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# Notes

## Preface

- 1 G.W.F. Hegel, *The Phenomenology of Spirit*, trans. A.V. Miller, Oxford, Clarendon Press, 1977, ¶590, p. 360.

## 1 Introduction

- 1 The term could be dreadfully misleading, since particularism is often construed as the moral view that normative ethics concerns the assertion of particular judgements in specific contexts rather than the application of general principles, e.g. it is unjust to punish the innocent. I could find no better term. ‘Empiricist’ and ‘inductivist’ seem far too general. I welcome suggestions for an alternative and caution readers that the term is not in widespread use and should be employed with discretion.
- 2 G.W.F. Hegel, *Elements of the Philosophy of Right* (henceforth *Philosophy of Right*), ed. A.W. Wood, trans. H.B. Nisbet, Cambridge, Cambridge University Press, 1991, §132 and Remark.
- 3 I. Kant, *Critique of Pure Reason*, trans. and ed. P. Guyer and A.W.

- Wood, Cambridge, Cambridge University Press, 1998, note at pp. 100–1.
- 4 The phrase is Hobbes's. See T. Hobbes, *Leviathan*, ed. C.B. Macpherson, Harmondsworth, Penguin, 1985, Ch.13, p. 188.
  - 5 Remember, I haven't argued for this. I've just asserted it and will proceed to review the implications of this claim as if it were true.
  - 6 J. Rawls, *A Theory of Justice*, Oxford, Clarendon Press, 1972, pp. 48–50. Rawls distinguishes *narrow* and *wide* reflective equilibrium. A reader reminds me that the process of reflection I describe is more akin to the first than the second. I am assuming the pursuit of a wide reflective equilibrium since I am supposing that the philosopher will review candidate moral theories in the light of other available theories as well as in the light of the judgements and principles specific theories reject or endorse.
  - 7 These are not straw targets. No traditionalist practice is so awful that it can't find a trendy apologist. See Martha Nussbaum's report of a conference on 'Value and Technology', in M. Nussbaum, *Sex and Social Justice*, Oxford, Oxford University Press, 1999, pp. 35–7.
  - 8 For a strong defence of utilitarianism as an ethical theory signally apt for political employment, see R.E. Goodin, *Utilitarianism as a Public Philosophy*, Cambridge, Cambridge University Press, 1995.
  - 9 Examples include M. Sagoff, *The Economy of the Earth*, Cambridge, Cambridge University Press, 1988 and J. O'Neill, *Ecology, Policy and Politics*, London, Routledge, 1993.

## 2 Utilitarianism

- 1 John Rawls, Robert Nozick, Ronald Dworkin, to name three. John Rawls contrasts his own theory of justice with utilitarianism partly 'because the several variants of the utilitarian view have long dominated our philosophical tradition and continue to do so', J. Rawls, *A Theory of Justice*, Oxford, Clarendon Press, 1972, p. 52.
- 2 Bentham, upon finding that his proposals for reform were ignored, became incensed by the disregard of government for the welfare of its subjects and railed against its evident pursuit of *sinister* (i.e. sectional or minority) interests. Recently, Robert Goodin has stressed the aptness of utilitarianism as a *public* philosophy. See R. Goodin, *Utilitarianism as a Public Philosophy*, Cambridge, Cambridge University Press, 1995.
- 3 See Anscombe's reference to Gareth Evans in G.E.M. Anscombe,

- 'On the Frustration of the Majority by the Fulfilment of the Majority's Will', *Analysis*, 1976, vol. 36, pp. 161–8.
- 4 For Bentham's misgivings, see B. Parekh (ed.), *Bentham's Political Thought*, London, Croom Helm, 1973, pp. 309–10.
  - 5 J.S. Mill, *Utilitarianism*, in *Utilitarianism, Liberty, Representative Government*, London, Dent, 1968, Ch. 5, p. 58.
  - 6 I take the distinction that follows from D. Lyons, *Forms and Limits of Utilitarianism*, Oxford, Oxford University Press, 1965.
  - 7 There is an important wrinkle here. Do we judge actions (or agents) in the light of what consequences transpire or in the light of what consequences agents believe will transpire (expected utility) or in the light of what a rational agent, possessed of whatever information we expect such agents to gather, would predict should transpire? See J.J.C. Smart, 'An Outline of a System of Utilitarian Ethics', in J.J.C. Smart and B. Williams, *Utilitarianism: For and Against*, Cambridge, Cambridge University Press, 1973, for a survey of the issues.
  - 8 Since agreement should never be taken for granted, it's worth pointing out that Friedrich Nietzsche would not endorse compassion and sympathy as dispositions which should be valued. But he wasn't a utilitarian, either.
  - 9 The *Nautical Almanac* is a famous example used by J.S. Mill, *Utilitarianism*, Ch. II, pp. 22–3.
  - 10 See Bentham's outline of the 'felicific calculus', in J. Bentham, *An Introduction to the Principles of Morals and Legislation*, ed. J.H. Burns and H.L.A. Hart, London, Methuen, 1982, pp. 38–41.
  - 11 In the discussion of rules that follows, I rely heavily on John Rawls, 'Two Concepts of Rules', *Philosophical Review*, 1955, vol. 64, pp. 3–32, repr. in *Collected Papers*, ed. S. Freeman, Cambridge, Mass., Harvard University Press, 1999, pp. 20–46 and P. Foot (ed.), *Theories of Ethics*, Oxford, Oxford University Press, 1967.
  - 12 Ideal rule utilitarianism has been supported most conspicuously by R.B. Brandt. See his *Ethical Theory*, Englewood Cliffs, N.J., Prentice Hall, 1959, and *A Theory of the Good and the Right*, Oxford, Clarendon Press, 1979.
  - 13 The best known criticisms are those of J.J.C. Smart and David Lyons. In what follows I adapt the examples discussed by Lyons in *Forms and Limits*.
  - 14 The term 'rule-worship' was introduced in this context by J.J.C. Smart in 'Extreme and Restricted Utilitarianism', *Philosophical Quarterly*, 1956, vol. 6, pp. 344–54, repr. in P. Foot (ed.), *Theories of Ethics*.

