political Obligation," *Philosophy & Public Affairs* 5, no. 3 (Spring 1976): 277-278.

provide us with a reason for working against it, the justice condition is meant to be tied to the principle in a more intimate fashion. But what is this fashion? Thus far, nothing we have said about fair play seems to have anything to do with the moral status of the scheme's purposes. The intuitive force of the principle of fair play seems to be preserved even for criminal conspiracies, for example. The special rights and obligations which arise under the principle are thought to do so because of the special relationships which exist between the cooperating participants; a fair share of the burdens is thought to be owed by a benefiting participant simply because others have sacrificed to allow him to benefit within a cooperative scheme. No reference is made here to the morally acceptable status of the scheme. Simple intuitions about fair play, then, do not seem to provide a reason for disqualifying unjust cooperative schemes. Rather, they suggest that obligations of fair play can, at least sometimes, arise within such schemes.

But perhaps another sort of support can be given to Rawls' condition. This second argument concerns distribution within the scheme, and it certainly has the Rawlsian flavor. We suggest first that, in effect, the justice condition amends the principle to read that a person is bound to do his fair share in supporting a cooperative scheme only if he has been allocated a fair share of the benefits of the scheme. Previously, the principle of fair play required only that the individual have accepted benefits from the scheme in order to be bound, where now it requires that he have accepted benefits *and* have been allocated at least a fair share of benefits. The role of the justice condition now appears to be important, to be an intimate feature of our intuitions about fair play. For if a scheme is just, each participant will be allocated a fair share of the benefits of cooperation; thus, anyone who benefits at all from the scheme has the opportunity to benefit to the extent of a fair share (although he may *accept* less than this). We are guaranteed that the principle of fair play will only apply to individuals who have been fairly treated. Our feeling that a person ought not to have to share equally in supporting a scheme that treats him unfairly is given voice in this condition. The justice condition, then, on this argument, serves the purpose of assuring that a man is bound

to do his fair share only if he is allocated a fair share of benefits (and accepts some of them).

I think that this is an important feature of our intuitions about fair play, and it also seems a natural way of reading Rawls. In fact, this may be the argument that Rawls is suggesting when, in elaborating on the principle, he notes that if the scheme is just, "each person receives a fair share when all (himself included) do their part."<sup>11</sup> (Rawls' observation is, strictly speaking, false; the justice of a scheme does not guarantee that each person either receives or accepts a fair share.) But if this *is* the argument Rawls intends for his justice condition, there are serious difficulties for it to overcome. The motivation for including the requirement is (on this reading) to guarantee that an individual not become bound to carry a fair share of the burdens of a cooperative scheme if he has been allocated less than a fair share of its benefits; it is unfair to demand full cooperation from one to whom full benefits are denied. But if *this* is our reason for including the justice condition, we have surely included too much. Why should we think that the whole scheme must be just for this sort of intuition to be given play? Rawls' justice condition requires that *everyone* be allocated a fair share of benefits if *anyone* is to be bound by an obligation of fair play. But the reasons we have given for including this condition seem only to require that for a particular individual to be bound, *he* must be allocated a fair share. This says nothing about the allocation of benefits in general, or about what benefits *others* are allocated. If some individuals within an unjust scheme are allocated less than a fair share of benefits, then our reasons would support the view that *they* are not bound to carry a fair share of the burdens. But nothing said yet about feelings of fair play seems to exempt from obligation those individuals to whom a fair share of benefits is in fact allocated within an *unjust* scheme. So again the point of Rawls' justice condition comes into doubt.

These arguments may prompt us to think more about the notion of a "fair share" of the burdens of cooperation. For if we understand by this phrase a share of the total burden proportionate to the share

11. *A Theory of Justice*, p. 112.

of the total benefits allocated to the individual, then we may have no problem in accepting that anyone who accepts *any* benefits from a cooperative scheme is bound to do his "fair share." Our belief that only an individual who is allocated a fair share of the benefits is bound to cooperate may be false. For it seems eminently fair to hold that each is bound to cooperate to the extent that he is allowed to benefit from a cooperative scheme; thus, those who are allocated the largest shares of benefits owe the largest share of burdens. But even one who is allocated a very small share of the benefits is bound to carry a small share of the burdens (provided he accepts the benefits).

Now it is clear that these intuitions cannot be given full play in the case of schemes whose burdens cannot be unequally distributed. But there may seem to be other difficulties involved in the interpretation of the fair-play principle sketched above. First, it seems to entail that the better-off are bound to support unjust schemes which favor them, and the more discriminatory the scheme, the more strongly they must support it. And second, it seems to entail that those who are allocated tiny, unfair shares of the benefits are still bound to cooperate with the unjust scheme which mistreats them. These may again seem to be good reasons to limit the principle's application to just schemes. I think this appearance is misleading. For, first, the principle under discussion does not entail that the better-off must support unjust schemes which favor them. While it does specify that they are obligated to repay by cooperation the sacrifices made in their behalf by the other members, the injustice of the scheme is a strong reason for opposing it, which gains in strength with the degree of injustice. Thus, there are moral considerations which may override the obligations of fair play (depending, of course, on the degree of the injustice of the scheme, among other things). And if we think of the burdens as sacrifices to be made, it seems only fair that the unjustly favored should be heavily burdened. As for the apparent result that the unjustly treated are still bound to support the scheme (even if to a lesser degree) which discriminates against them, this result can also be seen to be mistaken. For if we remember that benefits must be *accepted* in order for an individual to be bound under the

principle, the unfairly treated have the option of refusing to accept benefits, hence sparing themselves the obligation to support a scheme which treats them unfairly (and they have, as well, the duty to oppose such unjust schemes, regardless of what obligations they are under). The idea, then, is that only if they willingly accept the benefits of the scheme are participants bound to bear the burdens of cooperation, and only then in proportion to the benefits allocated to them.

