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# Utilitarianism and Beyond: Contemporary Analytical Political Theory

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# Utilitarianism and beyond: contemporary analytical political theory

DAVID MILLER AND RICHARD DAGGER

### General features

In this chapter we sketch a body of political thought that became predominant in the second half of the twentieth century among academic political philosophers, primarily in the English-speaking world, but increasingly elsewhere, too. To call this type of political thought ‘analytical’ may not be particularly revealing, but no other term better describes the movement in question. Sometimes ‘liberal political theory’ is used, and there is indeed a close connection between analytical theory and liberalism. But that label is in one way too broad and in another too narrow for this kind of political thinking: too broad because liberalism has assumed many different philosophical guises in the course of a history much longer than that of our subject; and too narrow because those who engage in this kind of political theory use methods of analysis and techniques of argument that are not confined to liberals.

Indeed, the political theorists and philosophers of the analytical school often disagree sharply over questions of practical politics, and some have embraced positions, such as Marxism, that have been historically hostile to liberalism. They form a school not because of a common ideological stance, then, but because of certain shared assumptions about the aims and methods of political thought. These assumptions fall under the following five headings.

First, political theory can be detached from deep metaphysical questions about the meaning of human life and the place of human beings in the cosmos. There is no need to settle such questions in order to discover how people should live in societies and order their common affairs. Although political theorists must know something about how human beings behave and what they value, they need not preface their theories with a general account

of 'the human condition', if that means asking such questions as 'What can we know?', 'What is the ultimate good?', 'Does God exist?', 'Is there life after death?' In particular this means that political theory must begin from secular premises, whatever the personal beliefs of the person who engages in it. This feature distinguishes analytical theory from many other schools of political philosophy, past and present, and leads some critics to describe it as comparatively shallow (Parekh 1996). Analytical theorists would say in reply that since we cannot expect to find agreement on the deep metaphysical questions, yet have to live together in political communities as best we can, we must find principles to live by that can be justified in less ambitious ways.

The second feature of analytical theory, as its name perhaps suggests, is its commitment to conceptual clarity and argumentative rigour. Analytical theorists begin with the observation that many of the ideas politicians and the public invoke in political debate are ill-defined and often confused. Concepts like democracy, freedom and equality are used rhetorically without the speaker or writer having any clear idea of their meaning. So a first task of political theory is clarification, which may involve giving an exact definition of a term like 'democracy' or perhaps more often distinguishing between two or more ways in which such a term can be used, as Isaiah Berlin did in his celebrated lecture on 'Two Concepts of Liberty' (Berlin 1969). This feature derived originally from the influence of analytical philosophy, the mid-century movement which held that the task of philosophy was to dissolve philosophical problems by carefully tracing the ways in which concepts were used in ordinary language. Initially this had a somewhat stultifying effect on political theory, because it implied that political theory could not go beyond the analysis and clarification of the terms of political discourse (e.g. Macdonald 1951 and Weldon 1953; for a critical appraisal, Miller 1983). But conceptual clarification soon came to be seen as a preliminary to the justification of principles and the defence of political positions: it is necessary to state clearly what democracy and related concepts mean, for example, if one is to explain why democracy is valuable (see Benn and Peters 1959; Barry 1965; Pitkin 1967; and the essays collected in Quinton 1967; De Crespigny and Wertheimer 1970; and Flathman 1973).

According to analytical theorists, the arguments used to justify principles should be set out explicitly in as rigorous a way as possible. The ideal is to present a series of deductive steps from premises to conclusion. Although the arguments given are rarely so logically tight as this, analytical theorists attempt to display the structure of reasoning that leads to a particular conclusion. Equally, they strive to avoid forms of argument that are prevalent

in other, less reputable, forms of political thought: appeals to tradition or to the authority of Great Books, use of rhetorical devices or loose analogies, and obscurantist jargon. In this respect they follow the example of John Locke when he complained that ‘vague and insignificant Forms of Speech’ and ‘hard or misapply’d words’ are frequently mistaken for ‘deep Learning and heighth of Speculation’ (Locke 1975 [1690], p. 10).

The third feature of analytical theory is that its aim is a normative one, namely to establish political principles that can govern the constitution of states and the making of public policy. It attempts to answer the questions that face citizens and their representatives when they vote, or pass legislation, or allocate resources to one project rather than another. Ought the constitution to include a bill of rights? Should financial support be given to those who cannot find work? Ought hate speech to be outlawed? These are the kinds of questions that political theory should answer by establishing general principles – of liberty or justice, for instance – from which specific recommendations can be derived. It is political theory written from the perspective of the responsible citizen, one might say, and its aim is to encourage such citizens to think more clearly and consistently about the issues they face in the politics of the day. In this respect it diverges radically from forms of political theory whose avowed aim is to promote the cause of a social class or other sectional group, or whose purpose is the unmasking of power relations in contemporary society.

Fourth, analytical theorists all confront, in various ways, the phenomenon of value-pluralism. That is, they acknowledge that deciding political questions such as those listed above requires us to consider a number of apparently conflicting ideals – liberty, justice, democracy, economic prosperity and so forth – each of which may suggest a different answer to the question at stake. Some thinkers in this camp hold that political philosophy has simply to cope with the irreducible plurality of political principles: a view eloquently expressed in Berlin’s lecture ‘Does Political Theory Still Exist?’, in which he argues that the human condition does not allow us to achieve all of our ideals simultaneously, but forces us to make choices that involve the sacrifice of one value for another (Berlin 1962). Other thinkers believe that we have good reason to give precedence to one value: John Rawls, whose theory will be discussed later in the chapter, has argued in this way for the priority of *justice*<sup>1</sup>, while both Robert Nozick and Ronald Dworkin insist that

1. ‘Justice is the first virtue of social institutions, as truth is of systems of thought . . . [L]aws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust’ (Rawls 1971, p. 3).

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individual *rights* should take precedence over other political values (Nozick 1974, esp. ch. 3; Dworkin 1977, ch. 7). Perhaps the most ambitious attempt to come to terms with value-pluralism has been utilitarianism (discussed in the next section), which appeals to the principle of greatest happiness as a supreme arbiter to resolve conflicts between liberty, justice and all other goods.

