

existing societies as embodying the Lockean ideal. Thus, for instance, the Lockean account of justified resistance in a legitimate, consensual community (i.e., in one that has "gone bad" in certain respects) is in no way undermined by the fact that no legitimate, consensual political communities actually exist. It can still be regarded as a (or the) valid theory of political resistance. But most of us do not stand in (Lockean) political relationships with respect to others, however accustomed we may have become to thinking of ourselves in that way. The best Lockean political philosophy insists rather that we are in, admittedly complex and highly structured, nonpolitical states of nature with regard to most of our peers. It is not Locke's theory of political resistance that applies to us here and now, but his account of rights and justifications in our natural condition. Thus, our practical "political" lives are described more in chapters 1 and 2 of this book than they are in chapter 6.

If we wish our lives to have the moral sanction of the Lockean term "political," we must cease our contentment with lives built upon layers of force (threatened or real) and passive acquiescence, and restructure our laws and conventions to permit the freedom on which any political legitimacy is premised. Lockean consent theory and resistance theory are more defensible than political theorists usually suppose, although their defensibility turns less than we might have thought on their applicability to our actual lives. What is indefensible is not Lockean political philosophy—which is, after all, supposed to be describing not *our* "political" lives, but morally acceptable ones. What is indefensible is rather our ordinary ways of thinking about the legitimacy (rights, authority) of existing governments and societies and about the political obligations of real people, ourselves importantly included. The final section of this chapter (and this book) attempts to defend these claims against two prominent and initially persuasive objections.

#### 8.4. Lockean Anarchism

Locke's most basic commitments, I have argued, are, first, to the natural freedom (from political subjection) to which each person is born; and second, to the voluntarist conception of the political relationship that is necessitated by that first commitment (to natural freedom). When Locke writes of the basis of the political relationship, as a result, he most often mentions agreements, contracts, and other straightforwardly consensual acts. But we have seen (in 7.2), as well, that Locke may have been willing to extend the meaning of

political "consent" in his philosophy to cover other voluntary, but not literally consensual, possible grounds of special obligation—such as willing benefaction (the "enjoyment" of the "dominions of any government"). The most natural way to characterize a theory of political obligation that relies on such grounds, however, is not as a "consent theory" of political obligation, but rather as a "reciprocation theory" of political obligation—that is, as a theory that holds that obedience to law (with the other components of political obligation) is morally required reciprocation for benefits received or accepted by citizens from the workings of their political communities, legal and political institutions, or officials.

The most popular recent version of such a reciprocation theory, of course, utilizes the so-called principle of fairness (to use John Rawls' name for it), according to which "when a number of persons engage in a mutually advantageous cooperative venture . . . , and thus restrict their liberty in ways necessary to yield advantages for all, those who have submitted to these restrictions have a right to similar acquiescence on the part of those who have benefited from their submission."<sup>66</sup> Political obligation, according to the account using this principle, is the obligation (of fairness) of each benefiting participant in a cooperative political scheme to do his or her fair share in bearing the burdens necessary to the production of the benefits shared by all. Citizens who obey the laws and pay their taxes (etc.) within just civil societies have a right that other citizens do the same, since all benefit from their society's cooperative structure.

Now one might reasonably believe that Locke had such ideas in mind when he stretched the term "consent" to cover all instances in which people willingly "enjoy" the benefits political societies provide.<sup>67</sup> The obligations of such "enjoyers" may not be strictly consensual in nature (so that it is certainly misleading for Locke to insist on that characterization of them); but they are *like* consensual obligations in being created, special obligations (i.e., not natural ones), in being voluntarily assumed (by willing benefaction), and in grounding particularized obligations of obedience and support to the one society that provides the benefits.<sup>68</sup> Perhaps it is because of

<sup>66</sup> Rawls, *Theory of Justice*, 112. For fuller statements of this principle (and its early formulations), its possible forms, and the problems it faces, see my *Moral Principles and Political Obligations*, chapter 5; and Klosko, *Principle of Fairness*.

<sup>67</sup> See *Moral Principles and Political Obligations*, 89–95.

<sup>68</sup> Indeed, the legal doctrine of "quasi-contracts" importantly relies on these similarities between contractual relations and the relations of those who voluntarily interact within a climate of mutual expectation. See Lessnoff, *Social Contract*, 121.

these similarities that Locke calls the acts of both proper (express or tacit) consenters and willing beneficiaries acts of "consent."

This reading of Locke seems even more persuasive when we note his account of the transfer of rights from member to society:

For being now in a new state, wherein he is to enjoy many conveniences from the labour, assistance and society of others in the same community, as well as protection from its whole strength; he is to part also with as much of his natural liberty in providing for himself as the good, prosperity and safety of the society shall require: which is not only necessary, but just, since the other members of the society do the like. (II, 130)<sup>69</sup>

Since Locke is here describing the act, elsewhere called contract or consent, by which each member gives up certain rights to the political society (in the transaction that creates it), it seems fair to conclude that Locke is prepared to draw no very sharp lines between obligations of consent and what we would now call obligations of fairness. For he here describes the "act" of political consent in terms not at all unlike those used by contemporary authors to describe the basis for obligations generated under the principle of fairness.

Now the first three sections of the present chapter were concerned to argue that political consent (properly or strictly understood) is not sufficiently in evidence in actual political communities (no matter how democratic) to ground political obligations for even a substantial minority of their residents. Our conclusion was that a commitment to true consent theory is in fact a commitment to a moderate philosophical anarchism. A voluntarist in political philosophy might now respond, however, that there is no reason why voluntarism must allow only consent (strictly construed) as the ground of political obligation. The voluntarist may, perhaps following Locke's own example, embrace other voluntary grounds of moral obligation as possible sources of political obligation—grounds such as the willing benefaction within cooperative schemes that generates obligations of fairness. Each person's own voluntary act would still be necessary for that person's political obligations. But the act in question might not be strictly consensual.<sup>70</sup> The essential Lockean commitment to voluntarism, one might argue, thus need not be a commitment to (pure) consent theory, or to the philosophical anarchism it requires.

<sup>69</sup> See Den Hartogh's discussion of this passage in "Express Consent," 108.

<sup>70</sup> See Den Hartogh, "Made by Contrivance," 215.