I am not sure just how much of the Hart-Rawls conception of the principle of fair play this analysis captures. But the considerations raised above seem to me to be good reasons for rejecting Rawls' "justice condition." While we can, of course, agree with Rawls that intolerably unjust schemes ought not to be furthered (and, in fact, ought to be opposed), there is no logical difficulty, at least, in holding that we may sometimes have obligations of fair play to cooperate within unjust schemes. And the arguments suggest that there may be no non-logical difficulties either.

### III

I want to pause here to comment briefly on the theory of political obligation which uses the principle of fair play, and specifically on the changes which this account introduces into our conception of political obligation. There are, of course, important continuities between this "fair-play account" and the traditional consent theory account mentioned earlier. While one approach locates the ground of obligation in the acceptance of benefits and the other in consensual acts, both are "obligation-centered" accounts and, as such, both stress the essential voluntariness of the generation of the obligation.<sup>12</sup> But defenders of the fair-play account of political obligation wish to stress as well its significant departures from consent theory; the fair-play account requires a cooperative scheme as the context within which

12. By "obligation-centered" I mean simply that according to the account most or all of the people who are bound by political bonds are bound by *obligations* (that is, moral requirements originating in some voluntary performance). "Obligation-centered" accounts are to be opposed, of course, to "duty-centered" accounts.

obligations arise, and obviates the need for *deliberate undertakings* of obligation. How these changes might be thought to constitute improvements over the consent theory account seems fairly clear.

First, the fair-play account involves viewing political communities in a different way than consent theory; specifically, they are viewed as “communities” in a fairly strict sense. We are to understand political communities as being fundamentally, or at least in part, cooperative enterprises on a very large scale. Citizens thus are thought to stand in a cooperate relationship to their fellows, rather than in an adversary relationship with the government. And this former view may seem to some more realistic than the latter.

But clearly the major advantage which the fair-play account of political obligation is thought by its advocates to have is that of providing a *general* account of our political bonds. No deliberate undertaking is necessary to become obligated under the principle of fair play. One can become bound without trying to and without knowing that one is performing an act which generates an obligation. Since mere acceptance of benefits within the right context generates the obligation, one who accepts benefits within the right context can become bound unknowingly. This is an important difference from consent theory’s account, which stressed the necessity of a deliberate undertaking. Thus, while one can neither consent nor accept benefits (in the right sense) unintentionally, one can accept benefits without being aware of the moral consequences of so doing (while being unaware of the moral consequences of consenting defeats the claim that consent was given). The significance of this difference, of course, lies in the possibility of giving a *general* account of political obligation in the two cases. For consent theory’s failure to give a general account stemmed from the lack of citizens in modern states who had voluntarily undertaken political obligations in the sense required. At least initially, however, it seems much more plausible to suggest that most or all of us have accepted benefits, as is required under the principle of fair play. Thus, the possibility of giving a general account using this principle seems to be vastly increased over one which uses a principle of consent. This would *not* be the case, however, if accepting benefits in the right sense required having an understanding of

the moral consequences of such acceptance. For certainly most citizens who receive the benefits of government do not have such an understanding.

Exactly what “accepting the benefits of government” amounts to, of course, is not yet entirely clear. Neither is the identity of the “co-operative scheme” embodied in political communities. These points will be discussed as we continue. My aim here has been simply to mention what might seem to be advantages of the fair-play account; whether or not these “advantages” are genuine remains to be seen. But regardless of the advantages this account may have over the consent-theory account, it surely falls short on one score. Consent is a *clear* ground of obligation. If we are agreed on anything concerning moral requirements, it is that promising and consenting generate them. In specifying a different ground of obligation, the account using the principle of fair play draws away from the paradigm of acts that generate obligations. And to those who are strongly wedded to this paradigm of consent, such as Robert Nozick, the principle of fair play may seem a sham.

