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POLITICAL
PHILOSOPHY

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right, or Hobbes at the time of the English Civil War describing anarchy and arguing for the necessity of an absolute or unrestricted sovereign power. These are people you will want to argue with and you will find, to your pleasure, that it can be hard to do so.

Everyone who studies political philosophy has to know something about the history of the subject because that history is a priceless resource as much as it is an antiquarian interest. But this book will not address this history directly. Rather we shall concentrate on the central questions of political philosophy and the leading theories that have been employed to answer them. For the moment, I want to examine the methodology of political philosophy, to say a little more about the relationship of theory to judgement in the sphere of ethics – of which political philosophy is evidently a part.

The methods of ethics and political philosophy

A methodological impasse?

Let's begin our reflections with a hackneyed example. Suppose we have a sheriff who, along with utilitarian thinkers, believes the right action is the one that produces the greatest human welfare. Faced with a rioting mob, he decides a scapegoat is required to prevent widespread harm. He selects a plausible (but innocent) culprit for punishment and calm is restored. Harm and injustice is done to the poor innocent – but the greater evil is averted. The utilitarian sheriff defends his action as the right thing to do in the circumstances. A critic objects. The sheriff's action was wrong because it was unjust. No amount of benefit to any number of third parties can vindicate the punishment of an innocent man or woman. That principle is inviolable.

How are we to adjudicate the issue? On the side of the sheriff, supposing all the facts of the case are right, is a deep and plausible moral theory. The pity is that this theory of what constitutes right action commits him to doing what would normally be judged a wrong action. On the side of the critic is the principle ('intuition' is the term often used here) that it is unjust, and therefore wrong,

to punish the innocent. The sheriff has a theory, which he can defend if pressed, which enables him to judge what is right in tricky cases like this. She (the critic) thinks that his theory is indefensible if it justifies him acting in a way that violates her principle. So – do we keep the theory and sacrifice the principle or do we jettison the theory because we cannot find it in us to reject the principle?

This question, often posed in the discussion of utilitarianism, is, at bottom a dispute about *methodology*. There are many ways forward and all of them are controversial since philosophical dispute reaches into the methods of ethical and political theory as well as the diet of problems which give rise to speculation about the appropriate method for tackling them. First, we need to understand the notion of a *theory* as the sheriff is employing it. The first, simplest, conception takes the theory to be a systematization of the moral and political judgements we are inclined to make. We find ourselves judging that this action is right, that action wrong, that this system is fair, that unjust. And we accord these judgements considerable status. They are not self-evident or absolutely unrevisable, but we are more likely to stick to them than we are to accept a theory which is inconsistent with them. We recognize that we operate with a great and complex stack of moral principles and reflection suggests that such judgements are the product of a deeper principle – in the case of the sheriff, the utilitarian view that actions and practices are right if they maximize well-being. We have explained the judgements we reach, but this explanation may serve wider purposes. It may guide us when we find ourselves in a difficult dilemma. In entirely novel circumstances, of the sort that medical advances seem to throw up daily, the theory may show us the way forward. Obviously, this conception of moral theory cannot help us if we review the above example. The sheriff and his critic differ precisely on whether the case represents a decisive example which should cause us to reject or qualify the theory. Since both agree that what is decisive is the authority of the particular moral judgement or rule, I shall dub this view ‘particularist’.¹

A different conception of moral theory regards the task of the theorist very differently. On this account, the task of moral theory is to validate or generate moral principles, to serve as a

foundation for them. Utilitarianism may be viewed in this light, too, since, as we shall see, its techniques may be employed to assess not just specific actions and practices, but moral rules as well. If this is right, if some such theory finds conviction, whether it is utilitarianism, Kantian formalism which uses the test of the categorical imperative, contractualism or the theory of Divine Command, it follows that our intuitions regarding subordinate principles are all revisable in light of the theory to hand. Possession of such a theory would settle the dilemma posed by the sheriff's actions and the critic's challenge. We can dub this notion of theory 'foundationalist' – again with warnings about incautious use of the terminology. Unfortunately, I have no such theory to hand, believing that all attempts to delineate such an ambitious project have failed.

