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Justice, Community and Obligation : A study of recent liberal political philosophy
Austin McCarthy

Thesis submitted for the degree of Doctor of Philosophy in the
University of Durham
November 1990

Abstract

Liberals disagree about the state's legitimate sphere of activity. Some emphasise individual liberty and self-determination, believing the requirements of these principles are best met by the free market. Social liberals argue that citizens are members of a political community, whose obligations are fulfilled through the state.

How principles of justice are derived is a matter of controversy, but underlying them are certain ideas about citizens' relationships to the state and to each other. The theories of justice of Nozick, Hobhouse, Rawls and Walzer are compared. To what extent are citizens responsible for each other's welfare in contemporary liberal democracies?

The state is characterized by Nozick as a protective association with the sole function of guaranteeing individual rights, and in which concern for others is a private matter; by Rawls as a cooperative association organised in such a way that the position of the least favoured is maximised; by Walzer as a community of shared understandings in which all are entitled to the goods necessary to sustain their membership; and by Hobhouse as a harmonious society of rational men in which individuals find fulfilment in the life of the community.

I discuss political obligation, since how citizens are said to have obligations contributes to an understanding of descriptions of the state and the nature of the ties that bind citizens.

MacIntyre suggests that individualism renders moral argument unintelligible. There is no way of deciding between the competing theories of Nozick and Rawls. Walzer believes that MacIntyre is mistaken in describing these disputes as a mark of incoherence, since they take place within the liberal tradition.

I maintain that the differences within liberalism are so grave that it cannot be argued that we inhabit a world of shared values. The liberal democratic state cannot be described as the embodiment of community.

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political philosophy
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15 NOV 1991

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Statement

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Acknowledgements

My thanks are due to Professor A.J.M. Milne who has guided and encouraged me; to Newcastle upon Tyne Polytechnic for financial and other assistance; and to my wife and family for their patient endurance and firm support.

INTRODUCTION

Liberal ideology embraces a wide spectrum of political theorists with diverse views on human nature, individual rights and the state. A limited state, individual liberty and political equality are essential elements in the family of ideas and values which constitutes liberalism, accepted by all philosophers belonging to the liberal tradition. However the emphasis that writers give to one or other of these concepts leads to very different conclusions about the nature of the state and the functions of government, and the extent of the state's legitimate interference in the lives of its citizens.

Liberals argue that individuals have the right to be self-determining. The state, therefore, must be subject to the will of the people through democratic institutions which, though imperfect, legitimise the state's authority. In the words of the Declaration of Independence "governments are instituted among men, deriving their just powers from the consent of the governed."¹ Thus hierarchical or hereditary systems are clearly not liberal democracies, nor are theocracies, in which politicians are guided by religious leaders whose proclamations are authoritative; and whilst Marxist states may claim to be democratic they are not liberal, since power is exercised by the party on behalf of the people.

However liberals themselves disagree about the state's proper sphere of activity. Some, such as Nozick, tend to emphasise individual liberty and self-determination (the central tenets of liberalism) above any other consideration, arguing that an unfettered market within a minimal state allows maximum freedom to individuals to pursue their own private ends. All are equally free to compete in the market, and all enjoy political equality as citizens.

Others believe that an unrestrained free market will result in an extension of the



freedom, power and influence of those who compete successfully, and a diminution of the worth of the formal political rights of those who do not have the competitive will or the appropriate talents demanded by the market. The losers will lack the means necessary to live a full life as citizens and members of the community, and to pursue their reasonable life plans. Furthermore they will not be compensated for the lessened worth of their liberty. Great economic inequalities lead to a concentration of power and influence, whilst inhibiting the political participation of the least favoured, whose ability to control their own lives is seriously weakened. Thus government should control the market and redistribute wealth to ensure that basic needs are satisfied and to secure the position of those disadvantaged by the competitive economic system. These are the necessary prerequisites to enable citizens to enjoy their freedom to the fullest. In this view liberty is thought to be the positive power to pursue worthwhile ends, rather than the negative freedom from interference. Social liberals, then, believe that the people, united in a political community, should express their concern for one another through the agency of the state, and that freedom is extended through the redistribution of wealth.

It is my intention to examine the key works of several contemporary political philosophers who have made major contributions to liberal theory. Thus I examine four different liberal theories of justice with the intention of gauging the extent to which these philosophers share understandings of the concepts of liberty, equality and the state. The discussion will centre round theories of justice, the nature of the liberal state, and the relationship between citizen and state. Robert Nozick is an outstanding, possibly extreme, example of that strain of liberalism notable for its uncompromising individualism and which assigns to the state a very limited role. Of the writers I have selected, only Nozick argues that the state should have no redistributive functions. Hobhouse, Walzer and Rawls all hold that in order to pursue their own conceptions of the good and to fulfil themselves, citizens are entitled to the resources necessary to do so.

The inclusion of L.T. Hobhouse, even though he is neither American nor living, is justified since he belongs to that school of liberalism which sought to modify the nineteenth century laissez-faire doctrine favoured by Nozick.

John Rawls' "A Theory of Justice"² is the most important and influential recent attempt to establish principles of justice for a state deemed to be a fair cooperative system for individuals who yet pursue their own (incompatible) purposes.

Finally, at the opposite end of the spectrum to Nozick, I introduce the democratic socialist ideas of Michael Walzer who argues that within the state citizens are united in a community of common values, in which certain ideas about the distribution of social goods are intuitively known and understood.

I mention Ronald Dworkin, but merely to further illuminate certain issues arising from the discussion on Rawls and Walzer. Although I give a brief account of his ideas on liberty and equality, they are of minor significance in the development of my thesis.

I begin with an assessment of the minarchist Nozick, who argues that in a state of nature protective associations would be formed, one of which would eventually enjoy a monopoly position and be transformed into a minimal state. The state's sole legitimate functions would be the protection of individual rights and the provision of common security. The requirements of justice, liberty and equality are served by allowing each individual to pursue his own ends, subject only to the system of side-constraints designed to protect individual rights. Principles of distributive justice establish rules for the acquisition and disposal of goods. How things come to be held is more important than basing distribution on need or desert or any other patterned end-state principle.

Hobhouse rejects such individualism. Men are social beings whose relationships are guided by ethical principles. The state upholds and promotes a harmonious social life. He attempts to find a balance between extreme individualism and a collectivism in which the individual would be submerged by the community. The common good is inner harmony and harmony between citizens, who find true fulfilment in contributing to their shared life, although individuals should be free from arbitrary interference. The principle of harmony and the common good demand that certain needs are satisfied in order to maintain the condition of harmony, and Hobhouse considers various principles of distribution based on need and desert, effort and skill. Unlike Nozick, he considers that freedom is impaired by an unregulated market, and that property should be socially controlled.

Rawls' principles of justice are designed to guarantee equal rights and liberties within a cooperative system in which social and economic inequalities should benefit the least advantaged. The principles are chosen by rational men in a hypothetical situation. A just society would adopt these principles and arrange its basic institutions in such a way that their demands were met. Citizens could then accept a duty of obedience to the state since they would agree that the principles are the ones they would have chosen in the same circumstances. All have equal rights, but economic inequalities are allowed if they are to the benefit of the least well-off. I will argue that this seriously diminishes the worth of liberty. Rawls' principles are formulated by self-interested individuals, and they are incompatible with an interpretation of the state as a community. As Raymond Plant has written, "Liberals ... while recognising the beguiling power of the appeal to community, have never really known how to incorporate a rich sense of community into liberal theory, because liberalism's commitment to individual freedom seems to cut across communitarian assumptions."³ Rawls argues that his principles are a political conception and would be acceptable to people with irreconcilable metaphysical, religious and philosophical outlooks.

The incorporation of the "sense of community into liberal theory" is attempted by Walzer, for whom principles for the distribution of social goods are to be found in the experiences, practices and understandings of particular societies. Each community is, to some extent, a welfare state in which each person is entitled to the goods necessary to sustain membership. What these goods are, and how they are distributed, will differ from one tradition to another but it is within the state, the closest we can come to a world of common meanings, that debate takes place and decisions are made about such matters. No particular social good should be used as a means of domination or control.

I briefly outline Dworkin's criticism of Walzer's explanation of the derivation of principles of justice, his attempt to ascribe to "Rawls' deep theory" a basic right to equal concern and respect, and his own interpretation of the liberal concern with equality and liberty.

My interest centres on each writer's description of the liberal state and the political community. In what way and to what extent are citizens, strangers to one another, responsible for each other's needs in contemporary liberal democracies? In the final chapter I discuss political obligation as one way of illuminating this question. The discussion centres around Carole Pateman's critique of the problem of political obligation in which she is especially critical of the notion of abstract individualism. Consent theory has been modified so that the authority of the state does not depend upon the actual consent of its citizens. Now, some argue that citizens ought to consent to a just state. This is the position taken by Rawls in his account of duty and obligation and is, I suggest, one of three possible grounds for political obligation. For Hobhouse, too, political obligation is owed to a just government pursuing the common good. Walzer, however, changes his position from that in which a just government is one to which citizens have consented (this is a necessary though not sufficient condition for a just state), to one in which consent is

secondary to the obligation created by shared moral principles. Nevertheless participation remains a central feature of his political community. In Nozick's minimal state participation is irrelevant; in the just state it is desirable, although secondary; in the state as community participation is a sign of membership.

Alasdair MacIntyre argues that liberal individualism with its emotivist culture has rendered moral argument unintelligible. There is no way of deciding between the competing theories of justice of Nozick and Rawls, since we have lost a sense of tradition and no longer share a knowledge and understanding of moral principles.

Walzer's response to this criticism is that the argument about principles of justice takes place within what is now our tradition, the liberal tradition, but liberalism tends to be disintegrative and needs correction by communitarians. I maintain that these disputes within liberalism are so grave that we cannot be said to inhabit a world of common meanings, that we have no values held in common sufficiently strongly to form the basis of understanding about the distribution of social goods, and that it is a mistake to describe the liberal democratic state as the embodiment of community.

CHAPTER 1

Nozick : The Minimal State

Rights as side constraints

Robert Nozick, the contemporary American political philosopher, is - to borrow Koerner's phrase - an "unreconstructed classical liberal"¹, emphasising and justifying individualism to an uncomfortable degree whilst rejecting compulsory redistribution to achieve welfare benefits or egalitarian objectives. Barry writes that "his stress on the inviolability of rights and the "separateness" of individuals prevents his libertarianism from collapsing into a Hayekian conservatism".² Individuals have rights and protection of these rights is the state's sole legitimate function. Moreover, in order to stress the inviolability of rights and to limit the state to its minimum functions, he has developed a theory of side restraints. Moral concerns do not only function as moral goals. If this were so it might be possible to develop an argument which featured as a desirable end-state a "utilitarianism of rights" in which the concept of good includes the non-violation of rights. Thus the goal of the greatest good would be achieved by minimizing the violation of rights. But, Nozick writes, "this would still require us to violate someone's rights when doing so minimises the total (weighted) amount of the violation of rights in the society".³ He requires a much more stringent restriction on what may be done to people, in which rights are not a goal but are side constraints on actions and which cannot be violated no matter what the goal. He rejects non-violation of rights as a goal, arguing that specific side constraints demand that individuals not be used as means in these particular ways, whereas a goal-centred view would lead to individuals being used as means for a greater good. Nothing can be done to an individual without his consent for the benefit of a non-existent social entity or in the name of some higher social good. If something is done to a person it is done for

the sake of other individuals. "To use a person in this way does not sufficiently respect and take account of the fact that he is a separate person".⁴ Nozick adds "no-one is entitled to force this upon him - least of all a state or government that claims his allegiance (as other individuals do not)".⁵ But in view of everything which Nozick himself writes about the state (as I shall explain later) I am puzzled by this reference to allegiance, for if the state is Nozick's minimal state its purpose is protection of rights. No allegiance is required, merely consent and obedience to those measures the state deems necessary to fulfil this function. On the other hand a state claiming allegiance on some other basis may well justify differential treatment of its citizens.

Nozick, then, resists any "end-state maximising view" of the state in favour of moral side constraints governing actions which effect others. The importance of the individual is paramount although Nozick leaves incomplete his discussion of why this should be so. He does not justify his claim that we have rights nor specify their nature. He conjectures that the ability to shape and plan one's own life, to give it meaning, is somehow a powerful enough idea on which to base his whole theory. He concedes that many questions remain unanswered ("why are there constraints on how we may treat beings shaping their lives"⁶ and so on). Nevertheless it is worth pointing out the unsatisfactoriness of this argument, since it is important in any discussion about whether or not we may have obligations to society or community other than those we choose to recognise, and since he is himself critical of the lack of a sound philosophical argument for egalitarianism. It may be that certain constraints on action could be accepted within a teleological framework which, for example, redistributes unequally held wealth so as to enlarge the personal freedom of the least well-off. In other words, in some circumstances rights could be violated to justify certain ends. (For example A's right to enjoy positive freedom - in T.H.

Green's sense* - furthered through restricting B's and C's right to dispose of their

own income). Nozick does say more about permissible actions, and about principles of justice which may be deemed to form the basis of redistribution and I will return to this theme.

Development of the state

I turn my attention now to Nozick's explanation (derived from Locke) of the development of the state from the state of nature. Within the Lockean state of nature no-one may harm another, a harmed person may defend himself, seek reparation and restrain the offender. Since the natural law does not provide for every contingency personal disputes could linger on, with no final arbiter, nor guarantor to ensure agreements would be kept. Moreover any individual may be unable to enforce his rights. By contrast, the state's legal system works and is used because no other system is allowed and because it has the necessary monopoly of force to ensure its decisions are respected. In the state of nature protective agencies will be formed - mutual protective associations built on cooperation in some cases, and in others on simple market forces, the sale of protective services. Eventually, in any given geographical area, one of these protective agencies would enjoy a monopoly and become an embryonic state, assuming that they act "within the limits of Locke's law of nature".⁷

Unlike classical contract theories no compact has been necessary to create this rudimentary state. Each person, in trying to satisfy his own needs, produces a system that has a pattern and looks as though it has been created intentionally. The state emerges through an invisible hand process based on market forces. There may be, of course, a contract between the individual and the agency (although Nozick

* That is, the capacity to do something worthwhile and contribute to the common good.

does not say this) specifying the services to be provided, the price to be paid and so on. I will comment later on the meaning of citizenship in a Nozick-type of state.

However at the moment we are still at the stage of the dominant protection association. Unlike a state, the dominant protective associations do not claim they will punish those who use force without permission "nor does it seem morally legitimate for them to do so".⁸ Not only does the dominant protective association allow some people to enforce their own rights, it does not protect all individuals within its sphere of influence, but only those who buy its services. It thus differs from a state in certain crucial respects.

Nozick asks the reader to confront an interesting problem. In the ultraminimal state (that is, at the stage after the dominant protective association) the sole legitimate function of the state is protection of rights, and yet some - those who choose not to buy protection - are left unprotected. In the name of protection of rights they are left unprotected because they cannot be forced to buy protection, nor can others be forced to pay for protection for them. However, in the minimal or nightwatchman state protection is given to all. Some subsidise the protection of others. This is the only legitimate form of redistribution allowed in this state. How can this redistribution be justified, but not others? Is the evolution from an ultraminimal to a minimal state not bound to violate the moral side constraints which determine how individuals may be treated, when we consider the problems of redistribution to provide protection for all, and of the state's monopoly of power and its right to punish those who enforce their own systems of justice?

By what right does the state take to itself the sole authority to punish violations of rights? "If the private exacter of justice violates no-one's rights, then punishing him for his actions (actions state officials also perform) violates his rights and hence violates moral constraints. Monopolising the use of force then, on this view, is itself immoral, as is redistribution through the compulsory tax apparatus of the state."⁹ Nozick's aim is to show that the dominant protective association (which does not provide protection for all, nor claim a monopoly of force) can become an

ultraminimal state (which has a monopoly of force but protects only those who buy protection), which in turn can become a minimal state providing protection for all, and that at each stage no violation of rights occurs. Moreover once the stage of the ultraminimal state is reached, i.e. once the state has a monopoly of power, it would be morally impermissible for it not to provide protection for all. But, of course, the justification which Nozick will use for the provision of protection for all will avoid suggestions of redistribution!

Compensation, fear and risky actions

As a first step Nozick asks whether an individual's "moral space" can be transgressed without consent providing compensation is paid. He argues that certain actions produce fear and this "argument from general fear justifies prohibiting those boundary-crossing acts that produce fear even when it is known that they will be compensated for."¹⁰ His argument from fear seems to me unnecessary and tortuous. To live in a world in which assault was allowed provided compensation was paid would be to live in a brutal uncivilised society. Nozick could have confined himself to another of his considerations, namely "a system permitting boundary-crossing, provided compensation is paid, embodies the use of persons as means."¹¹ This in itself would be sufficient to prohibit boundary-crossing acts including intentional fear-producing acts.

Furthermore non-fear-producing boundary-crossing acts which will produce certain benefits, performed without prior consent because it is too difficult or costly to obtain, and for which the victim is compensated, are also prohibited. Not only do these acts, too, envisage the use of persons as means and their "plans and expectations liable to being thwarted arbitrarily"¹², but there is no social mechanism for determining whether the social benefits are great enough to allow the boundary-crossing, and no social entity which could benefit.

Discussing risky actions, Nozick outlines various procedures for compensating those who are (or might be) victims of risky boundary-crossing, without outlining any principle for deciding which risky actions might be permitted. Does the victim have a choice? For example he talks of reciprocity of risk, an exchange all would be willing to make - such as would be involved in car-driving - without reference to any moral principle which might be involved in allowing an activity which claims so many lives. Is it simply a matter of transaction and compensation? And although he mentions innocent victims of risky activities, such as children, he does not explain how compensation can justify crossing *their* boundaries, for the car driver limits the freedom of others to travel in safety.

Nozick then argues that to forbid certain actions to people because they have not the means to pay compensation "would ill fit a picture of a free society".¹³ Prohibiting such actions limits the individual's freedom, yet how can he be allowed to act riskily if he cannot pay compensation? (Yet again this argument could be reversed: why should the victim have his freedom threatened, and would he agree to being compensated, given the choice?). He writes that those who benefit from the reduction in risk to themselves have to "make it up" to those who are restrained from performing certain important activities which nearly everyone does. Why should this be so? If we are talking of an action which is risky no matter who performs it, and which is yet more risky when performed by certain people, by what decision-making process is *anyone* allowed to impose the risk on others? If an action is safe unless performed by certain people why should those who are unsafe be compensated for being forbidden to impose risks on others? The argument seems to be that they are disadvantaged because of some action or decision of the political community which is forbidding the risky actions. This is surely not the case. An epileptic is disadvantaged by his medical condition. The community might quite reasonably be unhappy about the risks involved in allowing him to engage in certain activities. But for which forbidden actions should the epileptic be compensated and

why? For the normal occupation of driving? For being excluded from certain jobs such as those involving the use of dangerous machinery? The principle of compensation is surely ill-suited to deal with such cases, especially since it provides no moral justification for allowing anybody to perform risky actions in the first place. There is a hint here that members of a polity have an obligation to ensure that the less-advantaged have every possible opportunity for self-fulfilment but "if", in Joseph Egerton's words, "the notion that an individual owes a moral duty to others is accepted, then it inflicts serious damage to Nozick's position".¹⁴

The argument of risk is then transferred into the area of activities of independents exercising risky and dangerous private systems of justice. Can such activities be forbidden and, if so, by whom? Nozick writes that "others would be entitled to group together and prohibit the *totality* of such activities"¹⁵, which seems straightforward, but he continues by asking whether *each* risky system should be prohibited and who has the right to decide? "No person or group is entitled to pick who in the totality will be allowed to continue".¹⁶

If several people submit to certain restrictions to yield advantages to all, Hart's principle of fairness suggests they "have a right to similar acquiescence on the part of those who have benefited from their submission".¹⁷ Acceptance of benefits binds one. If it is then claimed that those to whom the obligation is owed can enforce the obligation this "seems to make unanimous consent to coercive governments in a state of nature unnecessary".¹⁸ Nozick wants to know whether this principle can be used to limit the actions of the independents in the state of nature. It should be noted, however, that although Nozick himself claims that what persons may do to one another limits what they may do through the state, yet the state's fundamental coercive power in enforcing permissible moral prohibitions does not rest on any consent of the person to whom the coercive power is applied. In other words Nozick himself agrees that individuals can use coercion against others in certain situations

and that the state, acting as the agent of the individual, can do likewise. He rejects the implication in Hart's argument that the group has rights greater than those of the individuals comprising it, and he rejects the idea that being under a special obligation gives the person to whom the obligation is owed the right to enforce the obligation. Nozick also finds that enforcing the principle of fairness is unacceptable, and that "even if the principle could be formulated so that it was no longer open to objection, it would not serve to obviate the need for other persons consenting to cooperate and limit their own activities".¹⁹ However, as we shall see, his rejection of Hart's argument seems odd indeed, since the dominant protective association, by virtue of its power, enforces its will and its system of justice, and limits the activities of the independents, vis a vis the association's own clients, without regard to the consent of the independents.

Nozick, following his rejection of Hart, says that independents cannot be forced to cooperate in a scheme designed to limit their risky activities. But why should this be so, since clearly no independent has the *right* to use a risky procedure, no matter how frequently or infrequently, and no matter what the resulting level of fear? The problem is, who has the right to stop them? Anyone acting in self-defence may stop any particular independent acting in this way²⁰ and persons in a state of nature "may forbid the use of far more risky procedures"²¹ than their own. And yet "no person or group is entitled to pick who in the totality [of users of risky procedures] will be allowed to continue."²² Why not? Nozick's argument assumes the availability of criteria for judging a system of justice and its level of risk in a state or in the state of nature. In the state of nature cooperation is one obvious way to limit risk, and since any individual, acting in self-defence, can stop any other person using a risky procedure against him, then so could such individuals acting cooperatively, and so could the dominant protective association since its clients "may empower [it] to exercise for him his rights to resist"²³ unfair procedures of justice being applied to him. Nozick says that this is so, and therefore the totality

of risky procedures (each and every one of them) may be forbidden by any group or dominant protective association. Perhaps Nozick means that whilst all risky procedures could be prohibited, a situation in which risk was limited by allowing some independents to continue and others not, regardless of the consent of the users of the risky procedures, would be intolerable. If this is so then the situation would be intolerable, not because of any argument about consent but because no-one has the right to use such risky procedures, and indeed has the duty not to do so.

The dominant protective agency, like any individual, may appraise any procedure of justice to be applied to its clients and punish anyone who uses an unfair procedure. This assumes, of course, certain criteria which are generally admitted, and that all are acting with moral restraint. But neither an individual nor an agency can punish anyone for using a system just because it has not gained their approval - it might be a perfectly reasonable system. In other words, all (including the dominant protective agency and its clients) must submit to any fair and reliable procedures. The agency will prohibit known unreliable procedures being applied to its clients. But if we take away the assumption that the dominant protective agency will act in a morally acceptable manner we confront an awkward situation. I have assumed that up to now the dominant protective agency is operating in "a nonstate situation in which people generally satisfy moral constraints and generally act as they ought"²⁴, since this was Nozick's starting point. Of course if this situation is assumed then it is open to question why such powerful protective agencies would be needed at all, accruing to themselves unlimited power without constitutional restraint. Would there be a clientele for the services offered?

In discussing the dominant protective agency's relationship with the independents Nozick says there is no guarantee that the agency would judge an independent's procedure impartially.²⁵ Although the agency's approval should not be arbitrary (the procedures must be properly judged), because of its power it can in effect lay

down its own rules, and Nozick writes "it would take a brave soul indeed to proceed to apply a known procedure not yet on its approval list."²⁶ But once the assumption of impartiality is gone and the dominant protective agency's monopoly of power establishes it as a fearful entity, why should it be thought that it will judge fairly any independent procedure? Furthermore what is the moral and legal status of its own system of justice and its own activities when these are sanctioned by market forces rather than through moral argument or even common agreement? Once market forces have led to the demise of the independents and the less competitive agencies, an unrestrained monopoly can exert its will. Although Nozick claims that this is an invisible-hand process, the competition for clients is all too visible and it is the deliberate intention of an agency to see off its competitors so that it can enjoy its monopoly position.

The dominant protective agency becomes the sole effective judge of procedures and of the permissibility of the use of violence, with no restraint on its future actions once its monopoly of coercive power is sufficiently effective. Of course, any legitimately conceived state could be corrupted and Nozick argues²⁷ that each agency must act within the limits of Locke's laws of nature to claim legitimacy; but these are commercial agencies operating in a market to make a profit, and the concept of legitimacy is surely not applicable to such a situation. If laws of nature which limit actions are so clearly known, and if procedures of justice can be known to be reliable, why should an embryonic state be more acceptable because it is created through the invisible-hand mechanism of the market rather than through the deliberate considerations of rational men? It would be in everyone's interest to limit the size of the agencies through restraints on the market and to ensure that they always act within the bounds of the laws of nature. But this could only be achieved through the formation of a state with a monopoly of coercive power, rendering protective agencies obsolete! That is, to prevent unrestrained power accruing to an agency, individuals in a state of nature would foresee the problem

and form some kind of state which they felt they could control. A deliberately constructed state at least may have built into it some mechanism to limit the actions of those in control of the forces of coercion, and is more likely to have a universally acceptable system of justice since, in the market forces model, clients will join the most effective agency, not the most just. It is more rational for people to cooperate in setting up a state with known limits and an agreed system of justice than to risk everything to a battle for supremacy in the market place. They would surely want to preempt this risky process! Even if Nozick's argument were to be accepted as a legitimate philosophical explanation of the state's creation, clients would insist on institutions to control it, to prevent it ruling rather than protecting, and to lend some moral force to its claim to be the sole arbiter of justice.

Protection for all and the nature of the minimal state

Nozick goes on to argue that if the dominant protective agency forbids the use of unreliable procedures this will leave some independents unprotected, and the agency must give protection to these independents against its clients; it is morally required to do so. But why should this be so? The independent has no right to use an unreliable procedure in the first place. It therefore has the same options as everyone else - join the dominant protective agency or use a reliable procedure. Note that Nozick's argument is that in providing protection to non-clients the dominant protective agency's actions are not redistributive, which he would regard as an infringement of the liberty of the taxpayer, but are justified through the principle of compensation. This is a very necessary step in his argument because he is demonstrating that the minimal state would be created without rights' violations. Since compensation is not redistribution, those who are paying for the protection of others do not have their rights violated. Neither are the independents' rights violated since risky procedures can be forbidden provided compensation is paid. But this is an argument that I have already rejected. Having attained a monopoly of power the dominant protective agency - the sole effective arbiter and dispenser

of justice - is not under an obligation to provide compensatory protection to users of unreliable procedures. The agency will not interfere in the affairs of an independent using a reliable procedure, and this option is open to any independent not wishing to pay an agency for its services. Moreover, at no point in this transition from being the dominant protective agency to becoming the ultraminimal state (in which there is a monopoly of power and all have protection), is proper consideration given to the position of those independents who use reliable systems of justice. That is, the monopoly power will allow it to enforce its system against one of its clients, but would not help in its perfectly reasonable task of enforcement against a non-client, so that these independents are in a weaker position than those barred from using unreliable methods and who are compensated. The moral duty of the agency to provide protection to those it forbids to use unreliable procedures cannot be founded on considerations of compensation. An individual in the state of nature can prevent another from using an unreliable procedure against him but does not have to offer compensation. The dominant protective agency has, without prior approval, constructed a situation in which only it can act effectively. Therefore it has a duty to offer equal protection to all on the same terms. Those who choose not to be protected need not be so; those who cannot afford protection should be offered it, even if this is redistributive, since the clients of the agency have contributed to the situation in which membership is desirable and (possibly) necessary.

At this stage Nozick claims to have demonstrated how a state would be created without anyone's rights having been violated, a state having as necessary conditions a monopoly of force and offering protection to all. However it is clear that some rights are violated - the rights of those who have to pay for the protection of others, and the rights of the independents who cannot effectively use reasonable procedures, and who deserve compensation. According to Nozick the all-important starting point is that all are constrained from infringing the rights of others. If a state or agency is formed which alone can prevent wrongful use of force or

defective procedures, all should be offered a chance to join and so safeguard their rights. Nozick claims the monopoly is not imposed since it has arisen through market forces. Unlike a state the monopoly does not claim to be the sole authoriser of violence, but in fact it is the sole effective judge, so Nozick deems this condition of the state to be satisfied. But even allowing all Nozick's arguments we are left with a monopoly with might as its only claim to legitimacy. Although some have consented to using the agency, many have been forced to use its services, in effect, as the competition was eliminated. The sum of individual transactions has produced a result unforeseen by the individuals, but not by the agency. Strength has eliminated the opposition, not adherence to just procedures or principles. The creation of a state through an invisible-hand process proves nothing about the nature of that particular state, and even less about the nature of the states we actually live in.

Although the operators of the ultraminimal state are morally required to transform it into a minimal state which offers protection to all, this moral requirement does not originate in any sense of community, but is based merely on the duty to compensate for actions denied. However there is a stronger, more compelling argument. Nozick claims that the rights of the minimal state are no different to those possessed by any and each individual in the state of nature. What is different in this new situation is the ability of any individual to exercise his rights. I have emphasised the point that despite Nozick's claim that the dominant protective agency, a de facto monopoly, has no rights other than those of its clients as individuals, there is a distinction between having a right and being able to exercise that right. But in fact Nozick does give the agency special status in virtue of the size of its membership. For example, it has greater entitlement than any smaller grouping or individual to exact punishment. Clearly the sum of the rights of the clients, invested in the agency, enhances the worth of the rights. Market forces, not care or a shared culture, have brought people together in a rudimentary state. For

Nozick the state is not coterminous with community, nor does government act as the community's agent. Indeed, no community action, other than that based on complete unanimity, would be possible. The state cannot raise taxes (other than for its protective services) since no ownership rights may be violated, and, as I have already pointed out, there is no mechanism for determining whether social benefits are great enough to allow boundary crossing, and no social entity which could benefit.²⁸ Clearly Nozick's minimalist position excludes notions of welfare and community action through the agency of the state. But in a state of nature people interested in protecting their own rights and ensuring that others fulfil their duties might deliberately cooperate in founding a state with these objectives in mind, recognising that living together as a community required certain constraints on their actions. In founding the state all would recognise the benefit of involving as many people as possible since this would give the greatest peace of mind to the greatest number.

This is at least as persuasive as Nozick's spurious argument that all are offered protection by either buying it or being offered it as compensation for being forbidden to use procedures they had no right to use in the first place. The minimal state is constitutional insofar as all enjoy equality and freedom before the law, but it lacks constitutional checks on its actions. As Nozick recognises, in the end what matters is who actually has coercive power and how it is exercised. The Nozickian state offers a stark contrast to the participative social democracies which I will describe. His notion of obligation is essentially negative, and within the context of the state there are no obligations to help others based on ties of community or of mutual concern and respect.

Distributive Justice and State intervention

Nozick argues that redistribution is a violation of property rights and therefore any

state other than the minimal state, whose sole aim is protection for all, cannot be justified. Property rights are paramount for Nozick, showing his "very narrow view of the nature of human beings, one which rejects the notion of duty."²⁹ All holdings arise from processes of gift or exchange and there is not, nor ever has been, a fair distribution. Holdings are just if they conform to his principles of distributive justice, which specify *how* unheld things are to be acquired (justice in acquisition) and *how* they may be disposed of subsequently (justice in transfer). Injustices are corrected through the principle of rectification of injustice in holdings, which makes the best possible estimate of what would have happened had the injustice not taken place. He rejects "end-state" principles of entitlement which seek to determine who should have what according to some principle of fairness or desert.

Although Nozick claims that how exchanges are made is more important than the result, yet "a process normally giving rise to a permanent bequeathable property right in a previously unowned thing will not do so if the position of others no longer at liberty to use the thing is thereby worsened",³⁰ and this principle, the Lockean proviso, governs future situations too, for he says that the owner of a waterhole would have difficulty to unreservedly call it his property any longer if all other waterholes were to dry up. In other words adherence to the Lockean proviso makes even Nozick's theory depend to an extent on an end-state situation, since all initial holdings and all subsequent transfers must not transgress the conditions imposed by the proviso, and otherwise legitimate transfers may have to be rescinded. Nozick suggests that the owner of a waterhole should charge a just price, but Barry points out that in the absence of competition it is impossible to say what is a just price: "the implication ... seems to be that there is some "just" price for a good which does not involve exploitation; but this is wholly alien to the tradition in which Nozick claims to be writing".³¹

Although Nozick argues that the Lockean proviso is not an end-state principle³², his argument is unconvincing since the purpose of the proviso is to prevent certain situations arising (albeit through controlling the exchanges which would lead to the undesirable situation). That is, *how* the situation arises is important but is secondary to the result, otherwise the result could not be overturned. Just as end-state theories would require continuous interference in people's lives, so too would adherence to Nozick's system of transfer as limited by the Lockean proviso, especially as populations grow and resources diminish, necessitating a redistribution of land, for example. Nozick does not believe this to be so. Scarcity would push up prices making it more difficult for monopoly situations to arise. "I believe that the free operation of a market system will not actually run afoul of the Lockean proviso" he writes.³³ An end-state principle eliminates the choice to do as one wishes with one's possessions and introduces redistribution through taxation, tantamount to forced labour. We have no duty to contribute to the welfare of others, other have no rights against us in this respect. Any individual feeling he has such a duty should contribute through a system of charity. There is no good argument for using the state as an agency for achieving certain desirable ends. Those who disagree will have to show why all should contribute to the welfare of the least well-off including those with special needs and in a weak bargaining position, such as the old and sick. It is as though Nozick's individuals are born into the world preformed, bearing no marks of generations of shared experiences and cultural developments, and therefore with no sense of belonging to a community or of duty to fellow members. The whole concept of "having a right" has little value in this context. The worth of the right to life is minimised since it does not include the right to the necessities to sustain life, such as food.

He argues that the right to life cannot provide a foundation for a theory of property rights; the theory of property rights is needed first, and this can then be applied to a "supposed right to life". Surely not. The right to life is the most basic

right, from which other rights, including property ownership, should be derived. This must be the point of the Lockean proviso! Nozick argues that the right to life "requires a substructure of things and materials and actions"³⁴ to which others may have rights and entitlements, and their right to ownership is inviolable, but he gives no adequate justification for the primacy of the right to property ownership. Nor does he explain how anyone can have permanent rights to a previously unowned thing to the detriment of future generations, his only criterion being that the ownership will not deprive others of something essential to life. Nor does he provide convincing arguments to refute the suggestion that property ownership rights should be overridden in certain circumstances. A chain of voluntary unforced exchanges in the market place could leave many people with an excess of food. The Lockean proviso will not come into play if the exchanges do not result in a worsening of the position of those no longer at liberty to use the excess (including, we must suppose, the starving, whose position is not worsened since they could not buy the food in the first place).

Again, he argues that a medical researcher who synthesises freely available chemicals into a new substance does not worsen the situation of others who need it by depriving them of it. But he is quite wrong in saying that those who need the new substance but do not have it are no worse off. A new situation prevails, in which a cure for their condition is available, when previously no such cure existed. It cannot be disinvented and those who need it and are deprived of it are in a worse situation. It is simply inadequate to suggest that they obtain and synthesise the materials themselves, unless they are readily available and the chemist is willing to disclose his technique. Nozick imposes no moral duty on the inventor thus demonstrating the inadequacy of his theory of rights, and exposing the lack of a theory of duty. Not only is Nozick's argument morally unsound because of the shaky theory of rights upon which it is based, it is also incorrect to say that the researcher's ownership does not breach the Lockean proviso, since what is important

is not the appropriation of some of the freely available chemicals but of all the synthesised substance. Exclusive property rights in this new, previously unowned substance will worsen the position of those not at liberty to use it.

The problem for Nozick is that market forces create morally intolerable situations. Hence the Lockean proviso. In the above example the means to life could be quite legitimately denied to a sick person with no moral opprobrium attaching to the inventor. In which case the right to life is worthless. The result of the unfettered free market is to place those who are naive, frail, feckless, temperamentally unsuited to bargaining, in a weak position, and less able to safeguard their rights and possessions. Individual agreements in, say, a series of buying and selling houses may result in many being unable to afford to buy. Providing sufficient homes may be beyond the means of existing charities. We live in a structurally complex world in which our communities are affected by events, national and international, beyond their control. Over a period of time the system of exchange leaves many well-off and many unable to fend for themselves, and neither the Lockean proviso nor the principle of rectification can be called upon to help if no injustice has taken place at any stage - if, for example, a labourer exchanges his skills for a fair wage until there is no demand for his skills on the market. Obviously Nozick would argue that no free exchanges can be overturned in order to provide for the unemployed. He correctly points out that those who argue for end-state principles also hold that the labourer is entitled to the fruits of his labour, that how something comes to be held is important, but for Nozick the "how" is the only consideration.*

The theories of justice of Hobhouse, Rawls and Walzer are a response to laissez-faire

* Note that Nozick's theory is based on entitlement, not desert, a point made by MacIntyre³⁵, and which will be discussed in chapter 6.

liberalism's disastrous consequences. It would be impossible to correct the gross inequalities which have arisen because of past unjust exchanges, to achieve a situation which Nozick would regard as fair.

