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POLITICAL PHILOSOPHY

Fundamentals of Philosophy
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> parsons who love to hunt and swill the claret as well as ascetic atheists with a fastidious taste in modern jazz.

All of these conceptions of the good life are swept behind the veil of ignorance. We know enough about our fellows behind the veil of ignorance to understand the magnificent variety of thick conceptions of the good that will be revealed when the veil is parted, but we are to presume ourselves ignorant of the contours of our own plan of life for the purposes of deliberating about justice.

The motivation behind this hypothetical combination of knowledge and ignorance is the elimination of partiality and bias. How can I be accused of serving my own distinctive conception of the good life if I don't know what it will turn out to be? How can I be accused of disvaluing the way of life you judge to be best if I don't know the plan of life you have selected? The device of hypothetical ignorance has evident resonances with the way we think about justice. One way of judging the impact of some proposal or the justice of some policy is to place oneself in the shoes of some other party who is affected by it and then ask would the subsequent distribution of benefits and burdens be acceptable if you didn't know which position was the one you occupy. Suppose the dispute concerned the allocation of housework. Harry doesn't want to do any of the work in the kitchen. Sally points out that they both work outside the home from 9.00a.m. to 5.00p.m. She already does the washing and the cleaning. If Harry's proposal, that he do nothing other than earn his wages, were accepted, there would be two parties, one doing all the housework, the other doing none. Asking Harry to hypothesize that he doesn't know which bundle of chores he might be assigned is a nice way of bringing home to him the unacceptability of either party's being asked to shoulder all the burdens. If his most advantageous option is crystal clear, so is that of the other party. If he would hate to have all the chores to do, he can understand Sally's complaint and should review the distribution of tasks.

Some have claimed that Rawls's theory of the veil of ignorance in the original position expresses a strong view of the role of the state as neutral between competing conceptions of the good life, that this is a clear implication of the doctrine of the priority of the

right over the good, which Rawls explicitly claims to be a central feature of his conception of justice.[57] I will have something to say about these issues later, but for the moment I want to stress that the primary intuition to be cashed out by the requirement of the hypothetical veil of ignorance is impartiality, not neutrality. When it comes to articulating, as is necessary, the theory of the primary goods, Rawls conclusions are *not* neutral, as one important critic has pointed out.[58] The basic structures of society should not be neutral in respect of their recognition of the value of the primary goods and their task of promoting them. Although Rawls believes that detailing the contents of the list of primary goods amounts to a weak premiss in the overall argument (he clearly did not anticipate the level of criticism directed towards this aspect of his theory), the list itself does not present an anodyne prescription for the activities of the state. In respect of both inclusions within the list and exclusions from it, the list is controversial. What holds the list together is the idea of the primary goods as all-purpose means to whatever thick conception of the good parties may have developed as rational for themselves to pursue. What governs exclusions from the list is the thought that the principles of justice must be the product of a process of deliberation with such a measure of impartiality that it is accessible to all parties. Whether or not Rawls achieves fairness in the process of deliberating about justice is an open question. There can be no doubt that he wishes fairness to constrain these deliberations.

The original position details the hypothetical circumstances in which we must place ourselves to address the question of justice. How do we deliberate once we have broached this thought-experiment? At this point we meet the second distinctive feature of Rawls's social contract approach. Rawls believes we should reason as egoists seeking to maximize our protections and advance our holdings of primary goods, helping ourselves to the technical resources of rational choice theory in order to derive the principles of justice. Let me stress at this point, having introduced the term 'egoist', that Rawls is most definitely *not* proposing that we adopt any variety of egoism. The kind of egoism that is put to work behind the veil of ignorance is a thesis about the motivation of the parties who inhabit that hypothetical condition: the primary goods constitute the ends that they value for themselves and

the principles of justice represent the best means to advance them.

Now Thomas Hobbes did hold this kind of egoistic view in respect of the motivation of all persons generally. On his account, human beings are predominantly motivated by a conception of what is in their own best interest, and he argued that the rule of justice, narrowly construed as the principle 'that men performe their covenants made', i.e. keep their promises, could be derived by anyone who pondered how best to achieve their long-term goal of commodious living. Hobbes was speaking of *us*, of how, granted his theory of human nature, people like us should deliberate about how to behave. Rawls is not describing our behaviour or the behaviour of people like us. We are not egoists. Most particularly we are not egoists because we have a sense of justice and wish to govern our transactions with each other in accordance with principles we judge to be fair. Self-interest in the original position, behind the veil of ignorance, is not self-interest beyond it. Self-interest behind the veil of ignorance is not a strategy of self-interest at all, because the parties in the original position have foresworn any of the knowledge that would enable them to advance the interests distinctive to themselves. In the original position, subjects do not know who they are or what they want except as specified by the conditions of the veil of ignorance. What Rawls has attempted to capture by his device of the social contract, the veil of ignorance and the postulate of rational choice is a method of impartial deliberation on the question of everyone's best advantage. Let us see how this deliberation works out.

