

Squaring Autonomy and Fair Play's Obligations

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Explanation of this paper's status

I've more-or-less abandoned this project. Some very helpful reviewer comments from *Social Theory and Practice* helped me realize that this isn't really a paper about political obligation. It started as that but evolved into an account of how even the most stringent conceptions of autonomy are not conceptually in tension with our having myriad (often tacit) obligations to each other. Political obligation became at best a central example and at worst a distraction. I haven't found time to rework it accordingly.

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Abstract

Philosophical Anarchists like Robert Nozick and R.P. Wolff have argued that fair play based political obligations are incompatible with respect for autonomy. On their view, an obligation is legitimate if and only if the autonomous person endorses it. On a principle of fair play, the fact that a person has benefited from the cooperative efforts of others entails an obligation to contribute whether she wants to or not. Thus the Philosophical Anarchist claims that, necessarily, the fact that a person has benefited from a government's services cannot entail an obligation to obey or contribute to it. These arguments have been widely accepted. But they are wrong. The conflict only arises in rare cases in which a person has a particular set of substantive preferences. While an autonomy-respecting principle of fair play cannot impose political obligations on this limited group of citizens, such exceptions are too uncommon to threaten fair play as a ground of political obligation. Thus, even on the Philosophical Anarchist's extremely strict conception of autonomy, fair play and autonomy only conflict at the fringes of pluralistic society. That is no problem for fair play based accounts of political obligation.

Keywords: Anarchism, Autonomy, Fair play, Nozick, Political Obligation, Taxes

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Squaring Autonomy and Fair Play's Obligations

Those who reside within a state usually have obligations to its government. These political obligations take several different forms. For example, there are political obligations to pay taxes, to participate in national defense, and to contribute to civic life. One task of the political philosopher is to explain the moral basis of these obligations. There are several approaches to this problem. Let me mention four.¹

First, on consent based accounts political obligations arise from a person agreeing to be governed and to make the required contributions. In the Lockean tradition, these agreements can be explicit or tacit. For example, a person can have political obligations by taking an oath of allegiance. Or she can tacitly consent to the obligations by using public services such as paved roads, education, police protection, et cetera.²

¹ I shall suppose that an account of political obligation need not ensure that every citizen in a state is obligated to obey their government. This is relatively uncontroversial. See, Simmons 1979, pp. 35-7; but, cf., Mapel 2005. Somewhat more controversially, I shall not suppose that an account of political obligation is or entails an account of citizenship or membership in a state. For example, I'm leaving it open whether non-citizens or tourists have political obligations.

² For example, Gilbert 1993, 2006; Plamenatz 1968; Steinberger 2004; and Beran (1987). For discussion see Hume 1752; Horton 1992; Simmons 1979; and Klosko 2005.

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Second, hypothetical accounts hold that political obligations arise because the state's members would choose to be governed and to make the requisite contributions if they were given the choice. For example, Hobbes claims that the alternative to life in a well-organized society and its attendant obligations is so terrible that any rational person would choose the political obligations.

Third, on a utilitarian account people have political obligations because free-riding – taking benefits without contributing – diminishes the overall utility of the society. Of course, on these views there is nothing particularly special about political obligations. They can be overridden whenever discharging a political obligation (or following a policy of discharging political obligations) fails to be optimific.

Fourth, on fair play based accounts the fact that a person benefits from life in a well-organized society can create political obligations because fair play requires that one contribute when she has benefited from the cooperative efforts of others.

More precisely, on H.L.A. Hart's formulation, a principle of fair play claims that

[w]hen a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to

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these restrictions when required have a right to a similar submission from those who have benefited by their submission.³

These and other approaches are variously more and less promising. In this essay I'll only discuss the fourth.^{4 5 6 7}

³ Hart 1955, p.185.

⁴ There are several other approaches to the problem of political obligation. I shall give a few examples in this and the following three notes. First, Rawls bases (part) of his account in natural duties of justice; Rawls 1969, 1971. See also Waldron 1999. For discussion, see Simmons 1999; and Dworkin 1986. In a similar vein, Wellman 1996, 1997 bases political obligation in samaritanism—another kind of natural duty. For discussion, see Wellman and Simmons 2005, and Klosko 2003.

⁵ Second, like Plato in the *Crito*, other writers invoke gratitude as the basis for political obligations. For example, Murphy 1970; Ewing 1947; and, Walker 1988, 1989. For discussion, see Simmons 1979; Wellman and Simmons 2005; and Klosko 1989.

⁶ Third, another approach appeals to association or membership in a group. For example, Dworkin 1986; Wellman 1996, 1997; Hardimon 1994; and, notably, Horton 2006/2007. For discussion, see Simmons 1979; and, Dagger 2000.

⁷ Fourth, there are at least two other minority views worth mentioning. First, some writers have held that there is no need to account for political obligations. See, Macdonald 1951; and McPherson 1967. Second, other writers such as Klosko 2006; and, Wolff 1995, 2000, have held that a tenable account of political obligation will rest on a plurality of

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The presence of a political obligation justifies certain forms of coercion. I'll focus on the political obligation to pay taxes and the state's correlative right to punish non-payers. Part of justifying any form of coercion is demonstrating its compatibility with respect for autonomy. On consent based theories this is no problem. The obligee autonomously agrees to the obligation. But with fair play a person incurs obligations just by benefiting from a scheme; she need not agree to the obligation. As I'll explain in §2, this creates a deep tension between fair play and autonomy. Many writers have followed philosophical anarchists like Wolff and Nozick in accordingly rejecting fair play as a ground for political obligations. I shall argue that this is a mistake. The tension between autonomy and fair play is neither deep nor widespread enough to undermine fair play based theories of political obligation.

§1

Fair play and autonomy

1.1 Fair play

Though this essay is about the possibility of fair play based political obligations, I won't defend any particular version of the principle of fair play. My aim herein is to breach one of the philosophical anarchist's fortifications so

principles, including many of those above. This is also my own view. I only discuss fair play herein.

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that fair play's friends can fight amongst themselves inside the walls. Hence the thinner and more general my conception of fair play, the more competing substantive theories of fair play I can lead through the gap. I shall thus limit myself to Hart's skeletal formulation of the principle. Of course, there are several ways in which any tenable conception must develop this principle. For one, a substantive principle of fair play must specify what sort of schemes it applies in. Is it only the just ones? Or can there be fair play based obligations among thieves? To tyrants?