Nozick arrives at the conclusion, based on the principles of justice in holdings (acquisition and transfer), that there can be no argument for a state more extensive than the minimal state, since there is no need for an agency to deal with problems of distributive justice, but merely for an agency to apply, where necessary, the principle of rectification and to provide security. A more extensive state can be justified only as a temporary measure to rectify large-scale past injustices. In the minimal state all will acquire what they will, those weakened in the bargaining process will have to fend as best they can against the wealthy and against the cumulative effects of past exchanges, their own and others'. Even though all may cooperate with whomsoever they like there is no vision of community in which all are included, to which all contribute and from which all benefit.

And just as an extensive state is not needed to achieve ends associated with principles of distributive justice, neither is it needed to achieve greater economic equality "in order to avoid the political inequalities with which economic inequalities are often correlated".³⁶ He argues that the state's use of its power to raise taxes to enrich some at the expense of others is illegitimate. If this power is removed, as it would be in the minimal state, there is no motive for wanting political power, since nothing is to be gained by having it. Except to safeguard the considerable income to be made from client-citizens having to buy security from the monopoly - not so much protection as a protection racket; and there are those who simply like to wield power for its own sake!

Concluding remarks

Nozick's minimal state, whose sole function is protection of individual rights, is very likely to be the perpetrator of extensive rights' violations, with no claim to

legitimacy other than might and no competitors to check its actions. There is no reason to believe that an agency with a monopoly of power would continue to protect its clients rather than exploit them, or refrain from exploiting the independents. Market forces are not a substitute for moral argument in deciding which systems of justice are permissible. As I have observed a rationally created state, which tries to limit the forces of coercion, and which is based on widely accepted principles of justice upheld through the application of reliable procedures, is more desirable than an agency based on profit, whose clients are swayed by considerations of effectiveness, not justice.

When Nozick writes that the dominant protective agency is morally required to offer protection to all, his notion of morality is based on a defective compensation thesis, rather than on the stronger argument that would follow from a recognition that, given the chance to act rationally, people could and would cooperate in creating a state in which all would be protected and enjoy security and peace of mind. This is a necessary condition for living together in an acceptable manner.

I have commented on Nozick's theory of rights and his criticisms of redistribution. Individual liberty is a basic precept of liberalism, yet individuals do not operate as atoms. We live in communities, are born into relationships, acquire responsibilities. In the following chapters I will discuss the theories of philosophers to whom social relationships are as fundamental a starting point to any discussion on the nature of the state as restraint on boundary-crossing actions is to Nozick. Nozick's liberalism emphasises liberty and unrestrained market forces, with no place for community or for man as a social being. Even in his utopian framework all relationships are contractual in nature.

Consent is deemed to be indispensable to the authority of the liberal state, so much so that its definition has been stretched beyond tolerable limits. It may be felt that Nozick is the ultimate consent theorist; nobody may cross another's boundary

without consent. However consent is not relevant in the formation of the minimal state, since no-one consents to a specific agency having a monopoly of force, nor even to the principle that one agency should have such a monopoly, nor to the principles of justice in holdings. An individual must give his consent before his boundaries can be crossed, but there is no consent to the functions and activities of the dominant protective agency (other than a possible business contract between the agency and the client) in the sense of a political or social contract. Nozick would argue that none is necessary since the agency has very limited functions and its coercive power is used in such a way that the consent of those against whom it is used is not required; that is, it uses force just as an individual would legitimately use force to protect himself in certain situations.

Nevertheless the clients do not participate in the decision-making processes of the dominant protective agency, nor exercise any control over its coercive power. Theoretically a client could withdraw his custom, but since there is only one effective force there is no real choice. The market forces which allowed the monopoly to arise would be powerless to moderate its activities. Pateman suggests that representation is a key feature of liberal democracy³⁷, but in the minimal state there is no concept of democratic control to provide the political and social framework within which the dominant agency could legitimately operate. Such democratic control would be neither possible nor necessary.

The idea of citizenship could only be developed at a sub-state level, but ideals of cooperative decision-making, participation in joint ventures, the search for common ideals and a shared purpose are all compromised by Nozick's insistence on the contractual nature of all relationships. It would not be possible to realise these ideals through the state. The development of cooperative associations would starkly demonstrate and contrast with the lack of control over the state, and with the state's limited functions. Even if we acknowledge that the modern state is not the ideal

vehicle to achieve communal ends, that people feel divorced from the decisions made on their behalf, the alternative is certainly not to allow a monopoly of force to rest in the hands of an agency whose sole claim to legitimacy is that it has seen off its competitors in the market place.

CHAPTER 2

Hobhouse : The Harmonious State

Nozick argues that individuals are free to the extent that they can pursue their own ends without interference, but that no individual has the obligation or duty to contribute to the well-being of others or to provide them with the means to pursue their ends. The discussion of isolated individualism does not end here, but meanwhile I turn my attention to a writer who believes that men are essentially social beings, mutually dependent, with inescapable obligations, and that the worth of liberty is greatly diminished for those individuals who do not have the means to satisfy their basic needs. The contrast between the social justice of Hobhouse and Nozick's entitlement theory of justice - justice in an asocial setting - stems from their very different understandings of the individual and his relationship to others. Their philosophical arguments are derivative of, rather than justifications for, their ideological starting points. Hobhouse's harmonious society is an antidote to the fragmented relationships resulting from Nozick's unrestrained individualism.

In this chapter I will examine "The Elements of Social Justice"¹ in which Hobhouse explains his theory of harmony, moving from abstract arguments about the nature of rights, duties, liberty, to justice and the individual, thence to economic justice, with a final section on the individual in a political setting.

Individualism, Collectivism and Social Justice

Hobhouse's system of social justice is not designed, like that of Nozick, to erect barriers around each individual, but to integrate the individual into an organic

whole. The conditions necessary for individual growth and the principles of social life he calls social justice, and social and political institutions are the organs of social life. The task is to design institutions which uphold the principles of social justice. There must be an ethical principle underlying and guiding all human relationships, and this principle of the good is defined as a harmony between "feeling and action and experience".² Moreover our social feelings lead us to include "in the end all men whom my action may affect in the harmony that I can be satisfied with as really good".³ And note, these feelings carry "the burden of obligation".⁴ He considers these principles to be rational, leading to correct judgements of right and wrong, for if we all preferred ourselves, and it was good to do so, then the same act could be reasonably held to be good and bad by different people. The ultimate good would be a complete harmony in which all contradictory feelings are reconciled, with all fundamental needs satisfied in a fulfilled life. This harmony is not achieved through repression (of personal impulses, or by government of dissenting views) but through cooperation.

Moreover individuals cannot be used as ends in pursuit of the greatest good since harmony demands we consider the feelings and experiences of all. He writes: "the happiness of many purchased at the expense of the few is better than that of the few purchased at the expense of the many. But it is not harmony."⁵ The function of the state's institutions and laws is not merely to maintain social life but to promote a harmonious life. The state has a vital role to play in achieving Hobhouse's conception of the good, whereas Nozick's ideal of individual liberty demands a state which will not interfere in the independent lives of its citizens.

Is there not a danger, however, that the individual could be sacrificed to the collective whole in the interests of harmony, that a minority's concerns could be consistently ignored? Hobhouse considers the dangers of both one-sided collectivism and one-sided individualism. The former "conceives the life of the community as

something qualitatively different from and superior to the lives of the component individuals",⁶ whereas one-sided individualism denies "the reality of the social group, refusing to conceive it as a distinct entity, insisting on resolving it into its component individuals as though these individuals were unaffected by the fact of association".⁷ Sometimes interests do conflict but this disharmony should be overcome as far as possible. Nobody should be crushed by the collective life, but rather all should be completed by it and carried "to a higher harmony of wider sweep".⁸ In defining the common good he says it is neither the sum of individual goods nor another kind of good opposed to individual goods, but it is the harmony of all individual goods. It is harmony within the individual and between individuals. Unlike Nozick he believes that organised society may set itself goals which appeal to all its members and contribute to its happiness. One problem is deciding on such goals. He regards national glory and power as false ends, and no doubt would regard them as such even if all members of a community agreed on them, since pursuit of those goals would result in disharmony between nations. In other words any goals, to be legitimate, must conform to the demands of the ethical principle of harmony.

Rights and Duties and Freedom

One-sided individualism "attributes to the individual as against society anything which really belongs to him only as a member of society".⁹ This attitude is inherent in natural rights theory in which rights are treated as parts of a person, like limbs, not dependent on social circumstances (unlike duties). The obligation to keep faith begins as soon as men enter into a bargain, and the right to expect the bargain to be kept begins at the same time. These rights and duties are not established by political institutions but begin with social relations. Hobhouse comments on Locke's

saying that these rights and duties belong to man as man, not as members of society, from which it could be inferred that they belong to men as individuals, prior to any social relationships - individuals standing "in casual temporary and external relations to one another".¹⁰ Hobhouse takes issue with such an abstraction. "The rights of men are not ... conditions precedent to society, but move and have their being in social life."¹¹ Rights and obligations go hand in hand; "right is a due seen from the point of view of the party to whom it is owed, and duty is the same thing seen from the point of view of the party owing it."¹² The theory of rights which Nozick expounds tends to stress the rights rather than the obligations of atomised individuals entering into a random series of contractual relationships. Hobhouse, on the other hand, sees people as an integral part of a greater whole from which they receive many benefits and to which they contribute, and in contributing find true fulfilment. The principle of harmony seeks the good in the shared life.

The purpose of a system of rights and duties is to promote the common welfare. Again there is a hint that the individual could be sacrificed to the greater good, because the lesser must at times give way to the greater. Although this breaches the principle of harmony, which demands that all be considered, Hobhouse seems to offer no guidance in deciding between conflicting claims which appear irreconcilable, and this is true not just of competing individuals but of minority groups within a collectivity. In the words of C.M. Griffin "no political principle in particular can be derived from the belief that what is harmonious is to be preferred to what is not".¹³ All have a share in the common welfare which is promoted by the system of rights - it is the sum of their rights; and to it all must contribute - it is the sum of their duties. Since the fulfilment of each personality is an element of the common good each individual may claim the conditions necessary to it. He defines a right as a claim on others, a legal right as a right recognised in law, a recognised moral right as a claim upheld by the moral judgement of the community and a true moral right as being demonstrably justifiable by relation to the common good,

whether or not it is actually recognised. But no moral right can possibly conflict with the common good "as therein every rational aim is included and harmonized"¹⁴. Rights have moral validity not because they are conditions of personal development but because personality is an element of the common good in the principle of harmony. No individual right is allowed which could prove detrimental to others, and thus the individual appears to be protected.

Nozick offers a precise procedural system of justice which might appear more attractive in that claims can be decided by how a situation arose rather than by the end result. Moreover the role of the state is severely restricted so that, in principle, the individual is protected from arbitrary interference. I criticised his theory on the grounds that it largely ignored man's duties as a social being, and Hobhouse is trying to define the principles on which this social relationship should be based. But because the community itself has claims against its members, and because the common welfare is paramount, one fears that the individual may be dominated by the community. But Hobhouse clearly does not see man as competing with the state. As Griffin says "the idea of man versus the state is...absurd for Hobhouse"¹⁵. Note that two distinct sources of conflict have been mentioned - citizen against citizen and citizen against the state. Is it fair to Hobhouse to say that he offers no principle for deciding between claims?

He recognises that states at present are far from perfect and may well not act in the common interest. There is a distinction to be made between rational men in a community of harmony, in which individual and state would not come into conflict, and imperfect men pursuing their own ends in a state run by power-seeking politicians. The system of rights guarantees access to the means necessary to personal development and freedom from arbitrary interference. Nothing may be done to the individual which damages his welfare or ignores his needs and each individual is equally important to the common good. However as we shall see these

rights are limited in scope and do not give an individual freedom to do as he pleases with, for example, his wealth. The individual has no right to do anything deemed contrary to the common welfare. When citizens' claims compete then a choice is made bearing in mind the effect on the common welfare. This does not seem an unreasonable way to decide between irreconcilable claims of equal validity. The question is to define the common good! When rights and duties conflict the answer is neither to make one relation of life dominate all others by erecting certain rules into absolute principles, nor to use the one supreme rule (the right of the common welfare) as the test in every case, because this would dispense with general rules and introduce great uncertainty into relationships. Every case would have to be judged on its merits. Rules do arise which govern our relationships and they must be judged by their contribution to the general harmony. To set them aside would be harmful to the common good. I take him to mean that such general rules as keeping contracts cannot be set aside - they are necessary for the conduct of human affairs, but in specific cases where the application of such a rule of right would conflict with another equally valid rule then a compromise (or, ideally, a synthesis) should be found. "Every valid claim of right rests on some real condition of the common good"¹⁶ he writes, but all relevant conditions have to be considered, if necessary a synthesis arrived at, but if any "real condition of the common good is violated, there remains a disharmony"¹⁷.

Whereas Nozick starts with a principle of individual rights and derives his theory of the state and of individual behaviour from this principle, Hobhouse believes that it is only from the *experiences* of a highly developed community that a system of rights and duties can be drawn, incorporating those factors which operate harmoniously, rejecting the disharmonious. Michael Walzer's theory of justice also relies heavily on the notion of shared experiences and understandings, as we shall see. Nozick rejects any general responsibility for others. If property is acquired according to his just principles there is no right or duty of the state to redistribute

any of this property according to some general principle of welfare, nor has the individual a duty to others. In contrast Hobhouse insists on our general responsibilities to others as members of a community, and it is the experiences of the community which enable it to judge the rules by which it lives, to consider the results of such rules and their contribution to a condition of harmony.

Freedom for Hobhouse is the removal of external restraints and a condition of inner harmony in which impulses are checked, not opposing the will but fortifying it. Man is not a being determined by the past, but one who values past experiences and considers the effect of each action. Decisions are shaped by values not self-conceived and the individual responds within to external promptings. Personal development depends upon the individual making rational choices and the system of rights guarantees that he can do so. Securing individuals' well-being is an element of the common good. Freedom in society is in part freedom from arbitrary interference by another, that freedom guaranteed by Nozick's system of side constraints. Restraints are required to regulate the disharmonious aspects of a community's internal life, to protect the freedom of others.

He rejects the distinction made between self- and other-regarding actions, arguing that every act has some effect on the community, and that "the good of each is, on the principle of the common good, matter of concern to all".¹⁸ Thus the personal rights of the individual should not be in opposition to the rights of the community. It may be that without invading any acknowledged right a person may persuade another into a contract which is detrimental to the other's welfare, "and the state may be compelled, for this reason, to regulate contracts between parties of unequal economic strength"¹⁹, an example of adjusting the general rule for the common good. The community always retains the right to judge any act and its results. The weaker party to a contract has the right not to make the contract but not the means, and Hobhouse notes that the acceptance of disadvantageous terms by weaker parties

could result in a whole class being subjugated by another. I presume, although Hobhouse does not say so, that such a situation could be controlled on the grounds of the disharmony produced, but he notes that modification of the process has in the past been regarded as a curtailment of liberty. He argues that it is a case of conflict of rights - the right to make contracts conflicting with "the right of a competent and willing worker to the minimum conditions of a civilised existence"²⁰. And freedom of contract really does mean equality between the parties so that no compulsion is involved. "Free contract stands, like all other rights, in need of careful definition in all its bearings on the contracting parties and the good of the community"²¹. There is a discrepancy between this explanation and his earlier assertion that no specific right of the individual may be transgressed in these circumstances. In this case we have a general rule of right which governs contracts; the rule has been modified as the result of experience. However the effects of actions cannot always be calculated in advance. In some circumstances even a rule which specifies such conditions may have adverse effects on third parties, and Hobhouse writes that the pursuit of a right cannot be legitimate if it is "adverse to some general condition of well-being"²². He is concerned to limit undue advantage, but what *is* undue advantage and how should it be limited? Perhaps the vagueness in his description of rights and duties is inevitable since, unlike Nozick, Hobhouse is as concerned about the effects of actions as much as the inherent rightness of the actions themselves.

Hobhouse is aware of this problem. A right is a liberty which is restricted by the rights of all and by the rights of the community as a whole, and there is "a general liberty of doing anything which does not invade any specific rights"²³. Is this definition of rights and liberties "indeterminate because rights rest on conditions of the common welfare which must ... be matters of opinion"?²⁴ It is *because* the conditions of the common welfare are matters of opinion that we claim liberty of thought and action, "and it seems futile accordingly to construct a definition of

liberty which throws us back on the problematical and unknown"²⁵. That is to say we have these liberties for our personal development, which is a contribution to the common good, and in order to determine the common welfare which cannot otherwise be known; yet the liberty we claim is defined and restricted in terms of the common welfare which depends upon them to be known. In other words we need to identify, define, redefine the common good, and this will always be a matter of opinion, so how can an appeal be made to the common good as though it is an objective standard? He answers that where ends do not clash there is a general liberty, but where two people cannot pursue their own ends without conflict then they cannot both have liberty. We have to choose between them, the choice resting on "the bearing of either end on the common welfare"²⁶ according to our best judgement, but our best judgement will be "the best in the circumstances" and is hardly definitive of the common good.

In Hobhouse's discussion it is at times difficult to distinguish between individual rights which are transgressed and the individual's welfare, and the right of the common welfare. Why judge an act or rule by the yardstick of the common welfare when it is an individual's rights and welfare which are at stake? The answer is that the whole system of rights is not designed to protect the individual qua individual but as a member of society, and what is being judged in each case is the likely effect of a rule's application on everyone else who may be touched by it. In "Democracy and Reaction" Hobhouse says "the rights of an individual are what he may expect from a social organisation based on certain principles, and the test of his rights is this - that their persistent violation is in the end fatal to the principles of the organisation".²⁷ However over or above this general consideration the community itself has certain rights. The individual has duties to the community and Hobhouse asks "how far it can demand that service as a right?"²⁸, and "what right has the community, acting through its established organ, the Government, to

impose its will upon a recusant minority?"²⁹ He concludes that the community can enforce its will in matters necessary to the common good.

Liberty, says Hobhouse, is a condition of well-being and therefore a right, but rights are liberties to do specific things without interference so liberty cannot simply be anything that does not interfere with other rights, but "requires a positive definition as that which itself will not be interfered with"³⁰. The definition is important since if liberty is a right it must be taken into consideration when we are judging conflicts such as those mentioned earlier, and "other things equal it will always be the lesser liberty that we shall exclude"³¹. If the good of each individual is part of the common good should we not interfere with a person's liberty for the sake of the common good? Hobhouse replies that the individual will not develop through coercion; he must be led to the fulfilment of his personality through reason. Moreover the common good is based on harmony which requires toleration. Neither the individual nor society can attain growth and harmony through suppression of ideas. There is no final truth so individual freedom "becomes a necessity not merely for individual but for collective progress"³². Rational minds will discover the common good but we must accept that freedom of choice implies an individual's rejection of what is best for him. Freedom of choice is limited, of course, by the rights of others.

"Since a right is itself normally a liberty, it follows that the doctrine that liberty is limited by rights is not very remote from the suggestion that it is limited by the like liberty of others"³³, but there are differences: the system of liberties is not "defined by the individual himself for himself, but must be defined by or on behalf of the community on the basis of the general well-being"³⁴, and to the rights of the individual are to be added the rights of the community as a whole.

Far from being indifferent to the individual the community needs the individual's judgement and character. I have already referred to Hobhouse's concern about the effects of actions over and above any considerations of procedural justice. Thus any group of individuals entering into an association may have powers which no individual has, and the powers of this new entity have to be judged and, if necessary, constrained "by considering not only how they were built up, but what they are and how they are exercised"³⁵.

For the individual liberty means "the open field for mind and character"³⁶, and the system of rights, and restrictions should be "conceived in the interest of such development"³⁷. However the individual's liberty is limited by the other conditions of social organisation, and the majority can restrain a minority which seeks to thwart a "common plan" considered necessary for the common welfare. This is not simply a question of numbers - of the majority always having its way - "but the belief that is reasoned out according to the best of one's lights as to the necessities of the common good".³⁸ In an important rider to these considerations Hobhouse points out that in practice the conduct of the state is less than perfect, both morally and practically, and its rights cannot be equated with the rights "which the community might very properly exercise if it were adequately organised for the purpose of conducting its affairs in the best possible way"³⁹. However it is the state's function to "secure the benefits of organisation and the maintenance of all personal rights against private oppression"⁴⁰. There are two points arising from this which demonstrate the marked contrast between Hobhouse and Nozick. The first refers to wealth and benefits as the result of common rather than individual effort. Taxation is not loss of liberty for some "but an appropriation to common ends of wealth which arises out of common efforts"⁴¹. The state performs functions which "require the organised resources of the community as a whole"⁴². The second point also refers to the state's function in the distributive process. The state's role in protecting the individual from "private oppression" is common to both Nozick and

Hobhouse, and as Hobhouse says state control in this respect is an extension of liberty, as long as other private rights are not sacrificed "to the ubiquitous encroachments of state authority"⁴³. But he also sees redistribution as an extension of liberty and Nozick, of course, would regard the state's role in this respect as just such an encroachment of private rights.

If the state is imperfect, under what conditions, Hobhouse asks, do law and government represent "the will or the good of the community"?⁴⁴. Liberty is freedom to develop one's personality; law is a positive aid to freedom, not a constraint. It is the individual's good which is to be realised in society, not the state's. But the basis of liberty is harmony to which all lives contribute and so "it follows that free institutions are those which arise out of the character and will of all the individuals who live under them by a process of growth"⁴⁵. From the importance of each individual to the whole is implied the principle of political democracy. His is a community based on harmony and cooperation, on a delicate balance between collective action and individual freedom.

The purpose of political liberty is not to guarantee an individual's other rights. Rather it is a duty which all share - it prevents domination by one group, it enables interests and claims to be heard and the common welfare to be determined. The basis of society, then, is not will imposed by force, but cooperation. Restraints imposed for the common good are willingly accepted, not regarded as constraints but as guarantees of freedom through rational self-determination.

Equality and Distributive Justice

It may be said that rights belong to all equally not because of social and moral capacities, in which all are not equal, but because the human soul is "deeper than all

differences"⁴⁶. But men have a variety of relationships, as parents, children, parties to contracts and so forth, and equal rights means that within these various relationships specific rights and duties apply to all, and all men have an equal right to enter into these special relationships. Thus at this stage equality means "equality in some fundamental rights, including ... the right of enjoying and entering into special relations"⁴⁷. The starting point here is a common human nature. However if we begin with considerations such as merit we may argue for a principle of "proportionate equality" based on equal treatment for those of equal merit. But the rights of children for instance do not depend upon merit, but "to a human being as such"⁴⁸. Strangely he argues that "to each according to his needs" is a proportionate rather than an absolute principle, since different quantities of necessities are needed by different individuals. But surely the principle is absolute, since everyone is entitled to satisfaction of their basic needs, the distribution of goods depending upon the particular circumstances of individuals. A proportionate system is based on effort or some other factor not attributable to all persons as persons. But Hobhouse argues that "the claim of a need is proportioned to its urgency. We may then regard even the most universal of common rights of man as proportioned to their needs"⁴⁹.

He then states the following propositions:

- "1. By equality is meant equality of proportion between claims and satisfaction.
2. Claims are based either on need or desert...
3. Desert may be measured by effort or attainment.

These principles are of general application. But further, men are born or enter into special relations to particular people. In regard to these equality means:

4. (a) Equal reciprocal obligation...

(b) Equal opportunity to all to enter into such special relations as are constituted by human choice".

These rights "may be held to attach to personality as such... They may be held qualified by what the man has done, is doing, or about to do, that is, by desert"⁵⁰.

In the modern liberal state the law is applied equally and impartially. Rules of law are wise and good if they are "the most effective that can be devised" to serve the common good. In this sense justice - the right ordering of human relations - "is the impartial application of a rule founded on the common good"⁵¹. If justice is a derivative of the common good is it not also "some constituent of the common good on which the rules are ethically based"?⁵² The principle of harmony is based on the principle of justice which declares that moral judgements are universal; that is, they cannot be applied partially for this would contradict their rational character. The principle of harmony, which demands equal consideration for all, needs rules of law which will serve the common good, and it is in this sense that justice is a derivative of the common good.

All must be equally considered in determining the common good and their differences and diversities are recognised by the conditions of harmony. Differences in what is due to or from an individual must be differences required by the common good, which is concerned to satisfy only those claims for the conditions necessary to harmony. This is an individual's "real good and its conditions his real need"⁵³. To meet the same need individuals may require different things, a principle upheld by Dworkin who distinguishes between treating people equally and treating them as equals (see Chapter 5). Urgent claims should first be dealt with,

but within "the adequacy of resources" all should be satisfied and the principle of distribution by need is a principle of equality. Added to these basic considerations is the necessity to maintain the functions which serve the common good, and since these functions require different conditions this implies different needs, bringing to mind Plato's Republic in which justice in the state is the performance by each group of its proper functions, the needs of each group being different. Hobhouse defines "distributive justice as equal satisfaction of equal needs, subject to the adequate maintenance of useful functions"⁵⁴, that is, subject to a condition prescribed by the needs themselves (the needs being the conditions necessary to maintain the functions on which the common good depends, the common good being a condition of harmony, and his real needs being these necessary conditions!)

Is justice "that apportionment which will yield the greatest good" even if the weak suffer, or are we all entitled to the same degree of consideration despite differences in actual development or capacity for development? Not the former, since it would conflict with the rule of harmony for one person's interests to be neglected. Pursuit of excellence is an unworthy end if at the expense of weaker members of society. Nor should collective achievement displace individual achievement. "If...the principle of harmony is maintained, then collective achievement is the harmony of personal achievements carried to their highest power and in this harmony every personality receives all the consideration which mutual consistency allows"⁵⁵. Thus a collective achievement in which no individual is indispensable does not mean that each individual is without value; the achievement is the result of each individual's personal effort added to that of all other individuals to create something otherwise not possible.

It is all too easy to argue for inequalities now that will produce "lasting benefits for all" at some future time, so disharmony is only allowed to achieve a stated aim in the near future, another point also made by Dworkin. Having rejected the argument

for cultivating excellence at the expense of some to achieve progress, Hobhouse turns his attention to the problem of inequality caused by economic success. The possession of certain abilities enables some to do well in economic terms, and the resulting inequalities are perpetuated through inheritance. This inequality is a social danger, despite formal political equality, because economic power can be used to undermine civil and political liberties.

Human achievement, as economic or military hegemony, leads to inequality both internally, and of one people over another. Not only is it a social danger but "modern law and ethics have...insisted on the equal enjoyment of certain elementary rights, including...the right of self-advancement"⁵⁶. Whilst conceding that "the ethical importance of equality" needs to be more clearly defined - although his principle of harmony and the needs of individual development and the common good do seem to be firm foundations for the ethical justification of the principle of equality - he refutes "the easy view of the comfortable that inequality is inherent in progress"⁵⁷. Differences in social position and wealth occur because of our varying gifts, attributes and capabilities, but advantages are often used to oppress, and inheritance gives advantage to those who have not earned it (and the creation of the inherited wealth was made possible by communal effort), so that the unity of society may eventually be destroyed. Our differences should not be translated into material inequalities of a destructive nature. (I shall outline Hobhouse's theory of property rights later). He considers that equality of right "sets itself against" tendencies to oppress, and he optimistically observes that "the greater the responsibility put upon the strong and more capable to regard and serve the weaker, the keener is the stimulus to their faculties..."⁵⁸.

Hobhouse rejects any development in some which obstructs the development of others. Whilst recognising differences in development, his principle of harmony would not allow great social differences, so from Hobhouse's arguments it could be

deduced that he would favour a strong principle of economic equality. He would then reject the Rawlsian justification of social and economic inequalities if they are arranged to the greatest benefit of the least advantaged. But he introduces a principle of development which is unnervingly Rawlsian in character: "There may be great inequalities of development, but to satisfy ethical requirements they must be such that the further the development is pushed in any one person, the more it tends on the whole to assist the corresponding development of all others whom it can effect"⁵⁹.

I have already noted his objection to inequality now for the sake of future good, and he writes that "the social value of material wealth tends to increase as the distribution becomes more equable"⁶⁰. Furthermore if there are insufficient resources to enable all to fully develop, then deliberate inequality (the good life for some being the best we can manage) is rejected since the common good cannot deliberately exclude some of those to whom it applies, a point forcefully made by Dworkin (see Chapter 5). If there is shortage, distribution is based on need according to principles of maintenance of essential services, strong defending the weak etc., and no luxuries are allowed - "no amount of unnecessary comfort is to be balanced against deprivation of necessities in a single case"⁶¹.

We thus have principles of justice and distribution based on the common good, individual development and the principle of harmony. Distribution is based on need and maintenance of services essential to the common good, with great inequality of wealth inimicable to the conditions necessary to produce harmony. Equality, one of the principles of harmony, is defined as "equality of consideration" in defining the common good, equal satisfaction of basic needs, and distribution of wealth tending towards the equable. The justification of redistribution according to need is based on the right of each individual to the conditions necessary to his development - men living as social beings developing to their fullest as members of

society. This right in its turn derives from the principle of harmony. But how are the general principles of justice, including principles of distribution, to be interpreted in practice? What exactly can any individual claim from the common good to enable him to live in harmony? Where wealth is limited Hobhouse has formulated certain priorities for the satisfaction of needs; assuming an abundance of wealth what social and economic inequalities are permissible, given that in a harmonious society all contribute to the best of their ability to the common welfare? Are the equal needs of equal members to be met unconditionally?

Retributive Justice

Justice has to maintain the functions which serve the needs of the community. The most efficient way in which it can do so is through the method of reward and punishment, which is based on the principle of "to each according to his deserts". What then has happened to the principle of "to each according to his needs", and is the system of reward and punishment the *obvious* system in a harmonious and rational society? Hobhouse argues that rewarding effort results in payment for failures and weaknesses; rewarding performance we pay a man for gifts with which he was born. If we reward effort or moral will, rather than success, can we say that the individual is entitled to his reward any more than he would be entitled to reward for the gifts he was born with, because development of moral will is due to the forces fashioning a life? Can desert, then, be justified as a basis of reward?

He avoids the problem of "ultimate causation" which would lead us to question whether anyone was ever responsible for their own actions. "A responsible agent is one who knows what he is about, no matter how he came to know..."⁶² and who knowingly directs "his action to some end because that end appeals to him"⁶³. The

responsible agent can also examine the effects of his acts. Responsibility involves not only a rational process but also feeling, for it is feeling which guides the will. Is the rational responsible agent, with disciplined will, entitled to bear "the fruits of his voluntary acts"?⁶⁴ Since acts have good and bad social effects it is impossible for the individual to bear all the fruits. He argues that to make a man the sole bearer of the consequences of his acts implies a quite impossible individualism. On the other hand it is "impossible socialism" to offer vice and virtue as their own rewards.

Thus if a person's actions are based on his will which in turn is developed by forces entirely outside his control - if, in fact, his "will" is a matter of chance - then whatever his acts, good or bad, they are the result of the social setting in which he lives and to "society" therefore belongs the credit or the blame. If on the other hand we believe in personal responsibility then credit or blame are due to the individual. We may believe a bit of both (as Hobhouse does) and want to apportion blame or reward accordingly, but we should look at the condition of the individual actor, not, like Hobhouse, at the effects of the action, although a rational being takes into consideration the likely results of his acts.

Why is it impossible to say, as Hobhouse argues, that a man cannot bear the whole fruits of his acts? In one sense this is true - if my act has wrought misfortune on others they bear the cost, especially non-material costs. However I can be held fully responsible for my act and made to bear its fruits insofar as I could be made to compensate others for their loss. If my act brings unintended benefits to others perhaps they should compensate me for their good fortune! Since Hobhouse's whole argument rests on the premiss that men are not individuals in isolation, but members of society dependent on others to find true fulfilment, he constructs an argument for desert based on the synthesis (or uneasy tension?) between individual

responsibility and communal influence and responsibility.

If we were sufficiently aware of our responsibility to the common good we would always do our best for the common good. This is what Hobhouse means by virtue as its own reward since we would cast aside purely self-interested considerations. But he says that we all have legitimate self-interests "not necessarily identical with the common good"⁶⁵. How can this be so? It is surely a logical impossibility for us to have legitimate self-interests which are not identical with the common good. He himself writes that it is for the common good that we should have self-interests, because the common good lies in "the exaltation of the personal life"⁶⁶. In fact, he writes, in pursuing our self-interests "we should be governed by certain principles of universal application"⁶⁷. In other words, in pursuing our interests we observe certain rules which make possible living together peacefully in society, and we recognise our duty to contribute to the welfare of others. It is the social function of retributive justice - the system of rewards and punishments - to instil in men this sense of belonging to society, of seeing the effects of acts on others, and making judgements about future acts in this light. Although this is the function of retributive justice its roots lie in "the principle of harmony and its corollary the equal partnership in rights and duties"⁶⁸. He goes on to say that "to be adequate to the requirements of justice there must be such reciprocity between the community and its servants as harmonizes the private and common interest, and this is the function of reward"⁶⁹, but how great a reward is the subject of economic justice which he discusses later. In principle the man who secures the common interest whilst serving his own should not lose.

Punishment must be the minimum possible which allows society to protect itself and which discourages lawbreaking, whilst doing the least harm to the offender, the best form of punishment being the offender's realization of what he has done "for we

want him to enter into the ethical community as a conscious and responsible agent"⁷⁰ Thus at one level Hobhouse wishes the individual to be left to his conscience, but punishment is a form of deterrence, a means of social control, so that in this context people do bear the consequences of their actions. This concept of desert justifies the principle of justice to maintain the functions which serve the community. The system of reward is based on the principle of treating every man according to his deserts and this harmonises private and common interests. But the maintenance of functions is required by the common good and does not need to be justified by a principle of desert. Happily, perhaps, they coincide and are mutually supportive, but both are justified independently.

Payment

It is only by bearing in mind an individual's dependence on others that we can reconcile the private interest and justice to the individual (the fruit's of a man's acts are his moral deserts) with the public interest which will share the reward. As Nozick pointed out those who argue for end-state principles also argue that the labourer is entitled to enjoy the fruits of his labour. Reward, as we have seen, is partly based on the maintenance of functions, but payment for service - a system of exchange - in which both parties to a contract are satisfied, seems to involve exchange of equal values, bearing in mind that consent does not necessarily indicate willingness, that one party may act with insufficient information etc. Judging such transactions requires an objective standard of fairness. If something can be freely exchanged it has an "exchange value" and this gives rise to a simple principle of fairness based on exchange at equal values, and such an exchange "is just if we consider it as an isolated transaction in an open market where values are determinate and all sorts of exchanges readily made"⁷¹. Whereas Nozick argued

that in a free market value was determined by market forces and that provided the transactions did not transgress the correct principles of exchange, then right to ownership precluded interference and whatever pattern resulted from the sum of exchanges was just, Hobhouse says that exchanges are not isolated transactions. We have to look at the whole system to see whether or not it is working fairly, and at the standard of value itself. Selling at a loss, for instance, because of market fluctuations could be an injustice. "Exchange is an incident in the production and distribution of wealth, and must be judged by its bearing on the whole of these processes"⁷² writes Hobhouse, and "in the economic field justice will be achieved by exchange at equal values provided that the standard of value is fixed by justice in general"⁷³. The principles to which the standard of value must relate are those of a just economic organisation, namely equal provision for equal needs, subject to the adequate maintenance of the functions which supply the needs; and, the private interests of the performer of a function must harmonize with those of the community.

The economic system serves the community - individuals as members of a community - rather than isolated individuals making a series of discrete exchanges. It is directed towards meeting the needs of all members of the community according to the urgency of the need (whilst maintaining necessary functions). Children, the aged and the disabled, as our dependents, have a moral claim on us to give them the best we can afford to meet their needs. Other needs may be provided for without equivalent service provided that there "is no crippling burden on production"⁷⁴. All needs supplied without return must be either universal or for the special cases just mentioned. Other than these cases no wealth can be acquired except through social service. He further writes that "the lowest remuneration for work done" must be such that the least capable worker "actually required by the operation of the industrial system" is maintained "in a condition of full civic efficiency"⁷⁵, which

quaint phrase makes the worker sound like a useful unit of production, but what Hobhouse has in mind is that such a worker should earn at least sufficient to be able to care for himself and his family and to be able to develop his faculties to the fullest.

In a system of free exchange unskilled workers are unlikely to reach this minimum, except through the intervention of trades unions or wages councils. Whilst these institutions might boost wages, the wages are still not earned, unless in a free exchange system earnings depend not only on an individual's "power of work, but on his power of getting himself paid for it"⁷⁶. This system would prevent those with little bargaining power from earning a just wage. On the other hand a just system would yield a situation in which each producer would be paid the civic minimum and each producer required by the system would produce more than he is paid - thus are harmonised the interests of the producer and of the community. The weakest worker in such a system earns his pay.

