Abstract

This chapter discusses David Miller’s claim that the provision of public goods raises important issues of justice. Patten argues that the just state has a role in promoting the provision of public goods that would be systematically underprovided by the market. This applies to both ‘essential goods’ relating to education, public health, and the environment, and some ‘discretionary’ goods stemming from particular conceptions of the good. Patten is more restrictive than Miller in his account of essential goods, but more permissive in terms of the discretionary goods whose provision is a requirement of justice. The chapter argues that relying on voluntary schemes for the provision of public goods can result in a bias against ideas of the good life that presuppose collective action. States sometimes have good all-things-considered fairness-based reasons to provide discretionary public goods that are not valued by everyone and pay for them out of general taxation revenues.

Keywords

David Miller, public goods, distributive justice, markets, essential goods, discretionary goods, identity goods, free-riding, assurance problem, fairness

11

Public Good Fairness

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David Miller has made major contributions to a number of important topics in political theory, including social justice, market socialism, liberal nationalism, global justice, and the theory of democracy. I suppose an ideal paper for a volume such as this would offer a sharply critical discussion of his position on one of these big topics. But Miller has also been a scholar with quite extraordinary range. He has authored books on Hume and on anarchism, and has published papers on everything from altruism to violence. My paper is about one of the lower profile topics in Miller’s oeuvre—the provision of public goods.[[1]](#footnote-1) Moreover, I won’t be articulating a sharp disagreement with Miller’s views on this topic. I differ from Miller on a few points and will note these disagreements when they arise. But looking at it from a broader perspective, the paper is mainly an attempt to elaborate and amplify a position that Miller has argued for—that public good provision raises important issues of justice.

My central contention is that, under conditions to be specified, a state may be considered unjust when it fails to provide public goods that are widely—even if not universally—demanded by its citizens. Under the specified conditions, it is both permissible for the state to provide the public goods in question and it is a legitimate expectation of justice that the state in fact do so. A just state, on this picture, is not simply one that guarantees everyone a fair share of resources and then leaves the question of which goods get provided up to the disaggregated and uncoordinated decision-making of the market. A just state has a role in promoting the provision of public goods that would be systematically underprovided by the market. Justice properly understood does not have an individualistic bias. It should recognize that some of the things that people value depend on extensive coordination and cooperation with one another, and that one of the tasks of the state is to facilitate this coordination and cooperation.

Stated so bluntly, the claim I seek to defend may not seem especially controversial or newsworthy. There is a long tradition of arguing that the state’s *raison d’être* is the provision of public goods.[[2]](#footnote-2) The state’s core functions, to mention just a few, include securing law and order, maintaining roads, streetlights, and other infrastructure, providing public education, promoting public health, and protecting the environment. In each instance, the state is tasked with providing important public goods that would otherwise be underprovided by private actors. Except for some anarchists and libertarians, few doubt that a just state has at least some role in securing the provision of these goods.[[3]](#footnote-3)

The reason why state provision of these goods is relatively uncontroversial, however, is that they can all be given a plausible public justification that is independent of their being public goods. The fact that they are public goods is relevant to the claim that the state should deliver them—they would be underprovided by private actors—but the reason why they should be provided by someone in the first place lies in independent, publicly justifiable considerations.

The claim that I shall try to defend, however, extends beyond the case of public goods that can be given an independent public justification (what I shall call ‘essential’ goods). Some goods cannot plausibly be regarded as essential in this sense, but instead are merely goods that people want to pursue and enjoy as part of their conceptions of the good. I shall argue that, even for these ‘discretionary’ goods, there is a consideration of fairness that sometimes favours public provision or support. In the absence of state intervention, people who want these public goods can reasonably argue that they lack a fair opportunity to realize their conception of the good.

As we shall see, the boundary between essential and discretionary goods is a highly contested one. For many public goods, it is controversial whether provision of the good is justifiable on public grounds—whether members of the public can legitimately be expected to bear the costs of providing the goods even if they do not personally benefit. Even where there is some sort of connection between a good and an important public concern, the connection may be indirect and tenuous and there might be other preferable ways of supporting the concern in question. For instance, public fireworks displays might seem justified to some by the contribution they make to patriotism, which in turn might be thought to support the bonds of social solidarity that support a just society. To others, however, this connection between fireworks and justice will seem problematic in various ways (to be discussed below). From this second point of view, public fireworks would better be thought of as a discretionary good.

One disagreement I have with Miller concerns judgements about which goods should be thought of as essential and which as discretionary. Miller posits a significant category of ‘identity’ goods that, while not directly required by justice, can, in his view, be given a public justification. The size of this identity category leaves less to put in the discretionary category and makes it tempting to settle for a fairly restrictive account of the just provision of discretionary goods. For reasons I shall explain, I tend to be sceptical about (even if not totally dismissive of) this identity goods category. Since I am less likely than Miller to classify a good as essential, I face the following choice. Either I should accept a more minimal view of what the state can legitimately do, or I should argue for a more permissive and demanding account of justice in the provision of discretionary goods. As I have indicated already, I shall pursue (in the latter sections of the paper) the second of these alternatives.

11.1 Public Goods and Undersupply

Miller understands ‘public good’ in roughly the sense of the term favoured by economists—as a good that has one or more technical characteristics. For Miller’s purposes, the important characteristic is ‘non-excludability’.[[4]](#footnote-4) A good is non-excludable with respect to the members of some group if the following is true of it:

*Non-Excludability*. If the good is available for the enjoyment of anyone in the group, then it would be unfeasible or unacceptably costly to exclude others in the group from enjoying the good, even if those others have not made contributions to the cost of supplying the good.

On this definition, non-excludability, and hence publicness, is neither an inherent nor a fixed property of a good. Rather whether a good is properly considered public with respect to some group depends on contingent facts about how the good is supplied, as well as on normative judgements about whether proposed measures to exclude non-contributors are ‘unacceptably’ costly. For instance, whether an open-air concert in a public park can be considered a public good depends on the orientation and elevation of the stage, the quality and power of the sound system, and also on whether it would be normatively acceptable to fence off an area of a public park and charge people for admission into that area.