More importantly, it must restrict the ways in which benefiting from a scheme can generate obligations. Some arguments, such as those of Simmons and Nozick, seem to show that a person's benefiting from a cooperative scheme can only create an obligation to contribute when she accepts the benefit. For example, Nozick famously writes that:

You may not decide to give me something, for example, a book, and then grab money from me to pay for it....You have...even less reason to demand payment if your activity that gives me the book also benefits you; suppose that your best way of getting exercise is by throwing books into people's houses, or that some other activity of yours thrusts books into people's houses as an unavoidable side effect....One cannot, whatever one's purposes, just act so as to give

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people benefits and then demand (or seize) payment. Nor can a group of persons do this.⁸

If this is right, fair play can't impose obligations when the benefits are forced upon the recipient.⁹

That threatens to collapse fair play based accounts of political obligation into consent based accounts. The proponent of fair play must explain the relevant way of accepting a benefit without requiring the recipient to also accept the obligation to contribute. While I believe this can be done, I must set these important problems aside.

To respect these problems as much as possible without addressing them here, I shall confine my discussion to a set of cases in which it is very likely that the benefit will be accepted in whatever turns out to be the relevant way. I shall only be consider cases in which the alleged obligee's benefit minus the required contribution would be a positive sum — where cooperation with the scheme would be profitable.

⁸ Nozick 1974, p. 95. See also Simmons 1979, pp. 101-142.

⁹ Though, see Arneson 1982 and Klosko 1992 for discussion of the degree to which receiving benefits must be voluntary. See also Dagger 1997.

1.2 Autonomy

On most conceptions of autonomy, part of being autonomous is being, in some sense, a self-legislator. The autonomous person has certain forms of control over the course of her life and her entanglements. Of course, different accounts of autonomy may differ widely on what these forms of control are. To make the strongest possible case, I shall assume a particularly strong conception of autonomy and what respect for it requires.

Some writers hold that because obligations demand action the autonomous agent must be the sole arbiter of what obligations she has. As I shall argue shortly, this conception of the autonomous person as a self-legislator is in tension with any view on which the actions of others can be sufficient conditions of an autonomous person being under an obligation. Put more generally, on the strong conception of autonomy I shall discuss herein, it is at least true that

P: An autonomous agent's endorsement of an obligation to do x is both necessary and sufficient for her being obligated to do x. This is the sole sufficient condition of her having an obligation to do x.

This is part of Wolff's view. He holds that if a person is autonomous, it is open for her to choose not to endorse any alleged obligation. He writes,

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[Being autonomous] means making the final decisions about what one should do. For the autonomous man, there is no such thing, strictly speaking, as a command.¹⁰

Wolff and other friends of P thus take a person's decision to endorse an obligation as the only point at which she is obligated. Thus, the possibility of someone else possessing a right to demand Violet's action in the absence of her deciding to confer that right is inimical to her autonomy on his picture.

On this view, the sole authority over one's obligations extends even to moral obligations. Fair play and other moral principles cannot impose obligations upon a person in the absence of her endorsement. Wolff writes,

The responsible man...does acknowledge himself to be bound by moral constraints. But he insists that he alone is the judge of those constraints....we may say that he gives laws to himself, or is self-legislating. In short, he is *autonomous*.¹¹

Wolff stipulates that any fully autonomous person will in fact impose moral obligations upon herself. That need not be the case on P. In principle, an autonomous person is not obligated to refrain from murder unless she decides to

¹⁰ Wolff 1970, p. 15.

¹¹ Wolff 1970, pp. 13-14. His italics.

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impose the obligation upon herself. But this does not entail that there are no moral principles. And it is compatible with murder being morally wrong. The fact that it is wrong gives the autonomous person a sound moral reason to obligate herself not to murder. This is true even if she decides not to endorse it. Thus when she murders she does something wrong. And we may punish her because murder is wrong. But we cannot say that she has done something she was obligated not to have done. This seems at best strange. I'll return to it in §3.

P is probably an unreasonably strong conception of autonomy and what respect for it demands. But its strength makes the tension between autonomy and fair play particularly perspicuous. Though this also makes it tempting to write off the tension as the product of an implausible view. But the tension is always there. Any fair play based account of political obligation claims that respect for autonomy is compatible with fair play's unendorsed obligations. Simmons and Nozick's arguments show at least that this alleged compatibility will always require explanation.

One common way of responding to this tension is to weaken the conception of what autonomy requires by rejecting P. I shall take a different tack. I shall argue that fair play based political obligations and respect for autonomy are compatible even on P's unreasonably strong account of autonomy's

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demands. That will afford a general answer which applies to all understandings of autonomy's demands, weak and strong alike.¹²

§2

Two conflicts between fair play and autonomy

I can now describe the tension between fair play and P. Let me begin with two assumptions.

2.1 Indivisibility

Applying the principle of fair play requires a picture of how to calculate the benefits and burdens of public life. Many writers distinguish between two sorts of goods. Presumptive goods are “things it is supposed that all members of the community want, whatever else they want, regardless of what their rational plans are in detail.”¹³ Thus, we can view “goods that are of less value — goods that may be desirable but should not be viewed as essential to people's well-being— as discretionary goods.”¹⁴ I shall assume that benefits of both kinds are relevant in calculating political obligations. The benefits of sniffing state-planted

¹² I shall eventually contend that we ought to reject P. But that will not be part of my argument for the compatibility of autonomy and fair play. See §5.2.

¹³ Klosko 1987, pp. 246-7. See also Rawls 1971, p. 92.

¹⁴ Klosko 1987, p. 248.

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roses are as relevant as the benefits of national defense; *mutatis mutandis* for burdens.¹⁵

More contentiously, I shall assume that in making the calculation we only consider the total costs imposed and the total benefits received. That is, the costs and benefits of being a member of a state form a package in the calculation of when fair play creates obligations. Consider.

Art: Brown abhors the art her government sponsors. She finds it vile, immoral, and in poor taste. She determines that her share of the budget for these grants is \$1 in her total tax bill.

I am assuming that the fact that she does not want her \$1 spent this way does not relieve her of the obligation to pay it. It is not as though she has one obligation to pay for defense, another obligation to pay for infrastructure, and still another to pay for the arts. When we consider whether fair play obliges her to pay taxes the question is whether the amount she benefits from organized society as a whole is greater than the cost of the total tax bill. The fact that a person's government does things which do not affect her or which she actively opposes does not mean that

¹⁵ C.f., Klosko 1992, pp. 38-39.

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she has political obligations only to (and only based on) the programs she supports. I shall call this assumption Indivisibility.¹⁶

This faces several challenges. For example, Indivisibility is sometimes employed in attempts to move from obligations to pay for presumptive goods to obligations to pay for the discretionary goods provided by the same scheme.

Klosko claims that

If A is obligated to contribute to the provision of some presumptive public good(s) supplied by scheme X, then he is also obligated to support X's provision of discretionary public goods a, b, c and so

¹⁶ There are cases in which different people may have different political obligations. It is possible that a person has a political obligation to pay taxes, but no political obligation to serve in the military. Non-citizens, for example, might have the former but not the latter. Indeed, there may be different accounts of the different kinds of political obligation which rest them on different grounds. For example, it might be that fair play grounds the obligation to pay taxes and consent grounds the obligation to serve in the military, but not vice-versa. If true, this may complicate my use of Indivisibility. In these cases, I suspect that we should calculate each different political obligation on the basis of the packages of costs and benefits that are relevant to that obligation. This complication is not important for this essay.

