AGAINST STATE NEUTRALITY: RAZ, RAWLS, AND PHILOSOPHICAL PERFECTIONISM

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1 INTRODUCTION

The first shoots of what we now understand as liberal political philosophy appeared in Renaissance and Reformation Europe, finding early expression in the English philosophers Thomas Hobbes and John Locke, and coming to full flower two to three centuries later in the writings of Immanuel Kant, Jean-Jacques Rousseau, Benjamin Constant, Wilhelm von Humboldt and John Stuart Mill.¹ Then followed a period of decline, in which liberal theorising was eclipsed, to some extent, by the vigorous growth of Marxism, Fascism, and various forms of anti-colonialism in the first three-quarters of the twentieth century. But, as is now frequently remarked upon, liberalism was revived with the publication, in 1971, of John Rawls's *A theory of justice*,² in response to which an avalanche of scholarship was produced.³

A theory of justice took itself to be building on the "social contract" tradition, an important stream within European liberalism which represented political morality as constructed (in different ways by different theorists) by an agreement between free and equal citizens.⁴ The book directed much of its fire against the ethical tradition that was, until a generation ago, held to be the most promising philosophical basis for liberal politics: utilitarianism, the doctrine of the greatest happiness for the greatest number. "Intuitionism," by which Rawls meant the adherence to a set of unstructured ethical principles, and what he called "the principle of perfection," were also sharply criticised, but at considerably less

The classic texts in this story include Thomas Hobbes's *Leviathan* (Harmondsworth: Penguin, 1982), John Locke's *Two treatises of government* as well as his *Letter concerning toleration*, published together by Yale University Press in 2003, Immanuel Kant's *Groundwork of the metaphysics of morals* (tr HJ Paton) (New York: Harper, 1964), *The metaphysics of morals* (tr Mary Gregor) (Cambridge: Cambridge University Press, 1996) and "Perpetual peace: A philosophical sketch," in Immanuel Kant, *Political writings* (tr HB Nisbet) (Cambridge: Cambridge University Press, 1970), Jean-Jacques Rousseau's *The social contract and other later political writings* (tr Victor Gourevitch) (Cambridge: Cambridge University Press, 1997), Wilhelm von Humboldt's *On the limits of state action* (tr JW Burrow) (Indianapolis: Liberty Fund, 1969) and John Stuart Mill's *On liberty* (Indianapolis: Bobbs-Merrill, 1956). Benjamin Constant's writings are usefully collected in the volume of his *Political writings* (Cambridge: Cambridge University Press, 1988), which forms part of the *Cambridge Texts in the History of Political Thought* series, and John Gray's *Liberalism* (2ed) (Buckingham: Open University Press, 1995) opens with a useful history of the development of liberal political philosophy.

² John Rawls, A theory of justice (Revised edition) (Oxford: Oxford University Press, 1999). First edition published in 1971.

³ The volume of writing on Rawls is discussed in the introductions to the volumes *Reading Rawls*, edited by Norman Daniels (Oxford: Blackwell, 1975) and *The Cambridge Companion to Rawls*, edited by Samuel Freeman (Cambridge University Press, 2003).

⁴ Rawls famously states on page *xviii* of the preface to *A theory of justice* (Revised edition) (Oxford: Oxford University Press, 1999) that he has attempted 'to generalise and carry to a higher order of abstraction the traditional theory of the social contract as represented by Locke, Rousseau, and Kant.' Later on in the same passage he comments that '[t]he theory that results is highly Kantian in nature,' disclaiming any originality for his views, which he describes as 'classical and well known.'

length.⁵ At least partially as a result of the book's influence, utilitarianism has faded as an intellectual force, but, ironically, the principle of perfection, now usually referred to as "perfectionism," has found more defenders as a result of Rawls's challenge.

Perfectionism endorses the claim that the state may legitimately promote (primarily by means of legislation, it is envisaged) certain human virtues or "excellences" or, to use the phrases most commonly used in the contemporary debate, "conceptions of the good," by which is meant, roughly, the moral, philosophical, or religious views held by citizens.⁶ To this Rawls did not explicitly oppose a doctrine of "state neutrality." In fact the term "neutrality" does not rate a mention in the index of *A theory of justice*, and *Political liberalism*⁷, his second major work, merely includes a brief discussion of the term in which it is described as "unfortunate," on the grounds that 'some of its connotations are highly misleading,' and that 'others suggest altogether impracticable principles.'⁸ His opposition to perfectionism, however, and his adherence to the doctrine which has subsequently come to be called "liberal neutrality" was unmistakable.⁹

Liberal neutrality, or "the principle of state neutrality," as I will refer to it, is the doctrine that the state may not take sides between the conflicting conceptions of the good life adhered to by citizens. Briefly put, it follows from the fact that, in *A theory of justice*, parties to a fair contract for the purpose of designing the social order must come to an agreement in ignorance of their race, sex, positions in society, as well as their conceptions of the good. The principles of justice which emerge from contracting parties so situated – two principles which, taken together, Rawls names *justice as fairness* – can therefore endorse no claims to greater entitlements on the basis of superior race, sex, social position or conception of the good. As a result they are *neutral* between these potential sources of bias, as is any legislation which conforms to them.

⁵ On page 46 of the revised edition of *A theory of justice* (Oxford: Oxford University Press, 1999), Rawls remarks that 'no constructive alternative theory [to utilitarianism] has been advanced which has the comparable virtues of clarity and system...Intuitionism is not constructive, perfectionism is unacceptable.' Later on – in section 50 of *A theory of justice* – Rawls devotes a little more attention to refuting perfectionism, but at nothing like the length at which he attacks utilitarianism.

⁶ I examine exactly what these *conceptions of the good life* might be in greater detail in the introductory section of chapter one.

^{7 (}New York: Columbia University Press, 1993)

⁸ Political liberalism (New York: Columbia University Press, 1993), p. 191.

⁹ This is made explicit in §50 of *A theory of justice* (Revised edition) (Oxford: Oxford University Press, 1999), pp. 285-92.

A theory of justice was followed shortly afterwards by another landmark in the history of liberal political theory: the publication of Robert Nozick's Anarchy, state and utopia, in which the author explicitly argued that a legitimate 'state or government...must be neutral...between its citizens.'¹⁰ Four years later Ronald Dworkin, who has subsequently come to be regarded as the second great figure in post-war liberal philosophy (after Rawls) published an essay entitled simply 'Liberalism,'¹¹ in which he argued that 'political decisions must be, so far as is possible, independent of any particular conception of the good life, or of what gives value to life.'¹² This is a theme to which Dworkin has repeatedly returned, ¹³ and in taking an interest in which he has been far from alone. ¹⁴

In fact Dworkin has not merely defended the doctrine of state neutrality. He has also described it, at one point, as 'a fundamental, almost defining, tenet of liberalism,' 15 and in this he was echoed by Bruce Ackerman, who remarks in *Social justice in the liberal state* that "constrained conversation" – his version of the neutrality principle – is 'the organising principle of liberal thought,' and that the liberal tradition is 'best understood as...an effort to define and justify broad constraints on power talk.' 16 Similarly, Charles Larmore, whose 1987 book *Patterns of moral complexity* 17 influenced Rawls's later writings, has claimed that 'the fundamental liberal principle is that the state should remain neutral toward disputed and controversial ideals of the good life' 18 and that 'the distinctive liberal notion is that of the neutrality of the state' 19 and even Joseph Raz, an avowed enemy of anti-perfectionism, comments that 'when anti-perfectionist principles are used to provide the foundation of a political theory they can be regarded as

¹⁰ Robert Nozick, *Anarchy, state, and utopia* (New York: Basic Books, 1974), p. 33.

¹¹ Ronald Dworkin, "Liberalism," in *A matter of principle* (Cambridge, Massachusetts: Harvard University Press, 1985), pp. 181-204.

¹² Ronald Dworkin, "Liberalism," in *A matter of principle* (Cambridge, Massachusetts: Harvard University Press, 1985), p. 191.

¹³ See also his "Foundations of liberal equality" in Stephen Darwall, (ed) *Equal freedom: Selected Tanner Lectures on human values* (Ann Arbor: Michigan University Press, 1995), pp. 190-306, where he writes, on page 191, that

It is a fundamental, almost defining, tenet of liberalism that the government of a political community should be tolerant of the different and often antagonistic convictions its citizens have about the right way to live: that it should be neutral, for example, between citizens who insist that a good life is necessarily a religious one and other citizens who fear religion as the only dangerous superstition.

¹⁴ See Bruce Ackerman, who says that '[a] power structure is illegitimate if it can be justified only through a conversation in which some person (or group) must assert that he is (or they are) the privileged moral authority.' *Social justice in the liberal state* (New Haven: Yale University Press, 1980), pp. 10-1.

¹⁵ Ronald Dworkin "Foundations of liberal equality" in Stephen Darwall, (ed) *Equal freedom* (Ann Arbor:, University of Michigan Press, 1995), p.191.

¹⁶ Bruce Ackerman, Social justice in the liberal state (New Haven: Yale University Press, 1980), p.10.

^{17 (}Cambridge: Cambridge University Press, 1987).

¹⁸ Patterns of moral complexity (Cambridge: Cambridge University Press, 1987), p. ix ¹⁹ Patterns of moral complexity (Cambridge: Cambridge University Press, 1987), p. 42

attempts to capture the core sense of the liberal ethos.'20

Clearly, if neutrality is the distinctive liberal notion, then we might associate perfectionism with illiberal politics. And history gives us good reason to do so. But, of course, the fact that all anti-liberals have also been perfectionists does not imply that all perfectionists are anti-liberals. And, as one might expect, claims by prominent theorists about the alleged centrality of the principle of state neutrality to the liberal project provoked liberals who did not reject perfectionism to show their hands.

Briefly put, *liberal* perfectionists argue that liberalism is not a doctrine of limited government, but rather, as Raz puts it, 'a doctrine about political morality which revolves around the importance of personal liberty.'²¹ Thomas Hurka, who offers what is perhaps the most detailed contemporary defence of a perfectionist *ethic*,²² argues that perfectionism can value liberty by making the free choice of one's form of life itself an objective good. Liberty, or personal autonomy, is understood by such liberals as a virtue or excellence which the state is obliged to promote. And this obligation cannot be understood as the principle of *neutrality*.

The first book-length liberal perfectionist response to liberal neutralism was Vinit Haksar's *Equality, liberty, and perfectionism*, which appeared in 1979. As he indicates in the introduction to the book, Haksar sets out to refute the Rawlsian position 'that perfectionism can and should be bypassed as a political principle,'23 devoting two chapters to detailed exegesis and criticism of the positions advanced in *A theory of justice*. Haksar's book did not receive the publicity it deserved, and liberal perfectionism had to wait for the publication, in 1986, of Raz's *The morality of freedom* before it was able to take centre stage. *A theory of justice* also looms large in Raz's book, being described in it as '[t]he most serious attempt to specify and defend a doctrine...of... neutrality,'24 and as such is the principal focus of critical attention for Raz. Even the work of more recent liberal perfectionists, such

²⁰ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 108

²¹ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p.17.

²² As opposed to a perfectionist liberal politics, the defence of which has been undertaken in the most detail by Raz, as we shall see. Furthermore, it is fair to say that Sher has offered a detailed defence of a perfectionist ethic which is in many ways as impressive as that of Hurka. I will come to discuss Sher as well in what follows.

²³ Vinit Haksar, *Equality, liberty, and perfectionism* (Oxford: Oxford University Press, 1979), p. 1.

²⁴ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 117. On page 122 Raz distinguishes between *comprehensive neutrality* which, as he puts it, 'consists in helping or hindering the parties in equal degree in all matters relevant to the conflict between them' and *narrow neutrality*, which he takes to consist in 'helping or hindering them to an equal degree in those activities and regarding those resources that they would wish neither to engage in nor to acquire but for the conflict.'

as Hurka's *Perfectionism* (1993), George Sher's *Beyond neutrality* (1997), and Steven Wall's *Liberalism, perfectionism, and restraint* (1998), all written more than twenty years after *A theory of justice*, devote considerable space and effort to responding to the anti-perfectionism articulated and developed by Rawls, ensuring that assessing the competing attractions of neutralism and perfectionism has become one of the central concerns of contemporary liberals.

Perfectionism is the idea that the state *may* take sides in the conflict between the various moral, philosophical and religious ideals held by citizens, promoting some and discouraging others. This should not be understood as being equivalent to the idea that the state should take sides in the inevitable conflicts of interests between *citizens* (unless one holds the implausible view that citizens' identities are exhausted by their ideals). Nor should it be understood as the idea that state neutrality between the various ideals is always illegitimate, as there are many cases in which there are good reasons for it which have nothing to do with a *general* principle of neutrality; if, for example, there is nothing to choose between two ideals (and there is no imperative that one be chosen), or also, perhaps, where taking sides would be the cause of major strife and remaining neutral would not have comparably undesirable consequences.

What remains unclear, however, is whether saying that the state should promote ideals of the good means that it should do so *whenever it can*, and also whether it should do so *to the greatest extent possible*. These are similar issues, in that they both go to the question of how stringent the perfectionist requirement that the state promote the good is. It seems obvious, at least *prima facie*, that if the state is capable of promoting the good, then there is no excuse for it not doing so. But even perfectionists might accept that the state has certain obligations which forbid it from promoting the good under certain circumstances. A perfectionist might accept, for example, that citizens have a right to autonomy. The state's obligation to recognise this right would obviously place obstacles in the way of its promoting the good. And the greater the number and/or stringency of such obligations recognised by the perfectionist, the greater the likelihood that the politics he or she advocates comes to resemble that of the neutralist. There is nothing incoherent, however, in a perfectionism which recognises even a great number of important right-based constraints on the state's promotion of the good.

To remain perfectionist one must merely deny that the state may *never* promote the good.

So contemporary perfectionists think the state should take sides between ideals. How do they make their case? Firstly, as we have already noted, a great deal of effort is expended in attempting to debunk the case for state neutrality. Raz, for example, devotes two chapters of *The morality of freedom*²⁵ to this, Sher no less than four of his *Beyond neutrality*, ²⁶ and a similar pattern is noticeable in the writings of Haksar²⁷ and Wall.²⁸

There is good reason for proceeding this way. This is because it is uncontroversial that one ought to pursue that which is good. And it is therefore also uncontroversial that the state should promote the good, unless, of course, there are weightier reasons not to. Now the principle of state neutrality purports to offer precisely such reasons. It is, as Raz says, a principle of *restraint*. It 'den[ies] the government's right to pursue certain valuable goals, or require[s] it to maintain undisturbed a certain state of affairs, even though it could, if it were to try, improve it.'²⁹ So the dispute between perfectionists and neutralists turns on whether or not there are reasons (and, if so, what they are) for the state to refrain from pursuing the good when it can. Neutralists claim that there are *always* such reasons (although the exact reasons offered differ from one writer to another). Showing that these alleged reasons do not hold, as arguments such as those of Raz and Sher attempt to do, leaves the way clear for an acceptance of the standard perfectionist view of the state: that it has a duty to improve the lives of citizens, or, to put it another way, a duty to promote the good.

We must note that these attacks on neutrality do not mean the abandonment of liberalism, and that they most emphatically do not mean abandoning a commitment to the value of personal autonomy. In fact, as we shall see in chapter three, Raz argues that state neutrality between ideals of the good runs the risk of diminishing the autonomy of citizens. It makes it more difficult for citizens to lead good lives, in that many of the valuable forms of life which citizens might choose

²⁵ (Oxford: Clarendon Press, 1986)

²⁹ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 110

²⁶ (Cambridge: Cambridge University Press, 1997)

²⁷ Vinit Haksar, *Equality, liberty, and perfectionism* (Oxford: Oxford University Press, 1979)

²⁸ Steven Wall Liberalism, perfectionism, and restraint (Cambridge: Cambridge University Press, 1998)

cannot be pursued as individuals, and require state support for their continued existence. The demise of these forms of life would result in a restricted palette of opportunities, leaving many citizens without sufficient valuable options for them to be able to make genuinely autonomous choices. Succinctly put, neutrality undermines autonomy. And, if this is indeed so, liberals have another reason for adopting the perfectionist view of politics.

Having acquired some sense of what it means for a state to take sides between ideals, I now turn to its opposite, neutrality, and make a few clarificatory remarks about what neutralists expect from the state.

The concept of neutrality is frequently associated with (and sometimes confused with) related concepts such as justice, fairness, and impartiality, although it is not to be equated with these. It presupposes, as Jeremy Waldron points out, a contest or conflict of some kind, and is predicated of the actions of parties not directly involved in the conflict. 30 Furthermore, the idea is "most at home" in the context of international relations, particularly during times of war.³¹ So, for example, we would say that Sweden was neutral during the Second World War, on the grounds that no military units acting on behalf of the Swedish nation intervened in order to influence the outcome of the war.³²

More precisely, taking a stance of neutrality is, following Alan Montefiore, 'to do one's best to help or to hinder the various parties concerned in an equal degree.'33 This, according to Raz, is the 'primary sense of neutrality.'34 Raz goes on to say that one is neutral in the primary sense 'only if one can affect the fortunes of the parties and if one helps or hinders them to an equal degree and one does so because one believes that there are reasons for so acting which essentially depend on the fact that the action has an equal effect on the fortunes of the parties.'35

³⁰ Jeremy Waldron, "Legislation and moral neutrality," in Robert Goodin and Andrew Reeve, (eds) *Liberal Neutrality* (London: Routledge, 1989), pp. 61-83 at p. 44.

Jeremy Waldron, "Legislation and moral neutrality," in Robert Goodin and Andrew Reeve, (eds) *Liberal Neutrality* (London: Routledge, 1989), pp. 61-83 at p. 66.

Swedes certainly volunteered for combat in their personal capacities, on both sides of the conflict, and were therefore absorbed into both Allied and Axis military units. It is conceivable, in conflict situations, that voluntary participation could reach a level (and partisanship) sufficient for it to be no longer plausible to assert that the country of which such volunteers are citizens is neutral. The participation of Swedes in World War II does not appear to have reached this level, however.

Alan Montefiore in the book he edited, *Neutrality and impartiality* (Cambridge: Cambridge University Press, 1975), p. 5.
 Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 113.
 Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 113.

Following Raz, then, we should say that being neutral in this sense requires, firstly, at least the possibility of affecting the outcome of the conflict: one *might*, if one so chose, be able to help or hinder one of the parties. A party which can have no influence on the outcome, whatever it does, is not neutral in the primary sense. And secondly, neutrality in Raz's primary sense is not accidental. It is the outcome of a decision grounded in reasons for refraining from helping or hindering the parties unequally.³⁶

We should note therefore that there are not always reasons for being neutral, simply because neutrality is not always (or even *prima facie*) desirable. It might signify indifference to that which ought to arouse partisan passions, and it can be the occasion of regret.³⁷ Even neutrality in times of war is not necessarily to be approved of: while many may think that Sweden's wartime neutrality was understandable, few found it admirable. So the advocate of neutrality must explain not only the context in which neutrality is to be endorsed, but also the reasons for which it is to be endorsed.

If we are to understand what reasons might be put forward in support of a policy of neutrality, we must move away from the idea of neutrality in general, and narrow our focus. This dissertation is concerned with *state neutrality between conceptions of the good*, which, following Raz, we will understand as the refusal on the part of the state to use its power to privilege or discriminate against any citizen on the basis of their adherence to a particular conception of the good life. It is neutrality in this context that I will now turn to focus on.

It is widely held that the populations of contemporary constitutional democracies are uniquely diverse. More specifically, the claim is that citizens of contemporary constitutional democracies adhere to a great variety of moral, philosophical, and religious views, and that this was not usually the case in these territories in earlier times.³⁸

³⁶ Raz notes that there is a further, secondary, sense, in which may one be neutral without intending so to be. See *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 113.

³⁷ See Thomas Hardy's poem 'Neutral tones' in Paul Keegan (ed) *The New Penguin Book of English Verse* (London: Penguin, 2000), p. 823.

³⁸ What we are to say in this regard about contemporary societies which are not, strictly speaking, constitutional democracies in the style of West, is a tricky question. Some appear to be relatively homogenous: China would be such an example, at least if we think of ethnic homogeneity. Others appear to be rather diverse (although powerful ethnic or religious factions within them have generally not adopted anything like the principle of state neutrality in the face of diversity).

Rawls offers a typical historical narrative in his introduction to Political liberalism, where he says, in the course of outlining the trajectory of liberalism and its precursors over the past three or four centuries, that the Reformation 'fragmented the religious unity of the Middle Ages and led to religious pluralism, with all its consequences for later centuries. This in turn fostered pluralisms of other kinds, which were a permanent feature of culture by the end of the eighteenth century.'39

Furthermore, many liberals have held that contemporary social heterogeneity calls forth the idea of state neutrality. Larmore, for example, contends that '[i]n modern times we have come to recognise a multiplicity of ways in which a fulfilled life can be lived, without any perceptible hierarchy among them. And we have also been forced to acknowledge that even where we do believe that we have discerned the superiority of some ways of life to others, reasonable people may often not share our view.'40 He goes on to say that 'pluralism and disagreement about the good life...make political neutrality reasonable, and mounts a defence, which we will examine in chapter two, of state neutrality which he takes to be the most appropriate response to the pluralism we encounter in modern constitutional democracies.

There are of course dissenters from the view that past societies were largely homogenous.42 There is reason to think that many past societies, including those which later developed into liberal societies, exhibited as great an ethnic and religious diversity as contemporary democracies (if not greater). And there is also reason to think that, at least in some cases, past societies managed such diversity without either requiring neutrality of their states or dissolving in ethnic and religious bloodshed.

But there is little doubt that contemporary constitutional democracies are very morally, philosophically, and religiously diverse. And there is also little doubt that the history of political philosophy in the West reveals an increasing concern with impartiality, and an increasing opposition to what we now understand as discrimination, whether accompanied by an increase in social heterogeneity or

³⁹ John Rawls, *Political liberalism* (New York: Columbia University Press, 1993), p. xxiv.

⁴⁰ Charles Larmore, *Patterns of moral complexity*, (Cambridge: Cambridge University Press, 1987), p. 43.
41 Charles Larmore, *Patterns of moral complexity*, (Cambridge: Cambridge University Press, 1987), pp. 50-1.
42 Charles Larmore, *Patterns of moral complexity*, (Cambridge: Cambridge University Press, 1987), pp. 50-1.

⁴² See, for example, Derek Phillips's Looking backward (Princeton: Princeton University Press, 1993), for an account of the diversity of past societies often taken to have been examples of social unity.

not.

It might be most accurate to understand this development as a concern with stability. The insistence on a state religion, especially where adherents of competing religions are of roughly equal strength, has often seemed to be a catalyst for instability and civil strife: the bloody wars of the seventeenth century in what is now Germany were a particularly ugly example. So there are good pragmatic reasons for responding to diversity with impartiality, and this was well understood by early modern writers such as Locke, 43 who proposed "toleration" as a means of damping potential religious conflict and winning the co-operation of a diverse populace. And once the idea of toleration gained momentum in Europe, it seemed there was no stopping it. By the eighteenth century the public position of European monarchs such as Frederick the Great of Prussia was that citizens were free to adhere to whatever "metaphysical fictions" they wished to 44 and by the end of the nineteenth, dissent from the Christian tradition was no longer an impediment to advancement in Europe. The sectarian character of European states faded into ever more insipid forms of civil religion.

It is of course also the case that twentieth-century European history did not evince much in the way of stability, despite religious toleration. This does not prove, of course, that things would not have been even worse had religious toleration not become an accepted principle. But it ought to lead us to note that a concern with stability is not the only possible motivation for requiring states to hold back from supporting (or being supported by) partisan conceptions of the good life. And if we look at the development of opposition to discrimination in the political philosophy of the West, we see that it is as much grounded in an ideal of equal treatment as it is in a pragmatic concern with avoiding strife.

This ideal emphasised the necessity of treating the social standing or religion of a citizen, and, with time, his or her race, gender, or sexual orientation, as irrelevant in the distribution of the burdens and privileges of living in a democratic society. And, as we see in the later work of Rawls,⁴⁵ it also emphasised the moral unacceptability of requiring some citizens, but not others, to live by principles they did not share and had no part in formulating.

⁴⁵ Especially *Political liberalism* (New York: Columbia University Press, 1993).

⁴³ See his "A letter concerning toleration" in *Two treatises of government* and *A letter concerning toleration* (New Haven: Yale University Press, 2003), which had great influence on the American founding fathers.

⁴⁴ In Frederick's case this does not seem to have been because of any aversion to violent conflict, however.

Again, we must be careful. A thorough historical study of the rise of the ideal of equal treatment (which this dissertation does not attempt to be) would undoubtedly find traces, or precursors, of it in many pre-modern eras (not to mention in non-Western cultures). One has merely to think of the golden rule of Jesus Christ in order to summon a similar norm of great antiquity and long-lasting influence. But the loosening of the bonds of aristocratic and clerical power in the early modern period in Europe did see the ideal of equal treatment clearly and forcefully articulated, notably by Kant and Rousseau, and also by the signatories of the Declaration of the Rights of Man. And the principle of state neutrality appears to many to fall naturally into this tradition. It appeals to our sense that a state which treats its citizens differentially, as, it seems, it must do, if it advances certain conceptions of the good life and not others, is perpetrating precisely the kind of injustice which our culture has come to abhor, regardless of whether or not those against whom it discriminates are able to destabilise the society.

In what follows we will look at both pragmatic arguments for state neutrality, as well as appeals to the ideal of equal treatment, and assess their appropriateness as responses to what we might call "the circumstances of diversity". It will be my contention that, while understandable, the demand that the state be neutral is misguided. In order to establish this, I examine, in chapter one, the various formulations the principle of state neutrality has taken, in chapter two, the main arguments for the principle, and, in chapter three, I examine, in particular, Joseph Raz's liberal case for the acceptability of perfectionist legislation, even in the circumstances of diversity. I conclude that, given the failure of the arguments for the principle of state neutrality, a modified version of Raz's perfectionism is the most acceptable liberal political morality.

2 FORMULATING THE PRINCIPLE OF STATE NEUTRALITY

We have now briefly traced the history of the idea of neutrality as it has been deployed in English-language liberal political philosophy over the past three decades.

As noted in the introduction, the idea did not meet with acceptance across the board. For some critics, such as the so-called *communitarians*, who rose to prominence in the 1980s, it was evidence of the misguided nature of liberalism, ⁴⁶ for others it stymied *liberal* goals. ⁴⁷ This thesis will not devote serious discussion to the communitarians, but will focus instead on the latter attack: criticism, in other words, from those writers who claim to share the commitment, the implications of which the prominent neutralists discussed in the thesis take themselves to be working out in their writings, to the paramount value of freedom and equality for all individuals within society, but who take the neutrality principle to be a misguided attempt at expressing these values

Before we get on to looking at what anti-neutralist liberals have to say, however, we need to fix, to the extent that this is possible, what exactly it is that neutralists are advocating, and why they do so. And here the picture gets complicated. I therefore devote this chapter to surveying a number of important formulations of the principle of state neutrality which have been offered by its advocates. An assessment of the perfectionist attack will have to wait until chapter three, after I have looked, in chapter two, in greater depth at the connections between formulating the principle of state neutrality and defending it.

As we have seen in the introduction, the neutrality principle is generally taken to mean that principle of political morality which requires the state, in a pluralist society, to maintain a position of neutrality towards those large-scale moral, philosophical, or religious frameworks typically referred to in the literature as conceptions of the good or conceptions of the good life, which claim the adherence of citizens. And the expression "pluralist society" is generally used to

⁴⁶ The most prominent of whom were Alasdair MacIntyre, Michael Sandel, Charles Taylor and Michael Walzer.

⁴⁷ Raz's *The morality of freedom* (Oxford: Clarendon Press, 1986) contains the most obvious case of such an argument, but the suggestion that state neutrality is a bogus ideal can also be found in the writings of the other liberal perfectionists discussed in this thesis.

mean a society in which there is not widespread agreement on any such conception of the good, in contrast to the homogeneity which, we are told, characterised pre-modern western cultures and still, frequently, is said to characterise contemporary non-western cultures.

With respect to the conceptions of the good, between which the state is required to be neutral, it is important to note that they are nowhere taken to include *all* the moral values held by citizens. This is because the term "the good" has, as used by contemporary political theorists, acquired a quasi-technical sense, and in this context is standardly contrasted with "the right." Roughly speaking, the good is understood as that which is worth pursuing, whereas the right is that which one is obliged to do.

So, for example, one might hold that pleasing God, experiencing pleasure, or expressing oneself artistically, is worth devoting one's time and energy (or even one's life) to, in which case these beliefs or attitudes would be part of one's conception of the *good*. They could even be, as may be likely in the case of the first example, the *entirety* of one's conception of the good. One might, however, if one is a good liberal, recognise that promoting that which is good or valuable is not the only claim on one's moral attention. One might think, also, that one's pursuit of the good ought to be limited or constrained by the obligation one has to take others into account. This might be because one recognises that others do not always value what one values oneself, and that it would therefore be unfair, or unreasonable, to expect them to sacrifice their own pursuits in favour of one's own (should it come to that). Or one might hold that unlimited pursuit of what one held to be valuable would create an undesirable level of conflict with one's neighbours.

And one might, of course, have quite different reasons for holding back from all out pursuit of any particular good. But the important point to recognise is that there is an aspect of morality which involves the acceptance of such limits. This aspect twentieth-century English-language moral philosophers have called the *right*, and its relation to, and apparent or alleged independence from, the *good* as a source of value has been the topic of much debate.

So, when liberal neutralists such as Rawls and Dworkin say that the state must be neutral between the various conceptions of the good life held by citizens, they do not mean that the state takes no position on how far citizens may go in promoting or pursuing the good, let alone that the state enforces no values whatsoever. On the contrary, the limits of the good are precisely what the neutral state enforces, and indeed it can be said to demonstrate its neutrality in doing so. Liberal neutralism can be understood as the view that the state should *enforce* the right, while standing aloof from the conflicts about the good.

This formulation is very general, however, and therefore admits of a number of ambiguities. And here is where the trouble starts, for the effect of these ambiguities is, as we shall see in the remainder of this chapter, that the principle has been interpreted in a number of ways, ways which may well conflict with one another.

My initial purpose in what follows is simply to offer a rough characterisation of the different interpretations of the principle of state neutrality. Questions about the plausibility of the principle will be left to chapter two, where I discuss what grounds there might be for adhering to *any* interpretation of the neutrality principle in greater detail, and where we will also see in greater detail how different grounds for doing so affect the stance one takes on the issues I discuss here in chapter one.

The first ambiguity I wish to discuss concerns what it means to say that the state must remain neutral between *rival* conceptions of the good. Thereafter I will look at two questions regarding the *range* of application of the principle, after which I will turn to what I take to be the crucial issue facing interpreters of the principle of state neutrality: the controversy regarding what it means to say that the state may not *favour* any conception of the good.

2.1 Rival conceptions of the good

Neutralists raise no controversy (amongst each other, that is) if they claim that the state must be neutral between *rival* conceptions of the good. But we might wonder under what circumstances conceptions of the good might be said to be rivals. We might, in particular, wonder whether conceptions of the good which are largely

unchallenged can be accurately said to have rivals. Obviously any conception of the good whatsoever *could* be challenged, but a good many of them *are in fact not* challenged, or not seriously challenged, at least within particular societies. The question then arises as to whether a state which intentionally and/or successfully promotes goods on whose value there is an overwhelming consensus does in fact take sides between *rival* conceptions.

Typical of one side of the argument is the view of Larmore, who holds that the ideal of political neutrality 'demands only that so long as some view about the good life remains disputed, no decision of the state can be justified on the basis of its supposed intrinsic superiority or inferiority.'⁴⁸ In fact contemporary constitutional democracies, the vast majority of which pay lip service to neutrality in some sense, frequently act on the basis of (relatively) uncontroversial conceptions of the good. This is apparent, for example, in the subsidisation of museums and galleries, or the special place monogamous marriage has in law; here the state clearly proceeds on the basis that the cultivated or the monogamous, life is particularly valuable.⁴⁹

Against Larmore we have writers like Rawls and Dworkin, who express serious misgivings about the possibility of state endorsement of *any* conception of the good. Rawls remarks, for example, in *A theory of justice* that 'the principles of justice do not permit subsidising universities and institutes, or opera and the theatre, on the grounds that these institutions are intrinsically valuable,'50 (although his position appears to soften in his later writings).⁵¹ Dworkin's position is similar to that of the Rawls of *A theory of justice*, although he devotes considerably more effort to discovering allegedly neutral reasons as to why the state should indeed subsidise various forms of (uncontroversially valued) high

⁴⁸ Charles Larmore, *Patterns of moral complexity* (Cambridge: Cambridge University Press, 1987) p. 47.

⁴⁹ Of course it might be possible to defend the legal enshrinement of monogamous marriage, and possibly even the subsidisation of museums and galleries, purely on the basis of right, although those who do so may be suspected of casuistry. My guess is that the enshrinement of monogamous marriage is likely to become increasingly threatened in contemporary Western democracies as its basis in a conception of the good which is no longer quite as widespread as it once was becomes clear, and right-based justifications of it become ever less plausible.
⁵⁰ John Rawls, *A theory of justice* (Revised edition) (Oxford: Oxford University Press, 1999), p. 291.

In a rather obscure passage on page 215 of *Political liberalism* (New York: Columbia University Press, 1993), he remarks that 'it is usually desirable to settle political questions by invoking the values of public reason. Yet this may not always be so.' Rawls uses the term "public reason" in his later writings to describe a form of justification which, amongst other features, appeals to no particular conception of the good. This passage ought therefore to be understood as suggesting that state policy with regard to constitutional essentials and matters of basic justice ought to be justified neutrally – in other words without reference to any particular conception of the good – after which it is also suggested that this stricture does not always hold. The circumstances under which it would not hold remain unclear..

culture.52

Ultimately, as we shall see in chapter two, this dispute has its roots in the reasons philosophers bring for advocating state neutrality in the first place. Here it suffices to say that if one is moved to support state neutrality solely out of, say, a concern for political stability, then it is indeed unclear why one would hold that the state should refrain from backing monogamous marriage. In a culture where marriage of this kind is taken almost unanimously to be the most valuable form of life for purposes such as the raising of children and the nurturing of serious sexual relationships, and where these purposes are almost unanimously regarded as worthy goals, state support for monogamous marriage will in no way threaten social stability – in fact it will in all likelihood contribute *towards* it.

If, on the other hand, one's primary reasons for advocating neutrality lie in the fact that one particularly values ethical or social diversity, one might think that the society could do with a little more variety in its sexual or familial arrangements than that engendered by the predominance of monogamous marriages. One might also advocate state neutrality on the basis of a commitment to personal autonomy, in which case one might argue that in a society where monogamous marriage is legally enshrined the choices citizens make for or against it do not amount to genuinely autonomous choices.⁵³ And so one might wish for the state to remain aloof from the conflict (if conflict it is) between monogamy, bigamy, and promiscuity, or that between heterosexuality and the various alternatives to it, leaving citizens to have maximum opportunity to arrive at their own conclusions about the respective values of these sexual strategies.