We have two different conceptions of moral theory and two different accounts of the status and revisability of the moral judgments and principles that such theories (in their different ways) encompass. It is worth noticing that these disputes about the nature of normative ethics find an echo in deep disputes about the appropriate methods of political philosophy. Hegel noticed that modern subjects claim what he described as '*the right of the subjective will*', a distinctively modern attitude which claims 'that whatever it is to recognize as valid should be *perceived* by it *as good*'. (Alternatively: 'The right to recognize nothing that I do not perceive as rational is the highest right of the subject.')

² This stance may be dubbed 'individualist' or even 'liberal'. It echoes Kant's claim that 'Our age is the genuine age of criticism, to which everything must submit'.³ In this context, the thought is that the individual who seeks the credentials of principles or institutions has detached himself from their moral 'pull' in order to conduct his investigation. He has placed himself above the *mêlée*, abstracting from all prejudice and allegiance in order to carry out a judicious review of what theory (in the guise of reason) requires. Suppose I find myself questioning the obligations I hitherto felt to a parent or a child. I see others behaving differently and wonder if perhaps I can legitimately do the same. It looks as though the only way I can examine these questions is by stepping outside of the institutions of domesticity and subjecting them to an external assessment. Or suppose I find myself breaking the law with

impunity and no sense of guilt – buying my under-age child a glass of cider in a country pub. Being philosophical, this causes me to wonder whether I have a general obligation to obey the law. Again, once prompted, once the question has been asked, I find myself at a distance from the press of what hitherto I had taken to be an obligation. Detaching myself from the moral force of the institutions that bind me by their rules, I can pursue my investigation as an outsider would. Should I subscribe to this general rule or should I modify or reject it in the light of the best reasoning I can command, the best theory at my disposal?

In the seventeenth century, for a variety of reasons, philosophers who reflected on politics began to question the grounds of their allegiance and the legitimacy of the constitutions of particular states. From what stance could this appraisal be conducted? It seemed obvious to some that the best way to answer the question of whether or not they had good reason to obey a sovereign power was to hypothesize that they had none – and then ask whether rational agents with a specific set of wants (Hobbes) or wants and values (Locke) would have good reason to establish one. They deduced that those without a sovereign power (as they said, in a State of Nature) would recognize that a sovereign ought to be instituted; those who found themselves already subject to the claims of sovereign authority should recognize it as legitimate. The reasoning which generated these conclusions could be advanced by (or expained to) each sceptical individual. Individualism of this methodological stripe has its origin in a sceptical impulse that subjects to scrutiny what many take to be the givens of one's moral and political regime. In order to conduct this scrutiny, it is evidently necessary to have some theory at hand that can serve as the test of the principles called for judgement. It is worth adding at this point that those who detach themselves in thought from the concrete demands of the institutions which govern them, seeking a rationale that should be good for any enquirer, generally attribute to all persons a moral status that endows them with liberty and equality as well as the universal ends of survival and 'commodious living'.⁴ In a nut-shell, this is why individualism as I have described it may also be termed 'liberalism'. (And while we're charting the 'isms', this stance of the detached, disengaged, perhaps alienated, enquirer may be described as 'atomism' if a society is thought to

comprise an aggregate of such individuals. But an intellectual health warning should be issued concerning the careless use of philosophical labels!)

By contrast, a different view will reject the possibility of this radically abstracted self. Call its protagonist the ‘communitarian’. She will insist that we cannot, even in thought, strip off the lineaments of our personalities – for our moral constitution goes as deep as this. For better or worse, we are burdened by intuitions concerning the moral standing of ourselves and others and what it is for folks like us to live well. Our views on these matters are not optional extras; they will be embedded deeply in our language and the very ways we think. On an extreme view, we just find ourselves located at a particular, specifiable, moral address. According to some feminists, humans are possessed of a socially constructed gender which has determined in a fundamental way their moral orientation – towards categories of rules and duties (men) or virtues of care and compassion (women). Most of us are enmeshed in families whose structures are describable in terms of rights and duties from which we cannot renege without doing wrong. These families may find their origins, sustenance and detailed regulation within a tribe or race, which may subscribe to a religion or worldview which gives point to its ceremonies and rituals. Such wider communities may inhabit a region with environmental exigencies which structure their domestic constitution. In the modern world they are likely to be regulated by a state whose history (and myths) deeply engage the allegiance of the people.