The failure of pure consent theory, then, leaves two possible avenues for Lockean political philosophy to take. Either (1) it must successfully defend an extension of the voluntarist account of political obligation and authority (with the move to utilization of the principle of fairness being the only very plausible candidate); or (2) it must accept the conclusion that most actual citizens have no political obligations and that no actual governments or societies have de jure political authority over most of those residing in the territories they control—that is, it must accept (empirical) philosophical anarchism. I consider these two possibilities in turn in the remainder of this chapter.

Will the supplementation of pure consent theory with a fairness account of political obligation in fact substantially assist the political voluntarist in producing a suitably general account of the obligations of actual citizens in actual states? Recent philosophical debate about obligations of fairness strongly suggests a negative answer. H.L.A. Hart's 1955 formulation of the principle of fairness (the principle he called "mutuality of restrictions"), of course, was presented more as an attractive alternative to consent (or contract) theory's account of political obligation than as a supplement to it.<sup>71</sup> But even in its more limited role as a voluntarist supplement to consent theory, most have been skeptical about the principle's ability to account for the political obligations of many actual citizens. Rawls, after initially accepting Hart's arguments, later concluded that the nonvoluntariness of actual political schemes makes inappropriate the suggestion that many people really freely accept the benefits those schemes provide (or at least, accept them in ways that would ground clear obligations to make substantial contributions to the schemes).<sup>72</sup> And Nozick employs related concerns (about our inability to refuse many cooperatively produced goods) to reject not only fairness accounts of political obligation, but the principle of fairness itself. Our only obligations to contribute to or comply with cooperative schemes are those we assume by acts of strict consent.<sup>73</sup> My own arguments against fairness accounts of political obligation, while concerned to argue (against Nozick) that the principle of fairness is a valid moral principle and (against Rawls) that it is meaningful to talk about

<sup>71</sup> "Are There Any Natural Rights?" 185.

<sup>72</sup> *Theory of Justice*, 112–14.

<sup>73</sup> *Anarchy, State, and Utopia*, 90–95. I will not attempt here to comment on the apparent status in Nozick's theory of a class of nonconsenters (independents) that he seems to think may be legitimately incorporated into the minimal state (i.e., those who are forbidden to exercise their rights to enforce natural law and are then compensated with state protection).

freely accepting pure public goods, still aim to reinforce those same doubts about the principle's ability to account for the political obligations of many actual persons.<sup>74</sup> Indeed, even the most recent defense of a fairness account of political obligation in effect expresses these concerns; for it rejects altogether the original voluntaristic point of the principle of fairness, instead basing obligations of fair reciprocation not in the voluntary acceptance of benefits (or in willing benefaction), but in the mere (possibly unwilling) receipt of substantial goods that flow from the (possibly unwilling) sacrifices of others.<sup>75</sup>

Because of Locke's apparent interest in willing benefaction within political society as a ground of political obligation (as a sign of "tacit consent"), however, we should try to be very clear about just why a fairness account of political obligation seems so unlikely to be congenial to his theoretical goals. To begin, the kinds of benefits ("enjoyments") in which Locke was likely to have been interested (as a possible source of obligation) are almost certainly those we might call "public goods," "open benefits," or "nonexcludable goods."<sup>76</sup> These are the kinds of goods that are typically provided by governments or communities to the people in an area, rather than to particular individuals. All who are in that area receive the good, regardless of their willingness to pay for or to receive it. Standard examples of such goods in political societies are national defense, the rule of law, pollution control, a stable economy, and the availability of (i.e., the opportunity to use) public highways, recreational facilities, hospitals, and the like. A government will usually try to extend such goods "to all parts whereof the force of its laws extends" (II, 122). These goods can be contrasted with others, which can (without extraordinary expense) be supplied to or withheld

<sup>74</sup> *Moral Principles and Political Obligations*, chapter 5. The text below in part restates several of the prominent points from my earlier treatment.

<sup>75</sup> Klosko, *Principle of Fairness*. See especially 148: "Because the principle of fairness grounds obligations on the receipt of benefits rather than voluntary actions by recipients, it is not forced to construe political relationships as voluntarily assumed." On Klosko's account, even unwilling recipients of "presumptive public goods" will often have obligations of fairness to duplicate the sacrifices made by (indeed, will have obligations owed to) possibly unwilling "cooperative" producers of those goods (such as citizens who unwillingly pay taxes or obey restrictive, but "fairly enacted" laws). No possible rendering of these views about "fairness" or "cooperation" could make them look even remotely voluntaristic. Klosko thus willingly strips the principle of fairness of what was originally taken to be one of its chief virtues—its continuation of consent theory's concern for voluntary action as the source of special obligation.

<sup>76</sup> For defense of this claim, see *Moral Principles and Political Obligations*, 90. For a quick and concise analysis of collective and public goods, see Arneson, "Principle of Fairness," 618–19.

from specific individuals without the necessity of affecting similarly all others in the area. Any good that can feasibly be supplied in a "pay-for-use" scheme belongs in this latter group (including the benefits received from the *actual use* of hospitals, harbors, highways, fire departments, museums, schools, and so on).<sup>77</sup>

In the case of goods of this latter sort, of course, it is generally clear when a person willingly (freely, voluntarily) benefits from receipt. Since such goods do not fall on persons automatically, simply by virtue of their being in a certain area, individuals must go out of their way to secure the goods. Provided their actions are free and adequately informed, their thus going out of their way to secure a good can be taken to indicate the kind of free acceptance (willing benefaction) in which a voluntarist ought to be interested. But the case is more difficult with goods of our first sort (public goods or open benefits), for these goods fall unavoidably on all persons within an area. This unavoidability may seem to make nonsense of the idea that such goods even *could* be voluntarily accepted.<sup>78</sup> And since it is precisely the *public* goods—important goods received by all residents—which seem the most interesting in developing a reciprocation theory of political obligation (and precisely these in which Locke is most interested), their unavoidability seems to pose an unpleasant dilemma for the Lockean voluntarist who wishes to follow Locke's suggestion (about the moral importance of the citizen's "enjoyment" of the benefits of political society). Either the Lockean must reject on voluntarist grounds the relevance of such "enjoyments" to our political obligations (since the benefits in question cannot be voluntarily accepted); or the Lockean must pursue a nonvoluntarist account of the importance of such enjoyments to political obligation, thus sacrificing the central Lockean commitment to political voluntarism.<sup>79</sup>

<sup>77</sup> Few large-scale schemes provide only one of these kinds of benefits. And few benefits fall cleanly into one group or another. National defense and the rule of law, for instance, are standard examples of public goods and are normally provided to all of the area within a nation's recognized boundaries. But it is certainly feasible to exclude certain groups or areas, and even to exclude particular individuals in some circumstances (e.g., the United States could exclude Alaska or Florida or an island with one or two inhabitants). What is usually difficult or impossible in the case of public goods, of course, is excluding particular individuals, while still supplying the good to others in surrounding areas.