Whatever one's position on how the neutral state should respond to consensus on the good, it cannot be defended without reference to the arguments for the neutrality principle. Because of this, we must postpone serious discussion of these alternatives until the second chapter, where I will examine the connections between arguments for neutrality and the various formulations of the neutrality principle in depth. For now I continue to survey these different formulations, turning next to the first of two questions concerning the *range* of the neutrality principle – questions concerning, in other words, which state actions,

⁵² See in particular the essay "Can a liberal state support art?" in A matter of principle (Cambridge, Massachusetts: Harvard

University Press, 1985), pp. 221-33.

See Waldron's remarks to this effect in his "Autonomy and perfectionism in Raz's *Morality of freedom*" *Southern California* Law Review 62 (1989), pp. 1098-1152 at pp. 1151-2.

institutions, policies or processes must be neutral, and which need not be.

2.2 The range of the neutrality principle: comprehensive or narrow

The first way in which advocates of the principle of state neutrality come to different interpretations of the principle arose out of an ambiguity in the term "rival". The second, as we shall see, arises out of the fact that the word "state" can be understood in different ways.

One might use the term "state" in discussions of the neutrality principle to apply strictly or primarily to the *constitutional essentials* of a society – those 'fundamental principles that specify the general structure of government and the political process: the powers of the legislature, executive and the judiciary; the scope of majority rule' and those 'equal basic rights and liberties of citizenship that legislative majorities are to respect: such as the right to vote and to participate in politics, liberty of conscience, freedom of thought and of association, as well as the protections of the rule of law,' to use Rawls's formulation.⁵⁴

And one might, in accordance with the use of the term "state" in this narrow sense, take the principle of state neutrality to apply only to such essentials, as do, for example, Rawls and Brian Barry,⁵⁵ understanding the essential principles and rights to function like the rules of a game within which individuals and interest groups may legitimately attempt to promote their conceptions of the good. This view of the range of the principle I will refer to as the *narrow* neutrality principle.⁵⁶

Principles and rights such as these do not, of course, exhaust the business of legislation. Much governmental activity involves making laws in contexts and with respect to matters less fundamental than those listed above, and which specify in a more fine-grained manner the rights and duties of citizens and their organisations. To many, if not most, the term "state" is just as applicable to legislation other than the constitutional essentials, and so, therefore, is the

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⁵⁴ John Rawls, *Political liberalism* (New York: Columbia University Press, 1993), p. 227. Obviously, one might formulate constitutional essentials and matters of basic justice differently. I present Rawls's formulation here so as to give the reader a general sense of what characterises the distinction between such essentials and broader legislative functions.
⁵⁵ Brian Barry, *Justice as impartiality* (Oxford: Clarendon Press, 1995), p. 161.

⁵⁶ See Steven Wall and George Klosko's "Introduction" to the volume they edit entitled *Perfectionism and neutrality* (Lanham: Rowman and Littlefield, 2003), p. 6.

principle of state neutrality. This view we will call the *comprehensive* neutrality principle, ⁵⁷ and it rules out the promotion of the good in any governmental context.

It goes (almost) without saying that the reason why state neutrality of *any* range is required is that the state has immense influence over the lives of citizens: whatever reason one has for thinking a non-neutral state to be an evil assumes in the first place that the state has significant influence.

Furthermore, given that the state affects our lives primarily by means of legislation, and that constitutional provisions determine the nature and limits of other laws rather than *vice versa*, it is in the provisions of the constitution, rather than in the provisions of less fundamental legislation, that the state exercises its greatest influence. This is why the parties to the debate on this aspect of the range of the principle of state neutrality are divided in the way they are; this is why, in other words, there is no "the constitution can be partisan, but wider legislation must be neutral" party. The great influence of the constitutional essentials means that no one who was discriminated against by the constitution on the basis of their adherence to a particular conception of the good is likely to be satisfied by the reassurance that that all other legislation was neutral (were such a dispensation to be possible, which is doubtful), whereas one might certainly draw some comfort from a neutral constitution in cases where one's conception of the good life was disadvantaged by the policies of the government of the day.

Rawls expresses this view when he writes that his aim, in *Political liberalism*.

is to consider first the strongest case where the political questions concern the most fundamental matters. If we should not honour the limits of public reason here, it would seem we need not honour them anywhere. Should they hold here, we can then proceed to other cases. 58

We might sum this up by saying that if anything ought to be neutral, it should be the constitution.

⁵⁷ See Steven Wall and George Klosko's "Introduction" to the volume they edit entitled *Perfectionism and neutrality* (Lanham: Rowman and Littlefield, 2003), p. 6.

⁸ Political liberalism (New York: Columbia University Press, 1993), p. 215.

Richard Arneson has suggested that 'something approaching a consensus has formed around...[the view that state neutrality]... applies not to each and every policy the state pursues, but only to constitutional essentials and basic justice, or the principles that regulate the basic structure of society⁵⁹; around the principle of narrow neutrality, in other words.

As examples of important consensus-makers of this kind he cites Rawls, who writes that

[o]ur exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason⁶⁰

and Barry, who writes that 'nobody is to be allowed to assert the superiority of his own conception of the good over those of other people as a reason for building into the framework for social co-operation special advantages for it'⁶¹ and that 'at the point where basic principles and rules are being drawn up, no conception of the good should be given a privileged position.' ⁶²

Accepting the narrow principle would mean accepting that just as a neutral constitution does not forbid citizens from promoting the good in their individual capacities, it might also, under specified circumstances, allow some functionaries of the state to promote the good. This it might do, for example, by allowing local institutions to promote certain goods, while insisting that national institutions refrain from doing likewise. It should then be possible to interpret a constitution which conforms to the neutrality principle to allow, say, local educational institutions to decide which excellences or virtues their curricula will attempt to inculcate in schoolchildren, local governments to fund galleries and museums and sporting events of a particular nature, and so on. In all such examples, however, the important point to remember is that peripheral legislation, as we might call it, would be to some extent analogous to private action, in that it would be a sphere in which the good may be pursued within the limits set by neutral principles of

⁵⁹ Richard Arneson, "Liberal neutrality on the good: An autopsy," in Steven Wall and George Klosko (eds) *Perfectionism and neutrality* (Lanham: Rowman and Littlefield, 2003), pp. 191-218 at p. 206.

⁶⁰ John Rawls, *Political liberalism* (New York: Columbia University Press, 1993), p. 137. (The so-called *principle of liberal legitimacy*, which we encounter again in chapter three.)

 ⁶¹ Brian Barry, *Justice as impartiality* (Oxford: Clarendon Press, 1995), p. 160.
 ⁶² Brian Barry, *Justice as impartiality* (Oxford: Clarendon Press, 1995), p. 160.

right, enshrined in the constitution.

One might, of course, ask *why* the domain of political morality should be split into two like this. Is it not simpler, and more in accordance with liberal tradition, merely to distinguish between private morality and political, or public, morality? And if we do this, and if we think that the principle of state neutrality applies to political morality, then surely it applies to the whole of political morality?

Put very roughly, the problem seems to be that comprehensive neutrality seems too much, even for neutralists. (Obviously it is also too much for perfectionists, but they can see this as a reason to call the appropriateness of neutrality at *any* level into doubt.) Working out why writers like Rawls and Barry take the position they do involves a certain amount of speculation, as, as can be seen in the passages quoted above, both appear to favour the narrow principle out of caution; both passages express the suggestion that *at least* neutrality in the constitutional sphere can be defended, as if defending comprehensive neutrality would take them into treacherous territory, but should not in principle be ruled out. This way of proceeding cannot be straightforwardly taken as an *argument* for narrow, as opposed to comprehensive liberalism, but appears rather to be a strategy for defending neutrality *per se*.

Barry does offer hints as to why he adopts the cautious attitude when he writes that 'public policy [not constitutional matters] will in many matters reflect some conception of the good,' and further, to illustrate his point, that

[i]t would be absurd to suggest that there is some way of determining a [public school] curriculum that is neutral between all conceptions of the good, and it is significant that those who support the idea of legislative (as against constitutional) neutrality have never attempted to lay out a neutral curriculum.⁶³

This passage seems best interpreted to mean that it is *impractical* to demand that all essential state activity, ⁶⁴ at all levels, conform to the neutrality principle. Hence the cautious defence of neutrality; if its ambitions are scaled down, restricting themselves to the basic essentials, the accusation that neutrality of any kind is

64 This argument assumes, of course, that the provision of a public school curriculum is not a function that the state can simply

⁶³ Brian Barry, *Justice as impartiality* (Oxford: Clarendon Press, 1995), p. 161.

unachievable is less likely to stick. The practicability of a constitution which does not promote any particular conception of the good is at least *prima facie* plausible, regardless of the plausibility of an entire legal apparatus which is neutral in this way.

Is this a strategy that neutralists ought to follow? As we saw in the previous section, ⁶⁵ answering one question about the requirements of the neutrality principle may require already having answers to other questions about the meaning and justification of the principle. In the case under discussion, we need to know whether to interpret state neutrality to mean neutrality of *effect* or neutrality of *justification*; whether, in other words, a neutral state is one which ensures that nothing it does leaves anyone any worse off as a result of their adherence to any particular conception of the good, or whether the neutral state is one which does not to appeal to any particular conception of the good in justifying its policies, whatever the effects of these policies might be. ⁶⁶

Adopting the neutrality of effect interpretation does indeed render implausible the idea that the entire corpus of legislation, as opposed to the constitutional essentials, could be neutral. This is because ensuring that no one's fate is adversely affected as a result of the effect any law or policy has on the adherents of any particular conception of the good would surely paralyse the state. Hence anyone who thinks that neutrality must be understood as neutrality of effect must prefer the narrow neutrality principle (if they are willing to stick with the principle of state neutrality at all), as requiring that nothing in the constitution leaves anyone worse off on account of their adherence to a particular conception of the good looks somewhat more achievable. (Whether one ought to adopt the neutrality of effect interpretation is another matter, of course; one I discuss in the section below entitled "Favouring a conception of the good").

On the other hand, if the neutrality principle is understood as requiring simply that the state not appeal to any conception of the good in making law and policy, then comprehensive neutrality looks more plausible. Richard Arneson points out, ⁶⁷ in response to Barry's claim that any education must appeal to the value of

⁶⁵ The section on the question whether the state should remain neutral between all conceptions of the good, or merely between disputed conceptions of the good.

l discuss this matter in greater depth in the section below entitled "Favouring a conception of the good".
 See his "Liberal neutrality on the good: An autopsy," in Steven Wall and George Klosko (eds) Perfectionism and neutrality (Lanham: Rowman and Littlefield, 2003), pp. 191-218, at p. 210.

certain activities or experiences in comparison to others, that it is surely possible to justify educational goals in neutral terms. As Arneson puts it, 'we can appeal to the idea that it is fair that every person have...opportunity to attain some reasonable threshold level of literacy and mathematical competence, and run public schools on this basis.'68 Furthermore, if one endorses Larmore's position that state neutrality is not violated by legislation which promotes uncontroversial conceptions of the good, then it is even simpler to imagine how a policy of comprehensive state neutrality might successfully be applied to, for example, public school curricula.⁶⁹

In the absence of compelling examples of the impossibility of justifying legislation neutrally,⁷⁰ narrow neutralists face the accusation that there is something arbitrary about failing to extend the requirement of neutrality beyond the constitutional essentials. If there is a good case for state neutrality, and if it is just as feasible for legislation to be neutral as it is for the constitutional essentials, what grounds could there be for permitting state perfectionism on the legal periphery? This is not a question to which Rawls and Barry give further attention – indeed, one might expect Rawls's response to be simply that peripheral legislation is not the focus of his work.

But perhaps there are such grounds – grounds for regarding peripheral legislation as sufficiently unimportant for state neutrality such that the state may legitimately promote the good by means of it. Obviously, no neutralist case for the narrow principle can succeed without first establishing that there is a case for *any* version of the principle of state neutrality. What the neutralist then has to do is explain why the reasons for adopting the neutrality principle in the first place – be they the importance of personal autonomy, the importance of stability, the impossibility of

⁶⁸ See his "Liberal neutrality on the good: An autopsy," in Steven Wall and George Klosko (eds) *Perfectionism and neutrality* (Lanham: Rowman and Littlefield, 2003), pp. 191-218, at p. 210.

⁶⁹ Some, such as Russell Keat in his *Cultural goods and the limits of the market*, have argued that the inculcation of certain cultural values (such as, for example, the idea that a life with art is superior to a life without it) promote *autonomy* in individuals. If one takes the – admittedly controversial – view that autonomy is a neutral value, Keat's argument can also establish that a neutral public school curriculum is possible.

⁷⁰ I do not address the matter here of the *desirability* of peripheral as well as constitutional legislation being neutrally justified, merely whether it would be possible. We will see in chapters three and four that liberal perfectionists do not consider such neutrality desirable; Raz in fact thinks that it damages personal autonomy.

Furthermore, I come, in chapters two and three, to discuss the possibility that avowedly anti-perfectionist political moralities do in fact rely on (controversial) conceptions of the good. However the subject of these later discussions is the difficulty the possibility that these anti-perfectionist moralities in fact rely on unacknowledged conceptions of the good raises for any form of the principle of state neutrality, narrow or comprehensive. Given that the current matter under discussion is simply whether it is necessary or wise for neutralists merely to defend a narrow neutrality principle, as opposed to a comprehensive one, I do not raise deeper theoretical difficulties for neutralism in general at this point.

knowledge of the good, or any of a number of others – demonstrate the necessity of a neutral constitution or neutral principles of basic justice with that much more *urgency* than they do the necessity of neutral legislation.

Whether this is possible is a matter I will discuss in chapter two, when I come to discuss the cogency of the various arguments for neutrality in general. For the moment it suffices to note that neutralists divide into comprehensive and narrow neutralists, and that deciding which of the two strategies is the more promising depends, as with so much in this debate, on what reasons one has for adhering to the neutrality principle in the first place. In what follows I continue to survey the ambiguities in the formulation of the principle, turning next to discuss whether the neutralist state must refrain only from using coercion to promote the good.

2.3 The range of the neutrality principle: only coercive promotion of the good?

Another way in which the range of the principle of state neutrality is open to different interpretations concerns the issue of coercion; in particular, whether the principle requires the state to refrain from acting on the basis of a particular conception of the good only in cases where doing so involves coercing citizens, or whether neutrality is required even when the policy in question involves no coercive measures.

It is hardly surprising that anti-perfectionism and a particular concern with coercion are linked in the work of many writers; the state is distinguished from other actors in liberal⁷¹ political theory by its monopoly⁷² on the legitimate use of force, 73 and there is a certain symmetry in holding that the state's being distinguished in this way entails it being distinguished by the reasons for which it may act (or the reasons for which it may not act, in this case) as well. One might put it this way: for many anti-perfectionists, the state's acquiring the right to coerce

 71 And any version of democratic theory. 72 Near monopoly would be more accurate, given that most democratic theorists, liberals included, recognise the right of citizens to defend themselves by means of force under some circumstances.

³ Raz is a notable exception to this view, and Waldron has suggested that Raz's view that the state is distinguished rather by the generality of its claim to authority is linked to his view that taxation, for example, is not necessarily a coercive exercise of state power. See Jeremy Waldron,, "Autonomy and perfectionism in Raz's Morality of freedom," Southern California Law Review 62 (1989), pp. 1098-1152 at pp. 1139-40.

means it must lose the right to promote the good.

But if it is concern with the state's right to *coerce* which is the primary impulse in ruling out perfectionist legislation, such neutralists must work out what to say in cases where the state appears to exercise its power *without* coercion.

Clearly, any state frequently resorts to coercion so as to ensure compliance with the law; any cases where it uses force or threatens to use force to compel citizens either to do or to refrain from doing something count as coercion. And neutralists are agreed that the state may not use such methods either to promote the good or to forbid the bad.⁷⁴

But are *all* exercises of state power exercises in coercion? Citizens who accept the legitimacy of a law can certainly not be said to have been coerced into compliance with it. And although they may be aware that violations will result in punishment, in those cases where the legitimacy of the legislation is wholeheartedly accepted fear of punishment is not among their reasons for compliance. Furthermore, if we accept Raz's stipulation that, for a threat to be a coercive one, it must be a serious threat, citizens who comply with a law because they wish to avoid the minor inconveniences that certain punishments would bring upon them – small fines, say – can also not be said to have been coerced into compliance by the state. Thus the promulgation of legislation which is complied with because citizens accept its legitimacy, or because they fear punishment which is not sufficiently serious for the threat of it to count as a case of coercion, cannot be described as an example of the state exercising its power coercively over those citizens.

We can conclude from this that the case for the legitimacy of non-coercive legislation of this kind – legislation that is non-coercive because it is accepted as legitimate by citizens – is the same as the case for the compatibility of the promotion of uncontroversial conceptions of the good by means of the law with the principle of state neutrality, as discussed in the section above entitled "Rival

⁷⁵ Here I ignore the possibility – far fetched, it seems to me – that all instances of apparently wholehearted commitment to the law are cases of self-deception, where fear is in fact a genuine motivating factor, albeit one which the actor cannot or will not acknowledge. This is not to deny that there are such cases.

⁷⁶ See Raz's comment at page 149 of *The morality of freedom* (Oxford: Clarendon Press, 1986), that, in order for a case to be

⁷⁴ Some perfectionists, Raz included, hold a position quite close to this as well.

⁷⁶ See Raz's comment at page 149 of *The morality of freedom* (Oxford: Clarendon Press, 1986), that, in order for a case to be an example of coercion, avoiding the (credibly) threatened consequence of non-compliance must be, for the coercee, 'a reason of great weight for not doing' whatever it is that is being proscribed by the coercer.

conceptions of the good". For legislation which appeals to non-controversial conceptions of the good would not coerce citizens into compliance, regardless of what punishments were threatened for violations. And so those neutralists, such as Larmore, who are attracted to the view that state neutrality requires merely that the state refrain from promoting *controversial* conceptions of the good have reason to accept that non-coercive promotion of the good does not violate the principle of state neutrality.

The categories of non-coercive perfectionist legislation and non-controversial perfectionist legislation clearly overlap. But might there also be a category of *controversial* non-coercive perfectionist legislation? And, if so, what ought neutralists to say about it?

Not all exercises of state power are obviously coercive. A state may exercise its power through the medium of offers as well as threats. It may *reward* certain kinds of behaviour so as to promote the good. And it can, of course, reward those who pursue a *controversial* conception of the good, *so as to promote this good*.

One way of doing this would be to offer tax breaks to those who engage in or support favoured activities. Another would be simply to subsidise these activities. The state may also accord privileged legal status to forms of life which are considered valuable, as most contemporary constitutional democracies do when they agree to enforce certain kinds of contracts – monogamous marriage contracts, for example – and refuse to enforce others – agreements to sell body parts, and the like – and in so doing, aim at encouraging citizens that might not otherwise have done so to commit themselves to these putatively valuable forms of life and/or avoid those which are not valuable. Furthermore, the state might also use advertising or other public relations techniques so as to encourage valuable forms of life or discourage worthless ones. Such policies do not appear to *coerce* citizens into pursuing the good, and they certainly do not forbid citizens from pursuing the worthless, and so, it would appear, there is indeed a category of controversial non-coercive perfectionist legislation.

Waldron has suggested, however, that even if these allegedly non-coercive methods of promoting the good do not literally force one to get married or to take

up painting, the distinction between coercive state action and non-coercive state action is illusory. As he puts it, '[the state's] supremacy ultimately springs from its command of considerable means of violence.'77

If Waldron is right, then any difference of opinion on what the principle of state neutrality requires of the state in cases where its power is exercised non-coercively is of little interest. But must we believe that methods such as subsidising, promoting, or according privileged legal status to, valuable forms of life are, despite their innocuous appearances, in fact examples of the coercive use of state power?

Waldron's argument boils down to this: all of these state activities depend on the state's collection of taxes. Given that payment of taxes is compulsory, and that failure to do so is punishable, frequently severely, those who do not wish to subsidise the allegedly valuable options for the benefit of which the taxes are collected are plainly coerced into supporting them. To the extent that they are controversial, then, they are also coercive, just as with more obvious forms of coercion.

Even in those cases where all the state does is establish special status for certain forms of life, as it does when it recognises monogamous marriage, Waldron argues, the laws establishing this status are what he calls 'fragments of a legal system which is itself coercive,' for the reason that, although they do not compel citizens to restrict themselves to any particular type of sexual relationship, let alone compel them to marry, they do affect greatly matters such as who has a right to what property, manner of financial support, and tax benefits, and other such issues, and these rights are upheld by coercive sanction,⁷⁸ and in this way do indeed rely, ultimately, on the threat of coercion so as to promote the good of monogamous marriage.

A good deal of Waldron's argument turns on the idea that what is actually problematic about coercive perfectionism is that it undermines the *autonomy* of citizens; for this reason even if his claim that all apparently non-coercive methods of promoting the good are ultimately coercive can be rebutted, he may still argue

⁷⁷ Jeremy Waldron, "Autonomy and perfectionism in Raz's *Morality of freedom*," *Southern California Law Review* 62 (1989), pp. 1098-1152 at p. 1139.

⁷⁸ Jeremy Waldron, "Autonomy and perfectionism in Raz's *Morality of freedom*," *Southern California Law Review* 62 (1989), pp. 1098-1152 at pp. 1150-2.

that their *manipulative* nature is sufficient for them to undermine citizens' autonomy, and therefore for the principle of state neutrality to rule them out.

Furthermore, Raz, a leading defender of state support for valuable forms of life, but who, despite identifying himself as a perfectionist, nevertheless expresses adherence to Mill's harm principle, ⁷⁹ concedes that, to the extent that the state relies on compulsory taxation to raise the funds necessary for subsidising valuable forms of life or according them privileged legal status, such strategies for promoting the good *are* coercive. ⁸⁰ Raz, like Waldron, thinks that the important issue is not whether such strategies are coercive or not, but rather whether they damage autonomy, and the key difference between his position and that of Waldron is that Raz thinks that such subsidies can in fact promote autonomy.

This is a matter to which I will shortly return, but for the moment I wish to remain focused on the question of whether all exercises of state power are necessarily coercive, given the guns lurking behind those subsidies for artists. This is because there are grounds for thinking they aren't, whatever Raz concedes (and Waldron asserts).

Even if we concede that compulsory taxation does coerce those who do not share the conceptions of the good tax money is used to support, we do not have to accept that all uses of the state's fiscal powers are coercive. This is because the state may promote the good by the use of tax *breaks*, as well as by collecting *voluntary* tax payments.

In cases of the first kind the state might, for example, make donations of certain kinds tax deductible and others not. Companies may then be faced with incentives to donate large sums of money to, say, artistic foundations, and in this way would be encouraged themselves to subsidise valuable forms of life. In cases of the second kind, the state might, as it in fact does in Germany, collect voluntary tax payments (effectively donations) on behalf of a small number of established religious bodies, presumably on the grounds that the practices these bodies

80 The morality of freedom find exact quote.

⁷⁹ John Stuart Mill, on page 13 of *On liberty* (Indianapolis: Bobbs-Merrill, 1956), says, in an oft-quoted passage, that

the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise or even right.

promote constitute valuable forms of life.

Perhaps a case similar to that made by Waldron for the view that state support for monogamous marriage is ultimately coercive could be made against examples of the first kind; perhaps, in other words, one might establish that laws permitting such tax breaks can, ultimately, also be seen as fragments of a coercive legal system. One might do this by pointing to the web of legal relations in which such tax breaks are entwined, some of which would, ultimately, take the form of coercive prohibitions on certain uses of property etc. But it is quite implausible to classify the collection of voluntary church taxes as coercive in this way, at least if the performance of these collection duties is the only way the state privileges these particular religious bodies. So we do have at least one, and possibly two, examples of non-coercive perfectionism.

The question, of course, is what this conclusion implies for the debate between those neutralists who accept the legitimacy of non-coercive perfectionism and those who do not. One, obvious, implication, is that there is indeed a difference between the two parties; there is indeed something to fight about. But one may be forgiven for thinking that, unless a plausible rebuttal for Waldron's argument that even subsidies and privileged legal status for valuable ways of life constitute coercion can be found, there is not a great deal to fight about. We're left with the difference between a state that collects voluntary taxes on the behalf of valuable institutions and one which doesn't. We may still ask, of course, which of these two views which serve as the basis for the fundamental political principles these two states adhere to squares best with the principle of state neutrality.

This depends, as with the other ambiguities in the neutrality principle discussed in this chapter, on what one's grounds for adopting the neutrality principle in the first place are. And this is where we return to the question of autonomy, given its prominence as a basis for commitment to neutrality.81

Clearly, taking autonomy seriously means objecting to coercion. As Raz puts it, '[t]he contribution of autonomy to a person's life explains why coercion is the evil it is.'82 But would non-coercive promotion of the good be any more

 ⁸¹ I discuss reasons for adopting the principle of state neutrality systematically and in detail in chapter two.
 82 Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 377.

acceptable?

Some writers, such as Waldron, suggest that any promotion of the good shows disrespect for citizens. He argues that by increasing the costs attached to pursuing the worthless, or decreasing the costs attached to pursuing the valuable (or both), the state prevents citizens from making decisions about the direction their lives ought to take on the merits of the options before them. Making decisions on the merits is a necessary condition of rationality, and rationality is, on most readings, a necessary condition of autonomy. So when the state promotes the good, argues Waldron, it makes the decision on behalf of citizens, or, to put it more moderately, it goes some way toward making the decision for them. In doing so, it fails to respect their autonomy. 83

We might, as Waldron does, characterise such policies as manipulative. and, as such, just as damaging to autonomy as coercion. If, further, one adheres to the neutrality principle on the basis of the importance of autonomy, one will obviously incline towards the view that neutrality rules out any promotion of the good, as opposed to merely the coercive ways of doing so.

Other writers, however, including Raz⁸⁴ and Sher, 85 have called into question the view that subsidisation, or the according of privileged legal status to valuable forms of life, or even what Sher calls 'the manipulation of the nonrational determinants of preference'86 are necessarily opposed to respecting citizens' autonomy. Assessing the plausibility of the arguments of Raz and Sher would, however, take us into territory reserved for chapter two, namely, the question whether the principle of state neutrality ought to be adhered to at all.

For the moment it suffices to say that accepting that manipulation and/or coercion do not necessarily disregard the autonomy of the one manipulated or coerced is unlikely to leave one in the neutralist camp – at least not on the basis that neutrality is necessary for autonomy. If, on the other hand, one thinks that the principle of state neutrality can be derived from a commitment to personal autonomy, one is probably going to accept that non-coercive - manipulative, in

⁸⁶ George Sher, *Beyond neutrality: Perfectionism and politics* (Cambridge: Cambridge University Press, 1997) p. 36.

⁸³ As we noted above, Waldron believes in addition that such policies are coercive. But it is important to note that his argument for their damaging effect on autonomy applies equally whether such policies are in fact coercive or not.

See the section entitled "Autonomy and the harm principle" in Joseph Raz, The morality of freedom (Oxford: Clarendon

Press, 1986) at pp. 412-9.

85 George Sher, *Beyond neutrality: Perfectionism and politics* (Cambridge: Cambridge University Press, 1997) at pp. 64-5.

other words – promotion of the good is enough of a threat for it to be proscribed.

Of course a commitment to autonomy is not the only reason why one might adhere to the neutrality principle. One might, for example, be a moral sceptic, and argue that seeing as there can be no reasons in favour of any particular conception of the good, the state is obliged to be neutral.

Although very few philosophers have taken this line of argument seriously, ⁸⁷ it still has sufficient life outside of philosophical circles. So we may note here that, assuming it is possible to take a consistent position of this kind, moral scepticism would not incline one to think that non-coercive perfectionism was any more justifiable than coercive perfectionism (assuming it was the only basis of one's commitment to the neutrality principle). Opposition to the one would in all likelihood mean opposition to the other.

One might, somewhat more plausibly, think that state neutrality follows for what Sher calls "prophylactic" reasons;⁸⁸ reasons such as the fear(s) that, in general, perfectionist governments run a higher risk of oppressing citizens, bringing about civil strife, or making citizens' lives worse than neutral governments do.

Assuming for the moment that some such arguments succeed, we can say that where such neutralists would fall on the issue of whether the principle of state neutrality permits non-coercive promotion of the good depends on the role they believe non-coercive perfectionist laws play in bringing about the unfortunate consequences perfectionism in general is said to give rise to. Some such neutralists might agree that the principle of state neutrality permits non-coercive perfectionism and others might not, but whichever way they go depends on (quasi-)empirical claims about the effects of perfectionism.⁸⁹

So, for example, one who thinks that perfectionism heightens the danger of tyranny, or the danger of those in power acquiring excessive influence or wealth, would need to assess whether a government which permitted only non-coercive promotion of the good would run a greater risk of fostering these evils than a

89 Quasi-empirical because predictions.

⁸⁷ Bruce Ackerman, for example, discusses the argument for state neutrality from moral scepticism with a certain degree of enthusiasm on page 369 of his *Social justice in the liberal state* (New Haven: Yale University Press, 1980), but, given his coyness about the provenance of his neutralist convictions, it is difficult to know whether he genuinely endorses this argument.
⁸⁸ See George Sher, *Beyond neutrality: Perfectionism and politics* (Cambridge: Cambridge University Press, 1997), pp. 106-39.

neutral government. If the answer is yes, and fear of oppression is indeed the sole (or primary) impulse behind this commitment to the principle of state neutrality, then clearly all forms of perfectionist legislation must be proscribed. And so it goes, on similar lines, for arguments for neutrality from fear of instability or from the fear that perfectionist laws make the lives of citizens worse than neutral laws would do. We will look at the plausibility of such arguments in detail in chapter two, and this will enable us better to decide whether non-coercive promotion of the good really is compatible with the principle of state neutrality or not.

2.4 Favouring a conception of the good

I wish now, however, to turn to what is perhaps the most important ambiguity in the formulation of the principle of state neutrality: what it means to say that the state *favours* a particular conception of the good.

Let us assume that the political arena can be understood as a conflict-ridden realm where the conceptions of the good endorsed by individuals battle for influence. Neutralists argue, unlike perfectionists, that the state must, in the face of these conflicts, ensure that no conception of the good gets any special favours, just as an unbiased sports referee favours no team.

Referees, of course, are frequently accused of bias. And states regularly face the same accusation. So what exactly is it that they are said to have done, or failed to do, when their neutrality is questioned?

2.4.1 Neutrality as neutrality of aim

First, it is obvious that a referee who *aims* to help one side is not neutral. We might draw from this rough starting point the provisional conclusion that neutrality is a quality of the aims of those individuals or bodies entrusted with the kind of adjudicatory role referees and states are entrusted with (at least in liberal theory). We might conclude that to be neutral – in other words, to avoid *favouring* any side – is to act without any intention of helping or hindering either side.

In sport, however, even games officiated by the most scrupulously neutral referees usually end up with a winning side and a losing side. Likewise, certain practices, ideals, or forms of life, may "win" or "lose" under the auspices of a state which purports to be neutral, and where this neutrality is taken to mean that it aims neither to hinder nor to help any of them. The influence of, for example, particular religions or art forms may wax and wane. If neutrality is a matter of aim, we are not entitled to conclude from these "victories" and "defeats" that the state lacks neutrality. For just as the neutral referee is not obliged to ensure that every game ends in a draw, neither is the state obliged to ensure that all conceptions of the good fare equally well.

What the neutral referee *is* obliged to do – and this is what his neutrality, on the neutrality of aim view, consists in – is, by dint of the unbiased application of the laws of the game, ensure that only the *deserving* side wins, not the team that best secures for itself unjust advantages, as it might by cheating in various ways (which include receiving favours from the referee). Likewise, the neutral state is obliged to ensure, by the impartial application of the law, that only conceptions of the good which are entitled to do so⁹⁰ gain influence, and not those ideals which are spread, say, by violence, or indeed by soliciting help from the state to facilitate their success.

Neutrality, in its core sense, as Waldron reminds us, ⁹¹ implies *keeping out* of a quarrel between two (or more) other parties. But this is not, strictly speaking, what either a neutral referee or a neutral state does, given that they *do* intervene. This means that there must be something about the rules neutral adjudicators apply which allows us to say that neutrality consists in their impartial application, despite the fact that they have differential effects on different forms of life (or on different sporting virtues and vices). This feature is elusive, but it is frequently identified as the fact that the rules enforce the right (as opposed to targeting any particular conception of the good life), or, sometimes, that their aims are *independent* of any such partisan intentions.

The question whether *desert* is involved where some conceptions of the good life prosper under a neutral dispensation and others do not is a difficult one, and falls beyond the scope of this dissertation, hence my use of the more neutral term "entitled to", which encompasses luck as well as desert. Rawls denies that this is the case – see his *Political liberalism* (New York: Columbia University Press, 1993), pp. 195-200 – whereas Haksar, a perfectionist, writes as if this is indeed an assumption of Rawls's position: see his remarks on what he calls the "choice criterion of value" in his *Equality, liberty, and perfectionism* (Oxford: Oxford University Press, 1979), pp. 206-25.

Jeremy Waldron "Legislation and moral neutrality," in Robert Goodin and Andrew Reeve (eds) *Liberal Neutrality* (London: Routledge, 1989), pp. 61-83 at pp. 63-4.

The latter is Nozick's position, which he outlines in a passage where he ridicules the suggestion that a state cannot be neutral if it prohibits rape, given that such a prohibition disproportionately penalises men. 92 He concedes that such a prohibition does penalise men in this way, but argues that it cannot be construed as a non-neutral piece of legislation because targeting men (or even frustrating that class of men who are attracted by the prospect of raping) is not, in any known case, the aim of prohibiting rape. In saying that there are independent reasons for prohibiting rape he means there are (good) reasons for doing so which have nothing to do with the desire to privilege any particular conception of the good.

The sporting analogy with the prohibition of rape might run as follows: Forbidding punching on the sports field – assuming the sport in question is not boxing – has nothing to do with the desire to penalise whichever team happens to have superior pugilistic skills. There are good, "independent," reasons for forbidding such actions, and so the referee who punishes the violent player who throws a punch is not thereby demonstrating his bias against violent players, or anyone else.

A similar argument is made by defenders of the neutrality of aim conception with respect to cases which do not involve prohibitions, but where policies with neutral aims lead to the decline of a particular form of life. Will Kymlicka presents the example of a state which promotes the English language at the expense of others for the reason that, in the state in question, English is the most common language, and that communication is therefore improved by everybody having a command of the language. 93 Other languages might well begin to die out under such circumstances, and this may be experienced, at least by the last generation that speaks the language, as a cultural loss, but, on the neutrality of aim view, as long as the legislation does not aim at damaging the other languages, it cannot be construed as a violation of state neutrality.

