

READINGS IN POLITICAL PHILOSOPHY

THEORY AND APPLICATIONS

EDITED BY
DIANE JESKE AND
RICHARD FUMERTON

Readings in Political Philosophy



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Diane Jeske

and

Richard Fumerton



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Preface

This anthology provides a survey of important issues and concepts in Western political thought, from Plato to the present day. Our aim is to show both the continuity and the development of the issues over time. Therefore, rather than arranging the anthology chronologically, we have organized it topically. Most of the sections begin with highly theoretical discussions of fundamental principles that deal with the issues at hand. But we also demonstrate the importance of such theory by including articles that apply these principles to contemporary issues and also by including court cases and other political documents that illustrate the importance of getting clear about underlying presuppositions. Many political philosophy anthologies fail to include court cases on the grounds that such inclusion would blur the distinction between political philosophy and philosophy of law. It is our view, however, that it is a mistake to make any sharp distinction between many of the issues that arise in the two fields. After all, perhaps the most important application of any political theory finds expression in the construction and development of legal institutions. Our goal is to make students more informed, thoughtful, and reflective thinkers about political issues and their legal and social implications by teaching them how to reason about issues that arise in these fields. We hope to give them an appreciation of political theory by showing them how that theory can help to clarify contemporary debates about important topics.

We precede the readings contained in each unit with a comprehensive introduction designed to give students an overview of the issues addressed in that unit. In addition, these introductions engage in an evaluation of various theories and offer new alternatives not included in the readings. The section introductions offer explicit examples of philosophical reasoning to aid students in their philosophical development. Unlike other anthologies, this one has been designed to promote philosophical thinking and development, rather than simply to encourage an absorption of positions with names attached. The teaching of political philosophy, we believe, needs to emphasize philosophy as much as it does politics. To this end, we provide study questions at the end of each reading. These questions stress the philosophical activities of identifying, constructing, and evaluating arguments.

Political philosophy necessarily involves basic ethical concepts such as right and wrong, legitimate and illegitimate, duty, obligation, reason, justification, etc., so some grasp of basic ethics is needed for any careful study of political philosophy. However, political philosophy courses often do not have ethics as a prerequisite. Therefore, our section introductions provide some of the necessary background, so that students can go into the readings with a broader knowledge base and can place the issues discussed into the larger philosophical and ethical landscape.

We intend the anthology to be useful for undergraduate political philosophy courses at any level. A lower-level course might involve a broad survey, using only a couple of articles from each section, maybe one theoretical and one applied piece. An upper-level course might focus on two or three sections, delving into more depth on selected topics.

We would like to thank a number of people who helped enormously in the design and construction of this anthology. These include our

research assistants Heather Libby and Christoffer Lammer-Heindel; our departmental assistant Allison Roggenburg; our copyeditor Martin Boyne; Alex Sager, a previous editor at Broadview whose support for the project was invaluable; and our current editor, Greg Janzen, whose advice and constructive criticism helped bring the project to a successful completion. We also appreciate the suggestions made by a number of anonymous referees.

General Introduction

This text provides a thorough overview of the central issues in political philosophy. Political philosophy is best understood, we believe, as a branch of *ethics*. Ethics deals with questions about our reasons for action, our moral obligations, what is in our best interest, what constitutes a virtuous character, and what is good or bad, right or wrong. Political philosophy deals with these questions as well, but it does so as they arise in the context of a state or society. So, for example, political philosophy addresses questions such as the following: What reasons would we have to create a state if we did not have one? What reasons, if any, do we have to obey the laws of an already existing state? Is living in a state and obeying its laws always, or ever, in our best interest? What constitutes a good state? Which sorts of legislation is it right or wrong of the state to enact and enforce? To what extent, if any, should the state attempt to make its citizens virtuous?

It is obvious, then, that one cannot adequately deal with the central questions of political philosophy without some prior attempt to deal with the central questions of ethics. If, for example, we do not know what, in general, constitutes a right or a wrong action, we will be unable to assess the rightness or wrongness of a group of legislators enacting and enforcing laws regulating, say, gay marriage, the production and consumption of pornography, affirmative action in university admissions, or the admission of women to the bar. Debates in political

philosophy usually reflect underlying disagreement about the answers to ethical questions, and we need to understand that underlying ethical disagreement if we are to understand the political debate.

As an example, let us consider one of the most famous debates in the history of Western political philosophy, that between Thomas Hobbes and John Locke. Hobbes claims that a legitimate state is one in which the sovereign has nearly unlimited power: the sovereign has the authority to seize and distribute property as he sees fit, the discretion to order and enforce punishments, including capital punishment, according to his own judgment, and so on. Locke, on the other hand, insists that a government that failed to preserve citizens' claims to property and to preserve their lives if they had not committed one of a previously specified range of offenses would be illegitimate. Why did Hobbes and Locke differ so sharply about what constitutes a legitimate state?

