

PUBLIC GOODS, MUTUAL BENEFITS AND MAJORITY RULE

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Abstract: Which public goods should the state provide? Political philosophers have often distinguished between necessary and discretionary public goods. Once we have argued for the necessity – as a matter of justice – of a bundle of certain goods (say, security services, basic health care and education), the residual question is whether the state should provide any *discretionary* public goods. This question is relatively ignored, even though many things the state does are not necessary, on any reasonable theory of justice. The dominant answer is the ‘mutual benefit approach’, which argues that every individual should benefit more or less equally from such public goods – worked out either in a unanimity requirement or a majority rule constrained by a substantive norm that everyone benefits from a package of public goods. My main aim is to challenge this approach and show that discretionary public goods provision can be legitimate in the absence of mutual benefits. I argue that we should accept majority rule to decide which discretionary goods a community should provide. The mutual benefit constraint is only legitimate if one sees preferences for discretionary public goods as the exclusive responsibility of each individual. However, one could equally well see them as parts of reasonable conceptions of the good life that should be respected, as an ‘equality of welfare’ approach would do. These competing views of the legitimacy of preferences for public goods need to be balanced, and the majority rule is needed to identify a fair way of doing so. Such a majority rule still needs to be constrained, but in a quite different way than the mutual benefit approach envisages: to provide a fair compromise between the mutual benefit approach and the rival equality of welfare approach.

Introduction

Should the state provide national defense to its citizens? Or build dams so as to protect the population against floods? To many, the answers to these questions have seemed obvious, because defense and dams are considered to be ‘public goods’. Such a judgment however takes the fact that something is a public good in the technical sense as a sufficient argument for the conclusion that the state should deliver this good. Such an

inference is unjustified. Examples like defense and dams derive their strength from the tacit presupposition that all members of the community benefit from these goods; they are crucial to their survival against floods or foreign invasions. But for many other public goods it is far from self-evident whether this presupposition is warranted. Some will benefit from sending a mission to Mars, in that they experience pride in this as a national achievement, or benefit directly from its scientific results. Others are likely to protest and argue that they are forced to contribute to something they consider to be a waste of money. In the face of such disagreement, we need to ask: when is the state justified in delivering public goods?

To answer this question, I will start with the standard theory of public goods provision in economics: that they represent one kind of market failure, which the state is justified in remedying. I will show how the problem of unequal benefits just mentioned necessitates going beyond the economic framework. We need to follow those political theorists who have distinguished between necessary and discretionary public goods. Once we have argued for the necessity – as a matter of justice – of a bundle of certain goods (say, security services, basic health care and education), the residual question is whether the state should provide any *discretionary* public goods.¹ But this question, if noted at all, is largely ignored.² This is problematic because many things the state does are not necessary, on any reasonable theory of justice. This paper will therefore focus on this relatively neglected question of the legitimacy of discretionary public goods provision (Section 1).

The dominant answer is the ‘mutual benefit approach’, which argues that every individual should benefit more or less equally from such public goods. This is worked out either in a unanimity requirement or a majority rule constrained by a substantive norm that everyone benefits from a package of public goods (Section 2). My main aim is to challenge this approach and show that discretionary public goods provision can be legitimate in the absence of mutual benefits. First I will briefly show how *not* to challenge the orthodoxy, by rejecting three alternative approaches that all discount the

¹ I take the term ‘discretionary’ from George Klosko (Klosko 1987, 1990).

² David Miller states that given the political importance of public goods provision, there is surprisingly little discussion of this question in political philosophy (Miller 2004: 127). One may always quarrel over what is ‘a lot of literature’, but he is surely right that there is relatively little.

direct benefits these goods bring to individuals. (Section 3). This paves the way for the introduction of my own position: that we should accept majority rule to decide which discretionary goods a community should provide. The mutual benefit constraint is only legitimate if one sees preferences for discretionary public goods as the exclusive responsibility of each individual. However, one could equally well see them as parts of reasonable conceptions of the good life that should be respected, as an ‘equality of welfare’ approach would do (Section 4). These competing views of the legitimacy of preferences for public goods need to be balanced, and the majority rule is needed to identify a fair way of doing so. Such a majority rule still needs to be constrained, but in a quite different way than the mutual benefit approach envisages: to provide a fair compromise between the mutual benefit approach and the rival equality of welfare approach (Section 5).

1. Beyond The Economic Theory of Public Goods

The economic approach justifies the provision of public goods when markets are unable to provide for these goods. Public goods are one category of market failure. Two characteristics make them unsuitable for market provision: they cannot be provided to some without being provided to all (non-excludability) and their consumption by some doesn’t diminish the consumption opportunities of others (non-rivalness).³ Because of these characteristics, individuals have an incentive to free riding. It has often been noted that there are very few public goods in this strict sense. Still, the framework has continued to be dominant, because goods that exhibit these features to a lesser extent can still be understood as obeying the same logic. The justification for the state to step in is that excludability is (very) difficult and costly and there is strong non-rivalness in consumption (these are ‘impure public goods’)(Cornes and Sandler 1986).

There have been many criticisms of the economic framework. Some argued that the judgment that a certain good exhibits public goods features is insufficient: it must also be proven that the state, when providing the good, will not fall prey to worse

³ Sometimes slightly different characterizations are given instead, such as ‘jointness in supply’, ‘indivisibility’ and others. For an overview see (Cullity 1995).

inefficiencies of its own, and display ‘government failure’ (Grand 1991). Others argued that even when markets fail there often is more room for private actors acting in concert than the simple state-market dichotomy suggests (Ostrom 1990). Again others argued that we should widen our concept of public goods beyond the economic framework (Sunstein and Ullmann-Margalit 2001: ; Taylor 1995). While important, these criticisms leave intact the basic message of the economic theory: that, at least sometimes, there is an *efficiency* rationale for having the state provide certain public goods.⁴ As David Schmidtz put it:

‘Thus, one of the most attractive features of the public goods argument is the minimal nature of the normative assumptions it must make in order to ground a justification of the state. The public goods argument seems to presume only the legitimacy of helping people to do what they want to do but cannot do without the state’s help.’ (Schmidtz 1991: 82)

The problem with the argument is that this minimal nature of the economic argument obscures something essential: that not all citizens want to be helped all the time. In Schmidtz’s words:

