

Benefit, acceptance, and opposability: a response to Edward Song

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Say that a person receives benefits from a scheme of social co-operation. Is it fair to require that person to contribute towards the costs of that scheme? In ‘Fairness, Benefits, and Voluntary Acceptance’, Edward Song argues that the answer is no, unless that person has accepted the benefits in question.¹ Song takes acceptance to consist in a subjective pro-attitude towards the exchange of the benefit for the contribution, and makes two claims about acceptance so understood. The first is that advocates for an acceptance condition can respond adequately to some examples that have been thought to frustrate their position. The second is that critics of the acceptance condition, call them objectivists, have failed to explain how a product of social co-operation can even count as a benefit (let alone an accepted benefit) for a person unless that person has formed a subjective pro-attitude towards that product.

Song does not endorse a general or global ethical subjectivism. He claims that “while objectivism might offer a compelling account of overall human well-being, it provides an implausible way of thinking about the benefits that are relevant for considerations of fairness”.² The challenge Song raises is therefore specifically targeted to arguments that ground a person’s duties under a scheme of co-operation on the *benefit* that this person receives from that scheme, rather than, say, on a natural moral duty to support just institutions. That challenge says that such arguments have no alternative to subjectivism as an explanation of what counts as benefit for that person.

I believe that Song is right to say that objectivists about fairness have not yet supplied an account of the idea of benefit that meets this localised subjectivist challenge. I also think that he is right to insist that any plausible account of fairness must make adequate space for a person’s subjective attitudes towards the products of social co-operation.³ However, I want to suggest that the way Song draws the contrast between objectivism and subjectivism mischaracterises the questions at stake.⁴ The

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¹ Song E., ‘Fairness, Benefits, and Voluntary Acceptance’ 20 *Journal of Moral Philosophy* (2023) 268-289. At 271-2, Song lists four other (and, for my present purposes, less controversial) conditions of the fairness of such a duty: the Co-operation Condition; the Rules Condition; the Benefit Condition; and the Justice Condition.

² *Ibid* at 284.

³ Although I cannot take up the point here, I also agree with Song (at 286) that whether the benefit in question counts as a public or a private good does not make a fundamental difference to the discussion.

⁴ *Ibid* at 283: “the subjectivist/objectivist distinction is exclusive. A theory must either think that goods must be the object of a person’s agential endorsement in order to count as a benefit for her, or they do not”.

real issue is not *whether* a person's subjective attitudes matter in the discussion of duties of fairness but *how far* and under which conditions they do so. I hope to show that, in this more limited sense, objectivism has the better of the debate because it can accommodate Song's intuitions about the significance of subjective attitudes, while subjectivism cannot accommodate some plausible concerns about what I will call the 'opposability' of such subjective attitudes to other persons. To put it differently, objectivists can explain why the fact that a person lacks a subjective pro-attitude towards a scheme of social co-operation can sometimes justify exempting that person from the demands of that scheme, whereas subjectivists cannot explain how the lack of such a pro-attitude is sometimes outweighed by the interests of other persons who rely on that scheme. Finally, I will argue that the same point applies in respect of the appropriate *mode* for establishing a person's attitudes for the purposes of fairness.

The acceptance condition and the problem of opposability

Song's main illustration in defence of the acceptance condition and subjectivism more generally is the Recalcitrant Vegetarian example.⁵ The Recalcitrant Vegetarian opposes a scheme that would clean up the local lake from a dangerous build-up of algae because the cleaning operation requires the slaughter of cows in order to extract certain algae-dissolving acids from their stomach lining. Song suggests that the Recalcitrant Vegetarian can object to being required to contribute to the scheme under those terms. He accounts for that intuition on the basis that, given her sincerely held beliefs about the impermissibility of slaughtering cows for the purpose of cleaning up the lake, the Recalcitrant Vegetarian lacks the required subjective pro-attitude towards the scheme.

A threshold problem with this claim is that the Recalcitrant Vegetarian's objection to the scheme does not rely solely on the fact that she sincerely lacks a subjective pro-attitude towards it. It also relies on the fact that her reasons for not taking that pro-attitude have moral force independently of that attitude. The welfare of animals is a consideration that bears moral weight both on the overall permissibility of the lake-cleaning scheme and the justifiability of exemptions from its requirements, whether or not the Recalcitrant Vegetarian thinks so. It follows that the Recalcitrant Vegetarian example is ambivalent between

⁵ Ibid at 279. The example is a variation on Garrett Cullity's 'Recalcitrant Fisherman', see Cullity G., 'Moral Free Riding' 24 *Philosophy & Public Affairs* (1995) 3 at 11.

The Acceptance Condition: a person becomes subject to the rules or demands of social co-operation only when the benefits produced are voluntarily accepted.

and something like

The Moral Objection Condition: a person may object to being bound by the rules or demands of social co-operation when those rules or demands conflict with an important moral interest of that person.