Fifth, in a broad sense, analytical political theory must be described as liberal. It aims to serve as the public philosophy of a society of free and equal citizens who have choices to make about how their society will be organised; it assumes that such citizens will often disagree, but that clear thinking and careful argument can lessen the disagreement and uncover principles that can win widespread support. Within this broad agreement, analytical theorists have taken a wide variety of political stances, from free-market libertarianism at one extreme to egalitarian socialism at the other. (They include, for example, analytical Marxists, who have attempted to reconstruct Marxian political theory by abandoning dialectics and using analytical methods borrowed from non-Marxian economics and philosophy: see Elster 1985; Roemer 1986.) Analytical theory is liberal, then, but not in the narrow sense that entails a particular view about the rights of individuals or how extensive the role of the state should be.

### The legacy of utilitarianism

In its origins, analytical theory both grew out of and reacted against the utilitarian outlook which had achieved a kind of dominance-by-default in the English-speaking liberal democracies in the twentieth century. Jeremy Bentham, John Stuart Mill and other ‘philosophic radicals’ had gained prominence in the first half of the nineteenth century with the argument that questions of government and policy should be answered by choosing the available option that appeared likely to contribute most to the aggregate happiness of those affected. In Britain, especially, this was a great reforming philosophy, underpinning major changes in economic policy, legal practice and the machinery of government. But in the later years of the century it came under attack from various quarters, and was displaced in the universities by the idealism of F. H. Bradley, T. H. Green and their disciples. In the first half of the twentieth century no utilitarian political philosopher mounted a systematic defence of utilitarianism to rival Henry Sidgwick’s *The Methods of Ethics*, first published in 1874.

Yet utilitarianism remained a powerful current among economists, especially those ‘welfare economists’ who sought ways to measure and achieve ‘maximum aggregate utility’ (Rescher 1966 provides a succinct summary). It also enjoyed a quiet revival among moral philosophers after the Second World War. These philosophers were more concerned to elucidate moral concepts and to explain the meaning of moral propositions than to put forward substantive criteria by which actions and practices might be assessed, but when they did turn to matters of substance it was often a form of utilitarianism that emerged. Richard Hare, for example, gave an account of moral judgements as universalisable prescriptions – that is, action-guiding judgements that everyone must be able to endorse, no matter what their place in the world. Arriving at a universalisable prescription required the moral agent to give equal weight to the preferences of everyone who would be affected by the judgement’s implementation and to follow the course of action that would achieve the greatest possible satisfaction of preferences. Hare’s substantive criterion for testing moral principles was thus utilitarian, with ‘preference-satisfaction’ replacing the traditional ‘happiness’ in the utilitarian formula (Hare 1963; 1981). In the USA, Richard Brandt’s work followed a parallel path, from his analysis of moral language to a defence of a sophisticated form of rule-utilitarianism (Brandt, 1959; 1992). Even John Rawls, who was soon to become a leading anti-utilitarian, wrote an early paper defending a form of rule-utilitarianism that he thought would overcome familiar criticisms, such as that utilitarianism might justify punishing the innocent (Rawls 1955).

Utilitarian thinking also seemed to come naturally to politicians and civil servants in democratic governments charged with making policy decisions that affected the welfare of very large numbers of citizens. Over the first half of the twentieth century, New Liberalism in Britain and the New Deal in the USA brought a steady expansion of the powers of government, with new social programmes in education and health, and, under the influence of J. M. Keynes, a more interventionist style of economic policy. Economic planning in wartime, and the post-war preoccupation with national defence, amplified these powers still further. Responsible public servants had somehow to justify such policies to a democratic electorate: but how was this to be done when these policies typically produced both winners and losers? Most obviously, by counting the interests of each citizen equally, and then showing that on balance the gains of the winners outweighed the losses of the losers. In this way, utilitarianism became the unconscious public

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philosophy of a generation of administrators and their advisers; after all, as one of them later wrote, 'the welfare state was itself an essay in utilitarianism' (Annan 1991, p. 413).

The perception that democratic governments were following the utilitarian principle provoked a reaction from several political philosophers, who argued that unconstrained utilitarianism might justify abhorrent policies. They criticised utilitarianism primarily from two directions. First, because policies were assessed simply by weighing total gains and losses, it was possible on utilitarian grounds to justify policies that violated the basic rights of certain individuals or groups, or harmed them in some other way, so long as these costs were outweighed by greater gains elsewhere. Thus draconian forms of punishment might be justified if these acted as an effective deterrent to potential criminals, or economic policies that imposed severe costs on a few people could be defended on the grounds that they enhanced economic efficiency overall. Utilitarianism appeared to have no place for the idea that each person has a claim to just treatment that could not be overridden even if doing so produced great benefits for others. This failure to recognise that a gain to A does not automatically compensate for a loss to B led to the complaint that utilitarianism 'does not take seriously the distinction between persons' (Rawls 1971, p. 27). So it was necessary to look elsewhere – to a non-utilitarian theory of justice, a theory of human rights, a theory of freedom, or some other source – to find acceptable principles for a free society.

The second attack on utilitarianism took a slightly different form. Critics in this camp pointed out that the injunction to do whatever will produce the best overall consequences places no fixed limits on what people might do. Absolute restrictions of the form 'It is always wrong to perform actions of type X', where X might stand for 'taking innocent life' or 'betraying one's friends', are simply not allowed. At the personal level, this meant that utilitarianism must collide with the belief that it is always dishonourable – a violation of personal integrity – to act in certain ways (Williams 1973). At the public level, the charge was that utilitarianism encouraged a kind of cynicism in which nothing the state did could be described simply as morally intolerable, since it was always possible to find consequentialist reasons to justify what had been done. In the century of Stalin, Hitler and the Holocaust, this was no merely abstract consideration. Later, the Vietnam War was thought to show what may happen when governments make their decisions on the basis of a kind of cost-benefit

analysis, admitting no absolute moral limits on what they can do (Hampshire 1978).