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forth, unless it can be shown that his costs in cooperating with X outweigh his benefits, or that X is unfair.¹⁷

But, as Simmons points out, it isn't clear why we shouldn't say

that a person should have to participate only to the point of supporting the provision of presumptive goods. Why *assume* the presence of an obligation (rather than the presence of a liberty) in the absence of serious cost or unfairness? Klosko seems to say that a scheme's providing discretionary goods could not "overturn" our obligations to it...But, of course, we need not *overturn* the original obligation when we simply refuse to *extend* it to cover provision of discretionary goods.¹⁸

This objection doesn't affect my use of Indivisibility. Herein, it doesn't matter whether the goods are discretionary or presumptive. My conclusions will follow as long as participation in the state is a net benefit.

However, I face a related problem. I shall combine the costs of services a taxpayer receives and those which she will never use (and does not want to have

¹⁷ Klosko 1987, p. 257.

¹⁸ Simmons 1987, p. 274. His italics.

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available to her). Simmons raises a problem for this when he notes that Klosko's argument hinges on the claim that

our burdens are indivisible "packages", so that we cannot separate our support for presumptive goods from our support for discretionary ones. But tax payments...seem perfectly divisible.¹⁹

This denies Indivisibility. On this claim, government services are to some (large) degree morally ala carte. If in calculating her obligations a taxpayer can go line-by-line in the state budget, she will likely have a long list of taxes she is obligated to pay. But it is unclear that these will sum to anything like the general political obligations most writers seek. Given the variety of services the capable government of a moderately sized state provides, it seems likely that denying Indivisibility would threaten fair play as a tenable general account of political obligation.

The force of this objection turns on the content of the obligation to pay taxes. But my topic is only the possibility of a political obligation to pay taxes given P. Of course, a substantive account of fair play must eventually provide an account of what taxes one is obligated to pay. And this will involve a defense of Indivisibility. But, save for two quick comments, that must wait for another day.

¹⁹ Simmons 1987, p. 247.

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First, the ramifications of denying Indivisibility aren't limited to the principle of fair play. For example, many accept that considerations of distributive justice allow taxation to be used to shift costs and redistribute resources from one social stratum to another. It is unclear how taxes could achieve this if we deny Indivisibility for all forms of taxation.

Second, rejecting Indivisibility may threaten certain kinds of government. For example, given the way budgets are made and monies distributed in large states, the denial of Indivisibility may require significant transformations of the role and operation of a representative government. Lawmakers will face logistical and epistemic challenges in ensuring that the programs affecting their constituents do not demand (too much) more of any taxpayer than she could be obligated to pay. Moreover, the lawmaker will have to coordinate these programs with the funding for programs that only affect other districts. That may involve significant economic and political difficulties. Perhaps clever technocrats will be able to design ala carte governments which can function in the political, cultural, and economic milieus of large states. But I suspect that these and several other practical challenges lend prima facie plausibility to Indivisibility.

2.2 Conflicts

I can now state the central issue. Consider this extension of a scheme Simmons describes in his discussion of Nozick's criticisms of the principle of fair play.²⁰

Fresh Water: Scarlet's neighborhood is plagued by dirty water. The water is drinkable, but she would prefer it to be fresh. The neighborhood gets together and unanimously votes to dig a public well. Each member of the neighborhood agrees to pay \$5 a month for its maintenance. By coincidence, Scarlet is out-of-town when the meeting is announced and held. Had she been present she would have voted for the construction of the well and the maintenance scheme. She returns to the neighborhood to discover the well dug, the maintenance scheme operating, and, once she starts using it, her alleged obligation to contribute \$5. Though she recognizes that she will be acting unfairly, Scarlet uses the well without contributing.

Any friend of fair play should say that Scarlet is obligated to contribute. This is anathema to P.

²⁰ Simmons 1979, p. 126.

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P and fair play conflict in two ways. We've already seen the first. To be distinct from consent based accounts, a fair play based account must make political obligations flow from a person's interaction with a scheme, not from her agreement to contribute. Thus a person has a fair play based obligation whether or not she endorses it. In *Fresh Water*, Scarlet doesn't consent to the fair play based obligation. But she is allegedly obligated to contribute. That is incompatible with P.²¹

Second, fair play can demand too much. If a person has a fair play based obligation strictly in virtue of her interaction with a cooperative scheme, it doesn't matter what her individual preferences are. But one's preferences are an important part of who a person is and thus of her integrity as an autonomous individual. Being obligated to act against them thus violates her autonomy.

Our restriction of cases to those in which contribution to a scheme is profitable cuts off some but not all cases in which this second conflict arises. If

²¹ Klosko makes this explicit: "Strong evidence that the obligations...arise from the principle of fairness and not from some other moral principle is the connection between the obligations [a person] incurs and the behavior of others. Fairness obligations are distinctive in that they stem from the behavior of others, as opposed to the performances of the individual himself that are generally necessary to ground other obligations."

Klosko 1987, p. 247.

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the fresh water were not worth \$5 to Scarlet, then she would not be bound by fair play. But in Fresh Water, she would be happy to pay the \$5 if she had to.

Contribution to the scheme would be a net profit. Hence fair play seems to obligate her to contribute. But she rather free-ride. She can autonomously demur that the fair play based obligation would force her to act against her autonomously chosen preferences. That's incompatible with P.

2.3 Two kinds of conflict

Let me say what it means for P and fair play based obligations to conflict. We may distinguish two kinds of conflict which can arise between different goods or principles.

Conceptual conflicts between goods or principles involve logical incompatibilities. For example, the principles 'the moral value of an act is wholly determined by its outcome' and 'the moral value of an act is wholly determined by the intentions with which it is done' are logically incompatible. This is a conceptual conflict.

A practical conflict arises between goods or principles in a particular situation due to features of that situation. These conflicts are familiar. For example, we often cannot both respect a right to life and maximize utility. The infamous Inhospitable Hospital is one such case. The doctors cannot both respect

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the recluse's right to life and remove her organs to save the five other sick patients.

But such conflicting goods are not logically incompatible. There are many cases in which the best alternative is one which both respects rights and maximizes utility. Indeed, many respond to cases like the Inhospitable Hospital by arguing that maximizing utility usually requires the same action as respecting rights. It might be that killing recluses and transplanting their organs will make others less likely to visit their doctors. These responses don't show that respecting rights and maximizing utility never conflict. We can gin up cases by adding enough details to generate a conflict. But they do show that the conflicts between utility and rights are practical and not conceptual conflicts.