As we have seen, public goods are of special interest to political theorists and economists because of the suggestion that such goods might best be provided or supported by the state. The first step of an argument for such a proposition consists in the claim that a public good would be undersupplied were provision to be left up to the uncoordinated private decisions of individuals acting in the market and civil society.

In Miller’s treatment of public goods, and I think in most other discussions, it is presumed that ‘undersupply’ can be understood in one or other of two different ways. In one sense, ‘undersupplied’ means normatively insufficient. There is an adequate public justification for ensuring that a good be supplied at a higher level than the supply that would be anticipated under private provision. A second sense of ‘undersupplied’ is captured by the idea of Pareto inferiority. As a general matter, an allocation is Pareto inferior if there is a feasible alternative allocation that would make at least one person better off without making anybody worse off. For our discussion, we can say that a good is undersupplied in the Pareto sense if there exists a feasible scheme for providing more of the good, and for paying for that higher provision, that, on balance, leaves nobody worse off and at least one person better off. While these conceptions of undersupply might overlap, they are not coextensive. A good might be undersupplied in the normative sense even if some people who are asked to help pay for it are not expected to be beneficiaries. And a good might be undersupplied in the Pareto sense even if there is no independent public justification for supplying the good at a higher level.

As will become clear later in the paper, my own account of justice and public goods works with a distinct, third conception of ‘undersupply’. On the view I will propose, a good is undersupplied if it would be supplied at a higher level under conditions in which the people who value it possess a fair opportunity to realize their conceptions of the good. Undersupply in this ‘fairness’ sense is distinct from undersupply in the normative sense because no assumption is made that there is an independent public justification for supplying the good at a higher level. It is only because some people happen to value the good that the fairness consideration arises. As we shall also see, the fairness conception diverges from the Pareto conception because fairness does not insist, after all things are considered, that nobody end up a net bearer of costs.

Whichever metric of undersupply one adopts, the ‘non-excludable’ character of public goods helps to explain their vulnerability to undersupply.[[5]](#footnote-5) Not all public goods as such are vulnerable to undersupply. Some public goods might be costless or even pleasant to supply. Others might be so valuable to some people that it is worth their while to cover the whole cost of provision even if others cannot be excluded from also benefiting. And yet other goods might depend for their full provision on costly contributions from each and every beneficiary.

Public goods are vulnerable to undersupply when provision of a full supply of the good (in one of the above senses) requires *costly* contributions from *many* but *not all* beneficiaries. Under these conditions, given non-excludability, it becomes tempting for prospective beneficiaries to avoid contributing. Since full supply *does* require contributions from many people, individuals know that their making a contribution will not guarantee that the good is fully supplied. And, since optimal supply does *not* require contributions from all beneficiaries, individuals also know that the good may be optimally supplied even if they do not make a contribution. In effect, from the standpoint of each individual, whether a full supply is provided is to some degree independent of his/her decision to contribute or not contribute. Given that contribution is costly, and depending on the exact degree of independence,[[6]](#footnote-6) it is rational for each person not to contribute and the good will predictably be undersupplied.

The preceding analysis of what public goods are and why and under what conditions they are vulnerable to undersupply is in line with conventional accounts by economists and political theorists. While I have no objection to this account, I do want to highlight another kind of case of undersupply that does not fit easily into the analysis. This other case suggests that we ought to be interested in a class of goods—we might still call them ‘public goods’—that is broader than the set of goods characterized by non-excludability.

To see the other kind of case I have in mind, note that, in the above analysis, there are really two features of goods that drive the expectation that public goods will be undersupplied. One is non-excludability: it is because of this feature that individuals are tempted to free-ride—to reason that, if enough others make a costly contribution, they do not need to. The other is collective provision: the fact that the good is fully supplied only if many people make costly contributions. It is this feature that induces individuals to reason that there is no point in their making a costly contribution without assurance that others also plan to do so.

Significantly, there can still be vulnerability to undersupply if one of these features—non-excludability—is absent, so long as the other—collective provision—is still in place. Imagine a situation in which a number of friends are thinking about attending a large public festival. Given the time and money involved, they would not judge it worth their while to do so if they expect to experience the festival by themselves. But they would judge it worthwhile if they could experience the festival together. Unfortunately, nobody has determined a meeting place or time, and so the friends cannot be confident that they will meet up together if they go. Lacking assurance that attendance will be worth their while, many may elect not to attend. There is a kind of undersupply here in at least the Pareto sense, where the good being undersupplied is something like cooperative enjoyment of the festival. There is a feasible set of decisions that would leave some better off and nobody worse off. But it is unlikely that individuals would make these decisions absent a coordinating or assurance mechanism. Undersupply in the normative and fairness senses also seems possible in this assurance problem scenario.

In light of this possibility, I shall understand ‘public goods’ in a somewhat broader way than economists typically do. For the purposes of the discussion to follow, public goods are those goods that are characterized by non-excludability *or* by collective provision (or by both).[[7]](#footnote-7) Not all public goods in this broad sense are vulnerable to undersupply, but undersupply is a central enough danger for goods of this kind that it is worth exploring the normative implications. Under what conditions, if any, should the state provide, or support the provision of, public goods that are vulnerable to undersupply?

11.2 Varieties of Public Goods

As I noted earlier, Miller divides public goods into two main categories, which I called ‘essential’ and ‘discretionary’. Essential goods are public goods the support or provision of which can be given a successful independent public justification. Discretionary goods are goods for which such a justification is not available but which are valued by some persons in the community. By a ‘successful’ public justification, I mean a justification that has the right form and strength to be sufficient to establish that it is permissible to impose costs generally on members of the community to support or provide the goods in question, even on individuals who do not personally value those goods. By an ‘independent’ justification, I mean that the basic case for ensuring that these goods get provided does not rest on their being public goods that happen to be valued by many people. The fact that they are public goods may enter in at a subsequent stage to explain why it is that the *state* needs to do the supporting or providing.