Our identities may be thick with attachments and emotional ties deriving from all of these sources and more; attachments and ties which cannot be repudiated or even questioned without the deepest personal loss and fragmentation. Such a dense moral address Hegel called our ‘ethical life’. Its reality and the objectivity of the claims it makes upon us he called ‘ethical substance’.

The modern debate between the individualist and the communitarian is not a fad of the moment. It echoes (in a distorted fashion, for historical purists) the contrasting views of Plato and Aristotle on the good society – Plato advancing a utopian vision founded on a conception of justice he worked hard to elaborate, Aristotle describing those institutions mankind has discovered to be necessary for the fullest expression of human nature. At the turn of the

nineteenth century, battle was renewed again between another pair of near contemporaries, Kant and Hegel – Kant aspiring to a standpoint of reason which in ethics takes us right outside the phenomenal world of everyday experience into a noumenal world where principles of practical reason are disclosed to any dispassionate enquirer; Hegel, by contrast, finding this standpoint ‘empty’ and counselling us to seek a deep understanding of the principles and institutions which history has deposited as the framework of our social lives. To grossly caricature the contrast, the individualist seeks a perspective of reason whereas the communitarian articulates a description of ethical reality.

In the context of political philosophy, I am tempted to label the respective camps ‘radical’ and ‘conservative’. The individualist position is *radical* because of the implicit commitment to subject *all* beliefs and institutions to review, according none a privileged status of critical immunity. The communitarian position is *conservative* in the sense that it accepts the validity of central categories of moral self-description which are entrenched within the practices and institutions of society. We cannot escape those dimensions of moral vision and feeling in which we have been enclosed by socialization. Outside of the sense of ourselves which the communitarian philosopher articulates, we would not employ the sharp vision of the detached critic; we would be altogether lost and aimless, without any sense of characteristic human ends or aspirations. We must begin at that place where we come *from*.

The issue is complex, but it should not be too hard to see how this dispute about the character of political theorizing reproduces the methodological disputes recorded earlier. The first should be obvious. In the first part of this chapter, I contrasted the respective approaches of the foundationalist, the theorist who wields a decisive theory, and the particularist, the thinker who takes her stand on principles or intuitions. The differences evinced by these two approaches reflect a pair of contrary dispositions – a top-down impulse to validate and a bottom-up need to explain and systematize. I believe that, in so far as the individualist/communitarian distinction is concerned with the *methodology* of ethics and politics, the same two dispositions are at work. The individualist, as I have characterized this position, is committed primarily to evaluation from a theoretical stance he endorses. Unless rules,

principles, practices and institutions can be validated in the light of higher values to which he subscribes he will not authorize them, they have no claim to legitimacy. The communitarian, by contrast, is distinguished by what she takes as given, the values, principles, practices and institutions which constitute her historically contingent identity. She cannot, in fact, detach herself in principle so as to achieve a theoretical stance from which her commitments can be appraised.

Reflective equilibrium

Back to the sheriff's dilemma. Since we don't possess the quick fix of a theory which can review the situation and settle decisively whether the sheriff or his critic is right or wrong,⁵ a first way forward is to expand the data available for judgement and hope that with more information to hand some agreement may be attained. We may amplify the detail of the example. The description already available is true, we have supposed, but that does not establish that it is sufficient for a correct verdict to be reached. In fact, the opposite is the case. The information given in the example is palpably insufficient for a consensus on the rightness or wrongness of what the sheriff has done. When more information is brought to bear – perhaps the critic can get the sheriff to agree that he can't keep secret his practice of framing innocents and so lots of citizens will become anxious that they may be selected as scapegoats – it may transpire that theory and intuition are brought into line as protagonists agree that the example has not shown that maximizing human welfare can require acts of injustice.

Second, we may review the theory. We may limit its ambitions, draw in some of its horns. We can supplement the restricted theory with another, different one which offers a better explanation or justification of the troublesome case. The resulting bunch of theories will be messier, an altogether less elegant intellectual structure and perhaps it will create boundary problems within the body of theory which has been yoked together. But this may be a price worth paying if the resultant structure promises an understanding of how we reach decisions in a disconcertingly wide range of cases. In the case of the sheriff, we may limit the scope of utilitarian

reasoning and insist that independent principles of retributive justice apply.