#### IV

In Chapter 5 of *Anarchy, State, and Utopia*, Nozick argues against accepting the principle of fair play as a valid moral principle, not just in political settings, but in any settings whatsoever. He begins by describing a cooperative scheme of the sort he thinks Hart and Rawls have in mind, and then suggests that benefaction within that scheme may *not* bind one to do one’s part:

Suppose some of the people in your neighborhood (there are 364 other adults) have found a public address system and decide to institute a system of public entertainment. They post a list of names, one for each day, yours among them. On his assigned day (one can easily switch days) a person is to run the public address system, play records over it, give news bulletins, tell amusing stories he has heard, and so on. After 138 days on which each person has done his part, your day arrives. Are you obligated to take your

turn? You *have* benefited from it, occasionally opening your window to listen, enjoying some music or chuckling at someone's funny story. The other people *have* put themselves out. But must you answer the call when it is your turn to do so? As it stands, surely not. Though you benefit from the arrangement, you may know all along that 364 days of entertainment supplied by others will not be worth your giving up *one* day. You would rather not have any of it and not give up a day than have it all and spend one of your days at it. Given these preferences, how can it be that you are required to participate when your scheduled time comes?<sup>13</sup>

On the basis of this example and others, Nozick concludes that we are never bound to cooperate in such contexts (unless we have given our consent to be constrained by the rules of the cooperative scheme).

Now, to be fair, Nozick does not simply pick the weakest form of the principle of fair play and then reject it for its inadequacy in hard cases; he has, in fact, a suggestion for improving the principle in response to the cases he describes. Having noticed, I suppose, that the case described above favors his conclusions largely because of the negligible value of the benefits received, Nozick suggests that "at the very least one wants to build into the principle of fairness the condition that the benefits to a person from the actions of others are greater than the cost to him of doing his share" (Nozick, p. 94). There is certainly something right about this; something like this must be built into the idea of a useful cooperative scheme. On the other hand, we can imagine a defender of the principle saying "if you weren't prepared to do your part you ought not to have taken *any* benefits from the scheme, no matter how insignificant." Nozick, of course, has more to say on this point, and so do I.

Even if we do modify the principle with this condition, however, Nozick has other arguments against it. "The benefits might only barely be worth the costs to you of doing your share, yet others might benefit from *this* institution much more than you do; they all treasure listening to the public broadcasts. As the person least benefited by the

13. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 93. Citations of Nozick in the text refer to this work.

practice, are you obligated to do an equal amount for it?" (Nozick, p. 94). The understood answer is no, but we might agree with this answer without agreeing that it tells against the principle. For if we understand that "doing one's part" or "doing one's fair share" is not necessarily "doing an equal part," but rather "doing a part proportionate to the part of the benefits received," then the one who benefits least from a cooperative scheme will *not* be bound to share equally in the burdens of cooperation. I argued for this interpretation in Section II, and if we accept it, Nozick's PA system example may no longer seem so troublesome. For we might be willing to admit that the individual in question, because he benefited so little, was bound to cooperate but not to the same extent as others who benefit more from the scheme. Would being obligated to do one's part in the PA scheme seem quite so objectionable if one's part was only, say, an hour's worth of broadcasting, as opposed to that of the PA enthusiasts, whose parts were one and a half days of broadcasting? There are, perhaps, not clear answers to these questions.

But surely the defender of the principle of fair play will have more fundamental objections to Nozick's case than these. In the first place, the individual in Nozick's PA example does not seem to be a *participant* in the scheme in the sense that Hart and Rawls may have in mind. While he does live in the neighborhood within which the scheme operates, and he does benefit from it, he is still very much of an "innocent bystander." The PA system scheme has been built up around him in such a way that he could not escape its influence. And, of course, the whole force of Nozick's example lies in our feeling that others ought not to be able to *force* any scheme they like upon us, with the attendant obligations. The PA case would be precisely such a case of "forced" obligation. So naturally we may find Nozick's criticism of the principle of fair play convincing, if we believe the principle to entail that we *do* have obligations under the PA scheme.

But it seems clear that Hart and Rawls did not mean for the principle to apply to such cases of "innocent bystanders" (though admittedly neither emphasizes the point). Nozick's case seems to rest on a reading of the principle which runs contrary to the spirit of their remarks, a reading according to which the principle binds everyone who

benefits from a cooperation scheme, regardless of their relations to it. And Nozick is surely right that a moral principle which had those results *would* be an outrageous one. People who have no significant relationship at all with some cooperative scheme may receive incidental benefits from its operation. Thus, imagine yourself a member of some scheme which benefits you immensely by increasing your income. Your friends and relatives may benefit incidentally from the scheme as well if, say, you now become prone to send them expensive presents. But the suggestion that their benefiting in this way obligates them to do their part in the scheme is absurd.

Hart and Rawls can most fairly be read as holding that only beneficiaries who are also participants (in some significant sense) are bound under the principle of fair play. And on this reading, of course, Nozick's PA system example does not seem to be a case to which the principle applies; the individual in question is not a participant in the scheme, having had nothing to do with its institution, and having done nothing to lead anyone to believe that he wished to become involved in the scheme. The example, then, cannot serve as a counterexample to Hart's principle. In fact, all of Nozick's examples in his criticisms of Hart are examples in which an "outsider" has some benefit thrust on him by some cooperative scheme to which he is in no way tied (see Nozick's "street-sweeping," "lawn-mowing," and "book-thrusting" examples, pp. 94-95). But if I am right, these examples do not tell against the principle of fair play, since the benefits accruing to "outsiders" are not thought by Hart and Rawls to bind under that principle.