‘The actual interests different people have in particular public goods can vary widely; that a good exhibits characteristics of nonexclusiveness and nonrivalry in consumption does not guarantee that a given person has an interest in it. For any particular public good, there will be some people for whom it is not a good at all, or, at least, has a total return too small to rationalize contributing *c.*’ (Schmidtz 1991: 83)

This problem of unequal benefits has become central to the political philosophical discussion. Which goods should be provided, given that for almost any good some citizens will not see an interest in its provision (but must contribute through taxation)? Note that this problem does not invalidate the economic theory of public goods completely. It does show that any case for providing a public good must satisfy two

⁴ The word ‘provide’ may seem misleading here. In some cases it may be more efficient for governments not to deliver public goods in kind themselves, but subcontract private providers or distribute earmarked budgets (vouchers) to consumers to buy goods on the market. (Barr 2004: 89-92) If in these cases (financial and political) responsibility for the successful delivery of public goods to citizens remains with the government, one might still interpret these schemes as ‘public goods provision’. It is the coercion in taxation to collect the necessary funds which is essential to overcome free riding.

premises. The normative premise is that the provision of this public good is a normative requirement. The empirical premise is that the state can do so more efficiently than the market or any other private alternative. The problem of unequal benefits draws attention to the normative premise while economic theory focuses on fleshing out the empirical premise in terms of the technical characteristics that explain the market's inefficiency. Both are necessary. When the theory of market failure is presented as the whole story, what actually happens is that for a certain public good (say, dams, or national defense) the normative premise is *assumed* to be satisfied.⁵

The economic theory of public goods remains important, but needs to be supplemented by a theory stating when the normative premise is satisfied. Economic theory interprets this premise in terms of its subjective, utilitarian theory: a good should be provided when individuals have a preference for this good. But other, more objective theories are possible as well. On such objective views, whether or not individuals reveal a preference for the good is besides the point. For example, a public good should be provided if rational individuals (fully informed, deliberating carefully and impartially) would consent to its provision. Thus, once the normative premise is made explicit, *there is no a priori reason to take over economic theory's interpretation of this premise*. So how should we go about fleshing out the normative premise?

The first step most philosophers make is to distinguish between two categories of public goods, necessary and discretionary ones. The main context in which this distinction came up was the discussion, generated by H.L.A. Hart (Hart 1955), Rawls (1999 [1971]: 96-98, 301-308) and Nozick (1974: 90-95) on the principle of fairness. This principle establishes obligations for individuals to contribute to cooperative schemes that one personally benefits from. Nozick had expressed skepticism about this principle, since he sees it as imperative that individuals consent to such schemes. Rawls argued that one only has such an obligation when 'one has voluntarily accepted the benefits of the arrangement or taken advantage of the opportunities it offers to further one's interests'

⁵ Strictly speaking, the economic theory could be defended against what follows by saying that even if a public good is not preferred by every citizen and in that sense its provision cannot be Pareto-efficient, it can still be efficient in the Kaldor-Hicks sense (losers could be compensated by winners). This will not satisfy those theorists (introduced in the next section) who think it is problematic to contribute to but not benefit from these goods. It also does not satisfy those who dispute the normative status of individual preferences, for purposes of political decision-making (sections 3 and 4). I thank one of the reviewers of this journal for pressing me to clarify this point.

(Rawls 1999 [1971]: 96). George Klosko breaks with actual consent completely, when he states that those public goods can legitimately be delivered which are

‘(i) worth the recipients’ effort in providing them and (ii) “presumptively beneficial”. (...) As for (ii) by “presumptively beneficial” goods (or presumptive goods) I mean something similar to Rawls’s primary goods, “things that every man is presumed to want.” Since we are concerned with public goods, we can confine our attention to presumptively beneficial public goods (...). Basically, such goods must be necessary for an acceptable life for all members of the community.’ (Klosko 1987: 246)

This link to primary goods establishes the basic distinction between necessary (Klosko’s ‘presumptively beneficial’) and non-necessary, or discretionary goods.⁶ Necessary goods are those goods a just society guarantees for all. Whatever one’s theory about necessary goods, if the distinction has any bite then on any theory some public goods will be non-necessary. I will here remain agnostic on the correct theory of justice, so I cannot give examples which goods would classify as discretionary goods. But, to have something in mind, often-used examples include some environmental goods (preservation of some endangered species non-necessary for ecosystem maintenance)⁷, non-necessary infrastructure (a cycling path for recreational purposes, a public park), subsidies for non-necessary activities and establishments (festivals, sporting events), subsidies for the arts, libraries, research in the humanities and public service broadcasting. For all of these goods, we are faced with the objection Joel Feinberg used as a paper title on the subject: ‘Not with my Tax Money!’

2. The Mutual Benefit Approach

Arguably the dominant approach in the literature is what I will refer to as the ‘mutual benefit approach’. The core idea is that only when all individuals benefit from a public

⁶ Necessary public goods resemble primary goods *only* in that just as primary goods, they are goods ‘every man is presumed to want’. This should not be taken to mean that all of Rawls’s primary goods are necessary public goods, since, evidently, some of his primary goods are private goods (such as income and wealth).

⁷ Obviously, preservation of many environmental goods may classify as necessary for (intergenerational) justice.

good, its provision is justified. There are two variations of this approach. Rawls defends a strict version (unanimity requirement), while many others have defended a weaker version (mutual benefit principle). Both of these are filling in the normative premise of the public goods argument.

The paradigmatic example of the unanimity requirement is Rawls, who explains how implementation of his principles of justice requires a set-up with four branches of government. Then he adds as a fifth branch the ‘exchange branch’, which however does not serve to realize justice as fairness. It serves as a ‘special trading body that arranges for public goods and services where the market mechanism breaks down’ (Rawls 1999 [1971]: 250). If citizens unanimously vote for delivering a certain public good (and the necessary taxes), the exchange branch allows them to use the coercive apparatus of the state to overcome the free-riding problem in collecting contributions. Rawls immediately recognizes the harsh implications: in a polity of some size it will be almost impossible to reach unanimity.⁸ But he emphasizes that the exchange branch assumes the overall justice of the basic structure:

‘But when this condition is satisfied, then the unanimity principle is sound. There is no more justification for using the state apparatus to compel some citizens to pay for unwanted benefits that others desire than there is to force them to reimburse others for their private expenses.’ (Rawls 1999 [1971]: 250).