During the 1960s and 1970s, then, political theorists began to search for alternatives to utilitarianism that could remedy these defects while still providing firm foundations for the liberal state. Utilitarianism became, and has since remained, a minority view, even though it has continued to find vigorous defenders (see Smart 1973; Singer 1979; Hardin 1988; Goodin 1995). The strongest argument that can be made on its behalf is perhaps that it can provide coherent guidance to legislators and policy-makers, who must consider the general long-term consequences of the decisions they make and the overall welfare of the people affected by those decisions. Yet even in this role – as a public political philosophy rather than a personal ethic – it faces difficulties. There are formidable problems associated with the utilitarian calculus itself – the problem of discovering how much welfare or happiness each person would derive from the implementation of different policies, and the problem of aggregating these individual utilities into an overall measure of social utility. Even if these problems could somehow be overcome, most political theorists would continue to argue that non-utilitarian principles – principles of liberty, equality, individual rights and others – set limits to what governments may legitimately do in pursuit of the general happiness. Utilitarianism, therefore, cannot serve as a complete public philosophy.

#### Political obligation, authority and civil disobedience

Utilitarianism's incompleteness is especially evident with regard to political obligation and civil disobedience. For the utilitarian, whether one ought or ought not to obey the law is a matter of deciding which course of action will produce the better consequences. But this response simply bypasses the question of whether citizens – especially the citizens of a democratic state – have a moral *obligation* to comply with properly enacted laws.

In the political climate of the 1960s and 1970s, this old question of political obligation took on a new urgency. People involved in the civil rights and anti-war movements in the USA, and in campaigns against nuclear weapons in Britain and elsewhere in Europe, had to decide whether their protests should remain within the bounds of law or whether the gravity of the issues at stake could justify flag-burning, draft-dodging, illegal occupation of military sites, and other acts of civil disobedience. Analytical political philosophers in the 1950s had argued that the problem of

political obligation could be dissolved by observing that acknowledging an obligation to obey the law was simply part of what it meant to belong to a political society (Macdonald 1951; Weldon 1953; McPherson 1967). Such views were hard to sustain, however, when democratic governments were following policies that significant numbers of their citizens regarded as immoral.

Utilitarians aside, most liberals had accepted Locke's argument that citizens were bound to obey because they had consented, either expressly or tacitly, to the state's authority over them (Locke 1963 [1689–90]). But showing that citizens had generally behaved in a way that implied consent proved an embarrassing problem. Despite Plamenatz's attempt to revive consent theory in something like its traditional form, this embarrassment led analytical theorists to search for an alternative (Plamenatz 1938). Some turned to *hypothetical* consent as the grounds of political obligation. What counts, on this view, is not whether one *has* consented to obey the laws of one's country but whether one *would* consent, freely and rationally, to obey them. What counts, in other words, is whether the state in question is legitimate, or the kind of state to which one ought to consent (Pitkin 1965–6; Kavka 1986, pp. 398–407). But this proves to be a consent theory in which the idea of consent does no work at all. If the legitimacy or worthiness of the government or state is what matters, then one may as well dispense with the idea of consent (Schmidtz 1990). Or one could take consent quite seriously and insist that it must be actual rather than hypothetical or implied, which entails that states must undertake reforms that give people suitable opportunities to express their consent and reasonable alternatives should they withhold it (Beran 1987). Such a theory of 'reformist consent' cannot ground an obligation to obey the laws of existing states, however, for none of them, no matter how worthy, provide the requisite opportunities and alternatives; nor is it likely that these can be provided (Klosko 1991).

Reflection on the difficulties of consent theory has led some thinkers in the analytical tradition to espouse 'philosophical anarchism'. These 'anarchists' deny not only that most people have a general obligation to obey the law but also that states or their officials even have the authority to enact and enforce laws. The anarchists' arguments take a stronger and a weaker form. The stronger claim is that it is impossible to provide a satisfactory account of a general obligation to obey the law. Any such obligation must rest on the belief that political authority is 'the right to command, and correlatively, the right to be obeyed', and this belief is at odds with our 'primary obligation' of autonomy, which requires us to decide for ourselves, not merely to

follow orders (Wolff 1970, pp. 4 and 18). The weaker form of philosophical anarchism holds that none of the many attempts to ground political obligation have succeeded, which suggests that none will. The conclusion, then, is that only those relatively few people who have explicitly committed themselves to obedience have anything like a general obligation to obey the laws under which they live (Simmons 1979). Philosophical anarchists of both kinds admit that we probably have good reasons, moral as well as prudential, to obey the laws, but an obligation to obey those in authority is not one of them.

Other philosophers have stopped short of philosophical anarchism by accepting the first conclusion – that there is no general obligation to obey the law – but not the anarchists' denial of political authority. They do this on the grounds that political authority does not entail an obligation to be obeyed by those subject to the authority (Green 1988; and the essays by Smith, Sartorius, Raz and Greenawalt in Edmundson 1999). In this dispute, much depends upon what counts as the proper analysis of 'authority'.

Most recent attempts to justify political obligation have appealed either to *fair play* or *membership*. As formulated by H. L. A. Hart (1955) and Rawls (1964; but cf. Rawls 1971, §§18, 19, 51, 52), the principle of fair play (or fairness) holds that everyone who participates in a just, mutually beneficial, cooperative practice or endeavour has an obligation to bear a fair share of the burdens of the practice. This obligation is owed to the others who cooperate in the practice, for cooperation is what makes it possible for the practice to produce benefits. Anyone who enjoys the benefits without contributing to their production is liable to blame and punishment as one who takes unfair advantage of others, even if his or her shirking does not directly threaten the survival of the practice.

The principle of fairness applies to a political society only if that society can reasonably be regarded as a cooperative enterprise. If so, the members of the polity have an obligation of fair play to do their part in maintaining the enterprise. Because the rule of law is necessary to this end, the principal form of cooperation is obeying the law. Fair play allows that overriding considerations may warrant civil disobedience, but in their absence the members of the polity qua cooperative practice must honour their obligation to each other to obey the laws.