The problem of specifying who are "outsiders," and consequently whose benefits will count, is a serious one, especially in the political applications of the principle. And it seems that the problem may provide ammunition for a serious counterattack by someone such as Nozick against the principle of fair play. We have maintained, remember, that only "participants" or "insiders" in the cooperative scheme are candidates for being obligated under the principle to do their share in cooperating. Those "outsiders" who benefit from the scheme's operation are not bound under the principle of fair play. But how exactly do we differentiate between these outsiders and the in-

siders? What relationship must hold between an individual and a cooperative scheme for him to be said to be a participant in some significant sense?

This is a hard question to answer, but we have already considered some cases where an individual is *not* a participant in the right sense. Thus, merely being a member of some group, other members of which institute a scheme, is not enough to make one a participant or an “insider.” Although Nozick’s man is a “member” of an identifiable group, namely his neighborhood, this “membership” does not suffice to make him a participant in any scheme his neighbors dream up. Normally, we would want to say that for an individual to be a real participant in a cooperative scheme, he must have either (1) pledged his support or tacitly agreed to be governed by the scheme’s rules, or (2) played some active role in the scheme after its institution. It is not enough to be associated with the “schemers” in some vague way to make one an “insider” or a participant; one must go out and do things to become a participant and to potentially be bound under the principle of fair play.

Now we can imagine an opponent of the principle accepting these remarks concerning whose benefiting will count, and accepting our criticism of Nozick’s PA system counterexample, and still responding to our discussion by posing the following dilemma. We are agreed, the Nozickian begins, that “outsiders” fall outside the scope of Hart’s principle; not just anyone who benefits from a cooperative scheme will be bound to do his share in it. And we are agreed that mere membership in some group, other members of which conduct some cooperative scheme, is insufficient to make one an “insider.” And we are agreed that one becomes an “insider” by the means described above, perhaps among others. But the problem is this. In becoming an “insider” one must do something which involves either an express or a tacit undertaking to do one’s part in the scheme. So if the principle of fair play can bind only “insiders” in a cooperative scheme, it will bind only those individuals who have *already* become bound to do their part in the scheme in becoming “insiders.” The principle is superfluous; it collapses into a principle of consent. All and only those individuals who have actually undertaken to do their part in the

scheme are bound by the principle of fair play to do their part in the scheme. Benefiting under the scheme is quite irrelevant, for benefiting only counts under the principle for "insiders." But "insiders" are already bound to the scheme, whether they benefit from it or not.

This argument, if it is acceptable, counts heavily against the principle of fair play. For that principle was supposed to show us how individuals could become bound to some cooperative enterprise *without* actually giving their consent to it. But if the principle can only plausibly be thought to bind those who have already consented to going along with the enterprise, the principle's usefulness becomes highly doubtful. We can explain whatever obligations participants in the enterprise are thought to have simply in terms of a principle of consent, quite independent of considerations of fair play.

But is this sort of argument acceptable? Is it true that I cannot become a participant in the right sense without giving at least tacit consent to the scheme? Surely many participants in cooperative schemes have given their consent, either express or tacit, and are bound to their schemes regardless of what else they do to bind themselves. But these are not the individuals with whom Hart and Rawls are primarily concerned. With all our discussion of "participation," we are overlooking a feature of the principle of fair play which Rawls saw as essential to the generation of the obligation. The principle of fair play does not specify that all participants in cooperative schemes are bound to do their part, or even that all participants who benefit from the schemes are so bound. It states rather that those who *accept* the benefits of a cooperative scheme are bound to cooperate. This distinction between accepting benefits and merely receiving benefits has been lost somewhere in the shuffle. It is a distinction which is *completely* overlooked in Nozick's discussion of the principle of fair play. But it seems to me that this distinction is crucial in settling the problem of how to distinguish participants (or "insiders") from "outsiders."

For Rawls and Hart, the principle of fair play accounts for the obligations of those whose active role in the scheme consists of accepting the benefits of its workings. One becomes a participant in the scheme precisely by accepting the benefits it offers; the other ways in which one can become a participant are not important to considerations of

fair play. And individuals who have merely *received* benefits from the scheme have the same status relative to it as those who have been unaffected by the scheme; they are not in any way bound to do their part in the scheme unless they have independently undertaken to do so. If, as I've suggested, the acceptance of benefits constitutes the sort of "participation" in a scheme with which Rawls and Hart are concerned, we can understand why neither Rawls nor Hart specifically limits the application of the principle to *participants* in the scheme. This limitation has already been accomplished by making obligation conditional on the acceptance of benefits. This means, of course, that the principle cannot be read as the outrageous one which requires anyone at all who benefits from the scheme to do his part in it.

But understanding the principle in this way also helps us see why the Nozickian line of argument we have considered cannot succeed. The Nozickian tried to persuade us that an individual could not become a participant, or an "insider," without doing something which amounted to giving his consent to do his part in the scheme. But it seems clear that a man *can* accept benefits from a scheme and be a participant in that sense without giving his consent to the scheme. And further, such acceptance of benefits *does* seem to obligate him to do his part. Let me support and clarify this claim with an example.