Third, we may review the principle about which the critic was so confident. Perhaps we can get her to accept that there are circumstances, real or hypothetical, where it seems to imply conclusions which are unacceptable. An example which illustrates much the same point as that of the sheriff who lynches the plausible scapegoat, but which can trigger very different reactions, concerns the reality of systems of criminal justice. Let's all agree that in this world of fallible human beings it is quite impossible to devise a criminal justice system which can be guaranteed *never* to convict an innocent. Different mixes of procedural rules will generate different probabilities of innocents being acquitted or convicted. Now suppose we have to set up such a system or endorse a system which is in place. We *know* that sooner or later an innocent will be punished. We *know* that some unfortunate individual will have to pay for the utility (or justice) of our having instituted a workable system of trial and punishment to deal with criminals. Against this background – of having to establish *some* systematic procedures for responding to crime – the critic may come to recognize that, in practice, any such response will permit unintentional and undiscovered miscarriages of justice. Examples such as this may cause the critic who is confident in her intuitions of principle concerning the punishment of the innocent to register a doubt. In which case she, too, may be willing to enter negotiations when theory collides with intuition.

Let us review the conclusions of this discussion of the methodology of ethics. In my book there are two villains. The first is the philosopher who claims one can get nowhere in ethics until one has discovered, through *a priori* reasoning or the investigation of a sufficient range of moral judgement, some high-level theory of ethics which can serve the purposes of testing lower-level principles of action and generating verdicts of right/wrong, good/bad, just/unjust in respect of any particular action brought forward for judgement. The second villain is the philosopher (or ordinary moral agent) who believes himself endowed with a set of moral principles or intuitions which are in principle immune to correction, which brook no qualification or exception, nor require careful contextual elaboration.

What we are left with is a pair of propensities which draw away from and collide with each other in fruitful co-existence. The first is a bottom-up drive to gather together judgements made in particular cases and formulate principles which articulate the rationale of these judgements. We go further. Having to hand a set of principles, we can try to establish whether this exhibits any common features which we might employ to propose a still more general theory of ethics. Success in this endeavour would advance our understanding of a crucial range of human activities.

The second propensity is as powerful as the first and best thought of as a top-down impulse to cleanse our intellectual stables. It finds its beginnings in what may seem an incontrovertible insight into the nature of morality – and there are conspicuous modern candidates. For the utilitarian, morality is concerned at base with the promotion of human well-being and the relief of human suffering; for the Kantian, it expresses our nature as rational and autonomous creatures; for the contractualist, it elaborates and represents the employment of a need to find agreement if conflict is to be avoided and co-operation facilitated, or alternatively, it expresses the need we feel to justify our conduct to others. Whichever core insight we fix on is then developed into a theory of great generality, and is consequently used in a review of our judgements on actions and institutions, although again there will probably be an intermediate stage of assessment where rules and principles are subject to inspection.

I say both bottom-up and top-down strategies are propensities because we operate consciously and spontaneously in both ways, when we act, when we judge and when we theorize. We evaluate actions in terms of principles and we examine principles in the light of their verdicts in particular cases. We assess candidate principles by asking whether they can be derived from an overarching theory and we endorse or challenge theories because they entail principles we avow or repudiate.

This ideal – of satisfaction that our mix of theory, principles and judgements is in good order – has been dubbed ‘reflective equilibrium’ by John Rawls.⁶ In the real world of imperfect information and variable judgement the picture breaks down. Reflective equilibrium will need to be created again and again as uncomfortable facts and the disturbing implications of our theories and principles

are revealed to us. It is not surprising, given this conception of the task of ethics, that the subject has a long history and an assured future. Our contribution to this endeavour will be to display as comprehensive an equilibrium as can be attained in our reflections about politics.

We have sounded an optimistic note with the promise of reconciliation through the search for a reflective equilibrium. I want to continue in the spirit of optimism. Something akin to reflective equilibrium must be sought in reconciliation of the dispute between the individualist and the communitarian. My sketch of these two positions has been a caricature, too brief, too tendentious, to carry conviction although it may illuminate central elements of the work of distinguished philosophers. This will become evident as soon as we criticize these stereotypes. Against the communitarian we must insist that her account is vulnerable as soon as it is seen to defend the indefensible. Take your favourite example of an appalling practice with deep cultural and historical roots, the apologists for which seem blind to the iniquity: slavery, forced conversion, suttee, trial by combat, female circumcision, ethnic cleansing; there is no shortage of candidates! We cannot take the unreflective conviction of enthusiastic practitioners, nor any amount of detail showing how firmly such practices are embedded in the belief- and value-structures of specific communities, to insulate them from criticism.⁷ At the very least, we can attempt to show how far these traditions are based on false beliefs where this is evident. So we should be very suspicious of claims to the effect that subscription to moral principle or identification with institutions is somehow constitutive of the identity of potential villains. However deep their benighted views, they should be regarded as ripe for change.