The principles of justice

In order to see how the argument works, let us first state the principles, then outline the argument for them. First, let us state the general conception of justice:

> All social primary goods – liberty and opportunity, income and wealth, and the bases of self-respect – are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored.

The famous two principles of justice are deemed to be a special case of this:

> *First Principle*. Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.
>
> *Second Principle*. Social and economic inequalities are to be arranged so that they are both:
>
> (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and
> (b) attached to offices and positions open to all under conditions of fair equality of opportunity.[59]

Before we proceed, a few clarificatory notes are in order. The First Principle, the equal liberty principle, has lexical priority in the special conception. This forbids trade-offs which sacrifice equal liberty to some gain in respect of the other primary goods. The second element of the Second Principle, equality of opportunity, likewise has lexical priority over the first element, the difference principle. The special conception of justice, with its division of two principles and the associated priority rules, comes into play when a certain level of prosperity has been reached. Sacrifices of liberty to promote wealth are only justified when the wealth creation is necessary in order to raise a society to an economic level where liberty can be enjoyed.[60] In *Political Liberalism*, this standard is sketchily described in terms of citizens' needs being satisfied – needs expressing requirements which have to be met if citizens are to 'maintain their role and status, or achieve their essential aims'[61]. We shall concentrate on the special conception, being convinced that liberty, rather than being an exotic and corrupting Western implantation that a disciplined emergent society can ill afford, is a precondition of the creation of sufficient wealth to meet citizens' most basic needs. Further, we shall concentrate in what follows on the Second Principle, barely mentioning the liberty principle and its priority.[62]

First though, to capture a central feature of Rawls's reasoning, let us look at the argument for the general conception and, *a fortiori*, for the difference principle. This proposes an equal division of

the primary goods unless an unequal distribution is to the advantage of the least well off. Why should anyone placed behind the veil of ignorance in the original position choose first, equality, next, if it represents an improvement, inequality? Remember, behind the veil of ignorance, contractors do not know their position in society etc. In these circumstances, Rawls believes, contractors would adopt a safety-first outlook. They would inspect an array of alternative distributions and select those principles which guarantee the best worst outcome. They would adopt a *maximin* strategy.

Suppose there are just two classes of people, A and B, and suppose candidate distributions are as follows, the numbers recording units of primary goods:

	A	B
(1)	50	50
(2)	30	150

Rawls thinks his contractors would select outcome (1). Departures from equality, above and below the level of 50 units, register the possibility of gains or losses. If the worst outcomes are ranked in order of which is best, the strategy of maximin requires the choice of (1), 50 units being better than 30. Contrast (1) however with a third possibility

(3)	55	65

Since more primary goods are better than less, Rawls believes contractors who are seeking to advance their holdings will select (3) in comparison to either (1) or, since (2) has already been judged inferior to (1), *a fortiori*, (2). Technically, outcome (3) is 'weakly Pareto superior' to (1). Everyone is better off so it is a change for the better. Whether they turn out to be in the better-off class or the worst-off class, they will register an improvement over the distribution in (1). The difference principle, reflecting maximin reasoning, ranks (3) higher than (1) and (1) higher than (2).

Under conditions of uncertainty, it is controversial which principle of practical reasoning one should adopt in order to rank alternatives. There are plenty of cases which suggest that *maximin*, going for the best worst alternative, is counterintuitive. Do

we climb the mountain or do we stay at home and go out in the afternoon to see a film. Climbing the mountain, one of us may slip and be killed. We may be killed walking to the cinema, but there's less chance of it. Climbing is not very dangerous, but it's dangerous enough for us always to prefer an alternative way of spending our free time, so long as we reason in *maximin* fashion. Were we *maximiners* we would never venture onto a steep slope. There is always something safer we could be doing.