Imagine that in Nozick's neighborhood the need for public entertainment is not the only matter of concern. There is also a problem with the neighborhood's water supply; the water pumped through their pipes has developed an unpleasant taste and an odd yellow tinge. A neighborhood meeting is called, at which a majority votes to dig a public well near the center of the neighborhood, to be paid for and maintained by the members of the neighborhood. Some of the members clearly give their consent to the proposed scheme. Others, who vote against the proposal, do not. Jones, in particular, announces angrily that he wants to have nothing to do with the scheme and that he will certainly not pledge his support. Nothing, he claims, could make him consent to do such a ridiculous enterprise. But in spite of his opposition, the well is dug, paid for, and maintained by the other members of the neighborhood. Jones, as expected, contributes nothing to this effort.

Now the benefits of clear, fresh water are available to the neighborhood, and Jones begins to be envious of his neighbors, who go to the well daily. So he goes to the well every night and, knowing that the water will never be missed, takes some home with him for the next day. It seems clear to me that Jones is a perfect example of a "free-rider." And it also seems clear that, having accepted benefits from the scheme (indeed, he has gone out of his way to obtain them), he has an obligation to do his part within it. But he certainly does not seem to have *consented* to the scheme. We have, then, a case in which an individual has an obligation to do his part within a cooperative scheme which is *not* accounted for by a principle of consent. We would, I think, account for that obligation precisely in terms of fair play. Jones has made himself a participant in the scheme by accepting its benefits, although he has refused to give his consent. So the Nozickian argument does not succeed.

I have tried to show, then, that the principle of fair play does not collapse into a principle of consent. While many participants in cooperative schemes will be bound to do their parts because they have consented to do so, many others will be bound because they have accepted benefits from the scheme. The obligations of the latter will fall under the principle of fair play. We should not think, because of the peculiarity of Jones' position in our example, that only the obligations of free-riders like Jones will be accounted for by the principle. For it is possible to *go along* with a cooperative scheme (as Jones does not) without consenting to it, becoming bound through one's acceptance of benefits. In fact, I think that *most* participants in cooperative schemes do nothing which can be thought to constitute consent. It is not necessary to refuse to give one's consent, as Jones does, in order not to give it. Consent is not given to a scheme by any behavior short of express dissent. Most participants in cooperative schemes simply go along with the schemes, taking their benefits and carrying their burdens. But if they do not expressly undertake to support the schemes, and if their behavior does not constitute a response to a clear choice situation, I do not think that we can ascribe consent to them. Certainly by going along with a scheme, we lead others to *expect* certain future performances from us; but this does not show that

we have *undertaken* to perform according to expectations. Thus, the obligations which participants in cooperative schemes have (relative to those schemes) will not normally be grounded in consent.

The reading of the principle which I have given obviously places a very heavy load on the notion of "acceptance," a notion to which we have as yet given no clear meaning (and Rawls and Hart certainly give us no help on this count). It is not, as I suggested in Section I, at all easy to distinguish in practice between benefits that have been accepted and those that have only been received, although some cases seem clearly to fall on the "merely received" side. Thus, benefits we have actively resisted getting, and those which we have gotten unknowingly or in ways over which we have had no control at all, seem clearly *not* to be benefits we have accepted. To have accepted a benefit, I think, we would want to say that an individual must either (1) have tried to get (and succeeded in getting) the benefit, or (2) have taken the benefit willingly and knowingly.

Consider now Nozick's example of the program that involves "thrusting books" into unsuspecting people's houses. Clearly the benefits in question are merely received, not accepted. "One cannot," Nozick writes, "whatever one's purposes, just act so as to give people benefits and then demand (or seize) payment. Nor can a group of persons do this" (p. 95). I am suggesting that, on the contrary, the principle of fair play does *not* involve justifying this sort of behavior; people are only bound under the principle when they have accepted benefits.

Nozick's first-line example, the PA scheme, however, is slightly more difficult. For here the benefits received are not forced upon you, as in the "book-thrusting" case, or gotten in some other way which is outside your control. Rather, the benefits are what I will call "open"; while they can be avoided, they cannot be avoided without considerable inconvenience. Thus, while I can avoid the (questionable) benefits the PA system provides by remaining indoors with the windows closed, this is a considerable inconvenience. The benefits are "open" in the sense that I cannot avoid receiving them, even if I want to, without altering my life style (economists often have such benefits in mind in speaking of "public goods"). Many benefits yielded by coop-

erative schemes (in fact most benefits, I should think) are "open" in this way. A neighborhood organization's program to improve the neighborhood's appearance yields benefits which are "open." And the benefits of government are mostly of this sort. The benefits of the rule of law, protection by the armed forces, pollution control, and so on can be avoided only by emigration.

We can contrast these cases of "open" benefits with benefits that are only "readily available." If instead of a PA system, Nozick's group had decided to rent a building in the middle of town in which live entertainment was continuously available to neighborhood members, the benefits of the scheme would only be "readily available." A good example of the distinction under consideration would be the distinction between two sorts of police protection, one sort being an "open" benefit, the other being only "readily available." Thus, the benefits which I receive from the continuous efforts of police officers to patrol the streets, capture criminals, and eliminate potential threats to my safety, are benefits which are "open." They can be avoided only by leaving the area which the police force protects. But I may also request *special* protection by the police, if I fear for my life, say, or if I need my house to be watched while I'm away. These benefits are "readily available." Benefits which are "readily available" can be easily avoided without inconvenience.