The basic distinction here between essential and discretionary goods is familiar from other discussions of public good fairness. In his 1919 paper on tax justice, Knut Wicksell assumed that most public goods could be regarded as discretionary and, on this basis, argued that the level of provision of a particular public good, and the taxes imposed on different individuals to support that provision, should be calculated to ensure that every individual is a net beneficiary.[[8]](#footnote-8) Because Wicksell assumed that being the net beneficiary of a permissible government action implies that one would agree to that action if consulted, he called this the ‘unanimity principle’.[[9]](#footnote-9) At the same time, Wicksell did assume a background just distribution of resources, suggesting that a different principle would be operative when this assumption does not hold. And he allowed that goods that were not of benefit to present citizens, such as the repayment of existing foreign debts, could not be considered discretionary (even if their original acquisition was discretionary).[[10]](#footnote-10) For non-discretionary goods, a different principle of tax justice, e.g., one based on ability to pay, is more appropriate.

Rawls endorsed Wicksell’s ‘unanimity’ principle, and also drew a line between discretionary and non-discretionary goods. More explicitly than Wicksell, Rawls emphasizes that establishing and maintaining background justice might necessitate the provision of certain public goods as well as a system of transfer payments.[[11]](#footnote-11) For these goods and payments, the corresponding scheme of taxation is determined by the principles of justice.[[12]](#footnote-12) (In practice, Rawls expected this scheme would involve an expenditure or income tax). However, Rawls allows that there may be other goods that are not needed for justice but that are valued by some citizens. For these goods—discretionary goods, as I am calling them—Wicksell’s unanimity principle should be applied.

Miller takes over the Wicksell–Rawls dichotomy of essential vs. discretionary goods, but suggests drawing the boundary line between these types of goods in a different place. In Miller’s view, two different kinds of goods belong in the essential category. First, there are the goods that Rawls identifies: the goods that are needed to satisfy whatever principles of justice have been accepted. But, secondly, there are ‘identity’ goods,[[13]](#footnote-13) which while not directly required for justice, play an ‘essential role in sustaining the community, so that reasons can be given to anyone who is a member to support their provision’.[[14]](#footnote-14) By expanding the category of essential goods, Miller in effect shrinks that of discretionary goods, thereby narrowing the domain in which a principle like Wicksell’s might apply.[[15]](#footnote-15)

My own sense of where the line between essential and discretionary goods ought to be drawn is closer to Rawls than to Miller. While I do not object to a public duty category that is neither justice-based nor discretionary, I am not convinced that identity goods fall into this category. Miller suggests that identity goods might include a community’s language, its architecture and patterns of landscape, its natural beauty, and so on. If someone insists that she does not personally benefit from or value these features of her community, Miller thinks she should be reminded that ‘she benefits from belonging to a political community that is constituted in part by the values in question’.[[16]](#footnote-16) If the goods were to diminish or disappear, he adds, ‘the community could not exist in its present form.’[[17]](#footnote-17)

This argument strikes me as unpersuasive. It is trivially true that, if certain goods available in a community were to diminish or disappear, ‘the community would not exist *in its present form*.’ If the italicized phrase is dropped, however, the claim goes from being tautologically true to being clearly false. To many of its citizens, the US political community is partly constituted by the English language. But the US would continue to exist as a political community if its identity were to be decoupled from the English language, and if English were to share the spotlight with Spanish or with other languages. Likewise, even if it is granted that a person benefits from ‘belonging to a political community’, it does not follow that the person benefits from ‘belonging to a political community *that is constituted in part by the values in question*’. There could be any number of reasons why a person benefits from living in a particular political community, some having nothing to do with the availability of specific goods or the prevalence of certain values.

Miller is tripped up by an analogy he draws with a musical society.[[18]](#footnote-18) Let us grant that the society he describes would cease to exist if no effort was made to repair or replace worn-out musical instruments. By its very nature, the society is dedicated to musical performances. But political communities are different. There is no single end or goal to which they are dedicated and thus none of the features Miller considers—language, architecture, etc.—can be considered essential to their continued existence. Arguably, if a political community has any single trait that is essential to its value, it would be providing justice. But to the extent that the goods in question are necessary to support this trait, they could be subsumed under the justice category and there is no need for a separate identity category.

It is true that the disappearance or neglect of a particular good might weaken attachment felt by some people towards their community. A weaker attachment to the community might, in turn, affect their willingness to support and uphold institutions that realize justice. As Miller suggests, identity goods might be *indirectly* relevant to justice in this way.[[19]](#footnote-19) So perhaps there is a pragmatic sense in which we all do benefit from living in a community that supports certain goods after all. Without support for these goods, the community may fail to deliver justice, and justice is something we should all find valuable. This was the argument for state provision of fireworks displays that I mentioned near the outset.

A lover of airtight distinctions might object that this argument from identity to justice ends up blurring the difference between justice and identity goods advertised by Miller. Be this as it may, there is a deeper problem with this particular strategy for defending the support and provision of identity goods. Imagine that a substantial group of Americans were to regard the English language as so integral to their identities that, predictably, they would withdraw their support for various justice-enhancing institutions and policies if other languages were to assume a greater role. Granted there may be a pragmatic reason for accommodating the English-only preferences of the people in question. But this reason seems on a par with the pragmatic reasons we sometimes have to give in to blackmailers or kidnappers. We accommodate an immoral demand in order to avert an even greater evil.