2.3 The alleged conceptual conflicts

I take it that those who oppose fair play on grounds of its conflicts with autonomy mean that there is a conceptual conflict between a person being fully autonomous and her being obligated by fair play without her consent. Wolff, for example, writes,

The magnitude of our problem is indicated by our inability to solve the dilemma of autonomy and authority even for a utopian

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society....[p]olitical philosophers have supposed that utopia was logically possible....But the arguments of this essay suggest that the just state must be consigned to the category of the round square ²²

On its face, it seems that P and fair play based obligations conceptually conflict. P claims that no unendorsed obligation is consistent with autonomy. Whereas the fair play based obligations at issue are obligations which we have whether we consent to them or not.

I shall argue that this is false. P and unendorsed fair play based obligations can practically conflict, but there is a wide range of cases in which they are in harmony. That is, there are cases in which unendorsed obligations are compatible with P. This will be the thesis of §3.2.

However, that will not be enough to answer the charge that P undermines fair play as a basis for political obligation. Even if P and fair play based obligations are sometimes compatible, these cases may be few and far between. Though fair play may generate an obligation in isolated cases, it would be useless as a general principle of political obligation. In §4.1-§4.2 I'll argue that the practical conflict between P and fair play is benign. The conflict cases normally involve a certain kind of person who has the explicit desire to free-ride. I'll then

²² Wolff 1970, p. 71.

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argue in §4.3.2 that these cases involve an unstable moral psychology and are likely to be rare. Thus the existence of cases of practical conflict doesn't threaten a fair play based account of political obligation.

§3

Moral obligations, moral reasons; fair play and autonomy

There are thus two conflicts between autonomy and fair play. But what follows from the fact that they conflict? The opponent of fair play believes that autonomy and fair play based obligations are necessarily incompatible. Thus she claims that insofar as we respect autonomy, we cannot have fair play based obligations. This doesn't follow. The apparent incompatibility comes instead from a misunderstanding of the different ways autonomous people are subject to moral considerations.

3.1 Preliminaries

To make the discussion as perspicuous as possible, I'll proceed with several background assumptions. Some may be contentious. But with the exception of the pluralism about value in §3.1.1, my argument does not depend on them. It will be possible to reformulate the argument without them.

3.1.1 Pluralism about value

I shall assume that there are multiple kinds of goods and principles. For example, autonomy, utility, rights, self-interest, justice, personal commitments, virtues, perfectionist ends, and many others, all have their own intrinsic values.²³ However, I shall not assume that these values all have the same normative significance. For example, I shall not assume that for each good, there is some situation in which it outweighs all other goods. That avoids begging the question against the friend of P who gives autonomy a peremptory status. The existence of multiple goods is compatible with the view that autonomy trumps all other goods. For example, if two alternatives are equivalent in their effects on a person's autonomy but differ in some other normatively significant respect, these other goods might determine which alternative is all things considered better.

3.1.2 Reasons and obligations

I shall often say that a good or principle gives reason to do x. That is, the fact that doing x will promote good y is a consideration in favor of doing x. Reasons can have many sources. The fact that x is morally good entails that there is reason to do x. The fact that a person wants y entails that there is reason for her to pursue y. A person can have several conflicting reasons at any given time.

²³ Cf., Nagel 1979.

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Rational decision involves choosing amongst one's apparent reasons.²⁴ The rational person chooses to do what she has most reason to do. That is, a decision to do x is rational only if the reasons for doing x are the strongest of the considerations present. For the purposes of this paper I shall use 'ought' and 'should' to mean 'ought/should all things considered'. A person ought to do x only if she has no stronger reason for doing anything else.

Two assumptions will help this discussion sidestep some common metaethical concerns about reasons. First, I won't assume any substantive constraints on what reasons we have. For example, I'll allow that a person could have reason to brutally torture her archenemy.

Second, I'll assume a weak internalism about reasons and motivation. I shall assume that a person has reason to do x only if she has a desire to do x. This

²⁴ There are at least two reasons for assuming that only apparent reasons are at issue. First, it seems likely that we should assess the rationality of decisions mainly on what reasons a person believes are present, not on what reasons there are. Second, a requirement that autonomous people have perfect knowledge of the reasons present is implausible. At the same time we should not count those who fail to recognize reasons through willful self-deception among the fully autonomous. Thus we may assume that autonomous persons are required to make a good-faith effort to suss out what reasons are present.

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is compatible with a person acknowledging that there are reasons for doing x without taking them to be reasons for her to do x. For example, I agree that the opportunities for success and satisfaction afforded by competitive powerlifting are good reasons for someone to take up the sport. But they aren't reasons for me to go to the gym more often; swimming is more my speed. In accordance with this weak internalism, my examples will only involve people who are disposed to form a desire to do x when they acknowledge that there is reason for them to do x. Sometimes these desires are strong —as when a person recognizes her duty to the small child drowning nearby. Othertimes the desire is weak —as when she knows that she ought to return the extra dollar that the clerk has handed her with her change (though the strength of the desire need not track the strength of the reason).

What one has reason to do and what she is obligated to do are separate normative categories. It is true that a person has an obligation to x only if she has some reason to x. But we often have reasons to do things that we aren't required to do.

3.1.3 Punishment

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I shall assume that a state can legitimately punish a person for doing x , where x does not harm another, only if she was obligated not to do x .²⁵ However, the fact that she cannot be punished doesn't imply that she isn't open to moral criticism. For example, we can often criticize a person's character without charging that she has broken an obligation or even that she shouldn't have done what she did.²⁶

Consider casual lying to strangers. If you and I are strangers, I am often not obligated to tell you the truth. Thus I cannot be punished for telling you that it is 12.30 PM when it is already 1.00 PM. Of course, that doesn't put me beyond reproach. I am still untrustworthy, impolite, and generally a jerk. But my poor character doesn't justify coercion or punishment. However, if I place myself

²⁵ The state can thus punish the autonomous murderer who hasn't obligated herself not to murder. But it cannot punish those who have acted unfairly unless they were obligated not to do so. Out of deference to the proponent of P, I shall assume this asymmetry.

Clearly it requires some explanation and defense. Nozick's invocation of rights as 'side-constraints' may be one way of filling this need. See Nozick 1974, pp. 28ff.

²⁶ Williams' example of a cruel husband is the standard case in which we cannot charge that a person shouldn't do x but can criticize him on other grounds. Williams claims that because the husband has no desire to be nicer, we cannot say that he ought to treat his wife better. Still, we can say that he is a vile and terrible person. See Williams 1981.

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under an obligation not to lie, then I may be punished. When I swear to tell the truth on the witness stand, I open myself to punishment for perjury.

This difference between reasons and obligations, and this assumption about when a state may punish are important for one of my central claims. I shall later argue that there is a category of person who may free-ride without violating any fair play based obligation. These people cannot be punished for benefiting from a cooperative scheme without contributing. But they can be criticized in other ways. That will be the topic of §4.3.