The principal objection to the fairness theory is that political societies, even the best of them, are not cooperative practices that generate political obligations. As developed forcefully by Nozick (1974, pp. 90–5) and Simmons (1979, ch. V), the criticism is that fair play requires the voluntary

acceptance of benefits – otherwise, people could foist obligations on us by giving us unsolicited benefits – and this kind of voluntary acceptance is too rare to provide the basis for political obligation. The principle's advocates have responded by arguing that voluntary acceptance is not as rare as the critics charge (Dagger 1997, ch. 5; Kavka 1986, pp. 409–13), and that obligations of fairness may obtain even when people cannot avoid the receipt of such benefits as national defence and the rule of law (Arneson 1982; Klosko 1992).

The belief that obligations need not derive from voluntary commitments is also central to the membership (or associative) theory of political obligation. Here the key idea is that the political community, like the family, generates obligations even among those who have not chosen to be members. Like 'family and friendship and other forms of association more local and intimate', political association 'is in itself pregnant of obligation' (Dworkin 1986, p. 206). There is thus no need to justify political obligation by appealing to voluntary commitment or some fundamental moral principle, for political obligations, like other associative obligations, grow out of 'deep-rooted connections with our sense of who we are and our place in the world, [and] have a particularly fundamental role in our moral being' (Horton 1992, p. 157).

Critics of the membership theory charge that it depends upon an implausible analogy between small and intimate associations, such as the family, and the large and impersonal state (Simmons 1996; Wellman 1997). As with fair play, the complaint is that membership may generate obligations, but not *political* obligations. We are left with contending theories of political obligation, then, and no consensus as to which of them is best – or (as the essays in Edmundson 1999 attest) whether any of them is even satisfactory.

There are, however, two points on which there is wide agreement among analytical theorists. The first is that the obligation to obey the law, if it exists at all, must be defeasible rather than absolute, for it is always possible that other moral considerations may override this obligation. The second point of agreement, following from the first, is that civil disobedience is sometimes just and proper. No matter how free, open and democratic a state may be, there is always a chance that some injustice will be done to some of its members, or perhaps to foreigners, that warrants civil disobedience. What counts as *civil* disobedience remains a matter of dispute – must it be direct disobedience of the law(s) in question, for instance, or may it allow disobeying one law, such as trespass, as an indirect protest against another? – but the possibility of justifying civil disobedience does not.

The contractarian alternative to utilitarianism

The attempt to answer questions about political obligation leads quickly, as we have seen, into other issues, such as authority, justice, rights and the common good, thereby pressing political thinkers toward more comprehensive and systematic theories. The most important systematic political philosophy developed as an alternative to utilitarianism in the analytical tradition has been social contract theory, especially in the form advanced by John Rawls. Its attraction lay mainly in two features. First, it embraced the individualism at the heart of utilitarianism, but promised to rid it of the possibility that the interests of the few might be sacrificed to the greater welfare of the many. According to contractarianism, a political order is legitimate when it is based on principles that everyone in the society in question can accept. Everyone enjoys a veto, so to speak, on the principles that will govern the society, thereby ruling out principles whose operation might prove detrimental to particular persons or groups of people. Second, contractarians such as Rawls believed that this test would select a clear and consistent set of principles of justice, so that public policy might be guided with more precision than utilitarian criteria provided. Rawls' aim, then, was to lay out certain principles of justice, and then to show that every citizen who thought rationally about how his or her society ought to be governed would agree to these principles.

In the earliest version of his theory, Rawls envisioned a social contract that people, taken just as they were, would agree to sign when they reflected on the long-term gains and losses they would incur under alternative sets of principles (Rawls 1958). But by the time the theory took definitive form in *A Theory of Justice*, Rawls had modified his argument so that the contract was now to be made behind 'a veil of ignorance' (Rawls 1971, §24). This required his readers to imagine that the people choosing principles of justice would know the general facts of social life but not their personal tastes, abilities or social positions. Rawls claimed that the choosers would select two principles. The first specified that each person should enjoy the greatest degree of personal liberty consistent with everyone else enjoying an equal liberty, which in practice meant that they should enjoy rights to speak and act freely, to associate with others and to vote in elections – in other words, the civil and political rights well established in liberal democracies. The second governed the distribution of social and economic resources: income, wealth and opportunity. Rawls argued that his choosers would start by assuming that these should be distributed equally. They would soon see,

however, that there were circumstances in which an unequal distribution might be to everyone's advantage – if, for instance, economic inequalities served as incentives to those who produced goods and services, thus leading to a greater overall volume of production – and they would accept such inequalities if they were fairly gained. So Rawls' second principle stated that material inequalities were fair when they could be expected to work to the greatest benefit of the least advantaged members of society, and so long as they were attached to social positions that everyone had an equal opportunity to fill. This principle required equality of opportunity in the education system and the job market, and redistribution of resources from the better-off to the worse-off up to the point at which further attempts to redistribute would backfire by undermining incentives. The outcome of Rawls' hypothetical social contract, therefore, was a social democratic state which preserved and privileged liberal freedoms, but constrained the workings of the market in the interests, primarily, of the least fortunate.

Is Rawls' theory formally valid? That is, would rational people placed behind a veil of ignorance actually choose the two principles he lays down? This is one of two main questions prompted by Rawls' theory. The second is how much weight, if any, we should give to a hypothetical contract – a thought experiment in which people are deprived of personal information that they do, of course, have in their daily lives. Rawls' aim was to propose a public conception of justice – a conception that would allow people in actual societies to justify their shares of material and immaterial benefits to one another even when the size of those shares is fully known. If my income is much larger than yours, can I justify this inequality to you by arguing that you would have chosen a principle that permits inequalities of this kind behind a veil of ignorance?