This ambivalence is problematic because the acceptance condition is subjectivist, while the moral objection condition is objectivist.

Song concedes that the moral objection condition can account for the Recalcitrant Vegetarian example.⁶ However, he believes that this condition has trouble accounting for variations in which the Vegetarian's objection is grounded not on an important moral interest of hers, but simply on her genuinely non-moral held beliefs and preferences. Song asks us to imagine that the Vegetarian is personally opposed to the killing of animals but is not sure whether such killing is objectively wrong in the circumstances. He intuits that the Vegetarian's unwillingness to participate in the scheme does not seem unfair. Generalising this intuition, he argues that the considerations that motivate a person's rejection of a given scheme and its benefits may include 'any kind of sincere reason', from aesthetic reasons to reasons of personal history and identity.⁷

I believe that this variation of the example still misses the target, or that we are not committed to subjectivism even if we share Song's intuitions about the Recalcitrant Vegetarian's position. For a start, the moral objection condition can account for the Recalcitrant Vegetarian's milder complaint too, as long as we conceive of 'important moral interest' as including the Vegetarian's sincere *doubts* about the moral justifiability of animal slaughter in the circumstances. There are several real-world illustrations of that wider conception at work. Such a conception underlies, for example, laws that allow persons to claim exemptions from institutional duties on grounds of conscientious objection.⁸ For example, s.4(1) of the UK Abortion Act 1967

⁶ Song at 279-80. In Cullity's terms, the Vegetarian is exempt because she "raises a legitimate moral objection to the scheme", Cullity at 19.

⁷ Song at 280.

⁸ Conscientious objection in the context of healthcare provision may not be the neatest illustration for the purpose of discussing the duty of fair play, not least because the legitimacy of such objection may be accounted for under natural moral duties (I return to this point in the text). At the same time, healthcare systems meet all the conditions of fairness that Song identifies as common ground between objectivists and subjectivists. More specifically, the benefit condition, as Song formulates it at 271, the requires that the scheme generate 'benefits of some kind that are enjoyed by the obligee'. It does not require that the benefit in question the same for every participant (e.g. for doctors and patients).

provides that a person has no duty to participate in treatments authorised by that Act insofar as that person has a conscientious objection to them. The Act does not require the persons in question to prove the objective moral wrongness of the treatments in question. It only requires them to prove that they hold sincerely beliefs that make hard for them to undertake or participate in such treatments. Of course, whether such regimes are best understood as subjectivist or objectivist in character will depend on the kind of reasons that can ground a legitimate conscientious objection, and that is a question on which medical ethicists disagree.⁹ My present point is that the fact that such an objection may be available to both the Recalcitrant Vegetarian and the conscientious objector does not show that the acceptance condition enjoys an explanatory advantage over the moral objection condition.

Suppose, however, that the Recalcitrant Vegetarian's attitude towards the lake-cleaning scheme is grounded on purely aesthetic reasons, e.g. the Vegetarian finds the prospect of slaughtered cows morally unobjectionable but distasteful to her senses. Song is right to say that the moral objection condition could not explain the significance of the Vegetarian's attitude in this variation. However, the moral objection condition does not exhaust the resources of objectivism. We could easily construct an objectivist condition that accords significance to a person's non-moral subjective attitudes toward a scheme of social co-operation. The alternative I have in mind is a condition that allows a person's subjective attitude to be grounded on 'any kind of sincere reason', but also includes what I will call an 'opposability' requirement, i.e. a requirement that makes the significance of that subjective attitude depend on the strength of that person's reasons or interests relative to the interests of other persons who rely on the same scheme. That condition could be formulated as follows:

The Opposability Condition: a person may object to being bound by the rules or demands of social co-operation when those rules or demands conflict with an interest of that person that is opposable to others.

Like the moral objection condition, the opposability condition is objectivist in character, but its objectivism has a different structure. The moral objection condition tries to *restrict* the kinds of interest that may legitimately ground a person's subjective attitude towards a scheme of social co-operation. The opposability condition does not depend on such a restrictive device. Instead, it puts the interests underlying that person's subjective attitude, whatever these may be, on the scales

⁹ Compare e.g. Wicclair M., *Conscientious Objection in Healthcare* (2011) at 92, arguing in favour of "granting health care professionals considerable latitude concerning what is and what is not a valid reason for a conscience-based refusal", Card R., 'Reasons, reasonability and establishing conscientious objector status in medicine', 43 *Journal of Medical Ethics* (2017) 222 at 223, arguing that conscientious objection must be justified by reference to 'public reason' in the Rawlsian sense.

alongside the interests of other persons who are affected by the same scheme. Its objectivism lies in the fact that the condition requires an assessment of which of the interests underlying that person's attitude are important or weighty enough in relation to the interests of those other persons.¹⁰ That is the question that the shorthand of 'opposability' means to capture.