In *Theory*, the exchange branch is only mentioned once more: in the context of public subsidies for the arts and sciences. These activities, falling under his principle of perfection, do not deserve to be subsidized as a matter of justice. He then mentions the exchange branch as the only option for those who nonetheless wish for public arts subsidies (Rawls 1999 [1971]: 291).⁹

⁸ The idea of unanimity was introduced by Knut Wicksell. He assumed that if all citizens benefited from a package of public goods it would attract unanimous support.

⁹ Rawls in his section on ‘economic systems’ endorses the standard theory of public goods. After explaining the technical characteristics leading to the problem of free riding, he states: ‘*Assuming* that the public good is to everyone’s advantage, and one that all would agree to arrange for, the use of coercion is perfectly rational from each man’s point of view. Many of the traditional activities of government, insofar as they can be justified, can be accounted for in this way.’ (Rawls 1999 [1971]: 236). [italics mine, author] Rawls doesn’t discuss this assumption. This may easily mislead readers to think he embraces the economist’s theory of public goods unqualifiedly and has completely missed the unequal benefits problem.

Rawls' exchange branch may seem like an example of a procedural solution: it relies solely on a decision rule to decide how to deal with discretionary public goods. Moreover, it relies on the strictest decision rule we can think of, making discretionary goods provision near to impossible. However, we should not be misled by this appearance. The only work that the decision rule is doing is to ensure that the provision of discretionary goods represents a Pareto-improvement. In that sense, Rawls's solution is substantive: the Pareto-criterion. He presents society as a cooperative venture for mutual benefit, which is just if the two principles of justice are complied with. Provided with a fair distribution of primary goods, people can go about realizing their own conceptions of the good. Goods which are not necessary for justice ('secondary goods') cannot be assumed to bring mutual benefits. Therefore the state should not play a role unless a unanimous vote dictates otherwise. Rawls' anti-perfectionism leads him to this conclusion. Discretionary goods are related to particular conceptions of the good; a state which provides them is insufficiently neutral between them (Patten 2011).

Perhaps due to its harsh consequences, Rawls has remained virtually alone in his endorsement of the unanimity rule.¹⁰ But since the underlying reasoning (anti-perfectionism) has been attractive to many, a different solution has emerged. It remains within the confines of the mutual benefit requirement, but can nonetheless allow more discretionary public goods provision. This solution is to let a majority decide on a package of public goods which is to the benefit of everyone. Probably because of this

The passages on unanimity and the exchange branch show that he does see the problem, but then one wonders why this is *not* reflected in the section on economic systems. Perhaps Rawls has overseen the consequences of his anti-perfectionist views for his endorsement of the economic theory. A further complication is that Rawls's idea of the exchange branch cannot easily be reconciled to his later insistence that justice as fairness is restricted to constitutional essentials, so that all other matters can be taken up by normal (majoritarian) democratic processes. Unfortunately, the exchange branch doesn't reappear in his later works. Even in *Theory*, the question is complicated, since Rawls, besides his endorsement of the exchange branch, also states: 'Thus on many questions of social and economic policy we must fall back upon a notion of quasi-procedural justice: laws and policies are just provided that they lie within the allowed range, and the legislature, in ways authorized by a just constitution, has in fact enacted them.' (Rawls 1999 [1971]: 176) Since his theory of the exchange branch seems to be his more specific statement for the issue of public goods, I take it that it overrules his preference for majority rule for the 'many questions of social and economic policy' addressed in this passage.

¹⁰ An exception is David Schmitz, who has argued for a conclusion that is even stricter than Rawls's: that only those public goods should be provided which are necessary to 'preserve a cooperative society' (Schmitz 1991: 158). This seems to rule out provision of additional public goods, *even if* unanimously consented to (but since he doesn't discuss this, we cannot be completely sure). See also N. Scott Arnold, who settles on 'vast majority' instead of unanimity. See (Arnold 2009: 157).

reconciliation of a strict normative requirement and more palatable consequences, this has become the most popular view in the literature. While I will in the following concentrate on its most elaborate defenses, by James Buchanan and David Miller, it was also defended by authors as diverse as Joel Feinberg and Friedrich Hayek.¹¹

The solution starts by imagining a two-stage process, in which the political community first decides on a just distribution of income and wealth (Miller) or a constitutional contract (Buchanan). Then it debates about the provision of public goods. After the first stage individuals will have a legitimate claim on their private holdings. Therefore from this point onwards all transactions should only be conducted with everyone's consent. This condition is normally required for transactions between private persons (market exchanges). Similarly public goods transactions would take the form of multi-party bargains. If the community would provide public goods without everyone's consent, it would seem to take away someone's property illegitimately and therefore lead to a less just state of affairs compared to the positions reached just after the first stage (Buchanan 1975: 42-43; Miller 2004: 130-131).¹² However, since this generates all the familiar problems of unanimity, they propose to use the majority rule, but to combine this with a substantive constraint. To make this work, Miller makes a shift from considering as the relevant good up for decision making a package of discretionary goods as a whole, *not* any discretionary good in isolation.¹³ Both Miller and Buchanan then put forward the idea that the majority rule is fair as long as it operates within constraints such that each citizen is a net beneficiary of this package.¹⁴ One can expect every citizen to accept this scheme because all possible packages constitute a Pareto-improvement over the situation in which no package was chosen at all.

¹¹ Joel Feinberg argues that we should agree to a majority rule which makes us 'win some and lose some' (Feinberg 1988: 311-316). In the context of arts subsidies, he calls this 'rotational justice'. (Feinberg 2003: 106-107). Friedrich Hayek hints at this solution in (Hayek 1982c: 44). See also (Gaus 2011: 534-538).

¹² For reasons of simplification, I leave a third category of public goods that Miller mentions, those necessary for sustaining the identity of the community, out of consideration.

¹³ Buchanan does consider a single public good, but argues that with a suitable tax system everybody could derive a net benefit from its provision. Since the idea of a package is more widespread, I will henceforth follow Miller.

¹⁴ One could imagine these being safeguarded by a constitutional rule or by a strong informal norm in the political community (in both cases it will of course be hard in practice to judge when the constraint is being met – this might itself come up for political debate).