Similarly, one might expect that cultures whose survival requires a certain amount of pressure on their members to conform - "closed" cultures, we might call them - are likely to suffer a mounting loss of membership and influence in societies where standard democratic freedoms are enforced. Members can no

Robert Nozick, Anarchy, state, and utopia (New York: Basic Books, 1974), pp. 272-3.
 Will Kymlicka, Contemporary political philosophy (2ed) (New York: Oxford University Press, 2002), p. 344.

longer be pressurised to remain within the community, and, as a result, community practices fall into decline. This can be seen in the history of various religious and linguistic groups which have not made the transition to modernity with success. Here the sporting analogy would run as follows: A neutral application of the laws of most football codes will likely result in victory for the young, the strong, the fast, and the intelligent. This does not mean that the referee is biased against the old, the weak, the slow, and the stupid.

Now whereas no one (or almost no one) would be sorry to see the practice of rape decline, we might regret the demise of closed cultures under a neutral dispensation, a little as we might be sorry to see the humiliation of an ageing sports star by a new generation of players. As Rawls puts, 'We may indeed lament the limited space, as it were, of social worlds, and of ours in particular; and we may regret some of the inevitable effects of our culture and social structure.'94 But we cannot, if we understand state neutrality as neutrality of aim, regard these differential effects as a sufficient condition for the attribution of bias to the state, and we cannot, therefore, require that the state intervene to restore the *status quo ante* (at least not on the grounds that neutrality requires this) any more than we think that a referee demonstrates impartiality by bending the rules to help the old star hold his own against the younger.

But is neutrality of aim how we should understand what it means to favour a particular conception of the good? On the one hand, any idea of neutrality which requires the state to be neutral between those who believe that raping others is part of the good life and those (everyone, rapists included, one would think) who hold that being raped makes their lives worse is clearly absurd; it is unclear what the attractions of neutrality are if they include a moral vision which refuses to discriminate between any ways of life. On the other hand, one might also think, as a speaker of a non-English language in the state of Kymlicka's example, that any alleged *neutrality* in a state which takes steps which it knows will in all likelihood lead to the extinction of one's culture is something of a sham.⁹⁵ One might wonder, under these circumstances, why the intentions or aims of state actors are

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⁹⁴ Political liberalism (New York: Columbia University Press, 1993), p. 197.

⁹⁵ One might also, of course, think that such a state *is* neutral, but that neutrality is less important than the survival of one's culture.

more relevant to the state's neutrality than the fact that certain sectors of the population whose way of life is not illegitimate in any way are disadvantaged in ways fully foreseeable at the time of legislation by the laws these state actors make.

That one is inclined to wonder this kind of thing does not automatically mean that one is *justified* in wondering it, of course. But there certainly is reason to be dissatisfied with using the neutrality of the intentions or aims of state actors as the measure of the neutrality of a state. This is because of the mysterious nature of such intentions. Ascertaining the *real* intentions of individuals is difficult enough; they are frequently confused or unknown, and some would even suggest that they are in principle unknowable, although this seems exaggerated. But when we move to the intentions of institutions or corporate bodies, the problem multiplies beyond comprehension. It is genuinely unclear that we can talk, with any degree of sense, of collective intentions.

Furthermore, even if motivations were reasonably discernable, they are hardly ever pure. The English-speaking lawmaker may genuinely aim to improve communication throughout the land, while simultaneously wishing to damage the prestige of the languages he does not speak. How do we judge whether the legislation he helps, on the basis of these motivations, to promulgate is neutral – especially if he acts in concert with other lawmakers who are motivated in yet other ways (assuming one can ascertain what moves them all in the first place) – if the purity of his intentions is our yardstick?

2.4.2 Neutrality as neutrality of justification

As a result of these difficulties contemporary neutralists generally do not formulate the principle of state neutrality such that state neutrality means neutrality of aim on the part of state actors. Some, such as Robert Goodin and Andrew Reeve, argue that, as a result of these difficulties, neutrality must be defined in terms of results, as they put it. ⁹⁶ We come to look at this option in the section entitled "Neutrality as neutrality of effect" below. But for the moment let us ask whether neutrality as

⁹⁶ Robert Goodin and Andrew Reeve, 'Do neutral institutions add up to a neutral state?' in Robert Goodin and Andrew Reeve, (eds) *Liberal neutrality* (London: Routledge, 1989), pp. 193-210 at p. 202.

neutrality of aim can be reformulated so as to shed the problem of the unknowability of the motivations of individuals and institutions, while retaining its intuitive appeal.

The most popular formulation of the principle of state neutrality, with respect to how the concept of favouring a conception of the good is to be construed, is what we will call the *neutrality of justification* interpretation. Larmore, for example, writes that

[P]olitical neutrality consists in a constraint on what factors can be invoked to justify a political decision. Such a decision can count as neutral only if it can be justified without appealing to the presumed intrinsic superiority of any particular conception of the good life. So long as a government conforms its decisions to this constraint, therefore, it will be acting neutrally. There is no independently describable condition of society to be called "neutral" that the ideal of political neutrality requires a government to promote or maintain.97

Similar formulations can be found in the writings of Ackerman, 98 Rawls, 99 Sher 100. and Waldron. 101 The great advantage in replacing the aims of the state with the justifications put forward by a state for its actions is that these justifications are more readily discerned – they are in the public realm, so to speak – than its aims, if it can even coherently be said to have any.

The neutrality of justification interpretation understands neutrality to be a rule about what kinds of reasons the state may legitimately offer – over and above the normal requirements of reasonable plausibility – in justifying the legislation or policy it puts forward. This rule specifies that if a piece of legislation or policy cannot be justified except by appeal to its role in promoting a (controversial) conception of the good life, it is non-neutral, and therefore illegitimate, regardless of whatever other merits it might have.

So, to return to Kymlicka's example, if the state were unable to justify its promotion of the English language at the expense of other languages on the basis that this would improve communication (or on some other neutral basis) then such

⁹⁷ Charles Larmore, Patterns of moral complexity (Cambridge: Cambridge University Press, 1987), p. 44.

⁹⁸ Bruce Ackerman, *Social justice in the liberal state* (New Haven: Yale University Press, 1980), pp. 8-10.

⁹⁹ John Rawls, "The priority of the right and ideas of the good," *Philosophy and Public Affairs* 17, 4 (1988) pp. 251-76 at p. 262. ¹⁰⁰ George Sher, *Beyond neutrality: Perfectionism and politics* (Cambridge: Cambridge University Press, 1997), p. 4. ¹⁰¹ Jeremy Waldron, "Legislation and moral neutrality" in Robert Goodin and Andrew Reeve (eds) *Liberal neutrality* (London:

Routledge, 1989), pp. 61-83 at pp. 66-8.

legislation would not be neutral. In other words, if it turned out that promotion of English would not improve communication, or that the improvement of communication was not necessary, or did not outweigh reasons for promoting other languages equally, then the proposed legislation would be in trouble; an alternative *neutral* justification would have to be found. If this were not possible – if it were only possible to justify the legislation by appeal to the alleged superiority of the English language ¹⁰² – then it could not be promulgated by a neutral state.

But, just as is the case with the *neutrality of aim* interpretation, the mere fact that the fortunes of forms of life, languages, cultures, religions and so on are differentially affected by neutrally justified legislation does not in itself call the neutrality of the state into question. Questions of justice, or questions of equality, may arise, but not questions of neutrality.

The appeal of neutrality as neutrality of justification is, on the one hand, that it accords with the core sense of neutrality as keeping out of a conflict by presenting us with the image of the state as referee, impartially adjudicating the rules of the contest between conflicting visions of the good life, letting the chips fall where they may, while, on the other hand, avoiding the obvious difficulties of neutrality of aim. It is unsurprising that the majority of writers on the topic adhere to it.

But, as we noted in introducing the question of the formulation of the principle of state neutrality, this consensus is not universal. Here the sporting metaphor is useful again, this time in that the point where it breaks down indicates why one might be unhappy with neutrality of justification as the correct interpretation of the principle of state neutrality. Sport, as a practice, unashamedly sets out to privilege certain (sporting) virtues, and the rules of most sports are set up precisely to allow these virtues to emerge triumphant over their corresponding vices. There is a point to the various sports, in other words. So, while a neutral referee favours no team, his interventions discriminate intentionally against certain qualities of teams – their age, their weakness, their slowness, their stupidity – for the reason that the laws of the game discriminate against these qualities. In fact one of the features of his neutrality is precisely his refusal to compensate for defects losing sides display. Pity is not neutrality!

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¹⁰² Provided superiority means more than "better able to facilitate communication in this particular country".

But this is surely not how (most) liberals want to understand the laws of society. Sport is a circumscribed arena, and, largely, not a matter of life and death. ¹⁰³ In general, liberals – especially neutralist liberals – do not understand society as a forum for the triumph of virtue over vice. It is the fact that the individuals within a society do not agree on what the most important virtues and vices are that leads many liberals to advocate state neutrality in the first place. In this case a neutral referee looks more like one who adjudicates *between* different visions of virtue and vice, not one who impartially applies rules which are designed to allow the virtues to blossom unimpeded by the distractions of vice. ¹⁰⁴ So whereas the team that loses on the sports field does not, merely in virtue of the fact that it has lost, have a complaint against the neutrality of the referee, ¹⁰⁵ it may be that those whose conception of the good "loses" – whether we mean by this simply that it loses ground within society or, alternatively, that it is proscribed outright – *do* have such a complaint.

Raz has indicated precisely why such a complaint might be justified; because, he argues, 106 the neutrality of justification interpretation excuses a nation which sells arms to one party during a military conflict and not the other, provided it (genuinely, one assumes) publicly announces profit to be the justification for the sales – profit, presumably, being a neutral, or *independent*, as Nozick would have it, 107 reason for action. It is hard to see why the party to which arms are not sold ought to regard the nation which sells them as neutral – interdicting such shipments would seem perfectly justified – and yet it is also quite unclear why the profit motive should be understood, in general, as a partial or biased reason for action. The point is that it is biased in this case. And it is biased in this case, presumably, because of the effect it has on the conflict between the two warring parties. So a state that was genuinely neutral between all visions of the good might have to ensure after all that, say, languages other than English prosper, whatever the virtues of English as an agent of communication, and perhaps even

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¹⁰³ There are contrary voices, of course.

¹⁰⁴ Ironically, the neutrality of justification interpretation could provide perfectionists, or even communitarians, with a theory of state impartiality (if not state neutrality): An impartial state, on this view, would be one which, without respect for persons, applied those laws which promote the favoured conception of the good (just as an impartial referee applies on the sports field, without particular respect for either team, the laws which are designed to promote those qualities which we value in sport).

without particular respect for either team, the laws which are designed to promote those qualities which we value in sport).

105 It does not have a complaint against the neutrality of the rules either, despite them being discriminatory, in that the team's participation in the contest assumes its willingness to be judged according to these standards.

¹⁰⁶ See his *The morality of freedom*, (Oxford: Clarendon Press, 1986) p. 116, where he discusses Nozick's version of anti-perfectionism.

Robert Nozick, *Anarchy, state, and utopia* (New York: Basic Books, 1974) pp. 272-3.

ensure a broader "neutral" balance of power between various conceptions of the good life within society.

2.4.3 Neutrality as neutrality of effect

These considerations suggest an alternative to the neutrality of justification view; the so-called *neutrality of effect* interpretation. It can be formulated in a number of ways. Wall and George Klosko put it as follows: the state should not do anything that has the effect - whether intended or not - of promoting any particular conception of the good or of providing greater assistance to those who pursue it. 108 Raz presents a variant formulation which he claims is a paraphrase of the view taken by Rawls in A theory of justice, and which holds that if a state is to be neutral, it must treat ensuring for all persons an equal ability to pursue in their lives and promote in their societies any ideal of the good of their choosing as a goal which is lexically prior to any other. 109

How would state neutrality of this kind work? The first point to note is that Raz's formulation suggests that Larmore errs in commenting that there is no independently describable condition of society to be called neutral. 110 There is; it is the state in which every citizen has an equal ability to pursue in their lives and promote in their societies any ideal of the good of their choosing. This is not a constraint on state decision-making, but an ideal state of affairs which the state is encouraged to bring about. Wall and Klosko's formulation, on the other hand, does read like a constraint on decision-making, albeit of a different kind to that of the principle of state neutrality understood as neutrality of justification. Unlike Raz's formulation, Wall and Klosko's does not hold up any particular balance of power amongst conceptions of the good life as ideal, but merely forbids the state from altering the current distribution. The state *may not do* anything which tips the balance in any direction, but, apparently, it has no obligations to prevent the balance from tipping of its own accord, so to speak.

¹⁰⁸ Steven Wall and George Klosko 'Introduction" to Steven Wall and George Klosko (eds) Perfectionism and neutrality (Lanham: Rowman and Littlefield, 2003), p. 8. There is no indication in the text that Wall and Klosko actually *endorse* this formula as the correct interpretation of the principle of state neutrality.

Joseph Raz, The morality of freedom (Oxford: Clarendon Press, 1986), pp. 114-5. I leave open the question whether this is indeed Rawls's position in *A theory of justice*. It is certainly not the position he takes in *Political liberalism*.

110 Charles Larmore, *Patterns of moral complexity* (Cambridge: Cambridge University Press, 1987), p. 44.

One might read Wall and Klosko's version as an additional constraint on state action; additional to the constraint set out in the neutrality of justification formulation. On this reading, then, the state must not only refrain from justifying laws by appeal to (controversial) conceptions of the good, it must refrain from enacting neutrally *justified* laws which have the *effect* of promoting particular (controversial) conceptions of the good. (One might also imagine a version which allowed the promotion of the good under certain circumstances, provided that those disadvantaged were compensated.)

Alternatively, one might also read Wall and Klosko's version as a separate constraint from the neutrality of justification formulation; it might rule out only laws which promote the good, whether intentionally or not, and have nothing to say on the matter of justification. Whether this is an interesting distinction or not depends on whether one thinks there could be laws which are justified on the basis of an appeal to a (controversial) conception of the good life, but which do not have any effects on the balance of power between conceptions of the good life. Although this sounds unlikely, one might wonder whether state support for churches in Europe fall into this category.

Raz's formulation, however, appears to require the state to intervene where naturally occurring changes in the balance of power happen – perhaps even justified changes, such as those that are analogous to the way in which a superior sports team takes control on the field. As if Wall and Klosko's formulation were not demanding enough! A state which is committed to 'ensuring for all persons an equal ability to pursue in their lives and promote in their societies any ideal of the good of their choosing' needs to pay close attention to the social mechanisms whereby citizens are prevented from pursuing and promoting ideals of the good, as well as those mechanisms whereby those choices are made in the first place.

Cultural, artistic, and religious choices – indeed choices of any kind – are heavily influenced by the extent to which they are in tune with the choices of others within a society. Choosing to pursue a minority religion is not, under any circumstances, as easy a choice as pursuing a majority one, even if it is not an impossible choice. (It may, of course, even be a choice that brings special

¹¹¹ Assuming, of course, that the analogy can genuinely hold; that is, assuming that some conceptions of the good life can genuinely *deserve* to be successful in comparison to others. Some standard would have to be acknowledged for this to hold; even a standard as thin as "would be successful in competition with other conceptions of the good life in conditions under which none are privileged by the state".

rewards). One might be forgiven for thinking that many of these mechanisms are beyond the state's control, and this is indeed the point of view of a number of commentators. Arguing that an ideal is unachievable is not necessary a damning indictment of that ideal – if that were so we could reject all theories of justice without bothering to consider their details – although the degree of difficulty involved in achieving it is a relevant consideration, as an ideal to which no approximation could be achieved is indeed one which ought to be rejected. 113

Perhaps it is possible for a state to achieve the kind of neutrality envisaged in Raz's formulation by maintaining the required balance in limited social areas, and it is quite probable that Wall and Klosko's less demanding formulation could be followed, given a sufficiently restricted field of play. But the more worrying consideration with regard to both these formulations is the question why neutrality of this kind ought to be an ideal at all.

The idea that no one should find implementing their freely chosen conception of the good life more difficult than anyone else finds implementing theirs is clearly related to the ideals of equality and justice, but it is not in itself either an ideal of equality or an ideal of justice, and its relation to the core sense of neutrality is also unclear. It is not simply an articulation of the ideals of equality or justice for the reason that citizens might freely choose conceptions of the good which are themselves inegalitarian or committed to injustice; as do the rapist and the Nazi, to name just two examples. And clearly neither equality nor justice requires that rapists and Nazis find implementing their ideals as easy as anybody else does (although, as Raz suggests, rapists and Nazis might nevertheless, on the neutrality of effect interpretation, be owed compensation 114).

Furthermore, requiring the state to intervene in people's lives in the millions of ways necessary for maintaining equality between the countless (and overlapping) conceptions of the good life citizens adhere to presupposes a puzzling commitment to the equal value of, or the right to survive of, all these

¹¹² See, for example, Jeremy Waldron, who remarks on page 68 of his article 'Legislation and moral neutrality" in the collection *Liberal neutrality*, edited by Robert Goodin and Andrew Reeve (London: Routledge, 1989), that what he calls *neutrality of consequences* interpretation 'is a very difficult requirement to live up to, because it is so hard to predict what the effect of a law is going to be on lifestyles and mores.' Similarly, Steven Wall and George Klosko suggest on page 8 of their introduction to the volume they edit entitled *Perfectionism and neutrality* (Lanham: Rowman and Littlefield, 2003), that '[i]t is impossible for a state to ensure that each person subject to its authority has an equal chance to pursue and realise his or her conception of the good.' One of the reasons why impossible ideals ought to be rejected is because they can only be implemented partially, or selectively, that is in ways that are likely to violate the rule of law. One might put it more strongly and say that the more removed from the realm of possibility the ideal is, the more likely its attempted implementation will amount to injustice.

¹¹⁴ At pages 115-6 of *The morality of freedom* (Oxford: Clarendon Press, 1986).

conceptions. It seems clear why a citizen might require the state to recognise his or her right to equal treatment or right to life; it is less clear why a conception of the good must be accorded the same (or similar) recognition. And, as we have also noted, it isn't clear why such a commitment on the part of the state, even assuming it could be justified, should be designated *neutrality*.

It is for reasons such as these that Rawls distances himself from the ideal of neutrality altogether in *Political liberalism*, where he writes that 'the term neutrality is unfortunate; some of its connotations are highly misleading, others suggest altogether impracticable principles.'115 He prefers to work with the notion of permissible conceptions of the good, by which he means those conceptions of the good which can survive in a dispensation in which the state makes no law on the basis of the alleged superiority of any one of them. This position, of course, reimports the (perhaps less worrying) difficulties associated with the neutrality of justification interpretation, but given that Rawls does not purport, in this passage, to be offering a characterisation of neutrality, the ways in which the neutrality of justification interpretation collides with the common understanding of the term are of less concern.

This discussion illustrates the difficulties, noted by Raz and Waldron, which arise when philosophers try to establish the "real" meaning of a term widely used in political (or any other form of) discourse. Raz, in particular, is eager to stress that the philosophical task is to articulate and defend a particular version of the term, 116 and this task has been taken on here to the extent that some of the difficulties involved in the various positions described here have been illustrated. But our principal aims at this point are merely to come to an understanding, first, of the options available to the defender of the principle of state neutrality, and, second, of which arguments for neutrality are likely to underpin which formulations of the neutrality principle (regardless of whether or not these arguments are completely sound).

With this in mind, we can note that those who are drawn to the principle of state neutrality primarily on the basis that moral diversity, or individuality, is a

John Rawls, *Political liberalism* (New York: Columbia University Press, 1993), p. 191.
 See his remarks on pages 14 and 15 of *The morality of freedom* (Oxford: Clarendon Press, 1986).

good, as Mill is frequently interpreted as having been, are likely to hold that the state must take care that its actions help to bring about the right outcome; namely, some favoured distribution of conceptions of the good life. This need not, of course, be a balance of power in which all conceptions of the good are *equally* influential, but it nevertheless implies a concern with the *effects* of legislation, rather than the justifications thereof.

On the other hand, holding that the problem with perfectionism is that it violates equality by subjecting citizens to constraints they could not accept without abandoning their sense of their equal worth, as Dworkin does, leaves one open to formulate the neutrality principle *either* as neutrality of justification *or* neutrality of effect; for the claims that citizens' sense of their equal worth is violated by their having to obey laws which cannot be justified without appeal to a conception of the good they don't share and that citizens' sense of their equal worth is violated by their having to contend with (neutrally justified) laws which discriminate against them on the basis of their commitments to particular conceptions of the good are both plausible. In fact Dworkin appears at different times to favour different formulations of the principle of state neutrality; in his discussion of conservatism in *A matter of principle* he appears to articulate a version of the neutrality of effect interpretation, 117 while appearing to rely on the neutrality of justification interpretation during his discussion of the drawbacks of socialist economic decision-making in the same book. 118

Dworkin has also been read as rejecting perfectionism on the basis of a commitment to personal autonomy, 119 and one might, on this (widespread) basis, understand neutrality to mean neutrality of justification. One might think this because, for example, one thinks that citizens' choices about how to live their lives – choices which are properly theirs to make – are being made for them by a state which legislates on the basis of a particular conception of the good (whether or not citizens are actually in agreement with that conception) and that this presumption on the part of the state threatens citizens' autonomy. But a commitment to the value of personal autonomy is equally compatible with the neutrality of effect

117 See his A matter of principle (Cambridge, Massachusetts: Harvard University Press, 1985), p. 202.

¹¹⁹ This is how Sher reads at least one of his arguments, for example. See his *Beyond neutrality* (Cambridge: Cambridge University Press, 1997), pp. 100-4.

¹¹⁸ Ronald Dworkin, *A matter of principle* (Cambridge, Massachusetts: Harvard University Press, 1985), p. 195. I owe this point to Jeremy Waldron's discussion in his 'Legislation and moral neutrality' in Robert Goodin and Andrew Reeve (eds), *Liberal Neutrality* (London: Routledge, 1989), pp. 61-83 at page 68.

interpretation; one might think that the decision about, for example, which language to use in the state which promotes English is a decision that citizens are entitled to make for themselves, without the state nudging them in any particular direction, whatever its reasons for doing so.

The position of those who reject perfectionism for what Sher dubs "prophylactic" reasons 120 – roughly speaking, for reasons such as the view that state neutrality insures against the state becoming oppressive, the view that perfectionist legislation increases the likelihood of social instability, or the view that the state is especially unlikely to have, or to be able to apply, knowledge of the good – with respect to how to construe the term "favour" could depend on how seriously they view the dangers they perceive state neutrality to ward off. If they view these dangers as extremely pressing, the neutrality of effect interpretation, being stricter, will appeal, assuming these neutralists believe it is practicable enough to serve as an ideal.

Clearly, if one believes that state neutrality is necessary to prevent the state from, say, administering laws cruelly or arbitrarily, using legislation to enrich members of government, or other such oppressive behaviour, one is likely to believe that requiring the state to ensure that every citizen has an equal chance of pursuing or promoting any conception of the good they choose is a stronger antidote to the evils of oppression (or instability or error) than merely requiring the state to refrain from legislating if the proposed law cannot be neutrally justified. A state which is obliged to be neutral in the neutrality of effect sense of the term, especially if this requirement is formulated the way Raz does it, really does have its hands tied.

Of course neutralists might also have reasons for leaving the state freer than this, despite their concerns about oppression and the like, and they might perceive the neutrality of justification formulation as providing a better balance between the constraints deemed necessary to prevent the state from becoming oppressive (or unstable or error-prone) and the room to manoeuvre which a state which is neutral in the neutrality of justification sense has (in comparison to the state which formulates the neutrality requirement it must adhere to in neutrality of effect terms, not, obviously, in comparison to the perfectionist state), and which

¹²⁰ See chapter 5 of *Beyond neutrality* (Cambridge: Cambridge University Press, 1997).

they take as necessary for achieving other goals.

In summary, we should understand the question of what the term "favour" in the phrase "favouring a conception of the good" means to admit of two possible answers – the neutrality of justification formulation, which ought to be understood as a more plausible version of the neutrality of aim formulation, and the neutrality of effect formulation. As we have seen, both plausible formulations are not unassailable; the weaknesses of neutrality as neutrality of justification concern its apparent indifference to genuinely discriminatory (and even obviously non-neutral) behaviour, while the weaknesses of neutrality as neutrality of effect concern its impracticability and the fact that it is unclear why conceptions of the good life deserve the kind of respect or support which this formulation appears to give them. Obviously, though, these weaknesses cannot be dismissed on the basis of the brief commentary I have offered in this chapter.

2.5 Conclusion

In this chapter I have surveyed four different axes – the question of the meaning of the term "rival" in the phrase "rival conceptions of the good," the question whether the neutrality principle applies to all legislation or merely to constitutional essentials and matters of basic justice, the question whether the neutrality principle applies to all ways of promoting the good or merely to coercive methods, and also to the question of the meaning of the term "favour" in the phrase "favouring a conception of the good" – along which different interpretations of the principle of state neutrality may be found. Making the optimistic assumption that there are only two possible ways of interpreting each of the four already leaves us with sixteen varieties of the principle of state neutrality. And I hardly need add that more may be found, given a sufficiently diligent search. But while it is important,

¹²¹ Gerald Gaus provides a disturbingly long list of the diverse interpretations of neutrality. On page 138 of the volume *Perfectionism and neutrality*, edited by Steven Wall and George Klosko (Lanham: Rowman and Littlefield, 2003), he writes, in an essay entitled 'Liberal neutrality: A compelling and radical principle,' the following:

Neutrality understood as a constraint on the sorts of reasons that may be advanced to justify state action is regularly distinguished from "consequential neutrality" – that the effects of state policy must somehow be neutral. Yet interpretations of neutrality are far more diverse than most analyses recognise. Neutrality is sometimes understood as a doctrine about the intent or aim of legislation or legislators, the proper functions of

in proceeding to the heart of the matter (and of the dissertation), namely, the arguments against the proposition that the state may not promote the good, to have a rough understanding of the cases for and against the most important ways in which the principle of state neutrality has been presented, the strengths and weaknesses of these cases, as I have noted in a number of places above, are closely tied to the strengths and weakness of the various arguments for adhering to any version of the neutrality principle. We therefore need to see chapter one as a necessary springboard for approaching the arguments for the principle of state neutrality investigated in chapter two, and not one whose subject matter is now left behind. I aim, in what follows, to make the connections between the formulation and the defence of neutrality clear.

3 DEFENDING THE PRINCIPLE OF STATE NEUTRALITY

When we turn to the question of why one might believe that the state ought to be neutral between comprehensive conceptions of the good life, we run into an apparent paradox. As noted in chapter one, state neutrality has come to seem necessary to many as a result of the increasingly fragmented nature of liberal democratic societies. Looked at historically, this necessity appears as an extension of the principle of religious toleration which was hammered out in early modern Europe. 122 Looked at systematically, the necessity of neutrality appears to follow from a concern for the stability of divided societies, as well as from widely held commitments to values such as individual autonomy.

But whatever drives some contemporary thinkers towards the principle of state neutrality, it is of course not the case that all modern citizens wish for a neutral state. Many, if not all, take the conceptions of the good to which they adhere to be superior to their alternatives, 123 and, unsurprisingly, these conceptions of the good are often thought to have political implications.

This is where the neutrality principle might appear paradoxical. Because if a neutral state appears to rely on one of these conceptions in defending its neutrality, it may be suspected, at least by those whose conceptions do *not* serve as the basis for legislation, of precisely the kind of partisanship it is intended to circumvent. In such cases neutralism¹²⁴ might be thought of as a fighting creed, just as Catholicism, Islam, or various less clearly articulated visions of the good life which citizens hold are perceived – as a player; but in this case one who also claims the right to referee.

This appearance of paradox arises from a feature of democratic political theory which is less characteristic of theorising in other contexts: if one is at all committed to government by consent, as liberal neutralists, in virtue of being liberals, are, one wishes one's political theorising to be accepted by the general public. The mere existence of dissenters raises questions about the validity of one's position. While it is no doubt the case that metaphysicians would be grateful

Failing to do so may leave one unable to justify one's own adherence to these values to oneself.

¹²² A process described in the "Introduction" to Rawls's *Political liberalism* (New York: Columbia University Press, 1993).

Or liberalism, were we to see it, as many do, as inextricably linked to the principle of state neutrality.

for widespread acceptance of their views, they do not expect this, nor is their endeavour called into question by their tendency to address themselves primarily to specialists. The fact that not everybody accepts, say, the Kantian conception of the person, can be explained, without any appearance of paradox, by arguing that non-Kantians provide mistaken answers to metaphysical questions.

Error theories do not work quite so simply for democratic political theorists. If I claim to hold a position which is neutral, the fact that my position is not accepted by a sector of the public calls my neutrality into question. This, therefore, is the problem any advocate of the principle of state neutrality must deal with before going on to suggest why, whatever anyone currently thinks, there are good reasons for accepting the principle.

Concern about the appearance of partisanship has weighed sufficiently heavily on a number of philosophers for them to attempt to defend the neutrality principle in ways which at least do not presuppose any controversial comprehensive conception of the good life. We will see, in this chapter, what the prospects for such a justification are.

In the first part of the chapter I examine the logic of the attempts of a number of neutralists to formulate a defence of the principle of state neutrality which is itself neutral – in other words a defence which will take seriously the alleged need to achieve public consensus on matters of political *theory*, as opposed merely to consensus on the content of legislation. In doing so I will ask whether the "ecumenical" approach 125 to the project of finding such a neutral justification for the principle of state neutrality, most obvious in the work of Ackerman, or the "deductive" approach 126 to the task, as demonstrated in Larmore's book *Patterns of moral complexity* as well as the writings of Rawls (who makes free use of both methods), holds out the most promise, and what the prospects for finding a neutral justification – a justification, in other words, that takes no position on the truth or falsehood of any comprehensive conception of the good life adhered to by citizens – of any kind for the neutrality principle are. I conclude, first, that consistency does not require that the neutrality principle be defended neutrally, and second, that the principle *cannot* in any case be so defended.

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¹²⁵ I owe this term to Wall and Klosko. See Steven Wall and George Klosko (eds), *Perfectionism and neutrality* (Lanham: Rowman and Littlefield, 2003), p. 11.

¹²⁶ I also owe this term to Wall and Klosko. See Steven Wall and George Klosko (eds), *Perfectionism and neutrality* (Lanham: Rowman and Littlefield, 2003), p. 11.

In the second part of the chapter I look further at what I call *partisan* defences of the neutrality principle; defences which express indifference to the question whether they are compatible with all (or a significant number of) the comprehensive conceptions of the good life currently adhered to within liberal democratic societies. These defences include all arguments which set out to offer convincing reasons for the principle of state neutrality regardless of whether their premises are actually held by a large proportion of citizens or not. In doing this I examine a number of common arguments for the neutrality principle, and conclude that none of them are conclusive.

3.1 A neutral justification for the principle of state neutrality?

We start, then, by asking what the logic of the demand for a neutral justification of the principle of state neutrality is. I will, to avoid unnecessary repetition, refer to this demand from here on as the *principle of philosophical neutrality*.

I understand the principle of philosophical neutrality to be the requirement that the principle of state neutrality be defended by arguments which take no position on the truth or falsity of any comprehensive conception of the good life. Its appeal arises from the apparent inconsistency of arguing for neutrality between conceptions of the good on a basis which assumes the truth (or at least the superiority) of precisely such a conception (or conceptions).

Whether or not this inconsistency is genuine (I will argue that it is not), its mere appearance leaves the principle of state neutrality vulnerable in contexts where obtaining consent for, or attracting commitment to, the principle is crucial, given that arguments for neutrality must avoid the appearance of partisanship in such contexts. Ackerman, Larmore, and Rawls all recognise, in different ways (which I will outline), this as a problem.

This discomfort is sometimes expressed in moral terms, sometimes in pragmatic terms. Rawls, for example, suggests both that the liberal requirement of public justifiability would be violated by a conception of justice which was not defended in terms that could be accepted by all citizens, and expresses the concern that defending his vision of justice – after this referred to as "justice as

fairness" – in, say, Kantian terms, as he himself does in *A theory of justice*, runs the risk of alienating reasonable non-Kantians, and thereby threatening the stability of a well-ordered society of justice as fairness. Larmore calls the defence of the principle of state neutrality by appeals to ideals of the person that are themselves controversial 'one of the damaging paradoxes of...liberal theory,' and goes on to say that '[b]ecause liberalism is fundamentally a response to the variety and controversiality of ideals of the good life, it needs a justification of political neutrality that is itself appropriately neutral.' 127

One might make the point against philosophical neutralism however, that, given that total moral neutrality would mean not standing for any norms whatsoever (assuming this were possible), a case must, and can, be made for seeing principles operating at different levels of abstraction, with neutrality in the face of disagreement appropriate at some levels (typically less abstract levels, such as the making of laws) and not at others (typically more abstract levels, such as defending jurisprudential theories or theories of political morality). We do not, after all, continue demanding ever more abstract levels of neutrality; there is no writer I know of who insists that the defence of the *principle of philosophical neutrality* must be neutral!

However, accepting that there is no hope of achieving total moral neutrality is compatible with arguing that it ought to be pursued at a higher level of abstraction than that of lawmaking: political theorising, for example, hence the principle of philosophical neutrality. Defenders of the principle must establish that there is as good a reason (or reasons) for responding to disagreement about which values it is appropriate to advance by means of the philosophy of law with the principle of philosophical neutrality as there is (or are) for responding to disagreement about which values it is appropriate to advance by means of the law with the principle of state neutrality. But first of all we will examine prospects for satisfying the principle of philosophical neutrality. If we find that this cannot be done, there is no need to raise this issue.

¹²⁷ Charles Larmore *Patterns of moral complexity* , (Cambridge: Cambridge University Press, 1987), p. xiii.