I believe that the opposability condition offers a better version of objectivism than the moral objection condition. Legal regimes regulating conscientious objection in medical contexts are a useful illustration here. Such regimes pose a serious challenge to the moral objection condition insofar as they *limit* the availability of conscientious objection in order to protect the interests of other persons. For example, while s.4(1) of the UK Abortion Act 1967, as mentioned above, allows conscientious objection to treatments that involve termination of a pregnancy, s.4(2) makes such an objection unavailable in respect of treatments necessary to save the life or prevent grave permanent injury to the physical or mental health of a pregnant woman. The moral objection condition would have considerable difficulty justifying such limitations to the availability of conscientious objection, as this condition does not allow variations in the significance of a person's moral qualms regarding the scheme relative to what else lies on the scales. As long as the doctor has an important moral interest in not acting against their deeply held beliefs about the wrong of abortion, the moral objection condition shields them from duties under the scheme.¹¹ Under the opposability condition, by contrast, the answer turns on whether the reasons that underlie the objector's subjective attitude are weightier than the interests of pregnant women whose life or health are in danger. On that basis, we can easily explain why s.4(2) includes such a limitation on the availability of conscientious objection while, for example, s.38 of the UK Human Fertilisation and Embryology Act 1990, which also allows for conscientious objection, does not. The reason why the conscientious objector's attitude is more widely opposable to others under the 1990 Act is that fertilisation and embryological treatments do not tend to carry the same risks as terminations of pregnancy.

Of course, objections based on moral reasons and interests are admittedly not the 'cleanest' illustrations for the purpose of interrogating the conditions of a fairness-based duty to contribute, as such objections may sometimes be plausibly accounted for independently of such a duty. For example, one might agree that the conscientious objector cannot exempt themselves from duty to participate in the

¹⁰ That assessment could take the form of what Tim Scanlon describes as 'pairwise' comparisons, see Scanlon T.M., *What We Owe To Each Other* (1998) 229-41, but the opposability condition could work with other objective metrics of well-being too.

¹¹ Zolf B., 'No conscientious objection without normative justification: Against conscientious objection in medicine' 33 *Bioethics* (2019) 146 at 148-51 makes a similar point against subjective attitude-based accounts of conscientious objection in medicine.

termination of a pregnancy when the pregnant woman's life or health are in danger, and still think that the failure to discharge that duty would not be an instance of *unfairness*, but a violation of a natural moral duty of assistance, beneficence, or charity. Even if we allow that such examples can engage both natural moral duties and duties of fair play, it will be difficult to recruit them in support of particular conceptions of either. Examples in which a person's objection to a duty to contribute is grounded on non-moral reasons make for better illustrations in that regard, as they are less likely to engage natural duties.

The example on which Song bases his case against objectivism, the Recalcitrant Vegetarian who has purely aesthetic reasons for not taking a pro-attitude towards the lake-cleaning scheme, fits this bill. Consider, then, now how the acceptance and the opposability condition, respectively, would approach that example. Under the acceptance condition, the Vegetarian's aesthetic reasons suffice to show that she has no duty to contribute towards the scheme, and that conclusion holds no matter what else lies on the scales, e.g. how much other persons might rely on the lake-cleaning scheme or what harms they may be at risk of suffering if the scheme does not go through. Under the opposability condition, the right answer may differ depending on the relative intensity of the stakes for her and other persons affected by the scheme. To illustrate the point, consider two variations on a basic scenario. Say that the Recalcitrant Vegetarian owns a seaside property, and that if she refuses entry to the lake-cleaning teams, those teams will be unable to complete the clean-up. In one variation, this has the consequence that the algae will grow back before long, and the community's efforts to contain the health hazard will have been in vain. In another variation, the remaining algae will not spread, but many members of the community worry that the sight of the algae will have an adverse impact on real estate prices in the area. The opposability condition allows us to differentiate between these two variations. While the relevant interest of the Recalcitrant Vegetarian does not seem as weighty as the interests of members of the community whose health would suffer as a result of the failed clean-up, it may well be weighty enough relative to the interests of those who worry about real estate prices. The Recalcitrant Vegetarian's subjective attitude counts in both variations, but its moral significance varies from one to the other.