But equally, our contempt for cruelty and wickedness should not convince us that we have attained the high ground of moral certainty. Some methodological modesty is in order. Individualism, as I have characterized it, presupposes *some* conception of the wants and values of typical individuals, once we discount the overambitious claim to algorithmic reason. Hobbes identified a universal propensity to avoid death and live commodiously. Even so sparse a conception of human nature as this offers a hostage to fortune. John Locke took these ends to be universal, too, and then bolstered

his account by claiming that mankind could not act as trustees of the purposes God had ordained for them unless they were subject to the law of nature and recognized to be free and equal possessors of natural rights. These premises, too, are debatable. So just as communities may disseminate error, individualists may advance their critical positions on the basis of moral principles which can prove hard to defend. If communities need to find a place for bloody-minded critics, critics should not be surprised at the disclosure that their stance may be controversial and fallible.

As ever, some meeting of minds and temperaments must be sought. And a model suggests itself. We are the heirs to many centuries of careful moral philosophy – philosophy which both derives from and has contributed to a common social life structured by rules and institutions. We inescapably think of ourselves in terms of categories which carry moral potency. Thus we believe we are committed to and responsible for the well-being of others as well as ourselves. We insist on being respected as persons, as bearers of rights which command the duties of others. We claim to be autonomous and require a domain of personal freedom within which this autonomy can be exercised. We refuse to recognize any moral authority which can determine for us and dictate to us where our duty lies. Nothing shall be demanded of us which in principle is not available for us to endorse or reject.

At the same time, and equally inescapably, we find ourselves living within communities of fabulous complexity, our lives enmeshed with those with whom we associate in pursuit of domestic, economic, artistic, scholarly, religious and political ends. These pursuits, too, frame our severally rich conceptions of what is valuable to us and how we may live well.

My picture of our moral repertoire, which I acknowledge I have gathered from Hegel, is that of a structured cluster of principles of the kind listed above which are expressed in institutions, amongst which the law is dominant. We describe ourselves and recognize others in all of these ways – and more besides. The core terms of self-ascription have moral power in the simple sense that identification with them requires us to act towards others (and others to act towards ourselves) in ways consonant with the moral rules which constitute these patterns of identification. Thus to be a person, the most elementary of moral categories, is to claim respect

for one's rights as one respects the rights of others. To be a parent is to have a duty of care to the children one has brought into the world – and much else. To be a citizen is to be an active creator of laws which demand the subjection of their creators. And so on . . .

I have stressed the complexity of this inheritance because this very complexity establishes the philosopher's itinerary. This is a house which very much needs to be put in order. We have to think through every element in it, elaborating the conception of the self which is prompted and articulating the associated values. We need to enquire whether this structure can hang together, whether we *can* be all things at once, to ourselves and our fellows. It is likely that we demand more of ourselves and others than can be accomplished, that roles and principles may clash and personal as well as social conflicts erupt.

This is the conclusion I wish to draw from these brief reflections on the methods of ethics and political philosophy. To advance in ethics (and particularly in political philosophy) we do not need to find some foundational touchstone to establish the credentials of all our beliefs at once – identifying this one as gold, that other as dross. But nor need we endorse all that prereflectively we find ourselves approving. There is plenty of work for us to be getting on with in describing, explaining, systematizing and inspecting for contradictions the set of political values our history has gathered together. We don't need to closet ourselves away from the demands of our communities – but neither should we assume that the moral demands our communities press upon us are in good intellectual order. A moderate scepticism, predicated upon suspicions of confusion and incoherence, is quite enough to get us started.

