PART I

# *Starting assumptions*

CHAPTER 1

# *The liberal project*

## THE LIBERAL PROJECT

From theorists concerned with the course of ideas and institutions over time, one often hears claims about the various "projects" that characterize historical periods. Such talk is often not salutary: speaking of "the Enlightenment project," for example, or "the project of modernity" tends more often to hide tendentious assumptions than to denote a clear subject of inquiry. What Enlightenment project?, we want to ask. What do you mean by modernity? To philosophers such broad reductionism is especially unwelcome, as it leaves little room for the careful consideration of nuance and distinction that is their stock-in-trade.

Mindful of these concerns, I nonetheless intend the following book as an assessment of what I shall call the liberal project, as understood and advanced by its most forceful contemporary advocates. In referring to this project I mean to deny neither that contemporary liberal theory (or the liberal tradition as a whole) exhibits great diversity, nor that failure to attend to that diversity can result in a narrow reconstruction of a complex body of thought. But such considerations should not condemn from the outset any attempt to discern and assess what is central and distinct in liberal thought, to identify key elements that characterize the liberal account of political association.

The liberal project I understand as the attempt to mount an argument that achieves two distinct goals: one concerning the argument's conclusion for political practice, the other having to do with the nature of the argument itself. First, the theory should provide a compelling defense of the general model of political association, including the chief distinguishing structural features, that characterizes liberal states. I do not pretend that the phrase "liberal state" is entirely uncontroversial, and liberals continue to disagree over how such a state should conduct itself (what its policies should be with respect to economic justice, affirmative action,

international affairs, and so on). Without denying the urgency of such debates, my concern here is with the consensus that holds at a level above such disputes, the broad vision of political association shared by adversaries within those debates that nonetheless makes it sensible to group all of them, despite their differences, as liberals.

The essentials of that vision have been well conveyed by Isaiah Berlin. Liberal regimes, he says, aim to create conditions

> in which as many individuals as possible can realize as many of their ends as possible, without assessment of the value of these ends as such, save in so far as they may frustrate the purposes of others. They wish the frontiers between individuals or groups of men to be drawn solely with a view to preventing collisions between human purposes, all of which must be considered to be equally ultimate, uncriticizable ends in themselves.[1]

To create a social world responsive to this ideal, liberal states embrace two commitments that I shall concentrate on throughout my argument. First, all citizens are to have the broadest possible sphere of liberty within which to pursue whatever ends they choose so long as they do not harm others. This commitment finds most famous expression in Mill's harm principle, and I shall sometimes refer to it as such. Second, the state should take no steps to direct individuals towards particular goals or activities it regards as more valuable than any others. This constitutes the familiar prohibition against state paternalism.[2] Both commitments denote ideal types, and it may be that no existing liberal regime consistently lives up to both – that all extant liberal regimes both restrict personal liberty in ways that cannot be justified solely by the harm principle (consider public decency rules, for example) and promote certain goals (fine art, scholarship) deemed especially worthy. It is also true that some self-described liberals have of late argued that liberal states may advance especially worthwhile goals despite the opposition of some citizens. Notwithstanding such qualifications, these two commitments figure especially prominently in public debate within liberal regimes and in the conception of such regimes invoked by champions and critics alike. Both also connect directly to the principle of state neutrality that many see as epitomizing the liberal model of politics. Keeping the two commitments at the forefront of the discussion thus

[1] Isaiah Berlin, "Two Concepts of Liberty," in *Four Essays on Liberty* (New York: Oxford University Press, 1969), 153, n. 1.

[2] Note that these are discrete commitments: the harm principle alone does not prohibit the state from promoting certain activities and goals, and anti-paternalism alone does not guarantee freedom to engage in activities that offend but do not harm others.

helps sharpen the contrast between the liberal model of politics and other accounts.