It is not that the preference for English is immoral or objectionable. What is objectionable is letting one’s willingness to support justice institutions be conditioned on getting one’s way in the arena of language policy. Likewise, it would be objectionable for citizens who enjoy patriotic firework displays or admire certain architectural styles to withdraw their support for just institutions if the state were to opt not to provide or protect those goods. We can see this by imagining that the citizens themselves articulate such a demand: ‘Protect our beloved thatch-roofed cottages, or we’ll dismantle the welfare state.’ Again, there may be a pragmatic reason to give in, but as a public justification the argument does not pass what G. A. Cohen once called the ‘interpersonal test’.[[20]](#footnote-20)

I certainly don’t think it is right to say, as Miller does, that there would be *no* injustice in taxing everyone to provide identity goods not otherwise required by justice in order to secure stronger support for justice.[[21]](#footnote-21) Rather, it seems to me that there is some injustice—the same injustice that occurs when everyone is taxed to provide discretionary goods valued only by some—and this injustice gives the state reason to try to strengthen the commitment to justice of the citizens in question, even if in the meantime it is better to put up with the injustice in order to avoid a greater evil.

Notice that my divergence from Miller here is not empirical in character. In his work on nationality, Miller has suggested that there is an empirical connection between national identity and successful social democracies.[[22]](#footnote-22) Multicultural policies that weaken national identity are thus a danger to social democracy. Although one might dispute this empirical hypothesis, my concern lies elsewhere. Even if it is in fact the case that a monocultural natural identity provides support to institutions that realize liberal justice, there may be other more inclusive and even-handed forms of identity that *could* also provide that support. A liberal theory of justice should not prefer national identity as a principle of social solidarity over other more inclusive principles if those other principles are realizable and would mean less compromising of other liberal commitments.[[23]](#footnote-23)

11.3 The Unanimity Principle

So in my view it is not as straightforward as Miller suggests to expand the category of essential goods by adding in an identity category. Many of the goods that Miller considers as essential—the identity goods—should be regarded instead as discretionary.

At this point, my account of public good fairness encounters something of a dilemma. Either the account implies a fairly minimal view of what the state can legitimately do: it can legitimately tax people for the sake of goods they do not personally value only if those goods are needed for justice. Or the account must be supplemented by an argument showing that it would be compatible with justice to tax everyone to provide discretionary goods that are valued only by some citizens. Most theorists who have examined the issue, including Miller, have resisted the second of these alternatives.

The usual view about discretionary public goods is stated concisely by Rawls: ‘there is no more justification for using the state apparatus to compel some citizens to pay for unwanted [public] benefits than there is to force them to reimburse others for their private expenses.’[[24]](#footnote-24) From this claim, Rawls infers that the correct principle regulating government expenditures on discretionary public goods must be the benefit or ‘unanimity’ principle proposed by Wicksell: taxpayers must agree to the taxes needed to cover the costs of public expenditure on discretionary public goods ‘if not unanimously, then approximately so’.[[25]](#footnote-25) Although the principle is formulated by both Rawls and Wicksell in procedural terms—a democratic procedure deciding about expenditures on discretionary public goods should follow a unanimity decision-rule—the underlying idea is a substantive one. When background conditions are just, and a public good is not itself needed for justice, then justice can be reduced down to efficiency. Justice is satisfied so long as nobody is left worse off and at least one person is made better off.

With a couple of valuable caveats, Miller adopts essentially the same framework for thinking about discretionary public goods. One caveat is to suggest that the unanimity principle be applied to bundles of goods rather than on a good-by-good basis.[[26]](#footnote-26) Unanimity might be easier to achieve around the provision of heterogeneous bundles than it would be if each public good is considered in isolation. The second caveat is to insist that unanimity be regarded as a necessary but not a sufficient condition for justice. Miller thinks it would be unjust to tax people for unwanted discretionary benefits, but he doesn’t think that a tax-and-provision scheme that left everyone better off than they would be in the absence of the scheme should automatically be considered just. There might be some who are asked to shoulder only a light burden and end up benefiting a great deal, and others who are made to carry a heavy burden and end up with little or no net benefit.[[27]](#footnote-27) There are issues of distributive justice between benefiters, in other words, that are not addressed by the unanimity principle.

Even if Miller’s suggestion about bundling is adopted, it might still seem that the unanimity principle is an awfully tough standard. Is it realistic to think that there are any discretionary public goods, or bundles of such goods, that everyone in the community would regard as worth paying something for? I shall argue that the unanimity principle is too restrictive in certain cases, but this question makes it out to be more restrictive than it actually is. The question presupposes that any taxes that are entailed by state provision of a good must be *uniformly* imposed on all members of the community. But nothing in the unanimity principle entails this assumption and, indeed, each of Wicksell, Rawls, and Miller suppose that the most broadly acceptable tax/expenditure proposals would operate according to a benefit criterion whereby those who benefit more shoulder a greater share of the costs.[[28]](#footnote-28)

For instance, suppose that a public good costing $100 is provided to a three-person community. Person 1 expects to derive $75 worth of benefit from the good; Person 2 to receive $35 worth of benefit; and Person 3 no benefit. A tax scheme that charged $70 to Person 1, $30 to Person 2, and $0 to Person 3, would satisfy Wicksell’s principle. Nobody would be worse off, and Persons 1 and 2 would be better off. Given the payoffs, one might reasonably expect unanimous endorsement of such a proposal.

11.4 The Unanimity Principle and the Problem of Undersupply

It is hard to imagine the institutions and procedures through which decisions about discretionary public goods might actually be made in a manner that satisfies the unanimity principle. Rawls imagines a special ‘exchange branch’ of government with its own representative body charged with collating information on citizens’ preferences concerning different tax/expenditure proposals on public goods.[[29]](#footnote-29) This body might provide citizens with a schedule of different levels of provision and ask them to declare what costs and burdens they would be willing to accept for each level (perhaps on the condition that others are willing to pay too). The body would then calculate on the basis of this information what overall level of expenditure would be feasible and how the associated costs should be distributed. Some citizens would declare themselves unwilling to bear any of the costs of the policy being considered and they would not be charged. Others, however, might declare themselves willing to pay a share of some level of public expenditure and they would be billed accordingly.