What is the alternative to maximin? It is time to bring the reasoning in favour of (2) out of the woodwork. As (2) suggests, it is maximum average utility. Between classes A and B, supposing members of these classes are equal in numbers, one might suppose that some people, those who like a gamble, would compute average expected utility at 90 units – and go for it. They may find themselves in the class who receive 30 units, and worse off than they would be under *maximin*, but they may be better off than they would be under either equality or the difference principle. If we do the sums we find that average utility under (2) will amount to 90 units (30 plus 150 = 180; the sum divided by 2, = 90 units of utility). Computing in the same fashion, the average utility of (1) is 50; the average utility of (3) is 60 units of the primary goods. Since the utility of (2) is greater than the utility of either (1) or (3) why not go for it? The objection to Rawls can be phrased more strongly as: what reasons are there for not taking the approach of average utility, gambling on the chance of being one of the better off, gaining 150 units, and risking the prospect of losing – receiving 30 rather than 50 under equality or 55 under the difference principle?

Rawls's answer is that we wouldn't dare.[63] We only have one life to lead and the basic structure of the society in which we live is crucial to our well-being, and just as importantly, to that of our children. We would be wrong to risk the possibility of receiving 30 units when we can guarantee the receipt of 50 units or better. The utilitarian, as ever, has a cogent reply. In the comparison of (1) and (2), if (2) is represented as an outcome that the proponent of maximum average utilitarianism would endorse, either like is not being compared with like or the situation is underdescribed. It looks as though like is not being compared with like since the utilitarian will be concerned to envisage outcomes primarily in terms of the distribution of utilities, rather than primary goods. As we saw in

Chapter 2, the utilitarian has reason to believe that the sorts of allocation that maximize utility will be those that tend towards equality. With departures from equality, the gainers gain less than is lost by the losers, so average utility is diminished. If this is right, the utilitarian can properly ask for more details of how the unequal distribution of primary goods is supposed to maximize utility. If it is claimed that the facts of the matter are contingent, that things *might* work out this way, the utilitarian can agree, but insist that, as a matter of fact, they don't so work out – and Rawls's contractors, well aware of the laws of the social world, will be aware that they don't.

Let us put this issue to one side and concentrate on the question of whether we should select (1) the condition of equality, or go for (3) a situation of inequality in which everyone is better off. The answer looks obvious. How could it be rational to be the dog in the manger, refusing to move to a better position on the grounds that others are doing better still? Rawls insists that it couldn't. Envy is irrational. This might be so, but if inequality is known to be a general cause of envy, human nature being what it is, isn't this a reason not to move towards inequality?[64] One might point to the debilitating effects of social hierarchy and a stratified society, as we have had occasion to mention, but Rawls has a good reply at this point. As the second element of the second principle emphasizes, he insists that there be fair equality of opportunity, that everyone has the possibility of moving into the positions which offer the prospect of the highest income and wealth. We should also notice a corollary. The most mysterious of the primary goods, which is also mentioned as the most important, is self-respect or self-esteem, since without self-respect, 'all desire and activity becomes empty and vain and we sink into apathy and cynicism. Therefore the parties in the original position would wish to avoid at almost any cost the social conditions that undermine self-respect'.[65]

It is hard to place this primary good into the framework of the two principles; Rawls seems to think that it is served by the liberty principle as this is worked up into constitutional arrangements that guarantee equal political status. We could add that it should disallow inequalities of income and wealth of such a type and from such sources as corrupt the sense of the worst off that,

notwithstanding their lesser holdings are greater than they would possess under equality, they are treated as, or come to see themselves as, being of lesser moral or social standing than others. Hegel noticed that the condition of the unemployed can be utterly demeaning. We have learned that this lack of self-respect may persist even though the unemployed are in receipt of a minimum social income. If such lesser standing is a consequence of a specific aetiology of inequality, it should be factored into the index of primary goods which defines the condition of the worst off. They may well judge that despite their greater holdings of income and wealth, they are overall worse off than they would be under conditions of equality of income and wealth. Clearly *everything* depends upon the wider social ramifications of such differences.

Now we can return to our original question. If basic needs are met, and if as we have just insisted, inequalities of wealth and income are not magnified into the sort of social differences that inhibit equality of opportunity and undermine self-respect, should we not accept the inequalities that are licensed by the difference principle? I think we should.