The fact that a free exchange system does not give adequate reward to all reflects the basic immorality of the system in which the quality of an individual's life and his chances for self-fulfilment depend upon his marketable skills, the market being the mechanism for deciding the values placed on skills and talents. It is unclear what Hobhouse would suggest as the minimum wage for a worker not required by the industrial system. What, for instance, of a gardener setting flower beds in a public park, contributing to the common good, or anyone else engaged in non-essentials which enhance our lives? Any man hired for his labours and skills deserves such a wage that will enable him to live in dignity and comfort commensurate with the general level of wealth available to a society. That is, the economic system, as Hobhouse argues, must serve the community, and the individual is not to be treated as an economic unit whose value depends on market forces. If a

community is poor then expectations have to be lower to reduce unemployment, for the higher the wages paid to some the less money will there be to pay others. Assuming prime needs are met there will be a general spread of unmet secondary needs or comforts. Although Hobhouse writes that when all prime needs have been met the requirements of the minimum standard become less rigid - and in a rich country would be higher than in a poor one - I would still argue that the principle of harmony should have something to say about both maximum and minimum wages in order to avoid great discrepancies of wealth within the community. Hobhouse does mention this as I shall explain shortly.

There are problems with a minimum wage which is designed simply to meet basic needs in a community which will satisfy these needs anyway. In Hobhouse's words "the prime needs of all must be met without regard to their work simply because they are prime needs... It is therefore, it may be said, something of a mockery to tell the unskilled worker that he is earning what he would in any case receive from the community for his needs as a human being"⁷⁷. Hobhouse replies, rather unsatisfactorily, that whilst a worker can do what he likes with his money, others must spend their money on specific needs and under conditions specified by the community. Taking aside the idler, who simply refuses any obligation to work or contribute to the community, this argument not only makes second-class citizens out of dependents, denying them liberty and opportunity for self-fulfilment as proper members of the community simply because of age or disability or lack of marketable skills, but is hardly satisfying to the worker on minimum wage who may well perceive little or no difference since all his income must go on satisfying his basic needs. As Hobhouse recognises, this is a disincentive to work: "it is clear ... that the whole of our argument substantiates the alternative right to labour or maintenance"⁷⁸, by which I take him to mean the lowest paid would have the right not to work. Of course, some would work from considerations of self-respect, status,

companionship. The answer that suggests itself is that the idler has his basic needs met; that dependents such as the elderly or disabled have that support necessary to enable them to lead life to the fullest; that the minimum wage for a worker, given sufficient availability of wealth, is significantly above that which would just satisfy basic needs in order that the lowest paid worker has a real choice about how he spends it and how he leads his life. This problem does not arise for Nozick since he argues that a man's goods are his to dispose of as he pleases, and there is no obligation to the needy, and no just wage other than that set by the free market which is accessible to all. But perhaps the difficulty is unavoidable in a system designed both to maintain differentials in wages (to give reward for merit, for instance, or as an incentive), and to alleviate the worst excesses of a laissez-faire economy which would leave many workers very badly off, and at the same time has to meet the needs of those in special circumstances.

For Hobhouse the problem is the proper basis for differentials, effort or skill. Is the coal miner to be given greater reward than an academic who, with less physical effort makes a more valuable "social contribution"? He rejects the notion that a producer is entitled to the whole of the total value of his product, because the cooperating society is the major factor in wealth production - we depend on others for the tools we use and the system within which we operate. Similarly, he rejects the value of the free market which may be too little or too much. His own system of exchange, based on the principle of harmony between producer and consumer, means that exchange takes place at equal value. If the miner and the academic do their best "as a matter of social duty"⁷⁹, and if it costs no more for one to give us the fruits of his labour than it costs the other to give us the fruits of his intellect, is this not a sufficient basis to determine reward? He argues that because of the great variety of men's motives, "some measure of remuneration by achievement as distinct from effort does ... promote achievement"⁸⁰. The question is whether the

differentiation is just, "an intrinsically desirable element in a social system"⁸¹, or only an unfortunately necessary price we have to pay. The common good encompasses all personal interests, which include the need for individuals to make the most of their lives in their own way. If an individual gives fair value for all he enjoys then both he and society gain. This is really unconvincing since the least skilled worker will not be given the incentive and opportunities offered to the more skilled. So opportunities for self-development are brought within the exchange system and used as economic incentive. Having argued that a free market tends to disharmony and has to be modified, Hobhouse is suggesting that incentives are necessary to encourage performance, which may be empirically true but is not the common good.

If, then, there is to be reward by achievement, how is its value to be assessed? In simple cases by proportional output, but between different kinds of work "there seems to be no standard of comparison except the economic equation of demand and supply of available ability"⁸². Ability which makes a great contribution to wealth and is rare has a value which "is most nearly yielded by the remuneration which does, in fact, just serve to call forth and maintain an adequate supply of the necessary ability"⁸³. Reward so based is simply an operative fact, not an ethical principle. Payment by output is just, he has argued, given the civic minimum wage, and supply and demand simply measures "differential values of outputs of varying quality"⁸⁴. But, of course, the desirability of such a system of measurement is questionable. It does not give a reward based on value to society (other than in cases of wealth creation), especially where such valuable work is relatively unskilled or uses skills which many people have; and where "output" has little value placed on it, an individual's opportunities are limited, as I have already pointed out. Neither the minimum wage system nor the system of supply and demand gives proper worth to the lower paid worker, since both systems are based on output; in

the case of the minimum wage the community must get back more than it gives. It seems that the skilled worker needs greater rewards to encourage him to share his talents and ability.

It is not a matter of justice that the talented deserve greater rewards than the unskilled workers. If the common good is served by individual development then every person needs the same "liberty, scope, opportunity"⁸⁵. Forces of supply and demand do not necessarily give proper reward for useful social work because, as I have argued, the skills involved are not necessarily scarce, and therefore the system does not work for the good of the community; wealth tends to accumulate and become very unevenly distributed. In wedding the measure of supply and demand to reward based on value, Hobhouse has managed to destroy the latter. He tries to ameliorate the worst effects of supply and demand by pegging incomes at a point beyond which they cannot possibly contribute to the satisfaction of real needs. Similarly, Rawls argues that above a certain level of material well-being, the better-off members of society will become less interested in the accumulation of more wealth and will turn their attention to cultural pursuits. Such a policy is certainly necessary for Hobhouse to achieve his objective of "the harmonization of real needs"⁸⁶ but the limit is open to discussion. Set too low it would, of course, destroy the concept of supply and demand. But setting any limit may well serve as a disincentive to those very people who might expect the richest rewards.

Thus he writes that "we must admit remuneration in proportion to the value of work done as a maxim of economic justice"⁸⁷, which "makes possible a system of free exchange - which will never take place except at equal values"⁸⁸. He is wrong because of the inadequacy of his definition of value. The system of supply and demand does not result in equal reward for equal value. Hobhouse, in trying to modify the free market system by limiting maximum pay and guaranteeing basic

needs, has not succeeded in establishing a just system of distribution of wealth. Unfortunately his system will not yield the good he expects of it; it will simply avoid the worst excesses of complete freedom of exchange at the top and bottom of the scale. He offers no truly objective standard for judging social worth. His system will not give the expected benefits to society since those who do the most valuable work often do so despite the lack of incentive.

He calls the principles of justice applied to social organisations Social Liberalism, which is distinguished from socialism with its centrally-planned economy. Despite the difficulties which I have noted Hobhouse himself envisages a society in which the good of each and all is harmonised; a society carefully balanced between unfettered individualism and a collectivism which would direct all aspects of economic and social life in the name of equality. Justice harmonises needs by providing equally for equal needs, and it harmonises functions with needs by maintaining them according to their priority in the satisfaction of needs, which determines their value, together with a consideration based on the difficulty of having the function performed. Reward based on value of work harmonises the needs of the individual with those of the community.

The foundation of justice is equality: "every person ... must be equally taken into account in framing the plan of harmony"⁸⁹, writes Hobhouse, and he continues "the only ultimate ground of difference is some requirement of the working system of harmony as a whole"⁹⁰. But this "only" yields great inequalities as I have pointed out, even to the extent of justifying greater opportunities for self-fulfilment for those with marketable skills. Distribution is based on qualitative as well as quantitative criteria, "and in this relation the equality of justice is a proportionate equality"⁹¹. Hobhouse takes the term from Aristotle - equality in proportion of merits to rights so that equal merit attracts equal reward. The problem for society

lies in defining worth and merit and then in assigning to worth a scale of values on which the system of rewards is based. However a system such as that advocated by Hobhouse will increase inequality and tend to depress the worth of some members of society because rewards are economic rewards, and the distribution of wealth in this way apportioned opportunity and power according to the arbitrariness of supply and demand.

Property

Hobhouse goes on to argue that distribution of wealth depends on property control and ownership - the liberty to do as one pleases with one's possessions. "So far as the direction of my life and the exercise of my faculties depend on the free disposal ... of material things, it depends on my possession of property"⁹². But what property and under what conditions are crucial questions, since one person's ownership (and hence freedom of use) may significantly effect others. An owner of land may restrict access, whilst "the possessors of capital have advantages in contracting with workers which give them a very large measure of control over labour"⁹³. Property ownership is freedom and power. These two functions of property ownership must be reconciled. "The economic expression of liberty", i.e. property ownership, is seen as a social function, socially controlled. Whilst "property as economic power must be vested in the last resort in a self-governing community"⁹⁴, the individual requires property "for the free conduct of his personal life"⁹⁵. Economic power, if it is to promote liberty, has to be communally directed, with effective participation for all in decision-making, and no individual having the power to dispose of the lives of others.

If property is both communally and individually owned, what is the apportionment?

Distribution based on justice is distribution according to need, effort, result, maintenance of functions. Does distribution based on claims to freedom coincide with the needs of justice? To have some freedom the worker requires an adequate income which is his out and out property to build up a home "and surround himself with those little personal belongings"⁹⁶. This measure of an individual's claim to property, he writes, "coincides precisely with the requirements of economic justice"⁹⁷ as previously set out. But surely this is not so. If we were to use an objective measure of what is needed to make a home, then there would be a tendency toward equality of income (taking into account the number of dependents, special needs and so on). An individual's idea of what is needed to make a home could stray from this measure. The requirement of economic justice to which he referred distributes wealth not only by need, but also by merit and achievement, so that certain categories of skilled workers have much more opportunity for surrounding themselves with those little personal belongings, and greater personal freedom in deciding where and how to live.

Regarding the communal claim to property Hobhouse writes that the community carries out certain functions "which require their due return"⁹⁸. Now if these functions include common security, education, public health, then the community claims wealth to pay for these activities, and because of the way economic life is organised it claims this wealth through a system of taxation. These conscious activities, together with "the mere fact of social life"⁹⁹ through which we all absorb skills and knowledge are "the grounds on which the community has a claim to the wealth produced by its members"¹⁰⁰. However he also writes that "the state organization is to begin with the basis of security, and therewith ... of property itself. That consideration alone gives to the community the last word in deciding what rights of property it will recognise, and on what terms"¹⁰¹. He rejects the view that all property is individually owned and that distribution is therefore

theft, that the function of the state would simply be to defend property rights. State interference with property ownership is regarded by Nozick as a restriction on liberty, whereas for Hobhouse redistribution enhances liberty since all must have the means to self-development, and ownership of property should not entail power over others.

But what does Hobhouse mean when he says the state is the basis of security and *therefore* of property itself, because he writes as though this gives the state a claim over and above those claims based on social life? Property is social in two senses. The first I have already outlined. Secondly, it is the organised force of society which protects owners; without this organisation property rights would be useless. Property rights are not absolute rights which the state must protect, but are rights only made possible through a social system which includes law and security - society makes possible the creation of wealth. It must be borne in mind that Hobhouse regards rights as subsequent to social relationships and as conditions of an individual's welfare. It is in this context that one can understand him saying that the community is the final arbiter in rights of property, basing its decisions on ethical principles. Thus natural resources, for instance, belong to the community, which may allow them to fall into private hands, under certain conditions. We may contrast this with the position taken by Nozick, who would allow natural resources to be acquired by anybody with the inclination to do so, save only for the conditions of the Lockean proviso.

Inherited wealth is to be limited so that no child may live on it and "enjoy functionless wealth"¹⁰², or, as Watzel would argue, to prevent wealth being converted into political power (see Chapter 4). The wealth an individual was allowed to accumulate (and dispose of as he wished) in his own lifetime devolves to the community at his death. This brings me back to asking how much wealth should

an individual be allowed in the first place, and if accumulation of wealth is an economic driving force, then so too is its establishment as family wealth. Hobhouse must also have in mind the obligation of all to contribute to social life through their own efforts, rather than to live on unearned income or use this capital to acquire further wealth, which could lead to grave economic and political injustice. The accumulation of wealth by a minority group will weaken the very social life which made the acquisition possible in the first place, since power and influence are wielded by the wealthy, who wish to consolidate their positions. Private ownership of natural resources, and inherited wealth, are unnecessary "in a community which is fulfilling adequately the functions of a common life"¹⁰³.

Wealth is necessary to promote the material basis of the common good, but in an imperfect world where men's desires do not always coincide with the common good, some use of wealth is limited for the common good. For example, the insanitary house may be a source of wealth to its owner, but a hazard to the life of the tenant. All production, distribution, and consumption of wealth "is conditioned, ethically speaking, by the function of wealth as the material basis of personal and social life"¹⁰⁴.

Industry and commerce have an ethical foundation on which the rights and obligations of productive life rest. Hobhouse argues that industry should be guided to produce social wealth, and that production for personal satisfaction is justifiable if it contributes to the development of personality. The value of the whole system is judged by its success in "serving the needs of the community and the development of the social personality"¹⁰⁵. He recognises the profit motive, a necessary element in production, but private enterprise exists under conditions which are specified by the public interest and which are under public control. The task is to secure efficiency whilst bearing in mind the interests of owners,

employees and consumers. We stand at the borderline between state socialism and social liberalism he says. The industrial organisation he favours "is one in which unearned wealth would accrue to the community; the universal and elementary conditions of private work and remuneration would be laid down by law...; industrial management would be in the hands of joint boards of consumers and producers, the Municipality, cooperative associations, or private enterprise according to the nature of the industry, and the relative efficiency for varying purposes of which various forms of organization prove themselves capable"¹⁰⁶. State intervention is justified by social harmony and the requirements of justice, but Hobhouse defends the market economy, controlled by the state and given public ends. Needs are catered for and effort is rewarded. It is interesting to note that the tension between these two principles - the social market on the one hand, reward for individual effort on the other - is always present, and perhaps marks the essential weakness of the whole theory of social harmony, namely that only the best men will work for the love of society, the remainder need inducement, yet the theory is based on the activities of rational men who are beyond such pettiness.

The life of men, then, is ideally a cooperative venture in which all willingly share, recognising a public interest which takes precedence over self-interest. It is within society that individuals develop their talents; it is the context within which many people develop their capacities and functions. The market alone cannot determine which functions are socially necessary. The government is the agency of the community in a complex society, and it has a positive purpose, unlike Nozick's minimal state. This positive function is to provide equal opportunity and the social and economic conditions necessary for individual development, which includes caring for those in need and redistributing wealth according to the requirements of justice. It is a vision totally opposed to individualism. The moral purpose of the state is to develop the condition of harmony, and since men do not have properly

developed capacities the state must intervene where necessary. Individuals have an obligation to assist others. The ethical basis of all human relationships, and its reflection in a society's institutions, is the essence of Hobhouse's theory. Certain obligations are a fact of social life, but whether the principle of harmony will yield a satisfactory account of political obligation is a matter I will discuss in Chapter 6.

Democracy and Participation

From the perspective of political institutions he writes that "the ultimate root of democratic principle is the conscious recognition"¹⁰⁷ that life is the joint product of all concerned, "with the deduction that if any are to be truly and morally free, all must be free ... equal freedom in a common life is the simple meaning of democracy"¹⁰⁸. Democracy is not simply a convenient decision-making procedure based on the equal right of each individual to share in collective decisions with his own self-interest in mind. Rather it is the political expression of a collective life with a collective will. Freedom is self-determination for the individual or group and it is the individual's or group's contribution to the common life. The problem is deciding how to take each will into account. Hobhouse notes the complexities of modern societies and states and the difficulty in consulting everyone about all decisions. "Popular intervention is necessarily intermittent, occasional, and very imperfectly instructed"¹⁰⁹. Moreover the labouring masses, whose individual development is still in progress, spending "their toilsome days in mine or factory struggling for bread have not their heads for ever filled with the complex details of international policy or industrial law"¹¹⁰. Their role is "to respond and assent to the things that make for the moral and material welfare of the country"¹¹¹. How can they do so with insufficient knowledge? What is true is his observation that "the power of conscious democracy is practically limited to certain critical decisions,

and largely to a veto on the proposals of the bureaucrat"¹¹². Thus a ruling elite makes decisions with occasional approval by the citizens in the form of an election.

With majority decision-making a small majority can impose its will on a large minority. I would add that individual development requires certain freedoms which the majority have no authority to curtail. He writes that "majority decisions are necessary, and yet lack just that moral authority which democracy demands"¹¹³. It should also be borne in mind that this discussion is about decision-making in a stable society with a well recognised sense of common purpose and acceptance of common values, and the bigger and more complex the society the less likely will these conditions be met. This is a point of great significance, as I shall explain in my critique of Walzer. It is unlikely that a minority will agree to accept majority decisions which they will never be able to change (because they are a permanent minority on these issues) if they are adversely affected by the decisions or if their opposition is based on strongly held moral grounds. As Hobhouse says, it is a mockery to suggest to a permanent minority that it has equal rights and lives on equal terms to everyone else. A majority must not rule in its own interest, for democracy implies liberty and equality and a principle of community which may be difficult "to embody in any constitutional rule"¹¹⁴. Differences must be subordinate to a deeper agreement about the nature of a particular society within which no individual or sectional interest is overlooked. The majority must try to accommodate the desires of the minority. At this point it may well appear, given these difficulties and Hobhouse's opinion of the masses, that he should opt for decision-making by enlightened men who ever hold the principle of harmony in mind. Although all voices may be heard in majority decision-making it does not mean that the outcome is just or satisfactory; the system serves neither of its two objectives - ensuring self-fulfilment through participation, or reaching decisions acceptable to all and which are an expression of the common will.

Hobhouse recognises that there will always be some element of contention or disagreement, what he calls discommunity, and he therefore rejects the theory of the sovereign people which holds that the people having voted, individual and sectional interests cease. The people in a modern state cannot collectively exercise its will other than through an agent. Parliament makes decisions on behalf of the people. It cannot enforce its will on a reluctant people. And the will of the people as expressed through the majority vote gives no moral authority to the people's agent since decisions are limited by the rights of individuals.

Hobhouse's answer to the problems of political participation and decision-making brings to mind Michael Walzer. Hobhouse suggests "organisation with neighbours and fellow-workers." The citizen joins with others with whom he has common interests, makes decisions about subjects with which he is familiar. In sum, "the development of social interest ... depends ... on all the intermediate organisations which link the individual to the whole".¹¹⁵ It is interesting to note the development in Hobhouse's theory of these groupings whose members may well have allegiances or obligations which conflict with those to the state to which they belong. Michael Walzer's theory of political obligation, in its earlier stages, is based on membership of local or other common interest groups, in which he confronted this problem (see Chapter 5). However Hobhouse envisages a union of mankind based on territory, work guilds, churches, which unite men with common interests into a number of associations across a series of allegiances in an attempt to lessen the possibility of hostility between groups based on reinforcing cleavages such as race and religion combined. The groupings would be participatory units of democracy, with the state on a level with such associations. (At the national level the idea is not too dissimilar to Rawls' social union of social unions). A supranational body would control international relations, ensuring that the conduct of the state conforms to moral law.

The modern polity faces the tasks of firstly, bringing home to the citizen the need to participate; and secondly, making governments responsible to citizens. Participation in this context must not be taken as consent because no matter how decisions are made (and Hobhouse, like Walzer and Pateman, is trying to ensure that all interests will be considered) the important point is that decisions conform to moral principles. It may be that the necessity to participate together with the stricture that decisions conform to moral principles brings us to a position which I will mention in talking about Pateman, namely that participation and consent are necessary but not sufficient conditions of political obligation (see Chapter 6).

The conception of the sovereign state independent of other communities divorces "political action from the moral law"¹¹⁶. The ultimate community is the human race, but he defines community as that association "which is appropriate to the function that is in question"¹¹⁷ and this may be a church, an association, a union. We judge "appropriateness" not in relation to the state but in relation "to the life of humanity"¹¹⁸, by which measure the state too is judged. That is to say, ultimate moral authority does not belong to the state. Political obligation, "our obligation to serve the general well-being"¹¹⁹, and to obey the laws of the state, is secondary to our obligation to supreme moral authority. Duties prescribed by the principle of harmony must be applicable as far as possible to all people - to all members of the human race. We have no freedom to apply different standards to others. Here Hobhouse differs from Walzer, as I shall explain (see Chapters 5 and 6), because for Hobhouse what is good is good unconditionally, and the only unconditional good is harmony, harmony in the individual and harmony in the community.

Conclusion

Hobhouse has presented a theory of *social* justice - the individual is part of a whole. We have inescapable obligations to others, and rights and obligations are not precedent to social life, but begin with and are part of social life. Whatever an individual achieves he does so with the help of others, if not directly then through his reliance on the social and economic structure of society with all its benefits, and through inherited skills and knowledge. The economic system must be a directed system with an ethical end, namely the promotion of liberty and personal development within the community. By a community he has in mind a group of people with "a common sentiment or interest".¹²⁰

Any theory which acknowledges the imperfections of the world we live in and suggests a way of behaving in an ideal world is faced with the problem inherent in the theory - how to persuade people now to act as they would in the perfect state. Nozick's state, on the other hand, may appear more attractive in its simplicity. He sees no ideal, offers no solution because there is no problem. However there is no community, no shared experience, no caring. Behaviour is based on individual rights, not obligations to community. Nozick has no serious account of interdependence within social life, nor of duties to succeeding generations, whereas Hobhouse regards men as essentially social, cooperating for the common good. However there will always be difficulty in defining the common good, and there is a tension between the community of rational, selfless men and his recognition of the realities of human nature. Hobhouse believes that a condition of harmony is possible. In fact we often have to choose between competing and irreconcilable ends. We have different sets of values and conflicting ideas of the good, a point alluded to in the discussion on remuneration, and fully recognised by Rawls, whose

theory of justice is to be interpreted as political, not metaphysical, and it is to this theory that I now turn my attention.

CHAPTER 3

On Rawls' Theory of Justice

John Rawls envisages a cooperative society similar to that of Hobhouse, in which conceptions of justice would be publicly acknowledged and the virtues of liberal democracy upheld as a common good. However his is a much more rigorous formulation of principles based on rational argument and in which the right takes precedence over the good - principles of right limit the good which can be pursued, whereas Hobhouse gives priority to the common good.

In this chapter I will examine Rawls' idea of justice as fairness and its expression in the general and special conceptions of justice. I will comment upon his notion of liberalism and the liberal state as I understand it from my interpretation of "A Theory of Justice".¹ I will start by looking at the conditions under which rational men formulate principles of justice (the original position and the veil of ignorance), at the chosen principles and the lexical ordering, the distribution of wealth, the distinction between liberty and the worth of liberty, and procedural justice. I will then make some brief observations about how Rawlsian principles are said to match our considered judgements. The debate about how principles of justice should be derived will be continued in the next two chapters. I will outline Rawls' theory of political obligation and civil disobedience. Finally I will make some comments on Rawls' argument that justice as fairness is a political conception to be applied to liberal societies.

The Original Position

Rawls posits a contractual theory of justice and like other contractarians before him he devises a hypothetical situation, the original position, which is to be

understood as a philosophical attempt to provide the basis of justification for the theory, not as an actual historical condition. The parties in the original position will not contract to enter a particular society or establish a particular form of government. "Rather, the guiding idea is that the principles of justice for the basic structure of society are the object of the original agreement. They are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association."² In the original position men must formulate principles governing their social life and institutions - principles which assign basic rights and duties and "determine the division of social benefits. Men are to decide in advance how they are to regulate their claims against one another and what is to be the foundation charter of their society".³ This is a once and for all choice of principles of justice by rational men in a position of equal liberty.

The purpose of the original position is to demonstrate that the principles would be chosen as a result of rational agreement. And on equality Rawls says that "it seems reasonable to suppose that the parties in the original position are equal ... obviously the purpose of these conditions is to represent equality between human beings as moral persons, as creatures having a conception of their good and capable of a sense of justice".⁴ To ensure impartiality - that is, to avoid any person trying to establish principles advantageous to his particular circumstances - the parties in the original position make their choice behind a Veil of Ignorance, unaware of their own abilities, their status in society, their particular conception of the good, the society's level of development and so on. "One excludes the knowledge of those contingencies which sets men at odds ...".⁵ Rawls considers that the original position "is fair between individuals as moral persons, that is, as rational beings with their own ends and capable ... of a sense of justice".⁶ The original position is "fair"; the principles agreed are "fair", hence "justice as fairness". A question to be considered is whether or not principles can properly be devised in this way and, as we shall see, the

absence in the parties in the original position of any substantive moral principles is considered a serious drawback.

The principles of a conception of justice are chosen which "regulate all subsequent criticism and reform of institutions"⁷, and any constitution, legislature and laws must accord with the principles. We are then to apply these rationally chosen principles of justice to the actual circumstances in which we live, and Rawls formulates this stage of his argument in terms of hypothetical consent theory. "Our social situation is just if it is such that by this sequence of hypothetical agreements we would have contracted into the general system of rules which defines it. Moreover, assuming that the original position does determine a set of principles ... it will then be true that whenever social institutions satisfy these principles those engaged in them can say to one another that they are cooperating on terms to which they would agree if they were free and equal persons whose relations with respect to one another were fair".⁸

The Principles of Justice

What principles would be chosen then by rational, mutually disinterested and equal individuals in the original position, principles which they must be prepared to live with no matter what the actual situation in which they find themselves? He argues that they would reject principles of utility which might lessen the prospects of some for the greater advantage of others, such principles being "incompatible with the conception of social cooperation among equals for mutual advantage".⁹ Because Rawls regards society as a cooperative venture, with everyone dependent on others, "the division of advantages should be such as to draw forth the willing cooperation of everyone taking part in it, including those less well situated".¹⁰ Realising this the parties in the original position, having decided between different conceptions of justice, would choose two principles, the first of which would assign basic rights and duties equally, whilst the second would allow social and economic inequalities

if, and only if, such inequalities benefited the least advantaged members of society. Moreover the parties in the original position would assign a lexical ordering to these principles so that the first must always be satisfied before the second, which means "in effect, that the basic structure of society is to arrange the inequalities of wealth and authority in ways consistent with the equal liberties required by the preceding principle".¹¹

This lexical ordering is in contrast to intuitionist theories, which have no method for deciding between competing principles, and which deny that competing first principles can have an order of priority. In the case of utilitarianism, on the other hand, all disputes are settled by reference to the single principle of utility.

The principles of justice will be applied to, and will regulate, the basic structure of society and our major social institutions. They assume a social structure of two distinct spheres. The first defines and secures political rights and duties; the second specifies and establishes social and economic inequalities.

There is an initial general conception of justice: "All social primary goods - liberty and opportunity, income and wealth, and the bases of self-respect - are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored".¹² At first all would insist on equal distribution since it would be unreasonable to expect more than an equal share and not rational to agree to less. On the other hand if certain inequalities make everyone better off (by encouraging more effective performance for instance) then why not allow them? In this general conception liberty is equal to other social goods and can be traded off against other benefits. However this general conception is only permissible in very special circumstances, namely "when social conditions do not allow the effective establishment of these rights"¹³ (i.e. basic liberties); furthermore those with the lesser liberty must be compensated.

Up to a point, Rawls is arguing, it is rational to pursue wealth at the expense of basic rights and liberties, especially when the exercise of political rights has little influence on the course of events. However the sacrifice of important political liberties is an unwise precedent to set since it excludes citizens from the policy-making process and establishes an elite who may be unwilling to restore the surrendered rights. Furthermore it is unclear how the suspension of liberties is a necessary step in establishing social and economic gains for the least advantaged. For if we assume these rights are voluntarily forfeited then it must be the case that the least advantaged understand why they are taking this step, so they would willingly do what was asked of them to secure the same gains without having to give up the rights in question. As Barry says it will not be possible to gain more wealth by trading liberty, unless one chooses "to be coerced into working harder than one thought worthwhile; and this it would clearly be irrational to do".¹⁴ It is also worth pointing out that a political liberty which cannot be used effectively to influence policy - for these are the rights which may be foregone - is a right hardly worth having, and would have little trade-in value. I shall return to this theme of the relationship between wealth and effective liberty.

Be that as it may the important point to note is that the general conception of justice does not apply once a certain level of wealth has been attained, and while it is in operation society must be developing to the stage at which social conditions are such that a lesser than equal liberty would no longer be acceptable. And as Rawls says a just and good society does not depend upon a high material standard of life. In any event he believes there will be a natural transition from the general to the special conception of justice.

The serial ordering of the two principles is reasonable and is a long-term tendency of the general conception, so that once the parties in the original position know that they can effectively exercise their basic liberties they will not agree to a lesser

liberty in exchange for economic benefits. This is a natural and universal preference.

Thus we move to the special formulation of the principles of justice:

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

Further the principles are ranked in lexical order so that liberty can be restricted only for the sake of liberty.¹⁵

The basic liberties referred to include the right to vote, freedom of thought and speech, freedom to hold personal property and so on. Restricting liberty for the sake of liberty means that if it is rational - and seen by all to be rational - that unrestricted liberty will be harmful, then some liberties may be restricted, just as unrestricted freedom to use cars, for example, may mean loss of liberty for cyclists. Scanlon argues that in an extreme case such as invasion it may well be true that conscription indeed restricts liberty for the sake of liberty (defending free institutions), but in other cases restrictions are in the common interest. For example, demonstrations may be restricted when holding them might prevent the enjoyment of other goods such as sleep, but this restriction is not for the sake of liberty itself.¹⁶

Whilst the first principle establishes equal distribution of rights, the second states that distribution of wealth and income need not be equal but must be to everyone's advantage, injustice being inequalities not to the benefit of all. The serial ranking means that a departure from the principle of equal liberty "cannot be justified by, or compensated for, by greater social and economic advantages".¹⁷ However this principle is jeopardised by the distinction Rawls makes between liberty and the worth of liberty as I shall explain later. We may, in passing, contrast Rawls' position with that of Nozick who, having declared the inviolability of individual rights, does allow some boundary-crossing provided compensation is paid, a necessary step in his argument that the minimal state can come into being without the transgression of individual rights.

The basic structure of society distributes certain primary goods - those goods (rights, liberties, power, opportunities, income, wealth) which rational men are presumed to want. Exchanges of basic liberties are forbidden by the special conception and this is a natural preference. Why is this a natural preference? Rawls argues that not only is it irrational to want, for example, ever-increasing wealth at the expense of liberty, but that excessive wealth becomes at best a distraction, at worst a hindrance to the well-ordered society. Effective liberty is not increased by ever-increasing wealth, over and above a level of well-being which enables the effective exercise of liberty. His argument is that at a certain level of material comfort men will become more interested in the pursuit of social and cultural interests (requiring, for example, freedom of conscience) and will aspire to the exercise of their political liberties in order to control their own destinies. It would not be rational for them to exchange liberty for further material benefits. If society is too involved in ever-increasing wealth it is striving for unattainable goals.

However it may well be that some people do in fact prefer more and more wealth to the pursuit of cultural, spiritual or social interests, and they may even prefer this at

the expense of some of their basic political liberties. Wolff argues that there may well be rational plans of life in which some trade-off could be quite appealing. The parties in the original position have no way of knowing whether their life plans would be such as to justify a strong emphasis on liberty as opposed to income, for example, and so have no reason to opt for the lexical ordering. Wolff insists that no general priority rule forbidding the exchange of any basic liberty can be supported by Rawls' argument since it is an argument based on Rawls' ideals, rather than on rational moral principles.¹⁸ Similarly Rawls himself concedes that some people may prefer fewer primary goods in the actual situation.

Rawls argues that the principles harmonise with our ordinary judgements and provide a coherent structure for them, distinguishing between rights and liberties on the one hand and economic and social benefits on the other. "The lexical ranking of the principles specifies which elements of the ideal are relatively more urgent"¹⁹ and provides a benchmark for judging all societies. However if the principles of justice define which considerations are morally relevant, is the notion of pure procedural justice or of a non-teleological theory contradicted? No, because the principles specify criteria for judging the justice of the basic institutions of society but are compatible with a wide range of goals. Moreover a society which is based on these principles will not necessarily maximise the good (the good being defined as the satisfaction of rational desires) because, being a deontological theory, it is not connected with ends; it does not interpret the right as maximising the good. The priority of the right over the good is the central feature of justice as fairness.

The parties in the original position do not know what will be their conception of the good. Thus it is rational for them to prefer an equal share of basic primary goods; they can accept less if they wish. But in general they know "they must try to protect their liberties, widen their opportunities, and enlarge their means for promoting their aims whatever these are".²⁰

Rawls also argues that the choice of the two principles is justified by the original position, being a maximin solution to the problem of social justice. A maximin solution is one in which the losses will be least significant, one which maximises the minimum pay-off. He contends that the two principles are those which a person would choose "for the design of a society in which his enemy is to assign him his place".²¹ In maximin the worst outcome is superior to the worst outcomes of other alternatives, and hence would be chosen if the parties had to protect themselves against such a contingency. Note that utilitarian principles, for example, could justify a lesser liberty for some if the more general good was satisfied.

A maximin argument can only be used for decisions taken under conditions of uncertainty, in a situation of great risk and in which no account must be taken of the likelihoods and possible circumstances. In the original position knowledge of likelihoods is impossible. A further condition is that the person choosing cares very little for what he can gain above the minimum he can be sure of. Since the parties in the original position do not know their specific conceptions of the good, nor their circumstances, they will not be prepared to gamble and lose the minimum they can be sure of (equality of wealth, opportunity, liberty) which offers the best opportunity to fulfil their life plans.

Thus he argues that if the two principles "provide a workable theory of social justice ... then this conception guarantees a satisfactory minimum".²² Now if this is so, and basic liberties are guaranteed along with a minimum specification for the distribution of wealth "there may be, on reflection, little reason for trying to do better"²³, and he considers this would be decisive if the lexical ordering of the two principles was established; but I have already pointed out that this may not be acceptable to everybody, that in fact some may want more material gains at the expense of equal liberty. Barber argues that Rawls' emphasis on equality and no-risk makes his theory incompatible with market capitalism and that "the no-risk

predilection for security may be atypical of human choice in the face of uncertainty".²⁴

Distribution of Wealth

The second principle determines the grounds for inequalities in the distribution of wealth. Rawls considers society to be a cooperative venture to which all must willingly contribute and in which all are equally entitled to have their own life plans and have a reasonable chance of fulfilling their plans. The principles of justice are formulated with these objectives in mind. Hence the difference principle states that inequalities must be to the advantage of the least well-off if their willing cooperation is to be forthcoming. The principles of justice are applied to the social, political and economic institutions of society which determine rights, duties and distribution. Rawls argues that there are several ways of interpreting the two principles so that all may be advantaged. Firstly, in a system of *natural* liberty, with equal liberty and a free market economy, career opportunities are based on talents and this determines distribution. Over a period of time this initial distribution is "strongly influenced by natural and social contingencies. The existing distribution of income and wealth, say, is the cumulative effect of prior distributions of natural assets ... as these have been developed or left unrealized ..."²⁵, with chance, too, playing its part. The most obvious injustice is that distribution is "improperly influenced by these factors so arbitrary from a moral point of view".²⁶

The second interpretation, liberal equality, tries to rectify the deficiencies of the first interpretation by adding a condition of fair equality of opportunity, so that "those with similar abilities and skills should have similar life chances"²⁷ - social class should not unduly affect aspirations, given similar ability. The liberal interpretation seeks "to mitigate the influence of social contingencies and natural fortune on distributive shares".²⁸ The free market system is modified to preserve

conditions necessary for fair equality of opportunity. However Rawls considers that distribution based on natural ability and talent - the outcome of "the natural lottery"²⁹ - is no more morally justifiable than distribution which is the outcome of "historical and social fortune".³⁰ Hobhouse, too, argued that it was inappropriate to reward men for the gifts they are born with. Rawls writes that the difference principle "does not require society to try to even out handicaps as if all were expected to compete on a fair basis in the same race"³¹, but it is intended to allocate resources to improve the long-term prospects of the least-favoured. In any event the principle of fair opportunity is limited by the individual's family circumstances since social and class conditions and attitudes determine, at least to an extent, the development of natural capacities.