<sup>78</sup> "Notice that once a pure public good is supplied to a group of persons, there cannot really be any voluntary acceptance or enjoyment of the benefit by individual consumers. One cannot voluntarily accept a good one cannot voluntarily reject" (Arneson, "Principle of Fairness," 619).

<sup>79</sup> To select the first horn is essentially to follow Rawls (in his account of the obli-

I believe the dilemma, as stated, is a false one; for it makes perfectly good sense, in my view, to speak of voluntarily accepting goods that one unavoidably receives. Just as we may freely take those *avoidable* benefits we go out of our way to get, we may freely take *unavoidable* benefits that we knowingly and willingly accept (when they fall upon us). Provided I am adequately informed about the benefits and their costs (so that I can accurately be said to want the benefits *as they are provided*) and want them independent of the presence of factors that would make suspect my desire (such as duress, addiction, brainwashing, etc.), benefits I unavoidably receive can surely be viewed as voluntarily accepted by me. The relevant contrast here is not that between voluntary acceptance of a good and nonreceipt of it. Nonreceipt is not a possibility in the case of public goods. The relevant contrast is rather between voluntary acceptance and nonvoluntary receipt, where nonvoluntary receipt may be a matter of receiving goods one does not want, goods one does not want at the price demanded or in the manner provided, or goods of whose cost one is non-negligently ignorant (as when one reasonably, but falsely, believes the goods to be given freely as a gift, say, or to be already paid for by some previous contribution).<sup>80</sup>

gations of "ordinary" citizens). To select the second is to follow Klosko (see below) or Arneson (whose version of the principle of fairness allows that persons who "simply receive" a benefit from a scheme, where "voluntary acceptance of it is impossible," may still be obligated "to contribute to the support of the scheme" ["Principle of Fairness," 623]). Den Hartogh suggests that tacit consent in Locke's own writings should similarly be understood as the not-necessarily-voluntary receipt of the benefits of a government's labors (at least within communities with clear "exit options") ("Made by Contrivance," 215-16). This reading seems to me to (in effect) accuse Locke not just of a wishful and implausible attempt to portray his (internally consistent) voluntarist ideal as embodied in his own society (as I have done), but rather of a fundamental contradiction in his political philosophy (i.e., that between his political voluntarism and a nonvoluntarist theory of political obligation).

<sup>80</sup>Notice that these claims do not rely on the idea that emigration (or, more generally, leaving the area to which public goods are supplied) is the available option that makes it possible for "unavoidable" goods to be voluntarily accepted. I of course agree with Arneson ("Principle of Fairness," 619) that this option is inadequate to render receipt of goods voluntary (as the arguments earlier in this chapter should have made clear). Arneson objects more generally to the appeal to "subjective requirements" (of the sort I defend here), such as recipient knowledge or desire, as necessary for the generation of obligations of fairness. While he actually says only that the requirements I defend "are too stringent" (p. 632), his own account seems to ignore the subjective elements altogether (in the case of obligations to reciprocate for the receipt of pure public goods). But his only real objection to relying on subjective requirements seems to be that persons might have "bizarre beliefs" about the source of goods, the level of required payments relative to others, etc. (p. 632). These objections can be answered by the simple insertion of a requirement of non-negligence in one's beliefs (as stated above in the text, and as implied in the text criticized by Arneson). Arneson thinks that the requirement that "the benefit is un-

Making sense of the idea of voluntary acceptance of unavoidable benefits thus relies centrally on taking account of psychological facts about the recipient (that the recipient wants the benefit, wants it at the price, etc.). While appeals to such facts are obviously a difficult basis for public policy decisions about, say, whom should be taxed for what (given each individual's relatively privileged access to the relevant facts and given natural variations in desires across communities), the moral relevance of such appeals seems clear. And it is only by means of such appeals that we can explain how the principle of fairness, understood in voluntaristic terms, could be taken to ground obligations to reciprocate for the receipt of public goods. We are obligated to do our part in cooperative schemes supplying public goods, on my account, only if (and only to the extent that) we have voluntarily accepted the public goods those schemes provide.

Unfortunately, this rendering of the principle of fairness still severely limits the principle's ability to ground political obligations for many actual citizens in actual states. Chief among the reasons for this is the fact that most citizens, even in those states that are sufficiently just and nonauthoritarian to in any way resemble cooperative schemes, not unreasonably take the public goods they receive to be fully "bought and paid for" (indeed, overpaid for) from governments with tax payments. Mandatory purchase of overpriced public goods with compulsory tax payments does not leave much to account for the alleged additional aspects of political obligation (e.g., general obedience to law, military service, etc.) that the principle of fairness is supposed to explain. That people do in fact not only pay their taxes but obey the law (etc.) seems more a function of habit, fear of punishment, and belief in the independent moral wrongness of most legally criminal conduct than it does a function of a general belief that the receipt of public goods comes with this additional price (beyond payment of taxes). It will be hard, then, to portray the receipt of public goods by the average citizen as the kind of informed, voluntary acceptance of benefits that could ground political obligations of fairness or reciprocation.<sup>81</sup>

Recent defenders of a more wide-ranging principle of fairness re-

controversially a benefit for all" is a stringent enough condition without the addition of subjective requirements (p. 633). But, as we will see below, Arneson's requirement will either justify extensive and untoward limitations of individual liberty or must be read in a way that itself incorporates subjective requirements (i.e., in order to explicate what it is for something to be "uncontroversially a benefit for all").