The standard objection to such a voluntary taxation scheme, however, is that it would be undermined by widespread free-riding.[[30]](#footnote-30) In considering how much to declare themselves willing to pay for alternative levels of public good provision, rational self-interested individuals will take into account not only how much they value a particular level of provision relative to alternative uses of their resources, but also what difference *their* willingness-to-pay declaration will make in procuring a given level of provision. If they analyse the situation, they will notice that their declaration will make a significant difference in the costs and burdens they bear but have only a negligible impact on the level of public provision achieved. Seeing this, they will be sorely tempted to understate the value they attach to the good in question. In short, the reasons canvassed earlier for expecting public goods to be undersupplied in the market are also reasons to anticipate them to be undersupported by a voluntary tax.

This possibility of widespread free-riding poses a problem for the unanimity principle that is acknowledged by its defenders but left unaddressed.[[31]](#footnote-31) The unanimity principle assumes a straightforward relationship between benefit and agreement such that, if some non-zero tax/expenditure proposal cannot achieve universal endorsement, it must leave at least some people worse off than they would be with a lower provision of the good. But if some people are misrepresenting their preferences, this assumption does not hold. A given tax/expenditure proposal may fail to achieve unanimous approval, not because it actually leaves anyone worse off, but because some people *say* that it does.

Economists have long been aware of this problem and have explored different schemes designed to get people to reveal the true values and costs they associate with different levels of public good provision. The general view seems to be that, as things stand, preference-revealing schemes are not likely to prove practical, at least where large numbers of people are involved. The schemes that have been proposed would often be very costly to set up and administer, would have unrealistically demanding informational requirements, and could, in any case, only be expected to work very approximately.

I’ve emphasized free-riding here, which is related to the non-excludability reason for expecting public goods to be undersupplied. The problem for the unanimity principle can arise without free-riding, however, in situations of collective provision where there is an assurance problem. In these cases, individuals understate their valuation of a public good because they don’t want to end up being one of only a small number of contributors. As I suggested earlier, a tax scheme might try to address this problem through conditional taxes in which the tax is actually levied only if enough other people also volunteer to pay it. But it is not hard to think of cases in which the transaction costs of such an approach would be prohibitive. In the case of would-be public festivalgoers described earlier, it might be relatively easy for friends to get in touch with one another in advance to coordinate their plans. But imagine a state that does not designate a common weekly day off, instead letting every individual designate his or her own day off. Over time, a situation could easily arise where people have trouble coordinating social events. Schedules would be misaligned so it would be hard for people to do things together. Given the large and always shifting set of people who would potentially want to coordinate their behaviour together, the problem would not easily be solved by informal prior agreements. There is scope here for the state to get involved, but it is likely that there would not be unanimity. A majority might prefer to designate Sunday as the weekly day off, but a minority might have a preference for Saturday. Moreover, there might be people who genuinely don’t care that much about facilitating social events, and who would fare best without a mandated common day.

These problems with implementing the unanimity principle lead to an interesting but understudied question about distributive justice: What does justice allow and/or require in the way of the provision of public goods when there are a variety of different preferences with respect to those goods in the community and when the imposition of costs associated with such provision cannot be made to align perfectly with expected benefits? In particular, should the unanimity principle be relaxed under these conditions?

11.5 Should the Unanimity Principle Be Relaxed?

To address this question, let’s compare two broad families of tax schemes: voluntary schemes and compulsory schemes. Voluntary schemes insist on the principle that people should not have to bear burdens for the sake of discretionary goods unless they actually agree to do so (e.g., in their tax return).

Compulsory schemes impose costs on all members of a group, even knowing that some of those persons genuinely do not value the discretionary goods being supplied out of public funds.

To illustrate, consider two different schemes, each involving a series of votes. In the voluntary scheme, a vote is held on whether to supply the first unit of the public good, with each person who votes in favour of provision charged an equal share of the total cost of providing that unit. A vote is then held for the next unit, and then the next, and so on, until eventually the costs of voting for provision become so prohibitive that nobody votes in favour. Under the compulsory scheme, a similar series of votes would be held. This time, however, the decision to provide another unit of the public good requires majority support and the costs are shared equally among all taxpayers, however they voted.

For two different reasons, more units of the public good would be provided under the compulsory scheme than under the voluntary one. First, under the voluntary scheme, some citizens are likely to free-ride or refuse to pay because of uncertainty about the behaviour of others. For the free-riders, the marginal benefit from the *i*th unit of the public good exceeds the tax price they would pay in the voluntary scheme, but, thinking that their individual vote is unlikely be consequential, they vote against provision to escape the additional tax. For those lacking assurance, the marginal benefit from the *i*th unit would exceed the tax price *if* enough others who value the good also share in bearing the cost, but uncertain about whether this will occur they vote against provision to avoid the tax. Either way, less of the good would be provided under the voluntary scheme than under the compulsory one. Under the compulsory scheme, there is no possibility of free-riding and no concern about assurance.

Second, for some citizens the tax price emerging from the compulsory scheme will genuinely be greater than the value they attach to enjoying the *i*th unit of the good. So long as there is majority support for paying that price, the compulsory scheme forces everyone to pay it. With the voluntary scheme, there is provision so long as anyone votes in favour, but, because only those who vote positively pay the tax, the tax price rise is likely to rise sharply and become prohibitive at lower levels than under the compulsory scheme.

So which scheme should be endorsed? Should the unanimity principle be relaxed as the compulsory scheme implies or upheld by opting for the voluntary scheme? The clear defect of the compulsory scheme has just been identified: it would compel people to contribute to the cost of providing units of the public good from which they genuinely derive little or no benefit. As Rawls argues, if background conditions are just, this is objectionable. A person who is forced to devote some of her justly held resources to subsidizing other people’s preferences can reasonably complain that she does not have a fair opportunity to pursue and realize her own ends.