3.2 Practical not conceptual

My argument that the conflicts between fair play and autonomy are practical and not conceptual has two parts. First, in §3.2.1 I'll examine what would follow if P and fair play based obligations did conceptually conflict. The logical incompatibility of P and fair play based obligations would indeed undermine fair play as a source of obligations that bind independently of endorsement. But contrary to what opponents of fair play presume, this conclusion would not undermine fair play as a moral consideration. Much of my forthcoming argument will exploit this result. Second, I'll set out a class of cases in which P and unendorsed fair play based obligations fit without conflicting. That will show that P and fair play based obligations are logically compatible.

3.2.1 What follows from the opponent of fair play's arguments?

Fair play has a powerful intuitive appeal. We should continue to count it as a legitimate moral consideration until we have been convinced otherwise. I'll now argue that even if her arguments are successful, the opponent of fair play has given us no reason to reject fair play as a moral consideration.

Given P, a person can have an obligation only when she accepts it. But she can recognize that there are reasons for accepting an obligation without thereby accepting it. Consider.

NPR: Green frequently listens to her local public radio station.

When the yearly pledge drive comes, she accepts that fair play requires her to send a donation. However, she much rather spend the money on a night out at her friend's birthday party. She heads to the bar and does not write the check.

Let's assume that, in recognizing what fairness requires, Green forms at least a minimal desire to contribute (for example, she would donate if she could easily afford to do both). But while she has some desire to contribute, she does not ultimately act on it. In *NPR*, the reasons based in fair play get overridden by the reasons based in her other desires. She has competing desires: a desire to donate and a desire to go out with her friends. The latter outweighs the former in her decision.

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Still, in NPR, fair play provides grounds for contributing. The fact that fair play requires contribution can be a consideration in Green's decision-making. But that reason is ultimately trumped by the reasons given by her other desires. The fact that Green chooses not to do what she knows she has moral reason to do may impugn her character. But it doesn't show that fair play isn't a genuine moral consideration.

Fair play's normative significance would be undermined by NPR if we thought that the ability to act against an acknowledged moral requirement undermines the normative status of that requirement. But very little of ethics would survive that claim. Therefore, the conclusion that P and fair play based obligations are logically incompatible wouldn't entail that we must give up on fair play as a moral consideration.

Our question is whether fair play can be a source of obligation, not just whether it retains some moral significance in the face of P. Given P, an autonomous person cannot have a moral obligation unless she accepts it. Thus, as I've described NPR, while Green accepts that fair play gives her a reason (and she has a desire) to contribute, at no time is she obligated to do so. P does entail that a person's accepting that she has a moral reason for doing x is not sufficient for her being obligated to do x. But this is far from the claim that we must reject fair play as a source of moral obligation. That would follow if we believed that

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moral reasons necessarily trump all other kinds of reason. Since Glaucon's challenge to explain why we should be moral at the cost of self-interest in Plato's *Republic*, that has seemed dubious.²⁷ Moreover, it seems at odds with how morality figures into our everyday moral deliberations. We sometimes do what is wrong, though we know what is right.

Therefore, fair play can be a genuine moral consideration even if the opponent of fair play is right that there is a conceptual conflict between P and fair play based obligations.

3.2.2 No conceptual conflict

But there is no conceptual conflict between P and fair play based obligations. There is at least one sort of case in which P and unendorsed obligations do not conflict. Suppose that Violet sees that fair play gives her reason to do x and she has no stronger reason or desire not to do x. Because she has no grounds for rejecting the fair play based obligation to do x, she is rationally required to endorse the obligation. In this kind of case, I shall now

²⁷ Many do assume that moral reasons must trump all others. Some take this as grounds for despairing of the possibility of normative truths. For example, Mackie's famous argument from queerness seems to assume this. See Mackie 1977, pp. 38ff. I think we should reject this assumption. But I cannot argue for that here.

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argue, an autonomous person can have an unendorsed fair play based obligation without violating P.

Suppose that Violet's strongest purely self-interested desire is to do x. She also separately acknowledges that fair play requires that she do x. Because she normally wants to do what she sees she has moral reason to do, she thus has a separate fair play based desire to do x. Do the two conflicts between P and fair play arise in this case? I believe the answer is No on both counts.

The second conflict lies in the fact that fair play based obligations can ask too much of a person because they are incurred without consideration of her individual preferences. She can object that this requires her to act contrary to her preferences. At least on P, that is an affront to autonomy. But Violet can make no such complaint. The obligation doesn't demand any more than she is already happy to pay.

Nor does the first conflict arise for Violet. That conflict arises from the claim that autonomous people must endorse their obligations. But when the demands of fair play and one's other desires align as they do with Violet, there is no problem. Given what desires she has, Violet has no grounds for rejecting the fair play based obligation when it comes up for endorsement (for example, when considerations of fair play are pointed out to her). Of course, she can always change her desires. Thus she retains a kind of veto power over the fair play

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based obligation. But there is no problem when her desires do not change. If there were a problem here, it would have to lie in the fact that the fair play based obligation binds her before she actively endorses it. But why does that matter if her desires taken together entail that the endorsement is inevitable?

This needs some explanation. At P's heart is the claim that an autonomous person must be in charge of her obligations. This implies that an obligation must, in some sense, meet her scrutiny before she can have it. Now, it is true that Violet has not yet consciously reflected upon and endorsed the obligation. But this is only because the demands of the scheme have not yet come to her attention. For this to be a problem P must make actual conscious endorsement a necessary condition of an obligation's compatibility with autonomy. But Violet's case at least suggests that this epistemic requirement is peripheral to P's central intuition. The requirement therefore requires defense.

The philosophical anarchist's claim might be that as an autonomous agent Violet must be able to change her mind. There is a way in which it does seem as though Violet is being railroaded into the endorsement. She cannot do otherwise without changing her desires. But insofar as she autonomously endorses her desires, she is the one who built the track. I suspect that any discomfort here stems from the fact that we've now gone headlong into questions about the nature of free will. The discomfort is not the product of our concerns about

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respect for autonomy or about people being the authors of their lives (presumably Violet wrote the story that got her these desires). Instead it is a concern about how the sum of our present desires determine our future actions. That is far from what we are interested in with respect to political obligation.²⁸

Therefore, if my description of Violet is correct, the conflicts between fair play and autonomy do not reflect a logical incompatibility between unendorsed obligations and autonomy. And I have shown this on the friend of P's own terms. That is, in some cases the conflicts do not arise even on one of the most stringent conceptions of the autonomous person as a self-legislator.²⁹

²⁸ A partial analogy may help. Many writers hold desire theories of the good on which an x is good for a person if and only if she desires x. But this isn't true of just any desire. Sometimes, while washing dishes, I have the irrational urge to plunge my hand into the whirring blades of the garbage disposal. Many desire theorists add a counterfactual requirement of reflection to avoid saying this is good for me. For example, some require that the desire would survive reflection in a cool moment. This is often a kind of proxy for the more stable beliefs and desires I have while at the sink. They are unnoticed but determine what I should do. Cool reflection brings them back into focus. This is similar to the presence of the reasons which together entail acceptance being all the endorsement that is necessary on P. My suggestion here shouldn't seem too unfamiliar.