If the first defining goal of the liberal project is to defend a familiar political structure, the second concerns the process of reasoning by which that structure is defended. The main idea here is that liberal theorists are committed to an account of political legitimacy which states that the fundamental principles structuring the political realm must be such as can be rationally vindicated to citizens subject to it. In his prize-winning essay, "The Theoretical Foundations of Liberalism," Jeremy Waldron captures the idea thus:

> If life in society is practicable and desirable, then its principles must be amenable to explanation and understanding, and the rules and restraints that are necessary must be capable of being justified to the people who are to live under them. … The view that I want to identify as a foundation of liberal thought is based on this demand for a justification of the social world.[3]

Delivering on this demand for justification is not, for liberals, chiefly a pragmatic issue having to do with motivating citizens to subscribe to the rules and practices of liberal regimes, though it is partly that. It is fundamentally a normative requirement for any adequate account of legitimate political association. So while there is variation in the considerations offered to defend the liberal state (there are liberalisms grounded in personal autonomy, value pluralism, and so on), any liberal advancing such an account must believe it is persuasive enough to merit the assent of reasonable citizens who consider it. This second aspect of the liberal project I shall call the justificatory requirement (JR).

Straight away we can note important ambiguities in JR. To begin with, who is bound by it? Does it apply only to theorists defending the basic constitutional structure of the political community, or does it extend to anyone acting in a political capacity within that structure, or, indeed, to any engaged citizen at all? A body of important work has arisen over the last few decades exploring these matters, with particular attention to the appropriateness of relying on religious beliefs in political argument, and those discussions suggest the rich and nuanced issues at stake.[4] A second, related question concerns the topics to which JR

[3] Jeremy Waldron, "Theoretical Foundations of Liberalism," *Philosophical Quarterly* 37 (April 1987), 134–5.

[4] Especially influential contributions to this debate include Robert Audi, *Religious Commitment and Secular Reason* (Cambridge: Cambridge University Press, 2000), Kent Greenawalt, *Private Consciences and Public Reasons* (New York: Oxford University Press, 1995), and Michael Perry,

applies. Does it apply only to large-scale, defining issues within a political community (the relation between church and state, status and protection of basic liberties, etc.), or must all decisions made by political bodies satisfy JR (e.g. whether to preserve open areas, which works of art to subsidize, etc.)?

To resolve these matters adequately would take me far afield of my central concern here. Instead, I shall follow the general intuition that I believe John Rawls had in mind when he suggested that JR applies chiefly to "'constitutional essentials' and questions of basic justice."[5] Though Rawls's approach invites the objections of being both arbitrary (because it exempts some ultimately coercive exercises of state power from JR) and incomplete (because what qualifies as a matter of basic justice may itself depend on arguments that cannot themselves meet JR), it is nonetheless grounded on an unassailable intuition – namely, that the importance of satisfying JR stands in direct proportion to the importance of the state action in question. It is, for example, far more urgent that JR be satisfied when we are imagining the basic constitution for the polity, or citizens' religious liberties, than when we are considering how the state shall dispose of some infinitesimal portion of its national tax revenues. And we can grant that there is no firm and fixed border separating the important from the unimportant within the context of state policy while still distinguishing matters that have great importance from those that do not. I shall assume that the liberal arguments I explore, and the two liberal commitments I am focusing on, involve matters of great importance within a political community, so that if JR applies at all, it applies to them.

The final ambiguity in JR points to an especially deep worry that will recur at various points in my argument. What precisely does it mean to say that political principles must, as Waldron puts it, be "capable of being justified" to those who live under them, or that they should be, in Kent Greenawalt's phrase, "generally accessible" to citizens?[6] If we take this to mean that the argument for those principles will inevitably be endorsed by any intelligent citizen who considers it (like modus ponens, perhaps), this presents an exceptionally strong requirement, one that no political principles may meet. But just as surely JR requires that some significant number of citizens will be persuaded by the argument in question.

*Love and Power: The Role of Religion and Morality in American Politics* (New York: Oxford University Press, 1991).

[5] John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 214ff.

[6] Greenawalt, *Private Consciences and Public Reasons,* 26ff.