However, the voluntary scheme has a clear defect as well, which is also identified above. Where there is free-riding or a problem of assurance, the amount that people are required to pay for a given level of provision of the public good is *too high*.

A striking feature of the Rawlsian argument is that it assumes only that the *distribution of income and wealth* is just.[[32]](#footnote-32) It says nothing about the justice or fairness of the price structure that individuals face in spending their money. Income and wealth are not goods in themselves, however, but goods because of their exchange value. Thus, the prices at which exchanges take place ought to be considered just as important for fairness as the distribution of income and wealth. For instance, suppose it is unfair for two individuals, A and B, to have an unequal share of income and wealth. Then presumably it would also be unfair for the state to ensure equality but, in the absence of some appropriate reason, to add an extra tax on the goods that A values and then to use the proceeds to subsidize the goods valued by B. Again there would be a complaint—on the part of A—of being denied a fair opportunity to pursue and realize his ends (what I call a ‘fair opportunity for self-determination’).[[33]](#footnote-33)

The problem with the voluntary scheme is that the set of prices it implies is unfair: it is biased against preferences the successful pursuit of which depend on collective action and in favour of more individualistic preferences. In making this argument, I draw upon some remarks about *justice in pricing* suggested by Ronald Dworkin and endorsed by several other liberal egalitarian writers.[[34]](#footnote-34) Although this account is not endorsed by all liberal writers (many, including Rawls, simply ignore the issue of justice in pricing), it is sufficiently intuitive to merit further exploration in the context of public good provision.

Dworkin’s central insight is that a fair price for some good G ought to register the opportunity cost that any particular person’s ownership of G imposes on others. For instance, the fair price of some plot of land is based on how much others would be giving up when the purchaser becomes the owner of the land. Dworkin’s suggestion is that, the more that other people are forgoing, the more that the purchaser should have to give up of his wealth and income. By charging the purchaser more when others are forgoing more, others are given a better chance to acquire different goods instead, since there will be less of the purchaser’s money left for them to compete with.

Dworkin argues further that, for ordinary, private goods, this opportunity cost account of justice in pricing lends itself naturally to the use of market prices. What people would be prepared to bid for such a good in a market is a good measure of how much they would be forgoing were someone else to end up acquiring the good. All else being equal, if I prefer to consume a relatively scarce good which others would also like to consume, and there are no significant economies of scale in supplying that good, I would have to pay a relatively high market price for that good and would have fewer resources leftover to spend on other things. This seems right because I am asking others to do without something they value and make do with something else. If I were permitted to pay less than the market price for the good in question, then not only would others be losing out on a good they value but they would still have to compete with (more of) my resources in acquiring other things.

The problem with the voluntary scheme is that the tax price paid by individuals to secure an additional unit of provision of a public good does not reflect the opportunity costs imposed on others in the way that market prices do for private goods. The tax price implied by the voluntary scheme does reflect the opportunity costs of providing the public good imposed on those who genuinely would prefer the resources to be devoted to their own personal projects and ambitions instead. These citizens register the opportunity cost to them of devoting their resources to P by voting against that provision, thus driving up the tax price.

However, the voluntary scheme still does not accurately reflect the true opportunity costs imposed on others in the community. It fails to register the fact that some others—the free-riders and assurance-lackers—would also *benefit* from the provision of the good. The tax price misses the spillover effects or positive externalities enjoyed by these individuals associated with the fact that the good is public. To this extent, the voluntary scheme’s tax price is too high: it overstates the costs that are imposed on others by devoting resources to the provision of the good.

A just scheme for pricing public goods would reflect the *net* opportunity costs that devoting resources to those goods imposes on the rest of the community. The scheme must reflect (a) the value to the rest of the community of alternative uses of those resources. But it must also be attentive to (b) the fact that, because of free-riding and assurance problems, an accurate measure of who benefits from the provision of a public good is not captured by observing who would contribute voluntarily. A scheme must reflect both of these considerations to truly reflect what the rest of the community is giving up when a public good is provided at a particular level.[[35]](#footnote-35)

It is clear from this argument that two different demands of justice are pulling in opposite directions. On the one hand, from the standpoint of a just distribution of wealth and income, it seems unjust to compel people to shoulder costs and burdens for the sake of providing a public good to which they genuinely attach little or no value. This demand of justice pulls in the direction of a voluntary scheme and away from a compulsory one. On the other hand, justice also requires that individuals face a just set of prices—one which is not biased in favour of some ends and away from others. This demand could also be satisfied by a voluntary scheme but only if people honestly reveal their preferences and aren’t immobilized by a lack of assurance concerning the decisions of others. Where there is free-riding or a lack of assurance, however, the tax price implied by a voluntary scheme will be too high. In this context, there is a tug from justice in the direction of a compulsory scheme.

11.6 Public Good Fairness

Voluntary schemes of public good provision find support in the thought that, in a context of fair background conditions, it would be unfair to impose burdens on individuals for the sake of providing discretionary public goods that they genuinely do not value enough to make the burdens worth bearing. Those individuals would be denied a fair opportunity to pursue and realize their own preferences and ambitions.

However, individuals should also have the opportunity to translate their justly held income and wealth into goods needed to pursue their ends on terms that are fair and unbiased. When there is free-riding or a lack of assurance, voluntary schemes fail to satisfy this latter requirement. By giving free rein to the mechanisms that lead to undersupply of public goods, they end up overcharging citizens who would value a greater provision of those goods. In effect, so long as there is free-riding or an assurance problem, voluntary schemes are biased against ideas of the good life that presuppose collective action and in favour of more individualistic visions of the good. They deny a fair opportunity for self-determination to persons with collectivist preferences. Although compulsory schemes of public good provision plainly fail to satisfy the first requirement of fairness, they do a better job on the second than voluntary schemes.