Political philosophy

One could divide up the subject of political philosophy in any number of ways, hoping that a systematic treatment will leave students with a solid grasp of the major areas of dispute. One could begin with foundational theories, enquiring how far they generate a set of principles which can be applied convincingly to a standard list of philosophical problems which our political life throws up. So one might study, in succession, say, utilitarianism, natural law

and/or natural rights theory, Kantian autonomy-based theories, contractalist theories and no-theory theories. (I have in mind here that species of conservatism which argues that the political domain of political philosophy, and perhaps ethics generally, is a matter of practical wisdom and emphatically not susceptible to systematic, rational theorizing.) And no doubt there are more theories in the offing.

With our sights thus focused, we could investigate how well these theoretical perspectives deliver the goods, asking, for example: whether they can tell us whether we have good grounds for accepting the state (and, in particular, its powers to coerce us by threatening punishment) or whether we would do better without it, in a condition of anarchy; what is the optimal constitutional form of state authority (the rule of one: monarchy or tyranny; a few: aristocracy or oligarchy; the many: democracy, direct or representative; or some mix of these models); what is the proper extent of political power: Is there a private domain which can be invoked to limit the legitimate exercise of the states activities? Do these theories deliver an account of justice, telling us who should own what, how benefits should be allocated, which burdens should be accepted as due?

Suppose we take it that these problems have given rise to a range of clear answers prior to their theoretical exploration, we can then order our investigations differently. We can state the problem in appropriate detail, outline those answers which best encapsulate our intuitions, and seek out a theory from which these results could be derived.

In the chapters that follow, I shall use both of these approaches. In Chapter 1, I shall discuss the utilitarian contribution to political philosophy. I select utilitarian theory for close investigation for a number of reasons. First, because of its strength and the detail with which it has been articulated. Amongst philosophers, there may not be many card-carrying utilitarians nowadays, or not many utilitarians who accept the theory in an unqualified fashion. But utilitarianism has its classic sources in the work of Hume, Bentham and J.S. Mill, and the core theory has been refined and developed by countless thinkers since. It has many variants, each of which have developed responses to both sympathetic and relentlessly hostile criticism. As a body of normative theory it is

unrivalled in its sophistication. Second, from its Benthamite origins, it has been applied resolutely in the domain of practical politics. Its key insistence on computing the benefits and burdens of all those who are affected by policy decisions has ensured its continued use by both politicians and those who criticize them.⁸ This practical influence has also ensured that it has been the target of those who dispute its credentials, both generally and in the context of specific policy application. In recent years, for example, it has been heavily criticized for its role in debates concerning environmental policy.⁹ Third, the criticism of utilitarian theory has often been the starting point for those who have developed alternative theoretical positions. In no case is this more conspicuous than that of John Rawls as he develops the argument of *A Theory of Justice*. In which case, it is important that utilitarianism should not be represented as a straw target; evaluation of these competing theories requires that we understand the power and plausibility of utilitarianism at its strongest.

In the first part of Chapter 2 I lay out the structure and main variants of utilitarian theory, signalling the most important lines of criticism and detailing the utilitarian responses to them. If you wish to skip this exercise in moral philosophy and proceed directly to specific problem areas in political philosophy, feel free to do so. In the second part, I look more directly at the political elements of utilitarian theory, detailing classical or typical utilitarian accounts of the central political values – liberty, rights and justice in the distribution of goods. In two final sections, I examine briefly the utilitarian account of political obligation and the utilitarian case for democracy.

In the three chapters that follow we shall investigate in greater depth the philosophical credentials of these central critical ideals. In Chapter 3, I examine the value of liberty. This will prove a complex, not to say exhaustive, task since liberty is the most opaque of values. Although I shall be focusing on the questions of whether or not liberty is a value, and if so, why so, the literature has bequeathed us a complex task of careful analysis, examining a number of influential explications of the concept of liberty. We shall discover that these open up rather than settle the questions concerning value and that a complex account needs to be constructed. At the heart of this is a controversial claim that liberty

as a political value can never require that citizens have the opportunity to do evil. Having clarified the conceptual background and stated why claims of liberty should be respected, I go on to consider what liberty requires in the way of institutional provision, how far the value of liberty supports democratic decision-making processes and what principles should govern the legitimate restraint of liberty by law and less formal social mechanisms.

In Chapter 4, I tackle problems raised by the notion of rights. Given the ubiquity of rights claims and the focus of political attention in both national and international contexts on human rights, philosophical attention could not be more timely. As with liberty, first there is a thicket of analysis and terminological distinction to be entered and much jargon to be clarified. We are assisted here by the work of jurists who from Bentham onwards have been scrupulous in the definition of terms – which is not to say that their contributions are uncontroversial. We also look briefly at the question of group rights before tackling the vexed issue of the justification of rights claims. As citizens we are much better at claiming rights than defending them.