Finding the right position between these two extremes is no easy task, and I shall explore it at some length in both Chapter 5 (when discussing Rawls's account of justification) and Chapter 7 (when considering how modus vivendi liberalism stands *vis à vis* the ideal of justification). Here it must suffice to see JR as requiring that the argument for the liberal state be one that merits and for that reason strongly tends to elicit assent in citizens who consider it in the appropriate way (i.e. they accept a basic commitment to moral equality, follow canons of logical inference, endorse clearly grounded empirical claims, and so on).[7]

The importance of JR to the liberal project figures centrally in the argument of this book. No doubt many citizens, for a range of reasons, believe the liberal state constitutes an ideal form of political life and see it as a harmonious extension of ideals authoritative in their private lives. But such citizens are not, I want to stress, those whom contemporary liberal theorists most need to address. The really important audience here consists of persons who, prior to being presented with the liberal's argument, either endorse some illiberal vision of political association or are unsure of the appeal of the liberal account. It is this person, whom I shall refer to as the critic and whose doubt about liberal principles is usually rooted in a quite different set of authoritative ideals, who gives genuine urgency to the task of articulating an adequate liberal theory, his concerns that must be addressed if liberal states can reasonably claim authority over him. As Waldron notes, "If there is some individual to whom a justification cannot be given, then so far as *he* is concerned the social order had better be replaced by other arrangements, for the *status quo* has made out no claim to *his* allegiance."[8] Adopting T. M. Scanlon's terminology, we might say the argument for liberalism must be one the critic cannot reasonably reject. This is the acid test for an adequate liberal theory.

A key assumption driving this book is the belief that liberals have not adequately engaged with the critics' concerns. Consider in this context Michael Ignatieff's praise for Isaiah Berlin as "the only liberal thinker of real consequence to take the trouble to enter the mental worlds of liberalism's sworn enemies."[9] Given the importance of the ideal of justification,

[7] This way of putting the idea was suggested by an anonymous reader. The idea is similar to Rawls's cashing out liberal legitimacy in terms of principles that all citizens "may reasonably be expected to endorse," given features of "their common human reason" (*Political Liberalism*, 137).
[8] Waldron, "Theoretical Foundations of Liberalism," 135.
[9] Michael Ignatieff, *Isaiah Berlin: A Life* (London: Chatto & Windus, 1998), 249, quoted in Steven Lukes, *Liberals and Cannibals: The Implications of Diversity* (New York: Verso, 2003), 111.

Ignatieff's accusation points to a potentially serious indictment of liberal theory generally (assuming, as I shall, that some of those enemies are neither unreasoning nor deeply immoral). The worry is exacerbated by the fact that the worldviews, values, ideals, and so forth held by liberalism's defenders quite often are not shared by the critics to whom justification must be given. Indeed, it is likely that the very dispositions that qualify one for success as a political theorist (an unusually high degree of comfort with uncertainty, special interest in rational deliberation and self-scrutiny, enjoyment in challenging accepted views, and so on) also dispose one favorably to the general character of liberal regimes – a fact that would explain the phenomenon Ignatieff laments. Any argument sufficiently powerful to overcome the critics' objections will have to begin by understanding the depth of those objections.

Accordingly, this book tries to give serious and careful consideration to those objections. It assumes that there exist thoughtful critics of liberal regimes who have identified serious drawbacks to that model of politics, and it proceeds by asking whether the accounts offered by contemporary liberals are sufficient to allay those worries. I shall argue that the dominant strains of liberal theory fail by this criterion: existing arguments for the liberal state are not decisive against the critics' objections, and the steps liberals might take to bolster those arguments are either inconclusive or ruled out by JR.[10] But this does not mean, I shall argue, that liberal states cannot be given an adequate defense consistent with the guiding ideals of the liberal project. In the second half of the book I pursue an alternative defense of liberalism, one largely neglected in the tradition, that I believe offers a better chance of generating agreement on the general structure of liberal regimes.