Before we leave the discussion of Rawls and the topic of social justice, there are a few issues to be tidied up. At the heart of Rawls's conception of a just society is a conception of how we should think about the problem of distribution. We begin with a Humean conception of 'a society as a co-operative venture for mutual advantage',[66] developed as a response to the circumstances of justice which demand that conflicts of interest be resolved. I take it that this leads us to endorse, as a first step, a system of property rules that govern entitlements, enabling us to judge who owns what. We noticed when discussing Nozick's account that some system of adjudicating property claims is necessary (although we noticed, too, the absence of any specification of what the appropriate rules might be). I assume that in any *stable* society a conservative principle applies which supposes that the rules in place can be vindicated on grounds of their utility. (I don't suppose that either Nozick or Rawls would accept this judgement, but let us proceed. Both of them, I take it, suppose that we reflect upon the problem of justice against a background of rules having *de facto* authority in the jurisdictions which they examine.)

It is only against some such background – of established rules

and (moderately) successful practice – that we can identify society as a co-operative venture for mutual advantage. How else? We now have a fresh problem which Hume did not have to consider because he thought the problem of justice was settled. Granted that the institutions in place, with their constituent rules, secure mutual advantage or general utility, are they just? This question has point only if we accept that there is a standpoint for asking questions of justice which departs from the standard of utility. Rawls insists that there must be. There is the question: Is the distribution of benefits and burdens *fair* ? His answer is that it may be, but if it is, this is a coincidence, a matter of contingency, because the fairness of the system is to be adjudicated by principles other than utility.

Fairness requires that we review the benefits of social co-operation from the perspective of each of those who are affected by the scheme in place. Perhaps, as Thomas Scanlon, one of Rawls's most constructive critics has insisted, we can ask this question directly: Can the rules governing the allocation of benefits and burdens be reasonably rejected by any of those subject to the distributive scheme which is purportively required by principles of justice?[67] If anyone could reasonably reject such a scheme, its requirements would not meet the standards of universalizability proposed by Kant and accepted by Rawls.[68] Although this is a good question to ask, given Rawls's general endorsement of Scanlon's variety of contractualism in *Political Liberalism* and his advertisement of his argument as a species of Kantian constructivism, we have no clear answer. Rawls's canonical method is indirect, employing the original position and its veil of ignorance, because these argumentative strategems embody the intuitions concerning impartiality that fairness requires.

So the argumentative apparatus of *A Theory of Justice* directs us to appraise the institutions of any stable society from the point of view of one who requires that the principles be fair, as well as, or despite, the rules in place serving general utility. The Rawlsian prospectus, as I have described it, is utterly abstract. It is time to put some flesh on these bones. Suppose we accept that a free market economy, based on private property, has demonstrated its credentials in point of overall utility. (It hasn't; other sub-optimal systems, e.g. central government planning, have demonstrated their inefficiency – but then utilitarianism has no *a priori*

conclusions to defeat opposing intuitions.[69]) What Rawls has in mind as a system of political and economic organization which satisfies his principles of justice is the liberal democratic welfare state.[70] Democracy and liberty are guaranteed by the liberty principle, welfarism by the modified equality guaranteed by the difference principle. Putting liberty to one side in the context of evaluating distributive justice, we can see that the implementation of justice, as required by the difference principle, requires a system of transfers to be imposed upon the system of entitlements that are in place. Smith owns such and such, given the rules, but . . . Jones earns such and such, but . . . In each case holdings are reviewed in the light of the difference principle and transfers to or from Smith and Jones will be effected by such means as the taxation of income, sales, inheritance or wealth.

At this point, an obvious objection kicks in. We have a historically determined property system subject to continuous modification by application of the difference principle. We have institutions which guarantee equality of opportunity in respect of access to those offices and positions which yield the greater income and wealth in systems where differentials in income and wealth are judged to improve the position of the worst off, the details presumably fixed by the operation of a market in labour. What place is there in this system for the application of a principle of desert?[71]

Desert

We can think of a wide range of circumstances in which different allocations of income and wealth might be justified on the grounds of unequal desert. Smith works harder than Jones, or equally hard for a longer time, or with the same effort but with more skill, or with as much effort, for as long, and with as much skill, but at a dirtier job. In each of these cases, Smith produces more goods, and untutored intuitions or popular sentiment might have it that Smith earns a greater reward, deserving the premium his efforts or skill attracts. Regardless of whether his increased productivity has benefited the worst off, say through the trickle-down effects of his economic success, he deserves his unequal receipts. This is not a case of claims of desert conflicting with claims of justice, since it

will be argued that the reward of desert is an established principle of justice. So much the worse for a theory of justice that does not respect such claims.