- 15 The distinction between internal and external perspectives on institutional rules is made in H.L.A. Hart, *The Concept of Law*, Oxford, Clarendon Press, 1961, pp. 55–6.
- 16 But notice: I have not mentioned the ‘institution’ of promising. There is something conventional (as Hume saw) about institutions which is grist to the utilitarian’s mill, i.e. we can always ask which institution is best or which form of this institution is best – and use utility to weigh different answers. Since I don’t think that promising is up for assessment in these ways, I don’t think of it as an institution (cf. J. Rawls, ‘Two Concepts of Rules’).
- 17 As Hegel, *contra* Kant, clearly recognized. See G.W.F. Hegel, *Philosophy of Right*, §75 and I. Kant, *The Metaphysics of Morals*, trans. M. Gregor, Cambridge, Cambridge University Press, 1991, §§23–7, for an apt and interesting *contretemps* on the ethical nature of family life.
- 18 To keep matters simple, I am assuming in my discussion of these examples that goods are distributed equally amongst the population.
- 19 For a discussion of all of the issues I survey as problems of maximization, see James Griffin, *Well-being*, Oxford, Clarendon Press, 1986, especially Chs v – vii.
- 20 The proof – as much proof as is possible in the nature of the subject, which is not to say the kind of proof established by strict deduction from true premisses – is given in *Utilitarianism*, Ch.2. It has prompted an enormous amount of interpretation, criticism and defence. For a hostile account, see G. E. Moore, *Principia Ethica*, Cambridge, Cambridge University Press, 1903, Ch. 1; for sympathetic defence of elements of the proof, see John Skorupski, *John Stuart Mill*, London, Routledge, 1989, pp. 283–8.
- 21 J. Griffin, *Well-being*, p. 8.
- 22 This point is also illustrated by Nozick’s famous example of the experience-machine. See R. Nozick, *Anarchy, State and Utopia*, New York, Basic Books, 1974, pp. 42–5.
- 23 See M. Sagoff, *The Economy of the Earth*, for a strong critique of these techniques in the field of environmental policy.
- 24 Griffin believes such an account can be given. He claims clear-sighted, straight-thinking sadists would wish to give up their practices, which are costly and risky. See *Well-being*, pp. 25–6. Maybe . . . I opine, from a stance of total ignorance. But the newspapers tell me that practitioners devise consensual arrangements and the punitive institutions of society, from schools to prisons, offer the sadist a variety of career structures in the public service.

- 25 Other elements should not be discounted in a full treatment, notably the sceptical challenge to assumptions of infallibility.
- 26 J.S. Mill, *On Liberty*, in *Utilitarianism, Liberty, Representative Government*, Ch. III, p. 114.
- 27 Many readers have identified non-utilitarian themes in Mill's argument in this chapter, in particular the perfectionist account of human flourishing. In what follows, I shall ignore these.
- 28 J.S. Mill, *On Liberty*, Ch. I, p. 73.
- 29 J.S. Mill, *Utilitarianism*, Ch.V, pp. 49–50.
- 30 The utilitarian position is defended capably by R. Brandt, *A Theory of the Good and the Right*, Ch. XVI.
- 31 Hume's account is given in the *A Treatise of Human Nature*, Oxford, Oxford University Press, 1965, III, ii, 1–4, the *Enquiries, Concerning Human Understanding and the Principles of Morals*, Oxford, Oxford University Press, 1902, pp. 183–4 and is explicit in many of his essays. It has been widely discussed. David Miller, *Philosophy and Ideology in Hume's Political Thought*, Oxford, Clarendon Press, 1981, pp. 60–77 and J.L. Mackie, *Hume's Moral Thought*, London, Routledge and Kegan Paul, 1980, pp. 76–96, provide accessible discussions. The subject is treated exhaustively in J. Harrison, *Hume's Theory of Justice*, Oxford, Oxford University Press, 1981.
- 32 This interpretation of Hume has been challenged. For contrary views, see D. Gauthier, 'David Hume, Contractarian', *The Philosophical Review*, 1979, vol. LXXXVIII, pp. 3–38 and R. Hardin, *Morality within the Limits of Reason*, Chicago, University of Chicago Press, 1988. These readings are rejected in D. Knowles, 'Conservative Utilitarianism', *Utilitas*, 2000, vol. 12, pp. 155–75.
- 33 The law of diminishing marginal utility of income is rejected firmly as unscientific by R. Lipsey, *Introduction to Positive Economics*, London, Weidenfeld and Nicolson, 1965, pp. 149–51. Lipsey's arguments support those of Lionel Robbins in *The Nature and Significance of Economic Science*, London, Routledge and Kegan Paul, 1932.
- 34 A very full discussion of the difficulties in this area and the implications of them for politics can be found in Raymond Plant, *Modern Political Thought*, Oxford, Blackwell, 1991, pp. 184–218.
- 35 T. Hobbes, *Leviathan*, Ch.13, p. 186.
- 36 This interpretation of Hobbes is contested. See Bernard Gert, 'Hobbes and Psychological Egoism', *Journal of the History of Ideas*, 1967, vol. XXVIII, repr. in B.H. Baumrin (ed.), *Hobbes's Leviathan*, Belmont, Calif., Wadsworth, 1969, and T. Hobbes, *Man and*

- Citizen*, ed. B. Gert, Brighton, Harvester Press, 1978, 'Introduction', pp. 5–10. I believe the issue is settled by a couple of sentences in *Leviathan* where Hobbes insists that persons act only to procure some good for themselves. T. Hobbes, *Leviathan*, pp. 192, 209.
- 37 D. Hume, 'Of Passive Obedience', in *Essays*, Oxford, Oxford University Press, 1963, pp. 474–5.
- 38 D. Hume, 'Of the Origin of Government', in *Essays*, p. 35.
- 39 D. Hume, 'Of the Original Contract', in *Essays*, p. 67.
- 40 D. Hume, 'Of the First Principles of Government', in *Essays*, p. 29. See n. 32 above for sources which challenge this utilitarian reading of Hume.
- 41 This thumbnail sketch of anarchism derives from many authors. The most celebrated utilitarian anarchist is William Godwin, *Enquiry concerning Political Justice*, Oxford, Oxford University Press, 1971. Good general accounts of the anarchist literature can be found in George Woodcock, *Anarchism*, Harmondsworth, Penguin, 1963 and April Carter, *The Political Theory of Anarchism*, London, Routledge and Kegan Paul, 1971. The most sophisticated modern defence of anarchism is Michael Taylor, *Community, Anarchy and Liberty*, Cambridge, Cambridge University Press, 1982.
- 42 My presentation of this argument is much more simple than anything to be found in Bentham's writings. The crucial premiss, that individuals are the best judges of their own interests, is obviously false in respect of many individuals. Bentham excludes females, non-adult males, those who fail a reading test and alien travellers from the constituency of democratic participants. See B. Parekh (ed.), *Bentham's Political Thought*, p. 208. He was also well aware that, where ignorance and superstition are rife, voters may make disastrous mistakes. But he also believed that education and full information will tend over the long run to produce social conditions which validate the assumption of wide competence. For a careful discussion of Bentham's views, see Ross Harrison, *Bentham*, London, Routledge and Kegan Paul, 1983, pp. 195–224.
- 43 Bentham himself thought direct democracy evidently impractical and advocated a form of representative democracy designed to secure an identity of the interests of the representatives and the interests of the people. See excerpts from Bentham's *Constitutional Code* in B. Parekh (ed.), *Bentham's Political Thought*, pp. 206–15. James Mill, Bentham's follower and John Stuart Mill's father, made a most effective defence of representative democracy in his *Essay on Government*, Indianapolis, Liberal Arts Press, 1955, a