3.1.1 Ackerman's ecumenical strategy

Ackerman, in his *Social justice in the liberal state*, ¹²⁸ offers one of the earliest attempts to articulate and defend the neutrality principle in a neutral manner. In doing so he makes a surprising move: he claims that he does not need to defend or reject any particular argument for the principle. This strategy I term, following Wall and Klosko, an "ecumenical" strategy. ¹²⁹

He can make this move because, he argues, there is a wide range of valid "argumentative paths," any of which can lead one to conclude that the state must not favour particular comprehensive conceptions of the good life. Amongst the starting points of such paths he lists 'realism about the corrosiveness of power; recognition of doubt as a necessary step to moral knowledge; respect for the autonomy of persons; and scepticism concerning the reality of transcendent meaning. 130

The reason Ackerman gives for wishing to remain neutral between these different arguments is the desire to avoid any claim of privileged access to the ultimate truth, a claim which, as he sees it, would result in a partisan defence of neutrality. Such a defence runs the risk of '[making] liberalism a hostage of a particular metaphysical system,' 131 thereby contradicting 'the essence of liberalism,' which is 'to deny people the right to declare that their particular metaphysic and epistemology contains the truth, the whole truth, and nothing but the truth.' 132

He elaborates his strategy by noting that his

book aims, in principle, to be intelligible to all potential citizens of a liberal state. Given the very different people in this audience, however, any particular argument can be expected to persuade some only at the cost of turning others off. Thus, if I simply tried to tell you why I personally am a committed liberal, this would predictably divert some of you from arguments that you would find more compelling. Given this dilemma,

129 Steven Wall and George Klosko (eds), *Perfectionism and neutrality* (Lanham: Rowman and Littlefield, 2003), p. 11.

¹²⁸ New Haven: Yale University Press, 1980.

¹³⁰ Bruce Ackerman, Social justice in the liberal state (New Haven: Yale University Press, 1980), p. 369.

Bruce Ackerman, Social justice in the liberal state (New Haven: Yale University Press, 1980), pp. 356-7.

¹³² Bruce Ackerman, *Social justice in the liberal state* (New Haven: Yale University Press, 1980), p. 357. Liberalism does not in fact (or ought not to!) deny anyone the right to *declare* that their particular metaphysics is the ultimate truth, but rather the right to oblige others to act as if this were so.

it seems best to dispense with personal declarations of faith so as to better give you a sense of the *different* paths that can lead a thoughtful person to Neutrality. 133

The appearance of partisanship is to be avoided by ensuring that no attempt is made to persuade anyone to accept the principle of state neutrality on the basis of premises which they do not share.

This is not to say that Ackerman says nothing in favour of the neutrality principle. He presents it to the reader as capturing the essence of the liberal vision of political authority, which, as he sees it, takes any 'power structure [to be] illegitimate if it can be justified only through a conversation in which some person...must assert that he is...the privileged moral authority.' Liberal authority is justified rather by the free conviction of its necessity, produced through a dialogue of equals, on the part of its putative subjects. But this is not to *argue* for the principle of state neutrality; it is merely to assert its centrality to the liberal tradition, which, it is assumed (one expects), is the tradition of those addressed.

What exactly does this destination, to which all roads lead, look like? As with Rawls (and indeed with Kant¹³⁵), it can be modelled by means of a thought-experiment, which explains how the exercise of power by one citizen (or a group of citizens) over another (or others) can be (or can fail to be) justified. But whereas for Rawls legitimate law (at least as pertains to the basic structure of society) must pass through an elaborate series of hoops involving the conditions of choice in the original position as well as three further stages, Ackerman's demands are rather simpler. If a law¹³⁶ cannot be justified without appeal to the unchallengeable moral insight (which we might call the clergyman's fallacy, in deference to the historical origins of liberalism), or the inherently superior status of the one who exercises

Bruce Ackerman, Social justice in the liberal state (New Haven: Yale University Press, 1980), p. 360.
 Bruce Ackerman, Social justice in the liberal state (New Haven: Yale University Press, 1980), p. 11.

¹³⁵ In the essay ,Über den Gemeinspruch: "Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis,", translated as 'On the common saying: "This may be true in theory, but it doesn't apply in practice," by HB Nisbet in the collection edited by Hans Reiss entitled *Kant's political writings* (Cambridge: Cambridge University Press, 1970), pp. 61-92, Kant remarks at page 79 that

[[]we] need by no means assume that this contract (contractus originarius or pactum sociale), based on a coalition of the wills of all private individuals in a nation to form a common, public will for the purposes of rightful legislation, actually exists as a fact, for it cannot possibly be so...It is in fact merely an idea of reason, which nonetheless has undoubted practical reality; for it can oblige every legislator to frame his laws in such a way that they could have been produced by the united will of a whole nation, and to regard each subject, in so far as he can claim citizenship, as if he had consented within the general will. This is the test of the rightfulness of every public law. For if the law is such that a whole people could not possibly agree to it (for example, if it stated that a certain class of subjects must be privileged as a hereditary ruling class) it is unjust.

¹³⁶ Ackerman talks rather of "the exercise of power," but I take law to be a subset – perhaps the most important subset – of those cases in which citizens exercise putatively legitimate power over one another.

power in its name (what we might call the nobleman's fallacy), then it is illegitimate. Only those laws which are justifiable without appeal to any comprehensive conceptions of the good life – neutral laws, if we understand neutrality to consist in neutrality of justification – will pass the test.

We can also detect an echo of the social contract tradition in Ackerman's approach, despite his explicit rejection of it. 137 It lies in the importance the notions of equality and consent have in both Ackerman's minimal "moral proof procedure" 138 and in the standard contractarian scenarios, including the set of conditions articulated by Rawls's original position and the stages which follow it. Both Ackerman and (amongst others) Rawls, think that legitimate principles can only issue from a procedure which situates its participants initially as equals. Ackerman's conversationalists are barred from appealing to inherent superiority of any kind in attempting to defend the particular powers they exercise, and Rawlsian parties in the original position are not distinguished by relative power or influence (or indeed in any other way).

Furthermore, both Ackerman's rational conversation procedure and Rawls's original position model the notion of consent, central to liberal political theory. If, as a result of a conversation conducted between equals, I am *convinced* by the reasons you offer for your particular powers, as opposed to being intimidated by your status or your threats, I can be said to have consented to them. Likewise, Rawls's original position constitutes a hypothetical *agreement* between the parties behind the veil of ignorance.

What are we to make of Ackerman's refusal to take sides on the question of which the best arguments for neutrality are?

The obvious suspicion is that, as soon as an ecumenical neutralist such as Ackerman encounters a sufficiently stubborn perfectionist – one who denies that there are *any* "argumentative paths" which establish the principle of state neutrality – he is going to have to dirty his hands and show why there is at least one. Ackerman might respond to this challenge, however, with the concession that it may prove necessary to follow a particular line of argument, but that doing so

Thomas Scanlon suggests this idea in his 'Contractualism and utilitarianism' in Amartya Sen and Bernard Williams (eds), *Utilitarianism and beyond* (Cambridge: Cambridge University Press, 1982), pp. 103-28.

¹³⁷ Bruce Ackerman *Social justice in the liberal state* (New Haven: Yale University Press, 1980), p. 6.

need not involve any commitment to the *premises* held by the perfectionist. It merely involves showing them how they have not yet noticed that their premises, whatever they are, commit them to the neutrality principle. The ecumenical neutralist might, for example, be able to show that *if you think that virtue cannot be coerced into people*, or *that the autonomous life is the good life*, then you will, if you follow the argument sufficiently rigorously, conclude that the state may not favour any particular comprehensive conception of the good life. Showing this, however, does not commit the ecumenical neutralist to the claim that virtue cannot be coerced into people or that the autonomous life is the good life. It commits them to logical consistency, but this can hardly be regarded as damagingly partisan.

We might ask, however, whether this confidence in the prospects of taking any given set of premises held by citizens, and finding an argumentative path from there to state neutrality, is warranted. 139 Perhaps there are many widely-held premises of political morality which do not entail the neutrality principle. In saying this I am not merely raising the (doubtful) possibility that modern constitutional democracies conceal (large numbers of) people whose fundamental political commitments are utterly hostile to state neutrality. It is guite likely, rather, that many citizens of democracies believe that the state ought to be neutral with respect to most controversial questions of the good. This may not preclude, however, the possibility that many find themselves endorsing legislation in defence of the good on occasions when they think that values of great importance are at stake, that the defence of these values requires the exercise of state power, and that this defence is being impeded by those badly lacking in moral insight. Granting those lacking in moral insight a veto over legislation, especially in cases where they form a minority, might be thought to be unwarranted, possibly even disastrous. Hence, some citizens might not implausibly conclude that, on those occasions where, say, the state clearly does possess superior moral insight, and

¹³⁹ On page 12 of *Social justice in the liberal state* (New Haven: Yale University Press, 1980), Ackerman expresses this confidence:

Not that it is completely impossible to reason yourself to a rejection of Neutrality. Plato began systematic political philosophy with such a dream; mediaeval churchmen thought there were good reasons to confide ultimate secular authority to the pope. Only they recognised – as modern totalitarians do not – the depth of the reconceptualisation required before a breach of Neutrality can be given a coherent justification. It is not enough to reject one or another of the basic arguments that lead to a reasoned commitment to Neutrality; one must reject all of them. And to do this does not require a superficial change of political opinions but a transformation of one's entire view of the world – both as to the nature of human values and the extent to which the powerful can be trusted to lead their brethren to the promised land.

where the stakes are sufficiently high, it must exercise the power it has on behalf of the good.

What is the basis of the ecumenicist's confidence that citizens whose commitment to the principle of state neutrality is limited in the way described, or perhaps lacking altogether, thereby reveal a failure to appreciate the implications of their own moral commitments? It would seem to be a conviction that the premises of political morality commonly held by citizens of contemporary liberal democracies all do, when correctly understood, rule out absolutely any state action on behalf of the good. 140

But it is doubtful that this is so. I demonstrate in the second half of this chapter that arguments which indisputably rule out perfectionist legislation are very difficult to find, even amongst major neutralist writers. Clearly, if I turn out to be right about this, no amount of pointing to the argumentative paths will help Ackerman – at least not if he's concerned with *convincing* his readers. But, for the moment, we merely need to ask how he might respond to this possibility. We need merely to ask, in other words, what he would have to do to rebut the claim that the principle of state neutrality cannot be vindicated.

Ackerman's strategy must be to ask which premises of political morality the perfectionist accepts, and then attempt to show how state neutrality follows. The perfectionist may respond in two ways. She may say that, while she accepts premises a, b, and c, no unequivocal case for the neutrality principle can be made on the basis of these premises. Or she will accept that a case for the neutrality principle can be made on the basis of premises d, e, and f, but reject these premises. Ackerman's ecumenical strategy permits him to deal straightforwardly with her first response; he must redouble his efforts to persuade her that a case for the neutrality principle can indeed be made on the basis of premises a, b, and c. But it is imperative, if he wishes to remain ecumenical, that he succeed in these efforts. For if he fails he is forced, if he does not want to give up on the enterprise of making a case for the neutrality principle altogether, to attempt to persuade the perfectionist that she ought to accept one of premises d, e, and f. 141

¹⁴⁰ It is also compatible with the view that it does not matter how citizens are brought to support the principle of state neutrality, but merely that they can be. Since this is an illiberal position, I will not accuse Ackerman and others of defending it.

¹⁴¹ Assuming he agrees that it serves as the basis of a valid argument for the neutrality principle, which in all likelihood he will, given his confidence that all roads lead to the neutrality principle.

And arguing for a particular premise – arguing, for example, that the autonomous life is the good life, or some other such premise which might serve as the basis of an argument for the principle of state neutrality – is precisely what the ecumenical neutralist wishes to avoid. Ackerman is confident that he will not be cornered into doing this because he assumes widespread public acceptance of premises from which valid arguments for the neutrality principle can indeed be constructed. In this assumption he is, as I will show, optimistic. 142

In summary, Ackerman's confidence that he can remain neutral on the question of which arguments best establish the principle of state neutrality rests on the hope that sufficient widely accepted argumentative paths lead to that principle anyway. But the fact¹⁴³ that many widely held views on political morality, views which are taken by many philosophers, including Ackerman, to be capable of serving as premises in valid argumentative paths to the principle of state neutrality, do not obviously establish that principle is a problem for him, because it obliges him either to criticise some of these argumentative paths or to defend other, valid, argumentative paths (or both) if he wishes to establish neutrality – at least if he wishes it to be established by argument. And as soon as he does this he is no longer neutral on the question of which particular argument best establishes the principle of state neutrality.

Waldron has adduced further reasons for rejecting ecumenical approaches of the kind Ackerman articulates. 144 He thinks that we should reject the view that the neutrality principle should be given a neutral justification because he thinks that, strictly speaking, there is no such thing as *the* neutrality principle.

As he sees it "neutrality" is too heterogeneous a concept to serve as the focus of any one principle, and the importance of *neutrality* as such is in any case not what underlies commitment to the principles which are identified in the literature as variants of the principle of state neutrality. Neutrality's attraction lies in its apparent capacity to assuage certain more fundamental concerns: the value of personal autonomy, the importance of experimentation for discovering which

¹⁴² See the section entitled "Non-neutral justifications of the principle of state neutrality" below.

Rendered plausible in section entitled "Non-neutral justification of the principle of state neutrality" below.

In Robert Goodin and Andrew Reeve (eds), Liberal neutrality (London: Routledge, 1989), pp. 61-83, at p. 69.

lifestyles are in fact the most valuable, the absence of an incontrovertible case for any particular conception of the good, and so on. It is not widely thought to be attractive *per se*, regardless of what the case for it might be.

Waldron's initial premise is that one cannot articulate a principle without justifying it, or, to put it more colloquially, his attack on Ackerman may be paraphrased as "if you're going to tell us what it is you're defending, you're going to have to tell us what your case for it is." One does not need to accept the truth of this premise in all circumstances to see the force of Waldron's point with regard to the neutrality principle. This is because, as we saw in chapter one, the principle can be interpreted in a great variety of ways, and because, furthermore, the variant formulations are, at least in some cases, closely tied to particular arguments for the principle. We saw, to mention merely one of the axes along which variations of the principle of state neutrality are possible, that one might understand the neutrality principle as requiring neutrality of aim, effect, or justification, and it is fair to say that which of these one takes up as a legislative body will have a significant impact on what laws are passed (the difference between neutrality of effect and the other two being the greatest). And yet it is also clear that not all of these formulations of the neutrality principle are equally served by the common arguments for the principle

Believing, for example, that ethical pluralism is important is likely to incline one to advocate neutrality as neutrality of effect (if it inclines one towards neutrality at all), as requiring legislators to formulate laws only on the basis of neutral aims is unlikely to guarantee any particular (allegedly) appropriate spread of ethical options in a society. Similarly, as Waldron points out, scepticism concerning the reality of transcendent meaning (to use Ackerman's phrase) is likely to incline one to advocate the neutrality of aim or neutrality of justification interpretation. This is because the objection to perfectionism on the part of the moral sceptic is presumably that it is irrational to prefer one set of moral reasons over another as a basis for legislation.

And so because the arguments for state neutrality which appear in the literature are very varied indeed, as are the formulations of the neutrality principle, and because in many cases these principles have quite different policy implications, Waldron is able to draw the conclusion that there are particular

neutrality principles, some of which are closely related to each other and others which are not, and all of which are justified by particular arguments.

One might summarise his position as follows: If one remains agnostic on which the best arguments for neutrality are, one, in effect, remains agnostic on what neutrality is. The neutralist must do some arguing: either she picks which version of the neutrality principle she finds the most plausible, and then defends it against arguments for the others, or she assesses the strengths of the various arguments and then defends the version of the neutrality principle which is implied by the best of the arguments. Simply surveying the field, as Ackerman does, and suggesting that one does not need to defend any particular one of the arguments, leaves it unclear what principle is actually being recommended.

3.1.2 Rawls's ecumenical strategy

Rawls, in his later work, is moved by considerations interestingly similar to those motivating Ackerman, while nevertheless raising the hope that he can avoid the pitfalls which mean we must reject Ackerman's strategy. This is apparent in *Political liberalism*, ¹⁴⁵ where Rawls attempts to show that presenting justice as fairness as what he terms a *political* conception of justice can render it acceptable, under the right conditions, to a wide range of citizens who may differ greatly in terms of their other, non-political, commitments.

Unlike Ackerman, however, Rawls does not see himself primarily as addressing potential converts to the principle of state neutrality, who might be provoked to reject the principle if it is presented to them as the conclusion of an argument from premises which they do not accept. Rawls's concern, rather, is with the possibility of an *overlapping consensus* on the acceptability of justice as fairness, which we can take to entail state neutrality, amongst citizens who adhere to diverse comprehensive conceptions of the good life. Rawls asks, in other words, whether a future, or hypothetical, "Rawlsian" state can defend its refusal to act on the basis of any particular conception of the good in a manner that is neutral between precisely these conceptions. And he asks this because he fears,

¹⁴⁵ (New York: Columbia University Press, 1993).

for similar reasons to those of Ackerman, that a state which violates the principle of *philosophical* neutrality in its defence of the principle of *state* neutrality runs the risk of losing the loyalty of citizens who might otherwise have endorsed the latter principle. His hope is that a politically liberal state can rely on enough citizens to converge on a consensus endorsing neutrality on the basis of their *own* conceptions of the good – the so-called overlapping consensus.

The suggestion that citizens might not be able to converge on justice as fairness as the conception of justice which is to regulate the basic institutions of their society threatens the heart of Rawls's case for it. This is because he had argued, in *A theory of justice*, that the superiority of justice as fairness over utilitarian and perfectionist conceptions rests, partially but crucially, on the fact that it offers superior stability, by virtue of the fact that it alone of the options discussed could function as the conception for a well-ordered society, and would for this reason be favoured by the parties behind the veil of ignorance.

Utilitarian and perfectionist conceptions of justice, if *publicised* as the conceptions which regulate the basic institutions of a society (as must happen if the society is to be well-ordered), would, argued Rawls, in all likelihood, fail to attract the support of all citizens, given that both utilitarian and perfectionist conceptions might mean lifelong disadvantages for some citizens for the sake of improving the average level of utility or perfection. But parties in the original position must, says Rawls, take into account the *strains of commitment* any conception is likely to impose on them once they enter a society; the parties dare not, in other words, choose a conception they could not live with if things turned out badly for them.¹⁴⁸

Of course if the parties in the original position were permitted to pick a conception on the understanding that it need not be *publicly acknowledged* as the real measure of the institutions of the society, they might be inclined to choose utilitarian or perfectionist conceptions, given that they would know that citizens

¹⁴⁶ The other conceptions of justice on the table, so to speak, in *A theory of justice*, include utilitarianism, perfectionism, and various mixed options.

¹⁴⁷ Rawls takes, in *Political liberalism*, a well-ordered society to be a society united in its political conception of justice, and in which this political conception of justice is the focus of an overlapping consensus of reasonable comprehensive doctrines. This is in contrast to his view in *A theory of justice*, where he takes a well-ordered society to be a society united in its basic moral beliefs. An ideal such as this, he came to believe, is no longer tenable in contemporary liberal democracies, given their moral, philosophical, and religious diversity.

philosophical, and religious diversity.

148 The "strains of commitment" are discussed in §29 of *A theory of justice* (Revised edition) (Oxford: Oxford University Press, 1999), pp. 153-60.

might be able to accept their unlucky lot in life, should it come to that, if the fact that their lot was a function of the real conception of justice which regulated the institutions of the society were concealed from them. The publicity condition on choice behind the veil of ignorance is of course designed to offset this possibility. It therefore counts against utilitarian and perfectionist conceptions of justice, for the parties in the original position, that their acceptance as conceptions which are to regulate the basic institutions of a society might, given the way we know humans to be, turn out to render those societies *unstable*. The serious disadvantages certain citizens might have to suffer under a utilitarian or perfectionist dispensation would be likely to turn them against such dispensations, damaging the stability of the society.

Justice as fairness, according to Rawls, does not suffer from this defect. The case Rawls makes for the superior stability of justice as fairness is a complex one, and I do no more than summarise it here. 151 Roughly speaking, the two principles of justice as fairness are said by Rawls to give greater support to citizens' sense of self-respect than do utilitarian and perfectionist views, in that the first principle acknowledges their equality in the matter of a number of important freedoms, and in that the second principle rules out material inequalities which do not benefit the worst-off. As a result, argues Rawls, it will be clear to the parties in the original position that, regardless of how things turn out for them in society, they will not be expected permanently to sacrifice their well-being or interests for the good of others. We can conclude from this, he says, that a well-ordered society of justice as fairness is more likely to win the loyalty of its citizens than a well-ordered utilitarian or perfectionist society, as citizens under justice as fairness have much less reason (if any) to think that they can improve their condition by establishing a new conception of justice as the principle which regulates the basic institutions of their society. A well-ordered society of justice as fairness is, in this sense, stable, and will, for this reason, recommend itself to the parties in the original position, whereas a utilitarian or perfectionist society which starts out well-ordered is unlikely so to remain.

In Part III of A theory of justice, Rawls elaborates on the theme of stability,

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¹⁴⁹ It is hard to see, however, why parties which lack a conception of the good would wish to do this.

¹⁵⁰ See §29 of *A theory of justice* (Revised edition) (Oxford: Oxford University Press, 1999), pp. 153-60.

¹⁵¹ See §29 of *A theory of justice* (Revised edition) (Oxford: Oxford University Press, 1999), pp. 153-60 for Rawls's full discussion

explaining not only that citizens of a well-ordered society of justice as fairness come to acquire a sense of justice, that is, a disposition to act for the sake of justice, but that the exercise of this sense is compatible with, and can promote and realise the good of these citizens. In making this argument Rawls takes the good for each of us to be what it is rational for us to want, assuming that we have full information and have reflected critically on our ends, made them consistent, and decided on effective means for realising them. What concerns him here is the possibility that it is not rational in a well-ordered society to exercise and develop the sense of justice, as defined by justice as fairness, and to incorporate this virtue into one's conception of the good; in other words that, in pursuing their conceptions of the good, citizens of a well-ordered society do not have reason to acknowledge the claims of the two principles of justice. Clearly, if this is so, then justice as fairness is utopian, and cannot provide the stability which allegedly renders it superior to utilitarian or perfectionist conceptions of justice. ¹⁵²

Rawls's response, in A theory of justice, to this worry is the so-called congruence argument. Here he offers what he terms the Kantian interpretation of justice as fairness, in which he claims, first, that we are capable of autonomy by virtue of 'our nature as free and equal rational beings,'153 and, second, that the original position can be construed as "modelling" this conception of the human person, from which we can conclude that the principles chosen by the parties in the original position can be interpreted as principles that we give to ourselves out of our nature. If this is so, then to act for the sake of the two principles of justice is to act autonomously in the Kantian sense. Rawls then argues that, given that it is rational for citizens of a well-ordered society of justice as fairness to realise their natures as free and equal rational beings, it is also part of the good of each citizen. The human good and the two principles of justice as fairness are therefore congruent, and it is therefore indeed rational in a well-ordered society of justice as fairness to exercise and develop one's sense of justice and incorporate it into one's conception of the good. Rawls concludes, as a result, that we need have no concerns regarding the stability of a well-ordered society of justice as fairness.

See, in particular, chapter 9 of *A theory of justice* (Revised edition) (Oxford: Oxford University Press, 1999), pp. 450-514, for Rawls's full discussion of this issue.
 John Rawls, *A theory of justice* (Revised edition) (Oxford: Oxford University Press, 1999), p. 222.

We are to imagine, then, a society in which everyone accepts the two principles of justice as fairness as those principles which are to regulate the basic institutions, in which it is public knowledge that the two principles are to serve this purpose, in whose institutions justice as fairness is consistently realised, and in which citizens are generally inclined to do what justice as fairness requires of them; a well-ordered society of justice as fairness, in other words.

In such a society, as in any free society, citizens may pursue various conceptions of the good life. ¹⁵⁴ In fact, because of what Rawls refers to as *the burdens of judgement*, ¹⁵⁵ there is good reason to expect a great variety of such conceptions. The free workings of the human intellect in a society which does not enforce any particular orthodoxy on the question of the good life will inevitably result in people reaching widely different conclusions about how to live their lives, and given that the case for any comprehensive conception of the good will never be completely clear-cut, even when all citizens are reasonable, the use of judgement cannot be avoided.

In *A theory of justice*, Rawls expected, as we have seen, that citizens of a well-ordered society of justice as fairness could, despite their adhering to different comprehensive conceptions of the good life, nevertheless converge on a commitment to the two principles of justice. By the time he came to write *Political liberalism*, however, he had come to think that this convergence might be threatened by the way in which the two principles of justice as fairness would be publicly justified.

Rawls's worry here is that a public Kantian justification of justice as fairness would affect the stability of a well-ordered society of justice as fairness. Given the diversity of reasonable comprehensive conceptions in the society, the consensus

¹⁵⁴ Provided that their doing so does not cause the principles of justice as fairness to be violated.

¹⁵⁵ Rawls offers a list of the sources of reasonable disagreement, which he terms "the burdens of judgement", on pages 56-7 of *Political liberalism* (New York: Columbia University Press, 1993), noting that items (a) to (d), as he puts it, apply mainly to the theoretical uses of our reason and (e) and (f) apply to the reasonable and the rational in their moral and practical use.

a. The evidence – empirical and scientific – bearing on the case is conflicting and complex, and thus hard to assess and evaluate.

b. Even where we agree fully about the kinds of considerations that are relevant, we may disagree about their weight, and so arrive at different judgements.

c. To some extent all our concepts, and not only moral and political concepts, are vague and subject to hard cases; and this indeterminacy means that we must rely on judgements and interpretation (and on judgements about interpretations) within some range (not sharply specifiable) where reasonable persons may differ.

d. To some extent (how great we cannot tell) the way we assess evidence and weigh moral and political values is shaped by our total experience, our whole course of life up to now; and our total experiences must always differ.

e. Often there are different kinds of normative considerations of different force on both sides of an issue and it is difficult to make an overall assessment.

f. Any system of social institutions is limited in the values it can admit so that some selection must be made from the full range of moral and political values that might be realised.

on the *principles* of justice as fairness would not extend to the *public justification* offered for the principles and, as a result, commitment to the principles themselves might be weakened in the (presumably many) non-Kantians in that society. If this commitment, and with it the advantages in terms of stability which justice as fairness is said to offer, is to be maintained, a public justification which is not dependent on any one of the controversial comprehensive conceptions of the good life likely to be adhered to in a well-ordered society of justice as fairness needs to be found. And this is why justice as fairness needs to be justified *neutrally* – it needs to be offered, much as Ackerman does, as the conclusion of any number of arguments.

It is in response to this imperative that Rawls wishes to demonstrate that justice as fairness can be presented as a *political* conception of justice. A political conception of justice does not aim to encompass all the contexts in which we might speak of justice or injustice, let alone the good life. It is not offered, in other words, as a basis for social co-operation on the grounds that it is derived from any *comprehensive* (and putatively true) moral, philosophical, or religious vision of the good life despite its – hopefully – being compatible with many such visions. And it is this particular feature of a political conception – the compatibility of its *justification*, as well as its content, with a variety of comprehensive conceptions of the good life – which, Rawls argues, makes an overlapping consensus¹⁵⁶ between adherents of various comprehensive doctrines, and the social stability consequent on this consensus, possible. We need, therefore, to examine the extent to which the political presentation of justice as fairness does render it such that a broad range of citizens will give it their assent.

What reasons do we have for thinking that presenting justice as fairness as a *political* conception would enable the Rawlsian state to take an ecumenical approach to justifying the principle of state neutrality? Do we have grounds for thinking, in other words, that such a state could argue for justice as fairness while remaining agnostic on the question of the truth or falsity of the conceptions of the good, or argumentative starting points, adhered to by citizens?

¹⁵⁶ Rawls introduces the idea of an *overlapping consensus* in the "Introduction," pp.*xv-xxxii* of *Political liberalism* (New York: Columbia University Press, 1993) and discusses it at length in "Lecture 4," pp. 133-72 of the same book.

Ackerman expected, as we saw, ¹⁵⁷ that any premise ¹⁵⁸ would prove to be capable of serving as the starting point for a valid argument to the neutrality principle (given sufficient rationality on the part of those challenged to work out the implications of their starting points). In a similar manner Rawls expects that (at least) significant numbers of citizens will not need to be challenged to give up the comprehensive doctrines by which they live in order to submit to the demands of political liberalism. This is because, as Rawls envisages it, many citizens are likely to be *reasonable*, in the particular way in which he uses the term. This involves, firstly, their acknowledgement of the burdens of judgement. They do not, in other words, attribute deviation from their favoured conception of the good solely to the stupidity or malice of those with whom they disagree on these matters, and they conclude, consequently, that they cannot expect the state to legislate on the basis of, or enforce, their (or any other) doctrine of the good.

Assessing this expectation on the part of Rawls is not an easy matter, given that his position on the possibility of an overlapping consensus has prediction-like and argument-like aspects. Furthermore, the prediction-like aspect is rendered obscure by the fact that we should not read Rawls as suggesting that an overlapping consensus on justice as fairness will actually be achieved at some point in the future. But we can at least say about the argument-like aspect of the expectation that we do not have grounds for thinking that justice as fairness, even when presented as a political conception, is compatible with any and every comprehensive doctrine which is an option in contemporary liberal democracies.

This would not surprise Rawls, of course. But this does raise questions about whether his defence of political liberalism can be regarded as an example of an ecumenical strategy. The Rawlsian state (the state which enforces political liberalism, in other words) will, presumably, have to offer public arguments for justice as fairness (or some other conception of justice which is compatible with political liberalism) which are aimed not only at citizens who are reasonable, in the

¹⁵⁷ See the section above entitled "Ackerman's ecumenical strategy".

Not that it is absolutely impossible to reason yourself to a rejection of Neutrality. Plato began systematic political philosophy with such a dream; mediaeval churchmen thought there were good reasons to confide ultimate secular authority to the pope. Only they recognised – as modern totalitarians do not – the depth of the reconceptualisation required before a breach of Neutrality can be given a coherent justification.

¹⁵⁸ To be fair, Ackerman does concede the remote possibility that there may be starting points out there which could not lead one to the principle of state neutrality. See, for example, the following remarks at page 12 of *Social justice in the liberal state* (New Haven: Yale University Press, 1980).

¹⁵⁹ See his discussion entitled "Is justice as fairness fair to conceptions of the good?" at pp. 195-200 of *Political liberalism* (New York: Columbia University Press, 1993).

Rawlsian sense, but also at citizens who have *not* concluded that the conceptions of the good which guide their actions in the normal course of events are compatible with a political conception of justice.

Now obviously a Rawlsian state can remain ecumenical when justifying political liberalism to those who are part of the overlapping consensus. It can say to them, much in the way that Ackerman does, that it is has no interest in *why* they come to the conclusion that political values trump non-political values in the political sphere, or, to put the same point another way, *how* they get from their starting points to the conclusion that the state may not enforce any comprehensive conception of the good. As Rawls puts it in *A theory of justice*, '[j]ustice as fairness...[does not] try to evaluate the relative merits of different conceptions of the good...There is no necessity to compare the worth of the conceptions...once it is supposed they are compatible with the principles of justice.' And it may indeed be the case that the majority of citizens adhere to such conceptions, freeing the state from the burden of arguing for the liberal dispensation. But the breadth of Rawls's ecumenicism is tested in its encounter with those outside the consensus.

If we judge by Lecture 4 of *Political liberalism* (the lecture on the idea of an overlapping consensus), ¹⁶¹ the state may present two principal *neutral* arguments for political liberalism. The first simply involves the claim that what Rawls calls *fair social co-operation on a footing of mutual respect* is of great value, and the additional point that this form of co-operation would be threatened by legislation which could only be justified on the basis of a comprehensive conception of the good life. The way he puts it is to say that

the virtues of political co-operation that make a constitutional regime possible are...very great virtues. I mean, for example, the virtues of tolerance and being ready to meet others halfway, and the virtue of reasonableness and the sense of fairness. When these virtues are widespread in society and sustain its political conception of justice, they constitute a very great good, part of society's political capital. Thus the values that conflict with the political conception of justice and its sustaining virtues may be normally outweighed because they come into conflict with the very conditions that

John Rawls, *A theory of justice* (Revised edition) (Oxford: Oxford University Press, 1999), p. 94.
 John Rawls, *Political liberalism* (New York: Columbia University Press, 1993), p. 157.

make fair social co-operation possible on a footing of mutual respect. 162

The 'values that conflict with the political conception' are "non-political" values – values that derive from the comprehensive conceptions of the good citizens live by, and they may conflict with the political conception if they encourage their adherents to press for a political order which expresses them, despite their less than universal acceptance. And when Rawls writes that these values 'come into conflict with the very conditions that make fair social co-operation possible on a footing of mutual respect' he takes it that mutually respectful co-operation between the moral, philosophical, and religious factions which are inevitable in a free society breaks down if the political order expresses views which are properly to be regarded as private, or non-political. Put more crudely, social peace (albeit of a strictly liberal kind) will be endangered by partisan laws, and this is why a politically liberal dispensation is to be preferred.

In making this point, Rawls challenges critics of political liberalism to ask themselves whether they really want to give up the great good that is a society in which people co-operate fairly with each other on a footing of mutual respect. Add to this challenge the second argument from Lecture 4: what we might call the appeal to reasonableness, and we have Rawls's attempt at an ecumenical strategy laid out. He appeals to reasonableness as follows:

Since many doctrines are seen to be reasonable, those who insist, when fundamental questions are at stake on what they take as true but others do not, seem to others simply to insist on their own beliefs when they have the political power to do so. Of course, those who do insist on their beliefs also insist that their beliefs alone are true: they impose their beliefs because, they say, their beliefs are true and not because they are their beliefs. But this is a claim that all could equally make; it is also a claim that cannot be made good by anyone to citizens generally. So, when we make such claims others, who are themselves reasonable, must count us unreasonable. And indeed we are, as we want to use state power, the collective power of equal citizens, to prevent the rest from affirming their not unreasonable views. 163

So the second half of the non-partisan case for justice as fairness consists in

John Rawls, *Political liberalism* (New York: Columbia University Press, 1993), p. 157.
 John Rawls, *Political liberalism* (New York: Columbia University Press, 1993), p. 158.

Rawls, or the Rawlsian state, challenging critics of political liberalism with the accusation that it is *unreasonable* to press for perfectionist legislation, given the inevitability of dissent from the values which are to serve as the basis of such legislation.

This is a more substantial strategy than that of Ackerman, in that Rawlsian ecumenicism does argue for justice as fairness, and thereby for state neutrality. Furthermore, it seems that in presenting justice as fairness as a political conception of justice which guarantees the great good of (a liberal) social peace, and in suggesting to those who lie outside the overlapping consensus that they are thereby unreasonable, the Rawlsian defends neutrality without having to dirty his hands and take sides on questions of the truth or falsity of the comprehensive conceptions of the good life citizens adhere to. The appeal to the importance of the political virtues does not obviously depend on the truth of any comprehensive conception of the good life. Nor does it appear to deny the truth of any comprehensive doctrine. And in pointing out that it is unreasonable to insist that one's conception of the good be enforced by law, Rawls appeals to the uncontroversial fact that not all people of adequate intellectual standing and good faith have come to the same conclusions about how life ought to be lived. Pointing this out to someone is not to imply that their view is false. No stand on this question need be taken, it would seem.

But, as I have hinted at above, matters are not this simple. Why this is so becomes clear when we imagine in more detail, as we did in the case of Ackerman, the encounter between the neutralist and the perfectionist, as we might refer to those outside the overlapping consensus.

