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POLITICAL PHILOSOPHY

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or eliminate their autonomy which are not wrongs only, or primarily so, on just these grounds. And there are violations of rights which may, but may not, violate their autonomy. My hunch is this: if we construe respect for rights as respecting autonomy and then think of the violation of autonomy on Kantian grounds, as treating folks not as ends but as means merely, of course my rights are violated when you treat me as a punchbag. But then (and this is also a thought many Kantians endorse) this is the mark of all wrong-doing.[34] This conclusion strikes me as too strong (as does the lesser claim associated with Nozick and Dworkin that all political morality lies within the domain of persons' rights).

At bottom, my worry is that the value of autonomy is being asked to do too much work when it is employed as the foundational value of *all* ascriptions of human rights. If one uses a thin (Kantian) conception of autonomy, the line of derivation from the claim that persons are ends-in-themselves to the justification of human rights is likely to be too attenuated to be convincing. If one uses a thick conception of autonomy – and we have seen how Dagger amplifies the core Kantian insights – the autonomous life becomes, quite generally, the life well led, a life distinguished by plans, projects, relationships and ideals. If we demand: Which plans, projects etc. . . . count as expressive of autonomy? we can expect both a formal and a substantive answer. The formal answer may restrict plans and projects to those that are compatible with others' pursuit of their plans and projects; my autonomy should not be purchased at the cost of the autonomy of others. This strikes me as overly restrictive. Why should Jane not interfere with Jill's pursuit of the relationship of her choosing if they've both selected Jack as the best father for their children? The substantive answer to the question will require an inspection of candidate projects and ideals to see if they pass muster. What tests do we have available? I'm sure there are plenty. One question to be asked concerns the harmfulness of the canvassed project or ideal. Remember, as we noticed in Chapter 3, it isn't a good feature of a career of child abuse that it is autonomously pursued. Racial supremacy is another rotten conception of the good life, but if it is mine own, can I call in the value of autonomy to support me in its pursuit? Surely not.

None of this is meant to demonstrate that human rights cannot

be justified in terms of the autonomy of the agent who wishes her deliberations and activities to be protected. When agents reflect on their successes and failures, it is important in many cases that the endeavours they have pursued be identifiably their *own*. Nothing is more saddening than the guilt or shame felt by the child who has failed to live up to her parents' excessive expectations. The erosion of self-respect, the developing sense of personal inadequacy in the face of others' improper expectations or unrealistic standards is genuinely tragic because the flaw is unreal, though the personal consequences may be devastating. We argued before that a parent's imposition of life goals on a child represents a severe breach of that child's autonomy where the child internalizes the parental ambitions at a crucial point in her development. This familiar aetiology of personal desperation tells us much about the real value of autonomy.

The thought that moral agents are self-governing, that they have their own lives to lead, their own ideals to formulate and pursue, should not be represented as a bloodless ontological truth reflected in the metaphysics of morality. Or at least it should not be represented thus for the purposes of deriving some specification of human rights. The ideal of personal autonomy that is violated by the sad stories I have sketched serves perfectly well for the delineation of some human rights. It is a beautiful but sensitive plant, concealed as effectively by heavyweight philosophical apparatus as it is destroyed by strong alien intrusion. It is vulnerable to well-meaning family aspirations, peer pressure, mechanisms of social conformity, as well as the designs of states (or their representative politicians) to generate a well-structured labour force. All of these (and many other) agencies of coercion stand between the vulnerable person and her achievement of a decent and satisfying life. Autonomy, thus described, demands a manifesto of human rights, but it would be a mistake to understand all human rights as having their grounding in individual autonomy.

Are there any human rights which cannot be derived from the value of autonomy, or not from the value of autonomy alone? I think it is counterintuitive, as I have argued, to claim that the right to life which is violated by murder or the right to physical integrity which is violated by assault derive from some story about how these actions violate autonomy. I think it is just as misleading to

claim that the political rights derive from autonomy alone. Of course the autonomous agent will wish to have powers of participation in democratic forums, but the exercise of citizens' powers in activities such as voting, speaking up and marching with others is a social performance more than a personal project. To anticipate the argument of Chapter 7, it is we, the people, who so act, in concert with each other. Democracy may be represented as a stage on which solitary actors strut their stuff in a public display of private aspirations, but this is an impoverished representation of a most likely deluded activity. Politics, like church-going, is one of those activities that does not locate the sense that it is worthwhile in individual evaluations of the projects that make sense of them.