Rawls has been widely criticised on both counts. Few critics were persuaded that choosers behind a veil of ignorance would give liberty the absolute priority over material resources that Rawls requires, or that they would assess alternative material distributions exclusively in terms of the share of resources going to the worst-off group (e.g. Hart 1973; Barry 1973). Indeed, some critics argued that the natural outcome of Rawls' social contract would be a modified form of the principle of utility – an ironic consequence, given that Rawls' whole endeavour had been directed at finding a contractarian alternative to utilitarianism (Harsanyi 1982; Arrow 1973). Others argued that appealing to a hypothetical contract was the wrong way to generate a public conception of justice. In stripping his choosers of all knowledge of their beliefs, tastes and capacities, Rawls had also stripped away elements essential to

the personal identity of some members of existing political societies (Sandel 1982). One could not, for instance, justify freedom of conscience to a religious believer by asking him to consider what principles he would choose if he did not know whether he was a believer or an atheist. If he took his religious convictions to be an inescapable part of his identity, he might well regard that question as ethically irrelevant.

In the years following publication of *A Theory of Justice*, Rawls responded to these criticisms by softening the contractarian element in his thinking. Although he continues to stand by his two principles of justice, he relied less on the hypothetical contract to justify them and more on two other claims: that they can form the basis of an ‘overlapping consensus’ between people of diverse moral, philosophical and religious outlooks, and that they are potentially stable, in the sense that people will find them acceptable in practice and become increasingly attached to them over time. People in contemporary democratic societies are irreversibly divided over questions of ultimate value, but nonetheless they must live together on the basis of principles that each person (or at least each ‘reasonable’ person) can accept – principles, Rawls argued, that his theory is uniquely qualified to provide (Rawls 1993).

Although Rawls’ version of the social contract remained the most influential by far in the second half of the twentieth century, other philosophers have devised other forms of contractarianism. These fall roughly into two categories. In one are theories that attempt to provide a more ‘realistic’ alternative to Rawls by scrapping the veil of ignorance and analysing contracts that would be made under conditions of full information. How would people choose to arrange their social institutions if they all know how they are likely to fare under the various institutional arrangements that may be proposed? The key idea here is that everyone must gain relative to a baseline where common institutions are absent – a state of nature, so to speak, where individuals are free to act as they please and no principles of justice are in place. If institutions are to win universal consent, they must ensure that each person at least does better than he or she would do in what Hobbes called ‘the condition of meer Nature’ (Hobbes 1968 [1651], p. 196). Two questions then immediately arise: how are we to identify the relevant baseline, and how should we choose between different ways of distributing the gains of social cooperation? Contractarians of this type tend to assume that only a state with quite limited powers would emerge from this process; they assume, in other words, that the state of nature resembles an economic free-for-all, and those who fared well in it would not agree to redistribution on

the scale envisaged by Rawls, say. They are happy to accept Rawls' idea that society is a 'cooperative venture for mutual advantage', but they go on to insist that 'mutual advantage' must be interpreted literally and under conditions of full knowledge (see especially Buchanan 1975; Gauthier 1986; and for discussion Barry 1995, ch. 2).

A contrasting interpretation of the social contract has been offered by moral and political philosophers who claim that the contract should be understood as an agreement between morally motivated individuals. Principles, especially principles of justice, are acceptable if and only if they could not reasonably be rejected as a basis for 'informed, unforced general agreement' by people seeking to find principles that others with a similar motivation could also accept (Scanlon 1982, p. 110; elaborated in Scanlon 1998). The most important contractarian theory of this type has been put forward by Brian Barry, who claims that a number of relatively concrete principles of justice will be selected by the reasonable rejection test – for instance that 'all inequalities of rights, opportunities and resources have to be justifiable in ways that cannot reasonably be rejected by those who get least' (Barry 1998, p. 147).<sup>2</sup> In theories of this kind, a great deal turns on the notion of reasonableness, which leads critics to object that this form of contractarianism can be made to work only by smuggling the desired practical conclusions into the motivations of the parties to the contract.

### Rights theories

As we have seen, one of the most powerful objections to utilitarianism was that the principle might in certain circumstances license policy-makers to override the basic rights of some individuals in the name of the greater good of the many. The idea that individuals have rights which must on no account be violated has a long and distinguished pedigree in liberal societies, so it is hardly surprising that rights-based theories have proved a popular alternative to utilitarianism among political theorists in the analytical tradition. What may be more surprising is the sharp opposition within the tradition about the nature and justification of the rights they seek to defend. There has been an on-going debate about what it means to have a right – about the conditions under which we can correctly say that some person P has a right to some advantage A. Alongside this there has been a more overtly political disagreement between libertarians, who believe that rights are negative,

2. For the full statement of Barry's view, see Barry (1995).

protective devices that secure individuals and their property against invasion by other individuals and the state, and their various opponents, who believe that individuals also have positive rights to a range of opportunities and resources, often requiring state provision for their protection.

We cannot do justice here to the intricacies of the first debate. The most important contenders have been the *choice* theory of rights, according to which having a right is to have control over other people's duties – to be able to require them to fulfil a duty, or to waive that requirement – and the *benefit* theory, according to which having a right is to stand to benefit in an appropriate way from the performance of the duty. Both theories have been refined and developed in a variety of ways, with significant implications for questions of political obligation, the relationship between law and morality, and other issues in legal and political philosophy. (See Hart 1955 and Raz 1986, ch. 7, for important statements of the choice and benefit theories, respectively; and Jones 1994; Martin 1993; Waldron 1984 for surveys of the debate and general discussion of the concept of rights.)

Robert Nozick's *Anarchy, State, and Utopia* (Nozick 1974) touched off the debate between libertarians and their opponents over the substance of rights. Nozick's book begins with the claim that in order to recognise the inviolability of persons – that it is never morally justified to sacrifice one person for the greater good of others – we must attribute to everyone a set of rights that tightly constrains how others may treat him or her. This set includes rights to use and control our own bodies and full ownership of external resources that we have justly acquired. So powerful are these rights that they put in question the very legitimacy of the state. Nozick asks us to imagine people living in a state of nature with no political authority, and entrusting the defence of their rights to private protective agencies that would punish rights-violators and compensate their victims. In these circumstances, Nozick argues, an institution that we would recognise as a state could emerge spontaneously from interaction between such agencies, but it could only be a 'minimal state', restricted in its functioning to the protection of personal and property rights. Individuals may band together to pursue other goals or goods, but the state is prohibited from using its powers of compulsion for any purpose other than rights protection: thus taxation is only legitimate to cover the costs of external defence and administering a legal system.