Rawls distrusts such arguments – and he is quite right to do so; which is not to say that they have no philosophical weight. He accepts that persons are born with very different natural endowments. It may be that not only are individuals born with different skills and talents, but that they are unequally blessed in the ability to exploit them. Two mountaineers may be equally strong and agile, but one of them may lack the nerve to tackle the more dangerous routes, or the intelligence to approach them with an appropriate degree of safety, or the staying-power to proceed in the face of difficulties. Who is to say which of these qualities is *not* the product of a natural lottery? If the wonderfully talented jazz-player has a self-destructive streak it makes as little sense to praise him for the first as blame him for the second. This argument does not assume some sort of genetic determinism which establishes that all personal qualities are the product of natural inheritance. Rather it registers, in more modest fashion, our inability to measure the respective contributions of natural endowment and freely directed effort towards any specific accomplishment. Thus, Smith works harder or longer than Jones – but it may be that he was born stronger. Grant also that the effects of the natural lottery may be magnified by favourable personal circumstances – a supportive family, a solid education, strategically-placed friends – and we can see that the problem of isolating a distinctively personal contribution as the proper subject of merit or desert becomes even harder. Of all the moral principles constitutive in their way to the idea of justice, conceptions of desert are the most puzzling.[72]

From the standpoint of the original position, desert has no place. When we deliberate with that quality of impartiality that embodies fairness, we shall see society as a co-operative endeavour and adopt the difference principle as 'an agreement to regard the distribution of natural talents as a common asset and to share in the benefits of this distribution whatever it turns out to be'.[73] On the other hand, once we examine the institutions necessary to implement the principles of justice, we can expect to find elements of the economic system mimicking those residues of desert which linger in the thought that reward is due to effort or skill, since

these are the sort of individual qualities that are sought out in the labour market under conditions of fair equality of opportunity. Efficiency of the kind from which everyone benefits will often see to it that effort and skill are rewarded (though this cannot be guaranteed; skills fall out of demand and effort may be misplaced).[74]

Such considerations cannot be expected to satisfy those who insist that desert is a principle independent of incentive effects and market operations. Everyone dines well at Rawls's feast, but, it will be insisted, some have no right to be there. In particular, the spoiler of many a draft welfare scheme, the wastrel, idler, shirker or benefits scrounger, should have no seat at the table. This ignoble character precisely does not co-operate in the scheme for mutual advantage and is not a worthy recipient of any of its fruits. Far from being a member of the worst off class and due whatever amelioration unequal rewards to others may generate, he is due nothing.

If everyone were born with at least the capacity to develop some marketable skills, if they were educated to expect work and be trained to apply their skills in the labour market, if the market could supply jobs to meet their demand to work, if, in short, we could distinguish the idle from the unemployable and otherwise contingently unemployed, this argument would have a great deal of force. Until these distinctions can be confidently made, it is a distraction.

The detail of Rawls's arguments for the two principles of justice has been subjected to massive technical criticism which I shall leave readers to pursue for themselves. I hope I have elaborated its greatest strength – its insistence that the fashioning of principles of justice (which should include responsiveness to need) requires us to adopt a deliberative stance that ensures fairness in the specific sense of impartiality as we review competing claims on the limited pool of resources. If the aim of the exercise is to produce principles that all could accept as fairly governing the terms under which they co-operate with each other, it is vital that such principles do not favour or sacrifice the interests of any particular group of individuals, since, if they were so biased, they would not command the support of all those whose behaviour they are designed to regulate. Once one grants the necessity of such a

deliberative stance it is hard to see how any principle other than the modified equality of the diffference principle could find acceptance.

The communitarian challenge

Before we leave the topic of distributive justice, we should examine (too briefly) a set of claims, widely advanced in response to Rawls's work, to the effect that the deliberative stance of fairness, as I have explained it, is just not possible for creatures like us. This challenge has been made by a number of thinkers who have been grouped together as communitarians. Amongst contemporary philosophers, the most prominent communitarians include Alasdair MacIntyre, Charles Taylor, Michael Sandel and Michael Walzer. One has to be careful in thinking of these philosophers as members of a distinctive school or group, since the differences between them are often as great as their similarities.[75] I shall broach just a portion of their work in concentrating on their criticism of Rawls's (and other liberal theories) of justice.