The solution is akin in spirit to a trade in Rawls' exchange branch. Again the main thrust of the solution is substantive, but in contrast to Rawls an important element of procedural justice is brought in. The majority rule is necessary because different combinations of public goods will have differential effects on citizens. Not everyone will benefit to an *equal* extent. A political struggle can therefore be expected over packages which are skewed to benefit certain groups more than others. The majority rule is necessary to force a decision and determine which package wins. In Buchanan's language, rational individuals will *ex ante* seek to place limits on majoritarian decision making, so that public goods provision leaves everyone better off (Buchanan 1975: 43-51). Miller in the end is unsatisfied by net benefits which are very unequally distributed and argues for a somewhat stricter variation: the packages should be chosen in such a way 'as to make the net benefit received by each person as nearly equal as possible' (Miller 2004: 148).

3. Approaches Discounting Individual Benefits

There are many possible ways to attack the mutual benefit approach, and accordingly many different alternative grounds for justifying state action in this territory. In this section I will briefly revisit three of them, which all, in different ways, reject the focus on direct individual benefits.

A first alternative is to embrace perfectionism and argue that discretionary public goods should be provided to all, not so much because we care whether citizens *do* benefit from a certain public good, but because citizens *should* benefit. Even those who are initially disinclined to consume this good should do so, since it will enrich their lives. Open access lowers the threshold for people so that they can at no cost to themselves experience this enrichment. Perfectionism about values is here combined with paternalism: the view that the government knows better than we do what will benefit us. In public debates about arts subsidies, this is a well-known argument, but in the

philosophical literature I have not found a straightforward example of this view, probably because most (liberal) philosophers are suspicious of paternalism.¹⁵

I share this suspicion, but one should admit that the case against paternalism is not straightforward. Governments paying for arts, libraries or public television do not coerce individuals into consumption of these goods; they merely offer them for consumption. The coercive aspect only comes into play at the taxation side.¹⁶ Even more importantly, the argument could also be phrased in soft paternalist terms, acceptable to most liberals (Feinberg 1986: 12): that citizens are acting insufficiently voluntarily or poorly informed when they choose to consume market-based products and ignore government-sponsored high culture, because their choices are highly influenced by socialization into commercial culture, marketing efforts, etc. While this claim arguably has more solid liberal credentials, it is vulnerable on the empirical side. Proving involuntariness in art of media consumption is far from easy. Therefore I will not rely on it.

A second alternative is to argue that the focus on individual benefits is problematic. Certain public goods should be seen as intrinsically valuable and the community should be seen as protecting intrinsically valuable things for their own sake, regardless of individual benefits. This alternative is as perfectionist as the first one, but doesn't combine it with paternalism. It has been used with respect to environmental goods. Thus, when David Miller pushed his mutual benefit argument in this context (Miller 1999), Michael Hannis replied that environmentalists have ideal-regarding considerations about the value of nature, which for the sake of public justification of environmental policies should not be reduced to the status of mere preferences (Hannis 2005). In the context of defending arts subsidies a similar argument has been brought up by Feinberg, who claims that

‘it would seem odd to admit that something is objectively worthy of being valued (esteemed, treasured, cherished) and then deny that the possession of such property is any kind of reason – or a reason of significant weight – for requiring people to protect or support it. Even the egoistic

¹⁵ For example, Steven Wall comes close to it, but his argument ultimately hinges on intrinsic value, which I discuss below. See (Wall 1998: 214). This is also the case for Feinberg (to be discussed below).

¹⁶ Along perfectionist lines, one could complement the paternalist argument by arguing that the coerciveness of taxation is exaggerated. See (Raz 1986: 417-418).

philistine taxpayer, I should think, would have to admit that the possession in high degree is not grossly irrelevant.’ (Feinberg 2003: 121-122).

The problem with this solution is its perfectionism.¹⁷ Feinberg and others too easily pass from the ethical judgment that a good is intrinsically valuable to the political judgment that there is a role for the state in its providing. But why is the former a reason for the latter? This leaves Feinberg vulnerable against those who push the neutrality point and claim that judgments of intrinsic value belong to specific conceptions of the good life, which the government should refrain from making. This is a gap in Feinberg’s defense. To anticipate my later argument, I do *not* think that arguments about intrinsic value cannot play a role in justifying discretionary public goods provision. Rather, my position will be that the necessary bridge to a political justification must come from the moral weight carried by the majority rule. If a majority thinks (for perfectionist or other reasons) that providing the good is worthwhile, this legitimates it. But this is running ahead. On its own, the intrinsic value judgment cannot carry the weight.

A third alternative is refute those who claim not to benefit from the public good, by showing that all citizens *do* benefit, indirectly. Murphy and Nagel argue that a public good should be provided if the result is ‘a society that is much better for everyone to live in’, largely relying on spill-over effects of arts and sciences (Murphy and Nagel 2001: 63-64). Dworkin has argued in favour of arts subsidies because of the presumed benefits for the social structure as a whole (Dworkin 1985).¹⁸ Edwin Baker has argued that large externalities (both positive and negative) exist in the production of media content (Baker 2002: 41-62). Unlike the previous two solutions, this alternative does not revert to perfectionism, but remains within the Paretian framework of the mutual benefit approach. The difference is that those individuals not consuming the goods themselves benefit

¹⁷ I leave aside another potential objection against this type of reasoning, that the metaphysical status of intrinsic values is shaky.

¹⁸ Klosko has given a variation, arguing that a citizen can be obligated to support the provision of a package of discretionary goods when this is decided through a fair procedure and when ‘the discretionary goods are required for the provision of presumptive goods.’ (Klosko 1992: 92) (‘presumptive goods’ is his term for necessary goods).¹⁸ He calls this the ‘indirect argument’: discretionary goods are justified indirectly, when they are necessary to make the provision of presumptive goods work well. This solves the discretionary good problem by dismantling it. The question is what to do with those goods for which such an indirect argument cannot plausibly be made.

indirectly (sometimes these are called ‘collective’ or ‘social’ benefits, but the benefits remain benefits *to* individuals).

Since this third alternative is an extension of the mutual benefit approach, what I want to say against it also applies to that approach as a whole. My point would be that this is fine as far as it goes. If we can prove benefits to everyone – directly and/or indirectly – from a certain public good, I have no objection. But we should not confine discretionary public goods provision to those cases where such benefits can be claimed. A pragmatic reason which I will not push, but which needs mentioning, is that these benefits are almost never proven. The authors just mentioned are merely asserting these spill-over effects or positive externalities.¹⁹ The actual calculations are never done. Given the diffuse nature of these benefits, that is hardly surprising. Similarly, that the multi-person bargains Miller and Buchanan envision, actually benefit everyone has also to be simply assumed. These pragmatic defects weaken the case for the mutual benefit approach considerably.