## OUTLINE OF THE ARGUMENT

At various points in my argument I imagine the critic objecting to the liberal model on the grounds that it has unacceptable costs on human well-being. The force of that objection obviously hinges on the idea that how a particular model of political organization affects human well-being

[10] Andrew Mason has gestured to a similar possibility: "I have considerable doubts about the possibility of showing that any particular conception of justice, or even any set of liberal principles more abstractly conceived, can meet [the liberal] standard of justification, but I shall not pursue the point here, for it threatens the dominant liberal conception of political community itself" (*Community, Solidarity, and Belonging* [New York: Cambridge University Press, 2000], 73).

constitutes an important axis in assessing that model. Accordingly, Chapter 2 begins by discussing briefly the status of that assumption within political philosophy generally and the liberal project in particular. It then moves on to sketch an account of well-being that centers on the importance of engaging with objectively valuable goals and activities. Some readers might object to the absence of a rigorously worked out philosophical defense of that account, but such criticism is beside the point. The important question is not whether some such account is ultimately defensible through philosophical argument (I think it is), but whether endorsing it is a reasonable belief of the sort of critic whom liberal theory needs to persuade and so one with which any case for liberalism must be compatible. In the rest of Chapter 2 I defend a pluralist account of the goods that contribute to well-being and argue that no particular constellation of these is superior to all others.

I then turn to assess the most influential recent attempts to deliver the liberal project. I begin in Chapter 3 with the argument that the ideal of personal autonomy is supremely important and suitably protected only by liberal regimes. Chapter 4 takes up the more modest claim that autonomy, even if not essential to a good life, so powerfully infiltrates liberal society that liberal states have good reason to privilege that ideal. Chapter 5 considers an argument that seeks to bypass claims about well-being and appeals instead to an implicit consensus among liberal citizens on basic political norms and canons of reasonableness appropriate to political deliberation. In each case I conclude that the arguments for liberalism are not compelling enough to persuade the thoughtful critic: liberal states generate real costs, and the truth of value pluralism makes it impossible to conclude confidently that those costs are outweighed by the benefits liberal states provide. This fact raises the possibility that liberalism might best be defended by appeal to value pluralism itself. In Chapter 6 I survey various attempts to make this argument and suggest that they too ultimately fail.

Part III then pursues an alternative way of defending liberalism, one that abandons the strong normative ambitions of the previously canvassed arguments and endorses liberalism as a modus vivendi among citizens who remain deeply divided on the basic norms that would ideally govern political life. Modus vivendi liberalism (MVL) has been something of a black sheep in the extended family of liberal thought, and Chapter 7 seeks to rehabilitate it against its detractors. In the course of that argument I defend a construal of JR that, while less robust than that endorsed by other liberals, remains faithful to the central ideal JR captures.

Chapters 8 and 9 consider the practical implications of the modus vivendi approach, concentrating on two important areas where the liberal state's authority has been challenged: gender equality, and compulsory education. The concluding chapter acknowledges the shortcomings of MVL and tries to show that they do not constitute strong objections to the MVL approach.

CHAPTER 2

# *Well-being and value pluralism*

## POLITICAL PHILOSOPHY AND THE CLAIMS OF WELL-BEING

In considering the prospects for a successful defense of liberalism I shall frequently invoke the critic's objection that the liberal state does not advance human well-being as well as some illiberal models would. This objection assumes that any model of political organization should be evaluated, in significant measure, by how well it advances human well-being. In contrast to the justificatory requirement mentioned in the previous chapter, this is not a distinctively liberal constraint on acceptable political argument. It is possible either (1) to invoke claims about well-being in advancing a political argument that rejects JR entirely or (2) to advance an argument that satisfies JR but excludes considerations of well-being (or gives them very little weight). But I believe either form of argument would be significantly problematic.

Since my aim in this book is to assess the liberal project, arguments along the lines of (1) are, strictly speaking, not germane to my overall task. Still, it's worth noting that any such argument violates a basic normative commitment of mainstream political theory, publicly endorsed by virtually all extant governments, according to which political power, since it properly serves the interests of those subject to it and so owes its authority ultimately to them, must be organized and exercised on grounds broadly justifiable to citizens. One might deny this if one believed that human beings differed enough in their inherent abilities – their rationality, moral character, self-restraint, and the like – such that some had jurisdictional authority over others by their very nature, as it were. On that alternative, as Rousseau dryly noted in the *Contrat Social*, we must conclude that either rulers are men and the ruled beasts, or the ruled men and rulers gods. Such an approach may not be incoherent, but it is today simply a non-starter, both in political theory and public political discourse generally.