I have claimed that the distinctively valuable contribution of Rawls's theory of justice is his attempt to articulate an appropriate stance from which to deliberate the problem of justice. We take up the Original Position, locating ourselves behind the veil of ignorance and seeking to advance our holdings of primary goods. In so doing, we abstract ourselves in thought from the societies we inhabit and the concrete relationships in which we stand to other people. We deem ourselves ignorant of those goods which endow our lives with the particular meanings we ascribe to them, the thick theories of the good to which we subscribe. Communitarians object that we cannot conduct this exercise of intellectual abstraction, or, if we could, such abstraction could not yield principles of justice which would command our allegiance once we have departed the Original Position and relocated ourselves in our given, historically conditioned communities.

Now readers may have registered any number of doubts concerning the course of Rawls's argument. I have tried to explain the point of Rawls's exercise in abstraction, his withdrawal behind the veil of ignorance into the original position, in terms of a

pretheoretical commitment to fairness, but critics may charge that this manoeuvre is unnecessary or unsuccessful. They may ask why individuals who do not live behind a veil of ignorance should regard themselves as committed to principles they would adopt were they, hypothetically, to find themselves so located. Rawls, operating in the social contract tradition, has advocated something like a thought-experiment in order to advance our thinking about justice. The first element of the communitarian challenge is the striking claim, not that the thought-experiment is otiose or fruitless, but that we cannot genuinely conduct it.

Construction of the Rawlsian hypothetical contract requires that we think of ourselves as discrete individuals capable of dissociating from the ethical ties that bind us to others in our communities. We must be able to do this if we are to examine whether such ties are just. I think it appropriate as a poor man to doff my cap as the rich man enters the gate of his castle. Someone may challenge my habitual deference and cause me to think hard about my hitherto unexamined place in the established hierarchy. For a Rawlsian, the form of rationality distinctive of philosophizing about justice requires such exercises in detachment. Once I accept the demand that familiar obligations and allegiances be subject to rational examination, I should seek to distance myself in thought from the fact of my allegiance in order to conduct my investigation. If, as a matter of fact, I can't achieve the independence of thought necessary to attain such detachment, if I am so absorbed by the practices of my community that I cannot put them to question, then I can't deliberate about justice. Rawls's Original Position represents an ethical stance external to the obligations up for inspection which guarantees that my reflections will be conducted in an impartial spirit.

For the communitarian, such detachment and dissociation are impossible. I am constituted by a deep network of ends and purposes, furnished, willy-nilly, by the established social structures of the society in which I was raised. The interpersonal commitments which these ends and purposes embody comprise my identity as the person I am. It would not be *me* who retreated behind the veil of ignorance, but some shadowy simulacrum. How could it be *me*, if *I* am required to shed, in thought, constitutive ideals which contribute essentially to the identification of who *I am*, ideals which

Rawls has allocated to the theoretically inert realm of the 'thick conception of the good'. Take Holy Willie, the subject of Burns's eponymous poem, 'Holy Willie's Prayer'. The reader may suppose that Willie cannot, without becoming someone else, entirely detach himself from his Calvinist principles, and specifically, his sense that he is one of the Elect. Since he speaks to himself (though he is sure that his God is listening), we should judge him to be disabled by self-deception rather than common-or-garden hypocrisy.

Read the poem. You might think that Holy Willie has got things wrong somewhere – agreeing with Burns and most of his readers on this. He is clearly unable to confront seriously the question of whether the rigorous standards which he uses to judge the conduct of others, apply equally to himself. The syndrome is familiar. If this is a true description of Willie's state of mind, I think he is constitutionally unable to deliberate about moral questions.

I can't tackle here the range and sophistication of communitarian arguments against liberalism. Their prime focus, in any case, is Rawls's philosophical methodology rather than his specific contribution to discussions of distributive justice. But we know enough about the communitarian position to understand that the heart of it is a claim about the limits of our reasoning powers, about how far we can dissociate ourselves in thought from the values that frame our concrete social identities. There are some questions that we cannot ask – or, if we can ask them, that we cannot take seriously because we cannot achieve the detachment necessary to see the questions as open. We are, as a matter of fact, constrained in respect of the ethical questions we are able to tackle. A favoured example of this sort of constraint in operation concerns a good parent's inability to contemplate seriously whether she has an obligation to promote a child's welfare. Love will blind her to a review of the pro's and con's.