Rights and interests

Persons have interests. Some are weighty, some are trivial. Some are idiosyncratic, some are just about universal. These categories evidently intersect. Some interests are so important and so widespread that they give rise to claims against others that these interests be served. The resultant claims may be against others, that they not kill, hurt or steal from us, or against governments that they provide protective services. For Mill, a right is a valid claim on society for protection. 'To have a right, then, is, I conceive, to have something which society ought to defend me in the possession of.'[35] Mill's example was that of security, 'to everyone's feelings the most vital of all interests'.[36] And this reminds us, though this was not Mill's intention, that crucial rights may be either or both, negative and positive, depending on the terms in which they are spelled out. On this account, to have a right is to have a justifiable claim against others that some interest be protected or promoted. What rights, then, do we have? All will depend on the interests that are cited as demanding protection and promotion. In some cases, as Mill's example of security suggests, these will be universal. In which case, they may well be deemed human rights. In other cases, they will be particular or conditional. The rights distinctive of members of a club are examples.

Talk of interests is irremediably vague. Small wonder that dispute about rights is endemic and that new claims of right

proliferate daily. A novel example, which I suspect I am bringing to the attention of readers for the first time, is the right of adults born through a process of artificial insemination to be granted knowledge of the identity of the sperm donor. Clearly the first step claimants to such a right must take if they are to have it recognized, is to convince others of the importance of the interest they have in acquiring such knowledge. The phenomenon of 'rights inflation', well described by L.W. Sumner,[37] witnesses the variety of interests that individuals attest as grounds for the claims they make on others. Rights collide and compete as differing interests struggle for prominence in policy debates. The interest a natural parent takes in bringing up her child may conflict with the child's interest in having a healthy, supportive upbringing – and courts may be asked to adjudicate what emerges as a collision of rights in terms of laws or principles which establish a hierarchy or ranking between them. 'The rights of the child should be decisive', some will say.

Problems of two kinds are foregrounded by the conceptual association of rights and interests: philosophical problems concerning whether interests are subjective or objective,[38] and moral problems concerning the importance or weight of the declared interest and its implications for the duties which the claimed right imposes on others. Problems of the first kind, I put to one side (which is not to derogate their importance). Problems of the second kind seem endless and intractable. But that should be taken as an incentive for effort rather than a counsel of despair. Claims of right are not self-validating. It is an important feature of the view that takes rights claims as expressions of interests which warrant promotion and protection that it tells us where to look when disputes are to be settled: examine the interests which ground the claims.

Interests, we should note, may be individual interests or group interests. This distinction may seem misguided. Whether interests are taken as subjective or objective, aren't we always thinking, at bottom, of the interests of individuals? Who or what else could take or have an interest? There is evidently some connection between the interests of individuals and the interests of groups. It would be astonishing if one were to attest a group interest which bore no relation to any identifiable interest of the members of the

group. It is hard to think of a project being in the interests of a some firm without it being in the interests of the shareholders or of a policy being in the interest of some nation without it being in the interests of citizens. It is generally supposed that a firm's interests will be identical with those of a majority of shareholders. The national interest may be similarly decomposed into the interests of most citizens. On this view, if you wish to determine the group interest, consult or otherwise seek evidence concerning the interests of the members. Ask them, or otherwise find out, what their interests consist in. How else could one determine the interests of groups?

This direct approach is philosophically tainted. The common sense which underlies it is infected with a species of individualism which incorporates a distinctive and controversial philosophical view of the relationship of individuals to the groups of which they are members. The central feature of this view is that groups are identified as instrumental to the achievement of antecedent individual interests. Group interests, on this account, amount to a concatenation of individual interests. The decision procedures of such groups will be designed to give effect to these individual interests.

This view is doubtless true of many groups – but not of all, or indeed most, once groups have become stable. A useful distinction here is that between natural and artificial groups (or associations). Artificial groups enlist members on the basis of a declared prospectus. Standardly, membership will be voluntary, as will be continued subscription. The purpose of membership will be to pursue an individual interest which is more effectively achieved when individuals act in concert. As soon as the convener, secretary and treasurer are in place, a division of labour can increase efficiency and effectiveness in the use of resources to the common end. One can expect such groups to come into existence as soon as common interests are identified and to disband when the object of interest is secured. The evident mistake is to suppose that all groups are of this kind.