- tract which nicely summarizes the central elements of Bentham's thought. He argues that, since all potential legislators are rogues, representative institutions with powers of regular recall are the best safeguard against their pursuit of self-interest.
- 44 See G.E.M. Anscombe, 'On the Frustration of the Will of the Majority'.
- 45 These objections are most familiar from the work of John Rawls, Robert Nozick, Ronald Dworkin, Bernard Williams and Samuel Scheffler. See the collection of papers, *Consequentialism and its Critics*, ed. S. Scheffler, Oxford, Oxford University Press, 1988, for a review of the most influential recent literature.
- 46 Peter Railton, 'Alienation, Consequentialism, and the Demands of Morality', *Philosophy and Public Affairs*, 1984, vol. 13, pp. 134–71, repr. in Scheffler (ed.), *Consequentialism* and Shelly Kagan, *The Limits of Morality*, Oxford, Clarendon Press, 1989, have proved stout defenders.
- 47 J.S. Mill, *Utilitarianism*, Ch. 1, p. 3.
- 48 *Ibid.*, Ch. II, p. 22.
- 49 J.-J. Rousseau, *Discourse on the Origins of Inequality*, in *The Social Contract and Discourses*, London, Dent, 1973.
- 50 Incredibly, economists have attempted to do so. For a description (and severe criticism) of the 'Wyoming experiment', see M. Sagoff, *The Economy of the Earth*, pp. 74–98. See also John O'Neill, *Ecology, Policy and Politics*, pp. 102–22.
- 51 James Griffin believes this. See his *Well-being*, pp. 75–124.

### 3 Liberty

- 1 I shall use the terms 'liberty' and 'freedom' interchangeably.
- 2 I. Berlin, 'Two Concepts of Liberty', in *Four Essays on Liberty*, Oxford, Oxford University Press, 1969, p. 121. Berlin goes on to claim that historians of ideas have recorded 'more than two hundred senses of this protean word'. I believe him, although he offers no evidence for this.
- 3 J. Locke, *Two Treatises of Government*, Cambridge, Cambridge University Press, 1960, *Second Treatise*, §§ 6, 22, 57.
- 4 I. Berlin, 'Two Concepts', pp. 121–2.
- 5 *Ibid.*, p. 131.
- 6 T. Hobbes, *Leviathan*, Ch. 21, p. 262.
- 7 'The existence of an invariably enforced legal rule prohibiting the doing of B does not imply that persons subject to it are unfree



- to do B', H. Steiner, *An Essay on Rights*, Oxford, Blackwell, 1994, p. 32. See also H. Steiner, 'Individual Liberty', *Aristotelian Society Proceedings*, 1975, vol. LXXV, pp. 35–50.
- 8 I. Berlin, 'Two Concepts', p. 122, n. 2.
- 9 I. Berlin, 'Two Concepts', pp. 124–7 and 'Introduction', pp. liii–lv.
- 10 *Ibid.*, p. lvi. At p. l, Berlin describes his opponents as 'philosophical monists who demand final solutions'. This careful choice of words embraces both theoretical absurdity and practical barbarity.
- 11 *Ibid.*, p. xlvi. Earlier he tells us that the 'absence of such [negative] freedom is due to the closing of such doors or failure to open them, as a result, intended or unintended, of alterable human practices, of the operation of human agencies', p. xl.
- 12 Here I parody the ideological history of the British Labour Party, 1983–94.
- 13 See Ralph Wedgwood, 'Why Promote People's Freedom?', unpublished. Wedgwood links his account of freedom to those provided in G.A. Cohen, 'Capitalism, Freedom and the Proletariat', in Alan Ryan (ed.), *The Idea of Freedom*, Oxford, Oxford University Press, 1979, and C.B. MacPherson, *Democratic Theory: Essays in Retrieval*, Oxford, Clarendon Press, 1973, Ch.V. He distinguishes freedom as social empowerment from Sen's notion of freedom as opportunities or abilities in general. Thus one's health may impair one's opportunities, but if poor health is not caused by social conditions nor is it remedial by social improvement, it is not a social condition which limits one's liberty. By contrast, 'access to health care . . . is a social condition, and – since a standard likely consequence of access to health care is the power that comes with reasonably good health and long life – it is an important constituent of social empowerment. So if two people have equal access to equally good health care, then that will make an equal contribution to their social freedom, regardless of their actual levels of health. On the other hand, even if they are equally advantaged in terms of social freedom, if one is debilitated by ill health and the other is not, then the first person is worse off with respect to power or capabilities than the second', p. 5. For Sen's account, see A.K. Sen, *Inequality Re-examined*, Oxford, Clarendon Press, 1992, Ch. 3 and 'Capability and Well-being', in M.C. Nussbaum and A.K. Sen (eds), *The Quality of Life*, Oxford, Clarendon Press, 1992, pp. 30–53.
- 14 R. Wedgwood, 'Why Promote People's Freedom?', p. 5.
- 15 I. Berlin, *Four Essays*, p. 131.
- 16 J. Locke, *Essay concerning Human Understanding* (many editions), II, XXI, §48; J.-J. Rousseau, *Discourse on the Origin of Inequality*,