My more principled point in the remainder of this paper, however, is that even if these benefits exist for some goods, there may also be a justification for discretionary public goods provision in the absence of these benefits. Whether absent or present, the justification should not *rely* on these mutual benefits.

4. The Equality of Welfare Approach

In contrast to the perfectionism of the first two alternatives discussed in the previous section, I will accept the fact that the relevant benefits are benefits individuals actually derive from public goods. But here I will argue there are two principled ways to look at the status of preferences for discretionary public goods. The first one, exemplified by the mutual benefit approach, is to see them as isolated preferences for which individuals are themselves responsible. This assumption goes unchallenged and drives our reasoning in the direction of unanimity or the (equal) net benefit principle. But a second way of thinking about these preferences is to see them as part of reasonable conceptions of a

¹⁹ This is essentially the same assumption we encountered earlier when discussing the standard economic theory of public goods (section 1).

good life, which the political community should respect by helping to satisfy them. This I will call the ‘equality of welfare approach’ (for reasons that will become clear). In this section, I will present the case for the equality of welfare approach, but also argue that it is equally reasonable as the mutual benefit approach. In the next section, I will then argue for the majority rule as a fair procedural compromise between both approaches.

Individuals’ conceptions of the good life differ, *inter alia*, in the extent to which they require market goods or public goods (or a mix of both) to be realized. Imagine two persons, one of which has a conception of the good consisting solely of public goods (call him a ‘PG-lover’) and another one only wishing for market goods (‘MG-lover’). The PG-lover will have a problem if only the market is available to spend his income and wealth. On a perfect market consumption has to take the form of a private good (“consumption of a unit by one person precludes consumption by another”) and utility functions have to be independent (“no person gains or loses simply from the utilities of others”) (Gauthier 1986: 86). This forms a problem for our PG-lover, who has a preference that does *not* take the form of exercising ownership over private goods. Ironically, David Miller has argued for this point of view in earlier work:

“The market favours conceptions of the good which are centred on the private enjoyment of commodities, or which have non-commodity elements which run with the logic of the market – for instance, those who enjoy competitive success for its own sake as well as for the income it brings” (Miller 1989: 93-94).²⁰

When people with these preferences are dependent on the market, they will not be able to realize their conceptions of the good life. So neutrality seems to require taking individuals with a PG-requiring conception of the good as seriously as those with more individualistic conceptions (Kymlicka 1989b). This argument is especially salient for (but not restricted to!) cases where people have a preference for public provision of a good because of the commonness expressed in its being publicly provided; e.g. because of the

²⁰ Similarly, Daniel Hausman argues that not everyone would consent to engage in the perfect market, given their different conceptions of the good life: “It is not true that *every* rational agent would consent to the ground rules of a PCM. One reason might be that some agents prefer to live in ways that a PCM and the economic development that results render impossible.” (Hausman 1989: 322)

experience of interacting with others in public spaces. People may value open access in itself (Hirsch 1999 [1976]: 90-92; Walzer 1983: 114-115).

What kind of principle would we get if we treated preferences for discretionary public goods in this way? If we treat preferences in this way, then parties trying to come to a fair and impartial result would probably not adopt the (equal) net benefit principle. Trying to be impartial between PG-lovers and MG-lovers, they would probably adopt something closer to what we can call the *principle of equal welfare*: the total stock of resources left after necessary goods are provided (society's 'discretionary resources') should be divided over market goods and discretionary public goods in such a way that the welfare levels of each citizen are equalized. This principle may have strong redistributive effects and MG-lovers will complain that they help pay for the preferences of PG-lovers, while they do not get a similar service in return. Once everyone has a few public goods in his conception of the good, this problem will be much mitigated, of course. But the more extreme cases cannot be ruled out in advance.

Thomas Scanlon once stated the problem in the same terms. He proposed a contractarian method for thinking about the choice between market and non-market institutions and argued that parties in a position to choose a hypothetical social contract cannot unequivocally choose market institutions. The problem, according to him, is that people do not know (a) whether they will be untalented people who would prefer to have non-market institutions or talented people who would do better to opt out of these non-market institutions, and (b) whether or not they will have a preference for "community goods" (for purposes of the discussion here, these can be taken as equivalent to my public goods).²¹

In choosing between nonmarket institutions and market institutions we face a choice between institutions that restrict the liberty of some people – those who would do well to become "émigrés" or those for whom the values of community rank relatively low – and institutions that restrict the liberty of others – those who would be subject to the control of others in a market society or those who set a high value on the goods of community. There is no way to frame institutions so as to satisfy both of these groups. Thus, assuming that each generation will include some representatives of each group, no matter

²¹ Obviously, it is the B-clause that is of importance to us here. We can assume that the problem of the untalented is solved by redistributing (state) institutions; this leaves the problem of public goods provision untouched.

how we frame our institutions, some people will be faced, without their consent, with institutions that, in a most obvious sense, they would not have chosen. (Scanlon 1977: 62-63)²²

While I share the thrust of this passage, the formulation of Scanlon's conclusion is too dichotomous. The choice does not have to be between either having only market goods (and institutions) or having only discretionary public goods (and institutions). We can also strike a balance and adopt some mix of market and public goods. The overall message, however, is highly useful: we need somehow to establish fairness between both of these groups.

Miller's and Buchanan's theories only reason from the perspective of MG-lovers. They are preoccupied with individuals setting constraints to protect themselves against others who want to overburden the community with demands for discretionary public goods. If everybody demands some public goods mutually advantageous packages can be assembled. But in cases where some want no public goods at all, the constraints limit the space for such bargains and (almost) no public goods will be realized. Their set-up serves to protect MG-lovers against paying for other people's pleasures. The underlying intuition is that there is no reason to hold people less responsible for the costs of their preferences just because these happen to be preferences for public goods. If respect for a conception of the good which entails only market goods does not require forced contributions of others, why should this be different for conceptions which entail public goods?