²⁹ This result has important implications for our understanding of paternalism and its moral status. Indeed, this may seem to open the floodgates to all sorts of objectionable

§4

The practical conflict

I have made this argument in what may seem to be a very narrowly constrained set of cases. Thus even if we have gotten rid of the conceptual problem, we must ask how often fair play based obligations and the demands of autonomy are actually compatible.

4.1 Two kinds of conflict case

I shall now suggest that these cases of harmony are not uncommon. I'll proceed by setting out an obverse set of cases in which P and fair play based obligations do conflict, and then discuss how many of these conflict cases we should expect.³⁰

Those who deny that fair play gives reason to contribute pose no problem for a fair play based account of political obligation. We have seen no reason to

paternalistic infringements. I believe that accepting these claims does not require countenancing any form of paternalism —objectionable or not. But explaining and defending that would require an essay of its own.

³⁰ I'll leave it open whether there are other cases of conflict. If there are, I suspect that they will be idiosyncratic and not share a common structure like those described here.

Thus I suspect they will be quite rare.

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reject fair play as a genuine moral consideration. Our problem cases involve those who agree that free-riding is unfair.

Given the constraints of P, there are two kinds of people whom fair play cannot obligate to cooperate. For the first person, the contribution would leave her with a net loss. On the principle of fair play at issue, only profitable schemes can generate obligations. Thus if the fresh water were not worth \$5 to Scarlet, her free-riding wouldn't violate any fair play based obligations.³¹ This is true even though the well is not sole the water source. For her, there is no conflict between autonomy and fair play based obligations. She has none of the latter. I shall return to this kind of person in §5.1.1.

The conflicts do arise for the second person. Because she wants to free-ride, she doesn't have any fair play based obligations. I believe this is the central class of conflict cases between P and fair play based obligations. These people have a desire to free-ride that is distinct from their desires for the scheme's goods. Given P, the possession of this desire entails that this kind of person cannot be bound by fair play without violating her autonomy. In §4.3.1 I'll discuss whether, even though they break no obligations, these people act

³¹ Assume that the options are \$5 or \$0. This assumption is important to the existence of these problem cases. Where there are many options for contribution, many of these cases melt away.

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wrongly in free-riding. In §4.3.2 I'll then suggest that these cases are rare enough that they don't threaten fair play based accounts of political obligation.

4.2 Auxiliary desires

In our case Fresh Water, Scarlet wants the fresh water and would pay the \$5 if she were unable to free-ride. But since she can free-ride, she takes the water without contributing even though she agrees that this is unfair. Our first question is whether we should understand Scarlet as having only one desire — get fresh water as cheaply as possible — or whether she has a desire for the water and a separate desire to free-ride. I believe it is the latter.

Suppose that Scarlet has the desire:

D1: Pay \leq \$5 for fresh water.

She also sees that fair play requires that she pay \$5. She thus also has the desire (or a desire which entails):³²

D2: Pay the fair amount, \$5.

So far, since there is no further desire to outweigh the fair play inspired desire D2, she will pay the \$5 and won't attempt to pay less. With just D1 and D2 she wouldn't free-ride even if she could. This is true regardless of whether she has the opportunity to free-ride.

³² I'll henceforth take 'or a desire which entails' to be understood.

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She will thus free-ride only if she has an additional desire that outweighs

D2. This is the desire:

D3: Free-ride in this scheme.

Having D3 is a sufficient condition of free-riding not violating a fair-play based obligation in this scheme.

We might also ask whether Violet couldn't do x just out of self-interest while refusing to accept the moral obligation to do x . This may be possible in some cases, but it is not in Violet's. Insofar as she is rational, Violet can only do what she has some reason to do. Hence, given that she has a fair play based desire, she must have some reason to withhold fair play based acceptance. The fact that she acts out of self-interest neither entails nor suggests such a reason. In general, if x and y are reasons to do z , the fact that a person does z on the basis of x implies little more than the fact that y is weaker than or equal in strength to x . Thus the fact that Violet endorses the obligation out of self-interest does not itself give her grounds for refusing to act upon her fair play based reason. Hence the case the objection describes involves a third desire —viz., the desire to not endorse the obligation on grounds of fair play (this third desire is compatible with her having the fair play based desire). Therefore, the possibility raised in the objection cannot arise for Violet as I have described her. The fact that there can be other cases is unproblematic. I'll say more about this in a moment.

4.3 Jackasses

Fair play cannot bind a person without violating P when her fair play inspired desire is outweighed by the desire to free-ride. The desire to free ride thus entails the practical conflicts between P and fair play based obligations. This points to a central class of people who will not have fair play based obligations with respect to a particular scheme. I shall say that:

A person is a Jackass with respect to a particular cooperative scheme if and only if: (a) contribution would be a net profit for her; and (b) she agrees that free-riding is unfair; and (c) her desire to free-ride outweighs the desire to act fairly.

Some curmudgeons may hate the fact that others will benefit from their contribution. Some isolationists may hate having obligations to others. Both will grumble when they are forced to cooperate in order to benefit. But when they can take the benefits without contributing, they jump at the opportunity to avoid these commitments to others. They agree that they're acting unfairly. But they rather free-ride. They are Jackasses.³³

³³ Cf., Simmons' example of Jones who goes to the public well during the middle of the day to take water while loudly proclaiming "Don't think this means I'm coming into your stupid scheme! I'll never consent to share the burdens of this enterprise!" Simmons 1979, pp. 126-7.

4.3.1 Do Jackasses act wrongly?

P requires deference to autonomy. To respect autonomy we cannot say that the Jackass has a moral obligation when she won't endorse it. Such obligations are anathema to P. Thus we should say that compatibility with autonomy is a necessary condition of having a fair play based obligation. Therefore, Jackasses don't have unendorsed fair play based obligations. They break no obligations when they free ride.^{34 35}

³⁴ We can permissibly prevent them from benefiting by, for example, cutting off their access to the good. Because she has no right to the water, the neighbors could build a fence around the well to keep Scarlet out. Though in the larger case of political obligation, this raises some hard issues. For example, does this mean that we can deport or severely limit a Jackasses' access to public goods. Do we refuse to educate their children? Allow their isolated houses to burn? Not necessarily. That might follow from a fair play based account of citizenship or state-membership. But having political obligations may be neither necessary nor sufficient for state-membership.

³⁵ Despite the pejorative title, in some cases Jackasses may not be open to criticism on non-fair play based grounds. Personal commitments such as Green's obligation to attend her friend's birthday in NPR are important. In many cases, we think that a person all things considered ought to discharge a personal commitment rather than do what is fair.

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Thus when we accept P, we cannot coerce Jackasses or punish them for being unfair. That seems implausible. Let me give three mitigating considerations.