Now I think that clear cases of the acceptance of benefits, as opposed to receipt, will be easy to find where benefits which are only "readily available" are concerned. Getting these benefits will involve going out of one's way, making some sort of effort to get the benefit, and hence there will generally be no question that the benefit was accepted in the sense we have described. The principle of fair play seems most clearly to apply in cases such as these. These will be cases where our actions may obviously fall short of constituting *consent* to do our part in the scheme in question, but where our acceptance of benefits binds us to do our part because of considerations of fair play. When we accept benefits in such cases, it may be necessary that we be aware that the benefits in question *are* the fruits of a cooperative scheme, in order for us to be willing to ascribe any obligations of fair

play; but it will *not* be necessary that some express or tacit act of consent have been performed.

The examples of “open” benefits are, of course, harder to handle. Nozick’s comments seem quite reasonable with respect to them. For surely it is very implausible to suggest that if we are unwilling to do our part, we must alter our life styles in order to avoid enjoying these benefits. As Nozick suggests, there is surely no reason why, when the street-sweeping scheme comes to your town, you must “imagine dirt as you traverse the street, so as not to benefit as a free rider” (p. 94). Nozick’s comments here do not, however, strike against the principle of fair play in any obvious way. For as I have interpreted it, the principle does not apply to cases of mere receipt of benefits from cooperative schemes; and the cases where the benefits are “open” in this way seem to be cases of mere receipt of benefits. Certainly it would be peculiar if a man, who by simply going about his business in a normal fashion benefited unavoidably from some cooperative scheme, were told that he had voluntarily accepted benefits which generated for him a special obligation to do his part.

This problem of “acceptance” and “open benefits” is a serious one, and there are real difficulties involved in solving it. It may look, for instance, as if I am saying that a genuine acceptance of open benefits is impossible. But I would not want to be pushed so far. It seems to me that it is possible to accept a benefit which is (in one sense) unavoidable; but it is not at all the *normal* case that those who receive open benefits from a scheme have also accepted those benefits. In the case of benefits which are only “readily available,” receipt of the benefits is generally *also* acceptance. But this is not so in the case of open benefits. I suggested earlier that accepting a benefit involved either (1) trying to get (and succeeding in getting) the benefit, or (2) taking the benefit willingly and knowingly. Getting benefits which are “readily available” normally involves (1) trying to get the benefit. It is not clear, however, how one would go about *trying* to get an open benefit which is not distributed by request, but is rather received by everyone involved, whether they want it or not. If open benefits can be accepted, it would seem that method (2) of accepting benefits is

the way in which this is normally accomplished. We can take the open benefits which we receive willingly and knowingly. But doing so involves a number of restrictions on our attitudes toward and beliefs about the open benefits we receive. We cannot, for instance, regard the benefits as having been forced upon us against our will, or think that the benefits are not worth the price we must pay for them. And taking the benefits “knowingly” seems to involve an understanding of the status of those benefits relative to the party providing them. Thus, in the case of open benefits provided by a cooperative scheme, we must understand that the benefits *are* provided by the cooperative scheme in order to accept them.

The necessity of satisfying such conditions, however, seems to significantly reduce the number of individuals who receive open benefits, who can be taken to have *accepted* those benefits. And it will by no means be a standard case in which all beneficiaries of a cooperative scheme’s workings have accepted the benefits they receive.

I recognize, of course, that problems concerning “acceptance” remain. But even if they did not, my reading of the principle of fair play, as binding only those who have accepted benefits, would still face difficulties. The fact remains that we *do* criticize persons as “free riders” (in terms of fair play) for not doing their part, even when they have *not* accepted benefits from a cooperative scheme. We often criticize them merely because they *receive* benefits without doing their part in the cooperative scheme. Let us go back to Nozick’s neighborhood and imagine another, more realistic cooperative scheme in operation, this one designed to beautify the neighborhood by assigning to each resident a specific task involving landscaping or yard work. Home owners are required to care for their yards and to do some work on community property on weekends. There are also a number of apartments in the neighborhood, but because the apartment grounds are cared for by the landlords, apartment dwellers are expected only to help on community property (they are expected to help because even tenants are granted full community membership and privileges; and it is reasoned that all residents have an equal interest in the neighborhood’s appearance, at least during the time they remain). Two of these apartment dwellers, Oscar and Willie, re-

fuse to do their part in the scheme. Oscar refuses because he hates neatly trimmed yards, preferring crabgrass, long weeds, and scraggly bushes. The residents do not feel so bad about Oscar (although they try to force him out of the neighborhood), since he does not seem to be benefiting from their efforts without putting out. He hates what they are doing to the neighborhood. Willie, however, is another case altogether. He values a neat neighborhood as much as the others; but he values his spare time more than the others. While he enjoys a beautiful neighborhood, the part he is expected to play in the cooperative scheme involves too much of his time. He makes it clear that he would prefer to have an ugly neighborhood to joining such a scheme.