In general, then, no unfairness-free policy is likely to be available: one or other requirement will typically be offended. The best that can be done in this situation is to try to balance the competing demands in a reasonable way. This balancing process should be sensitive to several different factors. A compulsory scheme becomes preferable,

1. the greater the potential for assurance problems or free-riding; and

2. the more consequential these tendencies are for the costs facing individuals who value the public goods in question and are willing to do their share.

A voluntary scheme becomes preferable,

3. the greater the number of people who attach little or no value to the public good in question; and

4. the more significant the costs that such non-valuers would be made to pay under a compulsory scheme.

On balance, this framework suggests that the state does sometimes have a good all-things-considered fairness-based reason to provide discretionary public goods that are not valued by everyone and to pay for them out of general taxation revenues. It certainly seems that justice would *permit* governments to provide discretionary public goods under certain conditions. Going further, it also seems that citizens valuing a particular public good might have a complaint of unfairness if the state elected not to provide that good under the conditions in question. Their complaint would, in effect, be that, all things considered, they are denied a fair opportunity for self-determination. On this view, then, justice not only permits governments to provide discretionary public goods under certain conditions; it requires that they do so.

This last conclusion is not offered as a rebuke to Miller’s valuable work on justice and public goods or even as an alternative to it. Like others who have studied the problem, Miller is aware of the dangers posed to the unanimity principle by free-riding and assurance problems. He simply brackets these difficulties or assumes that they can be fixed technically by some kind of preference-revealing mechanism. My contribution has sought to extend the previous work done on this topic by readmitting free-riding and assurance problems into the analysis and exploring what implications follow for public good fairness.