This may or may not be true. If it is true, it will be true because that is how human beings characteristically think about these matters. I cannot see how questions of distributive justice might become practically otiose in a similar fashion. Once folks learn how to question the conventional allocation of benefits and burdens, Pandora's box is open. It might be hard to attain the impartiality required by Rawls's invocation of the Original

Position. It might be even harder to stick with the principles of justice furnished by this ethical stance once the thought-experiment is concluded. Some may be unable to achieve the required detachment, some may fail to carry through the principles derived by their intellectual efforts, but I cannot see how any philosophical arguments could be expected to demonstrate that the attempt to reflect on principles of justice is overambitious.

Chapter 6

Political obligation

The problems

Alfred Russell Whitehead is said to have said that all philosophy is a series of footnotes to Plato and Aristotle. It is a good saying and wouldn't be such a memorable falsehood if it did not contain a strong element of truth. It is a falsehood because, in the tradition of Western philosophy the Pre-Socratic philosophers deserve a mention. But just as obvious, there are more philosophical problems than were dreamt of by Plato and Aristotle in their philosophies (but perhaps not many more) and, equally, the repertory of arguments pro and con, the range of responses to these problems, has been enlarged well beyond the category of footnotes. But one can easily mistake the show for the substance in respect of touted philosophical advances. Another way of making Whitehead's point would be to say that Plato and Aristotle 'set the agenda' and this would be more true as well as more trendy, but still a falsehood. However, there is one philosophical problem which has not advanced far beyond the elaboration of Plato's

arguments and the development of challenges to it: the problem of political obligation.

In the *Crito*, Socrates is invited to collude with the plans of Crito and other friends and admirers who sympathize with his predicament by escaping gaol and the imminent (self)infliction of the sentence of death. He will be quite safe, he is assured, in Thessaly. If he accedes to Crito's scheme (the gaoler is beholden to him and informers can be bought off) Socrates will evidently be failing to fulfil the duties of a citizen of Athens. Should he or shouldn't he take up Crito's invitation? Should he do what the city requires of him? Or should he attempt to escape? Plato represents Socrates speaking in the voice of the Laws and Constitution of Athens and this voice argues convincingly in favour of his accepting the decreed punishment. The major themes of Socrates are first that he has consented to obey the laws and so to flee would be to break the covenants and undertakings he freely made; second, that he has received evident benefits from the city, that he ought to be grateful for these benefits, and that since by fleeing the city he would be doing it harm, this would be an ill return for the benefits received. These two arguments, the consent argument and the argument from received benefits have dominated the literature ever since, though they have taken many different forms, as we shall see.

First though, we should try to become clear about the precise nature of the problem of political obligation. We do best to think of our political obligations as obligations owed by us as citizens to the state. It is tempting to elucidate this concept by first outlining the general nature of an obligation and then explaining how specifically political obligations are to be construed. Such a course would require us to distinguish obligations from duties, and perhaps duties from reasons for action of a distinctively moral sort. The enterprise would be tricky and maybe interesting, but I am reluctant to engage in it for two reasons: in the first place, I doubt whether the exercise could be successfully concluded without excessive semantic legislation. Such distinctions could no doubt be forced. The language could be cleared up by careful stipulation which builds on distinctions made in the way we generally speak. I have no ambitions in this direction and, since judgement on whether such an exercise is valuable or pointless would have to

wait upon its outcome, I shall do no more here than register my doubts. In the second place, our chief interest is in the specific issue of political obligation, and it may well be the case that whatever distinctions can be traced between, say, obligations and duties taken generally, do not apply in the specific context of political obligation. In fact, I think this is the case. It makes no difference whether we speak of the political obligations incumbent on citizens or of the duties of citizens or, to my ear, of the moral reasons citizens should recognize as governing their conduct with respect to the political institutions of the state. The last of these locutions is a mouthful, so I shall try to avoid it. The first has all the virtues and vices of familiarity. I prefer the second.

My reason is informal and pragmatic. The concepts of legal obligation and political obligation are closely linked and the closeness of the linkage invites a narrowness of focus I wish to avoid. We speak of legal obligation when we wish to identify the demands legitimately made of subjects within a particular legal system. The model here is that of the (generally justified)[1] coercive law, proscribing or prescribing conduct on penalty of sanctions for non-compliance. Speaking substantively, our legal obligations comprise our obligations to obey the law. There may be one big legal obligation – to obey the law – or as many obligations as there are prescriptive or proscriptive laws. We are apt to think that political obligations march in step with legal obligations, and this is a natural assumption since legislation is a political process, effected or authorized by the sovereign. So we are apt to think that political obligation equates to the obligation to obey the law. If so, we are in error.