So while the others labor to produce an almost spotless neighborhood, Willie enjoys the benefits resulting from their efforts while doing nothing to help. And it seems to me that Willie is *just* the sort of person who would be accused by the neighborhood council of “free riding,” of unfairly benefiting from the cooperative efforts of others; for he receives exactly the same benefits as the others while contributing nothing. Yet Willie has not accepted the benefits in question, for he thinks that the price being demanded is too high. He would prefer doing without the benefits to having the benefits and the burdens.

So it looks as if the way in which we have filled out the principle of fair play is not entirely in accord with some common feelings about matters of fair play; for these common feelings do not seem to require acceptance of benefits within the scheme, as our version of the principle does. It is against these “ordinary feelings about fair play” (and not against the “filled-out” principle we have been describing), I think, that Nozick’s arguments, and the “Nozickian” arguments suggested, strike most sharply.

But Willie’s position is *not* substantially different from that of the salesman, Sam, whose sole territory is the neighborhood in question. Sam works eight hours every day in the neighborhood, enjoying its beauty, while Willie (away at work all day) may eke out his forty weekly hours of enjoyment if he stays home on weekends. Thus, Sam and Willie receive substantially the same benefits. Neither Sam nor

Willie has done anything at all to ally himself with the cooperative scheme, and neither has “accepted” the fruits of that scheme. Willie is a “member” of the community only because the council voted to award “membership” to tenants, and he has made no commitments. To make the parallel complete, we can even suppose that Sam, beloved by all the residents, is named by the council an “honorary member.” But if the neighborhood council accused Sam, the salesman, of “free riding” and demanded that *he* work on community property, their position would be laughable. Why, though, should Willie, who is like Sam in all important respects, be any *more* vulnerable to such accusations and demands?

The answer is that he is *not* any more vulnerable; if ordinary feelings about obligations of fair play insist that he *is* more vulnerable, those feelings are mistaken. But in fairness to Nozick, the way that Hart and Rawls phrase their account of the principle of fair play *does* sometimes look as if it expresses those (mistaken) feelings about fair play. As Rawls states it,

The main idea 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 benefited from their submission. We are not to gain from the cooperative labors of others without doing our fair share.<sup>14</sup>

This certainly looks like a condemnation of Willie’s actions. Of course, the way in which Rawls fills out this idea, in terms of accepting benefits and taking advantage of the scheme, points in quite a different direction; for on the “filled-out” principle, Willie is not bound to cooperate, and neither is the salesman.

It looks, then, as if we have a choice to make between a general principle (which binds all beneficiaries of a scheme) which is *very* implausible, and a more limited principle which is more plausible. I say that we have a choice to make simply because it seems clear that

14. Rawls, *A Theory of Justice*, p. 112.

the limited principle is much more limited than either Hart or Rawls realized. For if my previous suggestions were correct, participants in cooperative schemes which produce "open" benefits will not always have a right to cooperation on the part of those who benefit from their labors. And this does not look like a result that either Hart or Rawls would be prepared to accept. Perhaps it is, after all, just the result Nozick wished to argue for.

## V

When we move to political communities the "schemes of social cooperation" with which we will be concerned will naturally be schemes on a rather grand scale. We may, with Rawls, think that the maintenance of the legal order should be "construed as a system of social cooperation," or perhaps we will want to identify all the workings of that set of political institutions governing "political society" generally as the operation of "the most complex example" of a cooperative scheme (as Hart seems to).<sup>15</sup> The details of the interpretation which we accept are not particularly important here. We must simply imagine a cooperative scheme large enough that "doing our part" will involve all of the things normally thought of as the requirements of political obligation; and regardless of how we characterize this scheme in its particulars, the difficulties involved in an account of political obligation using the principle of fair play will be common to all particular versions.<sup>16</sup>

To begin, we face an immediate problem of "membership," of distinguishing the "insiders" from the "outsiders." Ideally, of course, the account wants all and only the citizens of the state in question to be the "insiders" relative to the cooperative scheme in operation in the state. The "all" in "all and only" can be sacrificed here, since an account which applies only to some members of a political community

15. Rawls, "Legal Obligation and the Duty of Fair Play," p. 17; Hart, "Are There Any Natural Rights?" pp. 185-186.

16. One limitation is obvious from the start. Only reasonably democratic political communities will be candidates for a fair-play account of political obligation; for only where we can see the political workings of the society as a voluntary cooperative venture will the principle apply.

is not obviously objectionable; but the “only” in “all and only” must not be compromised. For obvious reasons, we cannot accept an account of political obligation which binds non-citizens to do their part in the cooperative political enterprises of a foreign country.

But most “insiders” or citizens, even in constitutional democracies, seem to be very much in the same sort of position as Nozick’s man. They are not obviously tied to the grand cooperative scheme of political life any more than Nozick’s man is tied to his PA scheme. We are, after all, born into political communities; and being “dropped into” a cooperative scheme does not seem significantly different from having a scheme “built up around you.”