- 1st Part, p. 54; *The Social Contract*, Bk. I, Ch. VIII, p. 178; I. Kant, *Groundwork of the Metaphysics of Morals*, trans. as *The Moral Law* by H.B. Paton, London, 1969, pp. 93–5; G.W.F. Hegel, *Elements of the Philosophy of Right*, ed. A.W. Wood, trans. H.B. Nisbet, Cambridge, Cambridge University Press, 1991, ‘Introduction’. H. Frankfurt, ‘Freedom of the Will and the Concept of a Person’, *Journal of Philosophy*, 1971, vol. LXVII(1), pp. 5–20, repr. in G. Watson (ed.), *Free Will*, Oxford, Oxford University Press, 1982; C. Taylor, ‘What is human agency?’, in *Philosophical Papers*, Cambridge, Cambridge University Press, 1985, vol. I, pp. 15–44.
- 17 J.-J. Rousseau, *The Social Contract*, Bk I, Ch. VIII, p.178: ‘We might, over and above all this, add, to what man acquires in the civil state, moral liberty, which alone makes him truly master of himself; for the mere impulse of appetite is slavery, while obedience to a law which we prescribe to ourselves is liberty.’
- 18 G.C. MacCallum, Jr, ‘Negative and Positive Freedom’, *Philosophical Review*, 1967, vol. 76, pp. 312–34.
- 19 J. Feinberg, *Social Philosophy*, Englewood Cliffs, N.J, Prentice Hall, 1973, pp. 12–13.
- 20 J. Gray, *Isaiah Berlin*, London, Harper Collins, 1995, pp. 18–19.
- 21 *Ibid.*, p. 19.
- 22 For Rousseau’s definition of moral liberty, see note 17 above.
- 23 Quentin Skinner, most conspicuously in ‘The Idea of Negative Liberty’, in R. Rorty, J.B. Schneewind and Q. Skinner (eds), *Philosophy in History*, Cambridge, Cambridge University Press, 1984; Philip Pettit, *Republicanism: A Theory of Government and Freedom*, Oxford, Clarendon Press, 1997, which cites the earlier work on which this monograph builds; Jean-Fabien Spitz, *La Liberté Politique*, Paris: Presses Universitaires de France, 1995.
- 24 P. Pettit, *Republicanism*, p. 52.
- 25 The phrase is Harrington’s, cited by P. Pettit, *Republicanism*, p. 39. James Harrington, *The Commonwealth of Oceana and A System of Politics*, ed. J.G.A. Pocock, Cambridge, Cambridge University Press, 1992, p. 8.
- 26 J.-J. Rousseau, *Discourse on the Origin of Inequality*, 2nd Part, p. 86.
- 27 G.W.F. Hegel, *The Phenomenology of Spirit*, trans. A.V. Miller, Oxford, Clarendon Press, 1977, ‘Independence and Dependence of Self-consciousness: Lordship and Bondage’, §§178–96.
- 28 J.S. Mill, *On Liberty*, Ch. 1. For ‘tracking’, see P. Pettit, *Republicanism*, pp. 52–8.
- 29 J.S. Mill, *On Liberty*, p. 73.

- 30 J. Raz, *The Morality of Freedom*, Oxford, Clarendon Press, 1986. See especially Chs 1, 14–15.
- 31 G.W.F. Hegel, *Philosophy of Right*, ‘Introduction’. S.I. Benn, *A Theory of Freedom*, Cambridge, Cambridge University Press, 1988.
- 32 This distinction of first- and second-order desires is the nub of H. Frankfurt’s thesis in ‘Freedom of the Will’. What follows is best understood as a development of Frankfurt’s thesis constructed from a range of critical material.
- 33 An objection raised by G. Watson, ‘Free agency’, *Journal of Philosophy*, 1975, vol. 72, pp. 205–20, repr. in G. Watson, *Free Will*. Frithjof Bergmann offers a lovely philosophical redescription of Dostoyevsky’s malevolent clerk in *Notes from the Underground* as a sort of contrary wanton, a wanton of the third-order, perhaps. See F. Bergmann, *On Being Free*, Notre Dame, University of Notre Dame Press, 1977, pp. 17–22.
- 34 For the notion of free action as produced in accordance with ideas of the good and the true, see S. Wolf, *Freedom within Reason*, Oxford, Oxford University Press, 1990. For the notion of ‘strong evaluation’, see C. Taylor, ‘Responsibility for Self’, in A.O. Rorty (ed.), *The Identities of Persons*, Berkeley, University of California Press, 1976, pp. 281–99, repr. in G. Watson, *Free Will*. Also, C. Taylor, *Sources of the Self*, Cambridge, Cambridge University Press, 1989, Ch. 3.
- 35 J.S. Mill, *On Liberty*, Ch. V, p. 152.
- 36 J.S. Mill, *On Liberty*, p. 116.
- 37 F.D. Schier, ‘The Kantian Gulag’, in D. Knowles and J. Skorupski (eds), *Virtue and Taste*, Oxford, Blackwell, 1993, pp. 1–18, cited at pp. 1–2.
- 38 The account of autonomy I shall develop draws on a range of sources. Prominent amongst them have been J. Raz, *The Morality of Freedom* and S.I. Benn, *A Theory of Freedom*.
- 39 See, for an influential discussion, P.F. Strawson, ‘Social Morality and Individual Ideal’, *Philosophy*, 1961, vol. XXXVI, repr. in Strawson, *Freedom and Resentment*, London, Methuen, 1974, pp. 26–44.
- 40 A typical example is John Rawls’ defence of ‘the Aristotelian Principle’: ‘other things equal, human beings enjoy the exercise of their realized capacities (their innate or trained abilities), and their enjoyment increases the more the capacity is realized, or the greater its complexity’, *A Theory of Justice*, pp. 424–33, cited at p. 426.
- 41 This is Schiller’s quip, loosely rendered by Hegel. See Hegel,

- Philosophy of Right*, §124, and the accompanying note by Allen Wood.
- 42 B. Williams, 'Toleration: An Impossible Virtue?', in D. Heyd (ed.), *Toleration*, Princeton, N.J., Princeton University Press, 1996, p. 18.
  - 43 The classical discussion of this problem, alternatively characterized as incontinence, or, in the Greek, *akrasia*, is Aristotle, *Nicomachean Ethics* (many editions), Bk VII.
  - 44 W. Kymlicka, *Multicultural Citizenship*, Oxford, Clarendon Press, 1995, is an excellent survey of the range of the modern problem of toleration.
  - 45 The pros and cons of this debate are rehearsed more fully in G. Graham, 'Freedom and Democracy', *Journal of Applied Philosophy*, 1992, vol. 9, pp. 149–60 and D. Knowles, 'Freedom and Democracy Revisited', *Journal of Applied Philosophy*, 1995, vol. 12, pp. 283–92.
  - 46 Brian Barry reports that 'Those ordinary people who say in response to the surveys asked by political scientists that they personally could do things to change a national or even a local political decision which they disapprove of are not so much fine unalienated examples of the democratic citizen as – if they mean it – sufferers from delusions of grandeur on a massive scale', 'Is it Better to be Powerful or Lucky?', in B. Barry, *Democracy, Power and Justice*, Oxford, Clarendon Press, 1989, p. 301.
  - 47 J.S. Mill, *On Liberty*, pp. 72–3.
  - 48 J.J. Thomson, *The Realm of Rights*, Cambridge, Mass., Harvard University Press, 1990, pp. 259–71.
  - 49 Defended in full detail in J. Feinberg, *Harm to Others*, vol. 1 of *The Moral Limits of the Criminal Law*, New York, Oxford University Press, 1984.
  - 50 J. Feinberg, *Harm to Others*, p. 37, quoting Nicholas Rescher, *Welfare: The Social Issue in Philosophical Perspective*, Pittsburgh, University of Pittsburgh Press, 1972, p. 6.
  - 51 Lord Justice James Fitzjames Stephen, *Liberty, Equality, Fraternity*, London, Smith, Elder, 1873, new edn, Cambridge, Cambridge University Press, 1967 (a direct riposte to Mill's *On Liberty*), is the classical source of this objection.
  - 52 For a discussion of these questions, see D. Knowles, 'A Reformulation of the harm principle', *Political Theory*, 1978, vol. 6, pp. 233–46.
  - 53 G. Graham, *Contemporary Social Philosophy*, Oxford, Blackwell, 1988, pp. 123–4.
  - 54 As full a list as anyone could usefully employ is found in J. Feinberg, *Harm to Others*, at pp. 16–17.