In examining the credentials of rights claims we shall explore a number of traditional approaches. Locke's theological account is a model, but the premisses from which it is advanced are claimed to be too controversial to find widespread acceptance. Arguments from autonomy are more promising and, indeed successful over some of the terrain of rights. But some rights, I claim, are more evident than the justificatory apparatus proposed for them. Others, notably the political rights, are claimed to be a species of group rights for which support on the grounds of their promoting personal autonomy is inapt. Next, we re-examine, in more detail than hitherto, the utilitarian argument for rights. This, I maintain, is more successful than many opponents allow. But to be wholly satisfactory, utilitarian theory has to find acceptance. It may not be vulnerable to the charge that it cannot defend rights, but other objections may be harder to rebut. Finally, I examine a little-known view that I find persuasive – the no-theory theory. On this account, the success of appeals to rights lies in the fact that history has taught us to claim them and recognize that claiming them requires us to respect all persons as rights bearers.

In Chapter 5 we shall broach the questions of distributive justice: how may private ownership be justified; which criteria should we employ in order to decide who should own, or be allocated, which benefits and burdens? We begin with another common-sense, no-theory theory, the ‘entitlement’ theory of Robert Nozick. Here we shall see that presenting no theory to justify property distribution is a handicap rather than an advantage, since claims to property will be challenged, in the name of justice, by non-owners and by the state which wishes to engage in the redistribution of wealth and earnings. The fundamental weakness of Nozick’s theory will be exposed: if private property is so important a value that claims of right to it should be regarded as sacrosanct, to the point that taxation amounts to forced labour, shouldn’t everyone have some of it? At this point, I shall discuss, too, F.A. Hayek’s rejection of a value of social justice.

Assume that justice dictates that everyone should possess some property. This signals the need to find principles which determine just allocations, and in what follows we discuss a number of traditional contenders. The first principle to be assessed is that of need. Like principles of liberty and rights, we shall find that claims of need require clarification by careful analysis and, job done, command respect. Equality is a venerable (or disreputable) principle. Again clarification is demanded in order to answer the question: Equality of what? A range of candidate matrices of equality will be reviewed. Desert is a familiar criterion of just distribution – ‘Folks should get and keep what they have earned’ is an informal way of expressing this principle. This view is examined, but in large part rejected. Finally we look at one of the glories of twentieth-century political philosophy – the theory of fairness espoused in John Rawls’s *A Theory of Justice*. Rawls’s theory of justities aims to solve more questions than who should own what, who should be allocated which benefits and burdens, but we shall review it principally as an answer to those specific questions and try to measure its contribution.

Chapter 6 tackles one of the great chestnuts of political philosophy – the problem of political obligation. The central issues here concern the legitimacy of the commands of government, the authority which government claims when it addresses laws to the citizens. From the perspective of the citizen, the question will

often be ‘Do I have an obligation or a duty to obey the law, comply with the requests of the sovereign, or otherwise be a good citizen?’. In the literature of political philosophy, this clutch of related questions can be traced back to Socrates in his cell in Athens, deliberating whether to accept the sentence of death or escape with the assistance of his friends.

I put these questions in the voice of the state which makes demands of its citizens, and after some preliminary sparring discuss two approaches which reject the enterprise of justifying the authority of the state. The first of these, anarchism, insists that the state is an evil which cannot be justified; its use of coercive powers is immoral and unnecessary. The second attempt to reject the question comes from the communitarian who denies the citizen any perspective from which the questions can be properly raised. The authority of the state is beyond our critical reach. Unfortunately neither of these sceptical approaches carry enough conviction to disbar further investigation.

On any account of its powers, the state looks to be a nasty operation – this is the insight the anarchist just fails to exploit. And might is not right. This sets up the first and most obvious justificatory claim on the part of the state: however severe these powers may be in their application to citizens, if the citizens consent to the institutions which deploy them, the authority of the state is conceded. This argument is irrefutable – which is not to say the problem is solved, for it transpires that the phenomenon of consent is more easily charged than witnessed. Some persons consent expressly, some consent tacitly, but too many bloody-minded citizens can fairly repudiate the imputation of consent for these arguments to serve the purpose of the state which aspires to universal allegiance. The best argument from consent is addressed to citizens of a democracy who participate in the processes of making the decisions that bind them, but even this argument needs to be massively qualified and even then will not convince all dissenters.