The capacity of the opposability condition, of objectivism more generally, to account for non-moral reasons for resisting a duty to co-operate emerges even more clearly when we turn to Robert Nozick's famous example of a person who enjoys the public entertainment system that his neighbours have set up, but has done nothing either to invite its benefits or to indicate that she has taken on a duty to contribute to the cost of running the system.¹² For Song, the reason Nozick is right to intuit that this

¹² Nozick R., *Anarchy, State and Utopia* (1974) at 93.

person is exempt from the demands of the system is that the acceptance condition is not met: that person may enjoy the music, but they have not taken a subjective pro-attitude towards the relevant *quid pro quo*. On the opposability condition, Nozick's intuition may still be right, but the case for that turns not only on that person's subjective attitude towards the *quid pro quo*, but also on a fact that Song's subjectivism makes insufficient allowance for: that a well-functioning neighbourhood entertainment system is just a delightful amenity, with nothing much riding upon it. The person who objects to the duty to contribute to the scheme has a point because their interest in being able to opt out of co-operative aesthetic projects is at least as weighty as the interest of others in being able to set up such projects.

One might still wonder whether the weighing of respective interests that the opposability condition requires has a place in a debate as to whether the acceptance condition is part of the duty of fair play.¹³ Perhaps one of the implications of Song's distinction between the justice condition (i.e. the requirement that the rules of the scheme be reasonably just and fair) and the acceptance condition is that we should undertake such weighing when we design the rules of the scheme, not when we consider whether that scheme creates duties only for persons who take a subjective pro-attitude towards it. I agree that it is possible to treat opposability as part of the justice condition. However, I believe that this only serves to highlight the weakness of treating the acceptance condition as a separate requirement of fair play. The moral significance of a person's subjective attitude towards a scheme of social co-operation is not independent of the justice and fairness of that scheme. Incorporating the opposability condition into the justice condition would entail that whether and when a subjective pro-attitude is required is simply one of the questions that we need to ask when we determine whether the rules of the scheme are reasonably just and fair.

The mode of acceptance

Note, finally, that endorsing the opposability condition allows us to raise important questions about how the acceptance condition *itself* might be satisfied. As Song formulates it, the acceptance condition is ambivalent between

The Express Assent Condition: a person accepts the benefits of a scheme of social co-operation when they have expressly assented to the receipt of those benefits.

and

¹³ I am grateful to a referee for pressing this point.

The Opportunity to Object Condition: a person accepts the benefits of a scheme of social co-operation when they have had reasonable opportunity to raise an objection to the scheme and have not done so.

The idea of opposability helps us explain why the appropriate way to establish acceptance may differ depending on the relative strength of a person's interest in having their subjective attitude taken into account in determining their duties under the scheme, and the interest of the administrators of that scheme in containing the costs of ascertaining whether that attitude amounts to assent. Suppose that a newly introduced scheme requires members to donate a pint of blood every year so that the community has a blood bank that can meet rising demand for transfusions. Given the strong interest persons have in being able to make decisions about their body, it seems obvious that first participation in such a scheme would require each member's express assent. Contrast this with the Abortion Act 1967 and the Fertilisation and Embryology Act 1990, both of which provide that the burden of proving conscientious objection in any legal proceeding lies with the person that claims to rely on it.¹⁴ The fairly obvious difference is that once a person has accepted work in a clinic that provides such treatments and procedures, it would be too onerous for the clinic to have to establish that this person assents to such work on every occasion where their help is needed. My point is that neither the acceptance condition itself, nor any variant of subjectivism, could generate a similar explanation.

Conclusion

In his discussion of whether the Recalcitrant Vegetarian receives a benefit from the lake-cleaning scheme, Song asks:

But how could we possibly evaluate whether she ultimately benefits from such a scheme without also appealing to what she thinks about such things? What is the notion of benefit that will allow us to objectively evaluate whether the health benefits of clean water are outweighed by the violation of her moral scruples? There does not appear to be any plausible objective criteria that can settle this question, without appealing to fundamentally subjective considerations and what she ultimately wants to do – her desires, preferences, attitudes, and volitions.¹⁵

The question packs considerable intuitive force, and I believe we should agree with Song that any plausible account of fairness must make allowance for a person's

¹⁴ s.4(1) Abortion Act 1967 and s.38(2) Fertilisation and Embryology Act 1990, respectively.

¹⁵ Song at 285.

subjective attitude towards the goods that they are receiving from a scheme of social co-operation. What I have tried to show is that this truth presents us with only part of the moral picture. A person's attitude towards the products of social co-operation may matter, but it does not have a fixed moral significance, regardless of what else lies on the scales, nor does it provide that person with a general right of self-exemption from the duty of contributing to the relevant co-operative scheme. Using variations on Song's own examples, I have argued that the real question is how far that person's subjective attitude is 'opposable' to others, and that this assessment requires attention to the relative strength of that person's (moral or non-moral) interests against the interests of other persons who rely on the scheme. My conclusion is that Song's defence of the acceptance condition cannot explain either why a person's subjective attitudes are not always opposable to others, or how the appropriate mode of establishing acceptance may vary across situations.