Natural groups are those groups of which agents find themselves as members, willy-nilly. Families and clans are obvious examples. The nation-state is a controversial contender for natural status. Aristotle thought that the state in the form of the Greek *polis* was

natural – man is *zoon politikon*, a creature of the *polis*, because the *polis* is the minimum-sized unit of human self-sufficiency.[39] Hobbes, by contrast, believed the state to be an artificial group (or person) – the creation of individuals with a congruent set of purposes through their individual pursuit of the preservation of their lives and 'commodious living'.[40] This distinction of natural and artificial groups is too complex for us to pursue here, but one implication is noteworthy in respect of the interests group members attest. Artificial groups may be identified in terms of the antecedent interests which membership promotes. In the case of natural groups, some members' interests may be consequent upon the fact of their group membership. It is because they are members of such and such a group that they form certain interests; their interest in the well-being of the group itself will be the most conspicuous example.

This pair of distinctions, between natural and artificial groups, and interests formed antecedently to or consequent upon membership, conceals a good deal of overlap. Humans notoriously form groups for specific purposes, sometimes explicitly self-interested but often not so, and then find the group which has been created develops a life of its own. Parents form or join a parents association to promote the better education of their children, then find that the habit of association generates social activities which have a pleasure of their own independently of the original purposes of association. Some folks seem born clubbers, keen to join, organize and serve groups in which they enlist. Groucho Marx, keen to avoid any club which would have him as a member, seems very much the exception. Group membership forms as well as serves individual interests, even in the case of those whose original interest is self-interest. Hegel describes this process as the mediation of the particular through the universal. It is distinctive of Civil Society, the social sphere in which family members seek their particular welfare in the world of work.[41] I suspect that only those groups formed to serve very narrow and temporary interests can escape this dynamic. But the implication is clear. Groups can form individuals' interests just as effectively as the interests of individuals lead them to form groups. Where this happens, we can speak intelligibly of a group interest. And where groups express a distinctive group interest, we should expect them to claim that

these interests be protected and perhaps promoted as of right. The dynamic of transformation between individual interest and group interest can make it very difficult to establish whether the rights which are claimed in consequence are group rights or individual rights. Imagine a religious congregation which wishes to build a place of worship amidst a community of non-believers. Suppose planning permission is denied on grounds of bigotry. 'We tolerate the Muslims here, but let them not try to build a mosque!', I once heard said by a benighted Presbyterian. When the congregation appeals, citing their right to worship together in an appropriate building, is this a group right or a collection of individual rights that is being asserted? Only subscription to a mistaken view concerning individuals' interests would lead one to conclude that there couldn't be a group right at stake.

Rights and utility

Interests, as we have seen, may be widespread and important. Rights claims, whether established in international conventions or municipal legislation, are the favoured method of protecting and promoting them. How can interests, as the objects of rights, work to justify institutional provision? The simplest answer, though not the only one, is to register the interests which rights serve in a consequentialist, broadly utilitarian, calculation. Persons have interests as individuals or in virtue of their membership of groups. Consult these interests, expressed in terms of the best value theory, and enquire whether their fulfilment through institutional provision maximizes utility. If it does, one has established a moral right, construed as a claim against the institution designers that recognition of the particular interests be accorded by the most effective institutional structures. Generally, the most effective structures will be the legal processes of individual nation-states. Sometimes international legal structures, as in the recently established International Criminal Court, may be judged the best way of protecting human rights on a worldwide basis by prosecuting those responsible for genocide, crimes against humanity and war crimes.[42] Some specific provisions, derivable from more general rights may find informal protection within positive morality.

To see how this project might work, take the example I mentioned earlier of a novel rights claim – the right of adults born following artificial insemination to be informed of the identity of the donor. Those who claim such a right will declare an interest in knowing the identity of their natural father. They will cite their ignorance as a deprivation and source of suffering. They will anticipate the possible pleasure of future acquaintance. Those who oppose such a right will argue that the benefits to recipients of AID (parent(s) and perhaps child, too) will be reduced as donors are frightened off by the prospect of future telephone calls from developed embryos for whose creation they have some measure of responsibility. And one could go on, recording the good and bad news for the different persons likely to be affected by a policy of recording details to which putative rights bearers claim access. If, after registering the effects of such institutional innovation on all parties who have an interest in such affairs, it is judged that disclosure is more beneficial overall than secrecy, then a case has been made for a moral right. Public recognition of this right requires that the institutions which most effectively secure disclosure be put in place. Or not, as the case may be. It should be noted that this process of calculation requires that everyone's interests be taken into account. This includes those who claim e.g. that their right to AID would be compromised or their right to privacy would be violated by a process of disclosure. These rights, too, are decomposed into the registration of the interests their rights protect.