It is the third interpretation, that which Rawls calls democratic equality, which combines fair equality of opportunity with the difference principle. He writes "... the higher expectations of those better situated are just if and only if they work as part of a scheme which improves the expectations of the least advantaged members of society. The intuitive idea is that the social order is not to establish and secure the more attractive prospects of those better off unless doing so is to the advantage of those less fortunate".³² If the difference principle is "a strongly egalitarian conception"³³ why does Rawls choose to abandon his principle of equality in favour of economic incentives for some, because it is obvious that the difference principle may result in very great discrepancies in the distribution of wealth? The proposition is, as Hobhouse reluctantly argues - recognising that one must take human nature as it is - that certain people may need economic incentives to encourage them to put the maximum amount of effort into wealth creation activities. However Rawls believes that society is a cooperative venture to which all contribute willingly, and therefore such a system of incentives must operate to the advantage of the least favoured. Note that Rawls does not try to justify the principle of incentives but merely points out that such an argument would have to

be used to vindicate any deviation from the position of equality. But is it possible for such a system to be compatible with the first principle of justice, and more importantly would the parties in the original position agree to it?

Entrepreneurs who require incentives are operating in a market economy; that is, they will only sell their talents if they believe they are getting the best possible deal - a better deal than others. They will then benefit everyone by creating more wealth to be distributed in such a way that the position of the least well-off is maximised. But such a market based system ill fits Rawls' vision of the cooperative society in which all are willing participants.

Firstly, he regards talents as natural assets which do not morally entitle their bearer to any special advantages and which should be used to the benefit of all, and the "two principles are equivalent... to an undertaking to regard the distribution of natural abilities as a collective asset".³⁴ Why, then, is it just to reward with more those who will only be motivated in this way, leaving less for those who work out of a sense of duty, for example? What of a natural duty to use one's talents for the good of all? Obviously the argument is that more wealth is generated for everyone, but in a competitive situation there is a tendency to take advantage of those whose primary aim is not material gain. It could be said that a sense of duty done is adequate reward for some but not for others!

Secondly, Rawls does not think inequalities will be significant for another reason: there is a "tendency for them to be leveled down by the increasing availability of educated talent and ever widening opportunities"³⁵, and this, together with the operation of the difference principle, will "insure that the disparities likely to result will be much less than the differences that men have often tolerated in the past".³⁶ Moreover Rawls believes that at some point it is irrational to prefer more wealth to other social goods. Here I believe his argument is psychologically unsound since

many of those thus motivated *will* want to accumulate wealth, either for its own sake as a tangible sign of success, or because of the influence and power it can purchase.

The sphere of political rights and duties should not be corrupted by those with great economic power, as Walzer argues.(see Chapter 4) However those with wealth and power tend to want to keep it rather than share it, and also tend to dominate the institutions which enable them to do so.

Rawls argues that the principle of utility, though expedient, is not just when some have less so that others might prosper, "but there is no injustice in the greater benefits earned by a few provided that the situation of persons not so fortunate is thereby improved".³⁷ Now this argument might hold as long as society is a cooperative. In other words everyone must benefit not just for reasons of prudence (that they will continue to cooperate willingly), but for reasons of justice - all contribute in some way and so all benefit. This is to reject Nozick's proposition that a man is entitled to the fruits of his own labour and that redistribution is tantamount to theft. But will those who require the motivation of special incentives continue to believe that it is just that all should benefit from *their* efforts? As the gap widens the notion of a cooperative may vanish. And the least advantaged will increasingly have to take it on trust that in the long term the system is maximising their position, since it will be obvious that in the short term they would benefit from equal distribution once additional wealth has been created.

In allowing this type of argument Rawls jeopardises his claim that society is a cooperative venture. We shall see that he believes that citizens may not uphold even a just constitution by making their due contribution if they believe that others are not making theirs. If this is so, then how much more likely is it that they will not cooperate when, even if they do contribute, they see others with much greater

wealth and power and influence in a society which is supposed to have equality as the basis of its system of justice? In essence Rawls' theory is designed for liberal individuals and it cannot sustain the values of a cooperative community, although Rawls denies this, a point to which I will return.

Thus we can see how a situation of instability could arise. For example, according to Sir John Bareham ³⁸ the top fifth of the population of the UK increased their share of available income from 38% to 48% between 1979 and 1987, whilst the bottom fifth's share remained the same, yet the latter's income increased because the cake is bigger. If we assume that in 1987 the position of the worst off was indeed maximised and they would be worse off under any other system, it is clear that it could be very difficult to make the least advantaged accept this argument, since the gap between top and bottom has widened, and because we tend to measure our material well-being in comparative rather than absolute terms. The situation could be made even worse, bearing in mind Rawls' remark that the difference principle is not a system of redress which tries to compensate through allocation of resources for undeserved inequalities. It does require the allocation of resources to help the least favoured but "if this end is attained by giving more attention to the better endowed, it is permissible; otherwise not"³⁹, so more and better education for the most talented could be justified on the grounds that it would benefit the least well-off in the long run.

Could the parties in the original position hold all these views simultaneously: (a) society is a cooperative venture; (b) talents are natural assets which do not morally entitle their owners to special rewards; (c) some people require a special type of motivation which entitles them to a more than equal share of wealth? If they must choose the option the worst outcome of which is better than the worst outcome of any other option, then they would argue for equal distribution in a cooperative in which all contribute to the best of their abilities. The reasons are firstly, the

incentives argument leads to the situation of instability already described. Secondly the least advantaged could do no better - there would be no "least advantaged" in material terms. Moreover they cannot agree to another system on the chance that they would be individuals with special talents to bargain with, since this is forbidden by maximin. All would have equal means to achieve their aims (although the aims of some may require a more than equal share of resources!) There would be no lesser worth of liberty for some to be explained away by saying that "the capacity of the less fortunate members of society to achieve their aims would be even less were they not to accept the existing inequalities whenever the difference principle is satisfied".⁴⁰

Liberty and the Worth of Liberty

Rawls writes that "liberty is represented by the complete system of the liberties of equal citizenship, while the *worth* of liberty to persons and groups is proportional to their capacity to advance their ends within the framework the system defines. Freedom as equal liberty is the same for all ... But the worth of liberty is not the same for everyone. Some have greater authority and wealth, *and therefore greater means to achieve their aims*".⁴¹ He remarks that poverty and ignorance effect the worth of liberty but are not "constraints definitive of liberty".⁴² Then he goes on to say that the lesser worth of liberty is compensated for since the less fortunate would be even worse off were it not for the difference principle. But this distinction between liberty and the worth of liberty undermines the first principle. He had said that a lesser liberty could not be compensated for by greater social and economic advantages⁴³, but here we see that the least advantaged must accept a lesser worth of liberty as well as economic and social disadvantage (the two going hand in hand). It cannot really be said that the lesser worth of liberty is compensated for by simply asserting that the least advantaged are better off than they would be without the difference principle - the compensation does not make good an unequal liberty or give to everybody an equal worth of liberty. The

compensation, if such it is, is inadequate since it does not significantly effect the chances of the least favoured to influence events. As Daniels notes "the very inequality of wealth and power, which ... acts to *increase* the index of the worst off individual can at the same time act to *decrease* his worth of liberty"⁴⁴. Thus there is a trade-off between equal liberty and economic advantage which was forbidden by the first principle. That is, the very fact of allowing such inequalities in the first place leads to a lesser worth of liberty for some. Moreover the least advantaged will almost certainly have a narrower range within which to make their rational choices, unless the society they live in is at a particularly high level of development.

But it is misleading and erroneous for Rawls to use this distinction between liberty and the worth of liberty to justify the less than equal chances some "equal" citizens have to influence the factors which determine their social and economic status, and hence their prospects of achieving their life plans. There is little point in having an "equal" liberty which cannot be used as effectively as another's same liberty. Furthermore this situation is hardly compatible with the maintenance of self-esteem. According to Daniels liberty is distributed in accordance with the first principle, worth of liberty in accordance with the second. The distinction between liberty and the worth of liberty means that "the incompatibility between equal liberty and unequal wealth and power, between the first and second principles, seems to disappear. Unequal wealth and unequal powers no longer cause inequality of liberty itself, only inequality in the worth of liberty".⁴⁵ He goes on to say that it would be rational to choose equal worth of liberty if choosing equal basic liberties is rational; it would be rational "to reject inequalities in wealth and powers if they create similar obstacles" to those which would inhibit equal worth of liberty of conscience, such as "adverse majority opinion or unfavourable utility calculations".⁴⁶ He goes on, "there is no way to accept unequal worth of liberty in the original position. [It] cannot be compensated for by increases in other primary

goods, since the reasons for granting priority to equal basic liberties apply to equal worth of liberty with equivalent strength".⁴⁷ The distinction between liberty and the worth of liberty "has no satisfactory rationale"⁴⁸, the principle of equality of liberty is "a hollow abstraction ... if it is not accompanied by equality in the ability to exercise liberty. Further, since equality in the ability to exercise liberty is directly affected by the distribution of wealth and powers ... a strong egalitarian sentiment in the political sphere may not be so isolatable as Rawls and earlier theorists had hoped from strong egalitarian demands in the social and economic sphere".⁴⁹ Rawls recognises this when he writes that the better-placed members of society have more chance of gaining political office and of taking advantage of opportunities, and are more likely than others to have political obligations⁵⁰, but I shall return to this question later.

In Rawls' argument the parties in the original position agree to the difference principle lest they find themselves in the least-favoured position. They are concerned solely with their own welfare. However it would be rational to share talents and resources in a cooperative venture because this is both a better guarantee of their own position and because it is more satisfying for social beings. Although the parties in the original position are mutually disinterested, they do have "a natural duty of mutual respect which asks them to treat one another civilly"⁵¹, and it adds to the stability of the system if, in choosing self-regarding principles they incidentally choose principles which "publicly express men's respect for one another".⁵² But the gain is not that this engenders any sense of community and cooperation, but rather "in this way they insure a sense of their own value".⁵³ Why would the parties in the original position agree to a system which may result in some having to accept less simply because others would refuse to contribute on any other basis? This is hardly a just cooperative system, "a scheme of mutual benefit" or the public affirmation of each man's endeavours⁵⁴, and does not meet the criteria of "the natural duty of mutual respect which asks them to treat one another

civilly"⁵⁵, or as ends in themselves.

What is lacking in Rawls' theory, then, is a strong statement of principles of equality and community which would not be subject to modification as a result of arguments such as those justifying incentives. For if the principle of equality is prey to such an argument then Rawls has *not* left aside "those aspects of the social world that seem arbitrary from a moral point of view".⁵⁶ He seems to want the advantages of a cooperative society but as a by-product of a scheme designed to ensure the best possible deal for self-interested individuals, and this is a very unstable basis for cooperation, as I have already argued. Thus he writes: "the two principles are equivalent ... to an undertaking to regard the distribution of natural abilities as a collective asset so that the more fortunate are to benefit only in ways that help those who have lost out. *I do not say that the parties are moved by the ethical propriety of this idea*".⁵⁷ Cooperation seems to be more a means to an end than the very basis of society. It should not simply be the most convenient way of securing one's own advantage, but the very foundation of social life, of the good society of mutually respectful people who *are* concerned for one another's well-being.

Procedural Justice

Rawls believes that eventually there will be a levelling of incomes, without a significant wealth gap, but this may not be so and, as Hobhouse pointed out, it is necessary to judge a social and economic system by its results. This is a sharp contrast to Nozick's entitlement theory of distributive justice, which states that whether or not a holding is just depends on how it came about. Justice as fairness defines a system of rules which determines how social and economic institutions will operate, but no precise goals for society are specified. The two principles are compatible with a variety of social arrangements, and as long as they are operating, the outcome is just; that is to say, it is a non-teleological theory of pure procedural

justice in which "there is no independent criterion for the right result : instead there is a correct or fair procedure such that the outcome is likewise correct or fair, whatever it is, provided that the procedure has been properly followed".⁵⁸ The outcome itself cannot be judged independently of the procedures through which it came into being, but Rawls believes the outcome will (and should) satisfy the second principle of justice; that is, distribution must be to the advantage of the least well-off. No such outcome is demanded by Nozick.

Thus, what is crucial to pure procedural justice is not a criterion for judging the outcome, but for judging the basic structures "including a just political constitution and a just arrangement of economic and social institutions".⁵⁹ Unlike Nozick, Rawls believes that a duty of government is to redistribute wealth because he believes that a particular pattern of distribution is specified by the second principle. Law and the branches of government act to ensure that the economic system works in such a way that "the resulting distribution of income and pattern of expectations will tend to satisfy the difference principle".⁶⁰ We start from a position of equality and any diversion from equality must be justified. As an illustration Rawls writes that "the difference principle is a strongly egalitarian conception in the sense that unless there is a distribution that makes both persons better off (limiting ourselves to the two-person case for simplicity), an equal distribution is to be preferred".⁶¹ Moreover the results of applying fair procedures would always be the maximisation of the position of least favoured representative persons. However Rawls calls his system procedural because he is not looking at individuals and at a certain stock of goods and judging the relative position of individuals, but rather at "the arrangement of a basic structure".⁶² All must receive the social minimum. The difference principle is satisfied when the "total income of the least advantaged ... is such as to maximise their long-run expectations ..."⁶³ Although Rawls writes that "the intuitive idea is to design the social system so that the outcome is just whatever it happens to be, at least so long as it is within a certain range"⁶⁴, the range is not

specified. It is obvious that the result of applying the second principle could vary from equality to great inequality. He himself writes that "nothing guarantees that inequalities will not be significant".⁶⁵

Considered Judgements

Rawls' object is to show that the two principles of justice are indeed those that would be chosen by the parties in the original position, and the original position is designed to lead to this conclusion, for as Rawls says "we may conjecture that for each traditional conception of justice there exists an interpretation of the initial situation in which its principles are the preferred solution".⁶⁶ Now there is a certain circularity in the argument about the conditions of the original position, because he suggests that a particular description of the original position is justified if the principles chosen match our considered convictions of justice and "whether applying these principles would lead us to make the same judgements about the basic structure of society which we now make intuitively".⁶⁷ If the principles derived do not match these judgements "we can either modify the account of the initial situation or we can revise our existing judgements".⁶⁸ For example the parties in the original position may decide it is not rational to save for future generations "so in this instance the Veil of Ignorance fails to secure the desired results. Therefore I resolve the question of justice between generations in a different way by altering the motivation assumption".⁶⁹ The coherence constraint means that the principles selected in the original position must generate judgements which more or less match with our considered judgements about what is just.

"Eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgements duly pruned and adjusted. This state of affairs I refer to as reflective equilibrium."⁷⁰ In other words the original position is a device through which we can both assess and justify our considered judgements. It clarifies our intuitive

judgements, for if we appeal directly to these intuitive judgements we have a problem in assigning weights to them. However this process seems to me to negate Rawls' arguments for denying to the parties in the original position any substantive moral principles, limiting them to knowledge of certain general assumptions about social institutions, with all contingent circumstances erased. He writes that the justification of a conception of justice "is a matter of the mutual support of many considerations"⁷¹, not least of which, surely, is consideration of our own experiences, which reveal to us the deficiencies of either our intuitive conceptions or of the social institutions which regulate their operation.

After all it is the principles which we hold now, which have been formed over time, and the operation of the institutions of the state and the principles which lie behind them, which are both being judged through the device of the original position, and which are being used as the yardstick against which the principles deriving from the original position are being judged. Barry says that "in real life people disagree on moral principles because they have conflicting interests"⁷², but if they cannot be influenced by these conflicting interests, as in the original position, they can reach agreement. If we allow the parties in the original position to have substantive moral notions "we have to say that in the absence of self-interested biases people would agree on this or that principle, which is not deduction but assertion".⁷³ I return to this theme later when I examine the nature of Rawlsian society, and it will recur in my discussion of Walzer in the following chapters.

Duty and Obligation

The original position is necessary from a philosophical point of view as the device for the making of the hypothetical contract. The contract is necessary since it implies that men are ends in themselves capable of having their own conception of the good and who should be treated at the very least "in accordance with the principles to which they would consent in an original position of equality".⁷⁴

Membership in the society into which we are born is not a matter of choice - it is not the result of a contract - but "a society satisfying the principles of justice as fairness comes as close as a society can to being a voluntary scheme, for it meets the principles which free and equal persons would assent to under circumstances that are fair".⁷⁵ No obligation can be derived from a hypothetical contract. What then is the relationship between the citizen and a state based on Rawlsian principles, and to what extent does political obligation depend upon our consent, or upon any voluntary act, in Rawls' theory, given that we are to apply the principles to actual states which we are born into and have not joined voluntarily?

Rawls distinguishes between duties and obligations. The former apply to us regardless of any voluntary acts and "they have no necessary connection with institutions or social practices".⁷⁶ Obligations, and some natural duties, "presuppose principles for social forms"⁷⁷, which is to say that principles for institutions must be chosen first, before those governing obligations and duties for individuals can be formulated. Natural duties "obtain between all as equal moral persons".⁷⁸ They are derived from the contractarian situation; that is, they are the duties that would be acknowledged in the original position, but the parties in the original position would consider it appropriate that these duties should apply to all regardless of any act of consent. So, for example, we have a duty not to harm others or to inflict unnecessary suffering. We also have a duty to support just institutions - "each is bound to these [just] institutions independent of his voluntary acts".⁷⁹

From a contractual position certain principles defining natural duties are formulated which apply to everyone unconditionally - political duty does not depend upon consensual acts. Everyone has a duty to support institutions which are just (or nearly just) as judged against the principles which would be chosen in a hypothetical situation, principles to which we all would agree in the same circumstances. Is it not paradoxical that free and equal persons should have

unconditional duties imposed upon them? Rawls argues that we would willingly accept such duties because they underwrite the notion of society as a cooperative venture, confirm the bases of self-worth and mutual respect, and ensure the stability of the just society.

But why do the parties in the original position insist that one such natural duty, and the most important, is that of supporting just institutions? Should not this particular duty be conditional upon a voluntary act, in keeping with the contractual nature of the theory of justice? Rawls believes that since "the full complement of the equal liberties is already guaranteed"⁸⁰ there is nothing to be gained by insisting on an act of voluntary consent. Moreover if the requirement to support just institutions is unconditional then this is the most direct way to secure their stability. This natural duty is the minimum necessary to maintain social life. You must support just institutions because they comply with principles to which you would have agreed in an initial situation of equality. Consent is irrelevant and the need to find a consensual act is obviated. This is important because Rawls recognises the difficulty in identifying such an act. Furthermore, if duty depended upon consent "citizens would not be bound to even a just constitution unless they have accepted and intend to continue to accept its benefits".⁸¹ Hence the instability of just institutions if their support is a matter of voluntary acceptance. Even those who did give their support may wonder whether others regarded themselves as bound. "Therefore the parties in the original position do best when they acknowledge the natural duty of justice."⁸²

It is clear, then, that Rawls' theory of political obligation differs from traditional contract theory in that the duty to support just institutions is not dependent on any act of one's own, explicit or tacit. In other words, the duty is not contractual in form. No *contractual* obligation arises from the fact that Rawls casts his theory in terms of hypothetical consent - we would agree to the principles of justice if we

were in the Rawlsian original position. This simply defines the principles of justice which we have a natural duty to uphold. As Carr says, the original position is a device which dramatises the conditions we would accept for reaching the principles of justice and the restrictions we would want to place on them.⁸³

But Rawlsian society would be a cooperative undertaking; obligations arise when people engage in a mutually advantageous cooperative venture and restrict their liberty so that everyone gains. Those who accept the restrictions have a right to a similar acquiescence on the part of all those who have thus benefited. However Rawls is unwilling to apply this principle, to put it to the test in the case of the polity. The state is not a cooperative according to his own definition, although from a practical point of view his reasons for formulating the principle of duty in this way may seem compelling. For Rawls consent is not a necessary condition of political obligation for the majority of citizens. And, as I shall explain, he believes that citizens in the Rawlsian state would be bound together in a social union based on known and accepted principles.

Obligations, as opposed to natural duties, are accounted for by the principle of fairness, which holds that a person is required to do his part as defined by the rules of an institution when firstly, the institution is just (that is, when it satisfies the two principles of justice); and secondly, "one has voluntarily accepted the benefits of the arrangement or taken advantage of the opportunities it offers to further one's interests".⁸⁴ Those engaged in a cooperative venture must do their fair share. Note that obligations arise in this way because that is how the principle of fairness defines an obligation, and the first part of the principle means that it is impossible, regardless of any voluntary consensual act, to be obligated to an unjust government. Rawls writes "it is, therefore, a mistake to argue against justice as fairness and contract theories generally that they have the consequence that citizens are under an obligation to unjust regimes which coerce their consent or win their tacit

acquiescence in more refined ways".⁸⁵ Valid consent requires a just state as a necessary condition.

Obligations, then, originate in voluntary acts which may be express (such as promising), or in the acceptance of benefits. The notion of accepting benefits cannot be applied to all citizens residing in a community (who may accept the benefit of common security, for example) and therefore become, by extension, an act of consent common to all citizens. The majority of citizens have no political obligation, as defined by Rawls, for there is no clear consensual act which the majority have performed.

Obligations are normally owed to the other individuals with whom the obligated person is cooperating. So, for example, running for and winning office "gives rise to the obligation to fulfil the duties of office, and these duties determine the content of the obligation".⁸⁶ Now the duties of office are not moral duties but responsibilities attached to a specific institutional position, although one may have a moral reason for discharging the duties "as when one is bound to do so by the principle of fairness".⁸⁷

The obligations arising from the principle of fairness are not obligations of contract. Once "a complete conception of right is on hand, we can simply forget about the conception of original position, and apply these principles as we would any others"⁸⁸ he writes. That is to say, the principles of natural duty and fairness are derived from a hypothetical situation but this does not mean that duties must be contracted into. Similarly, whilst obligations depend upon voluntary acts they are not obligations because of either the original hypothetical contract or a later specific contractual act, but because the actor voluntarily performs an act the nature of which, as defined by the principle of fairness, gives rise to an obligation. So, for example, the political obligation acquired by an office-holder does not arise

from a contract.

Rawls says "we should note that, since the principle of fairness may establish a bond to existing just arrangements, the obligations covered by it can support a tie already present that derives from the natural duty of justice. Thus a person may have both a natural duty and an obligation to comply with an institution and to do his part".⁸⁹

So an office-holder may have a natural duty to support certain just arrangements, coterminous with everyone else's similar natural duty; he may also have an additional obligation to support these arrangements in specific ways deriving from the duties of his office.

It would be possible to make obligations depend on the natural duty of justice by construing "the requisite voluntary acts as acts by which our natural duties are freely extended".⁹⁰ However Rawls writes that "it seems appropriate to distinguish between those institutions ... which must inevitably apply to us since we are born into them ... and those that apply to us because we have freely done certain things as a rational way of advancing our ends"⁹¹, and the principle of fairness, from which obligations are derived, emphasises the distinction.

The better off are more likely to acquire political obligations because they are more likely to achieve their ends through acquiring office (supposed to be open to all equally!), or through influencing people and events. I have already drawn attention to the problem of the worth of liberty in Rawls' theory. The better placed members of society are more able to take advantage of opportunities offered to them - the worth of liberty depends not only on a person's abilities but on the distribution of economic benefits. The weakness of the first principle is apparent - its worth depends on the distribution of wealth which is regulated by the second principle, and the hollowness of the distinction between liberty and the worth of liberty is exposed. Although I have criticised this aspect of the theory, Rawls is consistent in

arguing that since the more privileged members of society obtain greater benefits from the system of cooperation they have an added burden of responsibility - an obligation over and above their natural duty to support the just state. Even though Rawls has argued that this natural duty applied to all would increase stability, this could well be offset by the instability caused by economic inequalities in circumstances which I described earlier.

Civil Disobedience

Rawls recognises that no society will be perfectly just and that "there is no feasible political process which guarantees that the laws enacted in accordance with it will be just".⁹² However we must accept unjust laws, or at least not oppose them through illegal means, if the injustice is not too great because we are required to support just institutions, including the imperfect but necessary principle of majority decision-making. We accept some injustices because all-in-all it is better to have an imperfect procedure than none at all, provided that the burden of injustice is evenly spread over different groups over a period of time. Permanent minorities suffering injustice over many years may find the duty to comply problematic. And no one is required to acquiesce in the denial of his basic liberties.

Even rational legislators may disagree about which policy will most closely cohere with principles of justice. Discussion "checks our partiality and widens our perspective".⁹³ However a range of options may be available and "if the law actually voted is ... within the range of those that could reasonably be favored by rational legislators conscientiously trying to follow the principles of justice, then the decision of the majority is practically authoritative, though not definitive".⁹⁴ This Rawls calls quasi-pure procedural justice, since its outcome does not define the right result. Those who disagree have not been able to persuade a majority to their point of view, and though they are required to uphold the decisions taken they are not required to think them just - they do not submit their judgement to the

majority's.

Rawls formulates a theory of civil disobedience applicable to a nearly just society. He asks "At what point does the duty to comply with laws enacted by a legislative majority ... cease to be binding in view of the right to defend one's liberties and the duty to oppose injustice?"⁹⁵ An act of civil disobedience is a non-violent illegal act aimed at drawing public attention to a violation of the principles of justice, and should be limited to cases of substantial and clear injustice. "When certain minorities are denied the right to vote or to hold office, or to own property ... or when certain religious groups are repressed ... these injustices may be obvious to all."⁹⁶ Indeed they may, and in a nearly just society one wonders how such blatant infractions of the principles of justice could be enacted into law.

Moreover Rawls argues that, for the sake of fidelity to law, the persons engaged in civil disobedience should willingly accept their punishment, but this seems harsh indeed on minorities persistently robbed of their basic liberties, and whose respect for law may well be severely tested by their experiences. In such cases resort to civil disobedience is surely uncontroversial. On the other hand violations of the difference principle, applied to economic and social policies and institutions, are more difficult to measure and "there is usually a wide range of conflicting yet rational opinion as to whether this principle is satisfied".⁹⁷

Citizens who are members of minorities with such justified causes of civil disobedience as those cited are unlikely to have a political obligation, since they cannot take full advantage of the system of cooperation. More to the point, I think, is whether they have a natural duty to support a constitution deemed to be nearly just and which is so obviously unjust to this particular group. They do have obligations arising from the principle of fairness insofar as this principle comes into force in their private transactions, or in the small groups or associations which

individual minority members may join, including political groups. In these cases individuals may have a political obligation not to the state or to citizens generally but to fellow group members. Obligations of this type are discussed by Michael Walzer, to whom Rawls refers⁹⁸ and whose theories I discuss more fully in the next chapter.

The parties in the original position would agree to this conception of civil disobedience since it emphasises the contractual nature of the principle of justice as those agreed among equals. "To deny justice to another is ... to refuse to recognise him as an equal."⁹⁹ Civil disobedience draws attention to injustice and stabilises the constitution because submission would lead to further contempt for the victims, whilst resistance would break the ties of community. Although we normally accept the outcome of the voting procedure, in cases of serious disagreement a person may feel he cannot accept the majority decision and that civil disobedience is justified. Rawls argues that the individual is accountable for his deeds and has to make his own decision. The fact that we can disobey laws and have to make a moral choice means that the concept of duty (which is not dependent on voluntary acts) does not undermine the individual as an autonomous agent. A theory of civil disobedience recognises that the power of the state to make moral decisions is limited. Note that we are talking about an individual's interpretation of the principles of justice, the political principles on which the constitution is based, the objective criteria against which institutions, policies and laws are to be measured. This is the Archimedean point as Rawls call it. Objections based on religious or moral views are a separate matter. "A person's conscience is misguided when he seeks to impose on us conditions that violate the principles to which we would each consent in [the original position]".¹⁰⁰ Rawls writes that "the degree of tolerance accorded to opposing moral conceptions depends upon the extent to which they can be allowed an equal place within a just system of liberty"¹⁰¹, and I now turn to his explanation of the political nature of justice as fairness.

Rawlsian Society

In stressing the freedom of the individual liberal theorists are called to task for ignoring the values of community. Rawls recognises the problem when he asks whether the contract doctrine is "a satisfactory framework for understanding the values of community and for choosing among social arrangements to realise them".¹⁰² Is the congruence between the right and the good only to be found in achieving the good of the community? Rawls argues that because, in the original position, each person is assumed to have a different conception of the good, it could be thought that the social order is conceived of as a private society, in which the basic arrangements are accepted not as good in themselves but as the best means to achieve personal ends. However Rawls rejects the idea that the original position should be interpreted as a private social order. "The account of goodness as rationality and the social nature of mankind ... requires a different view."¹⁰³ And in *this* view we value common institutions as good in themselves and recognise ourselves as members of a "social union founded upon the needs and potentialities of its members",¹⁰⁴ in which we delight in the excellence of others and share "in the total sum of the realized natural assets of the others".¹⁰⁵

There are many social unions - families, friendships, groups, associations - the essential elements being "a shared final end and accepted ways of advancing it which allows for the public recognition of the attainments of everyone".¹⁰⁶ The just or nearly just society is itself a social union, a social union of social unions, and its final end is the acceptance, support for, and development of just institutions seen as good in themselves. The members of such a society "have the common aim of cooperating together to realize their own and one another's nature in ways allowed by the principles of justice"¹⁰⁷, and in so doing "individually and collectively their nature as moral persons is most fully realized, and with it their individual and collective good".¹⁰⁸

Individual life-plans are "adjusted to the plans of others by mutually acceptable principles"¹⁰⁹ expressed in the public institutions of society, "a superordinate plan" which is not a dominant end to which all others are subordinate, but the realisation of the principles of justice in which all participate and regard as good. This Rawls deems to be "the preeminent form of human flourishing"¹¹⁰, because we both appreciate the moral virtues of others applied to upholding the just society, and because these just institutions, which all are dedicated to support, allow individuals to achieve their particular ends. "The public realization of justice is a value of community".¹¹¹ We achieve what we can, joining our activities to others' in contribution to the common culture. Thus each person does not seek to be complete in himself but to find fulfilment in "willing and meaningful work within a just social union of social unions in which all can freely participate as they so incline".¹¹²

It is important to place Rawls' remarks about the common end of society in the context of his interpretation of justice as fairness as a theory applicable to the *political* institutions of society, regulating men's relationships to one another as citizens. Unity is based not on one comprehensive philosophical, moral or religious doctrine but on an overlapping consensus of a political conception of justice held by all, with basic institutions which satisfy these principles and citizens who have an effective sense of justice. "Social unity so understood is the most desirable conception of unity available to us; it is the limit of the practical best."¹¹³ A society based on the principles of justice as fairness is a good for citizens since it secures their basic rights and liberties - it is a political good; and secondly, when the shared final ends (such as support of just institutions) depends "on the cooperation of many to achieve it, the good realised is social".¹¹⁴

Justice as fairness is an essentially liberal conception; the contract device serves to emphasise the political tradition from which the theory is derived. It assumes

conflicting and incommensurable conceptions of the good, and tries to establish the basis for cooperation among people holding such diverse beliefs. Rawls counters charges of abstract individualism which may arise as a result of his use of a hypothetical contract situation by pointing out that it is a device to help us to reason, presupposing no metaphysical doctrine of the person. Political persons, persons as citizens, are free in three ways. Firstly, they have the moral power and the right to have, and to revise, their own conceptions of the good, and this is a power recognised in others. This is in contrast to societies in which basic rights may depend on, for example, religious affiliations. Secondly, "they regard themselves as self-originating sources of valid claims. They think their claims have weight apart from being derived from duties or obligations specified by the political conception of justice ..." ¹¹⁵ Thirdly, "... they are regarded as capable of taking responsibility for their ends ..." ¹¹⁶ They will adjust their ends to keep them within the boundaries set by the principles of justice, in a system of fair cooperation, given their "prospects and situation in society". ¹¹⁷ I have already pointed out that the least favoured might feel their life plans to be severely and unfairly restricted, and might need to be persuaded that their lot is the best possible.

This political conception of the individual is, like justice as fairness, a liberal view. Justice as fairness is not a moral ideal governing all aspects of life. It is assumed that there will exist conflicting conceptions of the good, but people as citizens accept the constraints which are imposed as a result of the application of the principles of justice, without necessarily being committed to the moral ideals of liberalism such as individual autonomy and individuality. That is to say, as citizens we are committed to toleration of others' beliefs and conceptions of the good and to the idea that they are free to choose for themselves. "Justice as fairness tries to present a conception of political justice rooted in the basic intuitive ideas found in the public culture of a constitutional democracy" ¹¹⁸, in contrast to the comprehensive moral ideals of the liberalism of Kant or Mill, for instance. Indeed

he rejects the notion of a political society united in its belief in any such comprehensive doctrine. "This possibility is excluded by the fact of pluralism together with the rejection of the oppressive use of state power to overcome it".¹¹⁹ It may be concluded, then, that justice as fairness would be accepted solely for prudential reasons, a *modus vivendi*, stable only until self-interests are threatened. But Rawls believes this not to be so, that citizens would consider the just society as a good in itself. Justice as fairness is a moral conception, albeit restricted to the basic structure of society, having "conceptions of persons and society, and concepts of right and fairness, as well as principles of justice with their complement of the virtues ... this conception of justice provides an account of the cooperative virtues suitable for a political doctrine ..." ¹²⁰

The political conception expresses values; for example, it explains why certain issues such as liberty of conscience or the prohibition of slavery are accepted by all the rival comprehensive doctrines and are not open to public debate. These values can be asserted if some insist that a certain question, such as salvation of souls, is important enough to justify civil strife. The doctrine of liberty of conscience is asserted and "we deny that the concern for salvation requires anything incompatible with that liberty".¹²¹ Toleration, reasonableness and a sense of fairness are "very great" virtues, and when they sustain a political conception of justice they constitute a notable public good. Even if the liberal conception is accepted at first as a *modus vivendi* he believes there would be "a tendency for the essential cooperative virtues to develop"¹²², fostering an allegiance to the liberal political conception of justice and a belief in "the possibility of a reasonably harmonious and stable pluralist society".¹²³ The values and ideals of the publicly held conception of justice would "normally outweigh whatever other values oppose them"¹²⁴; that is, the values of comprehensive doctrines which may oppose the virtues of freedom of conscience, toleration, the idea of society as a cooperative venture between free and equal citizens.

The idea is that starting from the intuitive notion of society as a system of social cooperation between free and equal persons with different conceptions of the good, social unity is founded on "a political conception of justice to regulate the basic structure of society"¹²⁵, which limits "the conceptions of the good which are permissible".¹²⁶ Rawls writes that "to find a shared idea of citizens' good that is appropriate for political purposes, political liberalism looks for an idea of rational advantage within a political conception that is independent of any particular comprehensive doctrine and hence may be the focus of an overlapping consensus".¹²⁷

If, then, justice as fairness establishes the basis of social cooperation and if its public realisation is a value of community, and if it is affirmed by an overlapping consensus of religious, philosophical and moral doctrines, could it not be accepted as an ideal by communitarians who seek common values? I will argue that Walzer's theory of spheres of justice fails because he regards the state as the ultimate community, and that in the modern liberal democratic state no values are held in common sufficiently strongly to form the basis of an acceptable theory of distribution. Rawls' theory of justice is rejected by both Nozick and (for very different reasons) by Walzer, who believes that a system of justice must be based on the actual society - its beliefs and historical experiences - for which it is intended, and that no set of basic primary goods is "correct" for all societies. As Schaefer writes, "it does not appear possible to devise adequate principles for the regulation of a particular society, knowing nothing of that society's distinguishing characteristics".¹²⁸

Rawls, of course, has argued that his theory is applicable primarily to contemporary liberal democracies, but this would not alter Walzer's position since he (Walzer) believes that in arguing for principles of justice men should not try to detach themselves from reality but bear in mind common understandings and choices already made. Moreover Walzer would not accept the difference principle because



he believes that the polity has to make much more specific decisions about the nature and quantities of the goods which need to be distributed to sustain citizenship.

The construction of the theory through the device of the original position concerns Nagel, who asks "why should parties in the original position be prepared to commit themselves to principles that may frustrate or contravene their deepest convictions, just because they are deprived of the knowledge of these convictions?"¹²⁹ Craig argues that the theory's built-in individualism prevents Rawls from considering communal conceptions of justice. Toleration defends "... a kind of pragmatic social peace purchased at the price of the serious and full pursuit of other values".¹³⁰ The parties in the original position cannot choose a conception of justice which embodies an idea of the good life because they haven't the knowledge necessary to make this choice. He is arguing that liberal contract theory with its emphasis on individual liberty and freedom of conscience, and which treats men as ends in themselves, capable of reaching their own decisions about the good, is an attempt to "make morality function in a mass society".¹³¹ But men will only reach their potential as social beings in a good society with commonly held values, in which the individual is known and respected, and cares for his reputation. Schaefer writes that "different regimes rest on different conceptions of justice ... Each of these conceptions reflects a somewhat different view of the common good, and ultimately of the good of the individual human being. One cannot, therefore, evaluate a particular conception of justice except in light of a critical analysis of the substantive view of the good on which it depends and of an empirical observation of the facts of political life".¹³² He is arguing that within the liberal state of Rawls people are not free to pursue certain conceptions of the good because the principles on which the basic structures of society are founded are not compatible with such conceptions. He asks how much cooperation can exist among men with irreconcilable aims or severely different beliefs.