In discussing Ackerman, we noted that he might face two kinds of difficulties in dealing with stubborn perfectionists. The first possibility was that the perfectionist might indeed be committed to the premises which Ackerman takes to be potential starting points for an "argumentative path" to the principle of state neutrality, but nevertheless deny that neutrality is the logical end point of the path which begins with the premises they assert. The second possibility was that the perfectionist might reject the premises which Ackerman appeals to altogether, forcing him to argue for the truth of at least one, and thereby calling the ecumenical nature of his strategy into question. We will see how Rawls must deal

with similar interlocutors.

With regard to the argument from the great value of fair social co-operation on a footing of mutual respect, the Rawlsian state may encounter perfectionists who do in fact value co-operation of this kind highly, but nevertheless think that, occasionally, this good stands in the way of the achievement of greater goods. Such a perfectionist will be *mostly* reasonable, in the Rawlsian sense, but will think that on some crucial issues the state must enforce the good over the reasonable objections of dissenting citizens. And we will see that encounters with moderate perfectionists such as these raise the question whether political liberalism, and therefore state neutrality, can be defended in an ecumenical manner.

Such perfectionists accept the facts of reasonable pluralism and the burdens of judgement: there is no need for the Rawlsian to get them to accept premises they don't already accept. But what they don't accept is that the facts of reasonable pluralism and the burdens of judgement imply that political values must always override non-political values. They do not, in other words, think that state neutrality is the logical response to the diversity of reasonable comprehensive doctrines. Clearly, the state must, in such cases, try to show such perfectionists why the principle of state neutrality *does* follow from the burdens of judgement. And in doing so it violates Ackerman's standards of ecumenicity.

But the Rawlsian does have another arrow in his quiver: he will argue that Ackerman's stringent degree of ecumenicity is neither achievable nor desirable, but that a lesser degree of ecumenicity is both. This lesser degree amounts to the *political* nature of the argument the state puts forward for its neutrality: it may have to take issue with the argumentative path followed by the moderate perfectionist who does not reach state neutrality from the burdens of judgement, but it does so without drawing on any comprehensive conception of the good life. And in doing this, the state accuses the perfectionist of being *unreasonable*, but not of adhering to a false doctrine.

Can the Rawlsian state clear this lower bar? Answering this question requires taking a closer look at what Rawls understands by the term "reasonable". And when we do, it becomes clear that reasonableness, in the Rawlsian sense, is a little more partisan than we might have hoped. He says in *Political liberalism* that

'[r]easonable persons...desire for its own sake a social world in which they, as free and equal, can cooperate with others on terms all can accept.' This sounds a good deal as if Rawls takes being reasonable to mean understanding society as a fair system of co-operation between free and equal citizens: precisely the view of society that political liberalism expresses. A little later on he goes on to say that

being reasonable is not an epistemological idea (though it has epistemological elements). Rather, it is part of a political ideal of democratic citizenship that includes the idea of public reason. The content of this ideal includes what free and equal citizens can require of each other with respect to their reasonable comprehensive views. ¹⁶⁵

Another way of putting this would be to say that being reasonable does not merely consist in having certain mental capacities or having access to certain knowledge: being unreasonable is not simply a failure of mental competence. The perfectionist may recognise the *facts* of reasonable pluralism and the burdens of judgement, but, for Rawls, this is insufficient. It is the perfectionist's *response* to the facts that is inadequate, and, furthermore, it is inadequate for reasons that have nothing to do with the uncontroversial facts themselves. Being unreasonable, for Rawls, means failing to live up to a larger *political* ideal which includes, naturally, the ideal of reasonableness, but also, as he indicates above, a number of other notions from the lexicon of political liberalism, notions which, if they are accepted at all by perfectionists, are certainly not accorded the same weight they are in the vision of political liberalism.

The upshot of taking the reasonable to be part of a political ideal of this kind is that it allows Rawls to *define* the perfectionist, moderate or otherwise, as unreasonable, for it is precisely this understanding of the "political ideal of democratic citizenship" at the heart of political liberalism that the perfectionist calls into question. The Rawlsian notion of the reasonable is not, therefore, neutral ground to which the politically liberal state may appeal in attempting to persuade perfectionists to refrain from demanding that their favoured comprehensive doctrines be expressed in legislation. It is rather a particular kind of response to

John Rawls, *Political liberalism* (New York: Columbia University Press, 1993) pp. 49-50.
 John Rawls, *Political liberalism* (New York: Columbia University Press, 1993), p. 62.

the burdens of judgement, one which expresses the values of political liberalism.

But having established that the appeal to reasonableness is not an appeal to ground which is neutral between the political liberal and the perfectionist does not establish, of course, that the notion of reasonableness is not a political notion, in the Rawlsian sense. It may well be that Rawls's conception of the reasonable is one which, as part of the doctrine of political liberalism, applies only in the political sphere, and is elaborated in terms drawn entirely from ideas in public political culture of contemporary liberal democracies,

That this is not the case becomes clear when we look at how the Rawlsian state must confront non-moderate perfectionists – perfectionists whose *premises* must be challenged, as opposed to merely the conclusions they draw from premises they share with political liberals. In discussing this kind of encounter, Rawls asks us to

imagine rationalist believers who contend that these beliefs are open to and can be fully established by reason...In this case the believers simply deny what we have called "the fact of reasonable pluralism". So we say of the rationalist believers that they are mistaken in denying that fact; but we need not say that their religious beliefs are not true, since to deny that religious beliefs can be publicly and fully established by reason is not to say that they are not true. Of course, we do not believe the doctrine believers here assert, and this is shown in what we do. Even if we do not, say, hold some form of the doctrine of free religious faith that supports equal liberty of conscience, our actions nevertheless imply that we believe the concern for salvation does not require anything incompatible with that liberty. Still, we do not put forward more of our comprehensive view than we think needed or useful for the political aim of consensus. 166

In cases such as the "rationalist believer" the Rawlsian has even less purchase in appealing to the burdens of judgement – if the reasonableness of those who disagree with her position is denied, then, obviously, the next move to the reasonableness of political liberalism as a response to the facts of reasonable pluralism and the burdens of judgement cannot be made.

Now what is striking here is the admission that at least part of "our"

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¹⁶⁶ John Rawls, *Political liberalism* (New York: Columbia University Press, 1993), pp. 152-3.

comprehensive view has to be put forward in talking to the stubborn perfectionist. While the politically liberal state does not directly *say* that the comprehensive conception of the good life adhered to by the believer is false, this is implied by its actions, says Rawls. This is an extraordinary concession for Rawls to make, as it amounts to a recognition that political liberalism cannot be defended in a purely political manner against perfectionists who do not acknowledge the burdens of judgement. And this means that, at least with regard to non-moderate perfectionists, that the Rawlsian state does not justify state neutrality in a manner ecumenical enough to satisfy the relaxed requirements Rawls himself sets out, let alone Ackerman's more stringent standards.

And when we consider why the Rawlsian state cannot do this, we see that it is because the way in which one responds to the burdens of judgement is in fact dependent on one's comprehensive conception of the good life, and, further, that even perfectionists who do recognise the fact of reasonable pluralism must be confronted by the Rawlsian state in a non-political, and hence non-ecumenical, manner. This becomes clear when Rawls's discusses the case of abortion. On this topic he says the following:

Suppose...that we consider the question in terms of three important political values: the due respect for human life, the ordered reproduction of political society over time, including the family in some form, and finally the equality of women as equal citizens...Now I believe any reasonable balance of these three values will give a woman a duly qualified right to decide whether or not to end her pregnancy during the first trimester...Any comprehensive doctrine that leads to a balance of political values excluding that duly qualified right in the first trimester is to that extent unreasonable... ¹⁶⁷

This passage should be understood as emphasising that the view that the state ought to treat abortion at any stage of pregnancy as murder is an unreasonable one, on the grounds that believing abortion to be the equivalent of murder is a non-political belief which might reasonably be disputed.

Clearly that belief is a view that may be reasonably disputed. And it is also clear that enforcing this view – making abortion illegal in most or all cases – is

¹⁶⁷ John Rawls, *Political liberalism* (New York: Columbia University Press, 1993), fn. 32, pp. 243-4.

likely to hinder social co-operation on a footing of mutual respect. But one might accept both of these points and nevertheless think that abortion ought to be illegal in most or all cases because one thinks also that being reasonable and maintaining the social peace, however important, do not trump the need to prevent murder. This is in no way an incoherent position: it is a response to the burdens of judgement which is rooted in an at least partially non-liberal conception of the good. And the Rawlsian state's response, whether it be the insistence on the premise that there is a fact of reasonable pluralism which must be acknowledged, as it would be in the case of the "rationalist believer" or non-moderate perfectionist, or the insistence that the burdens of judgement imply the principle of state neutrality, as it would be in the case of the moderate perfectionist, implies the falsity of the conception of the good to which the rationalist believer or the (mostly) liberal opponent of abortion rights is committed, because no one could adhere to that perfectionist conception of the good and take the attitude to the burdens of judgement which political liberalism requires.

In summary, then, Rawls's appeal to *reasonableness* is not an ecumenical gesture. This is because the Rawlsian conception of reasonableness is a partisan one – it is in fact a moral conception, and one, furthermore, which is part of an anti-perfectionist vision of the citizen's place in society – and not an uncontroversial starting point on which political liberals and their opponents can agree. The appeal to reasonableness involves denying the premises of any conception of the good which disputes the fact of reasonable pluralism and rejecting the argumentative path taken by any conception of the good which acknowledges the fact of reasonable pluralism, but accords the good of fair social co-operation on a footing of mutual respect less weight in relation to other goods than the Rawlsian liberal accords it. How one responds to the fact of reasonable pluralism turns out to be intimately connected to which comprehensive conception of the good life one adheres to.

Consequently, the apparently ecumenical defence of state neutrality which Rawls's proposes in *Political liberalism* turns out in fact to have partisan elements. The politically liberal state cannot defend its refusal to legislate on the basis of any

particular conception of the good without arguing for at least the view that the good of fair social co-operation on a footing of mutual respect ought to take precedence over any goods which might come into conflict with it or the view that reasonableness consists in responding to the burdens of judgement by rejecting perfectionism. The fact that one's take on these two issues is a function of the conception of the good life one is committed to means that citizens cannot simply be left to work their way to the principle of state neutrality using argumentative paths they are already committed to. Their comprehensive conceptions of the good life, premises, or argumentative paths will, in many cases, have to be challenged by the Rawlsian state.

3.2 Non-neutral justifications of the principle of state neutrality

If it is neither possible nor desirable to justify the principle of state neutrality neutrally, what about frankly partisan justifications? Is there, in other words, a convincing case to be made for the principle of state neutrality on a basis which is not shared by all citizens of contemporary liberal democracies? Many such strategies have been suggested – Ackerman writes, for example, of 'four...main highways to the liberal state: realism about the corrosiveness of power; recognition of doubt as a necessary step to moral knowledge; respect for the autonomy of persons; and scepticism concerning the reality of transcendent meaning.'168 He goes on to say that '[d]oubtless there are other paths as well.' 169 I do not intend, in what follows, to adopt Ackerman's schema in its entirety – the second highway seems to me to collapse into the first and the fourth seems to me wholly unconvincing – but will concentrate rather on the first and third highways, given the greater likelihood of their indeed leading us to the principle of state neutrality. 170

¹⁶⁸ Bruce Ackerman, Social justice in the liberal state (New Haven: Yale University Press, 1980), p. 369

Bruce Ackerman, Social justice in the liberal state (New Haven: Yale University Press, 1980), p. 369

My discussion is in fact more indebted to the schema George Sher presents in Beyond neutrality than it is to that of Ackerman.

3.2.1 The first highway: Realism about the corrosiveness of power

I deal first with a number of popular arguments for state neutrality which are premised on what Ackerman terms "realism about the corrosiveness of power" and conclude that they do not, in the end, establish sufficiently that the principle of state neutrality is the necessary response to this problem.

Roughly speaking, this *realism* might be paraphrased as the view that perfectionist governments cannot be trusted to promote the good. When one says that one fears that a perfectionist state cannot be trusted to promote the good, what exactly is it that such a state is thought to be in danger of doing? What evils, in other words, is state neutrality thought to be the best method of thwarting?

The first kind of misbehaviour occurs when the state *misidentifies* what the good in fact is, in which case it ends up promoting that which is worthless and (at least possibly) *damaging* to citizens' lives. This concern is to be distinguished from moral scepticism – it is not the claim that there is no good which anybody, state or otherwise, might identify. In fact it is a kind of concern only available to moral realists, but it may be motivated by the belief that governments are particularly prone to judge moral matters incorrectly, given the multitude of temptations and interests they face. Raz alludes to this concern when he notes, as motivations for anti-perfectionism,

the dangers inherent in the concentration of power in few hands, the dangers of corruption, of bureaucratic distortions and insensitivities, of fallibility of judgement, and uncertainty of purpose, and the insufficiency and the distortion of information reaching the central organs of government.¹⁷¹

What are we to make of this concern? The first point to make is that there is little reason to believe that the state's refraining from promoting its (possibly erroneous) vision of the good would guarantee that citizens would be free of *any* influences which promote or discourage the good. There are many ways that one's life could go wrong without the state's interference, and one might worry just

¹⁷¹ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 427.

as much that the state's abstention from promoting the good would leave citizens vulnerable to other, possibly more malign, forces. So those who argue for neutralism on the basis that the state may misjudge the good need to show that the state is *especially* prone to this kind of misjudgement.

Why might one think that the state is especially prone to promoting misguided conceptions of the good? Mill suggests three reasons. 172 The first one is that the state cannot know the needs and tastes of each individual sufficient for it to be any kind of authority on what his or her good is. Secondly, the standards for judging the successful promotion of the good on the part of the state are, or would be, so vague as to leave policymakers with little incentive to consider legislation carefully. And, thirdly, a state which successfully promotes even a valid vision of the good amongst the citizenry runs the risk of leaving them, at some future time, unable to discern the falsehoods within that vision, or falsehoods which come to replace that vision.

One might, for any one of these three reasons, think that the state best remain neutral, and that pursuit of the good is best left in the hands of individual citizens themselves, given their greater knowledge of their own predilections, the much higher stakes they have in their leading valuable lives in comparison to the state, and the likelihood that they will develop the kind of dependence on the state's vision of the good that will leave them vulnerable, at a later date, to false values.

Sher has argued 173 that Mill's concerns are not misguided, and indeed make a convincing case for caution with regard to perfectionist legislation. But we need not conclude from this that the state must be bound by a rigorous principle of state neutrality. Holding instead that the state ought to be bound by a principle – which Sher dubs principle M – forbidding it from promoting any conception of the good unless that conception has been found to satisfy our usual standards of justification is just as likely, if not more so, to thwart the dangers of the state which misjudges the good.

Is there any reason to suppose that a state which observed Sher's principle M would be more likely to disregard its lack of knowledge of the needs and tastes of

John Stuart Mill, *On liberty* (Indianapolis: Bobbs-Merrill, 1956), p. 93.
 George Sher, *Beyond neutrality: Perfectionism and politics* (Cambridge: Cambridge University Press, 1997), pp. 131-8.

each individual, and thereby to hinder citizens in their efforts to lead valuable lives, than a state which understood itself to be bound by the principle of state neutrality? 174 Or to suppose that a state's being bound by the principle of state neutrality is necessary to diminish the danger of false ideals being promoted by officials with little at stake? Or that a commitment to state neutrality would reduce the risk of future moral misjudgements on the part of the state more than a commitment to assessing conceptions of the good by means of our usual standards of justification before promoting them?

One misleading line of argument for neutrality needs to be dealt with first, and that is the claim that a principle such as M could not solve the problem of possible misjudgements on the part of the state, since it is the state itself which must apply the principle M. Given that it is the state's vulnerability to error that raises the concern in the first place, so the argument goes, any response which suggests, in essence, that the state police its own errors (or, to put it more kindly, take its own fallibility into account), must be to that extent fallacious.

This argument shows too much. It shows too much because the claim that the state cannot be trusted to live up to the principles it is ostensibly committed to leaves it quite unclear as to why the *principle of state neutrality* should be any less vulnerable to such a move. If states which are supposedly committed to a careful weighing of reasons for and against before promoting a particular conception of the good cannot be trusted actually to act consistent with this principle, why should we assume that states which are committed to the principle of state neutrality can be so trusted? What is there about the principle of state neutrality which makes it less likely to be abused?

There may have been reason for optimism in regard to neutrality's properties as a fail-safe principle in Mill's day, but there is surely little reason now, given that we have all seen how easy it has been for states to commit every kind of abuse in the name of principles of right (such as justice) in the twentieth-century. But perhaps one does not need to deploy as sweeping an argument as the suggestion that states which promote the good will be tempted in every way to promote what is not in fact good, and that these temptations are faced to much lesser degree by governments bound to the principle of state neutrality. Perhaps we might rather

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¹⁷⁴ George Sher, *Beyond neutrality: Perfectionism and politics* (Cambridge: Cambridge University Press, 1997), pp. 131-8.

find specific arguments for the special vulnerability of perfectionist governments to the failure to understand the intricate needs of citizens, or showing how perfectionist governments will be especially uncommitted to working out the consequences of their policies for the goods they are supposedly promoting, or showing how future generations are rendered especially rigid or complacent by perfectionist governments.

It is hard to see where such arguments are going to be found. There is no reason to think that, as Raz puts it, 'one is more likely to be wrong about the character of the good life than about the sort of moral considerations which all agree should influence political action such as the right to life, to free expression, or free religious worship,'175 in which case we might say that a neutralist government is just as likely to leave its citizens vulnerable to false ideals than a government committed to Sher's principle *M*.

This issue reveals the fundamental problem with postulating a neutrality principle as a way of preventing the state from *erring*. While there certainly is cause to worry that the state may err for the reasons Mill mentions, and any reputable state would do well to take its own fallibility in this regard into account in making law, there are many conceivable ways of guarding against the possibility that a state may promote false ideals of which the principle of state neutrality is only one. An independent argument for the principle of state neutrality is therefore necessary.

The second kind of pragmatic reason for forbidding the state from promoting the good is motivated by the fear of instability. Larmore's "modus vivendi" liberalism, and the later work of Rawls can be read as following from the view that avoiding a society in which factions urgently desire control of the state so as to avoid having unwelcome conceptions of the good imposed on them requires excluding perfectionist considerations from lawmaking. Not surprisingly, many have feared that such a society would suffer from a dangerous degree of political instability. ¹⁷⁶

The obvious difficulty any such argument faces is the fact that contemporary liberal democracies are neither strictly neutralist nor unstable. Substantive goods

¹⁷⁶ Of course the overwhelming power of one faction within such a society would stabilise it. But this is hardly the kind of solution liberals look to.

¹⁷⁵ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 160.

are openly supported by the states of North America and the European Union, to mention two primary loci of liberal democracy. Many European states, for example, have established churches, and all of them, as well as Canada and the United States of America, support the arts and monogamous marriage by means of taxation. And these are only the more obvious examples – a great deal of the fine web of law which governs people's everyday lives is premised on the preferability of certain lifestyles over others.

The stability of contemporary liberal democracies is even more obvious than their lack of neutrality. Western Europe has seen remarkably little political turmoil since the end of World War II, and the United States and Canada have enjoyed an even longer periods of tranquillity. Furthermore, it is quite unclear that the causes of those periods of serious unrest in the recent history of the West can be traced to perfectionist legislation. It is true, of course, that the Nazis were perfectionists, but it was the odious nature of the substantive values they were committed to that pushed the world into war in the late 1930s and not the mere fact that they were committed to substantive values. And resistance to the Nazis can be explained by a host of factors other than objections to perfectionist government.

We must conclude, then, that there is little reason to think that the dangers which state neutrality is allegedly required to ward off, to the extent that they are genuine, are always better dealt with by a state which is bound only to legislate in a manner neutral between any conceptions of the good than they are by a state that is free to promote the good, provided it is also bound by the need to recognise various rights and procedures that form a standard part of the legal vocabulary of contemporary liberal democracies. It may be that, on occasion, state neutrality is an appropriate response to concerns of these kinds, but this fact is insufficient to establish a *principle* of state neutrality.

3.2.2 The third highway (1): Promoting autonomy as a ground for the principle of state neutrality

I deal in this section with a number of influential arguments for state neutrality which rely on the importance of personal autonomy and also conclude that they do not, in the end, establish sufficiently that the principle of state neutrality is the necessary response to this problem.

The importance of personal *autonomy* is a frequently appealed to – possibly the *most* frequently appealed to – reason for the requirement that the state be neutral. The basic idea here is that everyone has a fundamental interest in leading an autonomous life, and that perfectionist legislation damages the ability of citizens to do so. It will be my contention that no such general principle applies.

It will be my contention, in other words, that although particular perfectionist laws may indeed damage citizens' ability to lead autonomous lives, such laws may just as easily, if not more so, *enable* citizens to lead autonomous lives, and therefore the argument from the importance of autonomy to a *principle* of state neutrality fails.

Ackerman's way of putting this is to say that one can reason one's way to the principle of state neutrality by adopting 'a conception of the good that gives a central place to autonomous deliberation and den[ies] that it is possible to *force* a person to be good.'177 One form that this argument takes moves from the claim that autonomous lives are of great value to the principle of state neutrality via the intermediate premise that more good (in the form of more autonomous living, in other words) results from the state's refusal to promote any particular conception of the good than would from any alternative. Another way of putting this would be to say that *autonomous lives* (or *autonomous choices*) are good in the way that, say, beauty, or excellence, are, and therefore that, because the government must promote the good, the government must promote as much autonomy as it can, and this it does best by remaining neutral between conceptions of the good when legislating: the government's promoting the most good requires it refraining from

¹⁷⁷ Bruce Ackerman, *Social justice in the liberal state* (New Haven: Yale University Press, 1980), p. 11. One need not, of course, endorse both clauses. One could believe that it was indeed possible to force people to be good, but that that was nevertheless forbidden.

the attempt to do so.

The first troubling aspect of this argument, however, is that, while the claim that autonomy is valuable, and even the claim that autonomy is *very* valuable, is (rather obviously) plausible, the claim that *only* autonomy is valuable is (rather obviously) implausible. And this gives rise to two difficult questions for those who wish to argue from the value of autonomy to the principle of state neutrality.

The first question is whether autonomy is always reduced by state promotion of other goods. And if the answer to this question is positive, we might still ask why the state must always take the side of autonomy in any conflict between it and other goods. And even if autonomy is the most valuable good, we might nevertheless ask further why the state's promoting a select set of goods other than autonomy could never end up promoting more good overall.

As long as the possibility of the state trading autonomy off against other goods exists, the argument from the value of autonomy to the principle of state neutrality will not work. But there may be ways of ruling out such trade-offs, and one tempting way of doing so would be to argue that goods other than autonomy depend for their value on being *autonomously chosen*. This position need not be interpreted as the dubious claim that the mere fact of being chosen autonomously *confers* value; it could be the claim that valuable goods acquire their value through an act of choice which recognises their *potential* independent value.

If one holds to this claim, which is not implausible, ¹⁷⁸ then one might equally plausibly argue that any state promotion of the good which overrides citizens' autonomy cannot in fact succeed in promoting the good, as it removes the conditions under which genuine goods can arise. It is not obvious, however, that activities only become valuable in virtue of having been autonomously chosen. And the argument from the value of autonomy to the principle of state neutrality assumes that when a citizen takes up a form of life, or a potentially valuable activity, as a result of the state's having promoted it in some way, this choice on the part of a citizen is necessarily heteronomous.

But this is dubious. Let us look at a number of ways in which the state may promote the good in order to establish whether these methods necessarily detract

¹⁷⁸ It is, as Sher points out, analogous to Kant's view that actions acquire independent moral value only if performed for the right reasons, namely *recognition of their potential independent value*. See George Sher, *Beyond neutrality: Perfectionism and politics* (Cambridge: Cambridge University Press, 1997), p. 59.

from the autonomy of those who choose the good as a result of these efforts on the part of the state.

Could those who take up a potentially valuable form of life (or reject a worthless form of life) as a result of, say, a state advertising campaign, be said have chosen autonomously? One might think that they cannot, given that, first, autonomous choice is made on the basis of sound reasons, and, second, advertising campaigns (generally) do not aim to persuade by means of argument. One might plausibly conclude that opting to pursue a valuable form of life is an autonomous choice only if the value of that form of life is the reason for it being chosen; doing so as a result of a persuasive advertising campaign is not usually understood as a response to good reasons.¹⁷⁹

It is misleading, however, to suggest that if one's initial choice to pursue a form of life is not made on the basis of sound reasons, then one's subsequent pursuit of that form of life must be contaminated by this origin. This is because it is very frequently the case that valuable forms of life, pursued by citizens in what appear to be indisputably autonomous ways, were initially chosen on a less than rational basis. One might even suspect that all valuable practices, such as various arts, crafts, sports, or even religions, are initially taken up by their practitioners on the basis of, for example, admiration for prominent figures, the desire to impress their peers, an unmastered thirst for power or status, or any number of other forms of non-rational encouragement on the part of peers or authority figures. And yet it is false that such beginnings preclude an autonomous commitment to these practices in later life. It may be that non-rational choices are the necessary hooks which make it at all possible for adults to participate, whether autonomously or not, in such practices in later life. If this is the case, then a state policy which seeks to maintain an adequate range of valuable options for citizens to pursue, as Raz believes it should, 180 must not be construed as threatening to autonomy. On the contrary, a state which fails to do so might be needlessly depriving citizens of many worthwhile avenues of endeavour.

The obvious rebuttal would be for the neutralist to concede that it may well

¹⁷⁹ Of course an advertising campaign *could* merely present a sound argument to those who have not yet encountered it. I do not refer here to that kind of argument

not refer here to that kind of argument.

180 See Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 372.

happen that people respond autonomously to valuable options that they were initially introduced to by non-rational means, while arguing that these happy commitments are outnumbered by cases in which the initial method of persuasion does indeed render future pursuit of the option in question heteronomous, and that this means that the state should avoid promoting the good so as to avoid these more numerous unhappy outcomes. Put more simply, the neutralist might make a consequentialist argument that more good (assuming that autonomy is a good) results from a policy of state neutrality than from a policy of perfectionism, given the relatively low likelihood of autonomous choices being produced from the kind of heteronomous beginnings state promotion of the good induces.

But this seems much too pessimistic. Arguing that the an outright ban on any promotion of the good is necessary in order to forestall the loss of autonomy that such promotion inevitably entails requires arguing that the state is largely incapable of distinguishing between those cases where "manipulative" promotion of the good – say, through advertising campaigns which promote the arts, discourage dangerous drug use, encourage attendance at museums, participation in sports and various kinds of community service, and so on – supports long-term autonomous commitments to these forms of life and those cases in which it does not. There seems little reason to believe that once any state embarks on the promotion of forms of life uncontroversially accepted as valuable, such as those mentioned above, it will inevitably be tempted to promote them, and perhaps other, more controversial, forms in ways that *damage* citizens autonomy. This is not idle speculation, as most western states do aim to promote the good in precisely this way, and I know of no evidence to suggest that this has brought about a decline in the amount of autonomy in these societies.

A further problem for the argument from the value of autonomy is that it is surely impossible for a government to *avoid* affecting citizens' tastes or conceptions of the good. As we saw when discussing the neutrality of effect interpretation of the principle of state neutrality in chapter one, it is simply impossible for a state so to calibrate its policies that the balance of power between all forms of life or conceptions of the good within a society remains exactly as it would be absent state action. If this is so, a discussion of the state's influence over citizens' preferences must turn into a discussion of whether it may do so

intentionally or not, not whether it can be prevented from doing so or not.

But a state which refuses intentionally to influence the preferences of citizens in the direction of what it deems to be the good will not thereby increase autonomy in the society, as its unintentional influences will remain untouched; rather, the number of citizens who lead lives that are good in terms accepted by the state will drop, an outcome that should please nobody other than those who hold the state to be promoting false ideals of the good. Raz makes a similar point – emphasising the way in which individuals cannot always create valuable options without state support – when he says that 'anti-perfectionism in practice would lead not merely to a political stand-off from support for valuable conceptions of the good. It would undermine the chances of survival of many cherished aspects of our culture.'181 I come to discuss this point in greater detail when I outline Raz's defence of perfectionism in chapter three.

Whatever we have said about the claim that the state can create more autonomy by refraining from using non-coercive, non-rational, methods than by using them does not, of course, necessarily apply to the same claim about coercive methods. This, after all, is the crux of the neutralist's case: it is in the state's use of coercion to promote the good or discourage the bad that the neutralist sees the greatest threat to citizens' autonomy.

But is the argument from the value of autonomy against coercive perfectionism any stronger than the same argument against non-coercive perfectionism? What, after all, is the objection to coercion other than its preventing its victims from responding to the reasons that apply to them? And, if this is so, in what way does it differ from the argument that non-coercive perfectionism reduces the overall amount of autonomy? Is it not possible that initial coercion could produce citizens who respond autonomously to the potential good of genuinely valuable forms of life?

The obvious example would be laws against the use of narcotics. Some citizens may refrain from narcotics out of fear of punishment, and not because they recognise the dangers of narcotics. As such they cannot be said to be living (with regard to this choice, at least) autonomously. But it can hardly be denied that

¹⁸¹ Joseph Raz, The morality of freedom (Oxford: Clarendon Press, 1986), p. 162. Here Raz is thinking in particular about practices such as opera, but his point in fact covers a wide variety of cases.

We will see in chapter three, when I discuss Raz's view of coercion, that the way I have put it here is a simplification.

they may well lead lives a good deal more autonomous as a result of their *being* forced to refrain from narcotics; more autonomous, in all likelihood, than their peers who autonomously choose to devote themselves to regular drug consumption.

I conclude, then, that arguing from the value of autonomy to the principle of state neutrality will not establish that principle, as it is not the case that promotion of the good on the part of the state always decreases citizens' autonomy. As I argued above, it is possible, under not uncommon circumstances, for perfectionism to *increase* citizens' autonomy, especially if citizens' autonomy is considered over the long run. Furthermore any consequentialist argument which aims to show that a neutral state increases the overall *good* in a society must account for the place of goods other than autonomy. And this cannot be done in such a way – at least not if the argument is a consequentialist one – as to show why autonomy should always take precedence over other goods.

3.2.3 The third highway (2): Respecting autonomy as a ground for the principle of state neutrality

One need not, however, defend autonomy as a *good* to be maximised. It may be that getting from the importance of autonomy to the principle of state neutrality is best done by understanding *respect for autonomy* as a constraint which rules out non-neutral lawmaking.

This is a popular route for neutralists – so popular, in fact, that I cannot hope to examine all possible variations on it. As a result I look principally in what follows at the work of Rawls, who, as I have indicated in the introduction, is both unquestionably the most important contemporary liberal neutralist and a formidable opponent of consequentialist styles of political argument. I examine whether a convincing non-consequentialist case for the principle of state neutrality can be gleaned from his writings.

Rawls, as we have already seen, sets up a decision procedure known as the original position in his landmark work *A theory of justice*, the purpose of the original position being to model the principles of justice that free and equal citizens would agree on, given the right kind of circumstances. Naturally questions will arise as to why exactly Rawls sets up the original position the way he does, and these are precisely the questions we will need to deal with in working out why Rawls believes that free citizens, whom we can understand as *autonomous* citizens for our purposes, would choose principles of justice which are not to be based on any particular conception of the good. In other words working out why, for Rawls, respect for autonomy means state neutrality, means, at least with regard to *A theory of justice*, working out why the original position is set up the way it is. And this I do in what follows.

But first a small detour. The immediately puzzling aspect of any argument which rules out promotion of the good under certain circumstances is the fact that it requires one to ignore what would normally be considered good reasons for action; and in the case of arguments from respect for autonomy to the principle of state neutrality the state is required to ignore such reasons entirely.

How might such a requirement arise? Constraints which forbid us from promoting the good do make sense under some circumstances: it is uncontroversially illegitimate, for example, to extract organs from an unconsenting, living, person, no matter how much good would thereby be promoted. Such constraints, Sher points out, can be justified by the Rawlsian argument that 'one person's losses cannot be offset by the gains of others' 183.

But, as he goes on to explain, torturing for the greater good is not on all fours with promoting the good in general, as the latter, in theory at least, is an effort to promote the good in the lives of all citizens, not in some (such as those whose suffering is preventing by the torture) at the expense of others (such as the one whose torture prevents the suffering of others). Expanding on this, we might say that state promotion of the good cannot be understood as the *thwarting* of citizens' interests as torturing someone can be understood as thwarting his or her interests. This is because, as well as having an interest in leading autonomous lives, citizens also have an interest in leading good lives, in which case the state's *failure* to promote the good might well be understood as thwarting citizens' interests.

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¹⁸³ George Sher, Beyond neutrality: Perfectionism and politics (Cambridge: Cambridge University Press, 1997), p. 74.

Let us turn now to Rawls. In what follows I will look at arguments presented in both A theory of justice and Political liberalism which are understood by Rawls to make the case (although seldom explicitly) for a neutral state, beginning, naturally enough, with those presented in *A theory of justice*.

What is Rawls's case for the design of the original position which is simultaneously a case for the principle of state neutrality? To be precise, the question we have to ask is why Rawls denies the parties in the original position knowledge about the conceptions of the good, given that it is ignorance of this which leads them to assent to principles neutral between such conceptions. In A theory of justice. Rawls describes the veil of ignorance as ensuring 'that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstance.'184

Given that principles of justice which favoured certain kinds of personal qualities or talents would be precisely principles which advantaged or disadvantaged citizens on the basis of "natural chance" or "the contingency of social circumstance", we might think that principles which favoured certain conceptions of the good are ruled out for the same reason. It might be that Rawls thinks of the conceptions of the good people adhere to as being unchosen in the way that talents are, and therefore undeserving of favour.

I would caution against interpreting Rawls in this way, however, as tempting though the analogy may be, he surely cannot think of conceptions of the good in the same way as he thinks of talents. And this is because of the significance he takes our 'capacity to form, to revise, and rationally to pursue a conception of the good' to have. 185 It would be quite unclear why this capacity would be of any importance if it were simply the product of contingency: in fact it would be quite unclear how anybody could revise their conception of the good if that were the case.

Furthermore, it would also be unclear why any beliefs at all would be permitted to influence the choices of the parties in the original position, as Rawls gives us no reason to think (nor could he, one must assume) that beliefs about the

John Rawls, *A theory of justice* (Revised edition) (Oxford: Oxford University Press 1999), p. 11.
 John Rawls, "Kantian constructivism in moral theory," *Journal of Philosophy* 77, 9 (1980), pp. 515-72 at p. 525.

good are products of contingency, whereas their other beliefs are not. And clearly, some beliefs are required behind the veil of ignorance, otherwise the parties could have no grounds whatsoever for choosing the principles they do. We can conclude therefore that Rawls's reasons for excluding conceptions of the good from the knowledge available to parties in the original position lie elsewhere.