The variety of consequentialism which justifies the assignment of rights is evidently indirect.[43] Once rights are established, actions are wrong if they involve violations of claims of right or permissible if they are within the sphere of a legitimate rights claim. If it is granted, on grounds of general utility, say, that persons have a right to the exclusive use of private property, it is permissible for folk to use their own property but impermissible for others to do so without the owner's permission. This derivation of rights and the implied verdicts in the case of particular actions is no stronger than the variety of consequentialism which underpins it. I shall put to one side here general criticisms of the utilitarian project and shall address directly a few central objections to the utilitarian defence of rights.

First, let us tackle a number of slogans. Rights, as we have seen, are claims made by individuals or groups. In the simplest, albeit misleading, case, they amount to claims that the individuals' (or groups') moral boundaries be respected. Historically they are linked to a burgeoning individualism. So rights presuppose 'the distinction of persons . . . the separateness of life and experience' (Rawls),[44] 'this root idea, namely, that there are different individuals with separate lives' (Nozick).[45] The implication of this position for Nozick is that rights are 'side-constraints' on the pursuit of goals.

These claims have assumed an enormous importance in discussions of utilitarianism and rights since many of those who have taken them to be obviously true have also believed (as Rawls and Nozick believe) that they are incompatible with utilitarianism in so far as it incorporates aggregative and maximizing elements. Aggregation and maximization may reveal the best policy to be one which trades off the interests of some persons to achieve maximal well-being overall. One does not need to be a card-carrying utilitarian to recognize the weakness of arguments as sketchy as these. One of the distinctive features of utilitarianism is its insistence that everyone's interests be counted, and counted equally, in the aggregation. 'Everybody to count for one, nobody for more than one', was Mill's statement of the Benthamite orthodoxy.[46] Just one of the reasons why the classical utilitarians were deemed philosophical *radicals* was their insistence that the interests of *all* be computed in a judgement of the common good. No one's distinctive or separate interest, however idiosyncratic, should be ignored. This thought is bolstered by the obvious truth that the goods to be reckoned in any calculation are goods to individuals. Whether they be computed in terms of happiness, pleasure net pain, desire-satisfaction or elements of an objective list, individuals are the only possible beneficiaries. The thought that groups might have interests antecedently to the interests of individuals comprising the groups does not challenge this conclusion. Wherever the interests come from, the utility achieved by satisfying them will accrue to individuals severally. If the separateness of persons is recognized in the calculation of utility, and if the calculations of utility support the recognition of individual rights, what reason have we for concluding that the utilitarian project fails to recognize the

fact that different individuals have their separate lives to lead? For this conclusion to be justified there must be some other respect in which the separateness of persons is not recognized.

Before we investigate this further claim, let us look at another slogan – one deriving from Ronald Dworkin who argues, famously, that rights are trumps; in particular, rights claims trump competing judgements of utility. In Dworkin's words, 'Rights are best understood as trumps over some background justification for political decisions that states a goal for the community as a whole'.[47] The 'background justification' that Dworkin has in mind is utilitarianism. The metaphor of trumps, for those ignorant of the rules of whist, implies that no matter how grand the advantage of a policy in point of utility, if, in a specific case, implementation of that policy violates rights, it is unjustifiable. No matter how grand one's card in the other three suits (the ace of spades, perhaps) if clubs are trumps, the two of clubs wins the trick.

As with the other slogans, there is an argument behind it – and as with them, I shall ignore the details. It is important to see what this argument cannot establish. It cannot show that it is somehow analytic or conceptually integral to rights claims that they countervail arguments from utility. The utilitarian case for rights is cogent, though it may fail if the background theory is found unacceptable. It can't fall at the first hurdle on the grounds that it proposes to evaluate rights whose credentials are somehow immune to utilitarian inspection, that it is improper, conceptually speaking, to bring rights to the bar of utility.