This question of the presence or absence of shared values in a political community cannot easily be settled within the context of contemporary liberal democracies. Recognising this, Rawls has attempted to limit his theory to a political conception in order to enable people with irreconcilable differences to live together. Although he has written that the priority of the right over the good sets limits on which comprehensive doctrines are permissible, the principles of justice must sustain "ways of life that citizens can affirm as worthy of their full allegiance".¹³³ His political conception of justice contains political ideas of the good which can be shared by free and equal citizens whilst not presupposing any comprehensive doctrine. He believes that justice as fairness is not procedurally neutral since it is based on principles that are substantive, but it is neutral in that all citizens are allowed to advance their aims equally with no particular conception of the good being favoured.

Obviously there may be some people whose conception of the good is such that they are not prepared to tolerate divergent views, and in these cases it is difficult to see how cooperation is possible. Schaefer argues firstly, that not all can pursue their conceptions of the good equally under justice as fairness because of the very formulation of the two principles and the way they regulate institutions, and secondly, that some regimes may work very well based on different conceptions of justice and the good. Rawls preempts the development of such regimes by insisting on his concept of the right being prior to the good. Rawls is particularly open to attack in this way because he presents his arguments in the form of a rational discussion. The principles are chosen because they are rational. His critics claim the choice of principles is inevitable given his starting point. No such criticism could be made of Nozick, who simply states his ideological starting point - it is not open to logical contradiction as Rawls' theory is. Similarly Hobhouse simply assumes a set of values based on persons as members.

Although there is indeed a diversity of views about virtue, morality and the good, this is something of a distraction since Rawls' principles are to be applied to liberal democratic societies which do *not* recognise a generally held conception of the good, but which will tolerate all conceptions as long as they are not imposed on others.

Toleration is a virtue in the liberal state, which does not use its power to impose a doctrine on those reluctant to have it thrust upon them. The role of the state is wider than that of the nightwatchman state of Nozick. It has to uphold the principles of justice. This involves redistribution and other adjustments to the economic system in accordance with the second principle, as well as regulation of social and political institutions to ensure fair equality of opportunity, freedom of expression and so on. But just how difficult it is in practice to separate the metaphysical, moral and religious from the political in contemporary liberal democracies was neatly illustrated by a Bradford councillor. In a television interview he suggested that moslems who objected to Salman Rushdie's novel should "leave all that behind them in the mosque". I took him to mean that in the mosque they could believe and say what they liked about Rushdie and his book, but outside, in the political sphere of freedom of expression, they must allow him to give voice to views repugnant to their deeply held beliefs. How far is it possible to tolerate, in the name of political freedom, what is intolerable to those basic convictions which give value and meaning to one's life? And this is a problem for *anyone*; even liberals can have strong beliefs, but perhaps uncertainty is a more typical liberal condition!

Barry argues that liberalism includes the idea "that every doctrine should be open to critical scrutiny and that ... no religious dogma can reasonably be held with certainty".¹³⁴ Could those without a liberal outlook support liberal institutions and "liberal policy prescriptions"¹³⁵ such as freedom of worship and expression; could they accept justice as fairness as a *political* theory?

Believers tend to have clear ideas of right and wrong which are not open to compromise. Moral convictions, says Barry, cannot be treated as mere preference, yet the principle of neutrality puts all belief systems and conceptions of the good on an equal footing, "but to accept that this is how things ought to be organised, it is necessary to have an outlook that is, in broad terms, liberal".¹³⁶ Although Rawls does not treat beliefs as preferences he thinks that they should be held as private opinions but, writes Barry, anyone who regards the teaching of the RC Church, for example, as a matter of personal opinion "must already have swallowed a large dose of liberalism".¹³⁷

He concludes that a liberal outlook is a necessary condition for supporting liberal institutions. (Obviously some may accept liberal values for prudential reasons, recognising the nature of the society they live in, rather than as a matter of conviction). And justice as fairness is not *simply* a political conception. As Rawls himself says it includes moral values and ideas of persons with the capacity to respect one another and to cooperate in a scheme of mutual benefit.

Despite Rawls' arguments about the political nature of justice as fairness and the engendering of public virtues within a cooperative society, I consider that a society based on Rawlsian principles would be prone to instability. I have argued that the operation of the difference principle would give greater incentives to those who would not cooperate on any other basis, and could lead to great inequality. I have been particularly critical of Rawls' distinction between liberty and the worth of liberty.

Rawls' theory is under attack from Nozick on the one hand and the communitarians on the other. It is to the latter that I now turn my attention, specifically to the ideas of Michael Walzer.

CHAPTER 4

Walzer, Liberalism and Community

Thus far I have examined the contrasting theories of Nozick, Hobhouse and Rawls. Nozick considers individuals to have inviolable rights which define boundaries which may not be crossed. These rights set limits on the actions of other individuals and governments. Moreover principles of distributive justice are based not on an end-state but on the individual's right to a particular holding, his entitlement being just if the process of gift and exchange has not been abused. Since the state is not an agency for achieving desirable ends it follows that it can make no claim on the individual. The welfare of others - whether or not and how much to contribute - is a decision for each individual to make for himself. Hobhouse, on the other hand, believed that true freedom is to be found in the collective life. Individuals have both rights and obligations, the latter defining that which is due from one to another. We have responsibilities to others as members of the same community, regardless of our individual consent, and it is the larger community, the state, which maintains and promotes a harmonious social life and through which we provide for the security and well-being of others.

I noted the tension between individual rights and the claims of community within Hobhouse's theory of the common good and the same tension is present in Rawls' theory of justice. This is inevitable in a social liberalism which wishes to reconcile the equal freedom and rights of the individual with membership of the state, given that this membership is not the result of a conscious voluntary decision. Rawls, of course, uses the hypothetical consent argument - the principles are those to which we would have agreed had we been in the situation of the parties in the original

position. Society is a cooperative venture from which all must benefit. He argues that we have a natural duty to obey just institutions, regardless of any consensual act, and that such natural duties give support to the notion of society as a cooperative venture. However, he has not succeeded in eliminating the strains between the competing demands of the individual and the community because the principles are devised to meet the demands of liberal individualism, not for a cooperative society. And insofar as Rawls calls his theory "political", he sets limits on the extent to which a modern liberal state can be regarded as a cooperative community with shared values.

Simmons argues that Rawls' natural duty to support just institutions will not suffice to bind us to a particular community since we are bound to support all just institutions wherever they may be.¹ Communitarian critics of liberalism believe that the values of community, with its traditions and shared understandings which give meaning to our lives, are undermined by individualism and its expression in contract theory. Michael Walzer writes that "the political community is probably the closest we can come to a world of common meanings".² (Note that it is as a *political* theory that Rawls believes his principles could form the basis of community values.) I wish to take issue with Walzer on his understanding of the state as a world of common meanings. I will examine the development of his thought as it is expressed in "Obligations : Essays on Disobedience, War and Citizenship" published in 1970, and "Spheres of Justice" published some thirteen years later.³ It will be seen that Walzer moves from the position that the citizen in the modern state is alienated from the state, with obligations to the state which are secondary to those he has to the groups of which he is a member, to the belief that the state is the embodiment of a collective consciousness which transcends all differences of interest and which redistributes the resources of the members in accordance with some shared understandings of their needs. Strong and weak, rich and poor are connected through the social contract interpreted as a moral bond.

It should be noted that "Obligations" is a series of essays from which I have tried to extract common themes and integrate them into a coherent whole. However, the very form of the book means that many questions arise which are not properly answered. It is not a rigorously argued treatise, whereas "Spheres of Justice" is a systematic exposition. One of the distinguishing and recurring themes in Walzer's writings, to which I will return, is that it is a mistake to attempt to formulate universal principles of justice; rather principles should be derived from concrete situations.

Walzer is a consent theorist, but in "Obligations" he argues that full consent is only given through active political participation. Moreover the kind of political activity which he envisages in this early work will inevitably result in conflicting obligations. I intend to discuss certain themes and questions arising from "Obligations" and contrast these with the arguments presented in "Spheres of Justice". Initially I will examine his theory of the origin of obligations, his notion of consent, his description of the relationship between citizen and state, and his solution to the problem of political participation and obligation.

Obligations

Most obligations have their origin in consent. However throughout his essays Walzer is careful to distinguish two types of obligation, one of which is clearly *not* dependent on consent. And if this is the case for one set of obligations, what is different in the second (i.e. political obligation) to justify his argument that it not only depends on consent, but on consent defined in a particular way?

The first set of obligations is to society, and these obligations are incurred by the very fact of residence, of daily intercourse and the relationships which arise therefrom. Even oppressed minorities and prisoners of war will develop such "obligatory ties"⁴. These relationships lead to understandings from which

obligations follow, including an ultimate obligation to defend society. Thus an "alienated citizen", that is, a non-participant in the political process, nevertheless has obligations: "He is bound to those actions necessary for the safety of the social life he shares"⁵. Although Walzer is quite explicit in his insistence on the separation of state and society, nevertheless there arise certain minimum obligations to the state, for he writes that "residence in a democratic state does, I think, generate a prima facie obligation to obey the laws of that state - in part because of the benefits that are necessarily accepted along with residence, in part because of the expectations aroused among one's fellow-residents, and finally because of the universality of obligation in a democracy, from which no resident can easily exclude himself"⁶. What Walzer means by the phrase "universality of obligation" is unclear in this context, given that the main thrust of his arguments is directed against, and minimises, our political obligations in the present democratic state. However, Walzer believes that residence gives rise to obligations to the state in exchange for benefits received, especially the security which makes social life possible; and the obligations which we owe to our fellow-residents, arising out of direct relationships with them, are not to be taken lightly. "Moved by love, sympathy, or friendship, men in liberal society can and obviously do incur ultimate obligations."⁷

The second type of obligations, political obligations, are "incurred through action",⁸ and include the obligation to defend the state (in contrast to society). These are the obligations of citizenship - a commitment to society *and* its political system, "to the survival of the particular organization and also to all those purposes beyond survival that the organization sets for itself"⁹. The full obligations of citizenship are only incurred by those who share in ruling and being ruled. The two types of obligation described by Walzer are not equivalent to Rawls' notion of duty (to obey a just state) and obligation (incurred by political activists).

To understand fully just how these obligations are incurred it is necessary to understand Walzer's notion of consent, the source of just power. Political consent is not one specific action - a promise, the making of a contract between strangers. Rather it is signified by a series of actions, freely made, over a period of time. These actions demonstrate a commitment to fellow-citizens or to those with whom we share a common group membership. Our moral knowledge is acquired in a group; commitments to principles are commitments to other men. A member of a group incurs obligations when there is a shared self-consciousness, and when he is involved in decision-making and public acts in support of the group's ideals. Certain actions, then, both demonstrate the existence of the group and at the same time obligate the actors.

Obligations result from group membership and actions because "action is the crucial language of moral commitment"¹⁰. To generate such obligations a citizen must be a participant in the moral life of the community. That is to say, in Walzer's restatement of social contract theory, "the individual's contract is obviously not a founding act; nor, I think, is it simply a solemn promise upon which all subsequent obligation is based...Rather, the contract must involve some acknowledgement of the reality of the common life and of the moral transformation which it makes possible ...the common life must be lived before it can be said to generate ultimate obligation"¹¹.

It is important to note that group membership is not subjugation to some collective will, or blind obedience. "A theory of consent and obligation must include a view of the consenting self : the person who incurs and carries the obligation has to be and continue to be ... an autonomous and responsible man or woman"¹².

It does seem to me that the distinction between a person's private obligations (to friends and family) and his political obligations is difficult to sustain in Walzer's

description, since political obligations are incurred in the moral life of the community. The citizen is self-directing only in the group, which (in an ideal participatory democracy) will influence policy and hence the citizens' private lives. Euben¹³ says that the distinction is only possible if politics is defined in a very limited way, because even in a liberal society the polity is the most all-embracing association and which is ultimately responsible for sustaining the physical, material, cultural and moral life of its members. It is therefore misleading to oppose state and politics to society and morality. Decisions in the political sphere set a tone and direction for every aspect of human intercourse, and we shall see that this is the argument which Walzer makes in "Spheres". Carole Pateman argues that "liberal theorists have been able to distinguish "political" obligation from other obligations precisely because it is owed to the state, or concerned with the political sphere and not everyday life ... When theorists argue that political obligation is owed to fellow citizens and turn to the everyday life of individuals in voluntary associations in their arguments about consent, the long tradition of liberal theory is being challenged"¹⁴. She correctly points out that for Walzer the group is more important than the state, both morally and politically, and that the horizontal relationships between group members are part of political obligation, from which she concludes that "Walzer's participatory pluralist conception of consent and political obligation cannot be confined within the bounds of liberal theory and practice"¹⁵.

In "The Problem of Citizenship"¹⁶ Walzer argues that the citizen has come to be seen as the recipient of benefits, most notably security, provided by the state, whereas social contract theory suggests that citizens are bound to each other, bound to protect each other. It could be argued that in contract theory the benefits each citizen receives are the result of his own action in being a party to the agreement, and that such a contract suggests a relationship of mutual dependency and restraint, and a willingness to obey the state insofar as it is instrumental in achieving the desired end. However, as Walzer says, the relationships of the obligated persons are

unclear. The horizontal relationship implied by contract theory is contradicted by the idea of the citizen as recipient of benefits. Exactly to what, and to whom, is the citizen obligated, and to what extent must he obey the state? If, in his opinion his protection is inadequate then he would be obligated neither to the state nor to his fellow-citizens. Essentially the citizen, in this view, is passive and private.

But if citizens complain about authority and try to participate in decision-making (as they should do - it is the citizens, not their instrument, the government - who should make decisions) then a rather different view of citizenship emerges. The contrast is between the passive and powerless citizen and the participant citizen concerned for the common good.

Participation and Consent

Participation is the key to Walzer's theory of political obligation and consent. The attenuation of the relationship between citizen and state, even in liberal democracies, means that opportunities for express consent are rarely available. "If consent theory is to be taken seriously, it must suggest some way of submitting oneself to a government other than by pledging allegiance to it, taking out naturalization papers, or becoming an active participant in its politics."¹⁷ The answer has been found in the notion of tacit consent. The acceptance of benefits implies an agreement to obey the laws and keep the peace, since these are the conditions which make the benefits possible. In this case the obligations of the visitor would be the same as the obligations of the citizen. Walzer rejects Locke's distinction between express and tacit consent in which both bind to the same extent, the former perpetually, the latter temporarily. Since government by consent implies the possibility of a reconsideration of one's political allegiances the bond of express consent is not perpetual. Tacit and express consent differ in character, not duration. The duties of tacit consent are limited to preserving the peaceful social

order - the obligations to society incurred through residence and normal daily intercourse. Ultimate obligations to the polity are only incurred through the expressions of consent and participation which make one a citizen, involving a commitment to the polity as well as to society.

This whole question of tacit consent and obligations arising from ordinary daily life is a problem in these essays. Walzer clearly states that he will not recognise any obligations other than those based on consent, which is signified by "some act of our own"¹⁸. How, Euben asks, is tacit consent "an act of my own"? "It seems to me simply not demanding enough to say that a man tacitly consents when he is involved in personal and social relations, for that is as much as to say that any man who lives in a society tacitly consents to it."¹⁹.

It is important to note that a participant citizen is one committed to the polity and its purposes, but that the purposes of the state, even though they are just, will not in themselves obligate citizens. "In the context of consent theory we do not say that the government is just, therefore the citizens are obligated, but rather that the citizens have committed themselves, therefore the government is just."²⁰ Walzer *defines* a just government as one whose citizens have consented to it - who have actually exercised their right to consent to it. "A just government must be one to which or within which consent is possible. But this is a necessary, not a sufficient condition of political justice. Governmental powers are exercised by right only if we have actually granted that right."²¹

At this point we again confront a major problem in consent theory. Euben rehearses Pitkin's argument that consent theory directs our attention to the wrong place. We should be looking at the nature of the government (as Rawls does). As Euben says, consent theory cannot help us to decide what commitments to make, "for it is really a method or procedure; consenting may legitimise any state of affairs, and

questions about what may be legitimately consented to are not usually raised by consent theorists."²² Rawls overcomes the problem by arguing that we have a natural duty to obey a just state, a just state being one which adheres to principles we would have agreed to in the original position. Walzer's position is very clearly stated. "Consent theory suggests a procedural rather than a substantive ethics ... It is a way of describing how particular men come to have obligations..."²³, and in "The Obligations of Oppressed Minorities"²⁴ he argues that an oppressed citizen has the right to say "no" to a law because he has not helped to make it, whereas free and equal citizens are bound to obey every law. This seems to overlook the problems of the free citizen's attitude to legally valid but iniquitous laws, and the oppressed citizen's attitude to a just law, which he surely has no right to disobey.

If an oppressed citizen chooses to participate then he incurs obligations, but these obligations are limited, for Walzer writes that insofar as activists begin to exploit the democratic system successfully, so they begin to acquire obligations. The implication seems to be that participation is not enough; there must be a positive outcome - the beginning, should we say, of a lessening of injustice. This same argument seems not to apply to the free and equal citizen not affected by the injustice. Yet what is the position of such a citizen who supports the oppressed minority, who has participated, but has been unsuccessful in his attempt to rectify an injustice? Why is he bound to obey every law, pay every tax, whilst a minority with whom he sympathises remains oppressed, and when some of the state's actions conflict with "a core of deeply held ideals"?²⁵

Group Membership

In fact, obligations to the state do have their limits, even for free and equal citizens, because in Walzer's model free and equal citizenship is exercised within groups, and when obligations to the group conflict with obligations to the state, there is a duty

to disobey the state (but not to challenge the existence of the state itself). This is not simply a matter of the obligation to the group taking precedence because in the group one's participation and effectiveness in decision-making is greater. Within the group the citizen is sharing his moral knowledge and convictions, and when the group argues that the law is over-extended it is questioning the morality of the state's action. Incidentally, because of the nature of the pluralist state, "there can be no possible judge of this disagreement"²⁶. Participation in the state's decision-making has therefore incurred no more than a prima facie obligation to obey.

Moreover the obligations a citizen has to the group can themselves, in certain circumstances, be overridden for moral reasons. A person joins a group, makes commitments for particular reasons and can break these commitments "if these reasons ever seem ... to lose their force"²⁷. A citizen cannot be forced to sacrifice personal integrity too often without destroying "the moral balance" between it and obligations to comrades.

Walzer, then, tends to over-emphasise the obligations generated by participation, which is no guarantee of moral rectitude. Obligations within the group are stronger than those owed to the state both because of the greater degree of participation, and because of the moral nature of the group. Participation in the group is proof of one's citizenship, and paradoxically bestows the right to disobey the state. But obligations to the group, too, ultimately depend on the group's decisions and actions, as judged by the individual. As Euben says "consent ... is not enough to make a commitment into an obligation ... what intrude are judgements about the moral value of what I have consented to"²⁸ and this remains so even when consent is signified through active participation. To put it more clearly, even if participation signifies consent to the decision-making procedure, this consent can be withdrawn if the decisions are unjust.

Walzer is attempting to find a balance between moral anarchy and moral imposition. The citizen is neither free to break his obligations at random, nor should he simply obey, since this would reduce him to an automaton. To avoid the former, Walzer argues that responsibility is always "responsibility to someone else and is always learned with someone else"²⁹. The group provides the ambience within which those responsibilities can be known and felt. He feels this so strongly that he says we need "to supplement our most intimate bonds. That means, to incur other obligations to live and possibly to die for other men and women ... this is the heart of the matter: to be obligated to live for the political community ... is to have a reason for living"³⁰. Yet what happens when, despite the fullest participation, the citizen disagrees with the group's (not the state's) decisions? The individual is an autonomous and responsible person whose integrity can lead to the breaking of political obligations. What, then, has happened to the notion of shared morality? If morality becomes "merely personal" the individual loses his connection with a universal order³¹, yet, as Walzer says, groups are composed of individuals who determine the shape of their moral lives.

The group is the source of the citizen's morality, and at the same time group membership is proof that the citizen's morality is part of a shared consciousness. But when, as a matter of integrity, a person feels it necessary to curtail his group membership because of deeply-held principles, it is necessary to ask what is the source of such principles? In fact, they are formed in the culture and society which we have inherited, and which we are instrumental in changing through our own actions. Participation may make us adjust or change our principles, it might deepen them. But our participation is the result of the principles we hold. They, not participation nor consent, obligate us, they tell us what commitments to make and break. If a government's actions conform to our principles of justice then we ought to obey, regardless of our participation. The citizen must make the necessary judgements, and ought to participate to change an unjust condition.

The Distant State

Because Walzer's theory of obligation depends on participation, it is obvious that the civil liberty of all citizens is "the necessary condition of political obligation and just government"³². Complete political obligation is rare because of the nature and scale of the modern state - a distant power "never again firmly within the grasp of its citizens"³³ who have "no reason for feeling obligated"³⁴. And again, he writes that "the state has simply outgrown the human reach and understanding of its citizens"³⁵. The scale of organisations "restricts the access points of individual citizens to the decision-making process and narrows or distorts the view any one of them can have of the process as a whole"³⁶.

Liberalism, argues Walzer, emphasises the distinction between state and society. The liberal state's citizens are private persons; "it represents the triumphant solution to the problem of governing a society of strangers"³⁷. Yet democracy requires cooperation, and its legitimacy lies in self-government. The problem is that most citizens are largely inactive, whilst the active are only minimally effective and not necessarily representative of the whole citizen body.

The democratic ideal of self-determination is an illusion: "liberal theory knows nothing of an alienation more profound than political alienation, but that is a condition it seems almost designed to specify"³⁸. The illusion produces a sinister result. In the modern democratic state the best expression of consent is political participation, which is a pledge to abide by the decisions of the people. "Actual participants in a democratic political process are generally not surprised to be told that they have committed themselves to abide by its results"³⁹. Yet, because their participation is largely ineffectual, citizens do not in fact decide, but they are implicated in the decisions made. The ideal has become an ideology, and if we insist on defining citizenship with all its moral and political implications we do not

describe reality. His whole argument, then, raises doubts about the existence of political obligation in the modern liberal state.

What is the nature of citizenship in the modern state? There are degrees or classes of citizenship, and Walzer chooses to focus on three particular groups. Firstly, the oppressed citizen, already mentioned, whose "obligations depend upon the ways in which he chooses and manages to involve himself in the larger community"⁴⁰.

Secondly, the alienated citizen. On the one hand there is the alienated citizen who chooses not to participate. He wants a peaceful life in the state from which he is estranged. "He is bound to those actions necessary for the safety of the social life he shares, but not to actions dictated by "reason of state"⁴¹. On the other hand there is the alienation of the citizen who does participate, but whose participation is essentially trivial. This alienation is not self-imposed, and the participation fits the ideology of citizenship, not its ideal. Such a citizen "is unlikely to experience conflicts of obligation, and for this reason he is widely regarded as a "good" citizen. If the state stands over him as an alien force he does not know it; he thinks it is his own"⁴². This is the passive, private citizen, who enjoys liberty and protection in exchange for obedience to law. I have already outlined Walzer's argument against such a view of citizenship - "if the citizen is a passive figure there is no political community"⁴³.

Finally, there is the pluralist citizen who shares in ruling and being ruled through his group memberships. If such groups make no claims against the state then these citizens are "simply bound, bound without complications, to obey the laws they help in making"⁴⁴. It is this pluralism which "enables us to describe the citizen as a communal man and a participant at the very moment when citizenship by itself does not seem to permit either description"⁴⁵. Through his membership in secondary groups the individual establishes relationships with other citizens and with the

whole political community, and with the state. Walzer argues that these groups have standing with the state (i.e. they are recognised by the state as an appropriate means of mediating between state and people, a legitimate vehicle for political expression) and that they protect the individual. It is in the group that the citizen is self-governing, can participate, and can influence policy. "Self-determination is an indirect process made possible by the participatory politics of church members, union members, party members, and so on."⁴⁶

Because groups have a role in policy formation, the participant citizen is genuinely implicated and his membership generates real obligations. But "pluralist mediation loses its moral and political value"⁴⁷ if the group's business is trivial or if popular participation plays a limited part in group membership. It should be noted that the relationship of many group members to their group's leadership is as attenuated as that between citizen and state. In this case the citizen is alienated within the group. In Walzer's opinion most examples of contemporary pluralism are faulted in one of these two ways. However by equating obligation so strongly with participation he overstates his case. An individual may join a group as an expression of genuine support for its aims and ideals whilst being content to leave policy-making to others. Support will be withdrawn if the aims of the group change. In other words wilful membership in a small group does not necessarily entail active participation in decision-making.

In a genuinely pluralist state, group members are self-governing, free, public-spirited, and their actions are significant. Moreover pluralist membership overcomes the difficulty of obligation to a state in which membership is inherited. Walzer thinks that the absence of choice about our membership in the state makes "the wilfulness of that membership seem to have only minimal significance"⁴⁸. Group membership is deliberate, the resulting obligations are self-imposed. By joining certain groups the citizen is stating the limits of his obligation to the state.

It is in the group, not the state, that men aim for their highest ideal, and therefore the group is more important than the state to the citizen.

Questions of loyalty and obligation are complex when a group member is asked to give his support over a range of issues. As a member of a group functioning in an ideal way he will have had an opportunity to help to formulate policy on each issue, but in the end he will have to make decisions about his obligations in the light of his intensity of feeling about them all. The citizen in an election is in a similar position - he may indicate a preference for one package over another, or vote on one issue of overriding importance. Whichever it is he will be told afterwards that he has approved a whole range of government's actions.

The size of the group is important. In a small group the individual has more opportunity to influence the decisions made; it is within his grasp, he feels he has control over his own affairs. But the complexities of obligation may well remain unless the group has very narrow aims.

Walzer points out another very significant problem. Pluralism "builds moral and political conflict into the political system"⁴⁹. Membership prevents alienation, but the citizen's obligations to the group may well come into conflict with the actions of the state, especially when the state is not "articulated in a genuinely pluralist way"⁵⁰. It is worth noting again that even when participation is at its most effective, political obligation to the state is not total. A citizen's ultimate obligation is to the group, and he will act accordingly, save only that he does not threaten the state itself because it recognises and protects the status of all groups impartially. The state is neutral. "All that the pluralist state can do is to judge the claims made by each group in the light of the pluralist system itself and its security."⁵¹ No man, no group has more of a conscience than any other. But of course this really tells us

nothing at all about how the state does decide between the conflicting interests of a multiplicity of groups, nor how it should decide.

Walzer argues that the state cannot tolerate disobedience because this would nullify the decision procedure, and as Pateman says "if the authority of the liberal democratic state is not to be brought into question it must be the state that judges legitimacy"⁵². However the citizen's ultimate obligation is to fellow group-associates. If he is bound to disobey the state for grave moral reasons, consent through participation is not in itself sufficient to obligate the citizen to accept in advance the outcome of the decision procedure. This would only be possible were there general agreement on substantive moral issues. It may be that Walzer believes this would be the case, for although he has argued that in liberal society there has been the "replacement of a belief in a common substantive rationality by an emphasis on procedural rationality"⁵³, Euben is correct in saying that Walzer's "espousal of consent is compromised by a clear priority of values which tend, on the whole, to be liberal democratic ones"⁵⁴. Walzer recognises that pluralist participation is very likely to bring the citizen into conflict with the state, but equally the citizen can come into conflict with his group. The whole problem of political obligation arises when there is profound disagreement on moral issues, and consent theory (including consent defined as participation) does not solve this dilemma, in which the decision-procedure is redundant, although toleration and respect for others as self-directing beings put limits on our actions. It is the decisions which the state and the group make which are important.

It is also necessary to ask whether the state can be neutral. If it was without values, it could not decide between competing claims, assuming the claims were compatible with the freedoms and rights necessary to pluralism. Walzer argues that the state "must consider the claims themselves, weigh their contents and their likely effects"⁵⁵ but this does presuppose certain values, and it conflicts with his

observation that in questions of political morality in a pluralist state there can be no possible judge.

Pateman argues that Walzer's position "is ultimately deeply ambiguous"⁵⁶; it is uncertain whether he is defending liberal democracy or is subversive of it. Liberalism creates alienation and the attenuated relationships within the state are a sufficient argument for a radical reconstruction. "It never becomes clear whether or not he regards genuine consent as present, or possible, within the framework of liberal democratic institutions"⁵⁷, Pateman writes, for even though Walzer's aim is to provide institutions within which the citizen can be "a participant in a free state, concerned for the common good"⁵⁸, she notes that "he does not face up to the question whether genuine consent and participatory pluralism is compatible with the authority of, and political obligation within, the liberal democratic state"⁵⁹. A condition of potential conflict (conflicting loyalties and obligations for citizens individually, and conflict between the state and its secondary associations) is more preferable for the citizen than alienation. The citizen, says Walzer, is safer in his groups, is more responsible; he rules and is ruled; his effectiveness is increased; he has protection and responsibility. As Bernard Crick has written, "However difficult it makes government, we want active *citizens* making their own decisions cooperatively; not simply well-treated *inhabitants* or *subjects* voting for welfare..."⁶⁰

Walzer believes that political participation is necessary for complete fulfilment and he accords politics moral primacy. Yet, in Euben's words, this is "to contradict pluralism by denying apolitical men moral recognition"⁶¹, which Walzer clearly does not want to do, since he insists on the right to passivity, and that justice is done to non-participants as moral persons. Because membership must be voluntary if it is to result in obligations, Walzer believes that "citizens always have the right to choose between participation and passivity. Their obligations follow from their choices and do not precede them, so the state cannot impose one or other choice; it cannot

force the citizens to be self-governing men and women"⁶². The activists must not believe that they are representative of the non-activists. But genuine pluralism would require a very high proportion of activists, and even the non-participants would have a role as critics of the actors. This may not seem too different from the role of the citizens voting in an election now. In voting they make their judgement on party policies, and parties respond to this judgement. However, Walzer obviously has something more in mind because "the modes of criticism will become the forms of their participation"⁶³ and then the citizen will begin to take on responsibilities and incur obligations.

I have already argued, of course, that obligations do not follow from this choice of participation or passivity. Choosing passivity will not relieve a citizen of the obligations he has to his fellow-citizens - obligations to help shape his own life and that of his community. The citizen need not have an ideology, nor an ideal vision of society, but must simply recognise his duties. There is no right to passivity because we are not just private persons. Walzer is correct in saying that through our normal human activities and relationships we incur obligations, and although the extent and nature of our obligations to the state are called into question, this does not lessen our duty to use the opportunities for participation which do actually exist. There is no right to abrogate one's freedom, to leave decision-making to others. Euben thinks this is so because of necessity - we need collective action for the common end of containing forces which must be restricted or which will deny us choice and responsibility. Karen Johnson suggests that Walzer is mistaken in tying membership and hence obligation to consent. Membership is a status involving the acceptance of rights and duties but it does not depend on consent. She quotes Sir Ernest Barker on Plato's *Crito*: "What Plato means is that every man who regards himself as a member of the state has thereby really and implicitly, though not verbally and explicitly, subscribed to the obligations of membership. He has claimed rights and has had them recognised; he has acknowledged duties and is

bound to fulfil them. This is implied in membership of the state."⁶⁴ As Johnson says the state is, or could be, a normative association - i.e., one based on shared values. "We are born into a particular state, we grow into membership in it, and we are as a result likely to be tied to our fellow-citizens by a bond of shared experiences, attitudes and beliefs which is at least potentially the basis for a commitment to the political community and the exercise of an active citizenship."⁶⁵ But to tell us what the state could be is no help at the present, and Walzer's whole point is that these common bonds of citizenship (i.e. the citizen-state bond, the bond which would unite us as members of *this* state) have been destroyed by liberal individualism. The state cannot be a "normative association" for a person who feels alienated.

It is clear, then, that in this early work Walzer believes that citizens have become alienated from the state, which is beyond their reach; that individuals in the liberal state are essentially private and inactive. The solution to the problem of political obligation is to be found in active participation in associations and groups, membership of which will enable citizens to establish relationships with one another and with the state. The group is more important in the life of the individual than is the state; groups are the source of moral knowledge. Obligations to one's fellow-citizens qua group members are prior to obligations to the state, which is neutral between groups, although it is not clear how a neutral state can mediate between conflicting claims. Note that Walzer said that the state would never again be firmly within the grasp of its citizens. He has made a clear distinction between the state and other groups; the citizen seems to have no direct connection with the state, which yet embraces all the groups of which he is a member.

In examining Walzer's theory of complex equality as he expounds it in "Spheres of Justice" and some later writings,⁶⁶ it will become clear that his views on the state have changed profoundly, so that it becomes the normative association which

Johnson spoke of, the repository of shared values and collective understanding. His changing views on the nature of the political community and of the relationship between the individual and the state are of particular interest. When Euben, commenting on Walzer's distinction between private and political obligations, argued that the polity, even in a liberal state, was the most all-embracing association, which was responsible for sustaining the moral and cultural life of its members, he anticipated the position taken by Walzer in "Spheres".

The theory of complex equality, the subject of "Spheres of Justice", states that no social good should be used as a means of domination but should be confined within its own sphere. How social goods are distributed within spheres and where the boundaries are drawn between spheres are matters for the political community to decide. Rights are derived from the shared conceptions of the nature of social goods within particular communities. I will simply outline the argument as it is applied to some spheres such as offices and religion, looking a little more closely at questions of membership, community and welfare.

The Liberal Individual

Walzer has written that Marx believed the liberalism had created egotistic individuals separated from the community and this egotism "was a social product - required, indeed by the relations of production and then reproduced in all the spheres of social activity. Society remained an organised whole even if its members had lost their sense of connection"⁶⁷. Separation had to be overcome. Walzer, too, now believes that "the contemporary social world is still an organic whole"⁶⁸. The liberal world of "the individual, free within his or her circle of rights"⁶⁹, separated from all other individuals except through connections established by wilful agreements, is a mythical world. "The individual who stands wholly outside institutions and relationships and enters into them only when he or she chooses and

as he or she chooses : this individual does not exist and cannot exist in any conceivable social world... The individual does not create the institutions he or she joins...the individual lives within a world he or she did not make"⁷⁰. There is a deep connectedness between the spheres of social life, not only in the way these spheres and their institutions have been shaped, but because the same people inhabit several spheres - trade unionists live in neighbourhoods, send their children to schools, academics may hold public office and so on. But most importantly, as we shall see, all are bound together as members of the political community, which is the all-embracing all-important sphere in Walzer's new theory of the state. "Institutions are responsive to their own internal logic even while they are responsive to systemic determinations."⁷¹

He will argue that the liberal achievement in securing freedoms (academic, religious, individual) is real and valuable. The myth of individualism has a purpose: "It rules out state interference in institutional life, since the state is in its nature coercive"⁷². Separation "is a morally and politically necessary adaptation to the complexities of modern life"⁷³ but this "art of separation" should serve socialist principles - men and women enjoying their social roles. Institutions must be protected not only from state power but from the power of wealth. Equality and liberty can coexist when spheres are protected and when private government (made possible by the separation of spheres) has been abolished. He writes that "it is with the critique of private government that the leftist complaint against liberalism properly begins"⁷⁴. By protection of spheres Walzer means that in a "modern, complex and differentiated society"⁷⁵ success in one institutional setting should not be convertible into success in another. We should recognise that freedom is not the liberal individual making his own agreements but people in their social settings; we separate institutions, not individuals. "Individuals should be free indeed, in all sorts of ways, but we don't set them free by separating them from their fellows."⁷⁶

The liberal theory of individual rights seems to have a firmer foundation for political philosophy, he argues, but men and women live in societies, and they are free when they live in autonomous institutions, free from domination, living in a state free from external controls, which is internally free, and when they participate in free churches, universities, unions and so on their freedoms consist of rights in different settings or spheres. "Each freedom entails a specific form of equality or, better, the absence of a specific inequality ... and the sum of the absence makes an egalitarian society."⁷⁷ In "The Moral Standing of States" he writes that "the moral understanding on which the community is founded takes shape over a long period of time. But the idea of communal integrity derives its moral and political force from the rights of contemporary men and women to live as members of a historic community and to express their inherited culture through political forms worked out among themselves"⁷⁸.