<sup>81</sup>For additional arguments to the same conclusion, see my *Moral Principles and Political Obligations*, section 5.5.

ject my attempt to use psychological facts to explicate the idea of voluntary acceptance of public goods (and to explain in terms of voluntary acceptance the obligations that might arise from receiving unavoidable goods). They argue that mere receipt (however unwilling) of goods that flow from the sacrifices or labors of others, at least if these goods are substantial enough, can obligate one to contribute one's fair share.<sup>82</sup> But this view not only plainly constitutes an abandonment of political voluntarism, it constitutes in my view an abandonment of all the bases of intuitive support for the principle of fairness. That intuitive support revolves around the idea that it is unfair to take advantage of, to "ride free on" the good-faith efforts of others, taking desired benefits that others provide while refraining from contributing oneself. The classic free rider, whose behavior the principle of fairness is concerned to condemn, wants the goods a cooperative scheme produces, and wants them at the price demanded and in the manner they are provided (i.e., he prefers taking the goods with their associated costs to not taking them). But he wants still more to get the goods free; so he takes the goods, parasitically taking advantage of the efforts of others to support the scheme, all the while refusing to do his fair share within it.

Both my (voluntaristic) version of the principle of fairness and recent nonvoluntaristic versions (such as those of Richard Arneson and George Klosko) condemn the classic free rider's behavior. For the classic free rider not only receives, but freely accepts (on my account of that notion) the goods he gets from the cooperative scheme. In trying to capture the wrongness of such free riding, however, the nonvoluntarist accounts of the principle of fairness cast far too large a net. They catch not only the classic free rider, but also the person who genuinely does not want the goods some cooperative scheme is providing or who would genuinely prefer to do without those goods rather than pay the price demanded for them.<sup>83</sup> And that is not to worry about *fairness* at all. It is rather to justify a quite different sort of unfairness than the one they are interested in condemning. It is to justify a kind of tyranny by ourselves or our neighbors over those whose tastes, needs, or values are different, over those for whom allegedly "uncontroversial benefits" are in fact controversial. But surely the right to have tastes and values different

<sup>82</sup> See Arneson, "Principle of Fairness," 623, 628, 633; Klosko, *Principle of Fairness*, 39, 148.

<sup>83</sup> Klosko allows that the noncontributor who is really willing to "let others do the same" has not violated the principle of fairness (*Principle of Fairness*, 45, 102). But he seems unwilling to pursue the consequences of this claim, as I do here.

from those of one's neighbors, and not to suffer for this, is at least as basic as the right of our neighbors to a return for benefits we incidentally receive as a side effect of their freely chosen cooperative activities. We may not reasonably demand from others just whatever is necessary to supply what we (but not they) want to have reliably supplied at that price. Nor is a group entitled to demand repayment for whatever benefits happen to spill over on nonparticipants, as undesired but unavoidable side effects of the group's activities.<sup>84</sup> It is to demonstrate the illegitimacy of such tyranny that my appeal to psychological conditions (and to the distinction between voluntary acceptance and nonvoluntary receipt of public goods) is essential.

Klosko tries to avoid these objectionable consequences of embracing a nonvoluntaristic principle of fairness by appealing to the idea of goods that are "presumptively beneficial." Because some goods are indispensable (needed) for (almost) any decent life, every person can be presumed to want them. And only the receipt of those public goods that are thus presumptively beneficial will obligate one to reciprocate for unavoidable benefits.<sup>85</sup> Klosko allows that if one can show one genuinely does not need the presumptive good in question, one can escape obligations to reciprocate (the good is, after all, only *presumptively* beneficial).<sup>86</sup> Otherwise, mere nonvoluntary receipt of the good (and the satisfaction of several other conditions<sup>87</sup>) will ground obligations of fairness to contribute to the cooperative scheme that produces the presumptive good.

This addition to the principle of fairness is designed to counter voluntarist objections (like my own) that we must not be made liable to obligations for the unavoidable receipt of goods we do not want (and indicates that Klosko is in fact more concerned with psychological facts about recipients than he professes to be<sup>88</sup>). But Klosko's

<sup>84</sup> Americans could not demand payment from Canadians who benefited as a result of American national defense policy or American law and order. Nor does "invisible hand" production of some collective good (where all are simply pursuing their own business, with no thought of cooperation) justify collecting payment from all who happen to benefit. Nor can I demand payment for the undesired but inevitable benefits others may receive from activities I pursue for purely private reasons. Nobody is unfairly taken advantage of by being denied payment for goods he is not even trying to provide for others (and without any beliefs about common purpose).

<sup>85</sup> *Principle of Fairness*, 39–44. I believe that in the final analysis the guiding moral idea in Klosko's account is not really *fairness*, but *need*: we may require others to take and to pay for what they need. Klosko's concerns are thus less about fair distribution of benefits and burdens than they are about insuring the supply of needed goods (see my "Anarchist Position," 271–72).

<sup>86</sup> *Principle of Fairness*, 49.

<sup>87</sup> *Ibid.*, 39.

<sup>88</sup> Klosko claims that his appeal to presumptive goods greatly reduces the need for

nonvoluntarist revision of the principle of fairness fails for several reasons, of which I will mention only two here. First, there are no public goods produced by cooperative schemes that are needed or indispensable *simpliciter*, and so there is no product of a cooperative scheme that can be said to be on balance a benefit (presumptively beneficial) for anyone without further qualification. Goods are only benefits to persons on balance if their costs and the manner in which they are provided are not sufficiently disvalued by those persons. Even a good like physical security (Klosko's primary example of a presumptive good) may be reasonably regarded by an individual as on balance a burden if it is provided at a prohibitive cost—such as one's independence, say, or the violation of one's pacifist convictions—or in a manner that is unnecessary and objectionable (e.g., many public goods supplied by the state can be provided by alternative, private means, often at lower cost and without the imposition of oppressive or restrictive conditions). One who genuinely prefers doing without even a "presumptively beneficial" public good, given its cost, or who prefers to try to provide the good privately, can hardly be accused of unfairly taking advantage of a group that unilaterally foists that good upon her on their own terms. If anything, it is surely the group that tries to take unfair advantage in such a case. That the public goods a cooperative scheme produces are central or important will thus not adequately answer concerns about licensing tyranny under the nonvoluntarist principle of fairness.