There is a further implication of Dworkin's claim that rights trump utility that needs to be pinned down. Recall – if clubs are trumps, the two of clubs beats the ace of spades. This suggests that the meanest right, if granted, defeats arguments from utility that purport to justify its violation in the particular case. However much disutility may accrue, the right should be respected. Now the utilitarian can agree with this, so long as the right is in place and justified by good utilitarian reasons. The detailed specification of the right will make clear the scope of rights claims. Suppose we all agree, utilitarians and non-utilitarians alike, that a right to private property should be recognized. We can expect the detail of any such right to incorporate specific exclusions. The state will claim the right (eminent domain) to requisition farmland for the

construction of airports during an emergency, or a civic authority may have powers of compulsory purchase to build a city bypass. All zoning or planning regulations articulate, through limitations, the contours of specific rights. Once the cluster of rules deemed optimum have been set out and accepted, there will be no provision for arbitrary executive breach of them, as Rawls pointed out in 'Two Concepts of Rules'. At no trumps, the lead of the ace of spades will win the trick against the play of the two of clubs, but if the rules of the game establish a trump suit, and if clubs are trumps, not so. All depends on the precise rules of the game. One cannot insist that the rules of whist are distinctively non-utilitarian, because they make provision for a trump suit.

In a similar vein, it has been suggested by David Lyons that the utilitarian cannot capture the distinctive moral force of rights claims.[48] Call the moral theory which does capture the moral force of rights claims T. I see no reason to exclude the possibility that application of the principle of utility might not yield exactly the same set of institutional arrangements as T. This is clearly a contingent matter, since which institution finds utilitarian favour depends on the facts of the matter. So suppose both T and utilitarian reasoning support a given structure of rights. In this case the thought that the utilitarian cannot capture the moral force of rights boils down to the hypothesis that utilitarianism licenses a discretion on the part of officials to break the rules if they judge that this will produce utility. I see no reason why the utilitarian should accept this. Whatever discretion officials may exercise will be laid down *within* the system of rules – and, *ex hypothesi*, these are the same for both theories.

Some are not content with the contingency at the heart of utilitarian theories. Which institutions we endorse evidently depends on how the facts pan out. The utilitarian cannot deny this element of contingency. To settle the issue we should need to confront the utilitarian position with an alternative, as with T above, which derives rights in all their specificity from different foundations, and we should need to inspect the factual credentials of utilitarian proposals. This latter is a massive task, but we should not expect theory T to find straightforward *a priori* grounding and direct application. On my understanding of rights, T would have to bear on the interests that rights protect. This is an analytic feature of

rights claims and it severely limits the range of alternative derivations.

Often a different point is being made by those who deem rights to be trumps or possessed of some distinctive moral force which belies their grounding in utility. Suppose, as before, that both utilitarianism and theory T yield exactly the same set of rules granting rights. The claim may be that rights as trumps have such moral force as to warrant respect even in the face of catastrophe. Respect rights though the heavens fall. Respect rights no matter what amount of human interests are sacrificed thereby.[49] If rights are protective of human interests, such claims look preposterous. If rights are trumps in the sense of being absolute, we are better off without them. But I leave the reader to judge.

The no-theory theory

Before we close our discussion of rights, I want to mention one further theory. Let me begin with a story from Arthur Danto:

> In the afterwash of 1968, I found myself a member of a group charged with working out the disciplinary procedures for acts against my university. It was an exemplary group from the perspective of representation so urgent at the time: administrators, tenured and non-tenured faculty, graduate and undergraduate students, men and women, whites and blacks. We all wondered, nevertheless, what right we had to do what was asked of us, and a good bit of time went into expressing our insecurities. Finally, a man from the law-school said, with the tried patience of someone required to explain what should be as plain as day, and in a tone of voice I can still hear: 'This is the way it is with rights. You want'em, so you say you got'em, and if nobody says you don't then you do.' In the end he was right. We worked a code out which nobody liked, but in debating it the community acknowledged the rights. Jefferson did not say that it was self-evident that there were human rights and which they were: he said we *hold* this for self-evident. He chose this locution mainly, I think, because he was more certain we have them than he was of any argument alleged to entail them, or of any premises from

> which their existence was to follow. This is the way it is with rights. We *declare* we have them, and see if they are recognized.[50]

From one point of view, this no-theory theory is a counsel of despair. Suppose we are impressed by claims of human rights and yet, being philosophically scrupulous, we despair of establishing a foundation for them which we find convincing. We can see sense in various foundationalist projects: for some rights claims, in some circumstances, autonomy serves as the value which rights promote; for other rights, in different circumstances, utility promises convincing grounds; for still other rights, whose force we acknowledge, we may find ourselves stumped – no justification seems to serve. Where we accept justificationary claims we may still be hesitant to propose that we have to hand a convincing theory which can be deployed across the board. At this point, the thought that rights claim are an ethical bedrock, resistant to further exploration may look attractive. We can accord them the status of first principles, perhaps clouding the waters further by speaking of them as intuitions.

