

The Free Provider Problem: Private Provision of Public Responsibilities

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A persistent assumption in work on philanthropy is that non-coerced private action is superior to taxed redistribution. The casual assumption relies on the thought that coercion is presumptively something to avoid, so if a voluntary organization can effectively deliver a good, we should favor that scheme. This presumption can seem hard to resist. If free individual choices promote redistributive ends, surely this should be preferred over state taxation. The less coercive means the better.¹ If this is right, we have strong reasons to encourage non-governmental organizations to pick up redistributive work that the state is currently performing. In this paper I will challenge this assumption. But I won't rely upon the stock objection to having the state hand-off redistributive efforts to non-state actors.

My argument doesn't appeal to the free rider problem. If others can provide a collective good without our hand, why should you bother? Enter political institutions. They are ready-made to ensure that no one avoids doing one's share. So it's natural to lean on this form of argument. Insisting that the state provide a good because of its enduring safeguards against free riding is perfectly respectable. But the free rider problem doesn't supply an all-purpose solution. It fails to unify our reservations about private action displacing public responsibilities. And, I will argue, it obscures a moral reason that is agent-relative – one capable of naming democratic citizens as the only satisfactory provider of a good. This points to a neglected feature of the free rider problem as it is normally understood. It makes no difference to free riders whether *they* play any role in the effort. They think in exclusively *agent-neutral* terms. They want something to happen, but this wish makes no reference to them as an agent. Their alarming mantra — “Why does it need to be me?” — signals an indifference towards the identity of the provider of a good. They are content for other agents to bring about their preferred end.

The *free provider problem* inverts the structure of the free rider problem. Suppose you aim to contribute to a project that you take to be a public responsibility, one that can only be discharged

by you and your fellow citizens. Your description of this responsibility makes essential reference to your identity. It is an agent-relative obligation. But suppose this effort is preempted by a private effort. The free provider problem, then, arises when non-public actors put democratic citizens out of a job that we take to be ours. The concern that private philanthropy has the potential to undermine the public character of distributive justice isn't new.² But the moral reason that I uncover here is novel. To be sure, when public institutions systematically fail to discharge their distributive obligations, we may have reason to welcome free providers. Unjust conditions make the free provider into a non-problem. But even when the voluntary sector permissibly takes up the slack from noncompliant political institutions, the free provider problem can explain our sense that there's a moral remainder. It can even point to conditions that we may place on private provisions that are auditioning as public responsibilities. I argue that this explanation is far less clumsy than the usual appeals to the "warm-glow" associated with philanthropic giving.³ This fails to notice that principles of justice aren't indifferent to who is doing the redistributive work. In a society where major projects of justice are offloaded to the voluntary sector, the relationships among citizens will be impaired. Material inequalities may be mitigated, but third-party redistributive work can't repair how any one citizen relates to another in need. State provision isn't, then, a second-best

The argument plays out in five parts. The first three sections each run an objection to private provision of select public goods. I argue that the three arguments on offer – the free rider, domination, and communal arguments – share a common liability. While they can seem to provide agent-relative reasons, this appearance is misleading. Once formalized, none of them makes essential reference to the identity of the goods provider. Each is only able to name the state as a contingent provider of certain public or directed goods. This casts light on a structural feature of principles of distributive justice that have been overlooked. What has been called the "central question of ethical theory" has found little notice among theorists of justice.⁴ The fourth section offers an argument for the collective, democratic provision of certain goods. The free provider

objection can explain our intuitive dissatisfaction with the private efforts to satisfy distributive responsibilities. Our analysis reveals a neglected property of egalitarian reasons: they are ineliminably agent-relative. We must satisfy them together through our shared political institutions. The moral root of my argument has a democratic character. Only public actions, I argue, are capable of speaking in the name of all citizens. No third-party, however reliable or sincere, can serve as a genuine surrogate.

The final section turns to institutional debates about the relationship between the voluntary and public sectors. The extensive work on public provision “crowding out” private giving has directed our attention away from the opposite concern.⁵ When a voluntary association auditions as an agent of distributive justice, it isn’t capable of addressing the impaired relations of inequality among citizens. Private actions can alter the distribution of our resources or welfare. A billionaire may fund a public school district. A foundation may reduce homelessness. A charity funded in small dollars may provide health care to millions. But, if my conclusion follows, private efforts to satisfy distributive responsibilities are always incomplete. Philanthropic giving – large or small — doesn’t put citizens into egalitarian relationships with their fellow citizens in need. Justice creates a jobs program for democratic citizens that can’t be outsourced.

1. The Free Rider Objection

What’s special about satisfying obligations through shared coercive structures? The most obvious answer turns on the state’s special capacities. We structure our political institutions to overcome collective action problems. With their coercive powers and authoritative commands, only states can provide the kind of assurance distributive principles demand. Coordinated, collective beneficence is structurally vulnerable. First, individuals will be tempted to hitching a free ride on the collective effort of others. This becomes acute when they notice that their small contribution will not be decisive. They will have reason to channel it to other discrete acts that are not

dependent on the coordinated actions of others. Second, the commitment of individuals who wish to be beneficent may turn upon their assurance that an adequate number of other persons will join them to bring about their large-scale project. Even the purest altruists have reason not to invest their beneficence budget on a project without publicly checkable assurance. They needn't desire to free ride, only to commit in a conditional way.⁶ To see its underlying structure, we can lay out the argument in its barest form:

The Free Rider Objection

Premise 1. Principles of justice require that good X be provided.