Scanlon shows that, however powerful the underlying intuition, this betrays a one-sided concern with only one of the two groups' claims. We might also be concerned with individuals insuring themselves against being part of a group which needs public goods to fulfill their lifeplan. If we take these demands seriously, the problem isn't oversupply but undersupply. These demands are based on an opposing intuition, i.e. that PG-lovers need public support for the satisfaction of their preferences, because they shouldn't become the victims of the structure of their preferences. PG-lovers might retort to MG-lovers that latter would have appreciated help too, would they have found

²² He goes on to argue that there is a contractual argument in favor of the latter group (preferring non-market institutions), on the principle that "what one groups stands to lose is weightier than what the other stands to gain." (Scanlon 1977: 64) However, this general priority toward non-market institutions seems to me to be highly speculative (indeed, Scanlon does not provide an argument for it).

themselves in their situation. In other contexts, respect for people's conceptions of the good is held in high esteem. For example, states sometimes go to great lengths to accommodate minority religious beliefs. So why shouldn't people with other substantive (but often equally strong) beliefs have a similar claim upon the community?²³

One may be tempted to see a link between respect for PG-preferences and the case Richard Arneson and G.A. Cohen have made for respect for unchosen preferences (for divisible goods). This would assimilate PG-preferences to expensive tastes, which can claim compensation to the extent that they are involuntarily formed.²⁴ The approach would then be based on a variety of equal opportunity for welfare (Arneson 1989; Cohen 1989).²⁵ However, the best interpretation of the approach presented in this section is equality of welfare, not equality of opportunity for welfare. After all, it claims that individuals deserve political support for *all* their PG-preferences, whereas an equality of opportunity approach would restrict support to those preferences that were involuntarily formed (beyond a person's control). In other words, the equality of welfare approach *assumes* that all PG-preferences are involuntarily formed. This may sound radical, but we should not forget that in its radicalness it mirrors the mutual benefit approach. Whereas the mutual benefit approach assigns full weight to individual responsibility for PG-preferences (assumes them to be voluntary), the equality of welfare approach assigns no weight to responsibility for such preferences (assumes them to be involuntary).

It was necessary, in this section, to present the arguments supporting the equality of welfare approach. However, I do not endorse this approach. The problem is that the equality of welfare approach is as one-sided as the mutual benefit approach it is arguing against. In my view, it seems equally reasonable to consider preferences for discretionary public goods as part of conceptions of the good life (which deserve some respect from the larger political community), and as simple preferences (for which individuals remain

²³ I leave out of consideration that MG-lovers also impose costs upon others, at least in the form of public goods the state needs to provide to make the market function well (laws and courts, anti-trust agencies etc.). Also consumption of market goods imposes costs on others to the extent that market goods are positional in character; which is likely to be the case at higher levels of welfare. See (Hirsch 1999 [1976]) and (Frank 1999).

²⁴ I thank a reviewer of this journal for suggesting this interpretation and pressing me to clarify my position on this point.

²⁵ I abstract from the fact that as a consequence of the equality of welfare approach, we should also grant MG-lovers with expensive market tastes which were involuntarily formed a claim to compensation from others (both MG- and PG-lovers).

fully responsible). The seeming reasonableness of both approaches can best be explained by the intractability of the problem of attributing responsibility for our preferences. Given the often pervasive natural and social influences on our preferences, it seems reasonable to attribute *no* responsibility at all to persons for their preferences (as the equality of welfare approach does). Given the stubborn intuition that despite natural and social influences we are often able to make (at least partially) free choices, it seems reasonable to attribute *full* responsibility to persons for all of their preferences (as the mutual benefit approach does). One might equally say that both perspectives are unreasonable, or ‘one-sidedly reasonable’. In practice, the origin of our preferences is hard to track and probably, in many cases, a mix of voluntary and involuntary elements.

If this is correct, then the challenge is to find a solution that does justice to both perspectives and strikes a middle ground.²⁶ Parties trying to reason from an impartial point of view can be expected to be pulled apart, seeing the (un)reasonableness of both perspectives. They would consider the possibility of being a PG-lover or a MG-lover and agree upon the need to somehow strike a balance between these two competing intuitions. This balance cannot be found by restricting PG-provision to situations where PG-lovers hold their preferences voluntarily (i.e. adopting an equality of opportunity for welfare approach), even if that would be the theoretically most elegant solution. Such enquiries would require a highly intrusive (illiberal) and costly monitoring effort. Even if it could be done, the levels of voluntariness would be different for different PG-lovers, and they would be susceptible to changes over time (so that a stable policy is hard to make). Instead, an institutional solution that incorporates and mediates between both points of view is necessary. The attractiveness of majority rule as a fair solution should be located in this context. It responds to the presence or absence of individual preferences for specific discretionary public goods (through its sensitivity to the votes for these goods) while bypassing an investigation of their genesis.

5. Majority Rule

²⁶ I leave open the question to what extent individualized contributions (user fees) should be required for impure public goods. These contributions may be seen as an important way to avoid the dilemma posed here, at least for impure public goods, and make every group bear the burden of its own choices.

In the debate about (discretionary) public goods nobody – to my knowledge – has defended the majority rule as a solution. This is different for the closely related (more general) debate about perfectionism and neutrality. I will start by briefly outlining the argument that two authors, Peter de Marneffe and Brian Barry, have given for using majority rule in that context. Then I will discuss the implications for the issue of public goods provision and defend the majority rule, constrained in a quite different way than envisaged by the mutual benefit approach: constrained so that it reaches a fair compromise between the mutual benefit and equality of welfare approaches.

Both De Marneffe and Barry have argued that the majority rule is legitimate when there is a conflict between two non-basic interests (both expressing a conception of the good not shared by everyone). De Marneffe's distinction between basic and non-basic interests is similar to Rawls's distinction between primary and other ('secondary') goods. He states that a person 'has a basic interest in some good (resource or opportunity) if he or she needs that good in order to achieve one of these neutral values', a neutral value being one 'that any reasonable person would acknowledge as the basis of moral claims' (Marneffe 1990: 258). He then argues that 'a constitution is legitimate just in case (1) it fairly protects each citizen's basic interests, and (2) it establishes fair procedures for satisfying and settling conflicts between nonbasic interests' (Marneffe 1990: 258). Finally, the majority rule is identified as the necessary fair procedure. Thus, like Rawls, De Marneffe proposes a substantive solution to the basic part of his scheme and a procedural solution to the nonbasic part. But unlike Rawls he opts for the majority rule.