- 55 P. Devlin, *The Enforcement of Morals*, Oxford, Oxford University Press, 1965.
- 56 H.L.A. Hart, *Law, Liberty and Morality*, Oxford, Oxford University Press, 1963.
- 57 Report of the Committee on Homosexual Offences and Prostitution (CMD 247) 1957 (*The Wolfenden Report*).
- 58 *Bowers v. Hardwick*, 478 U.S. 186.
- 59 The strongest claims to this effect have been made by M. Sandel, *Liberalism and the Limits of Justice*, Cambridge, Cambridge University Press, 1982.
- 60 The term is Ronald Dworkin's, used in 'Liberal Community', *California Law Review*, 1989, vol. 77, pp. 479–504, to characterize one argument of his communitarian opponents.
- 61 *Ibid.*, p. 497. (I confess: this reader's imagination runs riot in contemplation of Dworkin's simile. Is he teasing his opponent? His pofaced prose makes it hard to tell.)
- 62 L.B. Schwartz, 'Morals Offences and the Model Penal Code', *Columbia Law Review*, 1963, vol. LXIII, pp. 680, cited in J. Feinberg, *Social Philosophy*, p. 43.
- 63 J. Waldron, 'Rushdie and Religion', in *Liberal Rights*, Cambridge, Cambridge University Press, 1993, p. 142, first published in the *Times Literary Supplement*, March 10–16, 1989, pp. 248, 260, as 'Too Important for Tact'.
- 64 *Ibid.*, pp. 140–1.
- 65 J.S. Mill, *On Liberty*, Ch. 1, p. 73.
- 66 *Ibid.*
- 67 *Ibid.*, Ch. V, p. 152.
- 68 *Ibid.*
- 69 One can't conduct this sort of discussion without giving offence. Readers who are fond of these pastimes, please accept my apologies, and note, appropriately for a discussion of paternalism, that the list contains at least one self-inflicted wound.
- 70 W. Burroughs, *Junkie*, Paris, The Olympia Press, 1966.
- 71 I accept that this is a caricature of the poorly understood phenomena of addiction.
- 72 J.S. Mill, *On Liberty*, Ch. 1, pp. 65–72, for his account of the 'tyranny of the majority'.
- 73 *Ibid.*, Ch. 5, pp. 164–70.

## 4 Rights

- 1 In recent years a modern version of natural law theory has been worked out by John Finnis, *Natural Law and Natural Right*, Oxford, Clarendon Press, 1980.
- 2 J. Bentham, 'A Critical Examination of the Declaration of Rights', in B. Parekh (ed.), *Bentham's Political Thought*, pp. 258–69. Also 'Anarchical Fallacies', in J. Waldron (ed.), *Nonsense upon Stilts. Bentham, Burke and Marx on the Rights of Man*, London, Methuen, 1987.
- 3 H.L.A. Hart, *Law, Liberty and Morality*, pp. 17–25.
- 4 W.E. Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, New Haven, Yale University Press, 1923. Hohfeld's classification is discussed usefully in J. Feinberg, *Social Philosophy*, Ch. 4, and J. Waldron (ed.), *Theories of Rights*, Oxford, Oxford University Press, 1984, 'Introduction'. Scholars of jurisprudence have refined Hohfeld's analysis in an ever more sophisticated fashion.
- 5 T. Hobbes, *Leviathan*, Ch. 14, p. 189.
- 6 'Rights of action' is D.D. Raphael's terminology. They are contrasted, in his analysis, with 'rights of recipience'. See D.D. Raphael, *Problems of Political Philosophy*, London, Macmillan, 1970, pp. 68–9.
- 7 Joseph Raz defines rights in terms of their constituting a sufficient reason for holding some other person(s) to be under a duty. See *The Morality of Freedom*, p. 166 and Ch. 7 generally.
- 8 Raz claims, plausibly, that there is no closed list of duties corresponding to each particular right. 'This dynamic aspect of rights, their ability to create new duties, is fundamental to any understanding of their nature and function in practical thought', *The Morality of Freedom*, p. 171.
- 9 J. Waldron, *The Right to Private Property*, Oxford, Clarendon Press, 1988, Ch. 4. Waldron is sharpening a similar distinction drawn initially by H.L.A. Hart, in 'Are there any Natural Rights?', *Philosophical Review*, 1955, vol. LXIV(2), pp. 175–91, repr. in J. Waldron (ed.), *Theories of Rights*.
- 10 H.L.A. Hart, 'Natural Rights', in J. Waldron (ed.), *Theories of Rights*, pp. 77–8.
- 11 This line of criticism is taken by Maurice Cranston, *What are Human Rights?*, London, Bodley Head, 1973. The discussion that follows echoes arguments from Henry Shue, *Basic Rights*, Princeton, N.J., Princeton University Press, 1980. A digest of

- Shue's central arguments is available in R.E. Goodin and P. Pettit (eds.), *Contemporary Political Philosophy*, Oxford, Blackwell, 1997, pp. 341–55.
- 12 Jeremy Waldron argues along these lines in 'Participation: The Right of Rights', *Proceedings of the Aristotelian Society*, 1998, vol. XCVIII, pp. 307–37.
  - 13 J. Waldron, *Theories of Rights*, 'Introduction', p. 7.
  - 14 J. Waldron, *The Right to Private Property*, Ch. 2.
  - 15 An account of the different elements of the right to private property is given in A.M. Honoré, 'Ownership', in A.G. Guest (ed.), *Oxford Essays in Jurisprudence*, Oxford, Oxford University Press, 1961.
  - 16 G.W.F. Hegel, *Philosophy of Right*, §§40, 46, 63, R. Tuck, *Natural Rights Theories*, Cambridge, Cambridge University Press, 1979.
  - 17 G.W.F. Hegel, *Philosophy of Right*, §36.
  - 18 R. Nozick, *Anarchy, State and Utopia*, p. 57.
  - 19 The Marxist case against human rights is presented in J. Waldron (ed.), *Nonsense upon Stilts*. The socialist critique of rights is discussed (and a socialist defence of rights mounted) in Tom Campbell, *The Left and Rights*, London, Routledge and Kegan Paul, 1983.
  - 20 Canonical texts of modern communitarianism include Charles Taylor, 'Atomism', in *Philosophical Papers*, vol. II, Cambridge, Cambridge University Press, 1985; Alasdair MacIntyre, *After Virtue*, London, Duckworth, 1981; Michael Sandel, *Liberalism and the Limits of Justice*, Cambridge, Cambridge University Press, 1982. It is fair to say that the variety of forms taken by modern communitarian writings developed as criticisms of modern liberalism. The main contours of these debates are usefully reviewed in S. Mulhall and A. Swift, *Liberals and Communitarians*, Oxford, Blackwell, 1992.
  - 21 The phrase comes from Michael Sandel, 'The Procedural Republic and the Unencumbered Self', *Political Theory*, 1984, vol. 12, pp. 81–96, repr. in R.E. Goodin and P. Pettit (eds), *Contemporary Political Philosophy*, pp. 247–55.
  - 22 The distinction of exclusive and inclusive rights has been put to interesting use in the interpretation of Locke's views on property by James Tully, *A Discourse on Property*, Cambridge, Cambridge University Press, 1980.
  - 23 The cases that follow are discussed in W. Kymlicka, *Multicultural Citizenship*, pp. 158–70. A useful survey of the philosophical problems concerning group rights may be found in A. Buchanan,