Premise 2. Absent state action, some citizens will ride free, and the good will be underprovided.

Conclusion. So, the state must provide x.

This formulation leaves open the kind of good at stake. The free rider objection doesn't require that good x be one that meets the official dual criteria of public goods: non-excludability and non-rivalry. It will suffice that the good is a requirement of distributive justice. We can start with the first premise. It makes clear the agent-neutral character of the argument. Principles of justice require that certain distributional patterns be met. But they don't yet point fingers at any particular agent. What makes the arms of the state the default actor is the second, empirical premise. The argument picks out a type of agent. It tells us that distributive principles can only reliably be satisfied by an institutional agent with a stipulated set of powers that can dissolve free riding problems. It rules out agents who fail to pass this functionalist test – you and me, and the associations that we voluntarily join and leave will chronically underprovide.⁷ After this process of elimination, the argument concludes with a single agent capable of providing the good. The state is the last agent standing. So, when Michael Walzer argues for the unique sustainability of communal provision, he is invoking an argument of this form. Only providing goods collectively, he argues, can “build the kind of community that can sustain the provision.”⁸

This problem drives the chronic worry that non-state actors will underserve justice. John Stuart Mill thought that philanthropists were in the grip of an error-theory. They thought that their

private efforts could, if coordinated effectively, produce a more just society. The mistake of “[r]eformers and philanthropists [was to] nibble at the consequences of unjust power, instead of redressing the injustice itself.”⁹ His argument is heavily indebted to a series of empirical premises about the durability of coercive, collective guarantees. This same argument has led contemporary political philosophers to take it for granted that whatever the correct theory of distributive justice – whether the many variants of sufficiency, equality, or priority – that the satisfaction of distributive principles is something that the democratic state must itself do. G.A. Cohen takes this for granted, holding that “of course it is better for the state to satisfy principles of justice.”¹⁰ He appeals by shorthand to the “awesome information/coordination problems” that would make private action in service of distributive principles unreliable or even impossible. For him, we simply can’t imagine the government abandoning “its service to the difference principle in favor of replacement of that service by private-citizen action.”¹¹ Cohen is confident enough in the force of free rider problems to cut off his argument against private provision here. But this leaves open the possibility that his empirics are wrong. Suppose private provision of certain goods and services were capable of bringing out distributions consistent with a theory of justice. Then we would be officially committed to the view that there are no outstanding debts – nothing that would still be owed by democratic citizens through their state.

2. The Domination Objection

There will always be free riders among us. My point isn’t that this objection normally fails. If anything, the free rider objection has been too successful. Its attractiveness has concealed the more morally fundamental reasons we have for thinking of distributive principles as naming *us* in some fundamental way. We have seen how the free rider argument turns on empirical claims about state capacity. But suppose our intuitive worries about non-state provision survive the falsification of these empirical claims about the state. This would be evidence of another objection hidden from plain sight. To identify it, we can walk through a garden patch, imagining cases constructed to

diagnose the limits of private attempts to satisfy distributive principles. Imagine a state without any redistributive laws. Let X be the justifiable distributive profile for this society. Now imagine that X is satisfied by a series of non-state agents. First consider

The Benefactor: A single, fantastically wealthy individual distributes resources to achieve pattern X .

There are a number of reasons for persisting intuitive dissatisfaction. This case makes vivid the difficulty of being at the whim of another. Without protections of its own, the imposed terms of interaction are putting individuals in the position of supplicants. They are also allowing one individual to wield enormous power over recipients of basic material goods. Philip Pettit puts the concern forcefully:

Why not just provide incentives – for example, tax concessions – that will motivate the wealthy and powerful to help the needy? Or why not just rely on people’s natural philanthropy to cater for the needs of others? Perhaps those in physical need will be better off if they can have recourse to privately funded kitchens and shelters, and perhaps those in medical and legal need will be better off if they can enjoy the pro bono services of philanthropic professionals.¹²

The civic republic tradition supplies us a reason for public provision that goes beyond the free rider objection. Even if we found an agent who was as empirically reliable as the state – say a private foundation like The Benefactor – our worries would persist. Those in need of the most basic goods would have to rely on the good-will of voluntary giving of private actors. We can put republican resources to work in this argument:

The Domination Objection

Premise 1. Principles of justice demand that good X be provided without domination.

Premise 2. The state is the only agent that can provide the good without domination.

Conclusion: So, the state must provide x .

This argument registers the point of view of the recipient of a privately provided good. It takes seriously their vulnerability of those in need to those offering largesse. Democratic citizens cannot allow individuals to be subject to the whims of private entities. Like its previous iteration, the domination objection continues to take on an agent-neutral form. It places a distinctive constraint on *how* a provider may act, and it claims that the state is uniquely placed to avoid this constraint.

But it's not obvious how it can vindicate the moral claim in Premise 2. We can undermine the plausibility of that premise by altering the case:

The Endowed Trust: A massive, legally unalterable endowed trust distributes resources to achieve pattern X.