Nozick goes on to show how a rights theory of this kind excludes not only utilitarian principles, but Rawlsian principles of justice that require the state to redistribute resources to the worst-off, principles of equality, and any principle that requires more than a 'minimal state'. Because individuals have

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strong rights over their possessions, any political project that infringes these rights will be illegitimate unless it can command the unanimous support of those whose rights are in question.

Two issues have dominated the critical reaction to Nozick's claims. The first concerns Nozick's move from the anti-utilitarian premise that individuals must in some sense be treated as inviolable and not be used for the benefit of others to the conclusion that they have rights of the sort that he endows them with. In particular critics have argued that self-ownership rights – rights to bodily integrity and control – and external property rights have very different implications (see especially Cohen 1995). If I am awarded rights over some physical thing – a tract of land, say – this immediately prevents you from using that thing without my permission. My freedom may be enhanced, but yours is restricted. So to justify property rights merely from the perspective of the right-holder is myopic. Connected to this is the second issue, namely, how individuals originally acquire the rights that are later to be treated as sacrosanct. Nozick follows John Locke in maintaining that people may legitimately acquire property by mixing their labour with unowned things, and may exchange or transfer the property so acquired in any way they wish, provided that their acquisition does not worsen the position of anyone else. But critics have argued that for property rights of this kind to be justified, people must at least have had an equal opportunity to acquire property in the first place. Even within the libertarian camp, some, such as Steiner (1994), have insisted that each person must initially be credited with an equal share of the earth's natural resources before property exchange and transfer is allowed to proceed.

This more egalitarian form of libertarian rights theory still conceives of rights negatively as requirements that others should not interfere with my person or property. For critics, this negative construal misses the essential point about rights, which is that they should safeguard the conditions under which human beings can lead worthwhile lives. These conditions include protection of person and property, but they may also include the provision of vital resources – food, medicine, education and so forth. The idea of human rights, which has assumed increasing importance in international affairs in the second half of the twentieth century, is usually taken to include positive rights of this kind. Within the analytical tradition such rights have been justified by appeals to *moral agency* or to *needs*. On the moral agency view, no one can choose and act morally unless he or she enjoys a certain minimum level of freedom and well-being. It follows that, regardless of the particular form of morality one embraces, one must recognise fundamental

rights to freedom and well-being as a precondition of *any* morality (see Gewirth 1978; 1982; 1996; Plant *et al.* 1980). A more naturalistic approach grounds rights in needs – such as needs for health and adequate nutrition – that are common to all human beings regardless of the particular lives that they choose to lead (see Shue 1980; Donnelly 1985). Both views claim that the distinction between negative and positive rights is morally arbitrary: it is as damaging to a person to be deprived of food by famine as it is by theft, so if individuals have rights not to be deprived of the food they have grown, they also have a right to be supplied with food if their crops fail through no fault of their own.

### Social justice after Rawls

As noted above, libertarian rights theorists such as Nozick argued for a minimal state and ruled out any compulsory redistribution from rich to poor in the name of social justice. Critics argued that states were morally obliged to protect the (positive) rights of every citizen by guaranteeing the provision of minimum levels of welfare. Rawls had gone further still in arguing that justice required not merely the provision of a social minimum but that inequalities in society must always work to the greatest benefit of the least advantaged members. Rawls, though, did not object to economic inequalities as such: if they served as incentives encouraging the talented to be more productive, then his difference principle would justify them. Subsequent theories of social justice in the analytical tradition have argued for a stronger form of equality. A common theme has been that justice requires the elimination of all morally arbitrary inequalities, where ‘morally arbitrary’ means that the individuals in question cannot be held personally responsible.

Ronald Dworkin’s theory of equality of resources has been particularly influential in this field (Dworkin 1981). The theory rests upon a basic distinction between a person’s circumstances and her choices – between features of someone’s situation for which she cannot be held responsible and those for which she can. Dworkin believes, in particular, that it would be wrong to try to give people equal levels of well-being, because a person’s well-being depends on her tastes and preferences, and in normal circumstances people can properly be held responsible for their tastes and preferences. Equally, people can be held responsible for the choices they make about how to use the resources available to them. The level of resources available to someone forms part of her circumstances, however, so everyone must initially enjoy

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an equal share of such resources. For Dworkin, these resources include not only wealth, commodities and other external resources, but personal talents and handicaps. Justice requires, therefore, that every citizen have access to an equal bundle of resources, taking both internal and external resources into account; but justice permits subsequent inequalities that result from choices or preferences.

Since people will value resources differently depending on their preferences, Dworkin's theory requires some way of deciding whether resource bundles are equal or not. For external resources he proposes the device of a hypothetical auction, where resources are divided into lots and each citizen is given an equal number of tokens with which to bid. The auction continues until each person is satisfied that he has made the best bids he can given the number of tokens he has and the rival bids of others. The resulting distribution of resources will be 'envy-free' in the sense that no-one prefers anyone else's bundle to his own. An equal distribution of external resources, therefore, is defined as one that could have emerged from such a procedure.

Dworkin faces greater difficulties when dealing with personal resources – personal talents and handicaps. His theory of justice requires that people with handicaps should be compensated by being given additional external resources, and that people with greater talents should be penalised by having fewer such resources: the principle is that, overall, everyone's bundle should be equally valuable to avoid morally arbitrary inequalities. But this requires that personal resources should be valued in some way, and the auction device is not appropriate here. Instead, Dworkin resorts to the idea of insurance. He asks how much people would be prepared, on average, to pay to insure against a particular form of disability, or to insure against having low levels of talent, if they did not know what talents or handicaps they actually had. He argues that the state should use its powers of tax and transfer to simulate such an insurance scheme – taking resources from the talented in the form of income taxation to track the insurance premiums they would have paid, and giving resources to the untalented and the handicapped to track the payouts they would have received, if such a scheme had existed.