- 'Liberalism and Group Rights', in J.L. Coleman and A. Buchanan (eds), *In Harm's Way: Essays in Honor of Joel Feinberg*, Cambridge, Cambridge University Press, 1994, pp. 1–15.
- 24 J. Locke, *Second Treatise*, Ch. 2, §6. For the theology underpinning this argument, see J. Dunn, *The Political Thought of John Locke*, Cambridge, Cambridge University Press, 1969.
- 25 J. Locke, *Second Treatise*, §27.
- 26 R. Nozick, *Anarchy, State and Utopia*, pp. 169–70.
- 27 G.A. Cohen, 'Self-ownership, World-ownership, and Equality: Part II', *Social Philosophy and Policy*, 1986, vol. 3.
- 28 This debate was one of the sub-texts of the development of liberalism. Rousseau, to take one classical example, savages Grotius, arguing that no rational agent would choose slavery (*Social Contract*, Bk 1, Ch. IV). Robert Nozick, to select a modern thinker, believes the opposite (*Anarchy, State and Utopia*, p. 331).
- 29 H.L.A. Hart, 'Are there any Natural Rights?', p. 175.
- 30 I argued in Ch. 3 that any account of autonomy which explains why it is valuable must be a good deal more cluttered than this – and I will return to the point in what follows.
- 31 This 'Choice Theory' of rights was advanced (and subsequently retracted) by H.L.A. Hart in 'Are there any Natural Rights?' It is discussed in Tom Campbell, *The Left and Rights*, pp. 87–9 and J. Waldron, *The Right to Private Property*, pp. 95–8.
- 32 Richard Dagger, *Civic Virtues: Rights, Citizenship and Republican Liberalism*, Cambridge, Cambridge University Press, 1997, p. 31.
- 33 Ibid.
- 34 J.L. Mackie (not a Kantian) tentatively advanced a thesis similar to this in 'Can there be a Rights-based Moral Theory?', in P.A. French, T.E. Uehling, Jr and H.K. Wettstein (eds), *Studies in Ethical Theory*, Midwest Studies in Philosophy, 1978, vol. 3, repr. in J. Waldron (ed.), *Theories of Rights*, pp. 168–81. In the latter volume, pp. 182–200, 'Rights-based Moralities', J. Raz rejects this claim.
- 35 Mill, *Utilitarianism*, Ch. 5, p. 50.
- 36 Ibid.
- 37 L.W. Sumner, *The Moral Foundation of Rights*, Oxford, Clarendon Press, 1987, pp. 8–9.
- 38 Can one have an interest one doesn't recognize or even disavow? Such issues are canvassed, with further references, in J. Waldron, *The Right to Private Property*, pp. 87–92 and J. Raz, *The Morality of Freedom*, pp. 180–3.
- 39 Aristotle, *Politics*, trans. E. Barker, Oxford, Clarendon Press, 1946, I, 2, 1253a3, 1253a7, III, 6, 1278b19.



- 40 T. Hobbes, *Leviathan*, Ch. 13, p. 188.
- 41 G.W.F. Hegel, *Philosophy of Right*, §§182–7, for a summary.
- 42 The agreement to establish this court was signed by 120 nations. Seven nations opposed the institution. The blacklist included the governments of Algeria, China, Iran, Iraq, Libya, Sudan and the United States. For details, and a discussion of American policy ('an embarrassing low point for a government that portrays itself as a champion of human rights'), see K. Roth, 'The Court the US Doesn't Want', *The New York Review of Books*, November 1998, vol. XLV(18), pp. 45–7, cited at p. 45.
- 43 Consequentialist defences of moral rights are advanced in L.W. Sumner, *The Moral Foundations of Rights*, Ch. 6 and T.M. Scanlon, 'Rights, Goals and Fairness', *Erkenntnis*, 1977, vol. II, pp. 81–94, repr. in J. Waldron (ed.), *Theories of Rights*, pp. 137–52.
- 44 J. Rawls, *A Theory of Justice*, p. 191.
- 45 R. Nozick, *Anarchy, State and Utopia*, p. 33. On 'side-constraints', see pp. 29–35.
- 46 J.S. Mill, *Utilitarianism*, Ch. V, p. 58.
- 47 R. Dworkin, 'Rights as Trumps', in J. Waldron (ed.), *Theories of Rights*, pp. 153–67, adapted from R. Dworkin, 'Is there a Right to Pornography?', *Oxford Journal of Legal Studies*, 1981, vol. 1, pp. 177–212, repr. in R. Dworkin, *A Matter of Principle*, Cambridge, Mass. and London, Harvard University Press, 1985, pp. 335–72.
- 48 David Lyons, 'Utility and Rights', in J.R. Pennock and J.W. Chapman (eds), *Ethics, Economics and the Law: Nomos XXIV*, New York, New York University Press, 1982, pp. 107–38, repr. in D. Lyons, *Rights, Welfare and Mill's Moral Theory*, Oxford, Oxford University Press, 1994, pp. 147–75 and J. Waldron, *Theories of Rights*, pp. 110–36.
- 49 Alan Gewirth defends this position in 'Are there any Absolute Rights?', *Philosophical Quarterly*, 1981, vol. 31, pp. 1–16, repr. in J. Waldron, *Theories of Rights*, pp. 91–109. Nozick hopes to avoid the issue of whether rights may be violated 'in order to avoid catastrophic moral horror' (*Anarchy, State and Utopia*, p. 30 n.). Lyons accepts that moral rights may be outweighed by *very substantial* utilities or disutilities (*Rights, Welfare*, pp. 156–8).
- 50 Arthur C. Danto, 'Constructing an Epistemology of Human Rights: A Pseudo-problem?', in E.F. Paul, J. Paul and F.D. Miller, Jr. (eds), *Human Rights*, Oxford, Blackwell, 1984, p. 30. Danto is criticizing Gewirth's attempt to found rights in the necessities of human agency. I believe this no-theory theory is central to Hegel's discussion of rights in the 'Abstract Right' section of the *Philosophy of*

*Right* – for countless historical reasons, folk nowadays just claim them as consequent on the moral status of *person* that they have insisted on conferring on themselves and others whose moral status they recognize. But I expect this reading to be controversial.