On page 560 of A theory of justice 186, Rawls says that

[w]e should not attempt to give form to our life by first looking to the good independently defined. It is not our aims that primarily reveal our nature but rather the principles that we would acknowledge to govern the background conditions under which these aims are to be formed and the manner in which they are to be pursued. For the self is prior to the ends which are affirmed by it; even a dominant end must be chosen from among numerous possibilities. There is no way to get beyond deliberative rationality. 187

This suggests that what is important about conceptions of the good – what, in other words, makes them unfit to influence the choices made behind the veil of ignorance - is not that they are the products of contingent factors beyond anyone's control, but rather that they are external to the self.

But the problem with understanding Rawls to exclude conceptions of the good on this basis is that his claim that the nature of the self is revealed by the principles it would choose behind the veil of ignorance, and not by its ends is that we do not thereby have an *argument* for denying the parties in the original position knowledge of the conceptions of the good they will adhere to. Naturally, seeing the self in this way leads to Rawls's designing the original position the way he does, and, unsurprisingly, this design produces principles of justice which forbid the state from acting on the basis of any particular conception of the good. But the progression from Rawls's vision of the self as prior to its ends to the design of the original position to the principle of state neutrality does not satisfy us if we want to know why we ought to see the self in this way, and if we do not know why we ought to see it this way we will not have been shown why the state should respect the principle of state neutrality.

¹⁸⁶ (Revised edition) (Oxford: Oxford University Press, 1999).¹⁸⁷ John Rawls, *A theory of justice* (Revised edition) (Oxford: Oxford University Press, 1999), p. 560.

In any case, in attempting to understand why the claim that the self's being prior to all its ends implies that conceptions of the good cannot be taken into account when principles of justice are being established, we run up against the problem of why one might think that the contingency of one's conceptions of the good should rule them out from consideration behind the veil of ignorance.¹⁸⁸

The problem is that one's conceptions of the good are not the only beliefs whose failure to "reveal our nature", as Rawls understands it, is indicated by the fact that our selves remain what they are despite changes in our conceptions of the good. This is in fact true of *any* beliefs we might have, including those beliefs that Rawls would deem straightforwardly to be "knowledge", and therefore knowable behind the veil of ignorance. But ruling out *all* these beliefs from the deliberations the parties in the original position take part in would deprive them of any basis for choosing principles of justice.

And so if Rawls were to argue from the contingency of conceptions of the good, or their changeability, to the principle of state neutrality, he would in both cases show more than he would want to: by ruling out conceptions of the good from the deliberations behind the veil of ignorance he would not only deprive the parties in the original position of what they need to establish principles of justice which are premised on the good; he would deprive them of what they need to establish any principles of justice at all.

But perhaps these are not in fact Rawls's reasons. Writing about the arguments for neutrality that might be found in *A theory of justice*, Raz says that

[t]o vindicate Rawls's position one requires convincing reasons...for excluding moral and religious beliefs from the information available behind the veil of ignorance...*A theory of justice* contains hardly any explicit argument for the exclusion of moral and religious beliefs from the original position. Such argument as there is turns on the need to secure unanimity, the need to have, in the original position, one viewpoint which can be the "standpoint of one person selected at random" which excludes bargaining and guarantees unanimity.¹⁸⁹

¹⁸⁸ See George Sher, *Beyond neutrality: Perfectionism and politics* (Cambridge: Cambridge University Press, 1997), p. 82, for a similar argument.

⁸⁹ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), pp. 124-5.

So perhaps we can get to the principle of state neutrality (via *A theory of justice*) this way: We *must* place knowledge of the good behind the veil of ignorance for the parties in the original position, because failing to do so would make it impossible for them to reach any agreement, with the result that 'we would not be able to work out any definite theory of justice at all' But this surely cannot, in itself, be sufficient for us to accept a principle of state neutrality, as it is quite possible to imagine configurations of the original position other than the setup Rawls actually uses which provide us with an agreement, *without* denying the parties in the original position knowledge of their conceptions of the good.

They could be, for example, provided with knowledge of a minimal number of well-supported values, much in the way that they are provided with a certain amount of empirical knowledge. Or we might note, as Sher has, that 'nothing [said by Rawls in *A theory of justice*] shows why we should not altogether dispense with the contractarian premises about the good life.' and that doing this would produce conclusions no less determinate than those reached by the Rawlsian parties.

Furthermore, Raz has argued that even being denied knowledge of one's conception of the good would not suffice to establish a neutral constitution: as he puts it, the original position

may yield an agreement to establish a constitutional framework most likely to lead to the pursuit of well-founded ideals, given the information available at any given time. Ignorance of one's particular moral beliefs will not exclude this possibility, since the parties in the original position know that they have moral ideals. They accept, in other words, "a natural duty" to pursue the best-founded moral ideal. 192

Contrary to Rawls, therefore, a principle of state neutrality cannot be deduced from the choices parties in the original position make: they might well refrain from adopting a 'particular perfectionist principle as a constituent of their doctrine of justice,' given their general knowledge of human fallibility, but there is no reason why they could not 'accept a doctrine of justice including an agreed process for determining which perfectionist principle should be implemented in the

¹⁹⁰ John Rawls, A theory of justice (Revised edition) (Oxford: Oxford University Press, 1999), p. 140.

¹⁹¹ George Sher, Beyond neutrality: Perfectionism and politics (Cambridge: Cambridge University Press, 1997), p. 83,

Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 125.

193 Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 126.

state' 194 – if we (and they) are to consider matters of the good as potential subject matter for rational deliberation, that is. And Rawls is of course eager to evade charges that he is a moral sceptic. 195 We might just as well ask ourselves, when thinking about justice, what sort of process the parties in the original position would want to implement for deciding which conceptions of the good ought to serve as the basis of legislation. This conclusion is, of course, welcome to perfectionists.

Of course A theory of justice is not all there is to Rawls's work. And it may be that, despite the difficulties of establishing where exactly the case for the principle of state neutrality is to be found in this first book, things become clearer once we turn to *Political liberalism*, where Rawls presents his theory of justice in a new manner, taking it to be the conclusion of a process, valid for contemporary liberal democracies alone, in which its principles are "worked up", as he puts it, from widely-held assumptions about political morality which are, so to speak, part of the public culture of such democracies. It might be that this strategy makes clearer why a commitment to respect for the autonomy of individuals requires the state the refrain from making law on the basis of any particular conception of the good, as Rawls sees it.

In Political liberalism Rawls emphasises, once more, his view that a conception of justice must be 'as far as possible, independent of the opposing and conflicting philosophical and religious doctrines that citizens affirm' 196 - neutral between conceptions of the good, in other words. And in *Political liberalism* he no longer argues for this neutrality on the basis of the original position. It is therefore worth asking why, according to the later Rawls, ought we to make these demands of a conception of justice? Why neutrality?

Raz's answer is that Rawls advocates state neutrality because he takes it that 'social unity and stability based on consensus - that is, achieved without excessive resort to force - are valuable goals of sufficient importance to make them and them alone the foundations of a theory of justice for our societies.' 197 As

¹⁹⁴ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 126.

John Rawls, *A theory of justice* (Revised edition) (Oxford: Oxford University Press, 1999), p 328.

John Rawls, *Political liberalism* (New York: Columbia University Press, 1993), p. 175.

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Joseph Raz, "Facing diversity: The case of epistemic abstinence," *Philosophy and Public Affairs* 19, 1 (1990), p. 14.

Raz interprets Rawls, perfectionist societies must either be unstable, or they must coerce their citizens into stability.

We have already seen that the claim that unless the laws of contemporary liberal democracies are free of perfectionist legislation, instability will ensue, lacks foundation. ¹⁹⁸ But let us grant Rawls this premise for the moment, so as to reveal further problems which arise from the way in which *Political liberalism* sets up the case for state neutrality. If, as Rawls suggests, any conception of justice which is not derived from the shared values of the public political culture is illegitimate (leaving aside for the moment the question of what makes it illegitimate), we must ask why justice as fairness is derived from a controversial conception of the good; the supreme value of uncoerced stability, as Raz puts it.

This apparent dependence on the value of uncoerced stability upsets the later Rawls's case for state neutrality in way similar to the way in which the argument for the neutrality principle from the *value* of autonomy is upset. ¹⁹⁹ If we are to derive the neutrality principle from the original position, the setup of which is itself premised on a certain vision of the autonomous and equal individual, but we are told that this vision of the person derives its validity from its place in the public culture of contemporary liberal democracies, then we need first of all to know why holding such a place in the culture confers validity on the vision of the autonomous person. The answer Rawls must give us, if Raz is correct, is that failing to base our vision of the person on the public political culture would mean basing it, instead, on a controversial conception of the good life. And this, so Raz's interpretation goes, is ruled out as a basis for legislation on the grounds that it is a recipe for instability.

But here, once again, we have to ask whether the rejection of uncoerced stability is as pervasive a part of the public political culture of modern liberal democracies as all that. It is true that there is no general enthusiasm for instability, but, as Sher remarks, it is still unclear 'why we should never regard some sacrifices in stability, or some amounts of coercion, as reasonable prices to pay for suitably large amounts of other goods.' And here we see that the trade-off problem, which we had hoped arguments from the *respect* for autonomy (as

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¹⁹⁸ We can safely conclude, as well (although I do not discuss this in any detail), that the reason contemporary liberal democracies are stable is not (at least not to any worrying extent) because of large amounts of coercion. ¹⁹⁹ See pp. above.

George Sher, *Beyond neutrality: Perfectionism and politics* (Cambridge: Cambridge University Press, 1997), p. 85.

opposed to the *value* of autonomy) could sidestep, arises again. It may be that the principle of state neutrality can be derived, via the public political culture, from the value of uncoerced stability, but we are not told why uncoerced stability should take precedence over other, or combinations of other, values.

One of the important innovations of Rawls later writings²⁰¹ is the so-called "principle of liberal legitimacy". This principle, which states that

our exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational²⁰²

is derived, first, from the fact that we do not choose our relationship to the politics of our society, but are simply born into it, and, second, from the fact of the state's overwhelming power.²⁰³ Rawls takes this principle to require that, as we saw in chapter two, conceptions of the good be excluded as a basis for reasoning about constitutional essentials or basic questions of justice.²⁰⁴

So we know from the principle of liberal legitimacy, that no constitution which cannot be reasonable endorsed by all citizens can be legitimate. We do not as yet know, though, as Sher accurately points out,²⁰⁵ that this means that a legitimate constitution cannot be premised on any conception of the good. And this is because we do not yet know what exactly it is that citizens can or cannot reasonably endorse.

Rawls's view is that citizens, or their comprehensive conceptions of the good life, are reasonable if they do not expect the state to coerce others into compliance with it; if they, in other words, accept the principle of state neutrality. But this is of course not an *argument* for the principle of state neutrality, for we first need an argument as to why Rawls's particular vision of reasonableness ought to be accepted: we might, quite *reasonably*, one would think, regard a

John Rawls, *Political liberalism* (New York: Columbia University Press, 1993), pp. 216, 135-6.

John Rawls, *Political liberalism* (New York: Columbia University Press, 1993), pp. 216, 135-6.

²⁰¹ By this I mean those writings after and including his "Kantian constructivism in moral theory," *The Journal of Philosophy* 77 (1980), pp. 515-72.

²⁰² John Rawls, *Political liberalism* (New York: Columbia University Press, 1993), p. 217.

George Sher, *Beyond neutrality: Perfectionism and politics* (Cambridge: Cambridge University Press, 1997), p. 85.

reasonable person, or conception of the good life, as one for which there is a good case, a view which does not have obvious neutralist implications. We still do not have a convincing reason for abandoning, in the political sphere, what is obvious in our personal lives; that we ought to promote the good.

4 DEFENDING LIBERAL PERFECTIONISM

We now have some sense of what the principle of state neutrality is, how it has been defended, and what the prospects for such defences are. Let us turn for the remaining chapter to the doctrine it opposes – perfectionism – to see how the positive case for perfectionism can be made. I begin by noting two oft-cited, yet misleading, ways of looking at perfectionism which we ought to reject, and then move on to discuss the arguments of the most influential of contemporary liberal perfectionists, Joseph Raz, in making the case for the pursuit of the good in the political domain. I join Raz in arguing that political perfectionism is permissible, but I depart from him in that I deny that state support for valuable forms of life is necessary in order to preserve the autonomy of citizens. My reasons for doing so will be made clear in the sections entitled "The necessity of perfectionism" and "Raz's collectivism."

The misleading picture of perfectionism is, unfortunately, the one encountered in §50 of *A theory of justice*, where Rawls characterises what he calls "the principle of perfection" as a doctrine which appears in two variants, one more plausible than the other. The first, less plausible, version, which he associates with Nietzsche, is the view that society should 'arrange institutions and…define the duties and obligations of individuals so as to maximise the achievement of human excellence in art, science and culture.' ²⁰⁶

In fact Rawls might equally have said that what is implausible is the failure to grant anything other than the principle of perfection weight in formulating a political morality, as the second, "Aristotelian" version of the principle turns out to be the recognition that its rule is not to be absolute. Nevertheless, as Rawls sees it, the greater the weight accorded to maximising human excellence relative to other social or political desiderata, the more justified we are in terming "perfectionist" the set of principles which are presented as a political morality. 207

But we ought not to see Rawls's elucidation as definitive of perfectionism.

²⁰⁶ John Rawls, A theory of justice (Revised edition) (Oxford: Oxford University Press, 1999), pp. 285-6.

²⁰⁷ 'This more moderate doctrine is one in which a principle of perfection is accepted as but one standard among several in an intuitionist theory. The principle is to be balanced against others by intuition.' See John Rawls, *A theory of justice* (Revised edition) (Oxford: Oxford University Press, 1999), p. 286.

For one thing, perfectionism need not endorse the account of excellence attributed by him to both the Nietzschean and the Aristotelian variants. While art, science, and culture are as plausible candidates as any for those activities a perfectionist state ought to promote, there are other candidates; the godly life, and, as we shall see when we discuss Raz, the autonomous life, for example. And there could be many others.

And secondly, accepting that the state promotes the good does not entail accepting that it ought to maximise the good. A perfectionist might quite coherently hold that certain reasons count against maximising the good, while they do not count against promoting it. So perfectionism does not entail the view that the state ought to promote the good and discourage the worthless at all costs, nor does it entail the view that the state is obliged to maximise the good. 208

In contrast to Rawls, Sher presents a definition of perfectionism in opposition to subjectivism: as he sees it, any substantive ethical theory which traces all value to some combination of actual or ideal desires, choices, or enjoyments is a form of subjectivism, and any view that denies that these factors exhaust the determinants of value is a form of perfectionism. 209 But while it is clear that the forms of perfectionism discussed in this dissertation require a commitment to an ethical theory of the kind endorsed by Sher, perfectionism should be understood as more than an ethical theory. Opponents of the principle of state neutrality such as Raz, Hurka, Haksar and Arneson have in common not merely a substantive ethical position, but also the view that the special value attributed by a perfectionist ethic of the kind described by Sher to some forms of human activity or experience ought to play a part in some political decisions.²¹⁰

Raz puts it this way: '[p]erfectionism...is the view that whether or not a particular moral objective should be pursued by legal means is a question to be judged on the merit of each case, or class of cases, and not by a general exclusionary rule, as the so-called "neutralists" would have it.'211 and, further, as 'a term used to indicate that there is no fundamental principled inhibition on

²⁰⁸ Contrary to Rawls's comments in *A theory of justice* (Revised Edition) (Oxford: Oxford University Press, 1999) at pp. 285-92. ²⁰⁹ George Sher, *Beyond neutrality: Perfectionism and politics* (Cambridge: Cambridge University Press, 1997), p. 9.

To be fair to Sher, this is quite clearly acknowledged throughout Beyond neutrality, but is usually referred to therein as political perfectionism.

Joseph Raz, "Facing up: A reply" Southern California Law Review 62 (1989), pp. 1153-235 at p. 1231.

governments acting for any valid moral reason.'212 Waldron (who is not a perfectionist) says that '[p]erfectionism is...the view that legislators and officials may consider what is good and valuable in life and what is ignoble and depraved when drafting the laws and setting the framework for social and personal relationships.'213 even, we might add, when doing so is controversial. It is with this kind of understanding of perfectionism - as a political theory - that we will proceed.

Hurka's perfectionism explicitly harks back to Aristotle, Spinoza, Kant, Marx, and TH Green, 214 and he takes the good life to be a life which develops or expresses human nature by developing or expressing those qualities which are essentially human. In fact he has been primarily concerned with defending a perfectionist ethic, but has also explored the ways in which such an ethic might support a perfectionist political dispensation which, in a manner similar to that advocated by Raz, provided citizens with the wherewithal for developing and expressing those essentially human qualities (one of which is their capacity for acting freely).

As Hurka sees it, states should not work from the false assumption that 'human beings left on their own will always choose what is best'. 215 Rather, they are obliged to create the conditions which increase the likelihood that citizens will live good lives. Sher, similarly, has argued that conceptions of the good are 'often relevant to decisions about public assistance, educational policy, the criminal and civil justice system, the prison system, city planning and land use, transportation policy, the tax code, support for cultural institutions, regulation of the entertainment industry, investment incentives, and the structure of institutions such as the military – to name just a few of the more obvious candidates.'216

Of course this does not mean that any and every attempt to promote the good on the part of the state is legitimate. Wall, for example, points out that there may be many situations - such as those in which it is particularly likely that officials or institutions lack the capacity to promote the good – in which the state

²¹² Joseph Raz, "Facing up: A reply" Southern California Law Review 62 (1989), pp. 1153-235 at p. 1230.

Jeremy Waldron, "Autonomy and perfectionism in Raz's *Morality of freedom*" Southern California Law Review 62 (1989), pp. 1098-1152 at p. 1102.

 ²¹⁴ Thomas Hurka, *Perfectionism* (Oxford: Oxford University Press, 1993), p. 3.
 ²¹⁵ Thomas Hurka, *Perfectionism* (Oxford: Oxford University Press, 1993), p. 160.
 ²¹⁶ George Sher, *Beyond neutrality: Perfectionism and politics* (Cambridge: Cambridge University Press, 1997), p. 246.

does best by keeping its hands off.²¹⁷ The frequency of such situations will determine the extent to which the practical recommendations of perfectionists will differ from those of neutralists.

It will help, in clarifying what it is that perfectionists stand for, for us to make a distinction suggested (with a little modification) by a passage from Hurka. 218 This is the distinction between "philosophical" and "state" perfectionism. 219 And distinguishing between these two explains the somewhat surprising fact, which we will return to in the more detailed discussion of Raz which follows, 220 that perfectionists, despite their theoretical commitments, may, under some circumstances, recommend policies which are very close to those recommended by anti-perfectionists.

What we might call *philosophical* perfectionism is concerned with political morality at its most abstract level. Philosophical perfectionism takes the view that the amount of good produced is a factor to be weighed in judging the ultimate worth of a legal or social system; it operates at the same level of abstraction as, for example, Rawls's theory of justice, and is concerned, in other words, with what legislation, in general, is supposed to achieve. And the goods that perfectionists think a legal system should promote – goods which, of course, will differ from perfectionist theory to perfectionist theory - may or may not be promoted by actual perfectionist legislation.

If a philosophical perfectionist is of the opinion that the greatest good can indeed be promoted by perfectionist legislation, in a given society, he or she evinces a commitment to what we might call "state perfectionism." To be a state perfectionist is to argue that this particular state ought in these particular circumstances to promote the good. Taking this position entails accepting philosophical perfectionism, of course, but the reverse does not apply. A philosophical perfectionist can conceive of circumstances in which the state

²¹⁷ Steven Wall, *Liberalism*, *perfectionism and restraint* (Cambridge: Cambridge University Press, 1998), p. 15.

Thomas Hurka, *Perfectionism* (Oxford: Oxford University Press, 1993), pp. 162-3. In fact Hurka proposes in this passage a distinction between philosophical and state neutrality, but we may safely extrapolate from that to a similar distinction with regard to perfectionisms.

²¹⁹ See also Steven Wall and George Klosko, *Perfectionism and neutrality* (Lanham: Rowman and Littlefield, 2003), p.16. ²²⁰ See especially the section entitled "The contours of Rawlsian perfectionism" below.

should not attempt to promote the good. 221

As we saw in the discussion of arguments for the principle of state neutrality in chapter two, and as we will see again in the discussion of Raz, a common motivation for anti-perfectionism is the fear of perfectionist coercion. The sheer power of the state, in comparison to other bodies or institutions that might attempt to promote the good, is thought by many to threaten human freedom. I have, of course, argued in chapter two that widely deployed arguments for the principle of state neutrality, whether they are premised on the value of autonomy or on various pragmatic concerns regarding oppression or instability, are unconvincing. But I wish to argue in this chapter that this does not mean that perfectionists cannot offer principled reasons for limiting the power of the state. They can; they simply do not postulate philosophical neutrality.

What exactly are these arguments? One way in which contemporary perfectionists have attempted to assuage doubts about whether the state should be entrusted with the power to promote the good is demonstrated by Joseph Chan, who argues (as does Sher²²²) for what Wall and Klosko have called the "weak perfectionist thesis" – the simple assertion that perfectionist considerations are a legitimate basis for policy. 223 "Weak perfectionists", like Chan might reject coercive promotion of the good on the part of the state on the basis of deontological considerations, while nevertheless endorsing non-coercive methods of advancing the good.

Another way in which one might assuage these doubts is to search for reasons for limiting state power within perfectionism, as those dubbed "strong" or "liberal" perfectionists by Wall and Klosko do. 224 Strong, or liberal perfectionism, as I will refer to it, argues that autonomy, limited government, or individual freedom, can be defended on a perfectionist basis. This position is, as has already been hinted at in chapter two, typical of contemporary perfectionists. And it is to the work of the most prominent of the contemporary liberal perfectionists, Joseph

²²¹ Thomas Hurka discusses, albeit critically, what such circumstances might be in his "Indirect perfectionism: Kymlicka on indirect perfectionism," Journal of Political Philosophy 3 (1995), p. 36-57.

See George Sher, Beyond neutrality: Perfectionism and politics (Cambridge: Cambridge University Press, 1997), p. 246. See George Sher, Beyond neutrality: Perrectionism and politics (Californiage, Californiage Chiversity Fiess, 1997), p. 2-10.

223 Joseph Chan, "Legitimacy, unanimity, and perfectionism" *Philosophy and Public Affairs* 29, 1 (2000), p. 15 and Joseph Raz,
The morality of freedom (Oxford: Clarendon Press, 1986), p. 133. "Weak perfectionism" of this description also bears a close
resemblance to the "Aristotelian" perfectionism discussed by Rawls on page 286 of *A theory of justice* (Revised edition) (Oxford: Oxford University Press, 1999).

224 Joseph Chan, "Legitimacy, unanimity, and perfectionism" *Philosophy and Public Affairs* 29, 1 (2000), p. 15 and Joseph Raz,

The morality of freedom (Oxford: Clarendon Press, 1986), p. 133.

Raz, that I now turn.

4.1 Raz's defence of perfectionism

Raz has argued that there are a number of reasons perfectionists might find for limiting the power of governments. One such reason would be perfectionism's compatibility with moral pluralism. There is no reason for a perfectionist state to promote only one conception of the good life if there are in fact many ways of leading a good life. Nothing about perfectionism rules out the state's encouraging a wide range of worthwhile ways of life (other than potential incompatibilities between these ways of life, which we need not assume will always be there). There is no reason, in other words, to assume that perfectionism entails the state imposing a unified conception of the good on a recalcitrant population.

Of course acknowledging moral pluralism does not give one a decisive reason against state paternalism. A moral pluralist might, for example, take the view Plato does in *The republic*, where the state pushes citizens into the roles it deems optimal for them, regardless of whether they wish to take up these roles or not. Offsetting this possibility requires the perfectionist to understand *autonomy* itself as a good. This would mean that a state which wished to promote the good would be required, *in perfectionist terms*, to promote citizens' autonomy. And one might conclude from this that the power of the state to compel citizens in certain directions must be restricted.

We must note, however, that for the perfectionist autonomy will, on any plausible catalogue of goods, be merely *one* of a number of goods. Nor is it likely that a plausible perfectionism would accord personal autonomy the highest place in any such catalogue. Further, some perfectionists, including Raz, ²²⁷ argue that autonomy is only valuable if exercised in the pursuit of the good, which implies that the state's forbidding or discouraging worthless options cannot be ruled out. One might, strictly speaking, concede that the implementation of this kind of policy affects citizens' *autonomy*, but not, as Raz sees it, their ability to lead an

²²⁵ Joseph Raz "Liberty and trust" in Robert George (ed), *Natural law, liberalism and morality* (Oxford: Oxford University Press, 1996), pp. 113-29.

²²⁶ This point is well developed in Thomas Hurka's *Perfectionism* (Oxford: Oxford University Press, 1993), pp. 148-52 and 158-60

^{60. &}lt;sup>227</sup> See Joseph Raz, *The morality of freedom* (Oxford: Oxford University Press, 1986), pp. 378-81.

autonomous valuable life. Only the latter, thinks Raz, is a good worth promoting.

Understanding autonomy as one amongst many values, and understanding it as valuable only in pursuit of the good, as Razian perfectionism does, leaves open the question whether, for example, what has traditionally been referred to as morals legislation, is illegitimate, as most neutralists (excluding those that think the state only need be neutral with regard to *controversial* values) take it to be. By morals legislation, I mean those laws, of which there are examples in every polity, which forbid actions on the grounds of their depravity, as opposed, generally speaking, to the likelihood of their harming others. The outlawing of homosexual behaviour, for example, was usually justified on the basis of the claim that such actions are depraved. Contemporary western societies, of course, usually permit homosexual behaviour, but laws against certain fringe manifestations of sexuality are still on the statute books: bestiality, various forms of exhibitionism, incest, and extreme forms of sado-masochism are forbidden, not because of any alleged harms they impose, but because of a consensus that they are immoral, or, to use terminology more typical of the philosophical literature, a consensus that they are worthless forms of life.

Morals legislation has frequently been attacked on the grounds that whatever good it promotes is paid for in terms of citizens' autonomy. 228 And then either this cost is deemed to be too high, or, if the neutralist does not wish to deploy a consequentialist argument, the mere fact of citizens' autonomy being violated is deemed to be sufficient grounds for rejecting morals legislation. But taking the view that autonomy is one among many goods, and also that it is only valuable to the extent that it pursues the good, leaves the case against morals legislation a good deal weaker. On this view, if the forms of life morals legislation seeks to combat are worthless, any autonomy citizens express by indulging in these forms of life is not worth protecting or promoting.

Certain perfectionists do defend morals legislation in this way.²²⁹ But one might also find perfectionist reasons for resisting morals legislation. One could, for example, argue that coercive promotion of the good must be ruled out on the

²²⁸ Although of course not only on these grounds. Other arguments against morals legislation would parallel other arguments for the principle of state neutrality: one might argue, for example, that morals legislation is likely to cause social instability, oppressive, or likely to enforce unsound morals, or even that the value or worthlessness of, say, bestiality, cannot be known, although one would have to be a particularly hardy sceptic to pursue the last line of argument.

229 Robert George is an example. See his *Making men moral* (Oxford: Oxford University Press, 1993).

grounds that, or in those cases where, genuine goodness cannot be coerced. And one might argue that this is because compelled virtue is no virtue. Or one might, following Raz, argue that 'there is no practical way of ensuring that the coercion will restrict the victim's choice of repugnant options but will not interfere with other choices.' This view implies that the state's coercive combating of worthless forms of life does not diminish autonomy *per se*, but is sufficiently likely to have deleterious effects on the efforts of its victims to choose *valuable* forms of life as well for it to be an illegitimate strategy for a liberal state. Accepting these considerations would also seem to imply that as long as non-coercive state strategies are as likely to be successful in promoting the good as coercive strategies, they ought to be preferred.

In what follows in this chapter, I will outline how Raz's defence of perfectionism has two strands, one of which I defend, and one of which I reject. The first aspect of Razian perfectionism involves the arguments he presents which are designed to establish that governments are *entitled* to make policy on the basis of judgements as to the value of comprehensive conceptions of the good life. The second aspect involves the arguments he presents which are designed to show that governments are *obliged* to make policy on the basis of judgements as to the value of comprehensive conceptions of the good life: in particular, that unless governments make policy on a perfectionist basis, the autonomy of citizens will be diminished. It is Raz's contention that liberals must acknowledge the *necessity* of perfectionism, given the fundamental role the value of autonomy plays in liberal political morality. I discuss the first strand in the section below entitled "The permissibility of perfectionism" and those which follow it.

4.1.1 Raz's case for the permissibility of perfectionism

In this section I defend Raz's argument for the claim that governments are *entitled* to make policy on the basis of judgements as to the value of comprehensive

²³⁰ Joseph Raz, *The morality of freedom* (Oxford: Oxford University Press, 1986), p. 419.

²³¹ Forbidding alcohol, for example, on the basis that a life devoted to its consumption is a worthless lifestyle, might well damage all kinds of worthwhile practices – including but not limited to the arts.

conceptions of the good life. His way of making the case for this claim involves, primarily, rejecting as unwarranted two traditional concerns regarding the illiberality of perfectionism. These two concerns are, first, the alleged danger that the values of one sector of the citizenry are imposed on the rest, and, second, the alleged danger that this imposition will take the form of coercion. In what follows I will defend Raz's defusal of these concerns.

A popular motivation for anti-perfectionism is the perception that allowing comprehensive conceptions of the good into politics entails the values of some citizens being *imposed* on others with contrary values. Accordingly, neutralists have argued that a state does not treat citizens with equal respect as long as conceptions of the good are permitted to be taken into account in political decision-making, given that imposing the values of one section of the citizenry on another appears to deny citizens whose views are judged unacceptable as a basis for legislation the respect to which they are entitled.

Raz's response is to point out that, in a perfectionist dispensation

the fact that the state *considers* anything to be valuable or valueless is no reason for anything. Only it's being valuable or valueless is a reason. If it is likely that the government will not judge such matters correctly then it has no authority to judge them at all.²³²

Another way of putting this would be to say that perfectionist policies need not (or *should not*) be defended on the basis of their *provenance*, but can (or *should*) be defended on the basis of their *validity*: his claim is that perfectionist lawmakers need not say "these values should be promoted by law because they are the values of privileged caste p" but rather "these values should be promoted by law because they are the right values (and it is an uninteresting matter that the truth of this is apparent to some and not others)."

Raz's strategy, then, is to distance perfectionism from views which ground the legitimacy of laws in the *opinions* of a select body, without taking an interest in the question of the correctness of these views: Patrick Devlin holds a position

²³² Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 412.

something like this, 233 as do Rousseau-style democrats who locate the legitimacy of laws in their fidelity to the general will, or those communitarians who locate the legitimacy of laws in their fidelity to the values of the community. But Razian perfectionism does not deem laws to be legitimate on the basis that they express the views held by the appropriate body of decision-makers. A further question must be asked, namely, whether the views of those entrusted with the business of making law are likely to be valid.

It is not clear, of course, that Raz's strategy would satisfy those who remain sceptical about the capacity of governments to judge matters of the good correctly. But remaining sceptical about this on the basis of a general moral scepticism - scepticism, in other words, about anybody's capacity to know anything about morality – is a very unpromising position, however, given that it undermines the basis for any political morality. And even a general scepticism about the capacity of governments to make moral judgements leaves its advocate unable to advance the principle of state neutrality, as governments, after all, must judge whether proposed legislation is neutral or not. But, as we saw in chapter two, there are legitimate, albeit not decisive, worries about whether governments are in the best position to access knowledge of the good, such as it is to be had. Raz appears to see the force of this point when he says that

...it is possible that the appeal of anti-perfectionism is at least in part indirect. There is no way of acting, politically or otherwise, in pursuit of ideals except by relying on the judgement of some people as to which ideals are valid and imposing it on others who disagree. Those whose views are imposed on the community do not regard the fact that they hold those views as a reason for their imposition on others who reject them. They maintain that their conception of the good is valid and that is the reason which justifies its imposition. But such an action is constitutionally justified on the ground that rulers, the majority, etc. chose to act in that way, regardless of the truth or soundness of their views.'234

Raz is willing to admit, further,

the dangers inherent in the concentration of power in few hands, the dangers of

 $^{^{233}}$ Patrick Devlin, *The enforcement of morals* (Oxford: Oxford University Press, 1965). 234 Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 158.

corruption, of bureaucratic distortions and insensitivities, of fallibility of judgement, and uncertainty of purpose, and the...insufficiency and the distortion of information reaching the central organs of government.²³⁵

These are not, however, reasons for rejecting *philosophical* perfectionism. This is because holding that the fact that laws conform to the values of the lawmakers, but not the entire citizenry, means that such laws are *imposed* on dissidents, and must therefore be considered illegitimate, is to hold to an untenable position. The problem that some members of society approve of the laws and others don't is by no means a problem peculiar to perfectionism. ²³⁶ *Imposition* must mean something more nuanced than this, otherwise we must conclude that it is inescapable. And this conclusion would deprive neutralists of any "non-impositional" alternative to perfectionism.

Raz goes on to say that

[t]he pursuit of full-blooded perfectionist policies, even of those which are entirely sound and justified, is likely, in many countries if not in all, to backfire by arousing popular resistance leading to civil strife²³⁷

and that '[i]n such circumstances compromise is the order of the day...which will confine perfectionist measures to matters which command a large measure of social consensus...' These factors hamper governments in fulfilling their legitimate role of helping citizens achieve well-being, and Raz's acknowledgement that they must be taken into account may mean that there may be little ultimate difference between the policy recommendations of a Razian perfectionist and a Rawlsian anti-perfectionist. What difference there is lies in the fact that the anti-perfectionist rules out perfectionist policies in principle, while the Razian concedes merely that they may not always be strategically or tactically wise.

Vinit Haksar comments on pp. 285-6 of his *Equality, liberty, and perfectionism* (Oxford: Oxford University Press, 1979) that

Even if one takes a purely want-regarding line, there is the problem about who has the authority to impose the recommended policy, and about whose views should carry the day on what the want-regarding approach implies in practical. Even if one takes a non-perfectionist approach like that of BF Skinner...there is still the problem about whose views about what ought to be done should carry the day....He can reply to such accusations by making a distinction between recommending a policy that should be adopted by legislators and dictatorially imposing a policy. He could admit that he has no right, no authority, to impose his views by dictatorial means, but this does not prevent his views from being correct and from being deserving of implementation by the state through democratic channels.

23

²³⁵ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 427.

Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 429.
 Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 429.

A second motivation for anti-perfectionism which Raz seeks to defuse is the view that state neutrality is necessary to prevent one section of the population from *coercing* others into acting in accordance with their conception of the good life.