Despite its technical difficulties, Dworkin's theory of justice ranks alongside Rawls' as a remarkable attempt to give a principled basis for the distributive practices of modern liberal democracies. Yet critics sympathetic to the egalitarian thrust of the theory have argued that it focuses too narrowly on *resources*. Even if people enjoy equal access to resources in the way that Dworkin's theory requires, they may still be relatively advantaged or disadvantaged for reasons that are not traceable to their choices or preferences – in

particular, they may be more or less able to convert resources into personal well-being. A handicapped person, for instance, may not only have fewer opportunities but may also suffer personal distress as a result of the handicap, and the distress would not count as a resource deficiency. So theorists have looked for a new 'currency' that avoids the difficulties of welfare and of resources in which to measure egalitarian justice. Amartya Sen has proposed 'basic capability equality' – the principle that people should as far as possible be made equal in their capacity to perform a range of functionings such as being adequately nourished, being able to move about freely, and avoiding premature death (Sen 1982; 1992). G. A. Cohen has proposed 'equal access to advantage', where 'advantage' is taken to mean some combination of resources and welfare (Cohen 1989).

A noteworthy feature of all these theories, and one they share with Rawls', is that they reject *desert*, as that idea is commonly understood. Social justice does not, for instance, mean that people who make a larger economic contribution deserve to receive a higher income. According to egalitarian theorists, since the size of someone's contribution depends in part at least on natural talents, and since natural talents are regarded as morally arbitrary features, no one can deserve income or other benefits simply for contributing more; at best someone might deserve something for making an effort or a choice. This feature sets egalitarian theories significantly apart from public opinion in the societies to which they are meant to apply, where desert retains a central place in popular conceptions of social justice. Some analytical theorists have attempted to rescue the idea of desert from egalitarian criticism and to argue that a complete theory of social justice must find room for desert alongside equality and other distributive principles (see Lucas 1980; Sher 1987; Miller 1999).

A quite different way of understanding the meaning and value of equality has been proposed by Michael Walzer (1983). Walzer rejects the idea that justice can be understood as the equal distribution of any single currency. Instead, justice is irreducibly plural, in the sense that different social goods – money, political power, education, recognition and so forth – compose separate spheres in each of which a different principle of distribution applies. Yet so long as the separation of spheres is maintained – so long as people are prevented from converting the advantages they gain in one sphere into advantages in another, in defiance of the distributive principle that rightfully applies in the second – a certain kind of equality may be achieved. Walzer calls this 'complex equality'. A society of complex equality is one in which some people are (justly) ahead in the sphere of money, others are ahead

in the sphere of political power, and so on, but no one wins out in all the spheres, and so everyone enjoys an equal standing overall. This also means that Walzer is able to find a limited place for desert within a theory of equality. So long as specific forms of desert are confined to particular spheres, and no overall scale of desert is established, recognising desert need not threaten social equality.

### The challenge of communitarianism

Another problem with contemporary theories of justice, according to Walzer, is that they are too abstract and universalistic. Against them he opposes his 'radically particularist' approach, which attends to 'history, culture, and membership' by asking not what 'rational individuals . . . under universalising conditions of such-and-such a sort' would choose, but what would 'individuals like us choose, who are situated as we are, who share a culture and are determined to go on sharing it?' (Walzer 1983, pp. xiv and 5). Walzer thus calls attention to the importance of community, which he and others writing in the early 1980s took to be suffering from both philosophical and political neglect.

Nor do these *communitarians* believe that theoretical indifference has merely coincided with the erosion of community that they see in the world around them. In various ways Walzer, Alisdair MacIntyre (1981), Michael Sandel (1982) and Charles Taylor (1985), among others, have all charged that the philosophical emphasis on distributive justice and individual rights works to divide the citizens of the modern state against each other, thereby fostering isolation, alienation and apathy rather than commitment to a common civic enterprise. This concern with the pernicious effects of individualism is hardly new – Hegel, de Tocqueville, Durkheim and the British idealists sounded similar themes in the nineteenth century, as did Rousseau and others even earlier – but it was given a new life and a new opponent as part of what became known, for better or worse, as the liberal-communitarian debate.

Those enlisted on the communitarian side of the debate have pressed four major objections against their 'liberal' or 'individualist' opponents. The first is the complaint, already noted in Walzer, that abstract reason will not bear the weight philosophers have placed on it in their attempts to ground justice and morality. This 'Enlightenment project' (MacIntyre 1981) is doomed by its failure to recognise that reasoning about these matters cannot proceed apart from shared traditions and practices, each with its own set of roles,

responsibilities and virtues. Second, the liberal emphasis on individual rights and justice comes at the expense of civic duty and the common good. In Sandel's words, 'justice finds its limits in those forms of community that engage the identity as well as the interests of the participants'; 'to some I owe more than justice requires or even permits... in virtue of those more or less enduring attachments and commitments which taken together partly define the person I am' (Sandel 1982, pp. 182 and 179). Contemporary liberals are blind to these enduring attachments and commitments, according to the third charge, because they too often rely on an atomistic conception of the self – an 'unencumbered self', in Sandel's terms – that is supposedly prior to its ends and attachments. Such a conception is both false and pernicious, for individual selves are largely constituted by the communities that nurture and sustain them. When Rawls and other 'deontological liberals' teach individuals to think of themselves as somehow prior to and apart from these communities, they are engaged quite literally in a *self*-defeating enterprise. The fourth objection, then, is that these abstract and universalistic theories of justice and rights have contributed to the withdrawal into private life and the intransigent insistence on one's rights against others that threaten modern societies. There is little sense of a common good or even a common ground on which citizens can meet. As MacIntyre sees it, the conflict between the advocates of incommensurable moral positions has so riven modern societies that politics now 'is civil war carried on by other means' (MacIntyre 1981, p. 253). The best that we can do in these circumstances is to agree to disagree while we try to fashion 'local forms of community within which civility and the intellectual and moral life can be sustained through the new dark ages which are already upon us' (MacIntyre 1981, p. 263).