Second, however, Klosko's only response to such objections threatens to justify even more massive infringements of individual rights. Despite his occasional nods to the importance of individual liberty,<sup>89</sup> Klosko's arguments commit him to the conclusion that even very substantial numbers of, say, serious pacifists (who wish to do without armed defense) or rugged individualists (who wish to defend themselves) can legitimately be forced to accept a community's provision of physical security (national defense, law and order). For he seems to allow that states may prohibit individualists

"making inquiries about [the beneficiary's] values or beliefs" (ibid., 48). It might be fairer to say that his appeal to presumptive goods at most just hides the central relevance to his account of beneficiaries' values and beliefs (subjective requirements). For calling a benefit "presumptive" seems to mean precisely that we can safely assume that almost everyone will *want* the benefit and will *believe* it to be worth any reasonable price (see my "Anarchist Position," 272–73).

<sup>89</sup> *Principle of Fairness*, 36, 114. Klosko allows interference for communitarian and paternalistic reasons that few of the classical liberals (to whose views he often appeals) would accept (see, e.g., ibid., 60; note 36).

from providing needed services for themselves, then provide for them those same services through state mechanisms and demand whatever payment is acceptable to the majority of state citizens (and all in the name of fairness!).<sup>90</sup> And pacifists seem unable to show that they do not need security in a fashion acceptable to Klosko;<sup>91</sup> so they too may apparently be coercively absorbed. Indeed, given Klosko's conception of a community, it seems clear that groups may on his account coercively extend themselves to absorb unwilling independents almost indefinitely and without interesting geographical limitation.<sup>92</sup> Surely this, however, is to advance (too) far beyond

<sup>90</sup> Klosko's arguments on this important subject are for some reason buried in a footnote (ibid., 108; note 8). Indeed, Klosko there seems uncomfortable with his own conclusions. But it is clear that if he were to allow to individuals the right to choose for themselves how they will secure needed goods (as I have urged), he would scuttle his efforts to ground political obligation in the mere (possibly unwilling) receipt of state-supplied presumptive goods.

<sup>91</sup> The only way Klosko allows that one could escape obligation to a scheme for the receipt of physical security benefits is by showing "one's ability to live off the land in a remote wilderness area," where security is not required (ibid., 115–16, 49). This is not the sort of thing a pacifist would always be able to show (or would think it necessary to show). Klosko's requirement really seems to amount to a virtual demand for emigration (to the wilderness) as the sole means of avoiding obligation for receipt of presumptive goods from (otherwise) reasonably just states.

<sup>92</sup> Klosko defines a community as "the collection of individuals who receive indispensable benefits from the cooperative scheme in question" (ibid., 62; note 55). The absence of any criterion of community membership other than benefaction (and of any geographical constraint on the conception of community) implies that groups providing physical security for their members may legitimately extend this service to any number of independent nonmembers, in any location whatsoever, and demand that these independents (who by merely benefiting, even if not on balance, are made community "members") carry their "fair share" of the group's burdens. For instance, nation A may unilaterally extend its security services to adjacent territory B, in effect annexing it, regardless of the wishes of those residing in B; for even "excludable" presumptive goods may be forcibly imposed on those who "need" them (ibid., 60; note 36). Or territory B may be annexable because it receives security as an utterly unintended consequence of its proximity to A (whose bristling defensive posture intimidates all would-be aggressors in the area). A may prohibit those residents of B (if any) who were providing security for themselves from continuing to do so (since A must monopolize force in its "community"), thereby creating the "need" that A's security benefits satisfies (in whatever way the majority of A's residents deem best). This is roughly like my stealing your motorcycle safety helmet, then forcing you to pay a tax to provide helmets for a large group in which you are forcibly included, and justifying my acts by appealing to your need for a helmet (and to the unfairness of allowing others to pay the tax without forcing you to do so as well)! Klosko may have intended his arguments to justify only the coercive assimilation of those within a territory who wish to remain independent while nearly all of their surrounding colleagues wish to form a cooperative group. But since he has no territorial criterion for community membership, all independents everywhere end up being similarly vulnerable to coercive assimilation. In any event, there is in my view certainly no better reason for forcing genuine dissenters (i.e., those who are *not* classic free riders) to participate in the cooperative schemes of others, than there is

any reasonable concern for fairness to cooperators or for the prohibition of selfish free riding.

These brief remarks, while obviously inadequate as a careful discussion of the principle of fairness, seem sufficient to support the first conclusions I wish to draw in this section. Nonvoluntarist versions of the principle of fairness are not only in one important sense non-Lockean. They are also sufficiently ill motivated and implausible in their own rights to discourage any reasonable Lockean from abandoning the commitment to a voluntarist account of political obligation (and of the political relationship generally). We have seen as well, however, that the most convincing voluntarist rendering of the principle of fairness is unlikely to entail political obligations for many citizens in existing states. It follows from this, of course, that the reasonable Lockean, pursuing the defensible, voluntarist version of the principle of fairness as a supplement to Lockean consent theory, will not be much aided by this pursuit in producing a suitably general account of political obligation. Most actual citizens in actual states have neither consensual obligations nor obligations of fairness to support and comply with their governments or communities.

Serious political voluntarism commits us to the acceptance of philosophical anarchism. Since Lockean political philosophy is *essentially* voluntarist, in my view, this means that Lockean must also accept philosophical anarchism. And because I believe political voluntarism to be the correct view to take on its subject (a claim supported in part by the rejection of nonvoluntarist fairness theory outlined above),<sup>93</sup> I believe as well that Lockean political philosophy is on secure ground in its commitment to this form of anarchism. Lest this seem a depressing conclusion, however, I will suggest below that Lockean anarchism in fact entails a view of our actual political lives that is free of many dramatically counterintuitive im-

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for forcing cooperators to limit their activities so as to leave genuine dissenters free of new obligations.