But as we saw in chapter two, perfectionist policy could consist in the encouragement and facilitation of action of the desired kind, or discouragement of undesired modes of behaviour — Raz mentions the possibilities of conferring honours on creative and performing artists, giving grants or loans to people who start community centres, taxing certain kinds of leisure activity (his example is of hunting). Citizens do not suffer criminal penalties for failing to become creative artists, or failing to get married, and so perfectionist policies of this nature, he argues, cannot be construed as coercion. And he argues, crucially, that there is an important difference between imposing criminal penalties on citizens for noncompliance with perfectionist laws, and using financial incentives (or disincentives) to encourage certain lifestyles and discourage others.

Many might argue, of course, that these allegedly non-coercive perfectionist methods are not importantly different from coercion, or that the difference between imprisonment, which is clearly a case of coercion, and taxation, which is less clearly so, is merely one of degree rather than kind. Even if nobody is forced to, for example, go to the theatre, everybody is obliged, on pain of coercive sanction, to pay taxes. The taxes which are used to promote the activity of theatre-going are raised coercively, and this surely means that the state is using its coercive power to enforce its judgements regarding the relative merits of various options (the theatre being held to be a valuable form of life despite its less than universal popularity).

It seems to me that the right way for Raz to defend himself on this matter is to distinguish between coercion *per se* and the state's use of its coercive power. It is clearly prospect of financial penalties or jail sentences for failing to observe officially-sanctioned religious or political dogma that causes anti-perfectionists to worry that perfectionism involves *coercion*. And it is clearly a stretch to argue that use of tax money which one would have paid anyway for purposes to which one is not entirely committed constitutes coercion – at least of a worrying kind. We might therefore deem the latter to be "the state's use of its coercive powers", and concede that, strictly interpreted, perfectionism does (as does any political

dispensation) involve the use of tax moneys for purposes which not every taxpayer can be expected to endorse. But this is a far cry from enforcing political, religious, or moral orthodoxy, and that is one of the important motivating forces behind the attachment to anti-perfectionism, not the uses of tax money.

Raz says very little about which lifestyles should be regarded as immoral, and for good reason, as his purpose in writing the book is to raise the question whether there is anything left in the liberal critique of perfectionism once we set aside the possibility that perfectionism might be deployed to support mistaken standards.²³⁹ This is better achieved by avoiding the danger that The morality of freedom be read as Raz's treatise against, for example, pornography, or some such thing. It is indeed the case that perfectionist principles are frequently invoked to call for a ban on lifestyles which some consider to be immoral, and that liberals usually counter by invoking anti-perfectionism so as to argue that the morality or immorality of, say, homosexuality, is not the state's business.²⁴⁰ Raz's perfectionism, however, would afford one the stronger response of saying that, for example, homosexuality is not immoral at all.

Razian perfectionism must be distinguished from legal moralism of the kind advocated by Patrick Devlin, who argued that

the law-maker is not required to make any judgement about what is good and what is bad. The morals which he enforces are those ideas about right and wrong which are already accepted by the society for which he is legislating and which are necessary to preserve its integrity...Naturally he will assume that the morals of his society are good and true; if he does not, he should not be playing an active part in government. But he has not to vouch for their goodness and truth.²⁴¹

This is a conservative rather than a perfectionist view, given that Devlin regards (one of) the purpose(s) of morals legislation as the maintenance of society's integrity, by which he means the maintenance of the particular moral community it happens to be, regardless of whether this can be justified in any objective sense.

²³⁹ Jeremy Waldron, "Autonomy and perfectionism in Raz's Morality of freedom," Southern California Law Review 62 (1989), p. 1130.

240 See Michael Sandel's introduction to his edited collection *Liberalism and its critics* (Oxford: Blackwell, 1984).

241 Patrick Devlin, *The enforcement of morals*, (:,1965).

Raz's view does show conservative tendencies, in that his perfectionism obliges the state to defend worthwhile social practices, and in that it is not implausible to suppose that it makes more sense to defend established worthwhile social practices rather than create new and unfamiliar ones. However, his view differs from that of Devlin in that a Razian state *does* vouch for the goodness and truth of the social practices it supports. Indeed, a Razian state only has legitimate authority to the extent that it *can* vouch for the value of these practices. And, of course, the question whether a state could indeed possess such competence is much in dispute.

Raz believes it could, and he believes that the grounds on which state decisions about the good should be made are exactly the same grounds as those upon which state decisions about the right should be made. His perfectionism, like any version of perfectionism, is willing to countenance legislation in support of distinctive conceptions of "wide morality" – principles, in other words, regarding the constitution of a 'successful, meaningful, and worthwhile life' – regardless of whether the interests of one's fellow citizens are directly involved or not. And this is where anti-perfectionism must part company with Raz.

Anti-perfectionists are especially preoccupied with the state because of the coercive power it holds. Both Max Weber and Locke understood the state primarily in terms of the means at its disposal. As Weber saw it, 'the state cannot be defined in terms of its ends...Ultimately, one can define the modern state sociologically only in terms of the specific *means* peculiar to it, as to every political association, namely, the use of physical force.'²⁴³ Locke's view was that 'the care of souls cannot belong to the civil magistrate, because his power consists only in outward force'²⁴⁴

Raz, on the other hand, has never seen the use of force as the defining characteristic of legal orders, preferring to see the generality of its claim to authority as the state's definitive feature, and it is against this background that we should understand his lack of squeamishness regarding the possibility of non-

²⁴³ 'Politics as a vocation' in H Gerth & C Mills (eds) *From Max Weber: Essays in sociology* 77 at 77-8 1946

²⁴² Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 213.

²⁴⁴ "A letter concerning toleration" in *Two treatises of government* and *A letter concerning toleration* (New Haven: Yale University Press, 2003).

coercive perfectionist policy-making on the part of the state. As he sees it, there can be no objection to the state's pursuing perfectionist goals if such means as, for example, taxing some kind of leisure activities, subsidising others, or conferring public honours on certain exemplary citizens, or using education to encourage certain kinds of activities judged to be noble, are employed.

However, traditional liberals are not likely to be convinced, as their worries about perfectionism are connected to the widely-held view that the state is distinguished by its monopoly on the use of force. Many would argue that the generality of the state's claim to authority is not, as Raz suggests, unique. Institutions such as the Roman Catholic Church make the same sorts of claim to general authority as those made by states – the difference between the authority of the state and the authority of the Roman Catholic Church is that the former, possessing those divisions of which the Pope has none, is much more likely to be obeyed. If this is so, then the government's ability to do anything rests, ultimately, on its coercive powers, and we should therefore be sceptical about claims about the allegedly non-coercive nature of policies. 245

Raz specifies that state coercion is legitimate only under certain tightlycircumscribed conditions - conditions which he takes to be the same as those under which Mill sanctioned state coercion. Raz's version of the harm principle, however, specifies that harm to autonomy is what legitimate state coercion is aimed at. 246 In other words, he allows that the state may coerce me so as to prevent an unacceptable diminution in my autonomy or the autonomy of another, but he explicitly rules out the use of coercion as a means of stamping out immoral or worthless forms of life:

A moral theory which values autonomy highly can justify restricting the autonomy of one person for the sake of the greater autonomy of others or even of that person himself in the future. That is why it can justify coercion to prevent harm, for harm interferes with autonomy. But it will not tolerate coercion for other reasons. The availability of repugnant options, and even their free pursuit by individuals, does not detract from their autonomy. Undesirable as these conditions are, they may not be

²⁴⁵ Jeremy Waldron, "Autonomy and perfectionism in Raz's Morality of freedom," Southern California Law Review 62 (1989), pp. 1139-40.

Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), pp. 413-4.

curbed by coercion.²⁴⁷

We should note, though, that Raz's reluctance to sanction coercion in the name of perfectionist ideals is pragmatic, rather than principled, and applies only to those forms of coercion which are broad and indiscriminate invasions of the autonomy of the coerced individuals:

[C]oercion by criminal penalties is a global and indiscriminate invasion of autonomy. Imprisoning a person prevents him from almost all autonomous pursuits. Other forms of coercion may be less severe, but they all invade autonomy, and they all, at least in this world, do it in a fairly indiscriminate way. That is, there is no practical way of ensuring that the coercion will restrict the victim's choice of repugnant options but will not interfere with their other choices.²⁴⁸

If such "smart" coercion became available in the future, Raz would have no objections to its use, as removing the option of harmless depravity from peoples' lives does not damage, in any sense that matters, the autonomy of those who would otherwise have participated in it.

4.1.2 The necessity of perfectionism: Raz's fundamental premises

I move now from Raz's *defusal* of widespread worries about perfectionism to his positive argument for the claim that governments *are obliged to* make policy on the basis of judgements as to the value of comprehensive conceptions of the good life. This is a more complex matter, and, although I find myself in agreement with Raz over much of this argument, I do not in the end believe that he establishes that the liberal commitment to the value of autonomy not only *permits*, but also *requires* state perfectionism. My reasons will be made more explicit in the section entitled "Raz's collectivism".

In outlining the argument with which he attempts to establish this, we begin with three premises. Firstly, Raz holds that well-being is success in the

Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 419.
 Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), pp. 418-9.

autonomous pursuit of a valuable form of life (or of valuable forms of life). I deal with the implications of this premise in the section entitled "Well-being and autonomy".

Secondly, he argues that the justification of political authority lies in its capacity to enable citizens better to act for the reasons that apply to them than they would be in the absence of the authority. I deal with the implications of this premise in the section entitled "The justification of authority". Thirdly, he holds that the various forms of life through which we pursue our well-being are social in nature – they depend on collective goods for their continued existence. I deal with the implications of this premise in the section entitled "Raz's collectivism". And it is here, as I will indicate, that the argument stumbles.

4.1.3 Well-being and autonomy

Raz's first premise – that well-being is success in the autonomous pursuit of a valuable form of life – derives from his rejection of moral scepticism, in that he holds that no well-being can issue from the pursuit of a worthless form of life, regardless of whether the agent takes it to be valuable or not. The mere fact of having been chosen is not sufficient to confer value on a form of life.

It is also the case, however, according to Raz, that well-being cannot be derived from unchosen pursuits. Autonomous choice is essential to well-being, and so, given that everyone has a fundamental interest in well-being, we may conclude that everyone has a strong interest in autonomy.

This interest is sufficiently strong, as Raz sees it, to impose on everyone an obligation to promote and maintain the conditions of autonomy – those social conditions without which individual autonomy would not be possible. This obligation Raz terms "the principle of autonomy".

Raz's commitment to the view that well-being is success in the autonomous pursuit of valuable forms of life also entails the conclusion that autonomy is only valuable in pursuit of the good, as the value of autonomy must lie in its contribution to our well-being, and well-being cannot issue from the pursuit of

worthless forms of life.

It follows that, in promoting the conditions of autonomy, which include, amongst others, the existence of an adequate range of choices, the state is under no obligation to maintain worthless forms of life, as, even if one's autonomy is enhanced by the existence of such forms of life (and Raz is hard to pin down on this question), one's well-being cannot be. Raz therefore understands the existence of an adequate range of *valuable* forms of life as a condition of autonomy.

Raz opposes moral scepticism. He holds not only that well-being is derived solely from valuable ways of life, but also that it is possible to know which ways of life are valuable and which are not, and further, that it is acceptable for the state to act on such knowledge.

It follows from this position that the good life must be a life which the agent has good reason to value – and that this is something about which it is possible to be mistaken. To the suggestion that nothing can be known on moral matters, Raz responds by saying that if this is so, then the wrongness of perfectionism cannot be known either. It is clear that no liberal, not even of the anti-perfectionist persuasion, could coherently be sceptical about *all* moral judgements, as doing so would leave unclear the basis for defending the standard liberal doctrine that everyone ought to be free to pursue their own conception of the good life.

The Razian view is that, because our goals and desires are not arbitrary – because we make our choices on account of the *value* we think they have²⁵⁰ – our ideals must be understood as reason-dependent. And, in so understanding them, we must concede that their value is not determined (entirely) by ourselves, and that we may therefore be mistaken about them, leaving open the possibility that others may be in a position to draw our attention to our misguided reasoning.

Raz takes it as axiomatic that individuals have a fundamental interest in personal well-being, the pursuit of which he distinguishes both from that of self-interest and from the satisfaction of preferences. One ought to, he argues, understand self-

Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 160.
 Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), pp. 411-2.

interest as relating primarily to one's biological needs, whereas well-being 'depends on the value of [one's] goals and pursuits,'251 and can come about only from the successful pursuit of autonomously chosen, valuable, comprehensive goals.252

The value of such goals is not conferred merely by the fact that somebody regards them as valuable. In fact, claims Raz, the '[s]atisfaction of goals based on false reasons does not contribute to one's well-being.'253 However, well-being is nevertheless dependent on how good one's life is from one's own point of view, 254 in that one has personal reasons for action which flow from the comprehensive goals which one has chosen. The pursuit of goals one has not chosen, or goals one is compelled to pursue, cannot result in well-being.

Comprehensive goals are necessary for well-being in that they provide us with what Raz calls "action reasons" - reasons we have to undertake certain endeavours, as opposed to simply enjoying their outcomes. Our well-being arises from participation in the endeavours which provide our lives with meaning, and our autonomy is realised in that we have the particular action reasons we do on account of the particular comprehensive goals we choose. 255

Raz argues further that the importance of action reasons for our well-being implies the incommensurability of the comprehensive goals from which these reasons arise. Without having already adopted a comprehensive goal, one lacks, as Raz puts it, 'any grounds for judging a career as a graphic designer to be intrinsically better or worse for those engaged in it than a career as a livestock farmer or a gliding instructor, assuming that they are likely to be equally successful and content in them.'256 The fact that one has adopted a particular set of goals, and therefore

care[s] about one thing rather than another determines to a considerable degree what is in [one's] interest and what is not. Therefore we cannot rank options by their

²⁵¹ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 298.

Raz understands comprehensive goals to be those goals which pervade one's life in the widest-ranging manner, forming the context in which one pursues lesser goals. Examples of the contexts in which comprehensive goals would be situated are marriage or the structure of a given profession, or the structures of politics in a given society.

Joseph Raz, The morality of freedom (Oxford: Clarendon Press, 1986), p. 301.

Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 299.

254 Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 300.

²⁵⁶ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 343. This is his so-called "Incommensurability thesis", which argues further that incommensurability is pervasive within our culture and hence integral to the structure of practical reasoning. See also WJ Waluchow, "Critical notice of Joseph Raz's *The morality of freedom*," *Canadian journal of philosophy* 19 (1989), p. 485.

contributions to our well-being. The conditions of our well-being, we might say, were not yet created. They are determined by our choices, and therefore they can guide our choices only to a limited extent. In large measure the direction is the other way: our choices determine our well-being. At that stage indeterminacy reigns, for many of the options are incommensurate, and reason cannot advise us how to choose between options which are incommensurate, except to tell us to avoid those we are unlikely to succeed in.257

Since it is frequently impossible to pursue various options simultaneously, and since these options typically only acquire value for us through actually being pursued, we find that we are not in a position to compare them.

One of the political implications of incommensurability is that governments are in an equally unpromising situation with regard to making such comparisons. Raz will argue that the best they can do is to maintain, in the interest of personal autonomy, a range of acceptable social forms from which people can choose, and thereafter derive well-being.²⁵⁸

If well-being is primarily determined by success in the pursuit of valuable, sociallydefined goals, we can understand the morally good person as one whose prosperity is so intertwined with the pursuit of worthy goals which advance the well-being of others that it is impossible to separate their personal well-being from their moral concerns.²⁵⁹

In fact Raz anticipates that, if the state supports a sufficiently wide range of valuable options from which citizens may choose their comprehensive goals, it will be

easy for people generally...to choose for themselves goals which lead to a rough coincidence in their own lives of moral and personal concerns...By being teachers, production workers, drivers, public servants, loyal friends and family people, loyal to their communities, nature loving and so on, they will be pursuing their own goals, enhancing their own well-being, and also serving their communities and generally

²⁵⁸ WJ Waluchow, "Critical notice of Joseph Raz's *The morality of freedom*," *Canadian journal of philosophy* 19 (1989), p. 484. ²⁵⁹ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 320.

²⁵⁷ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 345.

living in a morally worthy way.²⁶⁰

As one might expect, however, anti-perfectionists deny that the pursuit of personal well-being is quite so inseparable from the promotion of social values which benefit the whole community.²⁶¹

Two further premises in Raz's argument for perfectionism are derived from the claim that well-being is the successful pursuit of autonomously chosen valuable forms of life. I begin below with the first – that autonomy is necessary for well-being. This will involve a discussion of what Raz takes autonomy to be, as well as a discussion of what he takes the social conditions of autonomy to be. I turn in the section below entitled "Raz's collectivism" to the second premise which is based on Raz's understanding of well-being: that autonomy is valuable only in pursuit of the good.

Despite the consensus that freedom is an important value, there are aspects of it which remain obscure, and controversies have arisen around the question of what precisely it is that makes us unfree.

For example, being physically prevented from doing something I wish to do seems to be the perfect example of the loss of freedom. But even cases such as this are less straightforward than they seem at first blush, for we might want to ask whether the desire which we are being prevented from fulfilling is one which was freely acquired, and/or whether its fulfilment might lead to enslavement.

And there are many more complicated cases: Do I lose my liberty when fear prevents me from acting? Does it matter whether the fear is well-grounded or not? Do poverty and ignorance deprive people of liberty? The difficulty of deciding whether *freedom* is what is being lost in these cases has given rise to the by now familiar distinction between negative conceptions of liberty – whereby freedom is understood purely as the absence of constraints – and positive conceptions of liberty, in which the "freedom *to*" pursue certain values is emphasised, as opposed to "freedom *from*" constraints. ²⁶²

²⁶¹ See, for example, Richard Bellamy, in his "Review of Joseph Raz's *The morality of freedom*" *History of European Ideas* 9 (1988) p. 746

²⁶⁰ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 319.

^{(1988),} p. 746.

262 The classic discussion of these two ways of looking at freedom is to be found in Isaiah Berlin's essay 'Two concepts of liberty' in his *Four essays on liberty*, (Oxford: Oxford University Press, 1969), pp. 118-72.

Raz's understanding of autonomy is closer to the idea of "positive freedom", but it does not suggest that freedom from interference is valueless. It should rather be understood as showing us which liberties are worth pursuing and which are unimportant, as well as showing why freedom requires that citizens have rights to certain services – education, for example – without which our freedom from interference would be less than satisfactory.

Raz understands autonomy, first and foremost, as the ideal of people being (in part) authors of their own lives, ²⁶³ as opposed to living lives of coerced choices ²⁶⁴, and 'the vision of people controlling, to some degree, their own destiny, fashioning it through successive decisions throughout their lives'. ²⁶⁵ The autonomous person's life is

marked not only by what it is but also by what it might have been and by the way it became what it is. A person is autonomous only if he had a variety of acceptable options available to him to choose from, and his life became as it is through his choice of some of these options. A person who has never had any significant choice, or was not aware of it, or never exercised choice in significant matters but simply drifted through life is not an autonomous person.²⁶⁶

Looking at autonomy this way is of course not startlingly original. Rawls describes personhood as '...a human life lived according to plan'²⁶⁷ and writes that '...an individual says who he is by describing his purposes and causes, what he intends to do in his life.'²⁶⁸ He notes further that

[t]he main idea is that a person's good is determined by what is for him the most rational long-term plan of life given reasonably favourable circumstances...We are to suppose, then, that each individual has a rational plan of life drawn up subject to the conditions that confront him. This plan is designed to permit the harmonious satisfaction of his interests. It schedules activities so that various desires can be fulfilled without interference. It is arrived at by rejecting other plans that are either less

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²⁶³ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 370.

Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 371.

Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 369.

Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 204.

²⁶⁷ John Rawls, *A theory of justice* (Revised Edition) (Oxford: Oxford University Press, 1999), p. 408. John Rawls, *A theory of justice* (Revised Edition) (Oxford: Oxford University Press, 1999), p. 408.

likely to succeed or do not provide for such an inclusive attainment of aims. 269

Raz is concerned to emphasise, however, that autonomy does not entail the implausible requirement that one live one's life from beginning to end according to a plan. His view is that

the ideal of personal autonomy is not to be identified with the ideal of giving one's life a unity...The autonomous life may consists of diverse and heterogeneous pursuits. And a person who frequently changes his tastes can be as autonomous as one who never shakes off his adolescent preferences.²⁷⁰

Although the pursuit of goals does require some sensitivity to the past,²⁷¹ we do not need to be committed to projects which define the worth of our entire lives in order to be pursuers of goals in the sense necessary for us to be autonomous beings. Lesser goals will also suffice – and, indeed, an overly rigid life may be an indication of a *lack* of autonomy.

Raz is careful to stress that the autonomous person is *part* author of his or her life. A life is always lived in the face of basic needs, and in the midst of other people, who provide for one the materials out of which one's life is to be created. Autonomy is not compromised by the mere fact of having needs to satisfy – it is compromised by (amongst other things) the absence of choices as to how these needs will be satisfied. Raz at times seems to suggest that *all* our autonomous activities involve the satisfaction of needs, although they will often be less basic needs, such as the 'drives to move around, to exercise our bodies, to stimulate

²⁶⁹ John Rawls, *A theory of justice* (Revised Edition) (Oxford: Oxford University Press, 1999), pp. 92-3. Nozick makes a similar point in *Anarchy, state and utopia* (New York: Basic Books, 1974), pp. 49-50, where he argues that what is important about the idea of a person, is that it is the idea of

a being able to formulate long-term plans for its life, able to consider and decide on the basis of abstract principles or considerations it formulates to itself and hence not merely the plaything of immediate stimuli, a being that limits its own behaviour in accordance with some principles or picture it has of what an appropriate life is for itself and others...operating in terms of an overall conception of it life and what it is to add up to...What is the moral importance of this...ability to form a picture of one's whole life (or at least significant chunks of it) and to act in terms of some overall conception of the life one wishes to lead?...I conjecture that the answer is connected with that elusive and difficult notion: the meaning of life. A person's shaping his life in accordance with some overall plan is his way of giving meaning to his life; only a being with the capacity to so shape his life can have or strive for a meaningful life.

²⁷⁰Joseph Raz *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 370-1.

²⁷¹ See Robert Nozick, *Anarchy, state and utopia* (New York: Basic Books, 1974), p. 387 'Our life comprises the pursuit of various goals, and that means it is sensitive to our past.'

our senses, to engage our imagination and our affection, to occupy our mind.'272

Satisfying our needs provides us with reasons for action. But Raz also asserts that in adopting particular goals (such as deciding to pursue certain interests), individuals acquire reasons for action that they would not otherwise have had.²⁷³ And it is in these reasons for action, peculiar to themselves, that their autonomy can be seen, in that having reasons for action which they would not have had, were it not for the goals they have adopted, they determine how they will satisfy their needs, even though they cannot change the fact that they have (certain basic) needs.

Unfulfilled basic needs are nevertheless usually detrimental to one's autonomy. As Raz puts it, 'the autonomous agent is one who is not always struggling to maintain the minimum conditions of a worthwhile life.'274 Choices made under such conditions do not reflect the particular person one is - they cannot be said to reveal authorship. One might respond by suggesting that one's true colours are revealed in difficult times. This is hard to dispute, but leaving the matter there misses the subtlety of Raz's point. Hard times may reveal character – both in the sense of the capacity to remain steadfast, and in the sense which refers to the particular constellation of characteristics displayed by individuals. But neither sense conveys precisely the quality of authorship which Raz sees as essential to autonomy. And he is surely right here - one may be of strong character, and one may be unique, but neither of these qualities is identical to or necessary for autonomy.

Raz also warns against 'over-intellectualised conceptions of autonomy' 275, arguing that an autonomous choice need not be fully articulable, nor defensible in terms of reasons that would apply to everyone, at the time it is made. He argues that in many cases the most important projects in the life of an autonomous person are just as likely to be acquired, or discovered, as they are to be chosen by an act of conscious deliberation.

²⁷² Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 375.

Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 300.

274 Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 155.

275 Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 371.

Echoing the work of Sher, 276 John Christman, 277 and Harry Frankfurt, 278 it is not how such projects were initially acquired that matters for autonomy in Raz's view, but their conscious and wholehearted pursuit. We should understand the autonomous person as one who, being already in possession of certain projects, however acquired, regards themselves as having reasons either to persist with these projects or to abandon them. Furthermore, autonomous people choose amongst the projects they've acquired on the basis of reasons which they continue to use in their practical deliberations, and they identify with the choices they have made.

It is likely that some of these reasons we have for pursuing our choices will be impersonal – ie that they could in principle apply to anyone – but, as noted above, it is also likely that many of them will arise from having made the choice in the first place. As Raz puts it:

The emerging picture is of interplay between impersonal, ie choice-independent reasons which guide the choice, which then itself changes the balance of reasons and determines the contours of that person's well-being by creating new reasons which were not there before. This interplay of independent value and self-creation of value by one's actions and one's past provides the clue to the role of the will in practical reasoning.279

We see here how choosing autonomously is a way of creating oneself, as in doing so we create new reasons for future choices, and we are who we are at least partially through the reasons we have for our choices.

Some critics of liberalism, such as Michael Sandel, have argued that liberal political theory presupposes the existence of a self that stands at a certain distance from its own interests, a self that can reconsider its commitments without calling its own existence into question. 280 But the conception of the person evident

Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 389.

²⁸⁰ On page 62 of *Liberalism and the limits of justice* (Cambridge: Cambridge University Press, 1982), Sandel says that

[o]ne consequence of this distance is to put the self beyond the reach of experience, to make it invulnerable, to fix its identity once and for all. No commitment could grip me so deeply that I could not understand myself

²⁷⁶ See George Sher, *Beyond neutrality: Perfectionism and politics* (Cambridge: Cambridge University Press, 1997), pp. 61-5. See also my remarks in chapter two on the argument from the value of autonomy to the principle of state neutrality.

²⁷⁷ John Christman, "Autonomy and personal history." *Canadian journal of philosophy* 21 (1991), pp. 1-24.

John Christman, "Autonomy and personal history," Canadian journal of philosophy 21 (1991), pp. 1-24. Harry Frankfurt, *The importance of what we care about* (Cambridge: Cambridge University Press, 1988).

in Raz's view of autonomy is not one to which typical communitarian critiques of liberalism can easily apply.

Far from regarding commitments to conceptions of the good as detachable from the self, Raz's understanding of autonomy in fact *requires* such commitments, as the following passage makes clear:

(Significantly) autonomous persons are those who can shape their life and determine its course. They are not merely rational agents who can choose between options after evaluating relevant information, but agents who can in addition adopt personal projects, develop relationships, and accept commitments to causes, through which their personal integrity and sense of dignity and self-respect are made concrete. Persons who are part creators of their own moral world have a commitment to projects, relationships, and causes which affect the kind of life that is for them worth living.²⁸¹

Further on he notes that autonomous people may have commitments, the betrayal or compromise of which would render their lives 'worthless or even impossible (in a moral sense)'. Such commitments may be regarded as constitutive of the identities of those concerned – in other words commitments they cannot imagine themselves being without. Moreover, as we will see shortly, Raz regards the ability to maintain intimate relationships and form personal attachments, as well as the characteristic of stability, as conditions of autonomy.

And once one has taken up certain relationships or projects, one's subsequent reasons for action are changed:

Saying 'I want to...' can be a way of indicating that one is committed to a project, that one has embraced a certain pursuit, cares about a relationship. It is...part of a valid reason for action, once the initial commitment has been made. In this usage it does not signify the existence of a particular mental state, a desire. It signifies a commitment, deep or shallow, to a pursuit, which may be limited or lasting or comprehensive.²⁸³

without it. No transformation of life purposes and plans could be so unsettling as to disrupt the contours of my identity. No project could be so essential that turning away from it would call into question the person I am.

²⁸¹ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 155.

Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 155.

Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 389.

For the autonomous person, as Raz sees it, choices already made create the framework for future (autonomous) choices. The goals they choose determine the ways in which their autonomy is worked out. Clearly, a view of this kind cannot be construed as guilty of the (allegedly) typical liberal error of regarding the self as necessarily detached from his or her commitments.

Waldron comments that although liberals may deny, in some uninteresting metaphysical sense, that a commitment makes a difference to our essential beings, Raz has helped to show how our commitments make a great difference indeed to our goals, our reasons for action, and the way we see ourselves. Furthermore, says Waldron, he does this without neglecting either the part our own choices play in these commitments, or the sense we have that we could revise these commitments if we so chose. 284

Now that we have some idea of what the autonomous life is, let us look at the conditions which are necessary before individuals enjoy the possibility of living such a life. Raz goes to some lengths to emphasise the social nature of these conditions. For the time being I will simply note this position, as I engage in a fuller discussion of its implications in the section below entitled "Raz's collectivism".

The three conditions of autonomy are, according to Raz, 285 firstly, the mental abilities to form intentions of a sufficiently complex kind, secondly, freedom from coercion and manipulation, and, thirdly, the availability to the agent of an adequate range of valuable options.

In discussing the first condition, Raz lists a number of attributes of persons which we value on account of their contribution to the autonomous life - attributes without which individuals would have no capacity for autonomy. The list includes cognitive abilities such as 'the power to absorb, remember and use information, 286 character traits such as stability, loyalty and the ability to form personal attachments and to maintain intimate relationships, 287 as well as conditions such as basic health and physical well-being.

²⁸⁴ Jeremy Waldron, "Autonomy and perfectionism in Raz's Morality of freedom" Southern California Law Review 62 (1989), p.

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&</sup>lt;sup>285</sup> Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 372-3.
²⁸⁶ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 408.
²⁸⁷ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 408.

This first condition of autonomy is uncontroversial. Even anti-perfectionists are likely to argue, consistently with an opposition to perfectionism, that the state has a duty to provide people with the necessary basis for them to make their own, autonomous, choices – and this may involve taxation to raise funds for education and so on. Arguing that education and health are preconditions for the ability to make truly autonomous choices is hardly controversial, and even arguing that a certain level of prosperity is necessary for autonomy does not necessarily fall foul of the anti-perfectionist principle that the state refrain from judging the merit of different lifestyles.

Raz's list of the capacities necessary for autonomy is of course disputable. It includes such features as the capacity for loyalty which, anti-perfectionists may argue, blurs the distinction between the conditions for and the objects of choice. The perfectionist may well respond that recognising that certain objects of choice cannot be autonomously chosen (as Mulhall and Swift put it, that 'not just any choice can count as an autonomous one'288) calls the distinction into question. And the distinction might also be called into question in the opposite way. An antiperfectionist argument which, for example, suggested that state subsidies for the arts promotes the capacities necessary for the autonomous life, would be hard pressed to deny that the superior value of the arts is one of its premises.

Even less likely to be disputed by anti-perfectionists is Raz's second condition of autonomy: that of freedom from coercion and manipulation, given that negative freedom, in the Hobbesian sense, 289 appears to be a necessary condition of autonomy, even if not obviously a sufficient one. One could not be considered autonomous in circumstances in which one's desires or decisions had no impact on what one could do.

Unfortunately, however, it is unclear that the mere fact of being coerced does indeed mean that one's desires or decisions have no impact on one's actions. It is at least plausible to suggest that, when threatened with harm, one chooses to comply with the threatener's wishes.²⁹⁰ And the suggestion that what defines

Joseph Raz, The morality of freedom (Oxford: Clarendon Press, 1986), p. 151.

²⁸⁸ Stephen Mulhall and Adam Swift, *Liberals and communitarians* (2ed) (Oxford: Blackwell, 1996), p. 275.

See Thomas Hobbes, Leviathan (Harmondsworth: Penguin, 1982), p. 261, where he says that '[L]iberty, or Freedome, signifieth (properly) the absence of Opposition; by Opposition, I mean external Impediments of motion'.

coercion is that one regrets having to make the choice will not work either, as it appears to cover a range of situations, many of which we would not regard as coercion.

Raz regards any choice following directly from the need to preserve one's bodily integrity as a heteronomous one – whether the result of coercion, threat or poverty.²⁹¹ He goes on to observe that threats to destroy the projects or relationships which are central to our lives are also coercive, and therefore also destructive of autonomy.

Furthermore, he notes that

[t]he natural fact that coercion and manipulation reduce options or distort normal processes of decision and the formation of preferences has become the basis of a social convention loading them with meaning regardless of their actual consequences. They have acquired a symbolic meaning expressing disregard or even contempt for the coerced or manipulated people.²⁹²

On this view, I may show *disrespect* for your autonomy by threatening you, even if I don't actually diminish it. I might do this by threatening dire consequences for you if you do not do something you in fact wanted to do, for good reasons, anyway. We'll see later that Raz's opposition to the use of coercion in the pursuit of valid moral ideals requires this particular understanding of disrespect.

Raz distinguishes manipulation from coercion by postulating that the former 'perverts the way [a] person reaches decisions, forms preferences or adopts goals,'293 whereas the latter reduces one's options by associating unbearable costs with the options one would otherwise wish to pursue.²⁹⁴

Raz's analysis of manipulation is far less detailed than his analysis of coercion. What he does clarify is that, like coercion, manipulation is a threat to personal autonomy. He also makes clear that manipulation can be an insult to autonomy, much in the way that threats are, and that the political use of manipulation should face the same restrictions as the political use of coercion.

Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 378.

²⁹³ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 377-8.

²⁹¹ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 156.

²⁹⁴ Jeremy Waldron, "Autonomy and perfectionism in Raz's Morality of freedom," *Southern California Law Review* 62 (1989), p.1117.

However, as we'll see when we come to discuss the shape of Razian perfectionism, critics may well suspect that, even if the perfectionist state's promotion of morally valuable options can escape the charge of coercion, the charge of manipulation is less easily evaded. A defence against this charge would require more explication than Raz gives.

Let's look, for the time being, at what he does say on the subject. Firstly, one may regard manipulation as an invasion of autonomy on the grounds that it interferes with what Raz calls the *inner capacities* necessary for autonomy.²⁹⁵ If certain possibilities are deliberately concealed from one so as to ensure that one chooses a particular option rather than others, then clearly one cannot be said to be making an autonomous choice.²⁹⁶ Choices made under such conditions cannot be said to be one's *own* choices.

Unfortunately, though, the matter of deciding which desires have been artificially induced, and are therefore indicative of the manipulation of the agent, is a tricky one. Firstly, in order to ascertain whether manipulation has taken place or not, one needs to know what desires the agent would have had, had the alleged manipulation not taken place. Obviously, it is not clear how one might know this.²⁹⁷

And, as if this were not bad enough, someone like Raz, who holds that the reasons which make a preference autonomous may stem from the fact that the preference has been adopted, faces a yet more complex problem in attempting to distinguish manipulated desires from unmanipulated ones. Raz quite correctly acknowledges the fact that none of our preferences are adopted wholly independently of other people, hence his view that autonomous desires are those which we currently embrace on the basis of our evaluative capacities. And the

[s]ome of these concern cognitive capacities, such as the power to absorb, remember and use information, reasoning abilities, and the like. Others concern one's emotional and imaginative make-up. Still others concern health, and physical abilities and skills. Finally, there are character traits essential or helpful for a life of autonomy. They include stability, loyalty and the ability to form personal attachments and to maintain intimate relationships.