The amendment is simple. Eliminate the flesh-and-blood, living benefactor, and test our reactions. When we look at the state's books, we see a legal system that is compatible with the libertarian system of natural liberties. But its distributional profile contains no individuals in abject conditions. Say the endowment is invested in the safest available funds, and it is administered in an impeccably professional way. If we worry that this endowment represents a single point of organizational failure, we can pepper the society with a series of separately invested endowments. The trust can be broken up into a thousand points of distribution. So the domination objection may turn upon an over-strong premise. It attempts to pick out the state as the appropriate agent of justice, performing a process of elimination. But it isn't obvious that it succeeds at eliminating all candidate agents.

3. The Communal Objection

A third objection directs our attention to the social meaning of goods. We can challenge private attempts to provide certain goods on the grounds that it corrupts how we value them. On this view, whether education or health care is just another market good or a publicly-provided good is a momentous choice. A good should be provided by the state if and only if leaving it to the private or voluntary sector will undermine its proper meaning. For it to work, the argument demands that we inspect the role that a good plays in the life of a community. We start by asking what makes a good something that promotes our interests, or that we have reason to want.¹³ Then we can determine whether some good – whether college diplomas or votes — is being distributed in a way consistent with its social meaning. In cases where the meaning of a good would be corrupted if left to the market or the voluntary sector, the state has a reason to provide it directly.¹⁴ Let's place this argument into a now familiar form:

The Communal Objection

Premise 1. Principles of justice require that good *x* be provided in a way consistent with its communal meaning *y*.

Premise 2. If good *x* is provided by a non-state actor, it wouldn't mean *y*, and public support for *x* then won't be sustainable.

Conclusion: So, the state must provide good *x*.

The communitarian nerve behind this argument is simple. Our collective actions are both informed and checked by their impact on the way we value goods. It's not enough to turn to political institutions because of their reliability, or even their ability to avoid dominating the citizenry. The appeal of this argument lies, I think, in its more direct argument for collective provision than our previous candidates. The state doesn't just happen to be well-placed to thwart free riders or preempt dominators. There's nothing accidental about its principal role in our story of collective provision. Instead of appealing to negative properties of the state, the argument takes a constructive turn. If we look closely, we can see an internal connection between communal provision and principles of distributive justice. This points to a morally more fundamental reason why certain goods – public police protection, food stamps, and health care – are non-accidentally projects of the citizenry. For instance, we strongly resist allowing wealthier communities to “top-up” their police protection by private payments. Here the communal objection seems to have considerable force, since this kind of private provision turns our idea of the meaning and point of law enforcement into a protection racket.

The difficulty with this argument should come as no surprise. We may not find the empirical assumption in its second premise convincing. For one thing, it challenges private provision for undercutting social solidarity. Michael Walzer argues that distributive justice is conceptually linked with collective provision in a tight-knit way: “Political community for the sake of provision, provision for the sake of community: the process works both ways, and that is perhaps its crucial feature.”¹⁵ To see how this argument works, consider public education. Once the meaning of education becomes assimilated into our omnibus category of “consumer goods,” we are less likely to see it as *our* responsibility as citizens to provide. The communal objection is most effective in

cases where buying and selling of goods run against our ideal of equality. It is plausible to think that a voucher system of educational provision could weaken the shared meaning of education. When communal provision becomes indirect, we may worry that it won't be sufficient to sustain an educational system.

The communal objection has more difficulty explaining what's troubling about philanthropic giving in support of publicly provided services. So, when a billionaire philanthropist covers 81 percent of Newark's \$998 million annual school budget, the communal objection worries that this will undercut the meaning of education as a public good. But it isn't clear that larger-scale private giving to public schools has this effect — especially when the childless benefactor doesn't directly benefit.¹⁶ Putting aside this one-part conceptual and another-part empirical question of communal meaning, it isn't clear that the objection makes contact at all in this case. Is this philanthropist corrupting the good of education by buying and selling it for money?¹⁷ It's possible that big-ticket infusions of private funds into publicly-provided goods will have the opposite effect on the meaning of the public good, strengthening the public's view that this should be publicly-provided – if privately-funded. There is one way the communal objection continues to have force. If acts of largess like this one undermined the public view of education as an *entitlement* of justice, rather than a choice of priorities of citizens, then it could show what is troubling about private gifts serving in the place of funds from the public treasury.

What is attractive about the communal argument, I think, isn't its reliance on a community's shared meanings about goods. The argument stands out for its attempt to identify the essential providers of a good: the community. But notice that, by this metric, the argument falls short. There is nothing built into its first premise that points at the state as the necessary provider of certain goods. If a community held that the proper way to value good *a* was to distribute it through the Benefactor and good *b* through the Trust, the argument has nothing more to say. We can further pressure its second premise by imagining a distributive mechanism that lacks any democratic

pedigree. Suppose that, instead, it possess the relevant epistemic powers to determine the correct social meaning of any good:

The Meaning Board: For each candidate collective good, an expert panel of rich interpretivists determines the appropriate agent for distributing resources to achieve pattern x in conformity with social meaning y .