Their political differences were the result of a radical disagreement about the nature and source of morality. Locke believed that God is the source of all moral claims and obligations, and, thus, even in a state of nature—a condition without any civil government (without, in Hobbes's words, "a power sufficient to overawe them all")—we have moral obligations to preserve not only our own but all human life. Because the preservation of human life requires, Locke believed, exclusive claims to resources such as food and shelter, every human

being has a moral obligation to respect the property claims, or ‘rights,’ of other human beings. These ‘rights,’ or claims to resources, continue to place constraints on others even in the state; in fact, the entire purpose of the state is the protection of moral rights to our lives and property.

Locke’s *Second Treatise of Government* is clearly, at least in part, a response to Hobbes’s *Leviathan*, in which Hobbes offers a very different picture of the nature of morality. Hobbes’s state of nature is a condition in which no one has any moral claims or obligations. In the state of nature, I “own” what I can get my hands on and keep others’ hands off of. As soon as you manage to lead one of my sheep away from my herd, that sheep is now yours—at least until I succeed in retrieving it or in killing you. Given that there are no moral claims or ‘rights’ in the state of nature, there are no such claims to place constraints on the state. For Hobbes, the purpose of the state is to keep us out of the hell that is the state of nature, so the sovereign is given virtually unlimited power so that he can keep all of us in line and prevent our return to that state of nature. Talk of pre-existing ‘rights’ is, for the most part, destructive, and so it should be suppressed by the sovereign.

The debate between Hobbes and Locke presents a very stark example of how different understandings of morality lead to different understandings of the nature of the best or the legitimate state. Their conflict over the nature of morality led them to give different answers to questions about the nature of our reasons to obey the state, the limits on legitimate legislation, the extent of the liberty of citizens, and the appropriate distribution of property, punishment, revolution, and war.

All of these issues are addressed in this text, and we have divided up the readings from figures such as Hobbes and Locke so that their views on, for example, political obligation can be found in the unit on that particular topic. Most political philosophy texts include long selections from the important figures in the field, and instructors then need to find the relevant portions for each topic. Our approach has the virtue of allowing instructors to use just those portions of the texts of major figures that they need,

given the topics they intend to cover in their classes, or, alternatively, to assign all of the readings from a given figure (requiring students only to flip a few more pages in order to do so). Our organization of the text reflects our understanding of the field of political philosophy as a branch of ethics rather than as a sub-field of intellectual history. Figures such as Locke and Hobbes are given their due, we believe, only when it is clearly shown that they were ethicists with coherent, wide-ranging theories that they extended to the political realm. They continue to lay claim to our interest because they provide intriguing and challenging answers to the central questions in the field. We hope that the following text, then, not only introduces students to political philosophy itself, but also allows them to see the nature of the broader ethical debates that underlie the subject.

The title of this text emphasizes theory *and application*. Throughout the text we have therefore included legal cases that are usually not found in political philosophy texts. We believe that these cases provide an ideal way for students to see the impact of ethical and political philosophy upon real lives. For example, in *Bradwell v. Illinois*, students can see the concrete consequences for Myra Bradwell (and all other women in the state of Illinois at the time) of a judge’s views about what constitutes the virtuous life for a woman. *Bowers v. Harwick* demonstrates how views about the ethics of various kinds of sexual practices influence the creation and enforcement of law. These cases provide wonderful opportunities for students to engage with theoretical issues in a real-life context with real-world consequences.

Organization and Issues

UNIT I: The State of Nature and the Nature of the State: Understanding Political Obligation

The first unit of the text addresses fundamental questions about reasons in political philosophy: What reasons, if any, do we have to create and enter a state? And what reasons, if any, do we have to obey the laws of the state in which we find ourselves?

The first question—about our reasons to enter a state—is vividly addressed by the so-called *social contract theories*. Originally presented by Glaucon in Plato's *Republic*, social contract theory attempts to defend a claim about our reasons to create and enter a state by imagining what life would be like in the state of nature, a condition without a political authority. The various difficulties encountered in the state of nature—at their extreme, these difficulties are understood by Hobbes as a “state of war of every man against every man”—give us reasons to create and become members of a state, at least according to the social contract theorists. As we have already seen with Hobbes and Locke, ethical assumptions—about the nature of self-interest, the nature of morality, and the relationship between self-interest and morality—are usually made starkly clear in their discussions of the state of nature.