I think we have a political obligation wherever good moral reasons dictate the terms of our relationship with the political institutions of the state. If there are good moral reasons why we should obey the laws promulgated by the state, then we have a political obligation to obey the law. If there are good moral reasons why we should follow a call to arms made by the state, then we have a political obligation to volunteer. If there are are good moral reasons why we should participate in processes which elect representatives or enact laws through plebiscites, then we have a political obligation to do these things. Since I recognize that this list of standard political obligations is wider than is sanctioned by the

customary association of political and legal obligation, and since I don't want to beg the conceptual questions canvassed above, I think it most felicitous in point of style to speak of the duties of the citizen. There is nothing odd about the thought that citizens may have duties to volunteer some service to the state or vote in elections in circumstances where such conduct is *not* required of them on pain of sanction.

So the problem of political obligation is not on my account the narrow question of whether citizens have an obligation to obey the law. That problem can perfectly well be pursued within a wider agenda that includes other duties that may be imputed to the citizen. It may well take centre stage because characteristically the duty to obey the law is a duty that is *exacted* against the citizen and so one might expect arguments in favour of it to be the strongest available. But it is not the only duty that is in question, and, as we shall see, the question of whether we have such a duty may be most clearly answered in a context which brings into view other duties which citizens may recognize. That said, for the moment we shall retain the traditional focus on the duty to obey the law in order to frame more clearly other introductory questions.

The first such question concerns the ambition of the arguments that purport to establish this duty. How universal is the scope of application of the argument? Are these arguments designed to show that if any citizen should recognize such a duty then so should all?[2] Or may the arguments be custom-built, bespoke to the demands of citizens, severally? The classical liberal dialectic can be envisaged as a series of claims made by the state against citizens who independently review the cogency of these claims. The state advances its claims by way of arguments directed to all citizens. But each modern citizen assumes the right to examine these arguments independently. We imagine the state rehearsing its arguments because no modern state can expect its claims to be vindicated solely on the basis of its pre-established authority.[3]

The state hopes that its arguments will be of universal validity, convincing everyone. But of course it may not succeed. The arguments it employs may be failures, convincing no one, or they may be partially successful, convincing some but not all of those to whom they are addressed. I shall suggest that this is likely, and so shall represent the state as advancing a series of arguments that

successively widen the net over those it seeks to convince of its legitimate authority. The following outcomes are possible: (a) no argument convinces any citizen; (b) at least one argument convinces some citizens; (c) all citizens are convinced by at least one argument; but they are different arguments for different citizens; (d) there is at least one argument that convinces all citizens that they have a duty to obey the law. Outcome (d) is best for the state, but it may turn out that the state need not be so ambitious. If, as the dialectic proceeds, it transpires that there are no citizens who can reject every one of the arguments the state advances (outcome (c)), then its objective – of laying a legitimate claim to the obedience of all citizens – has been achieved. Third best, from the point of view of the state, would be the acceptance by most citizens of some of the arguments it puts forward.

The next question concerns the content of the state's requirements, a second dimension to its ambitions. The state, as we have surmised, will lay claim to the obedience of all of its citizens, for one reason or another. But does the state's claim on the obedience of its citizens require that they obey *all* of its laws? I think not. Again, this is too ambitious. First, we should recognize that the laws in place are likely to be a ramshackle collection. They are likely to be cluttered with dead wood. Alert students of the law of modern states will recognize plenty of laws in desuetude, relics of forms of life long gone, governing, perhaps, the rules of the road according priority to horses over pedestrians or vice versa. The invocation of such rules, as in the case of *Shaw* v. *Director of Public Prosecutions*,[4] whereby the Star Chamber offence of 'conspiracy to corrupt public morals' was resurrected to convict poor Shaw, is widely deemed unjust. Second, some laws seem designed to be broken so long as law-breaking remains within acceptable limits. I confess to having broken the licensing laws as a juvenile drinking below the age of state consent, as an adult serving drinks after closing time, and as a parent buying alcohol for my under-age children. (If you are not sympathetic to this example, think of *your* violation, as driver or willing accessory, of the Road Traffic Acts.) We are all, all of us car-drivers, law-breakers on a regular basis. So we shouldn't be too po-faced (unless we have chosen to be politicians!) about the content of the requirement to obey the law.

To be effective *at all*, laws need to be precise in contexts which