Whether democratic citizens are identified by the argument turns on whether our provision of the good preserves its shared meaning. But this gets the direction of the argument precisely wrong. We began with the intuition that certain goods are agent-relative. But the communal objection only takes that claim seriously insofar as any given community accepts it. It relativized a judgment that doesn't seem to turn on the subjective preferences of any community. Most of us don't want to allow the argument's second premise to be hostage to what any given community thinks is meaningful about a good. If a political community didn't change its shared meaning of law enforcement after its richest communities obtained extra-strong protection, we wouldn't find this practice any less objectionable.

Let's review our path through the garden patch. My weaker claim is that these three objections have concealed an argument that has considerable force. Along the way, I've claimed that objections have problems explaining what is troubling about private displacement of public responsibilities. To make good on this charge, I argued that available challenges to private provision of public goods are, when pressed, agent-neutral. Of course, each argument *concludes* that the state is the rightful provider of justice-implicated goods. But the shared structure of each argument makes them vulnerable to the charge that they fail to authenticate the state as the prime mover of distributive justice. This stands in contrast to my version of the objection, which will attempt to introduce agent-relativity more directly. We'll turn to that task now.

4. Free Provider Objection

The free provider offers something for nothing. We get some relief in shouldering the obligations of distributive justice, and the provider experiences a warm glow. Once we switch off the force of the three objections above, is there any remaining problem? I will argue there is. The relief that we experience from free provision can be illusory. If distributive obligations are agent-relative, then it's far from clear that another agent can satisfy them. Philanthropists cannot serve as justice surrogates. If they suppose that their giving can make some part of their society just, they face a paradox not unlike Zeno, whose arrow never reaches its destination, because it always travels halfway to its target. But my view of principles of justice as naming democratic citizens can seem excessively "hands on." After all, most of the actual work of the welfare state isn't performed by any of us in our role as citizens. We authorize others to carry out these tasks. Why can't we authorize the philanthropist to provide a good on our behalf?

Consider an analogy with reparative justice. If I have wronged you and owe you material compensation, I am not relieved of this obligation when an anonymous benefactor writes you a check for the exact amount that I owe. Suppose our benefactor has included a card with the check. It reads: "I send this check in the name of Eric Beerbohm for his past wrong." There is an obvious way that this gesture backfires. The benefactor has no relationship to me. I haven't authorized him to do or say anything on my behalf. The victim of my wrong may have greater material resources now, but the moral complaint against me persists. Even if I had asked the benefactor to make an anonymous donation in my name, I think it's clear that this proxy provision doesn't erase the moral books. There is a directed character to liability claims that doesn't allow them to be substituted by a willing or able third-party.

Why think that principles of justice are agent-relative in this same way? For one thing, it can explain the intuitive remainder from earlier. It wasn't enough to prevent private provision from enabling free riding, dominating and corroding social meaning. If we continue to be troubled by

private provision of goods that are entitlements of justice, we owe an explanation. Perhaps the problem with free provision is that it denies us the experience of solidarity – of engaging in projects of meaning that are larger than ourselves. Robert Nozick offers an argument from solidarity:

There are some things we choose to do together through government in solemn marking of our human solidarity, served by the fact that we do them together in this official fashion and often also by the content of the action itself.¹⁸

We express something – we place our “solemn mark” upon it – through collective provisions that guarantee that individuals do not immiserate under our shared coercive terms. When we refuse to prevent severe deprivation by acting together as democratic citizens, we downgrade the meaning of this guarantee. This account of what’s distinctive about joint state action runs against the economic view of the welfare state, which performs the same thing as a market. Both market and public provision are performing the same function: they enable mutually beneficial forms of cooperation.¹⁹ The state, on this view, is nothing more than a non-profit with an army. But this picture of public action misses the distinctive watermark of co-citizens acting jointly. It’s easy to dismiss this argument as placing too much weight on the expressive value of collective actions.²⁰ But I don’t think it needs to be understood this way. The value of official joint action needn’t consist in what it says, but what we do *qua* citizens.

We can accept the distinctive moral properties of joint official action without accepting the solidarity argument. For Nozick treats it as an end of citizens – a kind of democratic good that we crave to experience. In my argument, official joint action serves as a necessary means for satisfying our obligations. This is because the state is typically the only agent capable of serving as an agent for every citizen.²¹ We can now put the free provider objection in this way:

Free Provider Objection

Premise 1. Principles of justice require that good *x* be provided in the name of democratic citizens.

Premise 2. To act in the name of democratic citizens, an institution must have universal membership and democratic credentials.

Conclusion. So, absent a non-state agent with naming powers, the state must provide it.

This argument treats principles of justice as agent-relative through and through. Premise 1 identifies the individual citizen as the obligation bearer. But notice that the argument doesn't assume that the state is the only joint mechanism by which we can satisfy principles of justice.²² In principle, we could form non-coercive institutions that met the conditions of Premise 2. So if there's an obligation that only you and I must satisfy, we should look for an organization capable of carrying out this obligation by proxy. This explains the concern that free providers aren't able to perform this function. But it doesn't follow that the state is, at least in principle, the only institution capable of serving as our proxy agent. So it's worth describing a non-state entity that meets these criteria without coercion:

The Coop: Every member of society voluntarily joins and donates to a democratically-run, private association that achieves pattern *X*.