## 5 Distributive justice

- 1 G.W.F. Hegel, *Philosophy of Right*, §185.
- 2 For a utilitarian approach, see P. Singer, *Practical Ethics*, Cambridge, Cambridge University Press, 1979. For a Kantian approach, see O. O’Neill, *Faces of Hunger: An Essay on Poverty, Justice and Development*, London, Allen and Unwin, 1986. For contractualist approaches, see C.R. Beitz, *Political Theory and International Relations*, Princeton, N.J., Princeton University Press, 1979, and T. Pogge, *Realising Rawls*, Ithaca, N.Y., Cornell University Press, 1989.
- 3 R. Nozick, *Anarchy, State and Utopia*, p. 151.
- 4 *Ibid.*, p. 153.
- 5 *Ibid.*, p. 153.
- 6 To use Waldron’s language, a legitimate property holding always requires the validation of some *special* rights claim. If so, a theory of distributive justice necessarily grounds such claims. If so, one of Waldron’s major theses: that special rights arguments cannot be appealed to in the defence of a specific allocation of private property since it is vulnerable to the claims of *general* rights, cannot be defended, since it is a proper requirement of an acceptable general rights argument that it detail which special rights claims are legitimate. Nozick assumes, wrongly, that the dialectic begins with the vindication of special rights claims. Waldron concludes, wrongly, that special rights-based arguments have no distinctive place in the justification of a system of property holdings. See J. Waldron, *The Right to Private Property*, Chs 4, 7.
- 7 R. Nozick, *Anarchy, State and Utopia*, p. 161.
- 8 *Ibid.*, p. 163.
- 9 *Ibid.*, p. 169.
- 10 This point is stressed by J. Waldron, *The Right to Private Property*, pp. 266ff., and endorsed by Leif Wenar in ‘Original Acquisition of Private Property’, *Mind*, 1998, vol. 107, pp. 799–819.
- 11 J. Locke, *Second Treatise*, §25.
- 12 R. Nozick, *Anarchy, State and Utopia*, pp. 174–5.
- 13 In what follows, I reproduce the argument of D. Knowles, ‘Autonomy and Side-constraints’, *Mind*, 1979, vol. LXXXVIII, pp. 263–5.

- 14 I. Kant, *Groundwork*, pp. 90–3, Academy edn., *Kritik der Reinen Vernunft* (I. Auflage), ed. B. Erdmann, Kant's gesammelte Schriften, herausgegeben von der Königlich Preußischen Akademie der Wissenschaften, Band IV (edited by the Royal Prussian Academy of Sciences, vol. IV), pp. 428–31.
- 15 For a discussion of Kant's view of non-human nature see papers by Allen W. Wood and Onora O'Neill, 'Kant on Duties Regarding Nonrational Nature', *Proceedings of the Aristotelian Society*, 1998, Supp. vol. LXXII, pp. 189–228.
- 16 G.W.F. Hegel, *The Philosophy of Right*, §§34–69. For discussion, see D. Knowles, 'Hegel on Property and Personality', *Philosophical Quarterly*, 1983, vol. 33, Allen W. Wood, *Hegel's Ethical Thought*, Cambridge, Cambridge University Press, 1990, Ch. 5 and J. Waldron, *The Right to Private Property*, Ch. 10.
- 17 In a work like this which concentrates on the topics and puzzles that comprise the agenda of political philosophy, it is hard to detach Hayek's views on the problems in hand in a way that does not distort them through abstracting from their linkages to his positions elsewhere. The discussion that follows will amount to crude surgery, so I remedy the injustice to Hayek by recommending that readers follow up his other writings. Brief but well-judged accounts of Hayek's contribution to political philosophy can be found in R. Plant, *Modern Political Thought*, pp. 80–97 and M.H. Lessnoff, *Political Philosophers of the Twentieth Century*, Oxford, Blackwell, 1999, pp. 146–75. The most important primary sources are *The Road to Serfdom*, London, Routledge and Kegan Paul, 1974, *The Constitution of Liberty*, London, Routledge and Kegan Paul, 1960 and *Law, Legislation and Liberty*, Routledge and Kegan Paul, 1982 (published in three vols, 1973, 1976 and 1979).
- 18 F.A. Hayek, *Law, Legislation and Liberty*, pp. xv–xvi. and vol. 2, throughout.
- 19 *Ibid.* vol. 2, pp. 35–42.
- 20 F.A. Hayek, *The Constitution of Liberty*, Ch. 19.
- 21 T. Hobbes, *Leviathan*, Ch. 18, p. 234. Michael Lessnoff has argued, intriguingly, that *all* property is social property in a genuine democracy, because it is subject to the powers of the (democratic) sovereign. M.H. Lessnoff, 'Capitalism, Socialism and Democracy', *Political Studies*, 1979, vol. XXVII, pp. 594–602.
- 22 K. Marx, *1844 Manuscripts*, in *Early Writings*, trans. R. Livingstone and G. Benton, Harmondsworth, Penguin, 1975, pp. 328–9.
- 23 Centrally but not always. Intellectual property, e.g. patents and copyright, is an exception.