Key to this conclusion is De Marneffe's view of liberal neutrality. Neutrality requires that people accept a certain arrangement as protecting their basic interests. Over and above these basic interests, however, a liberal constitution should not take a stand. Here there is scope for the democratic process, in which considerations of the good have free play:

'The point is that if the interests of two reasonable people conflict and neither can point to some neutral value as sufficient reason why he should get what he wants, then the only justification that both can accept for things going one way or the

other is that the framework of basic laws in which such conflicts are decided is itself justifiable to both of them.’ (Marneffe 1990: 273)

The idea that there is no ‘neutral value’ at stake refers to the fact that only the protection of basic interests is warranted by ‘neutrality of grounds’. What De Marneffe calls ‘concrete neutrality’ is not a legitimate ideal of liberal neutrality. Whereas for Rawls neutrality warrants unanimity (effectively removing discretionary goods from the political agenda), for De Marneffe the majority rule qualifies as a sufficiently fair decision procedure. Brian Barry reaches a similar conclusion in his discussion of justice as impartiality. For Barry too the implications of neutrality have to be split into two parts. For those issues ‘that in the nature of the case cannot be resolved without giving priority to one conception of the good over others’, we should accept the majority rule as the fair procedure (Barry 1995: 144-145).²⁷

What emerges from these two authors is the idea that the majority rule has strong cards in situations where a decision *needs* to be taken in which one of two opposing interests wins. These are situations in which doing nothing is not an option. The unanimity rule – with its near-sure promise of paralysis – is especially problematic in these situations. Does this consideration militate in favour of the majority rule when making decisions about discretionary public goods? Here it should be reminded that de Marneffe and Barry are writing about perfectionist political decisions in general, not about the specific problem of discretionary public goods provision. While it may sometimes be the case that non-basic interests conflict and the state needs to take a decision, for discretionary public goods no such practical urgency is present. There also is the perfectly feasible strategy of not providing any discretionary public goods at all. We are not in what Jeremy Waldron has called the ‘circumstances of politics’, in which people need to take a collective decision in the face of disagreement about the content of that decision (Waldron 1999: 101). This is because, after necessary goods have been provided, there already is a coordination rule in place: market provision. Additional public goods will only be delivered once there is a political procedure which leads to that

²⁷ Similarly, in the context of the debate on arts subsidies, Samuel Black has argued in favor of the majority rule (Black 1992).

outcome, but coordination will not break down in the absence of such a procedure. The case for majority rule for discretionary public goods does not rest on its ability to solve a deadlock in situations where something needs to be done.

Still, we can and should take over De Marneffe and Barry's idea that neutrality with respect to non-basic interests points in the direction of majority rule. But this should not be interpreted as neutrality towards specific conceptions of the good (such as the ones held by PG-lovers and MG-lovers), but as neutrality between two perspectives on what it is to have a preference for discretionary public goods in the first place. The majority rule is able to provide a fair compromise between two conflicting interests that parties assessing the situation impartially may recognize; not to have to pay for other people's preferences versus being in a situation where other people's pay is needed to satisfy one's own preferences. However, there are important qualifications to be made. The majority rule only brings such a fair compromise under certain conditions. This can be shown by thinking through the consequences of discretionary public goods provision in an imaginary closed economy consisting of MG-lovers and PG-lovers, who contribute an equal amount to domestic production (to sidestep problems of justice arising from differentials in effort, talent or hours worked). They all spend part of their budget on taxes for necessary public goods, and then are faced with the political question of how to spend the remaining discretionary budget: on a single market good x (as the MG-lovers want), or on additional taxes for a single necessary public good y (as the PG-lovers want), or on a mix of both. By way of illustration, consider a highly simplified ten-person economy, with a 10.000 annual product per person and 3.000 in taxes per person for necessary goods (see table 1).²⁸

First, under the mutual benefit approach, no public goods are provided. The MG-lovers' resources are spent on market goods, the PG-lovers' resources are wasted (they do not find a consumptive destination). If for simplicity sake we assume that the welfare level of both groups is equal to their resources, then MG-lovers have a welfare level that is equal to their full personal after-tax budget (i.e. 7000), while PG-lovers' welfare level is zero. Following the reasoning in the previous section, this solution is unfair to PG-

²⁸ The following example relies on the (admittedly unrealistic) assumption that amounts in euros linearly track welfare, defined in terms of preference satisfaction, and there is no law of diminishing returns (1 euro equals 1 unit of utility across the board).

lovers, since they do not receive any opportunity to satisfy their preferences, while MG-lovers receive a full opportunity to do so. Resources lie idle in the hands of PG-lovers, to their own frustration. They would like to be taxed but cannot make the government tax them (and others) and provide at least some units of the public good (the whole set-up assumes equal taxes for every person, i.e. disregarding one's preferences).²⁹

Second, now consider the application of the equality of welfare approach. This approach leads to the opposite result. Now both parties contribute an additional tax to make discretionary public goods provision possible up to the point where the welfare levels of both parties are equalized (at 6364, see the fourth column in table 1). Following the reasoning in the previous section, this situation is unfair to MG-lovers, for they have to pay a subsidy to PG-lovers, while PG-lovers do not have to bear any consequences of their preferences. The equality of welfare approach and the mutual benefit approach provide the outer boundaries of what is fair. A fair tax, in the example would be in between what these two approaches prescribe (in the example in table 1, $0 < t < 636$).

Third, now introduce the majority rule, and assume self-interested voting. The effect of this rule is highly advantageous to the majority, whether it consists of MG-lovers or PG-lovers. Both groups, when in the majority, can exploit the minority. When MG-lovers are in the majority, the outcome is equal to the mutual benefit approach: there is no public goods provision at all. When PG-lovers are in the majority they will impose a tax on MG-lovers (and themselves) that equals everyone's discretionary budget (i.e. 7000). Everything goes to the state. PG-lovers will reach a welfare level that is much higher than it would be under the equality of welfare approach, while reducing MG-lovers' share to zero. The majority rule functions as a threshold, provides a considerable hurdle for PG-lovers, and a considerable protection for MG-lovers against exotic and easy-made claims for public support. But once the hurdle of a majority is taken, the tables are turned and the majority rule allows PG-lovers to exploit the MG-loving minority.