The Coop's members are convinced that the principles of justice apply to them not just as lone individuals, but as participants in a shared activity. They join together, absent coercion, and set up a reliable system for ensuring that your favored distribution holds. They view this collective project as an entitlement. They even pride themselves that they provide this entitlement through non-coercive structures: "We don't *need* to threaten our co-citizens at gunpoint to achieve pattern *X*." What better than to satisfy distributive principles without state's arsenal? The Coop challenges Thomas Nagel's assumption that "securing justice through legal shaping of the mechanisms by which private property is transmitted should be our ideal."²³ Under realistic conditions, you may see a tax-and-redistribute policy as a working ideal. But if we relax the empirical conditions, it is hard to resist the thought that the Coop embodies the dual values of democracy and equality.²⁴ The Coop, then, is capable of avoiding the free provider objection. This challenges the oversimple idea that obligations of justice aren't the kind of things that individuals can satisfy as private actors. We shouldn't downplay the fact that their membership in this organization is purely voluntary. I suggest that the Coop, with its universal membership and democratic character, is uniquely capable of acting in the name of its members. Ordinary associations cannot perform this role. You can insist

that we never applied for membership. They lack standing to claim that they are an agent and you are a principal. I can politely ask you not to put down your conspiracy theories when we co-sign a birthday card together.²⁵ In this context I just haven't authorized you to ascribe your pet theories to me.

The contemporary state has been described as an insurance non-profit with a standing army. We've described a private association that meets all the necessary conditions of public action – full membership combined with democratic organization – without the coercive features that we normally need to guard against advantage takers. The Coop challenges a persistent conviction of egalitarians: that we focus on principles of justice applied to the lone, virtuous individual *or* the institution as a whole. Debates about public or private attempts to bring about justice have taken on a strictly first-personal character: What should I do, *on my own*, to exhibit justice the particular wager choice that I face? Should I bargain for a higher salary?

The first-person plural is no less political. This is the site that I think has been neglected by theorists of distributive justice. We can accept Susan Moller Okin and G.A. Cohen's influential argument that principles of justice ought not be confined to the ballot box.²⁶ In the background of that debate was a durable assumption. Both sides accepted that private action would badly fail to achieve a justifiable distribution of goods. The role of the individual ethos of justice was comparatively modest. It would fill in gaps that the official elements of the basic structure would not be able to penetrate. Cohen held that "private action *supplements...*and enhances the effects of public action."²⁷ If we accept that many of our individual choices as market participants and family members are non-coercible, the role of the ethos was to make up for the limits of state power. The focus becomes on whether the individual who believes in equality can demand incentives that are inequality-producing. It focused our attention at the discrete attitudes of any given individual, generating a research program in "substantive virtue theory."²⁸ The debate framed the choice

between uncoordinated individuals who incorporated principles of justice in their labor decisions and the shared terms of political institution. The political became intensely personal.

If, however, you and I can interpersonally violate principles of justice in our everyday lives, this opens the possibility that individuals will jointly and non-coercively produce distributions that satisfy – partially or wholly – the profile set by a theory of justice. When non-state actors succeed in bringing about the correct distribution, should we care whether the *agent* of justice is the state or a non-state actor? Posing the problem this way complicates the longstanding debate over the site of distributive justice. When you and I come to internalize an egalitarian ethos and begin to organize our shared practices around this ethos, we may gradually move the distribution closer to the correct pattern. The insurance argument casts doubt on the chances for your success. But for our purposes, the Coop only needs to be intelligible, not empirically likely. For a more local version of homegrown reform without coercive structures, consider this tale by A.J. Julius:

The Movement. Suppose that men and women could erase those differences [in power between men and women] by acting, against habit, to reshuffle their usual roles in household and wage labor...Suppose that many other men and women are making the switch, so that by following their lead I could combine with them to refashion sex roles at large.²⁹

He concludes that you should make the switch, and the obligation is a kind of compound requirement. What is unclear is why the presence of “many others” ready to make the switch bears on your decision. The most compelling explanation would stress the accessibility of a joint intention to reform an unequal practice. You have the reasonable shot of participating in a joint action of reform, not a solitary act of expression. When you change the terms of your marriage and your wage negotiations to stand as equals, you see yourself not merely as acting locally, but changing a large-scale practice of gender subordination. You are entitled to see your action in that way because it can be credibly characterized as a shared action – by “following the lead” of others you already have some modicum of assurance that this joint action have a non-trivial probability of success. If you succeed in this elaborate joint enterprise, how does this non-state act compare to a state-

enacted version of this reform? Like the proud member of the Coop, you might stress that your refashioning of sex roles happened in an intentional, but “organic” way. Its driving agents were individuals combining together to satisfy a distributive principle – that the respective power of men and women in marriages was equalized. Even if democratic institutions could have satisfied this same distributive principle without acting on the threat of coercion, the threat always resides in the background.

Let’s take inventory of the claims in this section. We can now explain the general neglect of agent-relative considerations in distributive justice in two ways. First, the empirical claims of the insurance argument made the democratic state seem like a *default* agent, the natural vehicle for discharging distributive obligations. To see whether there was another value in the background, we put aside the empirical claim that only the state is capable of producing the patterns specified by distributive principles. This brought into focus independent moral intuitions for thinking that certain principles of justice are directed at you and me. We were left with the sense that these obligations fall on us, as democratic citizens, to achieve through our shared coercive institutions.