- 24 D. Hume, *Treatise*, Bk III, Part II; *Second Enquiry*, Section III. Hume believed that a system of rules governing property amounted to a system of justice so long as both the system and its constituent rules promoted utility.
- 25 G.W.F. Hegel, *Philosophy of Right*, §§190–5. Hegel's terminology is not careless. He regards the transformation of natural needs into 'social' needs as a distinctive (and liberating) feature of the modern world.
- 26 The argument is taken from A.R. White, *Modal Thinking*, Oxford, Blackwell, 1971, pp. 110–14. It is widely used. See also D. Wiggins, 'The Claims of Need', in *Needs, Values, Truth*, Oxford, Blackwell, 1987, p. 6. My adjudication of this argument agrees with the chief lines of R. Plant's discussion in *Modern Political Thought*, Oxford, Blackwell, 1991, Ch. 5.
- 27 This objection is put by Brian Barry in *Political Argument*, London, Routledge and Kegan Paul, 1965, pp. 47–9. The reply I offer draws on D. Wiggins, 'Claims of Need', in *Needs, Values, Truth*, pp. 6–11.
- 28 *Ibid.*, p. 10.
- 29 *Ibid.*
- 30 These categories summarize crudely Wiggins's discussion, *Ibid.*, pp. 11–16.
- 31 Griffin, *Well-being*, pp. 41–7, 51–3.
- 32 For the principle, see D. Braybrooke, *Meeting Needs*, Princeton, N.J., Princeton University Press, 1987, pp. 60–75. Further references are given at p. 314.
- 33 Or what the author describes as (a suggestive, though tentative and incomplete) list of course-of-life needs. The list that follows is cited from Braybrooke, *Meeting Needs*, p. 36. Another list – of central human functioning capabilities – is provided by Martha Nussbaum, *Sex and Social Justice*, pp. 41–2.
- 34 Notable contributions to these debates include Peter Singer, 'Famine, Affluence and Morality', *Philosophy and Public Affairs*, 1992, vol. 1, pp. 229–43 and *Practical Ethics*, Cambridge, Cambridge University Press, 1979, Onora O'Neill, *Faces of Hunger*, London, Allen and Unwin, 1986.
- 35 A.K. Sen, *Inequality Re-examined*, Oxford, Clarendon Press, 1992, p. ix.
- 36 A.K. Sen, 'Equality of What?', in S.M. McMurrin (ed.), *The Tanner Lectures on Human Values*, vol. 1, Cambridge, Cambridge University Press, 1980, pp. 195–220, repr. in Robert E. Goodin and Philip Pettit (eds), *Contemporary Political Philosophy*.

- 37 J. Rawls, *A Theory of Justice*, p. 62. I shall discuss Rawls's theory in more detail later.
- 38 *Ibid.*, p. 76. The quotation is amended from the two-person case Rawls describes.
- 39 A.K. Sen, *Inequality*, p. 20.
- 40 A.K. Sen, 'Equality of What?', p. 478.
- 41 *Hymns, Ancient and Modern*, No. 573, 'All things bright and beautiful'.
- 42 This phenomenon, whereby individuals shape their desires in accordance with the options realistically available, has been dubbed 'adaptive preference formation' by John Elster. It is discussed in John Elster, *Sour Grapes*, Cambridge, Cambridge University Press, 1983. Sen discusses the impact of these considerations on the metric of equality in *Inequality*, pp. 6–7, 54–5. Martha Nussbaum refers to this material in discussing the condition of women in 'American Women: Preferences, Feminism, Democracy', *Sex and Social Justice*, pp. 130–53.
- 43 A.K. Sen, *Inequality*, p. 44.
- 44 For a sensitive and clear-sighted discussion of these difficulties, see Thomas Nagel, *Equality and Partiality*, Oxford, Oxford University Press, 1991, esp. Chs 10–11.
- 45 J.-J. Rousseau, *Social Contract*, Bk 1, Ch. IX, footnote.
- 46 J. Rawls, *Political Liberalism*, New York, Columbia University Press, 1993.
- 47 Rawls disavows such a wide ambition, but I believe his practice belies his explicit modesty. See *Theory of Justice*, pp. 7–11.
- 48 R. Dworkin, 'The Original Position', in N. Daniels (ed.), *Reading Rawls*, Oxford, Blackwell, 1975, pp. 16–53, cited at p. 18.
- 49 See Rawls, *Theory of Justice*, Ch. VI.
- 50 *Ibid.*, pp. 130–4.
- 51 *Ibid.*, p. 18.
- 52 *Ibid.*, p. 19.
- 53 T. Hobbes, *Leviathan*, Ch. X.
- 54 Rawls steps carefully round these questions in *Political Liberalism*, New York, Columbia University Press, 1993, pp. 182–6.
- 55 J. Rawls, *Theory of Justice*, p. 137.
- 56 *Ibid.*
- 57 Such claims have been developed at book length by William A. Galston, *Liberal Purposes*, Cambridge, Cambridge University Press, 1991 and George Sher, *Beyond Neutrality*, Cambridge, Cambridge University Press, 1997. Rawls's statement of the priority of the right over the good is found at *Theory of Justice*, pp. 31–2. He

- articulates, some would say amends, his view at length in *Political Liberalism*. See especially Lecture V, pp. 173–211.
- 58 Thomas Nagel, 'Rawls on Justice', *Philosophical Review*, 1973, vol. LXXXII, pp. 220–34, repr. in N. Daniels (ed.), *Reading Rawls*. See the latter at pp. 6–10.
- 59 The general conception and the two principles are cited in their final versions from *Theory of Justice*, pp. 302–3.
- 60 This formal statement (*Theory of Justice*, p. 152), conceals some dreadful social choices which have been the occasion of anguished historical judgement. Isaac Deutscher, considering whether Russia could have emerged from barbarism by using less barbarous means, is a celebrated example. See in particular the final two chapters of I. Deutscher, *Stalin: A Political Biography*, rev. edn, Harmondsworth, Penguin, 1966.
- 61 Rawls, *Political Liberalism*, p. 187.
- 62 Those wishing to take the matter further should note the significant alterations in the principle as stated in *Political Liberalism*, Lecture VIII (at p. 291), in response to the criticisms of H.L.A. Hart, in particular. See H.L.A. Hart, 'Rawls on Liberty and its Priority', *University of Chicago Law Review*, 1973, vol. 40, pp. 534–55, repr. in N. Daniels (ed.), *Reading Rawls*, pp. 230–52.
- 63 Rawls deploys a battery of arguments against average utility, as a principle one might select in the original position. See *Theory of Justice*, §§ 28–9. The case for average utility is made by J.C. Harsanyi, 'Cardinal Utility in Welfare Economics and the Theory of Risk Taking', *Journal of Political Economy*, 1953, vol. 61, and, discussing Rawls, 'Morality and the Theory of Rational Behaviour', in A.K. Sen and B. Williams (eds), *Utilitarianism and Beyond*, Cambridge, Cambridge University Press, 1982.
- 64 Is envy a feature of human nature that can't be eradicated by honest and careful reflection? Perhaps it is, but so too, one might think, is the docile and unquestioning acceptance of traditional inequalities, the poor-man-at-the-gate syndrome noted earlier.
- 65 Rawls, *Theory of Justice*, p. 440.
- 66 *Ibid.*, p. 4.
- 67 T. Scanlon, 'Contractualism and Utilitarianism', in A.K. Sen and B. Williams (eds), *Utilitarianism and Beyond*. So far as I can see, specific questions concerning justice are not addressed in Scanlon's recent book, *What We Owe to Each Other*, Cambridge, Mass., Harvard University Press, 1999.
- 68 This point is made by T. Nagel, *Equality and Partiality*, pp. 38–40. Does Rawls accept Scanlon's version of contractualism, which