Further arguments are needed by the state if it is to justify its powers to coerce dissenters. A promising approach develops the idea of hypothetical consent into a construction of a hypothetical contract, the terms of which conclude, on the basis of premises acceptable to all, that rational citizens ought to accept the

authority of the state. Our judgement of this approach will be inconclusive. Despite the workings of the great dead philosophers – Hobbes, Locke and Rousseau – in this vein, a full modern statement of the case is necessary if it is to carry conviction. A related argument is offered by H.L.A. Hart, the Principle of Fairness, which claims that all who receive benefits from the co-operative efforts of others may be required to shoulder the burden of contributing towards the maintenance of the scheme that secures them – the state. Is there such a rule or convention of fairness? If there is does it govern the relationship of state to citizen? The responses to these questions are not obvious. The most direct answers exploit the notion of tacit consent which the principle was designed to articulate or replace. Finally we examine the most venerable of all arguments, the argument from gratitude. I shall rescue this argument from the appearance of silliness which it carries to the sceptical modern eye, but we shall see that the conditions required for its successful application impose severe limits on the constitution and laws of the state which can be said to deserve obedience by way of gratitude.

Finally, in Chapter 7, we broach the issue of the constitution directly. In discussing liberty, we claim that democratic institutions procure a valuable kind of freedom. On any account of human rights, the right of political participation will be central. The question of political obligation is easier to tackle, if not uniquely answerable, if the constitution is democratic. We bring all these threads together in our discussion of the claims of democracy. No wonder subscription to the values is just about universal.

We rehearse these values and explain their role in justifying democratic decision procedures through a presentation of Rousseau's contribution to democratic theory, which is not to say we are reciting uncontroversial truisms. His doctrine of the general will has been thought by many to be too opaque a mystery to serve as grounds for the legitimacy of democratic institutions, but we note that the clear utilitarian alternative – maximize satisfaction by implementing the desires of the majority – is deeply unsatisfactory.

Rousseau's arguments are directed to the justification of direct rather than representative democracy. For him, 'representative

democracy' was an oxymoron; for us it may be a necessity as well as an improvement on the model of direct plebiscitary decision-making. But then, we may not be true democrats either. If we are not, if we recognize an imperative to draw in the horns of the enthusiastic democrat, this may be because we acknowledge the dangers of majority tyranny. Majority tyranny is as serious a problem as we are likely to confront in our lives as politically engaged citizens – and it is philosophically puzzling, too. We shall try to fathom the complexities.

Finally we discuss the claims of deliberative democracy to be the only ethically permissible method of settling deep moral disagreements. We shall conclude that these claims, in reaching for an ideal consensus, are overblown. There are good reasons for believing that substantial agreement concerning the issues put forward for political settlement may be unreachable. Moral pluralism fosters intractable debate. Differences in deep moral values, often the product of divergent religious beliefs, seem irresolvable. Agreement on a method of establishing policy, on reaching political accommodation, is often the best we can hope for. Sadly, we have no reason to believe that this best is good enough for the zealots of dangerous causes. The democrat will have to use coercion to defend his use of the ballot box.

Chapter 2

Utilitarianism

A good way to begin is by studying a deep and well-worked-out ethical theory which has commanded wide assent, reached clear conclusions when tackling the philosophical problems thrown up by our political life and produced unambiguous policy directives to settle practical questions. I select utilitarianism because I believe it has these features (or, at least, makes these claims). This has been recognized by many of the most impressive recent contributors to political philosophy. Few endorse utilitarianism – but most of them see the need to define their position against the utilitarian salient.¹ Utilitarianism should not be treated as a straw target; it has two great virtues which we should not lose sight of. First, it is based on a thought that ought to have universal appeal: when judging conduct, we should pay close attention to the consequences of human actions in respect of their contribution to the welfare of all those whom the actions affect. Second, (and this was a central preoccupation of the classical utilitarian thinkers, Jeremy Bentham and John Stuart Mill) that focus is particularly apt for fixing the purposes of government. We would do well to