Second, we noted an overstrong dichotomy that has framed debates about distributive justice. The longstanding attempt to locate the coordinates of the “site” of justice put the problem in a way that directed our attention away from organized reforms carried out by individuals through non-state mechanisms. It encourages us to view ourselves first-personally – as one among millions. From this perch you aren’t able to imagine satisfying distributive principles on your own. Maybe you’ll attempt to “do your bit,” demanding a salary lower than you can command in the market, but all-too-familiar free rider problems will make it unlikely that your honoring an egalitarian ethos will lead to significant change. In this section I have suggested that it is the first-personal plural perspective that made possible in our imagined cases. It can be important for *us* to discharge the obligations issued by distributive principles, and these two organizations seem capable of speaking and acting on our behalf. They offered the representation of the state without the coercion.

The Coop and Movement are mere thought vehicles. They are designed to show how one can simultaneously solve the free rider and the free provider problems. In actual life, we are left with one organization that has this capacity to “name” each member. When a private association improves the distributive profile of our society, there’s no doubt that they improve the welfare of individuals. But it doesn’t follow that *your* and *my* relationship to these individuals is repaired. We can still fail to relate to them as equals, since their particular claims on you and me haven’t been answered. A third party has done them some good, but that doesn’t rewire the inegalitarian relationships among citizens. We can only see this if we redirect our attention away from the bare pattern of goods. The force of the free provider problem depends on attending to the social relationships among citizens. Purely distributive accounts of justice aren’t capable of registering this remainder. They see right through distributing agents and focus on end-states.

Let me conclude this section with the retreat objection. If philanthropists want to avoid the free provider objection, why don’t they heed caution and spend their wealth on traditional forms of conspicuous consumption? The worry is that this objection gives the well-off an incentive to avoid free provision, like Tom and Daisy in *The Great Gatsby*, to “retreat[] back into their money and their vast carelessness.”³⁰ But this response to the objection rests on a misunderstanding. We’ve been assuming that individuals recognize themselves as individually responsive to principles of justice. These are stringent demands. *What* they demand of us will depend on our resources. But the argument is only addressed to individuals who see themselves as subject to justice. So retreating from giving isn’t an option. Guidance is needed in how to direct goods in a way that avoids the objections we’ve canvassed here. In an unjust society, there’s a sense in which the free provider problem is insoluble for the philanthropist. She is obligated to direct funds in a way that is guided by principles of justice, continuously aware that her actions will always fall short. This posture may conjure up Zeno-like frustrations. But it would be far more morally dangerous for the

philanthropist to see her actions as capable of fully satisfying justice – without the hand of her co-citizens.

5. Political Injustice and Principles for Philanthropy

Philanthropic giving cannot pick up our collective tab. When private providers respond to principles of justice, filling in for official provision, their actions will fall short. On the economic explanation of this windfall, what the free provider denies us is the warm glow of giving.³¹ The self-satisfaction of thinking of ourselves as benefactors isn't available to us; it is being hoarded by a small number of individuals. But in cases where an individual has a claim on you and me, it is strained to refer to our providing what we owe as a warm-glow preference. On this view, we derive positive utility simply from the bare acting of contributing.³² But attributing this primitive preference to satisfying principles of justice is uncharitable. We don't need to treat individuals as self-indulgent credit-seekers when we have an equally parsimonious explanation that avoids this attribution.

I think the remainder isn't route-psychological, but moral. Principles of justice are agent-identifying. Even if private providers are wildly successful in altering the distributive profile of a society, they lack the capacity to restore relationships of equality among citizens. But it hardly follows that philanthropy should avoid responding to principles of justice. The upshot of my argument isn't a call for philanthropic retreat. But the problem does suggest institutional and norm-based principles that can guide the private provision of public responsibilities. In this section we will consider the implications of the free provider problem for both prospective givers and democratic citizens. What does the problem imply for philanthropic giving that responds to chronic institutional injustices?

Auditioning for Public Provision. Suppose the free provider sees herself as responding to an injustice that her political institutions are failing to correct. She recognizes that she is picking up the

slack of a collective failure. So she has reason to structure her giving in a particular way. She might see her foundation as auditioning a good as an essentially public responsibility, one that can be successfully delivered and should be provided by the community at large. This goal may inform the mission statement of her organization. It may favor a spend-down model over a perpetual trust, since the latter is insufficiently self-effacing. Philanthropic giving that responds to a public responsibility without temporal limits invites citizens to leave the effort to private hands. The “success condition” of this kind of giving is the state’s assumption of the responsibility. In this sense, philanthropy is genuinely honoring the audition principle when it is attempting to put itself out of business. The most tragic dilemmas of audition may involve the foundation’s decision to cut off needed funds with the hope of encouraging “uptake” by the state.

Elite vs. Mass Philanthropy. The free provider problem can shed light on the moral difference between philanthropic organizations that are supported by small dollar funds or a small number of wealthy individuals. Standard models of charitable giving assume, without argument, that recipients are agnostic towards the identity of the provider. They predict that recipients will be indifferent toward small or large philanthropy. But this relies upon an overly narrow conception of the preferences of recipients of largesse. We saw earlier how the Coop served as a kind of ideal type mass-giving institution. The larger the organization, and the more democratic its internal rules, the more individuals it can credibly “name.” While it will almost certainly fall short of broad representation, mass philanthropy has the potential to send a fundamentally different message to recipients than a billionaire could send with the same amount of provided goods. It can convey that there is a growing awareness that the good or service is a requirement of justice that all of us owe individuals. Under deeply imperfect conditions, privately providing this good is the best we can do. But notice how different the message sent from the single wealthy provider will be.