<sup>93</sup> More precisely (and as I have suggested earlier in this study), I think Locke is correct in claiming that each person is born to natural freedom (i.e., to *moral* freedom from political obligation and the *de jure* authority of others). And I think that only political voluntarism is consistent with acceptance of the natural freedom of persons. The only political obligations we have are those we have voluntarily assumed, at least for the cases of polities even remotely like our own. I take my arguments in *Moral Principles and Political Obligations* to be support for these claims, and to establish that *nonvoluntarist* accounts of political obligation (such as those utilizing a principle of utility, a principle of gratitude, or natural duties of justice or allegiance) are uniformly unsuccessful when applied to modern political communities.

plications, implications that might force us to reassess the arguments that lead us to that view.<sup>94</sup>

It might seem, of course, that Lockean philosophical anarchism could hardly be a more counterintuitive position. For Lockean anarchism might seem to imply both that (a) all existing governments are morally equal (since all are equally illegitimate or nonauthoritative, equally lacking "political power" over their subjects), and (b) residents of existing "communities" may do as they please, lacking any political obligations to obey valid law in their societies or support the other institutions of government that preserve public order and supply vital goods. A position that had those consequences would, indeed, be sufficiently odd to make reasonable persons question the arguments that led to it. But Lockean anarchism in fact implies neither of these counterintuitive claims.<sup>95</sup>

First, of course, from the mere fact that all existing governments or societies are illegitimate (in the sense in which a Lockean must use that term), it in no way follows that they are all morally equal. Governments may do more or less good, for their "subjects" and for others, and they may do more or less harm. They may violate the rights of persons more or less regularly, systematically, and seriously. They may be more or less merciful, responsive, beneficent, efficient, and wise. In short, governments may still, within the Lockean anarchist model, be properly said to exemplify to varying degrees all of the virtues and vices that we normally associate with governments.

Nothing in Lockean anarchism prevents us from ranking governments morally, as better or worse, in just the ways that we are normally inclined to do. We may even say that good governments are those that most deserve our free consent, those that it would be most reasonable for people to *make* legitimate (in existing or modified form) by the free contract (consent) and trust that establish the political relationship. The one thing we must *not* say, according to Lockean anarchism, is that good governments are, by virtue of those qualities that make them good, therefore legitimate, or that they therefore wield genuinely political power. Good governments, however extensive their virtues, cannot obtain over free people (without their consent) "the right to command and be obeyed." And to the

<sup>94</sup> As examples of those who disagree with me here, arguing that the consequences of philosophical anarchism are damningly counterintuitive, see Lessnoff, *Social Contract*, 89; and Senor, "What If There Are No Political Obligations?"

<sup>95</sup> For a fuller defense of several of the claims argued immediately below, see my *Moral Principles and Political Obligations*, chapter 8.

extent that good (but still illegitimate) governments, albeit with the best of intentions, utilize ("nonpolitical") force in violation of the rights of free persons, they act (*prima facie*) wrongly.

Second, the fact that most residents of existing societies must be understood not to have political obligations, on the Lockean anarchist view, in no way implies that these persons may act however they please. All persons have basic, natural moral duties to one another (as we saw in 1.2 and 5.2–5.3)—duties not to harm others in their lives, liberty, health, limb, or goods (II, 6). Even with no general obligation to obey the law, then, individuals in existing societies still have duties to refrain from those actions that in all legal systems constitute the most serious crimes (e.g., murder, assault, rape, theft, fraud). Similarly, I have argued that Lockean (and others) ought to accept some positive duties and rights—that is, duties to aid those in need and to extend their surplus wealth to the poor.<sup>96</sup> This implies, of course, that even if legal duties in this realm (where they exist) have no moral force, persons are still morally bound to care for one another in certain ways. They may even choose to (or, in hard cases, need to) discharge such duties by supporting salient cooperative efforts to help those in need, possibly including efforts by (their own or other) governments. And where others are abiding by innocent laws or conventions, and my violation of those rules would endanger them, I am bound not to violate those rules—even though the rules have *in themselves* no force with respect to me, and even though the behavior to which I am bound is not *naturally* obligatory. Thus, if others follow the convention of driving their vehicles on the right (and in so doing violate no right of mine), I must not knowingly endanger them by driving on the left, for I am morally forbidden to deliberately harm the innocent. This is true even if I am not a party to their practices and even though driving on the left is not naturally (i.e., in all times and places) immoral. The natural law prohibition on harming others extends itself to cases where their choices (e.g., innocent convention-following) or other (e.g., medical) developments make other persons vulnerable to harm in ways that are not natural or typical.

Lockean anarchism, then, insists that persons in existing societies are by no means free to do as they please, but rather that they have a wide range of moral duties that will overlap considerably (i.e., require the same conduct as) their nonbinding legal duties. And in most societies these moral duties overlap the most central and im-

<sup>96</sup>See *Lockean Theory of Rights*, chapter 6.

portant legal duties, prohibiting physical harming and most serious disruption of others' lives. Further, however, even where persons owe no natural moral duties to others, there can still be additional moral reasons not to interfere with or upset the innocent plans or arrangements of others.<sup>97</sup> Even if I do not count as harming you by upsetting your plans (and so am entitled to upset them), it would plainly be malicious to do so gratuitously. We are not morally obligated to act, nor ought we to act, just whenever we have a right to do so.<sup>98</sup> Indeed, simple decency demands that we not press others to secure our unimportant rights, where doing so will result in no substantial gain for us and serious cost for others. We have, in short, good moral reason, even if no moral duty, to practice the virtues of patience, courtesy, consideration, and so on, toward others. Again, Lockean anarchism does not advocate insensitive or destructive conduct.

It is easy to see, then, that Lockean philosophical anarchism does not have the direct and profoundly counterintuitive consequences that we considered initially. But we can see already as well several ways in which Lockean anarchism pushes us to substantially revise our thinking about ordinary "political" life. While we live in structured societies with laws and governments, we are not "subject" to those laws or governments, bound to obey them. We cannot act on the general presumption that obedience is obligatory, advisable, or even morally permissible. We must, rather, view legal requirements and the governments that make them with a certain skepticism,<sup>99</sup> with a (in my view healthy) focus on their actual moral standing. Our obligations to comply with laws (i.e., to act in the ways they require) have nothing to do with any special bond to the community whose laws they are, but only with the specific content of the laws. The same laws, imposed in some other similar country, would call for compliance by us in the same ways and for the same reasons.<sup>100</sup> We are bound to act toward our colleagues, our governors, and members of other societies all as fellow residents in a highly socialized state of nature, one in which we all are surrounded by many

<sup>97</sup>See *Moral Principles and Political Obligations*, 193–94, and "Anarchist Position," 278.

<sup>98</sup>See *Lockean Theory of Rights*, 119–20.