I tried to suggest earlier, of course, that the right way to distinguish the “insiders” relative to some scheme was through the notion of the “acceptance” of benefits from that scheme. While it is clear that at least most citizens in most states *receive* benefits from the workings of their legal and political institutions, how plausible is it to say that they have voluntarily *accepted* those benefits? Not, I think, very plausible. The benefits in question have been mentioned before: the rule of law, protection by armed forces, pollution control, maintenance of highway systems, avenues of political participation, and so on. But these benefits are what we have called “open” benefits. It is precisely in cases of such “open” benefits that it is least plausible to suggest that benefits are being *accepted* by most beneficiaries. It will, of course, be difficult to be certain about the acceptance of benefits in actual cases; but on any natural understanding of the notion of “acceptance,” our having accepted open benefits involves our having had certain attitudes toward and beliefs about the benefits we have received (as noted in Section IV). Among other things, we must regard the benefits as flowing from a cooperative scheme rather than seeing them as “free” for the taking. And we must, for instance, think that the benefits we receive are worth the price we must pay for them, so that we would take the benefits if we had a choice between taking them (with the burdens involved) or leaving them. These kinds of beliefs and attitudes are necessary if the benefaction is to be plausibly regarded as constituting voluntary participation in the cooperative scheme.

But surely most of us do not have these requisite attitudes toward or beliefs about the benefits of government. At least many citizens barely notice (and seem disinclined to think about) the benefits they receive. And many more, faced with high taxes, with military service which may involve fighting in foreign "police actions," or with unreasonably restrictive laws governing private pleasures, believe that the benefits received from governments are not worth the price they are forced to pay. While such beliefs may be false, they seem nonetheless incompatible with the "acceptance" of the open benefits of government. Further, it must be admitted that, even in democratic political communities, these benefits are commonly regarded as purchased (with taxes) from a central authority, rather than as accepted from the cooperative efforts of our fellow citizens. We may feel, for instance, that if debts are owed at all, they are owed not to those around us, but to our government. Again, these attitudes seem inconsistent with the suggestion that the open benefits are accepted, in the strict sense of "acceptance." Most citizens will, I think, fall into one of these two classes: those who have not "accepted" because they have not taken the benefits (with accompanying burdens) willingly, and those who have not "accepted" because they do not regard the benefits of government as the products of a cooperative scheme. But if most citizens cannot be thought to have voluntarily accepted the benefits of government from the political cooperative scheme, then the fair-play account of political obligation will not be suitably general in its application, even within democratic states. And if we try to make the account more general by removing the limitations set by our strict notion of "acceptance," we open the floodgates and turn the principle of fair play into the "outrageous" principle discussed earlier. We seem forced by such observations to conclude that citizens generally in no actual states will be bound under the principle of fair play.

These suggestions raise serious doubts about the Hart-Rawls contention that at least some organized political societies can be thought of as ongoing cooperative schemes on a very large scale. While such a claim may be initially attractive, does it really seem reasonable to think of any actual political communities on the model of the kinds of neighborhood cooperative schemes we have discussed in this chap-

ter? This seems to me quite unrealistic. We must remember that where there is no consciousness of cooperation, no common plan or purpose, no cooperative scheme exists. I do not think that many of us can honestly say that we regard our political lives as a process of working together and making necessary sacrifices for the purpose of improving the common lot. The centrality and apparent independence of governments does not make it natural to think of political life in this way.

Perhaps, then, we ought not to think of modern political communities as essentially or in part large scale cooperative ventures. No doubt there is a sense in which society in general (and political society in particular) can be understood as a "cooperative venture," even though no consciousness of cooperation or common purpose is to be found. Social man is thought of as governed by public systems of rules designed to regulate his activities in ways which increase the benefits accruing to all. Perhaps it is this rather loose sense of "cooperative scheme" which Hart and Rawls have in mind when they imagine political communities as cooperative schemes.<sup>17</sup> But we should remember that whatever intuitive plausibility the principle of fair play has, derives from our regarding it as an acceptable moral principle for cooperative schemes in the *strict* sense. Clearly the considerations which lead us to accept the principle of fair play as determining our obligations in the context of a neighborhood organization's cooperative programs may in no way be mirrored in the context of "cooperative schemes" understood in the loose sense mentioned above. So that while talk of cooperative schemes on the level of political communities may not be obviously objectionable, such cooperative schemes will not be among those to which we should be inclined to apply the principle of fair play.

These brief remarks all point toward the conclusion that at very best the principle of fair play can hope to account for the political obligations of only a very few citizens in a very few actual states; it is more likely, however, that it accounts for no such obligations at all. While we have seen that the principle does not "collapse" into a principle of consent, we have also seen that in an account of political

17. See Rawls, *A Theory of Justice*, for example, pp. 4, 84.

obligation, the principle has very little to recommend it, either as a supplement to, or a replacement for, principles of fidelity and consent. In particular, the main advantage which the fair-play account was thought to have over consent theory's account, namely, an advantage in *generality*, turns out to be no advantage at all.

This paper is an abbreviated and revised version of material from Chapter V of *Moral Principles and Political Obligations* (Princeton University Press, forthcoming). I would like to thank David Lyons and the Editors for helpful suggestions about earlier drafts of the paper.