Crowding Out. The standard worry is that public funds may crowd out private contributions. When the United States gives out one hundred million dollars to Teach for America, a non-profit,

this invites the concern that public dollars will discourage private giving. Here we have inverted this concern.³³ The free provider problem explains the logic of private giving crowding out public provision. Once a public responsibility is being provided by a non-public actor, how can democratic citizens reclaim their responsibility to collectively provide this good. Short of prohibiting private provision, public-private partnerships have the potential to gradually shift provision into the public's hands. Of course, part of the explanation will also lie with the original collective action problem. In the public goods game, participants choose how much of their private funds to provide for the public treasury. Famously, participants are much more generous than rational models predict them to be. But more recently, the public goods game has been designed to start with significant asymmetries of wealth among participants.³⁴ In transparent versions of this game, individuals with little wealth responded to deep inequality by giving far less than they would under conditions of greater equality.

Philanthropy for Non-Justice Goods. I have argued that philanthropy that aims to satisfy principles of justice faces a paradox similar to Zeno. In the absence of official joint action, there will always be a significant shortfall. But notice that the free provider problem doesn't directly apply to provision of goods that are discretionary or supererogatory. There are many social decisions that we make that are seriously underdetermined by justice. Consider our national monuments. These serve as public goods in the stringent sense of the term. If a private foundation or billionaire offers to defray the costs of maintaining them, is there a free provider problem? No. So-called patriotic patriotism of this kind doesn't attempt to discharge principles of justice.³⁵ I think this verdict will be surprising to some readers. If democratic solidarity has any force, surely it demands that democratic citizens band together and cover the costs of the very monuments that honor our democratic principles. The communal objection may well target patriotic philanthropy as undermining the meaning of our monuments. But the free provider objection doesn't turn upon a strong form of solidarity. This supports my claim that the free rider objection doesn't smuggle in

the independent value of acting together through the state. This points to a roadmap for philanthropy under more just conditions. There, the division of labor among the public and voluntary sector would sort out in this way. Public channels would focus on “distributive justice and fair equality of opportunity and individual charity would be able to concentrate on special, optional goods.”³⁶

Political Philanthropy. The free provider problem shares some of the premises of a related problem for democracy. Wealthy individuals can bring about sweeping policy change by bypassing traditional legislative channels. The Gates Foundation spent two hundred million dollars to enact the Common Core. The effort produced reforms “instituted in many states without a single vote taken by an elected lawmaker.”³⁷ Suppose, for the sake of argument, that the legislative outcome made our public school system less unjust. The worry is that political philanthropy bypasses the electoral system, generating policies at the whim of a single individual. This use of private money deprives citizens and their representatives the opportunity to “own” legislation. The resulting changes in law and policy can’t be said to be co-authored by the people or their representatives. This problem of elite, unelected lawmaking isn’t fully captured by the free provider problem, but it shares the worry that there isn’t proper “naming” of democratic citizens. Private money is being used to satisfy objections that are theirs, or to pass legislation that is their co-responsibility to authorize.

Conclusion

We began with a novel problem of collective action. The free provider problem arises most saliently in cases of philanthropic giving. We aren’t like the free rider, who sees the world solely in agent-neutral terms. We aren’t agnostic about the identity of agents of justice. There are some obligations that can only be satisfied through our shared political institutions. Most of us hold this belief closely. We assume that the identity of a goods provider can matter. Our principles of distributive justice don’t merely insist that universal health care, education, and food stamps should

be insured by someone — anyone. Here the provider must be the collection of democratic citizens acting together. Our distributive principles, then, seem to *name* you and me. They aren't agnostic about the provider's identity. They assign democratic citizens – through their political institutions – a starring causal role. Theorists of distributive justice have assumed that we can recruit the state into this role for free. On this view, once we “accept a modern conception of social justice,” we have signed up for the thought that our “first obligation must be to ensure that *social institutions* fulfill principles of justice.”³⁸ I have argued that this conclusion doesn't follow from the available arguments for collective provision.

It doesn't follow that philanthropic efforts should turn away from responding to institutional injustice. But awareness of the problem can inform how giving is structured, and how democratic societies respond to offers of largesse. Robert Nozick once suggested that if manna began raining down from Heaven on the poor, continuously satisfying all of their needs, we would have to search for other ways to express our solidarity with them.³⁹ Nothing in this paper suggests that we should prevent this largesse from reaching its recipients. But we are now in the position to see that, as a democratic people, our work would not be done. The free provider problem reveals that, like lunch, private substitution of public responsibilities doesn't come free.