<sup>99</sup>Green, *Authority of the State*, 254–55.

<sup>100</sup>That is, those laws whose point is territorially limited (e.g., specific traffic laws) will call for compliance when we are in the relevant territory, while those whose point is universal (e.g., laws forbidding murder) will call for compliance regardless of which country enacts them.

people with false beliefs about their rights and duties with respect to us.

The extent to which existing governments should be complied with, disobeyed, or resisted (and the respects in which such conduct is optional) is, of course, in part just a function of the specific character of the government in question. But the content of each person's natural rights provides a set of basic guidelines, as a common background for all such considerations. According to Lockean moral and political philosophy (and as we saw in 3.1 and 3.3), each person is born to a broad right of self-government, which includes the right to be free of coercive interference by others (except to prevent or in response to wrongdoing), the right to act in pursuit of "innocent delights" and to advance one's own and others' well-being (within the limits set by others' equal rights), and the powers to make property, to alienate or acquire rights by contract or promise, and so on. Each person also has the right to punish others who act immorally (up to the limits set by natural law) and to secure just reparation for injuries done them.<sup>101</sup> Free residents of existing societies may, of course, have alienated or forfeited some (or all) of these rights or acquired others in private activities, transactions, or interactions. But we must otherwise think of ourselves and others as (at least for the most part) possessors of this basic set of natural moral rights.

Viewed in this light, it is easy to see in what areas typical existing governments most often wrong (i.e., violate the rights of) those who reside within their territories. For (to simplify substantially) the most familiar types of (restrictive) laws imposed and enforced by governments can be divided into five categories: (1) those that prohibit acts that wrongly harm (including those that wrongly fail to benefit) others—that is, acts that are naturally immoral or *mala in se*; (2) those that impose systems of coordination on morally permissible activities, in order to prevent unintended harm (as in traffic laws); (3) those that prohibit private conduct that is harmless (and thus not forbidden by natural morality), but which is for other reasons deemed wrong or unnatural; (4) those that require or forbid acts in order to protect the government or the state (as in laws prohibiting treason or requiring military service); (5) those that require payments (or which permit seizures of property) to finance or facilitate government operations, provision of public benefits, and the like.

<sup>101</sup> For a fuller account of these basic rights, see *Lockean Theory of Rights*, especially chapter 2.

Of these five categories, it seems clear that governments will most often be justified in enforcing laws in the first two. For while it is true that the residents of existing states still possess their natural rights to punish moral wrongdoers, those who govern and administer the law are also persons possessing this right. When states punish those who harm others, officials of the state may in fact be justifiably exercising their natural rights to do so.<sup>102</sup> States may not demand that we *obey* their laws; but they may legitimately punish us for doing what is in fact contrary to law, when our so acting also breaches a moral duty.

In categories (3)–(5), however, governments routinely wrong those against whom their laws are enforced. No one may interfere with harmless, morally innocent activities (as the law does in category [3]). Nor does an illegitimate government have the right to force free people to protect it or the territories it claims (by enforcing laws in category [4]). If persons cannot be brought to voluntarily uphold a government or defend a territory (or to freely consent to do so in the future), the state is not entitled to insist that it continue to exist.<sup>103</sup> Good governments may merit our support, but they are not entitled to require it (without our free consent). And even the best governments wrong us in many ways (as the present argument is in part designed to show). Finally, governments may not demand or seize payment to support their operations or programs (by using laws in category [5]) from those who never authorized such activities. Even the state's enforcement of laws in categories (1) and (2), although possibly a permissible activity, is not an activity for which the state may demand payment. For governments were never authorized to be the sole enforcers of natural morality, nor did typical residents ever consent to pay for this. Payment from another may only be required in order to enforce a right (e.g., to repair a wrong or secure what has been promised). Only in the very rare instance when a government program provides the *only* way for an individual to do his or her moral duty can the government legitimately require participation and payment.<sup>104</sup>

<sup>102</sup> Provided, of course, that their punishments are just in kind and amount. States invariably act wrongly in prohibiting private citizens (or outsiders) from exercising their equal rights to punish (i.e., in seizing a monopoly on force); but this wrong is usually not a very serious one. For reasonable persons will not wish to compete for the right to punish (possibly dangerous) wrongdoers, at least if the state is punishing immorality efficiently and fairly.

<sup>103</sup> Wolff, *In Defense of Anarchism*, 80.

<sup>104</sup> This claim, with others in this paragraph, is in fact slightly too strong. Governments may sometimes act justifiably even when they violate individual rights. For

Lockean anarchism maintains that existing governments regularly and systematically wrong their "citizens," no matter how many good qualities (some of) these governments may otherwise display. Good governments limit this wrongdoing by, for instance, minimizing the number of laws in category (3), making military service voluntary, taxing citizens as little as possible, and so on. And good governments often act in ignorance of any wrongdoing and with the intention (and sometimes the effect) of benefiting persons within and without their societies. But even good governments still wrong us, still violate our rights.

How shall we view this wrongdoing in assessing our moral positions? Those of us who live under good governments (to whose authority we never consented) are not, of course, in precisely the situation of any of the persons discussed in chapter 6—that is, we are not members of an originally legitimate community who are now being wronged by the society's breach of its legitimating contract or by the government's breach of its trust. We never contracted with those around us or entrusted any government with our rights. Neither, however, are we in precisely the situation of the persons described in chapter 2—that is, we are not in a state of war with our governments. For while our governments have used against us "force without right," we have seen (in 2.1 and 6.2) that such a wrong is not in fact sufficient to originate a state of war (Locke's own claims to the contrary notwithstanding). Most of our governments (or at least most of those whose legitimacy might seriously have been maintained) have not conspired or acted to deprive us of our lives or freedom, and so have not made war upon us (in the reasonable Lockean sense detailed in 2.1). Rather, most of us in the "free world" are in Lockean terms just persons in the state of nature (simpliciter), subjected by our governments to a variety of (usually) relatively minor, but frighteningly regular, wrongful acts and policies. Illegitimate governments need not be warmakers. They can be quite benign, even progressive or responsive. They can govern the sorts of societies to which residence *would* give consent, if only residents were offered a clear choice situation. They can also, of course, be the sorts of governments we are entitled (or even obligated) to

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rights may conflict and other morally relevant factors (such as dramatic utilities) may need to be considered. Moral justification is not a simple matter of respecting rights. Governments may, then, sometimes be justified in coercing individuals, even where they lack the right to do so (and even where they violate the rights of others in the process). But coercion on the massive scale necessary to the enforcement of laws in categories (3)–(5) is unlikely to be defensible except in circumstances of serious crisis.

oppose with all means at our disposal. Most often in the "free world," however, they are merely bumbling and inefficient, sometimes well-intentioned, sometimes moved by personal or partisan concerns, occasionally oppressive or tyrannical, and still somehow able to do a reasonable amount of good.