Before turning to the 'liberal' rebuttal, we must note that the communitarian critics of liberalism neither form a well-defined school nor pose a distinctly extramural challenge to liberalism. Some theorists with communitarian leanings persist in calling themselves liberals (Galston 1991; Spragens 1995). Indeed, it sometimes seems that the communitarians' fundamental worry is that *other* liberals are so preoccupied with the rights and liberties of the abstract individual that they put the survival of liberal societies at risk. Whether this worry is well founded is a question that the 'liberal' side has raised in response to the 'communitarians'.

Here we may distinguish three interlocking responses. The first is that the communitarians have misunderstood the abstractness of the theories they criticise. Thus Rawls maintains (1993, lecture I) that his 'political'

conception of the self as prior to its ends is not a metaphysical claim about the nature of the self, as Sandel believes, but simply a way of representing the parties who are choosing principles of justice from behind the 'veil of ignorance'. Nor does this conception of the individual as a self capable of choosing its ends require liberals to deny that individual identity is in many ways the product of unchosen attachments and social circumstances. 'What is central to the liberal view', according to Will Kymlicka, 'is not that we can *perceive* a self prior to its ends, but that we understand ourselves to be prior to our ends, *in the sense that no end or goal is exempt from possible re-examination*' (Kymlicka 1989, p. 52, emphasis in original). With this understood, a second response is to grant, as Kymlicka, Dworkin (1986; 1992) and Gewirth (1996) do, that liberals should pay more attention to belonging, identity and community, but to insist that they can do this perfectly well within their existing theories. The third response, finally, is to point to the dangers of the critics' appeal to community norms. Communities have their virtues, but they have their vices, too – smugness, intolerance and various forms of oppression and exploitation among them. The fact that the communitarians do not embrace these vices simply reveals the perversity of their criticism: they 'want us to live in Salem, but not to believe in witches' (Gutmann 1992, p. 133; see also Friedman 1992). If liberals rely on abstractions and universal considerations in their theories of justice and rights, that is because they must do so to rise above – and critically assess – local prejudices that communitarians must simply accept.

Communitarian rejoinders have indicated their sensitivity to this last point. Some, such as Sandel (1996), have adopted 'republicanism' as the proper name for their position. By allying themselves with the classical or civic republican tradition of political thought, they have shown that they are not willing to accept community in all its forms; they have also reduced the distance between themselves and those who have embraced 'civic republicanism in the liberal mode' (Dworkin 1992, p. 220; also Burt 1993; Pettit 1997). Others have preferred to retain the communitarian label, but their rejoinders to 'liberal' criticisms stress their desire to strike a balance between individual rights and civic responsibilities (Etzioni 1997) and to 'move closer to the *ideal* of community life' – a life in which 'we learn the value of integrating what we seek individually with the needs and aspirations of other people' (Tam 1998, p. 220, emphasis added).

Mistaken or not as a critique of liberalism, communitarianism certainly has touched a political nerve. There is a communitarian journal, *The Responsive Community*, a Communitarian Platform and a Communitarian Network

that extends throughout Europe and North America. If there is no Communitarian Party competing for office, communitarian ideas and rhetoric have certainly been evident in a number of other parties and places – notably the Clinton administration in the United States and Tony Blair's Labour government in Britain. Among practising politicians, in fact, communitarians may have achieved more influence than those whose abstract and individualistic theories they have sought to counteract.

### Conclusion

Any attempt to assess the accomplishments of twentieth-century analytical political philosophy must confront two difficulties. The first is that our subject clearly continues to be a going enterprise – a growth industry, one might say, in which practitioners of the analytical approach take up new topics and spread around the globe. Indeed, space limitations prevent us from surveying the breadth of analytical political theory in this chapter. In addition to the topics we have discussed, a full treatment would explore the analysis of authority, freedom, power and other political concepts; survey contributions to the understanding of voting schemes, systems of representation and other topics in democratic theory; attend to the use of prisoners' dilemmas, free riders and other concepts of social choice theory to clarify various problems of politics; and take account of significant work on law and legal systems in analytical jurisprudence.

The second difficulty lies in determining what counts as success and failure for an enterprise of this kind. If the goal is to achieve fixed and uncontested understandings of key concepts or to arrive at nearly unanimous agreement on basic principles, then analytical theorists have thus far failed. Even when a particular analysis of a concept seems definitive – as may be the case with Hanna Pitkin's work on representation (Pitkin 1967) – this conceptual agreement does not lead to agreement on the political or institutional form that representation should take. By this standard, however, it is doubtful that any political theory could ever succeed. Nor is it a standard that most analytical theorists have aspired to reach. According to Berlin and other value-pluralists, in fact, the conflict among incommensurable goods forecloses the possibility of nearly unanimous agreement on substantive principles. Moreover, conceptual analysis has taught most analytical theorists that political concepts are such constitutive parts of political contests – perhaps even 'essentially contestable' parts (Gallie 1966; MacIntyre 1973; but cf. Ball 1988, ch. 1) – that they do not lend themselves to precise definition. As a

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form of activity that proceeds through argument, debate and deliberation, that is, politics necessarily relies on concepts. Insofar as conceptual analysis changes the way people define and employ such concepts as freedom, justice, democracy and the public interest, it must therefore change the way they think and act politically (Ball, Farr and Hanson 1989). However much they may desire to be dispassionate scholars, analytical theorists thus find themselves engaged in an enterprise that is inescapably political. In these circumstances, they will almost certainly fail to reach agreement on fixed and uncontestable understandings of key concepts.

But if the goal of the analytical school is the more modest one of bringing conceptual clarity and argumentative rigour to political thinking, thereby encouraging citizens to think more clearly and consistently about the politics of the day, then analytical political philosophy has surely achieved some success. The continuing importance in political debates of such concepts as positive and negative liberty, equality of opportunity, human rights and the public interest is one form of evidence. Another is the way in which analytical theorists have been able to bring their skills to bear upon new concerns as the politics of the day shifts and changes direction. This has been particularly evident in recent years as many of these theorists have looked to issues such as education, multiculturalism, nationalism, threats to the environment, and global and intergenerational justice. Analytical theorists may be academics, but they are academics who believe that their theory can and should inform political practice. In this respect, analytical political theory continues to be political theory written from the perspective of the responsible citizen.