Endnotes

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- ¹ Robert D. Cooter, "The Donation Registry," 72 *Fordham L. Rev.* 1981, 1984- 85 (2004).
- ² Michael Walzer, "Communal Provision," *Spheres of Justice*.
- ³ James Andreoni, "Impure altruism and donations to public goods: a theory of warm-glow giving," *The Economic Journal* (1990): 464-477.
- ⁴ Thomas Nagel makes this claim in *The View from Nowhere* (New York: Oxford University Press), p. 159. For the original formulation, see Derek Parfit, 1984. *Reasons and Persons*, Oxford: Clarendon Press. The most seminal work on the distinction includes James Dreier, 1993. "Structures of Normative Theories". *The Monist*, 76: 22-40; James Dreier, "Accepting Agent Centered Norms." *Australasian Journal of Philosophy*, 74: 409-422; P. Hurley, 1997. "Agent-Centered Restrictions: Clearing the Air of Paradox." *Ethics*, 108 (1): 120-146.
- ⁵ James Andreoni, "An experimental test of the public-goods crowding-out hypothesis," *The American Economic Review* (1993): 1317-1327.
- ⁶ Jean Hampton, "Free-Rider Problems in the Production of Collective Goods," *Economics and Philosophy*, 3, 1987, pp. 245-7.
- ⁷ Notice that it doesn't provide any special reason for *your* state to satisfy distributive principles. So there's a nested third premise that makes another empirical claim: namely that absent action of your state, other states will not reliably work to satisfy these principles.
- ⁸ Michael Walzer, *Spheres of Justice*, p. **
- ⁹ John Stuart Mill, *The Collected Works of John Stuart Mill*, ed. J.M. Robson, vol. X — *Essays on Ethics, Religion, and Society* (1985 [1833]).
- ¹⁰ Interview, *Philosophy Bites*.
- ¹¹ G.A. Cohen, 375.
- ¹² Philip Pettit. *On the People's Terms* (The Seeley Lectures) (p. 112). Cambridge University Press.
- ¹³ T.M. Scanlon, "Plural Equality," *Reading Walzer*, p. 183.
- ¹⁴ Michael Sandel, p. 94.
- ¹⁵ Michael Walzer, *Spheres of Justice*.
- ¹⁶ I am putting aside the prudential gains that well-publicized public giving has for the philanthropist.
- ¹⁷ Michael Sandel, 1998, 94.
- ¹⁸ Robert Nozick, *Philosophical Meditations* (New York: Touchstone Books, 1989), 287. John Rawls expresses this worry in the welfare context: "The economic position of women and children forced to fend for themselves is often precarious. A society that permits [such vulnerability] does not care about women, much less about their equality, or even about its children who are its future. Indeed, is it a political society at all?" John Rawls, "Justice as Fairness: A Briefer Restatement"
- ¹⁹ Stiglitz, 1989; Barr 1998, 68-85.
- ²⁰ I doubt that expressive arguments will be strong enough to do this kind of work, but I will leave that open here.
- ²¹ Kant's "agency of the people as a whole."
- ²² This challenges Robert Goodin: there's no stand-alone link between the concept of basic need and that of state provision. (1998, 27-50)
- ²³ Thomas Nagel, *Fordham Law Review*, 2018
- ²⁴ Contrast this with Immanuel Kant's authorization argument, see *Metaphysics of Justice*, AkW326 in (Ladd trans., p. 93): By "the General Will of the people ...government is authorized to require the wealthy to provide the means of sustenance to those who are unable to provide the most necessary needs of nature for themselves."
- ²⁵ A.J. Julius, "Nagel's Atlas"

²⁶ Susan Moller Okin, *Justice, Gender, and the Family* (New York: BasicBooks, 1991).; G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2009). David Estlund, "Debate: Liberalism, Equality, and Fraternity in Cohen's Critique of Rawls," *Journal of Political Philosophy* 6, no. 1 (1998).

²⁷ G.A Cohen, *Rescuing Justice & Equality*, p. 375.

²⁸ Seana Shiffrin, "Incentive, Motives, and Talents," *Philosophy & Public Affairs* 38, no. 2, p. 112.

²⁹ A.J. Julius, "Basic Structure and the Value of Equality," *Philosophy & Public Affairs* 31, No. 4, p. 348.

³⁰ GG.

³¹ Kahneman/Knetsch (1992): willingness to play for public goods related to their "moral satisfaction" from giving.

³² Andreoni 1990

³³ Crowding-Out Hypothesis: "A dollar from my pocket to the public good can be retrieved by reducing the contributions I voluntarily make to the public good by a dollar." Andreoni 1993)

³⁴ *Problem: Van Dijk & Wilke (1994) consider the provision of public goods as an indirect opportunity to reallocate wealth and argue that the "lack of attention to this opportunity may be ascribed to the fact that until now, most experimental studies [...] have focused on the situations in which group members possess an equal number of endowments to contribute to the public good."*

³⁵ Jennifer Steinhauer, *A Billionaire Philanthropist in Washington Who's Big on 'Patriotic Giving,'* New York Times, Feb. 20, 2014.

³⁶ Nagel (2018).

³⁷ Lyndsey Layton, "How Bill Gates pulled off the swift Common Core revolution," *Washington Post*, June 7.

³⁸ Will Kymlicka, "'Altruism in Philosophical and Ethical Traditions: Two Views," in *Between State and Market: Essays on Charities Law and Policy in Canada*, ed. Bruce Chapman, Jim Phillips, and David Stevens (Montreal: McGill-Queen's University Press, 2001), 115.

³⁹ Robert Nozick, *Philosophical Meditations*, 288.