Should those of us living under such governments, then, just obey our moderately good laws and support our moderately good polities? Or should we pursue some alternative course? Here we do well to attend to the Lockean position on justified *individual* resistance, even though that position was framed primarily for those who began in a consensual political relationship (as we did not). For while "the majority" has no moral standing in the state of nature (there being no "people" there on whose behalf they may decide), individuals (such as ourselves) whose rights are violated by de facto governments or societies are in much the same moral situation as individuals who are *returned* to the state of nature by a previously legitimate government's or society's violation of their rights (with this exception: that a contract is breached in the latter case, but not in the former). And in 6.3–6.4 we saw what Lockean political philosophy must say about such individuals. Individuals have the right to resist and repair violations of their rights and to recruit others who are entitled to assist them in this, regardless of whether the individuals live within or without political society. And in the state of nature (but not in political society) they may resist, repair, and punish even nonsystematic, nondeliberate violations. In thus enforcing our rights, we are limited only by the requirements that we avoid infringing the more pressing rights of others and avoid causing dramatic social harm (or preventing the accomplishment of dramatic social good).

When we confront a moderately good (but still illegitimate) legal system and government, then, we must weigh the importance of the rights it violates against the consequences of our various possible strategies. If the government is a good one, its violations of our rights would need to be very serious indeed (which will be unusual under a good government) for us to be justified in doing anything that will cause it to be unable to function effectively. For it will likely be doing significant good and preventing significant harm. And while we have no contractual duty to resist wrongs done to others (as we would toward fellow members of a legitimate polity [6.4]), we have a natural moral duty to aid those in need, as far at least as we comfortably can (and perhaps farther). This duty may require us to in certain ways support the efforts of governments (if only by

refraining from disabling them) when they assist those in need. Finally, of course, unless a government's violation of our rights is very serious, the acts we will be morally entitled to perform (in order to justly resist, punish, and repair those wrongs) will be anyway unlikely to be violent or destructive enough to cause serious disruption of a government's functions. For we are not at war with such governments as I am considering here. These moral facts, plus considerations of simple prudence (i.e., our interest in avoiding legal punishment), seem to dictate that moderately good governments, which violate our rights only in the ways such governments typically do, ought not to be resisted in ways that threaten to destroy them or to replace them with distinctly inferior alternatives. Lockean anarchism acknowledges that there can be strong moral reasons for supporting, or at least not actively resisting, even (certain) illegitimate governments. In this regard again, Lockean anarchism is not dramatically counterintuitive in its implications. It is only philosophically, not practically anarchic.

In the face of the wrongs done us by moderately good existing governments, of course, it will still usually be morally permissible to simply disobey those laws that are wrongly enforced against us, and it will be reasonable to do so as far as it remains possible to avoid detection or serious legal consequences. For simple individual disobedience almost never has dramatic social consequences. And it remains permissible, even if almost never prudent, to attempt to forcibly secure just compensation for the wrongs done us. It will usually be best to press for public recognition of these wrongs, sometimes even by conspicuous disobedience, within the legal frameworks offered in our society. To disobey conspicuously and pursue legal remedies is not to acknowledge the legitimacy of those frameworks (as the proponent of civil disobedience insists we must do); it is rather only to take action that is well within morally permissible limits in the context of illegitimate, but virtually unavoidable, legal mechanisms.

What we certainly have good reason to do is to press by legal means for those changes in our political arrangements that will permit the establishment of genuinely voluntary political societies. Thus, changes that would clarify the resident's choice situation, expand membership options, reduce the cost of membership, facilitate internal or external emigration, and so on, would all go far toward making the choice between membership and its alternatives adequately informed and fully voluntary. Such changes would help to secure the natural right of self-government to which each of us is

born, a right that includes the privilege of genuine freedom in the choice of political (or nonpolitical) forms of life. Although Locke (as we saw in 2.2) may have been wrong in claiming that life in the state of nature is always precarious and unstable (our lives in *this* state of nature are not, for instance, as he described them), he was surely right at least in maintaining that life in a free, consensual polity is *morally* preferable to life in even a stable, structured society built on force and acquiescence.

It would be foolish to pretend that many actual societies are likely to change or emerge in the ways Lockean political philosophy prescribes. In the world of illegitimate states that will continue, moral persons must cast off their childhood lessons in good citizenship, and proceed by selectively supporting or opposing their governments' actions and policies solely according to the particular moral standing of each governmental move. Even if we find that we can seldom justify or bear the consequences of active disobedience or substantial opposition, we can at least lobby for the elimination of those laws that interfere with harmless choices, impose needless regimentation of behavior and lifestyle, limit personal liberty without securing important social benefits. For any movement in such directions, as we have seen, will at least help to reduce the violation of basic personal rights.

Even when Lockean political philosophy directs us to obey the laws and support the government (of, say, a moderately good but still illegitimate state), and so tells us to do what common intuition prescribes, however, it still forces us to view our conduct in a new light. Lockean philosophical anarchism demands of us that we be more thoughtful about and more sensitive to the particular moral issues in our lives. For we can no longer just appeal to a general presumption of governmental legitimacy or political obligation, viewing it as overriding or outweighing more specific questions about the moral merits or defects of the individual laws, actions, or policies of our governments. We must confront directly and balance carefully the effects of such laws or policies on the performance of our natural duties and the exercise of our natural rights. Perhaps many of us have preferred to avoid the burden of these concerns. Perhaps in our complacency we have assisted the progress of political unfreedom and helped to further popularize the comfortable myth of easy legitimacy. If so, we have, in Locke's words, "done the truth and the public wrong." We owe both, as well as ourselves, a better effort.