First, the fact that the Jackass does nothing wrong with respect to fair play doesn't immunize her from moral condemnation. We cannot say that the Jackass ought to cooperate. She doesn't give the moral reason enough weight to outweigh the desire to free-ride. But we can criticize her for being the sort of person who doesn't give considerations of fairness the weight we think she should. She is, in short, a jerk. Still, if being a jerk with respect to x is not sufficient for being justly coerced or punished with respect to x, then the Jackass may not be sanctioned for free-riding.

Second, in some cases where the cooperative scheme is producing goods from raw resources (e.g., Fresh Water), the Jackass may violate a Lockean property right. What matters for such rights is roughly the mixing of one's labor with the resource. The fact that she cannot stop others from taking the product doesn't necessarily undermine the existence of such a right. Thus in some cases the Jackass may be morally liable for theft, though not unfairness.

Third, it isn't so far fetched to think that Jackasses aren't acting wrongly. After all, Nozick's cases are very attractive, even if we ultimately reject them or their lessons. Those who want to reject fair play based obligations on the basis of Swenson (Unpublished)
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P are neither crazy nor obviously mistaken. That's what makes the current project of rebutting them important and challenging. Thus while the inability to punish a select few for free-riding may be uncomfortable, it isn't terribly implausible.

4.3.2 Incidence of Jackasses

We can now turn to how many Jackasses there are. If there are too many, there will not be enough political obligations to keep a fair play based account of political obligation afloat in the face of P. While this is ultimately an empirical question, let me give three reasons for thinking that Jackasses are sufficiently uncommon.

First, Jackasses are a subcategory of autonomous people. Insofar as a person is autonomous she must honestly evaluate the apparent reasons in making choices. Since she agrees that the unfairness of free-riding is a reason to contribute, the Jackass is reflective in her choosing not to take that as a reason for her to contribute (or, if she takes it as a reason for her to contribute, she doesn't give it sufficient weight to counter the desire to free-ride). To be a Jackass in a particular scheme, one must face up to the fact that her chosen course is (to some degree) immoral. When a contributor complains that her free-riding is unfair,

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Scarlet must agree. But she does nothing wrong in tearing up the bill he hands her.

I suspect that this involves an unstable moral psychology. Thus I believe Jackasses will be acceptably rare. It is normally difficult for a person to believe that she has moral reason not to do x while doing x . When most of us act contrary to our moral judgments we tend to rationalize the actions as permissible. Witness the way explanations of acknowledged transgressions often slide into excuses or justifications. Jackasses do not do this. To be a Jackass, it is not enough to want not to contribute. The Jackass must not do x while believing that she has a moral obligation to do x and that the costs of x are consistent with her self-interest. The Jackass is a kind of clear-eyed wrongdoer. Those who act wrongly but believe otherwise are not Jackasses. While many of us are sometimes Jackasses with respect to particular schemes, I suspect this psychology is rare at the broad social level.

Second, a person is a Jackass with respect to a particular cooperative scheme. It is true that many of us are Jackasses with respect to some schemes. My own contributions to public radio are admittedly not as regular as my listening. But being a Jackass in some schemes doesn't entail being a Jackass in every or even many schemes. Being a Jackass is a state, not necessarily a trait. And whether one is a Jackass in a given scheme is surely influenced by many factors.

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These might include the size, structure, type, and other conditions of the scheme. That makes the expected incidence of Jackasses in a given scheme ultimately an empirical question for the behavioral sciences.

Thus the tenability of a fair play based account of political obligation under P depends on facts about human psychology and political life. But any account of political obligation ought to be in the same position. A Lockean consent-based account would provide a good explanation of political obligations among shipwrecked survivors on certain desert isles. The problem is that the facts about life in modern states make consent-based accounts useless as general accounts of political obligation (though they may work in some cases like immigration).

Third, stable cooperative schemes will usually have features and structures which minimize the number of free riders. Many of these operate by social means of goading. From public radio's periodic guilt-inducing hectoring to the justified jeers that Scarlet will receive from her neighbors, it's reasonable to suspect that most stable cooperative endeavors are organized in ways which tend to minimize the number of people who benefit from the scheme as Jackasses.

This is to some degree worrisome. The larger the scheme, the more important it seems to be to be able to punish free-riders. Past a certain size,

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goadings doesn't seem to be enough. Thus we might worry that when the scheme is large enough the inability to punish Jackasses will lead to the multiplication of Jackasses and the scheme's collapse.

It is true that the larger a scheme is, the more difficult it is to enforce cooperation through techniques of goading and persuasion. But I suspect it isn't easy to induce the Jackass's moral psychology through example. The inducement would have to make people who would otherwise contribute into clear-eyed wrongdoers. Of course, seeing other people violate a moral obligation often does induce similar violations. But this is often in part because it brings one to doubt or ignore the obligation's applicability or strength. However, this is the opposite of what must happen to induce a person to be a Jackass. If one doesn't believe that her acts are unfair, she cannot be a Jackass. Thus while the inability to punish Jackasses may in fact induce others to free-ride, I doubt it will make them into Jackasses. And we may punish non-Jackass free-riders.

§5

The obligation to pay taxes

I've now argued that unendorsed fair play based obligations can be compatible with an extremely stringent conception of autonomy. Let me apply this to the political obligation to pay taxes.

5.1 Two kinds of exception

Our question is when it is unjust to punish a tax-dodger on grounds of fair play. As before, I shall proceed by identifying those who do not break fair play based political obligations in enjoying the benefits of organized society without paying taxes. There are two central cases. In the first, a person does not benefit enough for considerations of fair play to arise for her. In the second, one has a fair play based reason to pay, but isn't obligated because of her substantive preferences. I'll discuss each in turn.

5.1.1 Outliers

For Outliers, paying the required taxes would make their interactions with society a net loss. The obligation would demand too much. They therefore have no fair play based political obligation to pay taxes. There are several ways one might be an Outlier. Here are two examples.

In some cases, a person may be an Outlier because she does not benefit enough from organized society. For example,

Survivalist: Amber lives alone in an isolated cabin deep in the wilderness. Her only interaction with others is limited to occasionally selling pelts in town to buy provisions.

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Amber draws very little benefit from organized society. Given that Indivisibility doesn't allow a person to pay taxes only for the particular benefits she receives (see §2.1), if the marginal tax rate demands more than she has benefited, it is unjust to tax Amber's income.

In other cases, the cost others would find reasonable may be too high for a particular person given her commitments. For example,

Pacifist: Indigo is an extreme pacifist. Her life is organized around her beliefs about the immorality of any war. Thus she cannot stand the idea of doing anything to support the foreign (just) war her country is engaged in.