²⁹ If we could tax according to preferences, PG-lovers and MG-lovers could each spend their full budget on their preferences. But it seems to me important not to lift this assumption (and assume the problem away), for in real-world circumstances information-constraints and incentives for strategic preferences revelation have always prevented differential taxation on this basis. Note that even if we could track preferences, then there would be the problem of excluding non-payers from use (by contrast if we can somehow track preferences through use of the public good itself, then it seems we can also exclude non-payers, so that there isn't a real public good anymore).

This reveals that the majority rule *need not* bring us what we were looking for: a fair compromise between the mutual benefit approach and the equality of welfare approach. This seems a disappointing conclusion. However, we have to acknowledge the force of the consideration in the previous section that we cannot theoretically determine a uniquely fair compromise beyond establishing its boundaries. For the sake of illustration, the third column in table 1 shows one out of many possible compromises, created by literally ‘splitting the difference’ between the tax levels (hence MG-lovers’ contributions, their sacrifices to PG-lovers) under the mutual benefit approach and under the equality of welfare approach. This particular compromise seems reasonable in some situations (like situation A in table 1) but it leads to counterintuitive results in other situations (like situation B).³⁰ This suggests that the compromise must somehow be adjusted to take account of the relative proportions of both groups, but to what extent, remains an open question. So I conclude that what is acceptable will all depend. Other possible compromise solutions will have other advantages and drawbacks, which need to be situationally assessed. We can only theoretically determine the outer boundaries between which such a compromise must be found, but we need democratic deliberation and voting to establish one specific compromise.

Fourth, we therefore need to accept the majority rule under a quite different ‘constraint’ or qualification. The majority procedure is unavoidable to find a balanced solution somewhere in between the extremes that would be yielded by the mutual benefit approach and the equality of welfare approach. However, it will only work if neither PG-lovers nor MG-lovers try to get the maximum out of a majority position. MG-lovers will have to be willing to tax and spend some resources on discretionary public goods, even if they could enforce a distribution of all goods to market-based consumption. They will have to put a helping hand to the minority. Similarly, a majority of PG-lovers will have to be willing to reduce the tax burden meant to collect resources for their public goods to make sure that MG-lovers are not enslaved to work for the satisfaction of their (PG-lovers’) preferences.

³⁰ In situation A the welfare levels of both groups is roughly in between the results under the two extreme approaches, which seems acceptable. In situation B the same compromise requires a PG-loving majority to forgo an exceptionable advantage and give MG-lovers a higher welfare level than themselves – this seems too much to ask for.

Table: discretionary public goods provision in a ten-person economy³¹	Mutual Benefit Approach	Majority Rule	Example of a Compromise Solution	Equality of Welfare Approach
Situation A: 8 MG-lovers, 2 PG-lovers				
Size of tax pro person	0	0	318	636
Welfare level of MG-lover	7000	7000	6682	6364
Welfare level of PG-lover	0	0	3180	6364
Situation B: 2 MG-lovers, 8 PG-lovers				
Size of tax pro person	0	7000	318	636
Welfare level of MG-lover	7000	0	6682	6364
Welfare level of PG-lover	0	70000	3180	6364

Conclusion

If anything, I hope the argument of this paper has helped to loosen the grip of the mutual benefit approach. The main message is that we have good reasons to reject the dominant Paretian thinking about discretionary public goods, even when we accept its focus on individual benefits. We do not have to resort to perfectionism (either in its paternalist or intrinsic value variation) to be able to escape the limitations imposed by the paradigm of mutual benefit. We can rely on normal democratic processes to define just solutions for the provision of discretionary public goods, albeit under the constraint presented in the previous section.

It may be helpful to compare the conclusions I have reached to our thinking on necessary public goods. The conventional view is that necessary goods are necessary for everybody in order to be able to realize their conception of the good. But while this general statement is true, it hides the fact that individuals differ in their use of these goods. Some will require much more health care costs than others. Some will spend more

³¹ The tax in the Equality of Welfare Approach is calculated by equating the welfare levels; i.e. $W_m = W_p$. This yields $7000 - t = 10t \rightarrow t = 636$. The welfare level of MG-lovers is determined by $W_m = 7000 - t$. The welfare level of PG-lovers is determined by $W_p = 10t$.

years in the education system than others. Some (let's say: representatives of NGO's pleading in favor of a radical cause) will benefit from freedom of speech more directly than others. All of this is justified because *ex ante* – imagining ourselves as parties in an original position – we want to ensure that we have access to these goods for ourselves. A just basic structure is an insurance policy for necessary goods, and we accept differential benefits once we enter real life just as we accept them under any insurance policy. Indeed, we may accept making a net loss (one's tax contribution minus one's consumption) on some basic goods compared to a situation where we would have had no insurance and had to buy them privately. What I have done in this paper is to extend this kind of thinking to discretionary public goods. We may *ex ante* accept differential benefits on discretionary public goods provision as an insurance against being a PG-lover.

However, as with real insurance we may want to make sure that incentives for moral hazard are held in check. We may be worried about tendencies on the part of PG-majorities to use the majoritarian system to overburden the entire community with public goods claims. The worry is not so much that outcomes aren't strictly equal (that is all in the game), but the usurpation of all discretionary social resources for public goods consumption. This suggests a constraint on majoritarian decision-making that is different from the one defended by the mutual benefit approach: that a PG-loving majority should be willing to use its voting power to establish a fair compromise between its interests and that of a MG-loving minority. As a courtesy in the other direction, a MG-loving majority should be willing to help a PG-minority to reach some satisfaction of its preferences. All kinds of arguments may be used to convince the other side that this is reasonable. Here even considerations of intrinsic value (see section 3) may return to the table. This leaves open several different ways of organizing the democratic process. In this paper I have argued that discretionary public goods provision is legitimate if majority decision making reaches a solution that falls in between what would be generated under the mutual benefit approach or the equality of welfare approach. *How* exactly the process of public deliberation and voting is to reach such an outcome, can be left open. Complex matters of democratic culture as well as institutional structure, in different socio-historical contexts, would need to be taken into consideration to be able to say more about that. What has

been crucial for the argument here is that majority rule does not simply turn into a tyranny of the majority. This paper has confirmed in the context of public goods provision what we already know from other contexts -- that majoritarian decision-making is more helpful to balance different kinds of claims than thinking in terms of unanimity, but that an understanding of democracy that leads to a tyranny of the majority is an impoverished conception of democracy.

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