This would be to misread the point of Danto's homily, since it fails to recognize a distinctive feature of the logical grammar of rights – that they are generally asserted as claims on others. If others acknowledge the force of claims of right (perhaps, as is likely, they make similar claims, themselves, against others) that is all that is necessary for the rights to be established. All parties are involved in a practice of making, acknowledging and respecting rights claims.

If this is true, if rights are claimed, acknowledged and respected amongst a community, no further argument is needed to establish their provenance. The obvious objection to this strategy is that the right in question, on any occasion of its assertion, may be denied. So it looks as though rights exist at the whim of tyrants or bloody-minded opponents. Just one determined nay-sayer on Danto's committee would have been sufficient to block progress.

The defender of the no-theory theory need not be disheartened at this point. The obvious resources will be history and sociology. Nobody, any more, I claim confidently, accepts the arguments in favour of slavery advanced in the seventeenth century. The various

documents attesting human rights are established as the norms of international and municipal political correctness. Folks just do make claims of individual and group rights nowadays, expecting, often correctly, that they will meet with sufficiently widespread acceptance. And so rights have emerged alongside the increasing embarrassment of their public detractors, composing a central ingredient of acceptable political rhetoric. Even the most benighted political conservative has lost the folk-memory or myth of a society with the sort of organic civic unity that precludes claims of right. Heirs of the Reformation, of the anti-slavery debates, of the struggles for the achievement of the rights of man and the citizen, we are all of us bloody-minded enough to keep cognizance of our rights.

The no-theory theory may look depressingly like a no-argument theory, impotent in the face of persistent dispute. If one can't get the dissenter to acknowledge the fact of her claiming the rights she repudiates, how is advance possible? This is the point at which a battery of other arguments kick in. We can try, *ad hominem*, the Lockean strategy, the Kantian strategy, the Millian strategy: whatever argumentative path will take the dissenter from her premises to our conclusion. Pluralism may be the enemy of philosophical tidiness but it is a friend to the project of finding agreement.

Chapter 5

Distributive justice

In this chapter we shall address the problem of distributive justice, the vexed issue of how wealth and income, goods and services should be distributed or allocated amongst the population of a state. There are many candidate principles that may be applied, some of which I discuss explicitly in what follows, but before we advance any further, I should bring to your attention a restriction which I have placed on this investigation which you may well judge to be arbitrary. For many, the problem of social justice amounts in practice to the social question of how a society should cope with poverty, assuming that the poor are always with us, that even in the richest nations pockets of seemingly uneradicable poverty exist alongside extremes of wealth. This was noticed by the earliest philosophers to observe the social mechanics of developing capitalism. Hegel, to take one example, tells us that 'civil society affords a spectacle of extravagance and misery as well as of the physical and ethical corruption common to both'.[1]

But if the co-existence of great wealth and deep poverty is a problem within states, it is a much greater problem between states

or between the peoples of different states. In the face of these dismal facts, one important philosophical question is this: are these different problems – one of social justice, say, the other of global or international justice – or are we confronted by the same problem arising in different contexts? Relatedly, are the philosophical principles which one might employ to judge the justice of these different manifestations of radical inequality the same in each case or are different principles needed to address them and to prescribe redistribution where that is deemed necessary? It is fair to say that the problems of international distributive justice are in their academic infancy, though already one can identify utilitarian, Kantian and contractualist approaches.[2] With great reluctance, I shall put these questions to one side, trusting, perhaps naïvely, that one will have made a start to the consideration of them if one has deliberated carefully about social justice within states.

I shall begin the discussion by investigating one of the latest entries to the field of competing theories, the entitlement theory of Robert Nozick. I begin here, anachronistically, because I believe Nozick's account is the simplest and most straightforward account of social justice; if not the best-founded, it most readily captures our untutored intuitions concerning who can validly claim the right to what property. As we shall see, these intuitions will need to be corrected.

Entitlement

With luck, you will own the book you are presently reading. Let me assume so. How do you vindicate your claims of ownership if these are challenged? 'Is that your copy?', someone may ask. If you are careful and well-organized, the issue of proper ownership will likely be settled as soon as you produce a receipt. This may not fully allay the enquirer's worries. She may be investigating your earnings and wonder how you acquired the wherewithal for this expensive purchase. So you bring out your pay-slips and bank statement and show that the item was purchased within your publicly declared means. What more can you be expected to do? The challenge was made and met. You have shown that you are entitled

to the copy you possess. You have demonstrated that it is your private property.