"Marx's vision of individual and collective self-determination requires...the existence of a protected space within which meaningful choices can be made. But space of that sort can only exist if wealth and power are walled in and limited."⁷⁹ The meaningful choices referred to are made within social settings - they are *not* the choices of the liberal individual, for the idea that a person can make and break agreements and feel free to break bonds and ties is "endlessly disintegrative"⁸⁰, and "the goal that liberalism sets for the art of separation - every person within his or her own circle - is literally unattainable."⁸¹ Further Walzer does not base his argument on any idea of natural rights, but on a certain conception of social goods, and rights follow from these shared conceptions. Rights are local in character. This is not strictly true since Walzer recognises some universal rights, in particular the right not to be deprived of life and liberty; and there is implied in his theory one right which by its nature is prior to any shared conceptions, and that is the right to contribute to an understanding of shared conceptions and common values. At the root of this particular right is Walzer's belief in equality - the recognition of each

other as human beings, different, yet alike in having bodies, minds, feelings, souls. This is not a literal equality enforced by a state constantly interfering to correct imbalances which would arise from our very natures, just as classical utilitarianism would lead to domination by planners. Rather Walzer's egalitarianism is freedom from domination. "Men and women are one another's equals (for all important moral and political purposes) when no one possesses or controls the means of domination."⁸²

Social Goods

Human beings come together to share, divide and exchange. We derive our place in a given order and our reputation from other men and women. Membership, power, knowledge, wealth, rewards, work are distributed through different political arrangements, but no state power can possibly regulate all exchanges, and there are different criteria for distributing different social goods - desert may be appropriate in one sphere, free exchange in another. Nor is there only one just distributive system, although he himself argues in favour of pluralism and his theory of separation, like Rawls' theory of justice, is intended for contemporary American society. Just as he has rejected the notion of a set of ideal universal rights applicable to all men in all societies, so he rejects the Rawlsian argument for principles of justice (just distribution of social goods) which would be chosen by rational persons in a hypothetical original position. In the real world ordinary people may well be able to set aside their particular interests but they cannot divorce themselves from their historical and cultural background. "What choices have we already made in the course of our common life? What understandings do we (really) share?"⁸³

Furthermore he is critical of Rawls' attempt to formulate a system of justice and of just institutions which will eliminate the effect of natural assets in the distribution

of income, wealth and other social goods. Rawls believes that a person's assets, including the character "that enables him to make the effort to cultivate his abilities"⁸⁴ depend upon social circumstances which are not of his making. He "cannot say that he deserves and therefore has a right to a scheme of cooperation in which he is permitted to acquire benefits in ways that do not contribute to the welfare of others"⁸⁵. But if men and women are not deserving of merit, if even the "the capacity to make an effort"⁸⁶ is an arbitrary gift, then, Walzer asks "How are we to conceive of these men and women once we have come to view their capacities and achievements as accidental accessories...? The reflexive forms of recognition, self-esteem and self-respect, our most important possessions, ... must seem meaningless to individuals all of whose qualities are nothing but the luck of the draw"⁸⁷. Rawls' abstract principles are applicable to people abstracted from their qualities, to goods abstracted from their meanings, "but it seems doubtful that such distributions can possibly do justice to persons as they are, in search of goods as they conceive them."⁸⁸ How can we give public honour and recognition without a notion of desert? he asks. MacIntyre, too, considers the absence of any reference to desert in Nozick and Rawls a serious omission (see Chapter 6). For a person to perform honourably he must be a moral agent, responsible for his performance. The virtues of the ordinary person going faithfully about his duties should be recognised. There is not just one principle of justice. Walzer contends that "the principles of justice are themselves pluralistic in form; that different social goods ought to be distributed for different reasons, in accordance with different procedures, by different agents; and that all these differences derive from different understandings of the social goods themselves - the inevitable product of historical and cultural particularism"⁸⁹. The conception and creation of goods precede their distribution: "goods with their meanings - because of their meanings - are the crucial medium of social relations ... distributions are patterned in accordance with shared conceptions of what the goods are and what they are for"⁹⁰. Hence the focus of his investigation is on the origin and meaning of social goods,

rather than on the process of distribution and the agents of distribution, or on rights and needs. He proposes a theory of goods as the basis of distributive justice, a theory with six propositions:

1. All the goods with which distributive justice is concerned are social goods - their value depends on their social setting and is publicly determined.
2. "Men and women take on concrete identities because of the way they conceive and create, and then possess and employ social goods"⁹¹. We are born into a history of transactions and distributions.
3. "There is no single set of primary or basic goods conceivable across all moral and material worlds"⁹².
4. "It is the meaning of goods that determines their movement. Distributive criteria and arrangements are intrinsic not to the good-in-itself but to the social good... All distributions are just or unjust relative to the social meanings of the goods at stake"⁹³.
5. "Social meanings are historical in character; and so distributions, and just and unjust distributions, change over time"⁹⁴. It may appear that some goods could be distributed for their essential rather than social meanings if the same good seems to be distributed in the same way in different societies over a period of time, but the definition of the good may itself vary, e.g. what is an office, even if there is agreement that offices should be distributed to the most deserving candidate. "There is no merely intuitive or speculative procedure for seizing upon relevant reasons"⁹⁵.

6. "When meanings are distinct, distributions must be autonomous. Every social good or set of goods constitutes, as it were, a distributive sphere within which only certain criteria and arrangements are appropriate"⁹⁶. In practice what happens in one sphere effects what happens in another so we look for "relative autonomy", which still means there are different standards of distribution "for every social good and every distributive sphere in every particular society; and these standards are often violated ... by powerful men and women."⁹⁷

The Dominant Good

In most societies one social good or set of goods is dominant. That is, the use of that good is not limited by its intrinsic meanings. The dominant good determines values in other spheres, and its owners can use the dominant good to acquire other social goods which ought to be distributed according to their own criteria. The dominant good is a monopoly if it is held by one person or group who wishes to exploit its dominance to convert the dominant good into other goods. In other words in our society we ought to ask is there anything money cannot buy!

The dominant group is the ruling class, which will be "challenged by other groups in the name of alternative patterns of conversion"⁹⁸. They may claim that the dominant good should be more widely shared, which would end the monopoly and prevent other social goods being monopolised since no one would have the means to convert the dominant good into other goods on a sufficient scale. They may claim that the existing pattern of dominance or monopoly is unjust - that a new good, monopolised by a new group, should replace the dominant good. But Walzer concentrates on a third proposition - that *dominance* is unjust, that there should be autonomous distribution of all social goods. He proposes a complex egalitarian society in which different social goods may be monopolised but the monopoly would be confined to the distributive sphere of the monopolised good; no particular good

would be convertible into other goods, and inequalities in one sphere would not be reflected by inequalities in another. The same group would not monopolise different spheres, as long as the autonomy of the distributive spheres was maintained. He considers that the outcome would be to localise social conflicts "and the resistance to convertability would be maintained ... by ordinary men and women within their own spheres of competence and control, without large-scale state action"⁹⁹. In this interpretation "equality is a complex relation of persons, mediated by the goods we make, share, and divide among ourselves; it is not an identity of possessions. It requires then, a diversity of distributive criteria that mirrors the diversity of social goods"¹⁰⁰, and the whole theory rests on the belief that we have certain shared conceptions of social goods from which we can determine the principles of distribution of each good. These same shared understandings lead us to resist unjust conversions - for example buying and selling of offices. He states his distributive principle thus: "No social good x should be distributed to men and women who possess some other good y merely because they possess y and without regard to the meaning of x "¹⁰¹. No particular share of social goods is specified, nor is any particular system of distribution recommended. Different spheres require different distributive criteria. Free exchange, need and desert are all considered in different spheres. The outcome is the distribution of "different goods to different companies of men and women for different reasons and in accordance with different procedures"¹⁰². It is our common understandings that lead us to this theory of separation of goods, which would not be applicable to a hierarchical or plutocratic or other form of society in which goods would not be differentiated. (That is, distribution would reflect the hierarchical, plutocratic or other structure).

Walzer contends that his principle of complex equality in the sphere of welfare distributes goods according to need, and the principle of justice is transgressed if needed goods are provided in proportion to people's ability to pay. "Needed goods

are not commodities"¹⁰³. Once we have a common understanding of the importance of the provision of a particular good such as medical care, then a decision not to provide it for all at an adequate level (given sufficient resources) would be unfair, although goods in excess of the level of adequacy may be sold. In other words, to maintain the integrity of distribution within this sphere, the dominant good in a society (in our case, money) must not be allowed to distort the provision of goods which ought to be allocated according to the criteria of need and membership. Payment of money instead of goods to the poor reinforces the dominance of money as the rich bid up the price of services.

Possession of money, then, should neither entitle nor enable the possessor to acquire certain goods. Although it is a universal medium of exchange, certain transactions should be "blocked exchanges". Thus rights cannot be bought or sold, nor human beings, nor political power, nor justice. When the possession of money is necessary for full membership, for people to be "socially recognised and effective persons"¹⁰⁴, when commodities become symbols of belonging, then citizenship is degraded and devalued. Since the market will always produce inequalities, simple redistribution of income to enable all citizens to compete in a free market would not produce a stable condition of equality. Alan Ryan has written that "where there has been a cry for equality it generally turns out on closer inspection to be a cry for justice"¹⁰⁵. Moreover Walzer believes that there are "activities more central to the meaning of membership than owning and using commodities"¹⁰⁶, although the market is an appropriate mechanism for attaching values to a great variety of goods and services. His point is that money accumulated by the successful entrepreneur should not enable its possessor firstly, to have undue power in the marketplace itself and thus distort the principle of free trade, and secondly, to buy social goods such as political office which are not properly for sale. Conversely no-one should "be cut off from [the market's] possibilities because of his low status or political powerlessness"¹⁰⁷. Rawls, like Walzer, recognises that the

person with private means may use these means to unfairly control public debate; "compensating steps must, then, be taken to preserve the fair value for all of the equal political liberties"¹⁰⁸, and this may include the wide distribution of wealth (although his two principles do not, I believe, secure the required end).

In Walzer's system of complex distributive equality the wealthy would be deprived "of the means of capturing political power..."¹⁰⁹. Furthermore capitalist owners still have power over workers' lives beyond any rights which risks of ownership may entail, and which offend conceptions of democratic citizenship. The workers take risks, bear the costs of failure but not the rewards of success. He argues for justice in exchanges, enabling workers to bargain as equal partners (a free market being a place where equals make bargains), and for worker-owners making their own decisions about wages, production, organisation. "Democratic decision-making ... is a way of bringing the market home, connecting its opportunities and dangers to the actual effort, initiative and luck of individuals..."¹¹⁰.

The dominance of money outside its proper sphere is prevented by blocking desperate exchanges between unequal partners, by redistribution through taxation, and by ensuring that ownership does not include the right to "sustained control over men and women"¹¹¹. The sphere of money is a different "type" of sphere to that of membership, security, office, welfare, education, kinship and divine grace. Some of Walzer's spheres are akin to the groups mentioned in "Obligations". Thus family, school, religion, trade unions, are all affiliations in which moral knowledge is gained and shared, although it may be said that the significance of these institutions would be greatly enhanced either in societies with an undifferentiated conception of social goods (where, for example, the state was also a community of faith); or in societies in which these groups are opposed to the state as described by Walzer in "Obligations". Spheres are different to groups in that they encompass many many people. For example, the sphere of education includes all teachers,

pupils and parents and not simply those connected with one school; the sphere of religion includes people of all faiths and is therefore qualitatively different to a group of members of one religious community with direct social relationships with one another.

In contemporary liberal democracies, where money is dominant, the market is a sphere of strangers; in a society in which religion was the dominant good people would be deeply connected through their beliefs. Liberal citizens may have these deep connections within other spheres and groups, but not within the dominant sphere of money and not, as I shall argue, within the state misrepresented as a repository of shared values.

Since money can be transferred into inappropriate spheres, especially the purchase of political office, there exists to an extent an undifferentiated conception of social goods. At its extreme this would mean that an individual's education, for example, would depend entirely on ability to pay and would serve an ideological purpose, the reinforcement of the dominant values. Although the influence of the successful entrepreneur may seem appropriate to a society of strangers whose main preoccupation is to generate wealth for individual consumption, it cannot be appropriate for a community which values membership as a means of mutual support, although it might be possible to argue that the free market is the most efficient way to generate the wealth and goods necessary to sustain membership. However if the driving force of the market is individual success, how can this be reconciled to the notion that the generation of wealth is for the benefit of all, that society is a cooperative venture? Rawls attempts this through the difference principle. Walzer merely talks of a "pool of wealth ... to which everyone contributes according to his available resources"¹¹². So "whatever we take to be the entailments of membership"¹¹³ must be paid for by everybody according to their means. If this requires a substantial proportion of income it may well be difficult for a free

market based on individual enterprise to exist in a state dedicated to extensive redistribution, since the system of incentives required by the market will fail. Walzer wants to limit the influence of the market in order to enhance his vision of a cooperative society. Thus his market is a sphere for worker-owners, cooperatives, small-scale entrepreneurs.

Distributive Criteria

Walzer comments on the appropriateness of different criteria for distribution within other spheres. Thus, for example, in the sphere of office distribution is regulated by the political community as a matter of justice. Offices are positions in which all citizens have an interest and they should not become the preserve of an elite. Justice in this sphere entails giving all citizens equal access to offices (or to the opportunity to be candidates for training), and in preventing office holders having influence and power beyond the limits of their offices. The wealthy should not be able to buy offices, nor should they be given to family and friends.

In the sphere of education schools "provide a context ... for the development of critical understanding and for the production, as well as the reproduction, of social critics"¹¹⁴, and therefore should not simply reflect the prevailing social, economic and political order. Because all citizens have a right to the knowledge necessary to be able to fulfil their roles as citizens, schools must be open to all. This is simple equality in the sphere of education in democratic states, based on the need for this basic knowledge. Its important function is to teach children "to be citizens first - workers, managers, merchants, and professionals only afterward"¹¹⁵. Complex equality in this sphere is shaping educational facilities to an individual's capacities and needs once a core body of knowledge is grasped. An educated elite must not be allowed to dominate office, and if schools are enclosed communities (i.e. protected from undue political or economic pressures), and with a common curriculum, "then

the sphere of education is likely to be a highly egalitarian place"¹¹⁶, rather than a sphere which reproduces "the basic structure of a class society"¹¹⁷.

It is inappropriate for the state to support a system of education which accentuates racial or other divisions. If segregation is involuntary then the situation needs to be corrected through applying principles of complex equality in the spheres of income, employment, housing and so on. If it is voluntary - that is, if groups divide along racial or other lines quite willingly, and not because of any lack of opportunities, then the schools must respect these wishes whilst working "to bring children together in ways that hold open possibilities for cooperation"¹¹⁸. People should not be forced together in the name of integration. I will discuss the problem of such a heterogeneous society in relation to Walzer's theory of the state, but if groups of citizens identify so strongly with one ethnic or religious group that they are unwilling to either live with people outside the group or have their children educated in schools with children of different backgrounds, then the point is clear and one must regard the state as a mediator between groups, fostering those qualities of toleration and mutual respect, rather than common identity, which will enable diverse people to live together in peace.*

The Unifying State

Although social goods are distributed across political boundaries within which monopoly and dominance are not confined, Walzer still believes the political community to be the key association, for it is "probably the closest we can come to a world of common meanings. Language, history, and culture come together ... to

***It is important to point out that my main concern is not with the difficulties arising in a society composed of people from different cultural backgrounds, but rather with the diversity of opinions held by liberals and others from the same cultural background, and more particularly, within liberalism itself. This point will be discussed in the following chapters.**

produce a collective consciousness ..."¹¹⁹, although historical and political communities do not always coincide. Sharing and distribution may take place in smaller units than the state, but it is within the sphere of politics that we can establish our common bonds and values, mediate the claims of smaller groups, shape our destiny, make decisions about distributive criteria, mark off the boundaries between spheres.

I note here the development of the different perspective in Walzer's conception of the state to which I have already drawn attention. In his earlier work the state had a very limited role. Shared understandings, the development of moral principles, took place within groups and the state was, in principle, neutral between groups. Now the state has a much more intrusive role. In "Liberalism and The Art of Separation" Walzer writes that the state "is not so much a nightwatchman protecting individuals ... as it is the builder and guardian of the walls, protecting churches, universities, families, and so on from tyrannical interference"¹²⁰, but more than this it is the group within which decisions about the common life are made - not the citizen protected from the state but the citizen-body as the all-embracing and unifying group. "The state is constituted by the union of people and government"¹²¹. And it is now clear how the state can mediate between competing claims, since it is not neutral and value-free but the guardian of our culture, our common life and its values, including the meanings we attach to social goods.

It is interesting that Walzer now feels able to attribute such a crucial role to the state, and that such a relationship between citizens and state, and between individual citizens and the citizen body as a whole, through the state, is possible. In an essay in "Obligations" he wrote that to be obligated to live for the political community would be to have a reason for living¹²², but the point he was making was that the citizen in the modern state was too alienated from the state to have such an obligation to the political community as embodied in the state. Reasons for

living for fellow citizens were to be sought in group memberships, whilst "civic friendship [has been] replaced by more impersonal forms of union"¹²³. Now, however, Walzer sees the political community as the embodiment of a collective consciousness. He still believes obligation is owed to fellow citizens, not to government, but now it appears that this is to the whole citizen body through its expression in the state, rather than to group members. He writes that "national character, conceived as a fixed and permanent mental set, is obviously a myth; but the sharing of sensibilities and intuitions among members of a historical community is a fact of life"¹²⁴. I do not wish to overstate Walzer's argument for the state, but there is a distinction between a neutral state mediating between groups and the state as "the closest we can come to a world of common meanings". Walzer's communitarian perspective is clearly stated. Briefly, liberalism, founded on a theory of individual rights, is disintegrative since it sustains the myth that institutions only exist as the result of a series of voluntary agreements between individuals who join and leave as they please. In fact institutions, including the state, have developed historically, changed through generations. We inherit them, they form part of our common experience and culture. We do not take decisions as isolated individuals but as members - of families, churches, unions - which were in existence before we were born, just as we do not "wholly shape the obligations [we] assume"¹²⁵, nor re-create the institutions to which we belong. As group members we interact within and between spheres. Some spheres consist of the groups themselves - the spheres of kinship and religion for example, but in other spheres we (group members) meet and part as strangers (in the market for example), but it is as group members, especially as members of the all-embracing political community, that we seek to control and mark off the proper sphere of activity of the market, the church and so on.

Now Walzer values individual freedom. "Men and women are free when they live within autonomous institutions."¹²⁶ He recognises that we have different interests

to pursue, different conceptions of the good (although there must be limits to the conceptions of the good we can hold if the idea of the state as the embodiment of a collective consciousness is to have any real meaning). Political freedom is "an absolute value, for without that men and women with different ideas and interests cannot share a common life"¹²⁷, but, he continues, "individual liberty is meaningless until it is incorporated within particular forms of social life..."¹²⁸. "This incorporation is the socialist project. Socialism is the effort to sustain older values within a social structure that accommodates liberated, that is, free and equal individuals"¹²⁹. These liberated individuals "must determine the shape of their common life"¹³⁰. Hence socialists are advocates of community seeking community for the sake of knowledge and self-management, not brotherhood, which belongs to the sphere of friendship. Individuals come together in cooperation to pursue a common life, to build a world to their liking, and decisions about these matters are taken in the political sphere. These are liberated individuals joined in various enterprises shaping the whole environment in which their groups and spheres of activity are located.

In the last chapter I drew attention to Walzer's objections to Rawls' theory of justice, and to the problems of finding commonly held shared values which would be useful in determining distribution of social goods in contemporary liberal democracies. There is an obvious connection to be made between, on the one hand, Rawls' cooperative political community comprised of groups with diverse moral and religious and philosophical ideals, which are united in their commitment to toleration and to the principles of justice which secure rights and liberties within a society conceived as a cooperative venture; and on the other, Walzer's attempt to describe a world in which freely associating adults live in diverse groups within the larger political community which is the embodiment of their common lives, and it is within the political sphere that the common life is sustained.

I am very sceptical about this interpretation of the modern nation-state. It suggests there are values shared sufficiently deeply to form the basis of agreement about the distribution of social goods, and about concepts such as rights and duties. Yet the heterogeneous state is composed of different religious, ethnic, regional and linguistic groups whose historical and recent experiences are as often divisive as unifying. Walzer himself recognises that we have different conceptions of the good and that politics is a sphere of hostility as well as cooperation. Civil society seems to be radical only in its pluralism. It suggests a readiness to welcome all-comers, demanding from them nothing more than tolerance and mutual respect. Liberal individualism, destructive of common values, is yet tolerant of all groups. Toleration is an essential element in a theory of individual rights.

Are there values held in common which will enable us to agree on decisions about the distribution of social goods, or is the political sphere, in reality, merely the battleground where groups with very different values vie for political power, bound together only in their respect for democratic institutions? It is important to note that Walzer has in mind more than a just procedure for deciding between claims. The political community is supportive; all are entitled to whatever is necessary to be part of that community. However appeals to common values are usually false appeals, dangerous jingoism in pursuit of ideological ends, and they are often associated with attacks on a distinctive group whose presence is said to be destructive of the common culture. I am not denying the real ties of community or the power of appeals to a common heritage, but I am saying that the modern liberal democratic state is not and cannot be a common enterprise. Its citizens do not have a common end, except in the most general terms - common security, for example. The citizen body has no common life to shape.

As an illustration I point to Walzer's argument that the degree of pollution we should live with is a decision for the community - citizens shaping one aspect of

their common life. In reality it is an argument about the conflicting interests of citizens in their other roles - as manufacturers interested in profit, as employees wanting to retain jobs, as parents worried about children's health. It is not impossible to imagine the manufacturer who willingly foregoes profit for the sake of the community, but it is more probable that this will be an area of conflict, a battle to be fought. Thus the values on which one person bases his opinion about an issue may be very different to the values of another person involved in the argument, and people of different religious and ethnic groups may have yet other values.

Does this cast doubt on Walzer's whole enterprise, for without common values can we even begin to erect walls between spheres, never mind agree on the distributions within spheres? I think it does. Walzer has not made a case for the state as he now conceives it as opposed to his earlier account of the state outside the reach of its citizens. He is constructing a theory of a democratic socialist state in contrast to Nozick's individualist minimal state. The venture is not utopian, he suggests, for the necessary arrangements are within our grasp. But the success of this common enterprise would depend on an agreement with Walzer's conception of equality and freedom. There is no such agreement. Nozick would find "spheres" of justice unnecessary - all free exchanges between individuals are legitimate; no one has to provide for the needs of strangers. Walzer thinks some goods must be provided to members on the basis of need. Nozick would say that redistribution without consent is theft; he has no sense of a political community, of citizens bound together through common concern for one another.

Moreover the state as it is cannot be the proper locus for Walzer's theory, because the political sphere is the arena within which groups with different and incompatible values reach agreement, or make compromises, or suffer defeat. I am not saying that it is impossible to imagine a society in which money does not buy

privilege, or that there are no common values, only that contemporary liberal democratic states cannot be such a society. So the answer to the disintegrative trends of liberalism should not be sought through investing the state with the features of community. Walzer himself writes "so long as adults associate freely, they will shape diverse communities and cultures within the larger political community"¹³¹, and the state "rests upon the cooperation and mutual involvement of all the groups"¹³². Despite these comments he no longer writes of groups as being the appropriate means of mediation between state and people. Rather than as group members protecting ourselves against the state, he now sees us as citizens protecting the integrity of groups and spheres, albeit as citizens who are also group members, active in inter-connecting spheres so that church members, for example, will criticise decisions made in the political sphere from their own moral standpoint.

Political Community

Walzer believes, as does Rawls, that the political community is itself a good, perhaps the most important good distributed. It is the "bounded world" within which people share and exchange goods among themselves. The nature of this community is self-determined and its constitution is a matter for the group to decide. "The primary good that we distribute to one another is membership in some human community"¹³³. The membership decisions we make concern the present and the future - whom shall we admit? What kind of society do we want? Although institutions are inherited they can be changed, and when citizens decide who to admit or bar from their state they are determining the character of their common life. Walzer argues that if the state has a very open immigration policy then neighbourhood groups will close in and protect themselves, whereas strict immigration control would allow neighbourhoods to develop "as indifferent associations, determined solely by personal preference and market capacity"¹³⁴, since the distinctive culture of the community as a whole would be undisturbed. He

writes, "the distinctiveness of culture and groups depends upon closure and, without it, cannot be conceived as a stable feature of human life... If this distinctiveness is a value ... then closure must be permitted somewhere"¹³⁵.

However this surely serves to reinforce my point that the modern western state cannot be considered as having a distinctive culture with a set of common values. The use of zoning laws in the USA is an example of communities trying to establish or safeguard their own identities, but even very strict immigration control would not make one community of people with different class, religious and regional experiences. Once admitted, all those living within a state, subject to its laws, must be allowed to fully participate in the political processes which direct their lives. "The processes of self-determination through which a democratic state shapes its internal life must be open, and equally open, to all those men and women who live within its territory, work in the local economy, and are subject to local law"¹³⁶.

One interesting aspect of the communitarian perspective is worth mentioning here, in its contrast to a theory of individual rights. Walzer argues that wide-ranging participation in the decision-making process leads to actions which the *community* can take. In some cases these actions will only marginally affect citizens considered as a whole. However they may well seriously affect the lives of individual citizens who may face additional competition for resources such as housing, jobs and welfare, and who may feel their own local community to be under threat. Should the individuals concerned be compensated for having to bear the costs of the wider community's decisions?

Walzer believes that it is "as members somewhere that men and women can hope to share in all the other social goods - security, wealth, honour, office and power - that communal life makes possible"¹³⁷. Members of a political community, which has been shaped over time, are bound to one another - not to their government -

through a contract. But the contract is a metaphor. "The moral understanding on which the community is founded takes shape over a long period of time"¹³⁸. Members of a community provide for one another. We need community itself - the bonds of culture, religion and politics; "it is only under aegis of these three that all the other things we need become socially recognised needs ... the social contract is an agreement to reach decisions together about what goods are necessary to our common life, and then to provide those goods for one another ... the signers owe one another more than mutual aid... They owe mutual provision of all those things for the sake of which they have ... joined forces in a particular community..."¹³⁹, and they will have come together in the first place for security and welfare. Thus every political community is in principle a welfare state; all members must bear some burden, and it is the sharing of duties and obligations which makes a political community. This is a noticeable contrast to Nozick's minimal state which provides security but welfare is left to voluntary effort and individual conscience. Walzer could not regard such a state as a political community, since there is no common agreement to sustain membership. On the other hand, it is difficult to agree with Walzer's argument that what people need from one another - "material goods that have, so to speak, a moral and cultural shape"¹⁴⁰ - they will seek or expect to find primarily through the state.

Necessary social goods should be provided to all on the basis of need to sustain the membership of the needy, and to "uphold the underlying equality of membership"¹⁴¹, but the community must decide what goods to provide to whom. The extent of provision is a political decision for the whole community to make. Decisions might be about providing facilities for all (street lights, hospitals) or about distribution of certain goods to particular people in need. The decisions will differ between communities depending on cultural perceptions and understandings, not on any theory of individual rights. Thus, as I have noted, he rejects a Rawlsian principle of distribution made by detached individuals. "In a world of particular

cultures, competing conceptions of the good, scarce resources, elusive and expansive needs, there isn't going to be a single formula, universally applicable"¹⁴². No, nor even a single formula commonly accepted within a single state! He writes, "here then is a more precise account of the social contract: it is an agreement to redistribute the resources of the members in accordance with some shared understanding of their needs ... the contract is a moral bond. It connects the strong and the weak, the lucky and the unlucky, the rich and the poor, creating a union that transcends all differences of interest..."¹⁴³; and again, "from each according to his ability (or resources); to each according to his socially recognised needs. This, I think, is the deepest meaning of the social contract"¹⁴⁴. He also writes that social meanings are not necessarily harmonious. Lower caste members in an Indian village may be angry and indignant about the prevailing system of distribution. The point is that all should be able to contribute to the debate on social meanings.

Since I have argued that Walzer's notion of the state as a community of common values is mistaken, at least in respect to values sufficiently well-defined and accepted to be used as the basis for redistribution of certain goods, it follows that he has not described an adequate alternative to traditional contract theory as a means of connecting individual citizens to the state, and this would obviously be the case if social meaning were simply to provide the setting for a debate about redistribution, as in Britain today. That is, the fact that we agree to conduct our affairs in a particular way and to uphold constitutional procedures does not mean we have other deeper common understandings. Walzer believes a community is a community because its members share common understandings about the meaning and distribution of the goods necessary to sustain membership. It may well be thought that a set of Rawlsian principles would better connect the strong and the weak in a society which is deemed to be a cooperative enterprise, albeit a cooperative of strangers or of persons who might have conflicting or incommensurable conceptions of the good.

Walzer's earlier theory of obligations to fellow-citizens through secondary groups is better suited to the idea of common values, since it is within the smaller group that these values are strongly held and sustained. In a recent article Walzer has written that "people need to be bound more tightly together, made responsible for one another, and that can only be done through groups much smaller and more intimately experienced than the political community..."¹⁴⁵. It would therefore be reasonable to assume that the relationship between citizen and state would be that described by Walzer in "Obligations", but this is not so. "The *state* is the instrument with which the members of a civil society, acting as citizens, struggle to give a particular shape to their common life"¹⁴⁶. The significance of groups, especially as the primary focus of political obligation, is diminished once the state is conceived as a community of shared understandings. For if citizens are fully participating members in the process of reaching understandings about their common life, and if the state is the vehicle through which these decisions are made and upheld, then it would follow that political obligations would be owed to fellow citizens as members of the larger all-embracing group, i.e. the state.

For Walzer the state is not now a neutral institution, an impartial mediator. The state and its officials guard the boundaries between spheres and prevent the tyrannical use of power, but it is the agency of the citizen body. Walzer believes that citizens should participate in a democratic decision-making process. All have a right to be involved in decisions about membership, about distribution of goods (there will always be strains between spheres, controversies about the position of the boundaries), about shaping their lives in the workplace, and this kind of citizenship is unimaginable in a hierarchical society.

Because of the crucial role of the state as the agent of distributive justice, its power must be restrained. More often than not "state power is colonized by wealth or talent or blood or gender; and once it is colonized, it is rarely limited"¹⁴⁷. State

officials behave tyrannically when they discriminate against some citizens, or try to control spheres outside their authority. Political power is the power to make decisions about a common life and such decisions properly belong to citizens. This is the deep meaning of citizenship. It is not simply a device to prevent the usurpation of power by any particular group. If ownership, expertise, religious knowledge and so on are confined to their spheres - that is, if the owner, expert and priest are not invested with special knowledge or power - then "there is no alternative to democracy in the political sphere"¹⁴⁸.

Democracy is not a form of simple equality since the faction with the most persuasive debaters and the most skilful politicians will win the day, and the losers must accept the decision. Simple equality in a democracy consists in the right to participate and the right to vote, but the power to vote falls "well short of the capacity to determine destinations and risks"¹⁴⁹. Politicians depend upon an accumulation of votes, which they try to obtain through all the organisational activities - parties, interest groups etc. - which have been developed to persuade voters. Walzer believes citizens should fully participate in all forms of political activity. "The citizen/voter is crucial to the survival of democratic politics, but the citizen/politician [i.e. participator] is crucial to its liveliness and integrity"¹⁵⁰. Full participation in secondary groups was a key element in Walzer's early writings on obligation. Now he argues that those who win political power must regularly submit themselves and their policies for the approval and consent of the citizens. The right to participate, the knowledge that they can participate, is central to citizens' self-respect. Participation enables citizens to resist violations of rights in all spheres. Moreover the citizen must be able to take responsibility for what he says and does. "Deprived permanently of power ... he is deprived also of this sense of himself"¹⁵¹, as he would be if he was reduced to a mere spectator by push-button politics, or if he was poor in a society which allowed the rich to dominate the political sphere. It

is the reaching of decisions together which is so important to Walzer's conception of a society of members.

In any society tyranny is appropriating things in a manner which violates common understandings of distribution. Complex equality is maximum differentiation between spheres, and this is appropriate to our society. The political arrangements best suited to this theory are those of "a decentralised, democratic socialism"¹⁵² - a constrained market, demystified civil service, public schools, protection of religion and family, workers' control etc. Citizens need to defend their institutions and "their own sense of meaning"¹⁵³. "This is the socialist form of the old liberal hope that individuals secure in their own circles won't invade the circles of others"¹⁵⁴. That is, we would see ourselves not as isolated individuals but as members of different groups. The individualist view of freedom, the idea of individuals entering into institutions and relationships as and when they choose, says nothing of the understanding of "social cohesion; nor do they make sense of the lives individuals actually live, and the rights they actually enjoy, within the framework of on-going institutions"¹⁵⁵; and he goes on to say that "if men and women enjoy their different social roles they are more likely to respect the settings within which the roles are played".¹⁵⁶ Earlier I drew attention to Pateman's observation that it was difficult to know whether or not Walzer was subversive of liberal democracy. He believes that all should be able to participate in political society, that the free market should be limited and the economy open and accessible to all, and that "members of political society and economy are collectively responsible for each other's welfare"¹⁵⁷. But citizens achieve their ends through liberal democratic institutions and, like Rawls, his idea of justice is not associated with the good. (Although, as I have already pointed out, the assertion that liberal citizens are entitled to form their own conceptions of the good is somewhat at odds with the description of the state in which a just distribution of social goods is made possible

because of shared perceptions about the nature of the goods in question.) This is Walzer's attempt to adapt socialist principles to a democratic setting.

It is the place which Walzer assigns to the state within this scheme, its description as an all-embracing unified group, the repository and guardian of common values and understandings, with which I have grave misgivings.

CHAPTER 5

Dworkin on Equality : a postscript to Rawls and Walzer

A note on terminology

This chapter is based on several essays written by Dworkin and collected in "Taking Rights Seriously"¹, and "A Matter of Principle"², and on some courteously antagonistic correspondence between Dworkin and Walzer in the New York Review of Books in 1983.³ It is not intended to demonstrate any chronological development in Dworkin's ideas, but merely to serve as a useful focus for further comments on Rawls and Walzer.

When Dworkin talks of liberals and conservatives he uses these labels in the context of contemporary American politics. The conservatism is that of the moral majority and George Bush, the liberalism that of Rawls, more akin to social democracy than to the laissez-faire liberalism reincarnated as Thatcherism which has dispensed with the social conscience which led to the modification of this strain of liberalism.

There are difficulties, too, in defining equality, the subject of this chapter, the first part of which summarises an argument between Walzer and Dworkin about how to establish principles of justice for a society - shared meanings versus abstract principles; the second section is a very brief look at Dworkin on Rawls, and in particular his argument that there is a fundamental assumption underlying Rawls' deep theory of justice. The third section explains Dworkin's interpretation of the liberal version of equality.

Firstly I must put this discussion into its proper context. In the last chapter I examined Walzer's conception of complex equality, which states that social goods

should be distributed according to the social meanings attached to those goods in any particular society. For example, should medicine be distributed according to need, or should distribution be left to market forces? I maintained that in the contemporary liberal democracies of Britain and the USA we have no shared conceptions which are of use to us in deciding how to distribute such goods. We have very different, mutually exclusive - indeed mutually hostile - principles of justice (or, perhaps, ideas of what justice requires, to use Dworkin's phrase). Recently Sean French talked of "the unbridgeable ideological gulfs in the British scene" and wrote "that we are all arguing from irreconcilable premises"⁴.

Derivation of Principles

Dworkin accuses Walzer of relativism, of failing to enunciate clear principles of justice against which actual distributions and practices can be judged. Distributions for Walzer are relative to the meanings attached to the goods in a particular society. Dworkin makes the same criticism that I made about the nature of diverse opinions within a society. He writes, "the ideal or complex equality he defines is not attainable or even coherent, and the book [i.e. *Spheres of Justice*] contains very little that could be helpful in thinking about actual issues of justice: It tells us to look to social conventions to discover the appropriate principles of distribution for particular goods, but the very fact that we debate about what justice requires, in particular cases, shows that we have no conventions of the necessary sort"⁵.

Political argument begins where shared understandings fail - where there is disagreement there is no shared social meaning, but Walzer believes that disagreements *within a cultural tradition* demonstrate the existence of shared meanings rather than deny them. I do not believe this to be so, and Walzer offers no convincing arguments to substantiate his claim. For example, disagreements about how much health care should be provided, to whom, and how it is to be

funded, reveal opposed ideological positions rather than shared understandings. Dworkin suggests that if the disagreements are within a single tradition then Walzer cannot choose between one interpretation of what justice requires or another - there are no abstract principles against which they can be judged. He argues that Walzer provides no real argument about how health care should be distributed - no genuine argument based on principles of justice. Walzer, for his part, replies that his argument is made - it is "historical, sociological and contingent",⁶ but Dworkin writes that Walzer's theory ignores one of our fundamental traditions "...that justice is our critic not our mirror", and that his relativism "is faithless to the single most important social practice we have: the practice of worrying about what justice really is".⁷ Rather than leave justice to "convention and anecdote" we must argue for a theory of justice "by finding and defending general, critical principles of the appropriate sort",⁸ and he mentions his own preferred principle, a version of complex equality which "...must permit inequalities that can be traced to the choices people have made about what kind of work to do, what kinds of risks to take, what kind of life to lead"⁹.

Here, then, are the two sides of the debate. Walzer, writing in 1988, said "...I have been arguing ... against the claim that moral principles are necessarily external to the world of everyday experience, waiting *out there* to be discovered by detached and dispassionate philosophers. In fact, it seems to me, the everyday world is a moral world, and we would do better to study its internal rules, maxims, conventions, and ideals, rather than to detach ourselves from it in search of a universal and transcendent standpoint"¹⁰.

On the other hand Dworkin rejects the idea that we share a common moral tradition from which we can derive principles of justice. Although the moral majority and liberals may share some traditions (for instance, the idea that the state must act justly towards all), at a more concrete level "they disagree sharply about the role

that justice permits or requires the state to play in the moral lives of its citizens"¹¹. If we take sides we are making a moral judgement, "the kind of judgement that would make no sense if justice were simply a matter of convention. So the idea of a shared moral tradition cannot do the work Walzer wants; if society is divided on some issue, the tradition runs out where the dispute begins"¹². He is not denying that arguments for principles of justice are made within particular societies, and will take account of "the relevant features of a community under discussion"¹³ and its understanding of the goods being distributed, "but the principles of justice we use to decide which features of a community are relevant to a just distribution of its goods ... must be principles we accept because they seem right rather than because they have been captured in some conventional practice. Otherwise political theory will be only a mirror, uselessly reflecting a community's consensus and division back upon itself"¹⁴.