Most of us are born into already existent states, not into a state of nature. Even if there were people once in a state of nature who voluntarily contracted to enter civil society, how could their contracting together bind later generations? The second section of this unit addresses this question: do people like us have reasons to obey the laws of the state, and, if so, what are the grounds of those reasons? Various answers to this question have been given: obeying the law is in our best interest; obedience to the law brings about the best long-term consequences for everyone concerned; we have consented to obey the law even if we did not “sign” the original contract; we have a duty to do our part in sustaining fair cooperative endeavors such as the state; and we have obligations to fellow citizens that are like our obligations to friends, family members, and colleagues. Again, one's background moral assumptions will play a large role in determining which, if any, of these accounts is plausible, because each account relies on various assumptions about the range and types of moral duties that human agents can or do have.

UNIT II: Rights, Liberty, and the Limits of Government

The Western political tradition since the Enlightenment has centrally invoked the concept of a ‘right’:

the American Revolution was fought in order to protect the colonists' rights to life, liberty, and the pursuit of happiness; the French Revolution was supposed to be guided by a commitment to the rights of man; and the United Nations takes as fundamental a list of human rights that it is dedicated to protecting. But what is it for a person to have a right to something? Jeremy Bentham, reflecting upon the aims and results of the French Revolution, famously described talk of rights as “nonsense upon stilts” that does far more harm than good. Bentham was, not coincidentally, a utilitarian—i.e., he held a moral theory that regards right action as action that produces the most good possible. So for Bentham, no action types—such as denying citizens the ability to speak or to practice their religions—are wrong from the outset: everything depends on whether such actions will maximize value. Other philosophers such as Robert Nozick take claims about rights as basic in their theories and regard individual rights as placing constraints on the government's legitimate ability to promote the general welfare.

Questions about rights—what are they, do we have any, and, if so, which do we have—are naturally connected to questions about liberty; after all, if someone is asked what rights they have, they will probably answer that they have at least ‘a right to liberty (or freedom).’ Does it make sense to suppose that we have a right to liberty? What would be involved in having such a right? What implications would such a right have for the government's ability to promote the morality of its citizens? We devote an entire sub-unit (*Free Speech* in Unit IIE) to the issue of censorship, because it has been a site of contestation with respect to the limits of government, particularly the government's ability to attempt to make its citizens good people.

Political philosophy shares an important feature in common with political practice: until very recently its practitioners have been almost exclusively male. Given this fact, it is sad but, perhaps, not surprising that women have typically been relegated to subordinate roles, both in theory and in reality. Therefore, the issue of the role of women in the state and the state's function in regulating

familial relationships such as marriage provides a good arena for testing and applying more theoretical claims (see Unit IIE). Is it permissible for the state to bar women from certain professions? Does the state have the right to deny homosexual couples the ability to enter into the marriage contract? Ought the state to take positive measures to attempt to bring about gender equity?

UNIT III: Property and the Distribution of Resources

Another topic that provides a good site for the testing and elaboration of political theories is property and its appropriate distribution. 'Property' is a broad term: Locke, for example, claims that our fundamental piece of property is ourselves—our bodies, minds, and abilities. Any resources that an individual might need or want, especially those that she might have an interest in laying exclusive claim to, could, in principle, acquire the status of being property. So we don't want to construe the notion of property so narrowly as to include only such things as material possessions. How can resources such as land come to be exclusively held by an individual? Do people have rights to resources such as land, rights that the state should protect even at the cost of the general welfare? Or should resources be distributed in order to maximize benefits for all members of the state? Political philosophy in the Western tradition has been highly concerned,

from antiquity to the present day, with questions about distributive justice, so this unit is divided into two sections, the first devoted to classical theories and the second to contemporary developments of those theories.

UNIT IV: Responses to Injustice

Once one has in hand a theory of what a good state looks like and how its citizens ought to behave, one is ready to confront questions about how to deal with bad states and with citizens who fail to fulfill their obligations. When citizens break the law, what, if anything, justifies punishing them? Is the state ever justified in punishing citizens who have not broken the law? What forms of punishment are legitimate? If citizens or the government have acted wrongly in the past, what sorts of corrective measures, if any, are permissible and/or required now? Such issues have come to the fore in the discussion of various controversial policies regarding affirmative action and proposals for reparations for groups whose members claim to have been wronged. When are citizens justified in attempting to dismantle, or break away from, their current state? When are citizens justified in waging war against other states? Many of these questions lie at the cutting edge of contemporary political debate, and it might be interesting to combine the use of this text with discussion of current events.

UNIT I

The State of Nature and the Nature of the State: Understanding Political Obligation