Nozick's theory of entitlement

Concealed in this episode is a theory of entitlement, associated in recent times with Robert Nozick. On Nozick's account, a distribution of holdings is just if it meets three conditions:

(1) *Justice in Acquisition*: 'A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.'
(2) *Justice in Transfer*: 'A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding.'
(3) *Rectification of Injustice*: 'No one is entitled to a holding except by (repeated) applications of (1) and (2).'[3]

The principles of just acquisition concern the 'legitimate first moves'. Acquisition, here, means first or original acquisition of goods which are owned either by nobody, or else inclusively, by everyone in common. The principles of just transfer concern 'the legitimate means of moving from one distribution to another'; standard examples would include sale or gift. Principles of rectification operate when holdings are illegitimate in respect of acquisition or transfer. They would require, for example, that stolen goods be returned to the legitimate owner. If we apply the bones of this entitlement theory to the episode described above, where your possession of this book was challenged, you vindicate your possession by application of the principles of justice in transfer when you give evidence of purchase. Had the book turned out to be stolen or kept following a loan, restitution to the owner would be prescribed by application of justice in rectification. As Nozick points out, 'the entitlement theory of justice in distribution is *historical*; whether a distribution is just depends upon how it came about'.[4]

Nozick's entitlement theory serves as a mighty critical instrument. All manner of theories of distribution are rejected as they

are revealed to be inconsistent with it, as we shall see later. The oddity of his presentation is that, having given a general outline of the form of the entitlement theory, he should do so little to give it substance by way of a detailed specification and defence of the three principles. 'I shall not attempt that task here',[5] he tells us, and to my knowledge he has never returned to it. What he does have to say concerning the first principle, for example, is a repudiation of Locke's attempt to vindicate original acquisition. Nonetheless, if there is a default position concerning the justice of any particular distribution of private property, Nozick has evidently given us the structure of it. Any theory of distributive justice must, when fully articulated and consistently applied, give rise to a specification of who owns what property which can be adjudicated by reference to the legitimacy of the transactions which produced the given distribution. Whether these transactions amount to the private agreements on which Nozick concentrates, i.e. gifts, bequests, sales etc. or government transfers, which Nozick deems illegitimate, e.g. social security grants or payments, state pensions or whatever, *some* story must be available to be recited when holdings are challenged. If a system of private property is held to be unjust, this must entail that some members of a community are not entitled, *vis-à-vis* the range of *permissible* stories which may be told, to the goods that they claim.[6] Justice will be done when the goods are reallocated in accordance with an appropriate scheme of rectification.

The glamour of Nozick's proposal derived from its link to common-sense intuitions governing who owns what, as exemplified by my story concerning your book, together with its promise to undercut reams of published debate on the subject of justice. All readers will be familiar with the thought that a just distribution is an equal distribution. Some may have moved on to the thought that we can improve on equality if the worst off in a society with an unequal distribution are better off than they would be under conditions of equality. Others will insist that a just distribution will be responsive to claims of need; others, still, may require that desert and merit be recognized. Philosophically tainted contributors to the debate will argue that no distribution can be just which does not maximize utility.

Nozick himself was well aware of the power of his entitlement

theory to counter theories developed from intuitions or theoretical stances of the kind rehearsed above. He contrasts his *historical* conception of justice with *current time-slice* principles which employ a structural principle to determine whether a distribution is just. A current time-slice principle will ask not: How has this distribution come about? but: Does this distribution achieve a specific goal or *end-state*, does it exemplify a specific *pattern*? Any theory of the sort that begins: 'from each according to his _____ and concludes: 'to each according to his____', is a patterned theory, as is equality of wealth and income.

An unusual example of a patterned principle is the one Hume deemed hopeless, if well-meaning: 'to each according to his moral virtue.' Nozick's point is that such a principle commits us to an inspection of the current distribution of goods to individuals to see whether or not it accords with this principle. If it does – the more virtue a person displays, the more goods they hold in comparison to others of lesser virtue – the distribution is just, *regardless of how that distribution came about*. If we find persons of lesser virtue holding more goods than the more virtuous, the distribution is unjust, again *regardless of the provenance of that distribution*. Nozick now goes on to reveal what he takes to be a systematic weakness in principles of this form.