Dworkin on Rawls

I mentioned Dworkin's own theory of equality to which he made reference in his review of "Spheres of Justice". In an essay on Rawls¹⁵ he argues that a particular conception of equality underlies Rawls' theory of justice. The construction of the theory shows it to be rights based rather than goal based or ideal based. "The basic idea of a rights based theory is that distinct individuals have interests that they are entitled to protect if they so wish"¹⁶. In the original position individuals argue for a conception of justice which they as individuals would find acceptable. Such a theory *presupposes* that rights are fundamental and not the result of convention, legislation or hypothetical contract. The basic right of Rawls' deep theory cannot be the right to any particular goal. Such a right might be produced by the theory but the original position itself cannot be justified on the assumption of such a right because the parties do not *know* they have such an interest or rank it above all others. He concludes that the basic right of Rawls' deep theory must be an abstract

right, but it is not the right to liberty, because everyone's general liberty will decrease any individual's likelihood of getting what he wants. Such a likelihood is increased by restraining others' liberty. So any right to liberty must be the right to particular liberties which are the product of the contract, not a condition of it. On the other hand, all the parties in the original position have the right to be treated equally, and this right "is enforced by the fact that no-one else can secure a better position by virtue of being different in any ... respect"¹⁷.

However, the parties in the original position qualify the value they give to equality. Material equality is subordinate to political equality, and material inequality may be justified if the condition of the worst off is thereby improved. He points out that Rawls has said that "equality as it applies to the respect which is owed to persons irrespective of their social position"¹⁸ is fundamental. It is fundamental, according to Dworkin, in the sense "that individuals have a right to equal concern and respect in the design and administration of the political institutions that govern them"¹⁹, and "the original position is well designed to enforce the abstract right to equal concern and respect, which must be understood to be the fundamental concept of Rawls' deep theory"²⁰. It is not "a product of the contract, but a condition of admission to the original position"²¹. It is a natural right owed to all persons as persons. Whilst Rawls argues that liberal democratic institutions will best ensure that the demands of equal consideration are met, it is open to critics of liberalism to show he is wrong, but there is no "more radical concept of equality"²².

Dworkin has transposed his own conception onto Rawls' theory, but Rawls rejects this interpretation. He suggests that his theory is applicable to the political sphere - a basis for general agreement in a "society viewed as a system of fair cooperation for mutual advantage"²³. We may hold certain ideas, opinions, beliefs about people in a metaphysical sense, which we must put aside when thinking of people as free and equal in a political sense. Now, we know that Rawls considers equal concern

and respect to be fundamental, and the original position is designed to yield moral principles which ensure and reinforce each person's self-respect, principles which are formulated by the parties in the original position who themselves enjoy equal representation as moral persons. And yet he is not prepared to concede Dworkin's point that "justice as fairness rests on the assumption of a natural right of all men and women to equality of concern and respect..."²⁴. The original position is not a device to test the natural right to equal concern and respect, but to examine "fundamental intuitive ideas" which are "implicit or latent in the public culture of a democratic society"²⁵.

Could Dworkin, then, not level against Rawls the same accusations that he made against Walzer, those of moral relativism, of simply holding up a mirror which merely reflects a community's ideas back on itself?

Rawls has written that Dworkin's classification scheme, rights-based, duty-based, goal-based views, is too narrow. Rather, "justice as fairness is a conception-based, or ... an ideal-based view..."²⁶. It takes "certain fundamental intuitive ideas such as those of persons as free and equal"²⁷ and works them up into idealised conceptions. The original position models not the natural right to equal concern and respect (as Dworkin would have it), "but of the essential elements of these fundamental intuitive ideas as identified by the reasons for principles of justice that we accept on due reflection. As such a device, it serves to combine and then to focus the resultant force of these reasons in selecting the most appropriate principles of justice for a democratic society"²⁸. In other words principles of justice are derived from a community's present shared understandings. Intuitive ideas and present convictions are tested through the original position and the condition of the veil of ignorance.

Walzer, too, examines shared meanings, although his method is less rigorous than Rawls'. And for Walzer justice in a society would lie in being true to its shared meanings and its conventions. The social critic is committed to his own society and criticises it from the standpoint of the principles it professes to hold. Are social goods distributed as they ought to be according to the meanings attached to them? He seems to accept, as Dworkin says, that shared meanings are just - a society simply has to be faithful to them. Rawls, on the other hand, wishes to test these conventions, to ask whether our present practices *are* just and reasonable. The test takes place in a bargaining situation, the original position. The source of criticism is rational discussion.

Equal Concern and Respect

I now turn my attention to what Dworkin himself has to say about the right to equal concern and respect, which he regards as a fundamental liberal value, the "nerve of liberalism" as he puts it.

Liberalism is an "authentic and coherent political morality"²⁹ with a constitutive set of moral principles which includes a belief that inequalities in wealth should be reduced; that government intervention is necessary to reduce unemployment; that restraints on free speech should be opposed, and so on. Firstly, he rejects the notion that liberals tend to value equality more than liberty, and that conservatives tend to value liberty more. Liberty is not quantifiable. We cannot say that more liberty is lost through traffic restrictions than through limits on freedom of speech. We cannot say that freedom of speech protects more liberty, valued for its own sake, than does "the liberty to drive as [we] wish"³⁰. Therefore we value fundamental liberties such as freedom of speech because of something else that they protect. "But if this is so", he writes, "then we cannot explain the difference between liberal and

conservative political positions by supposing that the latter protect the commodity of liberty, valued for its own sake, more effectively than the former"³¹.

A government may treat its citizens equally according to two distinct principles. It may treat them *as equals* in the sense that all are entitled to equal concern and respect; or, it may treat them *equally* in the distribution of certain resources. How far governments should try "to secure equality in some particular resource, for example, in monetary wealth"³², is a matter of argument. Liberals may certainly value equality in this second sense more than conservatives, but it cannot be argued that they value equality in its first, and more important, sense than conservatives do. The first principle is constitutive (valued for its own sake) for both liberals and conservatives. In the second sense it is derivative for liberals - a strategy to achieve the constitutive position.

Sometimes treating people as equals (that is, as entitled to equal concern and respect) means treating them equally, but the conservative believes that in many cases treating people equally would not mean treating them as equals. "So", he writes, "we must reject the simple idea that liberalism consists in a distinctive weighting between constitutive principles of equality and liberty"³³. However Dworkin does pursue the question of what it means for a government to treat people as equals, entitled to equal concern and respect.

One argument holds that the principle is satisfied only if the government is neutral on the question of the good life, showing no preference for one conception over another. A second argument considers that a government cannot be neutral on this question "because it cannot treat its citizens as equal human beings without a theory of what human beings ought to be"³⁴ and "...the content of equal treatment cannot be independent of some theory about the good for men or the good life, because treating a person as an equal means treating him the way the good or truly wise

person would wish to be treated. Good government consists in fostering or at least recognising good lives; treatment as an equal consists in treating each person as if he were desirous of leading the life that is in fact good, at least so far as this is possible"³⁵.

He argues that it is the first conception of equality which is liberalism's constitutive political morality. A liberal would argue that resources and opportunities be distributed equally as far as possible, as any other principle of distribution would assume that some people's preferences, ambitions, talents were more worthy than others of greater concern and value. A neutral distribution would allow everyone to choose their own lifestyle; between more work and less leisure, for example, or between more and less expensive tastes. If everybody had the same tastes and talents, the same conception of the good life, then the principle of equality would be satisfied by equal distribution, through government, of everything to be distributed. If everybody had the same tastes and talents but different conceptions of the good life then liberals could satisfy the principle of equal treatment through, firstly, the economic market as a mechanism for deciding what should be produced and how it should be distributed; and secondly, representative democracy for collective decisions about the regulation of conduct.

In these circumstances the market determines the prices of goods and of labour. Hence a person's own distribution is "a function of the personal preferences of others as well as of his own, and it is the sum of these personal preferences that fixes the true cost to the community of meeting his own preferences for goods and activities"³⁶. Although Walzer knows the "anti-egalitarian consequences of free enterprise in practice"³⁷, he considers that "under the special condition that people differ only in preferences for goods and activities, the market is more egalitarian than any alternative of comparable generality"³⁸.

Of course, in the real world we do not start with the same talents and abilities, and our choice of work is limited, as is our choice between work and leisure. Some start with more material wealth than others and some have special needs which limit their chances in competition for jobs, and they may require additional resources to satisfy identical requirements. Dworkin writes, "these inequalities will have great, often catastrophic, effects on the distribution that a market economy will provide. But, unlike differences in preferences, the differences these inequalities make are indefensible according to the liberal conception of equality"³⁹. That is to say, the able or talented or just plain lucky individual has no moral right to a greater share of the resources that are available to the community as a whole. If the market is the sole mechanism for distribution, many will not acquire the means to pursue their reasonable life plans.

This argument is based on the rights of the individual to equal concern and respect, and Dworkin is examining which distributive system, from a liberal point of view, satisfies this right. Rawls argues for equality of distribution (and for inequality when all, particularly the least well-off, would benefit). His theory, too, is founded on individual rights, but in the context of a society perceived as a cooperative venture, in which all share and to which all contribute.

Like Hobhouse and Rawls, Dworkin believes that a liberal economic system should limit inequalities arising from differences in talent and ability and so on, whilst allowing inequalities which reflect true choice of goods and opportunities. It may be a reformed or modified market system, with redistribution through taxation; it may be a socialist system, but whatever the choice its purpose is "to achieve the best practical realization of the demands of equality itself"⁴⁰. His notion that an unequal distribution is necessary to ensure equal concern and respect is not unlike Rawls' principle that an unequal distribution should benefit the least favoured.

It will be impossible to achieve a perfectly just distribution but we can judge, to an extent, how far a society falls short of the ideal. Moreover no citizen should be asked to make undue sacrifices for the sake of other individuals or for the sake of the community and its institutions. For example, it may be argued that welfare benefits lead to economic decline which in turn leads to cultural decline. So welfare benefits to the poor and unemployed should be withdrawn, the economy will prosper and everyone will be better off in the long run. Dworkin dismisses this as "simply a piece of utilitarianism, which attempts to justify irreversible losses to a minority in order to achieve gains for a large majority"⁴¹.

A citizen may make sacrifices on behalf of a community if he feels part of it, and if he is able to participate in shaping it, and if the promised prosperity will benefit his immediate community, be it family or race or whatever. But this means that a government which asks for sacrifices, which denies to some the equal resources due to them from considerations of equal concern and respect, must adequately compensate those who make the sacrifices. The unemployed must be given generous provision for retraining or for public employment, and opportunity and encouragement to become socially integrated and to take part in political affairs. "If government pushes people below the level at which they can help shape the community and draw value from it for their own lives, or if ... their own children are promised only second-class lives, then it forfeits the only premise on which its conduct might be justified"⁴², he writes. Or, as Galbraith puts it, we must "reflect the needs and aspirations of those outside. To do otherwise is to leave the unfortunate to a kind of voiceless despair, to say in effect that they have no place in the democratic process..."⁴³. If, as some economists predict, the economy fails as a result of these measures to ensure that no-one is cut off from social life or the political process, "we should simply have to tailor our ambitions to the future accordingly. For society's obligation runs first to its living citizens. If our government can provide an attractive future only through present injustice - only

by forcing some citizens to sacrifice in the name of the community from which they are in every sense excluded – then the rest of us should disown that future, however attractive, because we should not regard it as our future either"⁴⁴.

The citizen, then, should feel part of the community and has the right to help to determine its present course and shape its future. "Treating people as equals requires an ... active conception of membership."⁴⁵ Representative democracy is justified because it enforces the right of each person to respect and concern as an individual. The problem is that, in practice, majorities may disapprove of the particular wishes of a minority, and may violate its right to equal concern and respect, simply *because* they disapprove. They may legitimately restrict behaviour which limits the preferences of others. He concludes that a scheme of individual rights is necessary in order to prevent inegalitarian results arising from the economic and political institutions which seem best fitted to *protect* the basic right to equal concern and respect. But these rights "are not to be understood as representing equality in contrast to some other goal or principle served by democracy or the economic market. The familiar idea, for example, that rights of redistribution are justified by an ideal of equality that overrides the efficiency ideals of the market in certain cases, has no place in liberal theory. For the liberal, rights are justified, not by some principle in competition with an independent justification of the political and economic institutions they qualify, but in order to make more perfect the only justification on which these other institutions may themselves rely"⁴⁶. The system of rights must not be seen as compromising some other goal of the political and economic systems. The market economy is justified only because, and only to the extent that, it meets the demands of the right to equal concern and respect.

A conservative, Dworkin argues, believes that "treating a person with respect requires treating him as the good man would wish to be treated"⁴⁷, and he (the good

man) would wish to be treated in accordance with the principles of the virtuous society, a virtuous society being one in which citizens have a shared conception of virtue. "They believe their community, in its social and political activity, exhibits virtues, and that they have a responsibility, as citizens, to promote these virtues. In that sense they treat the lives of other members of their community as part of their own lives."⁴⁸ But unlike a socialist or Marxist with a vision of an ideal society, the conservative believes "that his own society, with its present institutions, is a virtuous society for the special reason that its history and common experience are better guides to sound virtue than any non historical and therefore abstract deduction of virtue from first principles could provide"⁴⁹. This is an Oakeshottian conservatism, valuing what we know and are used to.

Hence the by now familiar institutions of the market economy and representative democracy will appeal to the conservative, as to the liberal, but for very different reasons. Whilst the liberal believes that the talented have no special right to greater resources, the conservative believes "the economic market, in practice, assigns greater rewards to those who, because they have the virtues of talent and industry, supply more of what is wanted by other members of the virtuous society; and that is, for the conservative, the paradigm of fairness in distribution"⁵⁰.

I may say, in passing, that a neo-laissez faire liberal like Nozick would simply see the free unfettered market as the place where individuals could buy and sell whatever they legitimately owned at a price fixed according to the laws of supply and demand. There is no right or wrong outcome. The free market may result in the destruction of the community. Laissez-faire liberalism was modified not only because some individuals could not properly develop their capacities but because of the dangers to society of having a large impoverished class.

In the political sphere the conservative will approve of the institution of democracy, since it allows the community "to reaffirm, as a community, its public conception of virtue"⁵¹ by electing a government with a particular set of values, which are encouraged - indirectly - through legislation. Although liberals and conservatives may both reach the conclusion that the free market and political democracy are the best available institutions for their particular purposes, the conservative will modify the market only for reasons of expediency (when, as I have suggested, cohesion is threatened). They will protect, through the establishment of property rights, those who succeed, the virtuous and talented, from the envious majority who may use the democratic process to disinherit them. Liberals would only allow property rights to the extent that sovereignty over a limited range of personal possessions is essential to personal dignity. Liberals would also allow some form of redistribution to the less able on the grounds that the morally irrelevant considerations which help some to compete with more skill in the market should not determine the final outcome of distribution of resources.

In other words, conservatives and liberals, whilst embracing the same institutions, will modify them in very different ways. "They will disagree sharply over which corrective devices, in the form of individual rights, are necessary in order to maintain justice, and the disagreement will not be a matter of degree"⁵², writes Dworkin. And we can recall in this phrase the criticism made of Walzer - that politics begins where shared conceptions fail.

Dworkin has argued that liberalism's "constitutive morality is a theory of equality that requires official neutrality amongst theories of what is valuable in life"⁵³, but this neutrality is not an indication that "there is no right and wrong in political morality."⁵⁴ Liberalism based on equality is morally neutral to the extent that the demands of equal concern and respect require. "It rests on a positive commitment to an egalitarian morality and provides, in that morality, a firm contrast to the

economics of privilege."⁵⁵ Michael Ignatieff, in a recent article, has said that conservatives (of Mrs. Thatcher's kind) "believe the polity exists to maximise private freedom but do not believe the polity should provide the means to enable all citizens to be free"⁵⁶, but "the history of the welfare state in the twentieth century can be understood as a struggle to transform the liberty conferred by formal legal rights into the freedom guaranteed by shared social entitlement. Given the tendency of the market to generate inequality, the state was called upon, by its own citizens, to redress the balance with entitlements designed to keep the contradiction between real inequality and formal equality from becoming intolerable. From this history of struggle was created the modern social democratic polity: formally neutral on what constitutes the good life, yet committed to providing the collective necessities for the free pursuit of that good life, however individuals conceive of it"⁵⁷.

Dworkin believes that each individual who values his or her way of life should be allowed the freedom to pursue that way of life without restraint. Liberals are indifferent to the way people choose to live their lives. A government which tries to enforce "private morality" undermines the self-respect of those with different ideas who cannot "accept that [their] way of life is base and degrading"⁵⁸.

Citizens must be treated as equals because that is what is right. He refutes the argument that liberalism conceives of people as isolated individuals. It does not deny "that most human beings will think that what is good for them is that they be active in society"⁵⁹. He also denies that liberalism is self-contradictory in that it is itself a theory of the good: "the liberal conception of equality is a principle of political organisation that is required by justice, not a way of life for individuals"⁶⁰, he wrote, presaging Rawls' statement that justice as fairness is political, not metaphysical.

CHAPTER 6

Obligations and Community

Although Nozick, Rawls, Dworkin, Hobhouse and, possibly, Walzer may all be placed within the liberal tradition - concerned with individual self-determination, political equality, consent to government and democratic institutions and a (more or less) free market - it is obvious that the extreme individualism of Nozick sets him apart from the social liberals and from the democratic socialism of Walzer. Nozick's theory of justice does not embrace a vision of a political community with collective ends acting through its agent, the government, to ensure the welfare of all its members. But this is the central concern of Hobhouse, Rawls and Walzer and their purpose is to resolve the inevitable tension between individual rights and community needs which their theories entail.

It is the state which has a crucial role in securing justice, which for Hobhouse is to be found in the collective life; for Rawls in a cooperative society designed to maximise the position of the least advantaged; for Dworkin through equal concern and respect for all citizens; and for Walzer through complex equality achieved through the separation of spheres. How principles of justice are derived is a matter of controversy, but underlying them are conceptions of the individual as self-directed, and certain ideas about the relationship between individuals and the social and political communities of which they are members. Each of the theories I have outlined is a description of the liberal democratic state as it should be (because of the conceptions these writers have), and as it could be if any one of the sets of principles were to be generally accepted.

I intend to draw together certain strands, recurring themes, from the previous

chapters, concentrating on the conceptual development of notions of political obligation, the strength of communal bonds, and the state as community.

I start with a discussion of the significance of political obligation in the theories I have examined, since *how* we are said to have obligations illuminates each writer's understanding of the state and of the relationship of citizens to the state and to each other. I suggest that obligation to the state can be based solely on the justice of its actions, solely on consent, or on a synthesis of these two; that is, consent is a necessary but not sufficient condition - the state must also uphold moral principles. This leads to some further thoughts on Rawls, Walzer and Hobhouse, and I end this section with some summary thoughts on equality, liberty and the nature of the state.

In the second part I briefly outline MacIntyre's critique of liberalism and his argument that in liberal societies moral disputes cannot be resolved since we lack any shared conceptions of the good. Walzer suggests that the communitarian critique is partially correct, that liberalism is inherently disintegrative, and that the inclination to self-destruction needs correction. However, his endorsement of Rawls' social union of social unions as an ideal seriously weakens his description of the state as a community of shared values.

In conclusion I argue that actual liberal democratic states are not, and are unlikely to become, all-embracing political communities of citizens united in some common enterprise.

Pateman and Political Obligation

I have broached the question of political obligation, from the voluntarism of Nozick in the setting of the minimal state, through Hobhouse for whom obligations are inescapable, via Rawls and duty to the just state, to Walzer for whom obligations are rooted in community. The challenge for liberals is to justify in voluntarist terms an

individual's relationships (especially political) when this self-directed individual is situated within a social setting which is not freely chosen. But this is to raise the familiar problem of political obligation - how individuals can be said to have consented to be governed. Resolving this dilemma involves justifying the establishment of the state itself as necessary (for security, for example, or to promote justice), and then to explain how, subsequently, citizens come to accept the authority of the state.

As I have shown there are very different answers to the even more fundamental definitions of equality and justice - what is due to and from individuals as individuals, and as citizens. This in turn leads to differing explanations of the necessity for, and purpose of the state, and of citizens' relationships to it.

Carole Pateman, whose arguments I shall use as a useful framework for the following discussion, believes that political obligation is a permanent and insoluble problem in the liberal democratic state.¹ The ideal of self-assumed obligation demanded by the liberal conception of the free and equal individual lies behind contract theory, but this has been corrupted to become merely tacit consent and hypothetical voluntarism. The corruption of the contractual relationship serves to stabilise the potentially subversive nature of the liberal ideal. Since Pateman argues that obligations can only be self-assumed through deliberate and explicit acts of one's own it follows that political obligation is problematic.

She argues that abstract individualism, the conception of individuals as though they can be separated from their social institutions, is "both a reflection of, and an abstraction from, aspects of liberal democratic social life"², and this reflection of the market economy is then used to suggest that individuals "naturally" act purely out of self-interest and have a possessive morality. Fulfilment of obligations is then a matter of subjective judgement. Individuals thus conceived would be able to deny

that promises bind, for to talk of individuals abstracted from reality as making promises or having obligations is nonsensical since any such conception depends on convention or moral laws or principles. The individual abstracted from any social setting "could never agree that there are good reasons for any general constraint upon individual action or the individual's will"³.

Taken to its extreme, abstract individualism conceives of all relationships as contractual. Gauthier believes that the ideology of contemporary societies is developing towards a radical contractarianism⁴, an argument rejected by Beran, who writes that "love of country and love of people... are among the best reasons for voluntarily entering political and marital relationships"⁵. Beran himself vigorously defends consent theory, arguing for a specific act of consent to be made by each individual.

Both Gauthier and Pateman could have illustrated their theses with an account of Nozick, whom I described as the ultimate consent theorist. Starting from a position of the inviolability of the individual, Nozick describes how the state could come into being without any person's rights being transgressed. Rights are not dependent on social convention but define the limits of social relationships. In the context of political obligation I argued that the notion of consent was hardly relevant to Nozick's theory, since the state comes into existence through a series of individual contracts with a protective agency, rather than as the result of a deliberate decision to institute a polity of a particular nature. That is, it is seen as a purely economic process, the result of market forces. Nobody consents to the principle of a monopoly of force residing in one agency, nor to the principles of the entitlement theory of justice.

Problems of the relationship between citizen and state which occur when the state is invested with a wider role or described in quite different terms - as being, for

instance, an all-embracing community in which common values are shared and in which resources are redistributed to fellow-members - are avoided. However, other questions of a pressing nature arise such as the constitutional status of an unrestrained monopoly and how it, too, could be controlled through market forces once competition has been eliminated; the involuntary nature of the contract between the agency and unwilling independents, and between the monopoly agency and those born after it had been established as the minimal state; and the absence of any recognition of obligations and attachments to others acquired through membership in families and communities. The minimal state has no moral purpose; it is composed of self-interested individuals whose obligation is limited to the idea of moral side-constraints - the obligation not to transgress another's space.

Consent and Morality : three possibilities

Political obligation is a specific obligation owed to the state. It may be possible to say, following an argument of Raphael, that the state is necessary for the achievement of certain common aims and the fulfilment of our responsibilities to others as members of a community. In this case we would have a political obligation based not on the moral worthiness of the state's actions, but on its necessity to our own moral lives. "The obligation comes from the presupposed moral obligation to promote the ends of justice and the common good together with the recognition that the state is a necessary means to those ends"⁶. Consent in the form of acquiescence to the state as this necessary agent "adds to the state's power the authority or right to give orders"⁷, but consent is not the source of the obligation. The state's actions must be directed towards fulfilling its proper ends.

But if we accept, for the moment, that political obligation can only be self-assumed then the citizen has no automatic obligation to the state in which he was born or lives, no matter how virtuous the state. Political obligation would only be incurred through our knowing and deliberate consent or, for Pateman, through our

continuing active participation in decision-making.

We now have three possibilities:

1. Our obligation to the state is based purely on its actions judged by their consistency with moral principles.
2. Our obligation to the state depends only on our consent or participation. This is the necessary and sufficient condition for this obligation. However, moral and political obligations may conflict.
3. Participation and consent are necessary to political obligation but not sufficient. Political obligation also depends upon the state's adherence to principles of political morality.

The first possibility has nothing to say about a particular form of state or its institutions. Although Pitkin writes that a legitimate government is one to which citizens ought to consent, nevertheless their obligation depends not on consent but on the nature of the government. "If it is a good, just government, doing what a government should, then you must obey it; if it is a tyrannical, unjust government trying to do what no government should, then you have no such obligation"⁸.

If political obligation depends on our participation then the form of the state must be such that participation is a reality. On the other hand consent could be to any form of state, or to any government regardless of its purposes. I am simply trying to suggest here that a very narrow definition of political obligation might be possible. However, whether decisions are made through active participation, or by the government to which we have consented, they would have to be judged against moral principles, so that political obligation could be outweighed by moral considerations. For Nozick and Pateman consent is the key feature of political obligation. I have made some comments on Nozick already; Pateman does not exclude considerations of moral principles.

In the third case the political and moral become inseparable, so that our obligation to the state would depend both on its form (for Pateman, the full participatory social democracy) and on its decisions and actions.

Contract Theory

Pateman argues that contract theory has two parts, the first being an agreement to form civil society, and the second an agreement "to alienate to a government of representatives the right to make political decisions"⁹. Nozick's primary concern has been to demonstrate how the state itself is established (although not by any hypothetical agreement as understood in traditional consent theory), whereas Pateman considers the second stage to be the most important in liberal argument, the question being *how* do individuals consent or voluntarily obligate themselves. Pateman calls this second stage a promise to obey, the alienation of an individual's political rights. The Lockean contract has the two stages described by Pateman: firstly, the agreement to establish a political community, institute a political authority and so form a bond of political obligation. This first stage is a contract of horizontal relationships and is a logical necessity (though formal and abstract) preliminary to the second stage, in which political authority is given up to representatives. The vertical relationship between individual citizens and the state replaces the bond between citizens.

Locke's theory thus represents a shift from the general problem of justifying political obligation which arises from the notion of free and equal individuals, to an emphasis on the second stage of the contract. Having established the legitimacy of the liberal state he then seeks to answer the question "how it can be plausibly maintained that individuals consent to a form of political authority that is already assumed to be justified"¹⁰. For the majority consent is tacit, inferred from their remaining in their native country and going about their everyday business. Of course, we find it difficult to agree that political consent can be so inferred. Walzer

suggests that certain obligations are incurred through residence and normal daily intercourse, but these are limited to preserving the peaceful social order. However, the idea of tacit consent is very necessary to Locke because, Pateman argues, "usually there is no question about political obligation and consent because there is no question that the authority of the liberal state is justified. The task of the theorist then becomes that of showing how individuals can be said to give the consent that ought to be given. Unless hypothetically voluntarist arguments, however implausible, are accepted, problems about political obligation are opened up that Locke, and his successors, regard as closed"¹¹.

Rawls and Hypothetical Consent

But this changes the nature of the argument. Expressed in these terms it suggests that the authority of the liberal state is not to be found in the consent of its citizens, otherwise we would have to say that if there were problems with consent then there would necessarily be problems with the authority of the liberal state. And this is the crux of the matter because liberal theorists do have problems in showing how consent is given. Thus, Pateman says, Locke postulates a situation in which people consent to a government with certain purposes, and any government carrying out these purposes therefore has the inferred consent of its citizens. Pitkin, too, writes of the Lockean version of consent, "... you are obligated to obey not really because you have consented; your consent is virtually automatic. Rather you are obligated to obey because of certain characteristics of the government - that it is acting within the bounds of a trusteeship based on an original contract"¹², the terms of which are, to Locke, self-evident.

Obligation, then, depends on the nature of the government, not on any special relationship between citizen and government. As Pitkin says in her defence of the doctrine of hypothetical consent, you must obey a good, just government. This Pateman believes to be at the opposite extreme of liberal theory to abstract

individualism, since it "claims that it is a sign of philosophical disorder even to suggest that there could be general problems about political obligation"¹³.

Now Rawls, too, formulates his theory of political obligation in the same terms, although the original position "is an example of the most radical abstract individualism"¹⁴. Although the basis of obligation is the hypothetical contract, consent is not a necessary condition of political obligation. Pateman argues that it is an attempt to show that the state is rational and necessary and that therefore political obligation is unproblematic.

The principles of justice "distinguish between those aspects of the social system that define and secure the equal liberties of citizenship and those that specify and establish social and economic inequalities"¹⁵. This is the liberal separation of social and political life which has a special significance in Rawls' theory because only those who gain political office, who are likely to be "the better placed members of society"¹⁶, have a political obligation. The remainder have only a natural duty to uphold the just constitution, and this leads Pateman to say that for Rawls political obligation is "a largely irrelevant concept"¹⁷. As Zwiebach says, even if a social contract is needed in the original position, in fact our obligation (or duty) to the state derives from our considered judgements, our agreement that the two principles are indeed rational and fair and morally compelling (and evident in the constitution and practices of the state!). This is the first of the three possibilities! Pateman believes that Rawls' choice of the two principles "depends on the prior assumption that the existing liberal democratic state is just or nearly just"¹⁸, or as Zwiebach puts it, "Rawls' whole theory of rational action is based upon presuppositions that have grown out of market-liberal social science, such as the notion that rationality requires that men will be moved to maximise advantages and minimise or hedge against risks"¹⁹.

The natural duty to support just institutions does not depend on voluntary acts because, Rawls argues, this would introduce the possibility of instability. "This" writes Pateman, "is a fairly breathtaking argument from a writer who claims to be working within the social contract tradition"²⁰, and she denies that the parties in the original position would accept an involuntary duty, arguing that "in a just institution there is a good reason to assume an obligation to do what is necessary to keep the institution in being"²¹. Or as Beran argues, Rawls is committed by his theory of justice to a scheme of voluntary membership and to "the further claim that obedience to a particular state is conditional on voluntary acceptance of membership... And this voluntary acceptance of membership can generate a self-assumed obligation to obey the state"²².

Pateman believes that Rawls can only include everyone in his account of political obligation "at the cost of reducing his argument to a completely abstract series of conceptual points..."²³. However, it is clear that Rawls recognises the difficulties in trying to identify voluntary acts which can be clearly understood to incur political obligation for the majority of citizens in contemporary liberal democratic states. Furthermore his account of political obligation should not be separated from its wider context; justice as fairness establishes, and is accepted as, the basis of social cooperation in a state whose citizens have incommensurable ideas of the good, and who will recognise a duty to uphold a constitution and those basic institutions which make this possible.

Pateman's critique of tacit and hypothetical consent theories is based on her own conviction that all obligations must be voluntarily assumed, and in order to justify her position she distinguishes between "ought" and "obligation". It may be that we ought to perform certain actions but have no obligation to do so unless we make a specific undertaking through a deliberate act such as a promise. (I am inclined to the opinion that this is an example of the abstract individualism which Pateman has

criticised!) There can be no obligations, even moral obligations, which are not the result of our own acts, because otherwise we would simply be consenting to preexisting obligations. This, she argues, is closely connected with the idea of tacit consent "for if "obligations" that ought to be recognised, or consented to, exist independently of individuals' actions, it is an easy step to the inference that such recognition is given"²⁴.

However, what we ought to do, as Pateman would agree, is derived from our social life. Those who want to live this social life accept, for instance, that they ought not to tell lies. They have an obligation to tell the truth. It makes no sense to argue about whether or not this is a self-assumed obligation; all that is needed is to see that this is an essential part of the social life we wish to share. Similarly, other aspects of living together bring obligations. This does not mean that there is no room for individual judgement, because the extent of obligation is often open to argument, or because our moral rules and codes are constantly changing. We ought not to harm others. We have an obligation not to do so. In Rawlsian terms we have a *duty* not to harm others, since this is not a matter of voluntary acceptance. Hence we have a duty to support just institutions, he argues. Voluntary acceptance of a duty adds nothing to the fact that it is a duty.

If the state is conceived and subsequently justified as a voluntary arrangement entered into by free and equal individuals, then its authority can only be justified in terms of the self-assumed obligation of its citizens, which is morally binding. This is why Pateman claims that political obligation is always problematic and that the liberal principles of freedom and equality are subversive in character. Consent theory offers a solution but it is always necessary to ask how this obligation is acquired. It is always possible for those who have consented to withdraw their consent.

This leads Beran to argue that membership is not automatic.²⁵ The state, to be authentic must be a voluntary association; this follows from a natural right to self-determination. Those who do not wish to accept membership of the state can emigrate, secede, enter a dissenter's territory or claim resident alien status. In his insistence that people make such a choice, Beran is taking too little account of those family ties, personal friendships and cultural roots which bind people together despite political systems. The cost of severance is high. In ignoring such bonds he, too, is in danger of reverting to an abstract individualism. For most people these ties are far stronger than those between citizen and state, to the extent that Walzer, in his early work, suggested that they generated obligations prior to the obligation to the state. The exclusion of dissenters would enable the creation of a unified state whose citizens shared the same principles of justice, but at a price. Rawls, on the other hand, overcomes the difficulties which Beran brings on himself because he does not insist on trying to make the state a literal voluntary association. Those who accept the rationality of the two principles and live in a just state become part of the state as a cooperative enterprise.

Pateman believes that arguments such as Rawls' have resulted in a change in the concepts of political authority and obligation from being conventional, implying voluntary acceptance and rejection, to becoming natural and therefore involuntary in that acceptance and rejection are inappropriate terms in which to discuss the natural order. These arguments not only presuppose the state as an ethical association but assume that this conceptual point applies to actual states. They are "implying that the liberal state is as necessary to its citizens as two internally related concepts are necessary to each other"²⁶, and that therefore political obligation is un-problematic, whereas there are always questions to be answered about the specific forms of states and their institutions. Although political obligation is postulated on the notion of individual freedom and voluntary consent, in practice this is reduced to political obedience embracing everybody.

Pateman's own solution to the problem of political obligation is full participation in a democratic non-statist environment. But her emphasis on participation ignores the fact that, in practice, it is the clash of moral principles which causes the real problem of political obligation. Just as voluntary acceptance of a duty does not alter the nature of the duty, so decisions reached through participation do not necessarily accord with principles of justice. Decisions reached by the majority must be evaluated in the light of certain moral principles and only then can the extent of the obligation be decided. As Pateman herself writes, "there is no guarantee that participatory voting will actually result in decisions in accord with the principles of political morality"²⁷. In discussing the validity of law Hart wrote that "the certification of something as legally valid is not conclusive of the question of obedience"²⁸.

Pateman herself is very confused on this point. She criticises the private nature of the liberal state "which can be evaluated only in terms of the procedure and its requirements"²⁹, adding that "part of Rousseau's critique of liberal contract theory is that it does not and cannot give expression to the ideal of social life as a voluntary scheme based on self-assumed obligation, because it cannot find a place for substantive principles of political right that are freely chosen and adhered to by citizens themselves"³⁰. And later she writes that "a democratic theory of political obligation must include some principle of political right"³¹ by which citizens can know whether they ought to assume obligations consequent upon decisions being taken. In other words even full participation is not the last word to be said about political obligation, although expressed in this way by Pateman it sounds rather strange since surely one of the purposes of the discussion procedure, if the issue is morally contentious, is to decide on a morally right course of action so that those in the minority at the end of the debate have already made their judgement, as have the majority. That is to say, they do not decide *afterwards* whether the decision accords with principles of political morality, although the minority may decide to

abide by the decision for various reasons.

It is not exactly clear what the content of the principles of political morality would be for Pateman, although they are decided by the citizens themselves, and can be amended and changed. "Citizens are bound by the political obligation and political authority they have created for themselves, but they also remain superior to them"³². What the citizen ought to do depends upon certain principles but this does not mean that consent is irrelevant, because the citizens have agreed to these principles in the first place and can change them. "It is because principles of political right, and the rules and laws that govern social and political institutions, can provide an internal and voluntarily assumed constraint that... can be amended or revoked, that it makes sense to speak of social life as a voluntary scheme"³³. I have said that certain principles of morality arise from the very fact of living together as a social or political community, and Pateman argues that these principles are freely chosen. However, I am uncertain about the process through which this choice is made. They are not, and could not, be the result of majority decision-making, for example.

However, once moral principles are established and accepted, it is difficult to see why a person's obligation should depend on his participation. He need only participate when the principles themselves are being questioned. Otherwise it is sufficient to judge the outcome. A decision not in accord with accepted principles cannot obligate any citizen, regardless of active participation in the decision, or consent to it. A decision which conflicted with these principles should be disregarded.

Political decisions, like laws, must be submitted to moral scrutiny or, in Pateman's term, principles of political right. If these principles are generally accepted and understood, then Pateman's distinction between ought and obligation is unhelpful.