Forcing Indigo to pay any taxes would be a tremendous violation of her integrity. A political obligation based on fair play would demand too much from Indigo. Hence fair play does not obligate her to pay taxes even though she enjoys the benefits of the well-ordered society.³⁶

5.1.2 Anarchists

³⁶ Where a person's contribution to society can extend beyond paying taxes, many of these cases may dissolve. If the pacifist Indigo had the option of performing \$10,000 worth of public service in a way totally unrelated to the war, she would have a political obligation to do so.

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The second kind of tax-dodger who can't be justly punished on grounds of fair play is the Anarchist —a Jackass with respect to the political obligation to pay taxes. Unlike the Outlier, participation in political life after taxes would be a net gain for the Anarchist. But she refuses to cooperate. To be an Anarchist, it is not enough to want to get the benefits of organized society for free. Nor is it enough to think that one is paying more than her fair share.³⁷ The Anarchist agrees that the benefits she has received do raise considerations of fair play. But she will not endorse a fair play based political obligation because she has an auxiliary desire to free-ride (or a desire which entails it). Many hate paying taxes. But the Anarchist explicitly and with clear-eyes wants to get everything for free at the expense of everyone else.

Fair play doesn't justify punishing an Outlier or an Anarchist for not paying taxes. Neither has fair play based political obligations to do so. The Outlier does not benefit enough. Considerations of fair play don't even arise for her. The Anarchist meets that condition. But, given her desire to free-ride on

³⁷ There is a further question about how to calculate a person's fair share. It may be that the unfair amount is still a net benefit. Thus on the view herein, a person could be obligated by fair play to pay more than her fair share. But this is a separate issue. I am arguing for the possibility of fair play based political obligations. Their content is an issue for another time.

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everyone else's contributions, fair play cannot bind her without violating her autonomy. Like the Jackass, the Anarchist is subject to criticism on many other grounds. But she cannot be punished for unfairness.³⁸

As with the Jackass, the incidence of Anarchists and Outliers is ultimately an empirical question. But, as before, I believe that their preferences and moral psychologies are uncommon enough that they will be acceptably rare.

5.2 Rejecting P

I've argued that unendorsed fair play based political obligations are compatible with an extremely strict conception of autonomy. My project is now complete. Since deference to the friend of P is no longer necessary, let me close by defenestrating P.

³⁸ For the Jackass/Anarchist who wants to free-ride, why not also say that when we tot up the costs and benefits of society to her, the desire to free-ride makes contribution a net loss? This would make for a more elegant solution. Anarchists would also fail to sufficiently benefit from political life to be obligated to contribute. Like the Outlier, the Anarchist would not have considerations of fair play to ignore or discount. Thus Anarchists and Outliers would escape fair play's obligations in the same way. This would be compatible with the spirit of my account. Nonetheless, it would give no prominence to the auxiliary repugnant desires that the Anarchist has but the Outliers lack. Many Outliers are immune to the sorts of non-fair play based criticisms that the Anarchist is subject to. Thus I think we should give Anarchists and Outliers different treatments.

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There are many possible reasons why a person might be an Anarchist. Some may be Anarchists by virtue of misanthropy or prejudice. Consider, *Bigot*: Chartreuse's total tax bill is \$10,000. She agrees that the benefits of organized society to her are well-worth \$10,000. The problem, as she sees it, is that the benefits of society also accrue to a minority group she despises. She thus refuses to pay taxes because she refuses to let her money go to those she hates.

Chartreuse agrees that fair play entails that she ought to pay. But she refuses to endorse any fair-play based political obligation because contribution would have the side-effect of helping those she hates. On the account I have given, we would violate her autonomy if we punished her on grounds of fair play.

This is a nasty result. But it arises from P, not from any feature of fair play based accounts of political obligation.

I suspect that most of us can accept that the extreme pacifist or survivalist slips under fair play's radar. To be an Outlier one has to have idiosyncratic preferences or be in a rare situation. The requisite contribution must be onerous enough to outweigh all of the benefits one receives—from national defense, paved roads, education, the culture that organized society makes possible, et cetera. Indeed, I think that the inability to obligate Indigo in Pacifist is the right result. Being forced to pay for a war conflicts with her deepest held beliefs and

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desires. That would be a tremendous violation of her integrity. We should want an account of political obligation which respects that.³⁹

But do we really want to accept a principle of political obligation which does not allow us to justly coerce my imagined bigot into paying her taxes?

If we believe that we must respect autonomy regardless of what substantive preferences one has, then the answer can only be Yes. Chartreuse will not accept the obligation because she can't stand the thought of helping those she hates.

But what's objectionable here is not a feature of the principle of fair play. Rather it is the product of the substantive preferences individuals hold. If we object to all violations of autonomous preferences, no matter their substantive content, then we will never escape these nasty conclusions. To avoid them we must change our view of autonomy, not our conception of fair play.

There are many ways we might do this. For example, if we wanted to maintain the preemptory status P gives autonomy, we might reject it for something like:

³⁹ To be sure, not all Outliers may be so benign. We could imagine someone who hates a minority so much that she wouldn't benefit overall from contribution to society. This bigot would also be an Outlier.

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Q: An autonomous agent's endorsement of an obligation to do x is necessary and (solely) sufficient for being obligated to do x only when the substantive preferences upon which the endorsement is made or refused are not of certain intrinsically morally repugnant kinds.

Thus when fair play compels someone to act against certain intrinsically repugnant preferences such as bigotry, there is no violation of autonomy.⁴⁰

Discarding P for Q doesn't make the practical conflicts between fair play and autonomy disappear. Outliers will still escape fair play's reach. And there may still be some Anarchists who don't reject considerations of fair play on the

⁴⁰ There is a danger of question-begging here. By 'intrinsically morally repugnant' I intend mainly desires like those to harm others or which involve a profound disrespect of them as people. These are unproblematic. But what about the desire to benefit at other people's expense? If the desire to free-ride were morally repugnant in this way, we would simply write the issues surrounding Jackasses out of the picture. We would have a conception of autonomy which, by definition, is compatible with fair play based political obligations. I needn't take a stand on this, but it's worth mentioning two ways of avoiding the problem. First, we could take the charge of question-begging as grounds for denying that desires to free-ride are morally repugnant in Q's sense. Second, we've seen no reason to reject considerations of fair play. Thus the burden is on our opponent to demonstrate why we should allow the desire to free-ride to count.

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basis of non-morally problematic desires. Thus, if we accept Q, we will have to live with the fact that respect for autonomy entails that some at the fringes of pluralistic societies will have no fair play based political obligations to pay taxes. But I doubt we should expect otherwise.

Of course, there are many conceptions of autonomy besides Q that we might adopt once we've discarded P. Indeed, my own inclination is that Q is still too restrictive. And I have done little to defend or develop a substantive principle of fair play. But these are not at issue here. If I'm right, I have shifted the traditional battle lines in one significant way. Like any political principle, fair play still must tread carefully around autonomy. But autonomy is far from the philosophical anarchist's bulwark that most discussions of political obligation have taken it to be.

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