He proposes a thought-experiment. Take your favoured pattern of just distribution (D1) – not wealth proportionate to virtue, but, say (more familiar, if equally implausible) strict equality of wealth – and suppose it is exemplified. Now, Wilt Chamberlain signs for a basketball team that will pay him twenty-five cents for each fan admitted to home games and so collects $250,000 by the end of the season from the million fans who have willingly turned up to watch him. (Multiply the total by twenty or more to make it realistic in terms of current prices and earnings.) Is he entitled to these earnings? Clearly, the resulting distribution (D2) is unjust as measured by the principle of equality. Each fan has $25 less and Wilt has $250,000 more. Yet 'each of these persons *chose* to give twenty-five cents of their money to Chamberlain. They could have spent it on going to the movies, or on candy bars, or on copies of *Dissent* magazine, or of *Monthly Review*.'[7] The implication of patterned theories of justice is that, since this society has moved from a just to an unjust pattern of holdings, this position needs to be rectified:

most easily by confiscating Chamberlain's earnings and restoring them to the willing punters. Nozick's conclusion looks devastating: 'The general point illustrated by the Wilt Chamberlain example . . . is that no end-state principle or distributional patterned principle of justice can be continuously realized without continuous interference with people's lives.'[8] Liberty upsets patterns.

This conclusion should not be judged to be as iconoclastic as Nozick would have it. Those who value liberty may be disturbed at the prospect of 'continuous interference with people's lives'. But if they reflect that the form taken by interference is likely to be taxation and that, for most folks, 'continuous' means every time they receive a pay-slip or purchase a meal, they may judge that they do not experience this continuous interference as a significant loss of liberty. The value of keeping one's pre-tax earnings may not be negligible, the payment of income or sales taxes may be a burden, but most folks get used to it. Perhaps they notice that it is those who earn much the most who gripe the most – and who are most likely to emigrate to some tax-haven. For many people, the pain of paying their tax bills is as irritating as the pain of traffic lights switching to red whenever they are in a hurry, of pedestrians appearing on a zebra crossing just as they are about to drive across it. They see tax cuts as a notable gain rather than an insignificant reduction of an unjustified impost. As we discovered when thinking about liberty, not every restriction or impediment or interference weighs significantly on the scales.

Of course, those who are sanguine about taxation, seeing it, alongside death, as the fate of all mortals, may be underestimating the moral iniquity of their predicament. They may be the sort of victims of a prevailing ideology that a quick dose of smart philosophy may cure. They may read and think, and recognize Nozick as a philosophical faith-healer. 'Taxation of earnings from labor is on a par with forced labor', Nozick tells us.[9] I doubt it. What's more, I think it would be seriously impertinent to ask those who *have* undertaken forced labour – in the Gulag, in Nazi factories, in the Cultural Revolution in China, in the fields of Cambodia – whether they agree.

It's fair to combat rhetoric with rhetoric. But if an argument reads as truly sinister in the light of one's antecedent political

commitments, the philosopher should cough discreetly and get down to the business of exposing its weaknesses. One should put the rhetoric to one side and concentrate on the detail of the arguments. There are good arguments against Nozick's position and they should be carefully rehearsed.

The best way to start is to take up the entitlement theory. Its first element is the theory of just acquisition. Acquirers are first holders, first occupants. What was the status of, say, land before it was first taken into possession? There are two answers to this question, each of which makes first occupancy a puzzle. The first answer is that the land belonged to no one. Anyone could legitimately walk across it or pick mushrooms from it. The first acquirer then has a singular moral power. Suppose, as Locke thought, property is acquired by mixing one's labour, by working on the unowned land. We now have the possibility that agents may, by their diligent pursuit of their own interest, create obligations for all others which hitherto did not exist. A right of ownership having been acquired by proper means, everyone else is now under a duty to respect the owner's exclusive possession.[10] What can be the source of such a radical moral power?

The same question arises even more pointedly when the normative background is not a state of no-ownership, but rather one of co-ownership. Locke believed that God had granted the world to mankind in common. Everyone, originally, had *inclusive* property rights to the earth, its fruits and its beasts: 'this being supposed, it seems to some a very great difficulty, how anyone should ever come to have a *Property* in any thing'.[11] It does indeed, not least since those who have acquired an obligation in place of a previous inclusive liberty right have demonstrably *lost* a moral right they could legitimately claim hitherto. Locke throws a battery of arguments at the reader to justify a right of original acquisition. Famously, that property which one has in one's own person is somehow annexed to the portion of the world with which one has mixed one's labour. Rights of self-ownership are fuelled into the possessions one has created. The metaphors are normatively impotent as many commentators have seen, including, ironically, Nozick who asks: 'why isn't mixing what I own with what I don't own a way of losing what I own rather than a way of gaining what I don't?'.[12] If I add value to the land, why do I gain the land rather than just the