Does the person who knows he ought to assume an obligation but does not do so, therefore have no obligation? The individual who disagrees with the general opinion that he *ought to assume* an obligation in a particular case is in the same position as one who is said *to have* the obligation but disagrees. The problem is simply pushed back a stage. Instead of asking why we have certain obligations we ask why we ought to accept certain obligations. Who is to decide? Who is to censure? In a participatory democracy the individual would be more likely to do what he ought, according to Pateman, but although arbitrariness and uncertainty may be decreased the underlying questions remain, and these centre around our acceptance or rejection of certain moral principles and their application in particular cases.

Pateman and Walzer - a widening gap

In asking questions about morality and political principles I suggested that political and moral obligation might be separated. Is such a distinction possible? It is a central feature of liberalism that the private and political are distinct. Pateman argues that the liberal social contract of Locke, for example, was designed to preserve the social and economic inequalities of the capitalist market economy whilst giving "an appearance of legitimacy to the dominance of some over others"³⁴. Natural independence is exchanged for formal equality before the law, creating an appearance of political right and obligation. Once the contract is made, liberal theorists argue, social inequality can be disregarded. I have criticised Rawls for the distinction he makes between liberty and the worth of liberty. In distinguishing between political duty and obligation he recognises that some, because of their involvement or privileged position, will be more firmly bound to the institutions of the state. As Pateman argues, the private sphere is supposed to be a voluntary cooperative venture, but inequalities in distribution, authority, power and influence are determined by the wealthy, whose formal equality of citizenship is worth more than that of the poor, who cannot compensate for the inequalities.

The separation of spheres is the central feature of Walzer's theory of complex equality. I have discussed Walzer's early theory of political obligation, in which consent is signified through a series of actions, a commitment made over time, and our primary political obligations are to our fellow citizens through group membership, the groups being the source of moral knowledge. Walzer's ideal of group membership is akin to Pateman's answer to liberalism, namely voluntary agreement between individuals in "a non-statist political community ... a political association of a multiplicity of political associations"³⁵. The political and social spheres, whilst distinct, are not separated. The political life "is constituted by rules that are grounded in, yet transcend, everyday life ..."³⁶, and is governed by substantive principles of political morality.

However, Pateman criticises Walzer for failing "to explore the concept of self-assumed obligation in terms other than consent ... Walzer emphasises the idea of membership based on explicit commitments, but he does not investigate how the commitment can be politically renewed ..."³⁷ His attitude towards liberalism is ambivalent. Nevertheless his notion of participatory pluralism "shows how the idea and practice of self-assumed obligation can point the way to a new democratic conception of political life and political obligation"³⁸. I argued that the distinction between private and political obligation is difficult to sustain in Walzer's early theory and this, says Pateman, is a challenge to liberal theory.

It is vital to remember that many obligations are incurred in the course of normal social life, and that in contrast to the self-interested individuals of Nozick's theory, Walzer's citizens cannot make or break obligations at random. In the later development of Walzer's ideas he would seem to draw away from Pateman in several ways. Firstly, the idea that we are bound by our moral principles, rather than through consent and participation, is emphasised. This is a movement from the second to the first of my possibilities since rights and obligations have their origins

in moral understandings shaped over a long period of time. However, participation remains a crucially important element in his theory - reaching decisions together is an essential sign of membership. We are born into and live in societies whose institutions we did not make. Sy Levin, failed instructor, disappointed in his student's lack of commitment to principles and ideas, reflects, "although they were responsible for tomorrow, they had not invented the world or the values they had found in it"³⁹. I have already noted Pateman's observation that principles of political morality are freely chosen, although how this process takes place is unclear.

Green contrasts the consent and the communitarian positions in these words: "The consent theorist often does tend to overestimate the role of the will at the expense of communal traditions in establishing those moral relations that are constitutive of political life"⁴⁰, and later he continues, "It is wrong to think of our most important duties as being consequences only of our own wills; this is to drain them of the social dimension that explains their form and content"⁴¹.

Walzer believes that moral principles may differ from one society to another, arguing that they are the result of a long tradition, a continuing debate, so that we inherit certain ideas about the values and meanings of social goods. The social contract is a moral bond, and an understanding of how goods are to be distributed for the benefit of all. Whilst the political and social were integrated in his early writings on group membership, now his argument for the separation of spheres in order to confine inequalities to specific areas of activity so that political power is not subject to undue manipulation by the wealthy, stems from his interpretation of our understandings of these goods.

Lastly, his conception of the state as the all-embracing political group emphasises the distance between his and Pateman's positions. He has moved away from a reasonable argument that citizens can share their lives and sustain their values in

groups, to the untenable proposition that a renewed democratic socialist state can encompass all its citizens in a unified society of shared understanding (untenable, that is, because the modern liberal state cannot be so transformed).

Hobhouse: Obligation and Moral Authority

The harmonious society of rational men envisaged by Hobhouse is a useful link between Walzer and Rawls, between principles of justice derived from tradition and those derived from rational argument. For Hobhouse, as for Walzer, rights and duties (what is owed to and from one another) stem from social relationships and from the experiences of community. They are not precedent to social life but begin with, and are part of, social life; he is critical of the abstract individualism of Locke. Both Hobhouse and Walzer believe that all must contribute to the community's debate about its shared purposes and meanings.

Although Walzer's liberal state, like Hobhouse's, encompasses the notion of a sharing community, a welfare state, Hobhouse's description of the principles of justice is more Rawlsian in character. Wealth is the result of common effort, development should be to the benefit of all, with distribution tending towards equality. We have an obligation to contribute to the well-being of others, to provide them with the means to pursue their ends. Like Dworkin, he rejects grave inequalities now for the sake of future benefits, and he writes that all persons must be equally taken into account in establishing the principles of harmony. Even so, the idea of the state as the embodiment of the shared common life and common values is closer to Walzer's conception of the state than to Rawls' political community which unites those with irreconcilable ideas of the good.

A person is a member of many groups, but Hobhouse's concern is with membership in the state. Consent is not a condition of membership of a community. "The community, in fact, is not a voluntary association which men can enter and leave as

they choose, but its organisation is a necessity of social life, and imposes itself accordingly on the reluctant"⁴².

The doctrine of consent does not mean literally that every individual must consent to the government. "What the doctrine contemplates, of course, is a population desirous of an ordered common life, but no less desirous to choose its own order and form its own organised community"⁴³. Although he considers the question of a group breaking away from a larger association, he does not consider individual dissent, perhaps because "man needs society for the fulfilment of his own being"⁴⁴.

Is it possible to derive a principle of political obligation from Hobhouse's system of social justice and the principle of harmony and the inescapable obligations owed to others? In Chapter 2, I made some comments on the settlement of competing claims in Hobhouse's theory. This is a problem because his principle of harmony envisages a community of rational men, selfless in motive, living in a peaceful community. There is always a tension between this ideal and the real world of imperfect men who need incentives and punishments to guide them towards right behaviour. Hence political obligation will also be a problem. Why?

Obligation stems from the very fact of being members of a community. Social justice demands that society is directed to the welfare of all, and the government is the agent through which this end is achieved. The state secures benefits for all and protects individuals against private oppression. The state's coercion is used to override individual coercion, and it is used to extend liberty, not curtail liberty. It derives its authority and legitimacy from the pursuit of these moral ends. As Hobhouse says, political obligation is secondary to moral authority. Neither the lawfulness of the government nor the correctness of its decision-making procedures are sufficient conditions to obligate. Rather, we are bound to obey a government pursuing the common good - we judge its decisions by ethical principles. The first

possibility clearly stated.

However, the difficulty lies in defining the common good, and in how governments - themselves imperfect - make decisions about matters such as redistribution of wealth according to principles caught between idealism and realism. Our obligation must be severely limited, given these circumstances and the problems of ascertaining the common interest.

In "Liberalism" Hobhouse says that "democracy is not founded merely on the right or the private interest of the individual ... It is founded equally on the function of the individual as a member of the community"⁴⁵ All must help to form the common will on which the common good is based. The purpose of political participation is to discover the common welfare, which is directed to the good of the individual as a member of society. However, political participation in a complex society is limited, and the decision procedure itself - the opinion of the majority holds - lacks the moral authority democracy demands. Democracy *should* be the political expression of the collective life, but the nature of the societies in which we live, our lack of knowledge and our self-interest make it a poor reflection of the ideal.

No matter how decisions are made, and Hobhouse (like Pateman, Walzer and Dworkin) is trying to ensure that all interests will be considered, the important point is that decisions conform to moral principles. Pressed further it may be that the necessity to participate (if only to guarantee that governments are made accountable to citizens), together with the requirement that decisions comply with moral principles, leads to the conclusion that participation and consent are necessary but not sufficient conditions of political obligation in liberal democracies - the third of my possibilities. Although Hobhouse and Rawls both favour active citizenship within democratic institutions, participation is not a defining element of political obligation, except in the narrow sense which Rawls ascribes to the term

"obligation".

Walzer, however, believes that citizens must participate. Reaching decisions together binds members of a society. Obligations arise from common understandings but all should contribute to the debate, and in this context political obligation cannot altogether be dissociated from participation.

Equality, Liberty and the State

Nozick, Walzer, Hobhouse and Rawls all assert the values of equality and individual freedom, the right of each person to further his or her own idea of the good. But they assign different meanings to the concepts of equality and liberty because of their perceptions of the individual and his relationship to the society in which he lives. Since the state is one of the social institutions into which we are born it follows that they have differing ideas on the nature of the state and its role in securing equality and liberty, however they are defined. Their explicit or inferred theories of political obligation reflect these different views and illuminate their theories of justice.

Thus for Nozick the state protects all equally; all have formal equality before the law and are equally free to pursue their own ends provided they have the means to do so, save only for the conditions imposed by the Lockean proviso, and that they do not interfere with others' like liberty. These limitations to their rights define their duties to others. Freedom is negative. The citizen has a contractual relationship with the state, which is not to be regarded as the embodiment of community values. Obligations are assumed voluntarily; cooperation between individuals for welfare or other purposes is a private matter, and the government will not intervene to protect the weak or vulnerable or those otherwise unable to compete effectively in the market place for the means to achieve their ends.

Rawls argues that free and equal men will accept the involuntary nature of the state if it is organised in accordance with the two principles of justice. In the cooperative Rawlsian state all may pursue their own life plans, and the principles of justice are designed to ensure that all are equally able to do so or, at least, to maximise the position of those in the least favoured circumstances. The tension between the two aspects of his theory - the state as a cooperative venture run for the benefit of all, but founded on principles chosen on a maximin basis by self-interested individuals - is mirrored in the dual nature of political obligation, a duty for most, an obligation for those whom the system most favours. I say this is a mirror of the tension between cooperation and self-interest because of the distinction made between liberty and the worth of liberty. Because some have a greater capacity to advance their self-interest, their worth of liberty is greater and they have more influence over events. Thus the formal equality of the first principle is compromised because of the inequalities permitted by the second principle. The ideal of the state as a cooperative of equal individuals is jeopardised.

To avoid this particular problem Walzer suggests that inequality in one sphere should not be transferable to another. Hence the worth of political liberty would be the same for all citizens. Equality is freedom from domination. He emphasises the state as a historical community rather than as analogous to a voluntary association. We have obligations to each other as members of a community based on shared understandings, and as members of a community we care for each other's welfare. Individuals are not to be submerged in the group because all must contribute to the shared understandings of the community and because they are free to pursue their own ideas of the good, which they will normally do as members - of a neighbourhood or an institution or an association - in whose decision-making they fully participate, and which signifies their membership. The political community is the most important group since all are bound together within it, and it is the group within which decisions about the common life are made. It is the forum where

principles of distribution of goods are debated, decided and put into effect.

For Hobhouse, however, the authority of the state is derived from the pursuit of moral ends rather than from consent or participation. Men and women are social beings, mutually dependent on one another, with inescapable obligations to others as members of a community. Rights and duties have their origin in social relationships in a harmonious society of rational men, and the system of rights and duties promotes the common good. The welfare of all must be taken into account, and this end is achieved through the agency of government. The worth of liberty and political equality is enhanced when the state corrects material imbalances so that all have a reasonable chance of self-development.

The state is described by Nozick as a protective association with minimal functions; by Rawls as a cooperative run for the benefit of all; by Walzer as a community of shared understandings, and by Hobhouse as a harmonious society of rational men.

MacIntyre and the Decline of Moral Tradition

I have shown that within the broad swathe of liberal theory there are very different descriptions of social relationships and, more particularly, of the state. Are any of these accounts accurate representations of the liberal democratic states in which we live? Communitarians argue that liberal theorists misrepresent the nature of the ties that bind us together into communities. Alasdair MacIntyre's "After Virtue"⁴⁶ is a forceful rejection of liberal individualism, written in "updated state-of-the-art, theoretical language", (to use Walzer's phrase)⁴⁷.

MacIntyre argues that in contemporary liberal societies moral arguments cannot be resolved. Claims between liberty and equality, for example, in the end fall back on simple assertion. We live in an emotivist culture in which moral judgements are merely expressions of personal preferences, "a human relationship uninformed by

morality"⁴⁸. The emotivist self criticises everything "from whatever standpoint the self has adopted ... To be a moral agent is, on this view, precisely to be able to stand back from any and every situation in which one is involved, from any and every characteristic that one may possess, and to pass judgement on it from a purely universal and abstract point of view that is totally detached from all social particularity. [A description of the Rawlsian original position]. Anyone and everyone can thus be a moral agent, since it is in the self and not in social roles or practices that moral agency has to be located"⁴⁹. The emotivist self is contrasted to persons in traditional societies who are members of a family, a village, a tribe. Memberships define who and what a person is, what obligations and duties a person has, and one moves through life "toward a given end"⁵⁰. No such bonds inhibit the emotivist self.

Moreover moral debate is now envisaged "in terms of a confrontation between incompatible and incommensurable moral premises and moral commitment as the expression of a criterionless choice between such premises, a type of choice for which no rational justification can be given"⁵¹. This situation has arisen as a result of the rejection of a theology or philosophy which includes notions of "man-as-he-could-be-if-he-realised-his-telos"⁵². Human nature was to be improved and corrected, in which case it is pointless to look at human nature to "find a rational basis for ... moral beliefs"⁵³, but this is precisely what has happened, leading to "the unsetttable, interminable arguments of our own culture"⁵⁴. Man is set aside from his social roles. We cannot say in virtue of what it is that a moral judgement is true or false. Now the individual is his own moral authority, but inherited rules of morality "have to be found some new status, deprived as they have been of their old teleological character ..."⁵⁵ and their expression of divine law. Hence the attempts to ground moral rules in practical reason or utilitarianism.

He rejects arguments that there are universal rights applicable to all persons

everywhere, specifically Gewirth's attempt to show that an individual needs certain goods to exercise his rational agency and this necessity entails a right to these goods; the possession of rights presupposes "the existence of a socially established set of rules"⁵⁶. Rights and utility "are a matching pair of incommensurable fictions", he writes⁵⁷.

In Heroic societies morality cannot be divorced from the social structure. Without a place in the social order a man cannot be known or know himself. "Morality is always to some degree tied to the socially local and particular"⁵⁸. Our modern liberal society lacks moral unity, liberal citizens lack bonds of friendship which are possible only in a community which aims for the realization of the good of its citizens, and in which there is agreement on the nature of goods and virtues. In a population of even the modest size of fifth century Athens the bond of friendship had to be found in "a network of small groups of friends ... We are to think then of friendship as being the sharing of all in the common project of creating and sustaining the life of the city, a sharing incorporated in the immediacy of an individual's particular friendships. This notion of the political community as a common project is alien to the modern liberal individualist world"⁵⁹, in which the individual detaches himself from relationships and chooses to accept or reject obligations.

In fact we are born into particular societies and particular roles as members of a family, a church, a nation, our lives interacting with the lives of those around us. We inherit debts, expectations and obligations, which "constitute the given of my life, my moral starting point. This is in part what gives my life its own moral particularity"⁶⁰. We seek the good together, not limited by community but developing in our search for the good, and arguing about what is demanded by our tradition. "A living tradition then is an historically extended, socially embodied argument, and an argument precisely in part about the goods which constitute that

tradition"⁶¹.

However in our society we cannot agree on a conception of justice, the necessary basis of a political community according to Aristotle. Thus the Rawlsian and Nozickian principles of justice are incompatible and our pluralist culture cannot weigh the merits of claims based on entitlement against those based on need, although modern philosophers claim that their rival principles are derived from rational argument. For Rawls a principle of equality with respect to need is paramount and how those in need come to be in that condition is not considered - the past is irrelevant to present distribution. For Nozick entitlement is the primary concern - only past acquisitions are relevant in deciding claims of justice and present patterns of distribution need not be considered.

But a claim based on need cannot be weighed against a claim based on entitlement. In real life, argues MacIntyre, "it is the reference to desert which makes [people] feel strongly that what they are complaining about is injustice, rather than some other kind of wrong or harm"⁶². Both Rawls' and Nozick's rules for a common life are made for individuals and "the identification of individual interests is prior to, and independent of, the construction of any moral or social bonds between them"⁶³, whereas the notion of desert needs "the context of a community whose primary bond is a shared understanding both of the good for man and of the good of that community and where individuals identify their primary interests with reference to those goods"⁶⁴.

Rawls' theory of justice does not, of course, include a particular conception of the good because he believes that individuals may have (and have the right to have) their own conceptions of the good, and there will be disagreement about these conceptions. There is no reference to community in Nozick's formulation of rights and theory of justice. To an extent, MacIntyre says, Rawls and Nozick are realistic

about modern society, a collection of self-interested strangers, and that is why they exclude an account of community "in which the notion of desert in relation to contributions to the common tasks of that community in pursuing shared goods could provide the basis for judgements about virtue and injustice"⁶⁵. Appeals to desert conjoined to Nozick's theory ("I deserve to keep what I have earned"), or on to Rawls' ("Poverty of the needy is undeserved"), are appeals to "an older, more traditional, more Aristotelian and Christian view of justice"⁶⁶.

The positions of Rawls and Nozick could only be derived from their individualist premises, and yet from this common starting point they have formulated incompatible theories of justice. There is no rational solution, and no hope of a moral consensus in our society. We cannot invoke shared moral first principles in deciding between competing claims "for our society as a whole has none"⁶⁷. Government, rather than representing the moral community, merely imposes "unity on a society which lacks genuine moral consensus"⁶⁸. "Loyalty to my ... community ... becomes detached from obedience to the government which happens to rule me"⁶⁹, and so political obligation becomes a problem.

MacIntyre himself believes there is no adequate defence of the individualist position and that "the Aristotelian tradition can be restated in a way that restores intelligibility and rationality to our moral and social attitudes and commitments"⁷⁰, and that it is necessary to construct "new forms of community within which the moral life could be sustained so that both morality and civility might survive the coming ages of barbarism and darkness"⁷¹.

The transformation of liberal society into the sort of unified moral community envisaged by MacIntyre may or may not be possible. We have come to accept and value a state in which people are allowed conflicting viewpoints, and who nevertheless try to live together peacefully. It could be said, of course, that

liberalism increases tension between groups, each of which feels that its morality should prevail. I have argued, like MacIntyre, that we have no strongly held shared understandings which would form the basis for a general acceptance of principles of justice. Thus I pointed out that Rawlsian principles would be rejected (for different reasons) by both Nozick and Walzer. On the other hand I argued that Walzer was mistaken in believing that we intuitively "know" and agree upon principles for the distribution of social goods. Politics begins where these shared understandings fail, according to Dworkin, hence the need to refer to principles of justice deduced through rational argument.

Walzer and the Communitarian Critique

In discussing Walzer I classed him as a communitarian because of his belief that we are united in our shared understandings which are part of our cultural heritage and which are given expression in the political sphere. The very words used by MacIntyre in his description of a community arguing about its living tradition and about the goods which constitute that tradition bring Walzer to mind. Gutmann⁷² and Thigpen and Downing⁷³ also include him among the communitarians, but Hirsch writes that "Michael Walzer ... discusses community from within the social democratic tradition, as part of a wide-ranging critique of liberal politics and society"⁷⁴. As we have already seen Walzer is difficult to categorise, but he clearly places himself within the liberal tradition.

He believes there are two communitarian critiques of liberalism⁷⁵. The first states that liberalism has created the society it now accurately represents - a society of individuals with no shared traditions. MacIntyre, for instance, says that the theories of Rawls and Nozick are responses to actual liberal societies. If that is the case "then we might well assume that liberal politics is the best way to deal with the problems of decomposition ... Why not accept ... the priority of procedural justice over substantive conceptions of the good, since we can hardly expect ... to agree

about the good?"⁷⁶.

However the second communitarian critique "holds that liberal theory radically misrepresents real life"⁷⁷. We cannot escape from relationships; even in liberal societies people are bound to each other.

Both arguments cannot be true, although Walzer believes both are partially correct. Liberal society is disintegrative. As he said in "Obligations" alienation is a condition almost specified by liberalism⁷⁸. Four Mobilities (geographic, social, marital and political) undermine relationships and a sense of community, whilst representing "the enactment of liberty, and the pursuit of (private or personal) happiness"⁷⁹. To this extent the first critique is correct. (Writing about the takeover by professionals of working class areas in London, Martin Linton points out that "... Battersea is filling up with people who are unconnected ... they don't know its history ... What is more they don't care"⁸⁰). The second is correct in that "the ties of place, class or status, family, and even politics survive the Four Mobilities to a remarkable extent"⁸¹, although the long-term trends of liberalism may eventually undermine these ties altogether.

Walzer believes that MacIntyre is mistaken in describing philosophical controversies in liberal societies as a mark of incoherence, since the arguments take place within liberal tradition and are about liberal values. Our tradition is now a liberal tradition valuing compromise, procedural justice, freedom of speech. The ties which bind according to the second communitarian critique are the ties of liberalism, captured in "the language of individual rights - voluntary association, pluralism, toleration, separation ..."⁸². But since we are bound in this way within the liberal tradition how can it be said that liberalism prevents us from understanding these ties? Liberalism undermines itself in trying to build a world for "the eternally transgressive self", and for such a self no ties would bind: "the transgressive self is

antithetical even to the liberal community which is its creator and sponsor"⁸³.

Because of this endless tendency towards disintegration liberalism needs to be countered by the communitarian perspective. But "American communitarians have to recognise that there is no one out there but separated, rights-bearing, voluntarily associating, freely speaking, liberal selves. It would be a good thing, though, if we could teach those selves to know themselves as social beings, the historical products of, and in part the embodiments of, liberal values"⁸⁴.

We are born into many relationships such as class, race, religion. In liberal societies we can subsequently leave (some of) these groups (though it is obvious that we cannot easily disown racial, family or other ties even if we affect to do so). "At its best", writes Walzer, "the liberal society is the social union of social unions that John Rawls described: a pluralism of groups bonded by shared ideas of toleration and democracy"⁸⁵. Since all groups are insecure by the very nature of liberal society (as illustrated by the Four Mobilities), then the larger union of unions may itself be endangered. In order to slow down its built in tendency to self-destruction, the liberal state must itself be of a particular type. It must encourage groups which help to keep alive "underlying communities of feeling and belief"⁸⁶ which are eroded by the Four Mobilities. The state encourages cooperative associations, discriminates against groups which would destroy liberal values.

In short "liberalism is best understood as a theory of relationship, which has voluntary association at its center and which understands voluntariness as the right of rupture or withdrawal"⁸⁷ from associations, some of which we do not *enter* voluntarily. There is an apparent discrepancy between Walzer saying that there is no one out there but separated, voluntarily associating individuals, and his assertion that we are born into certain relationships, that is clarified, I think, by this explanation. We are free to leave, to walk away from family, friends,

neighbourhoods. But this, of course, is part of the problem. The liberal emphasis on individual self-determination encourages the idea that all relationships can be severed at will. If liberal selves are to be taught to be social beings, then their education should include some reinforcement of the notion of duty - freedom to walk away does not relieve one of obligations. Walzer, too, would surely insist that at least some of the relationships we are born into entail inescapable obligations.

Thus relationships tend to be unstable and society to become fragmented, although it is worth pointing out that those features of liberalism which are disintegrative (for instance, toleration) also enable the heterogeneous state to survive. Liberalism, then, requires periodic correction, of which Rawls' social union of social unions is an example. In other words the idea of community is grafted onto liberalism. But the underlying bonds which make such a union possible are perhaps being slowly attenuated and to this there is no remedy other than curtailment of liberal rights.

It may be felt that the idea of a social union of social unions, of the state as a group sponsor, is more akin to Walzer's early ideas than to those expressed in "Spheres of Justice". Indeed MacIntyre's assertion that loyalty to the community has become detached from obedience to the state is reminiscent of the Walzer who wrote "Obligations". However the social union of social unions would embody the shared values of liberalism, and would not be the distant state beyond citizens' grasp. But if this is the case, and the all-embracing political community, our world of shared understandings, is no more than the liberal state, embracing liberal values of toleration, free speech and equality, then it is impossible for Walzer to argue that, within this tradition, we share conceptions about the nature of social goods and agree about their distribution.

When Nozick and Rawls dispute each others' theories of justice they both do so from a liberal perspective - that of the self-directing individual in pursuit of his own

conception of the good life. However their disagreement about the very meaning of justice is so fundamental that MacIntyre's criticism of incoherence cannot be dismissed as mere difference of opinion about what is demanded by the tradition.

The Liberal State : A Discordant Community

How are we to proceed, then, if both tradition and rational argument fail to provide a generally accepted theory of justice? Hobhouse envisaged a harmonious society of individuals integrated into a greater whole seeking the good in the shared life. All willingly take part in this cooperative venture, recognising a public interest which takes precedence over self-interest.

The idea of the public interest has been developed by Milne who argues that for any group to be a community all its members must be concerned for the well-being of fellow members. "Each must regard it as important that subject to the terms on which they are living together, every member should be able to live as well as possible. If some are suffering, their fellow-members have an obligation to take practical steps to relieve their distress. This practical concern is required by the principle of "fellowship", a principle to which every member is committed in virtue of membership. There can be no community among people who are totally indifferent to one another's lot"⁸⁸. Like Hobhouse, Milne believes that members of a community have an obligation to put public interest before private interest when the two conflict, and the public interest consists in establishing conditions "which will enable every member, not just particular groups or classes, to live as well as possible on the terms which define his status as a member"⁸⁹. It is the interests they have in common as members, and it is a social responsibility. In a complex society activities are regulated through government "to the extent that this is necessary to maintain and promote the public interest"⁹⁰. "Political obligation" is a specific form of the generic obligation of "social responsibility"⁹¹. Government is obliged to guard the public interest, the governed accept the government's authority.

Thus living in a community should guarantee to each member a certain status, and a life appropriate to that status. Each and every life should be "intrinsically worth living"⁹².

But why should the liberal state be regarded as a community? On what terms do we live together, and why should any individual feel responsible for millions of strangers?

Nozick, of course, denies that the state is a community - the terms he sets out are designed to protect strangers from one another. Hobhouse, Rawls and Walzer all believe that the state is a cooperative community in which we are all somehow bound to each other, not merely for prudential reasons but through some deeper understandings which we share. It is the acceptance of common values which makes a community of what would otherwise be merely an organised society of self-interested individuals. Because Hobhouse and Rawls are liberals, who are concerned with individual fulfilment and the individual's right to self-determination, their attempts to counter liberalism's disintegrative tendencies result in a certain tension between individual and community.

Rawls argues that liberal society is composed of people with incommensurable ideas of the good. However they can live together as a community despite their diversity if they accept justice as fairness as a political principle. In this sense justice as fairness would be the primary value which would hold the community together. The two principles could give practical expression to the meaning of fellowship since they explain how goods are to be distributed to the benefit of all in a political and economic system designed on terms of fair cooperation. The values of the political conception of justice would outweigh other values that oppose them.

Now the important point is that the two principles would not be accepted merely for prudential reasons, as a *modus vivendi*, but as values and ideals to be cherished in order to maintain a tolerant, harmonious, pluralist, cooperative society. Milne, too, argues that there must be some "ideas, beliefs [or] values which the members share [which] must be more important to them than those which divide them"⁹³. I would suggest that a Catholic, a Jew, a Moslem, a Methodist, for example, are happy in a liberal state because it allows them to hold their various beliefs, to worship in their own way, without let or hindrance. Liberal toleration means they do not have to choose between church and state but can live peacefully together. However, it would be wrong to conclude that their primary loyalty is to the liberal state and not to their church or God. Furthermore, certain moral arguments such as those surrounding abortion or embryo research or nuclear weapons or homosexuality are not reducible to a concern about what is in the public interest.

This is not quite what Rawls has in mind since he seems to think that one's political self can hold certain values which may be at odds with one's deeply held religious or philosophical beliefs. But as Jones points out, "If I hold a philosophical or religious or moral belief that turns out to be at odds with the principles of justice, why should I give it up?"⁹⁴ Liberalism upholds the right of individuals to live in accordance with their own deeply held beliefs; individuals and groups may choose to ignore government directives, no matter what the position vis a vis principles of justice, if they conflict with these beliefs, and Rawls recognises this. No matter how attractive the idea of the over-lapping consensus it is apparent that Rawlsian principles of justice would not be accepted by everyone. I do not simply mean that within liberal states there are conservatives and socialists and people of diverse cultural and ethnic backgrounds, but that within liberalism itself principles of justice are disputed.

In "Obligations" Walzer argued that a neutral state provided security to groups such as churches, families and trade unions. These groups were the source of moral knowledge and members' primary loyalty was to the group and not to the state, from which many were alienated. However if the idea of the social union of social unions is adopted, then group members are not alienated from the state but support it because it upholds those virtues of toleration and equality which enable them to live together. It is understandable that Walzer should endorse this Rawlsian idea once the state is described not as alien but as upholding a certain set of generally acceptable values. I have already pointed out that this would negate his conception of the state as expounded in "Spheres of Justice", but I had previously suggested that his theory was seriously flawed.

Throughout "Spheres of Justice" Walzer uses examples to illustrate how particular communities understand and share social goods. All of his communities are small groups or minorities within states, some historical, some contemporary - the Israeli kibbutz, the medieval Jewish community, American blacks, neighbourhood schools. Since it is within such groups that values and meanings are learnt and understood and shared, the idea of a social union of social unions seems an appropriate and fruitful way to describe the groups' relationship to each other. The state would be all-embracing, but it would embrace groups with very different ideas about the nature of social goods and their distribution.

This is not to say that the liberal cooperative values would be accepted merely as a *modus vivendi*, for they are to be fostered as a good in themselves, enabling diverse groups to live together without strife. (Although Bernard Crick has written that "politics thus arises from a recognition of restraints. The character of this recognition may be moral, but more often it is simply prudential, a recognition of the power of social groups and interests..."⁹⁵ My point is that these are the *only* values held in common. The meanings of social goods (including liberty and

equality as well as health and education, for example) and principles of distribution, the very principles and requirements of justice, are still open to question. Arguments take place within the liberal tradition, and between liberals and others who live in liberal democracies. That is why appeals to the public interest, which "presupposes widespread agreement within the community about the terms upon which its members are to live together ..."96, will fail in contemporary liberal states. It has little value as a source of reference if there is no agreement about what constitutes living well together, or on the meaning of the good life. It will not help us to choose between irreconcilable ends or between conflicting accounts of principles of justice.

The neutral state upholds the right of all individuals and groups to exist, carry on their affairs, participate in the political process. Different organisations and political parties offer rival conceptions of justice, rival distributive principles for consideration. Sometimes there is consensus, usually there is compromise. The intuitive thoughts we have on what is fair or unfair do not necessarily reflect deep understandings, but rather the views prevailing at a particular time in the context of the constant struggle for ascendancy between rival ideologies.

We in Britain may want a caring society but we are divided on what exactly this means and how to set about achieving our goal. The state does not adjudicate between the claims of competing groups through reference to principles of justice, since the principles themselves are in dispute! For Crick the common good *is* the practice of politics, "the process of practical reconciliation"97, and it is the practice of politics together with a common interest in survival, rather than agreement on fundamentals, which holds together diverse groups. "The moral consensus of a free state is not something mysteriously prior to or above politics : it is the activity (the civilising activity) of politics itself"98. It takes place in societies too complex to be preserved solely by tradition.

Both the Nozickian invisible-hand theory of state formation and the Rawlsian original position as a device for establishing principles of justice, are ways of illustrating certain ideas about how the actual states we live in should be organised. Nozick's minimal state is unattractive because he conceives of all relationships as voluntary and fails to take account of human beings as group members with inescapable obligations. It accentuates liberalism's disintegrative tendencies. Similarly, Mrs Thatcher believes that in contemporary Britain "There is no such thing as society, there are only individual men and women and there are families"⁹⁹, and in her address to the General Assembly of the Church of Scotland in 1988 she said, "It is on the family that we in government build our own policies for welfare, education and care"¹⁰⁰. Although the family is one of the basic groups within a social union of social unions this is clearly not what Mrs Thatcher has in mind - for her the family is an isolated unit. Welfare is a matter for the family or for private charities to which individuals may contribute if they see fit. Appeals to Christian virtues and traditional values are used both to strengthen appeals to individual self-sufficiency and (paradoxically) to counter liberal permissiveness.

Rawls runs into difficulties because his cooperative society is developed from an individualist perspective. Nevertheless I have suggested that a Rawlsian social union of social unions could be a useful model for the liberal state. But I have also argued that a citizen's primary loyalty would be to other members of the groups which he needs in order to give meaning to his life. This seems an unremarkable, even inevitable, conclusion given the real nature of the contemporary liberal state. Nozick's notion of side constraints could be usefully applied to group relationships within the state.

Citizens are obligated to the state, in this case, because it upholds the right of groups to exist, save only for those which would destroy those liberal values which the state nurtures and preserves, and which all are obligated to uphold since they

enable all to contribute to the debate about which set of principles they should live by within their society (if there is such a thing!). They are attached to the liberal virtues of equality, individual liberty, toleration, freedom of speech (even when they do not like what they hear), and these are the basic terms on which they live together. Without the commitment, the obligation, to these values the pluralist liberal state would be very unstable. Ideally, they would accept these values as a good in themselves, but acceptance for prudential reasons is sufficient. There is always likely to be tension in a pluralist society since the result of liberal toleration is that many may feel that *their* values are threatened by others' freedom of speech or freedom to live their lives in ways perceived as inappropriate. Further, the encouragement and promotion of groups may carry its own tendencies to fragmentation since it supports the separateness of identity of diverse cultural, religious and other associations.

Walzer is correct, I believe, in arguing that liberal individualism and the right of voluntary association tend to the destruction of attachments which give meaning, comfort, security and status to people's lives, leading to alienation and a sense of loss. For this reason it is necessary to stress that the liberal right to individual self-determination does not relieve one of the obligations arising from the special relationships into which one is born, or which one voluntarily undertakes.

However political obligation is distinct from other social relationships, and this is part of the problem of political obligation according to MacIntyre. It is a relationship based on a formal equality before the law; it establishes a connection between all citizens within a state and it is therefore unlike relationships of kin or religion or employment. We have a political obligation to our fellow citizens to respect the terms which enable us to live peacefully together, and to the state which upholds those terms.

Those citizens who do not hold liberal values would accept the terms for prudential reasons whilst no doubt, working for or hoping for a different kind of state, but there is no reason and no need to believe that all must or would accept a liberal theory of justice or liberal democracy as a political ideal. This is the extent of our commitment to each other as citizens in contemporary liberal democracies.

The mistake, I believe, is attempting to portray the liberal state as more than it actually is - to make of it a community of citizens engaged, somehow, in a joint venture, rather than accepting it as a collection of individuals (with certain rights as citizens) bound together in many groups some of which overlap. This is not to say that the state as a caring community is not an ideal worth striving for, only that it is not the liberal state as it is, or as it is likely to become.

In a 1989 MORI poll respondents perceived Britain "to be a mainly capitalist society in which private interests were most important; a society where the individual was encouraged to be self-sufficient and where people were allowed to make and keep as much money as they could, and which emphasised efficiency rather than employment"¹⁰¹. Ideally the vast majority wanted a more caring society. However there were severe differences of opinion about how the caring was to be carried out - through self-help or state public provision. Nozick versus Rawls' economic system designed to connect the strong and the weak, or Hobhouse's and Walzer's community in which all are entitled to receive that which they need in order to live a full life within the community. In other words there is disagreement on the nature and extent of the obligations we owe to others, but the obligation to provide for the welfare of fellow citizens is central to the theories of Rawls, Walzer and Hobhouse.

Nozick (and Mrs Thatcher) are marked off from the social liberals in that they do not believe that the state *should be* a community of caring people who express their concern and act it out through government. A Nozickian state could not, by

definition, be a community. Yet Rawls believes that his principles of justice do not conflict with our intuitive ideas, and Walzer clearly thinks we share a view of the state as a caring society.

Until there is agreement on one of these, or some other, fundamental theories of justice, on the idea of the state as a cooperative system in which the bond of fellowship embraces all its members who are dedicated to securing the best possible life for all, then the state cannot be a community of citizens bound together by common values.

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