1. I focus especially on David Miller, ‘Justice, Democracy, and Public Goods’, in *Justice and Democracy: Essays for Brian Barry*, edited by K. Dowding, R. Goodin, and C. Pateman (Cambridge University Press, 2004). Miller also writes about public goods in: ‘Public Goods without the State’, *Critical Review* 7 (1993): 505–523; and in ‘Social Justice and Environmental Goods’, in *Fairness and Futurity: Essays on Environmental Sustainability and Social Justice*, edited by A. Dobson (Oxford University Press, 1999). [↑](#footnote-ref-1)
2. For a classic statement (cited by Miller in ‘Public Goods without the State’) see Adam Smith, *Wealth of Nations*, V.1.69. [↑](#footnote-ref-2)
3. Sceptics about state provision of public goods usually make two kinds of arguments. One highlights market-based mechanisms, such as assurance contracts, that would allow for efficient provision. The second concedes that the market would be an inefficient supplier of public goods but insists that, for different reasons, the state would also be inefficient. See David Schmidtz, *The Limits of Government: An Essay on the Public Goods Argument* (Westview, 1991) and Tyler Cowen (ed.), *Public Goods and Market Failure: A Critical Examination* (George Mason University Press, 1988). For critical discussion, see Miller, ‘Public Goods without the State’ and Hal Varian, ‘Markets for Public Goods?’, *Critical Review* 7 (1993): 539–557. [↑](#footnote-ref-3)
4. Miller, ‘Justice, Democracy, and Public Goods’, p. 128. [↑](#footnote-ref-4)
5. Miller, ‘Justice, Democracy, and Public Goods’, pp. 128, 130. [↑](#footnote-ref-5)
6. Independence comes in degrees when the production of a public good is subject to threshold effects: an additional unit is produced for every *n*th contribution. Potential contributors must then calculate the probability that their contribution is pivotal. All else being equal, the higher the value of *n*, the more independent the supply of the public good is from their decision to contribute. For discussion, see Miller, ‘Public Goods without the State’, pp. 509–510, and Shelly Kagan, ‘Do I Make a Difference?’, *Philosophy & Public Affairs* 39 (2011): 105–141. [↑](#footnote-ref-6)
7. In economies characterized by the division of labour, the production of most commodities is characterized by ‘collective’ provision. One worry, then, is that the proposed conception of public goods is overinclusive and effectively obliterates the distinction between private and public goods. However, the label is not important for my argument: I wouldn’t object to substituting ‘collective’ for ‘public’, for instance, or creating a three-fold categorization of ‘private’, ‘public’, and ‘collective’ goods. Note that commodity production under division of labour *would* likely give rise to undersupply if it were not for enforceable contracts and/or well-established markets: I wouldn’t invest in a factory producing pin heads if I didn’t have some assurance that others were producing pin bodies. Contracts might solve the problem of assurance more generally, except that high transaction costs and/or other values (e.g., trust, spontaneity) pull the other way. [↑](#footnote-ref-7)
8. Knut Wicksell, ‘A New Principle of Just Taxation’, translation by James M. Buchanan, in *Classics in the Theory of Public Finance*, edited by Richard A. Musgrave and Alan T. Peacock (St. Martin’s Press, 1958), p. 108. [↑](#footnote-ref-8)
9. I think this is what Miller (‘Justice, Democracy, and Public Goods’, p. 132) means in saying that the requirement that ‘everyone gains’ is ‘equivalent’ to the requirement of ‘unanimous support’. [↑](#footnote-ref-9)
10. Wicksell, ‘A New Principle of Just Taxation’, p. 79. [↑](#footnote-ref-10)
11. Rawls talks of ‘further’ public expenditures, beyond the baseline set by justice. See *A Theory of Justice* (Harvard University Press, 1999), pp. 249, 250. On the importance for public good fairness of assuming background justice, see also Liam Murphy and Thomas Nagel, *The Myth of Ownership* (Oxford University Press, 2002), pp. 77–78, 80. [↑](#footnote-ref-11)
12. Rawls, *A* *Theory of Justice*, pp. 246–247. [↑](#footnote-ref-12)
13. Miller calls them ‘Category B public goods’ but characterizes them as ‘defended on the grounds that they promote values that give the community its distinct identity, and bind its members together’. Miller, ‘Justice, Democracy, and Public Goods’, p. 140; see also p. 142. [↑](#footnote-ref-13)
14. Miller, ‘Justice, Democracy, and Public Goods’, p. 137. [↑](#footnote-ref-14)
15. In effect, there are three distinguishable categories of goods discussed by the authors mentioned in the text: justice goods, public duty goods, and discretionary goods. In addition to discretionary goods, Rawls emphasizes justice goods and Wicksell implicitly acknowledges them by assuming just background conditions. Wicksell recognizes the public duty category, illustrating it with the case of public debt obligations. Miller can be read as also recognizing public duty goods, and as illustrating this category with the case of identity goods. Liam Murphy and Thomas Nagel identify the same trifecta of categories of goods, illustrating the public duty category with examples such as the prevention and alleviation of major disasters, and support for intrinsic goods such as art (*The Myth of Ownership*, p. 81). I take issue with Miller’s account of identity goods, but I do not mean to dispute the possibility that there are public duty goods that cannot easily be subsumed into the justice category. [↑](#footnote-ref-15)
16. Miller, ‘Justice, Democracy, and Public Goods’, p. 138. [↑](#footnote-ref-16)
17. Miller, ‘Justice, Democracy, and Public Goods’, p. 138. [↑](#footnote-ref-17)
18. Miller, ‘Justice, Democracy, and Public Goods’, p. 138. [↑](#footnote-ref-18)
19. Miller, ‘Justice, Democracy, and Public Goods’, p. 138. [↑](#footnote-ref-19)
20. G. A. Cohen, *Rescuing Justice and Equality* (Harvard University Press, 2008). [↑](#footnote-ref-20)
21. Miller, ‘Justice, Democracy, and Public Goods’, p. 139. [↑](#footnote-ref-21)
22. Miller, *On Nationality* (Oxford University Press, 1995), pp. 90–96, 140. For discussion, see Patti Tamara Lenard’s contribution to this volume. [↑](#footnote-ref-22)
23. Miller and I may have a disagreement about what is *possible* in this area (as opposed to what *tends* to be the case). For my view, see *Equal Recognition: The Moral Foundations of Minority Rights* (Princeton University Press, 2014), pp. 32–33, and Sec. 5.2. [↑](#footnote-ref-23)
24. Rawls, *A Theory of Justice*, p. 250; Wicksell, ‘A New Principle of Just Taxation’, p. 89. [↑](#footnote-ref-24)
25. Rawls, *A Theory of Justice*, p. 250. [↑](#footnote-ref-25)
26. Miller, ‘Justice, Democracy, and Public Goods’, p. 133. For a similar suggestion, see Murphy and Nagel, *The Myth of Ownership*, p. 81. [↑](#footnote-ref-26)
27. Miller, ‘Justice, Democracy, and Public Goods’, p. 133. Murphy and Nagel, *The Myth of Ownership*, pp. 84–85. [↑](#footnote-ref-27)
28. Rawls, *A Theory of Justice*, p. 250; Wicksell, ‘A New Principle of Just Taxation’, p. 104. Miller, ‘Justice, Democracy, and Public Goods’, pp. 131–132. Murphy and Nagel, *The Myth of Ownership*, [Chapter 4](file:///C:\Users\Ownrr\Dropbox\Phil\Work\OUP\Butt_Politics\Manuscript\04-ButtEtal-Ch4%20-%20Copy.docx#LinkManagerBM_CHAPTER_vUYfmMbh), exploit this feature of the unanimity principle to argue that taxes levied to pay for public goods should be progressive. The intuition is that, all else being equal, a richer person will be willing to pay more for a marginal unit of some public good (e.g., street-cleaning) than a poorer person because the richer person will have an easier time paying for the private goods that compete with public goods for a person’s resources. [↑](#footnote-ref-28)
29. Rawls, *A Theory of Justice*, pp. 249–251. [↑](#footnote-ref-29)
30. Miller, ‘Justice, Democracy, and Public Goods’, p. 132; Rawls, *A Theory of Justice*, p. 250. Richard A. Musgrave, *The Theory of Public Finance* (McGraw Hill Book Co., 1959), [Chapter 4](file:///C:\Users\Ownrr\Dropbox\Phil\Work\OUP\Butt_Politics\Manuscript\04-ButtEtal-Ch4%20-%20Copy.docx#LinkManagerBM_CHAPTER_vUYfmMbh). [↑](#footnote-ref-30)
31. Rawls, *A Theory of Justice*, p. 250. [↑](#footnote-ref-31)
32. Rawls, *A Theory of Justice*, p. 250. [↑](#footnote-ref-32)
33. Alan Patten, ‘Liberal Neutrality: A Reinterpretation and Defense’, *Journal of Political Philosophy* 20 (2012): 249–272; Patten, *Equal Recognition*, [Chapter 4](file:///C:\Users\Ownrr\Dropbox\Phil\Work\OUP\Butt_Politics\Manuscript\04-ButtEtal-Ch4%20-%20Copy.docx#LinkManagerBM_CHAPTER_vUYfmMbh). [↑](#footnote-ref-33)
34. Ronald Dworkin, *Sovereign Virtue* (Harvard University Press, 2000). See also Will Kymlicka, *Liberalism, Community and Culture* (Oxford University Press, 1989), [Chapter 9](file:///C:\Users\Ownrr\Dropbox\Phil\Work\OUP\Butt_Politics\Manuscript\09-ButtEtal-Ch9%20-%20Copy.docx#LinkManagerBM_CHAPTER_m1MVm3xj) and Philippe Van Parijs, *Real Freedom for All* (Oxford University Press, 1995), Sec. 2.7. [↑](#footnote-ref-34)
35. For Dworkin’s view, see his discussion of the ‘principle of correction’ in *Sovereign Virtue*, pp. 155–158. [↑](#footnote-ref-35)