A may exercise power over B by getting him to do what he does not want to do, but he also exercises power over him by influencing, shaping or determining his very wants. Indeed, is it not the supreme exercise of power to get another or others to have the desires you want them to have – that is, to secure their compliance by controlling their thoughts and desires?

²⁹⁵ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), pp. 407-8. In this passage, he says that

²⁹⁶ Steven Lukes, in his *Power: A radical view*, (1974), expresses how manipulation might be a very serious violation of autonomy indeed when he says

²⁹⁷ Jeremy Waldron, "Autonomy and perfectionism in Raz's Morality of freedom," *Southern California Law Review* 62 (1989), p. 1118.

reasons we have for embracing these goals might, of course, be reasons which we would have regardless of the interference of others, but then again they might not. The fact that our preferences derive *initially* from the interference of others in our lives cannot then serve, for Raz, as an indication of their heteronomy.²⁹⁸

Furthermore, Raz has argued that personal autonomy is not possible outside of certain social conditions, conditions which are fragile and therefore require deliberate action to maintain them. Given that Raz will argue that we have a duty to create the conditions of autonomy for others, it may (not infrequently) be the case that we are duty bound to interfere in the lives of others in the interests of their autonomy. This, of course, leaves Raz unable to regard deliberate interference as necessarily indicative of manipulation.

Nor can he simply define manipulation as interference which creates the likelihood of bad choices on the part of the person interfered with – although such interference will certainly count as manipulation. But he needs to be able to offer an account of manipulation which allows for the possibility of the manipulative inculcation of virtue, which is, like the coercive inculcation of virtue, damaging to autonomy, ²⁹⁹ and this means that the moral quality of the choices resulting from interference cannot be the standard by which we judge whether the interference is manipulative or not.

Defining manipulation as the inculcation of false beliefs is equally problematic, as there are many cases in which we simply cannot tell what the merits of a belief are apart from the allegedly manipulative efforts to establish merits for it. Waldron uses the example of the symbolic loading of an option to make this point.³⁰⁰

If I wish, for example, to attempt to establish a certain way of being as "authentically x" – for example if I were to manage an election campaign with the intention of inculcating the belief that voting for the African National Congress is the authentically South African thing to do – is there some way of working out what the *genuinely* authentically South African thing to do would be apart from the social meanings with which this option has been and is being endowed? It's hard

²⁹⁸ Jeremy Waldron, "Autonomy and perfectionism in Raz's Morality of freedom," *Southern California Law Review* 62 (1989), pp. 1118-9

Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 420.
 Jeremy Waldron, "Autonomy and perfectionism in Raz's Morality of freedom," *Southern California Law Review* 62 (1989) p. 1120. The general point is Waldron's, the specific examples my own.

to see how even Raz could believe that there is. But if attempting to create the aura of authentic South Africanness around the African National Congress is *not* manipulation, then one might ask why attempting to create the aura of machismo around Marlboro cigarettes is.

Raz's third condition of autonomy requires the availability to the agent of an adequate range of valuable options, and this is where we come to the real controversy.

Autonomy is not possible without a society which ensures that the choices available to its members 'include options with long term pervasive consequences as well as short term options of little consequence.'301 We should also, according to Raz, 'be able both to choose long term commitments or projects and to develop lasting relationships and be able to develop and pursue them by means which we choose from time to time. It is intolerable that we should have no influence over the choice of our occupation or of our friends.'302 Moreover, '[t]o be autonomous and to have an autonomous life, a person must have options which enable him to sustain throughout his life activities which, taken together, exercise all the capacities human beings have an innate drive to exercise, as well as to decline to develop any of them.'303

While one can imagine anti-perfectionists accepting that autonomy isn't possible in the presence of coercion and manipulation, or in the absence of certain basic capacities, it is clear that anti-perfectionists must part company with Raz with regard to his third condition. The claim that the state has the duty to use its coercive powers so as to secure an adequate range of *valuable* options implies that the state must act on judgements as to the value of certain options, and this is not a position anti-perfectionists could endorse.

Why is a life without autonomy a life without well-being? Raz's answer here is a little surprising:

The nature of modern societies, he argues, denies well-being to the

³⁰¹ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 374.

Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 374.

303 Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 375.

heteronomous. Given that well-being depends on the successful pursuit of valuable social forms, and given that the social forms of modern liberal democratic republics are autonomy-presupposing, it follows, says Raz, that autonomy is necessary for the well-being of citizens of such societies. Conversely, members of different kinds of societies do not necessarily have an interest in autonomy. 304 As he puts it:

For those who live in an autonomy-supporting environment there is no choice but to be autonomous: there is no other way to prosper in such a society...The value of personal autonomy is a fact of life. Since we live in a society whose social forms are to a considerable extent based on individual choice, and since our options are limited by what is available in our society, we can prosper in it only if we can be successfully autonomous. 305

But note the phrase "autonomy-supporting environment". It so happens that modern industrial/post-industrial society is autonomy-supporting, and this means that well-being in this society requires autonomy, whether individual members of the society want it or not. 306

This of course raises the question of what should be done with the heteronomous in modern societies - whether they are so because they belong to pockets of non-modern culture, or simply because they choose against autonomy. Raz denies that non-autonomous lives cannot be valuable, 307 and in particular denies that those on the outside of modern societies should be forcibly "autonomised," so that they achieve the levels of well-being which the rest of us enjoy. He makes the obvious point that plunging the unprepared into a society that

305 Joseph Raz, The morality of freedom (Oxford: Clarendon Press, 1986), pp. 391, 394. Note that, in Raz's view, valuing autonomy does not necessarily imply valuing the extension of personal choice into all relationships and pursuits. In this regard, he comments that

[t]he relations between parents and their children are an example of a relationship which is not based upon choice of partners. It shows that an environment can be supportive of autonomy and yet include forms not based on choice...It has to be admitted though that even here choice has tended to creep more and more into the relations. Parents have greater control over whether and when to have children, and to a certain extent over which children to have. The widespread use of contraception, abortion, adoption, in vitro fertilisation and similar measures has increased choice but also affected the relations between parents and their children. The impact of the increased choice on the character of the family is just beginning to be felt.

It would be a mistake to think that those who believe, as I do, in the value of personal autonomy necessarily desire the extension of personal choice in all relationships and pursuits. They may consistently with their belief in personal autonomy wish to see an end to this process, or even its reversal.

³⁰⁴ On page 189 of *The morality of freedom* (Oxford: Clarendon Press, 1986), Raz comments that 'not everyone has an interest in autonomy. It is a cultural value ie of value to people living in certain societies only."

Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 394.

307 'Autonomy is...inconsistent with various alternative forms of valuable lives.' Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 395.

requires autonomy of them may well leave them a good deal worse off than before, and this can hardly be understood as a contribution to their well-being. 308

The claim that autonomy is of fundamental importance is, of course, associated with *anti*-perfectionism. Raz, however, is equally committed to the value of autonomy. It is just that he takes liberal political morality to be derived from a *comprehensive* ideal of the good life: that of the *valuable autonomous* life, where valuable and autonomous are not synonyms. As he sees it,

...the autonomy principle³⁰⁹ is a perfectionist principle. Autonomous life is valuable only if it is spent in the pursuit of valuable projects and relationships. The autonomy principle permits and even requires governments to create morally valuable opportunities, and to eliminate repugnant ones.³¹⁰

What Raz says here about the autonomy principle is surprising, first, in that he terms it a "perfectionist" principle: rather than requiring the state to withdraw from the terrain on which values battle for dominance, it requires the active *promotion* of a valuable human attribute, namely autonomy.

Second, Raz does not take autonomy to be valuable *simpliciter*. He thinks, rather, that the autonomous life is valuable only if it is spent in the pursuit of valuable projects and relationships. This means that Raz rejects the view that the state's job is done to the extent that citizens are offered a choice between ways of life: on the Rawlsian view, the *quality* of the choices on offer is also a matter for the state. And if we make the additional, plausible, assumption that governments could only have a duty to promote autonomy to the extent that it is valuable, we can conclude that the state can have no duty to support worthless forms of life.

Writers who stress the importance of autonomy, as liberals generally do, tend to emphasise that the state must leave citizens in a position to make choices. Remarking on the objects of such choices might be thought to be the province of ethics, or of comprehensive conceptions of the good, neither of which are thought by anti-perfectionists to be appropriate bases for political morality.

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³⁰⁸ Joseph Raz, The morality of freedom (Oxford: Clarendon Press, 1986), p. 424.

The autonomy principle is the principle of political morality which requires the state to promote autonomy (and which derives the duty individuals have to do the same).

Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 417.

Is valuing autonomy, while denying that it confers value on immoral or worthless choices, a tenable position? It is certainly less paradoxical than it seems. Stressing that it is of paramount importance that people choose for themselves, as all liberals do, does not imply that worthless ideals themselves acquire value through the fact of being chosen. While we do often make remarks such as "at least she chose it for herself" we do not thereby endorse the value of the object of a person's choice. Rather, in making such remarks, we emphasise the evil of coercion or manipulation. And it is a short step from conceding that worthless ideals do not acquire value through having been autonomously chosen to the recognition that being offered a range of worthless options may well allow one to make an autonomous choice, but not one that is in any sense worth having.311 Autonomy is valuable when there are valuable options on the table. If not, one's predicament is not improved by autonomy.

The autonomous life requires valuable choices, and this obliges Raz to accept moral pluralism. As Raz sees it, the moral ground for the liberal commitment to individual liberty is provided by the good of personal autonomy which individuals realise in choosing between morally valuable but incompatible possibilities.

According to this position, there are many morally worthy ways of living one's life, and they are not necessarily compatible with each other, nor can they all be pursued by a single person. As Isaiah Berlin puts it, 'not all good things are compatible, still less all the ideals of mankind. ³¹² In fact, it is likely that the pursuit of certain morally worthy ways of life would dispose one towards intolerance of other, incommensurable, ³¹³ morally worthy ways of life.

Raz notes that 'if autonomy is an ideal then we are committed to [moral pluralism]: valuing autonomy leads to the endorsement of moral pluralism³¹⁴ otherwise it would not be clear with regard to which choices autonomy could be exercised. Once one accepts that a life can only be autonomous and valuable if one has a number of valuable alternatives to choose from, then one must also accept moral pluralism, as it is necessary to make valuable autonomy possible.

³¹¹ Roger Waters offers a particularly clear expression of this point in the Pink Floyd song "Nobody home".

³¹² Isaiah Berlin, *Four essays on liberty* (:,), p. 26.

According to Raz, 'Two valuable options are incommensurable if (1) neither is better than the other, and (2) there is (or could be) another option which is better than one but is not better than the other.' Joseph Raz, The morality of freedom (Oxford: Clarendon Press, 1986), p. 325.

Joseph Raz, The morality of freedom (Oxford: Clarendon Press, 1986), p. 399 [my italics].

On the other hand, if autonomy is valuable regardless of the moral value of the choices made, a commitment to moral pluralism does not necessarily follow.

Raz's position is distinctive in that his view of autonomy *presupposes* the truth of moral pluralism. His argument attempts to establish an internal relation between moral pluralism and the claim that a life is only valuable if it is in pursuit of a valid ideal that has been autonomously chosen. In other words, his claim is that if autonomy, as he understands it, is possible, then value must be plural. In contrast, the more standard argument treats moral pluralism and the claim that a life is only valuable in pursuit of an autonomously chosen valid ideal as two separate claims, and concludes that a state concerned to promote the valuable autonomy of its citizens has no reason to favour any particular valuable form of life.³¹⁵

4.1.4 The justification of authority

Raz regards the exercise of political authority as justified only if the governed are more likely to comply with the reasons (moral, prudential and other) that apply to them if they accept as binding the directives of the authority, than they would be if they tried to comply directly with these same reasons. This thesis he terms the "normal justification thesis", and argues that if directives are indeed justified in this way, then the governed have an obligation to follow them and to treat them as pre-empting and replacing all other reasons which apply to them. The normal justification thesis is derived from the so-called "service conception of authority", also articulated by Raz, which takes political authority to be justified only to the extent that it serves the governed.

It is important to note the connections between the service conception of authority and the principle of autonomy. Because we all have a powerful interest in autonomy, we have reasons to act so as to create the conditions of autonomy for ourselves and others. And given that the role of governmental authority is to assist us to comply with the reasons which apply to us, government therefore has a duty to promote autonomy and compliance with the principle of autonomy.

³¹⁵ I owe this point to Mulhall and Swift. See their *Liberals and communitarians* (2ed) (Oxford: Blackwell, 1996), p. 265.

Political authority is therefore justified principally because and to the extent that it provides conditions necessary for personal autonomy.³¹⁶

In summary then, Raz's second fundamental premise is that the justification of political authority lies in its capacity to enable citizens better to act for the reasons that apply to them than they would be in the absence of the authority. It follows from this premise that, if the state is able to assist citizens in pursuing the reasons which apply to them (which would include their moral obligations), then it must do so, for failing to do so would be to neglect its duty.

4.1.5 Raz's collectivism

Raz's third premise is that the conditions on which autonomy depends are *social* in nature – that is, they cannot be created by individuals.

He argues further that these conditions depend on state support, to the extent that they would wither in the absence of such support, leaving the range of valuable forms of life insufficient for citizens to make genuine autonomous choices between them, and therefore deleteriously affecting their chances of experiencing well-being. I will explain, in what follows, why this part of Raz's argument for the necessity of perfectionism is unconvincing.

Raz's claim that '[a] person's well-being depends...on success in socially defined and determined pursuits'³¹⁷ involves, firstly, the claim that well-being depends on success in one's comprehensive goals, and secondly, that comprehensive goals must be based on social forms of behaviour. This much is certainly true.

Raz's understanding of well-being as depending on how successfully one is pursuing the most comprehensive goals one has set oneself means that well-being cannot, on this view, consist in the pursuit of goals one has not chosen, or is compelled to pursue. As noted earlier in this chapter, one might be mistaken about the value of one's goals. And this is as true for societies as it is for

WJ Waluchow 'Critical notice of Joseph Raz's *The morality of freedom*' (1989) 19 *Canadian journal of philosophy* 479.
 Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 309.

individuals, according to Raz. He argues that his claim that one's well-being depends on socially defined pursuits is 'not a conventionalist thesis. It does not claim that whatever is practised with social approval is for that reason valuable.'318

It is also important to note that the comprehensive goals of individuals are dependent for their meaning on the social practices or conventions in which they are embedded. This is true for the whole gamut of possibilities, ranging from goals such as the pursuit of a medical career, to those such as supporting Manchester United Football Club. And one can only maintain such comprehensive goals through continual participation in social forms, as instruction in the various practices in which these goals are embedded is never explicit, but learned largely through a process of intuitive observation. Failure to participate in these social forms results in "losing touch", whereby the successful pursuit of the associated goals becomes unlikely. This does not mean, of course, that it is not possible to deviate from social forms, nor that any attempts to deviate are valueless, but rather that deviations tend to gain their significance from the very fact of their being deviations from the norm.

It is on the basis of his claims that one cannot pursue valuable forms of life without the social forms that make them possible, and that autonomy requires the availability of a variety of valuable options, that Raz concludes that, for individual citizens to enjoy autonomy, a variety of social forms must be available. As he puts it:

...autonomy is only possible if various collective goods are available. The opportunity to form a family of one kind or another, to forge friendships, to pursue many of the skills, professions and occupations, to enjoy fiction, poetry, and the arts, to engage in many of the common leisure activities: these and others require an appropriate common culture to make them possible and valuable. 319

Raz argues further that the social forms necessary to maintain a range of options sufficient for the autonomy of the citizens would wither away without state support. Perfectionist policies are then seen to be necessary to preserve the conditions of autonomy. And this is where he is much less convincing.

 ³¹⁸ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 310.
 ³¹⁹ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 247.

Raz argues that anti-perfectionism '[undermines] the chances of survival of many cherished aspects of our culture, '320 and therefore undermines the possibility of autonomous lives. Here again, Raz emphasises the social basis of autonomy. He argues that '[s]upporting valuable forms of life is a social rather than an individual matter,'321 and we can conclude from this that, without social support, such valuable forms of life will wither away. The example he gives is of monogamy, which, he points out, 'cannot be practised by an individual,' and which "...requires a culture which recognises it, and which supports it through the public's attitude and through its formal institutions, 322 without which its chances of survival would be diminished.

We need to note that in claiming that cherished aspects of our culture may wither away without state support, Raz is not concerned with any particular cherished aspect of our culture. This is not an argument that the state has obligation to maintain, say, opera as an art form, because it is cherished. 323 The concern Raz articulates is that, without state support for valuable options, opportunities for autonomy may wither away, as the withering away of these valuable options may eventually reduce the choices citizens are able to make to a point where they can no longer be described as autonomous. And if this diminution of autonomy is a genuinely possible consequence of anti-perfectionist policies, Raz's concern is not one that anti-perfectionists can dismiss lightly.

Although anti-perfectionists do not usually articulate their commitment to neutrality as a commitment to ensuring that all conceptions of the good life are equally affected by state policy, 324 the view that the consequences of a policy particularly the consequences for autonomy – are irrelevant to the acceptability of the policy is not one that anti-perfectionists will rush to endorse. And neither would either the claims a) that we cannot identify any consequences as better than others, or b) that even if we can identify some consequences as better than others, the state has no reason to pursue these consequences, seem particularly tempting.

But would failure on the part of the state to support worthwhile forms of life

³²⁰ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 162.

Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 162.

Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 162.

³²³ In fact a Razian state would not have the right to support any particular form of life *unless* failing to do so would not leave a range of valuable forms sufficient for the autonomy of citizens.

324 The anti-perfectionist view is usually articulated as a commitment to neutrality of policy justifications.

have the consequences which Raz suggests it has? Raz has surely overstated his case, as it seems clear that many forms of life, the value of which he would endorse, do not require state support for their survival. This may not be true of opera, but Raz is not purporting merely to provide a defence of the value of opera, and we may well require a much larger set of examples of valuable forms of life which are likely to wither away without state support before feeling the need to abandon anti-perfectionism.

A lot hinges on what range of options counts as adequate for autonomy. And clearly, Raz's understanding is that autonomy requires a rather wide range. Even so, however, it is hard to imagine that the number of such options would become so small as to constitute a threat to the autonomy of citizens in the absence of state support. Raz is not, after all, suggesting that the state has a duty to provide us with *the most valuable life possible*, a duty which would have to be derived from the implausible view that all individuals have a coercively enforceable duty to do the same. It seems more plausible to interpret him as requiring the state to support options sufficient to guarantee the autonomy of citizens, which would mean that one could acknowledge that a certain form of life was superior, while denying that its disappearance would condemn citizens to heteronomy.

One possible Razian response to anti-perfectionist scepticism about the necessity of state support for valuable forms of life would be to acknowledge that many such forms could survive without state support, while arguing that state support is nevertheless necessary for them to be available to the majority of citizens. If the consequence of an anti-perfectionist refusal on the part of the state to support valuable forms of life would be a society in which a wide range of such forms is available only to the elite, leaving the majority of citizens with a much diminished menu of options, Razian perfectionism may appear as the preferable option.

But even we concede the possibility that, without state intervention, the range of options on offer in the society could be worryingly larger for the elite than for the majority of citizens, it remains unclear why we should think that the solution to this

³²⁵ The morality of freedom (Oxford: Clarendon Press, 1986), p. 375, where he says that '[t]o be autonomous and to have an autonomous life, a person must have options which enable him to sustain throughout his life activities which, taken together, exercise all the capacities human beings have an innate drive to exercise, as well as to decline to develop any of them.'

problem lies in a state which makes policy by judging the value of various forms of life. All that would be necessary is that the state redistribute resources sufficient for everyone to acquire the inner capacities necessary for the conduct of an autonomous life — as recommended by Raz himself in outlining his second condition of autonomy. Such a state need simply ensure that all citizens have access to education sufficient to allow them to create autonomously whatever forms of life they deem to be valuable. As Hannah Arendt, for example, has argued, the increased availability of formal opportunities for political participation seems to correlate *inversely* with the extent and substance of such participation. And Waldron suggests further that good social practices are likely to be those capable of flourishing perfectly well on their own, unassisted by the efforts of the law.

This is not, of course, to argue that perfectionism is *impermissible*. As I have argued in chapter two, the case for the principle of state neutrality has not been convincingly made. It is rather to suggest that Raz's conviction that antiperfectionism must damage *autonomy* is not well-founded. And this is because, although he is correct to argue that autonomy is valuable only in pursuit of the good, and also that the state has a duty to uphold the conditions of autonomy for all citizens, it does not follow that the state *must* therefore promote the good, as, under the circumstances likely to obtain in modern liberal democracies state promotion of the good is superfluous to requirements: a range of valuable forms of life adequate to provide citizens with genuinely autonomous choices can be attained in many ways other than state intervention.

³²⁶ Joseph Raz, *The morality of freedom* (Oxford: Clarendon Press, 1986), p. 408.

Hannah Arendt, *On revolution* (London: Penguin,1963), pp. 115-40.

³²⁸ Jeremy Waldron, "Autonomy and perfectionism in Raz's *Morality of freedom*," *Southern California Law Review* 62 (1989) 1138.

5 CONCLUSION

Having surveyed the case for the principle of state neutrality, I conclude that it cannot be sustained.

This conclusion I reached, first, on the basis that the onus of proof lies with whoever argues *against* acting for good reasons, or, to put it another way, with whoever argues against promoting the good. After outlining various, and often conflicting, ways of formulating the principle of state neutrality, I turned to examine a number of the most persuasive and most frequently advanced arguments in contemporary philosophical literature – with particular focus on those of Rawls – against state promotion of the good.

These arguments can be divided, roughly, into two closely related categories, paralleling (also roughly) the two most frequently presented explanations for the rise of neutralist liberalism in the face of increasing moral, philosophical, and religious diversity in western polities: neutrality as a response to diversity, and neutrality as a response to the moral requirement that citizens be treated equally and with respect.

The first kind of argument stresses the dangers which are alleged to lie in an insufficiently neutral response to the diversity of contemporary liberal democracies: the fears that the state may promote false values or create a divided and unstable society. And I have argued with regard to these fears that, while they are certainly grounds for concern, a principle of state neutrality is neither the only nor the optimal response to them.

The second kind of argument stresses the value of personal autonomy, and may take the form either of a consequentialist appeal to the good of autonomy, which is allegedly maximised by a refusal on the part of the state to promote any particular conception of the good life, or, as is to be extracted from the work of Rawls, the form of a deontological prohibition on the promotion of the good on the part of the state, which is best read as an appeal to *respect* for citizens as rational, autonomous, beings, who ought to be free to make their own choices with regard to the conceptions of the good life they wish to pursue.

I argue that no convincing version of either of these kinds of arguments from

autonomy has been made. The consequentialist appeal to the good of autonomy cannot establish the principle of state neutrality, as it cannot establish that the good of autonomy trumps all other goods, or any other combination of goods, in all conflicts of goods which might arise. The appeal to respect for autonomy, on the other hand, does indeed solve the problem of how to deal with conflicts between autonomy and other goods; this it does by advocating a prohibition on the state's promoting the good, regardless of what the consequentialist calculus turns up. But, as I argued in the second half of chapter two, it is damaged by the difficulties it faces in explaining why standard reasons for promoting the good ought to be disregarded completely in matters of political morality.

In discussing the appeal to respect for autonomy I examined arguments of this nature contained within the writings of Rawls. I argued that he does not provide adequate grounds in *A theory of justice* for the conclusion that no conceptions of the good may be permitted amongst the considerations the parties in the original position take into account. I contended further that the appeal to the principle of liberal legitimacy, presented in *Political liberalism*, fails for similar reasons, and that the appeal to the burdens of judgement, also found in *Political liberalism*, assumes rather than shows that respect for the autonomy of citizens rules out state promotion of the good.

Finally I move on to discuss what we might think of as the default mode of political morality, given that the case for state neutrality has not been proven: perfectionism, the view that the state must act for good reasons, just as individuals must. In doing so I defend a number of aspects of the perfectionism of Raz, who argues that not only is perfectionist policy-making permissible, but that, as long as what he terms the principle of autonomy holds, perfectionist policy-making is *obligatory*, in that a thoroughgoing neutral state would in fact *threaten* the capacity of citizens to lead autonomous lives, and, further, that such a state would also threaten other important goods.

I argue, however, that while Raz's attempts to establish the *permissibility* of perfectionism succeed, his more ambitious argument regarding the *necessity* of perfectionism fails. This is because, although he is correct in arguing that autonomy is of no value unless the options between which citizens can choose are worthwhile forms of life, it does not follow that the state *must* promote the

good in any and every possible political dispensation. It is simply not the case that, in general, unless the state promotes the good, the number of valuable forms of life available to citizens will fall below the threshold which is necessary for their autonomy to be worth having. It is usually possible for these valuable forms of life to be promoted and maintained by various non-state actors. However, as the success of Raz's arguments for the permissibility of perfectionism, and the failure of the neutralist arguments for the principle of state neutrality, show, the state *may* intervene to protect the autonomy of citizens, should it prove necessary.

In conclusion, I note that defending perfectionism in this way is not to say that state neutrality is never acceptable or desirable; it is simply to say there is no convincing case for a principled rejection of any and every attempt on the part of the state to promote the good. While it may be that some attempts on the part of the state to promote the good are sufficiently damaging to citizens' autonomy, sufficiently likely to promote that which is undesirable (as opposed to promoting the good), sufficiently likely to cause instability, or sufficiently oppressive to be illegitimate, it is nevertheless the case that these cases must be judged on their merits.

By this I mean that I endorse the view that the state has, in general, the *right* to promote the good, but I acknowledge that there are frequently reasons why it should, given common circumstances, refrain from doing so. Such circumstances might be temporary and/or contingent, as is the case where peculiar ethnic or religious configurations mean that too blunt a perfectionist dispensation would run a serious risk of instability. But the circumstances which caution against promoting the good may also be connected to what appear to be deep features of morality or politics itself, such as the fact that many valuable ways of life are incommensurable.

Critics may note that, practically speaking, there is little to choose between policies attractive to philosophical perfectionists of the kind I defend and those attractive to defenders of the principle of state neutrality. In this they would not be wrong. But this is not a refutation of the importance of articulating a perfectionist political morality.

It is not a refutation because, first, as even anti-perfectionists ought to

acknowledge, articulating a valid political morality is a worthwhile endeavour, an endeavour which a misguided commitment to the principle of state neutrality threatens. This is both because of the intrinsic value of pursuing a true account of political morality, and because of the dangers of relying on unsound arguments to buttress one's political morality. If the arguments for the principle of state neutrality do not work, it cannot be the task of the philosopher to conceal this, even if it is fervently wished that they did work. I am put in mind here of what Charles Taylor, in another (and yet in some ways similar) context called the Maginot line strategy, whereby potentially illiberal conclusions are ruled out by deeming a range of premises which might lead to them to be false. 329 Neutralists might be thought to be adopting a Maginot Line strategy because the fear of the abuse to which a conviction on the part of the government that it is entitled to promote the good can be put leads them to rule out any state promotion of the good whatsoever. And yet, in the manner of the defenders of "negative freedom" in Taylor's article, their case, as we saw in chapters two and three, is not strong. Intellectual seriousness requires rather that we bite the bullet and agree that the state may promote the good, and at the same to strive to identify with all the accuracy we can muster, what in fact the good is.

Second, the fact that there is little to choose between policies attractive to philosophical perfectionists and those attractive to neutralists is not a refutation of the importance of articulating a perfectionist political morality because important differences between the politics of perfectionism and the politics of neutrality always threaten to surface, particularly when there is, as there often is, a broad consensus on certain aspects of the good. It would therefore be an act of needless austerity for states to refuse to legislate on the basis of these shared commitments, particularly in those cases where the alleged gains in autonomy which such refusal promises are illusory.

We see this in the familiar cases discussed in chapters one, two, and three: state support for the arts and state support for marriage illustrate the point. Despite widespread acceptance of the idea that a life graced with the appreciation of (or the production of) various arts is a good life, there are dissenters from this

³²⁹ I refer here to Taylor's essay 'What's wrong with negative liberty?' in A Ryan, (ed) *The idea of freedom: Essays in honour of Isaiah Berlin* (Oxford: Oxford University Press, 1979) pp. 175-93.

view. And, similarly, the omnipresent desire for married life should not obscure the existence of those for whom alternative arrangements are preferable. Under these circumstances, it seems that a policy of state neutrality would therefore need to distance itself from support for the arts, or for marriage. (In fact, as we saw in chapter one, neutralists are often awkwardly inarticulate about the degree of dissent which must exist before neutrality is required: one might even read the principle of state neutrality as requiring state neutrality between widely-held conceptions of the good and conceptions which are merely *conceivable*.)

But do we really want to deny the state the right to support marriage, or the arts in societies where these are overwhelmingly held to be valuable? Do the (alleged) gains in autonomy for those who regard marriage or the arts as worthless justify the difficulties the vast majority would encounter in pursuing the married or the artistic life under a state which refused these forms of life any support?

It would seem rather, that unless one is committed to an ultimately untenable moral scepticism, one must acknowledge the state's right to promote the good, even in controversial cases, given every citizen's interest in living a life that is genuinely worthwhile.

This, of course, is anathema to neutralists. And yet it is surely the correct view to take. It can hardly be denied that everyone has an interest in living a life that is genuinely worthwhile: the desire to do so underlies any deployment of practical reason, and serves as the basis of every political morality. And, as I have argued in chapters two and three, the case against philosophical perfectionism has not been made, leaving us with what has been, as Joseph Chan remarks, 'the standard view of the state' in the western tradition. 331 Thinkers as disparate as Aristotle, 332 St Augustine, 333 St Thomas Aquinas, 334 and Nietzsche 335 take it as

³³⁰ Joseph Chan, "Legitimacy, unanimity, and perfectionism," *Philosophy and Public Affairs* 29, 1 (2000), pp. 5-42 at p. 5. He also notes that moving beyond this tradition would not reveal much different.

^{332 &#}x27;...tt...becomes an essential task of the lawgiver to ensure that [citizen and ruler] both may become *good* men, and to consider what practices will make them so, and what is the aim of the best life.' Aristotle (tr TA Sinclair, Trevor Saunders) *The* politics (London: Penguin, 1981), p. 433.

³ See the selection of Augustine's work in the Cambridge Texts in the History of Political Thought series volume entitled Political writings (EM Atkins and RJ Dodaro eds) (Cambridge: Cambridge University Press, 2001) and of course also his City of God (tr Henry Bettenson) (London: Penguin, 1972).

See the selection of Aquinas's work in the Cambridge Texts in the History of Political Thought series volume entitled Political writings (ed RW Dyson) (Cambridge: Cambridge University Press, 2002)
³³⁵ See John Rawls, *A theory of justice* (Revised edition) (Oxford: Oxford University Press, 1999), p.286.

obvious that governments have a duty to promote human excellence and virtue, and, in doing so, to favour certain conceptions of the good life over others. And, in the absence of a compelling and general case for the principle of state neutrality, so should we.

BIBLIOGRAPHY

- Ackerman, Bruce, Social justice in the liberal state (New Haven: Yale University Press, 1980)
- Aquinas, St Thomas, *Political writings* (ed RW Dyson) (Cambridge: Cambridge University Press, 2002)
- Arendt, Hannah, *On revolution* (London: Penguin, 1963)
- Aristotle, *Politics* (tr TA Sinclair, Trevor Saunders) (London: Penguin, 1981)
- Arneson, Richard, "Liberal neutrality on the good: An autopsy," in Steven Wall and George Klosko (eds) *Perfectionism and neutrality* (Lanham: Rowman and Littlefield, 2003), pp. 191-218
- Augustine, St, *Political writings* (eds EM Atkins and RJ Dodaro) (Cambridge: Cambridge University Press, 2001)
- Barry, Brian, *Justice as impartiality* (Oxford: Clarendon Press, 1995)
- Bellamy, Richard, "Review of Joseph Raz's The morality of freedom," History of European Ideas 9 (1988), p. 746
- Berlin, Isaiah, Four essays on liberty (Oxford: Oxford University Press, 1969)
- Chan, Joseph, "Legitimacy, unanimity, and perfectionism," Philosophy and Public Affairs 29, 1 (2000), pp. 5-42
- Christman, John, "Autonomy and personal history," Canadian journal of philosophy 21 (1991), pp. 1-24
- Constant, Benjamin, Political writings (Cambridge: Cambridge University Press, 1988)
- Daniels, Norman, (ed) Reading Rawls: Critical studies of <u>A theory of justice</u>
 (Oxford: Blackwell, 1975)
- Devlin, Lord Patrick, The enforcement of morals (Oxford: Oxford University Press, 1965)
- Dworkin, Ronald, 'Foundations of liberal equality' in Stephen Darwall, (ed)
 Equal freedom: Selected Tanner Lectures on human values (Ann Arbor:
 Michigan University Press, 1995), pp. 190-306

- Dworkin, Ronald, A matter of principle (Cambridge, Massachusetts: Harvard University Press, 1985)
- Ewin, RE, "Review of Joseph Raz's *The morality of freedom*," *Australasian Journal of Philosophy* 67 (1989), p. 495
- Fischer, John Martin, "Review of Joseph Raz's The morality of freedom,"
 Philosophical Review 98 (1989), pp. 254-7
- Frankfurt, Harry, *The importance of what we care about* (Cambridge: Cambridge University Press, 1988)
- Freeman, Samuel, "Introduction" to Samuel Freeman, (ed) The Cambridge Companion to Rawls (Cambridge: Cambridge University Press, 2003), pp. 1-51
- George, Robert, "The unorthodox liberalism of Joseph Raz," The Review of Politics 53 (1991), pp. 652-71
- George, Robert, *Making men moral* (Oxford: Oxford University Press, 1993)
- Goodin, Robert, and Reeve, Andrew, "Do neutral institutions add up to a neutral state?" in Goodin, Robert, and Reeve, Andrew, (eds) *Liberal Neutrality* (London: Routledge, 1989), pp. 193-210
- Gray, John, *Liberalism* (2ed) (Buckingham: Open University Press, 1995)
- Haksar, Vinit, Equality, liberty, and perfectionism (Oxford: Oxford University Press, 1979)
- Hobbes, Thomas, *Leviathan* (Harmondsworth: Penguin, 1982)
- Humboldt, Wilhelm von, *On the limits of state action* (tr JW Burrow) (Indianapolis: Liberty Fund, 1969)
- Hurka, Thomas, *Perfectionism* (Oxford: Oxford University Press, 1993)
- Hurka, Thomas, "Indirect perfectionism: Kymlicka on indirect perfectionism,"
 Journal of Political Philosophy 3 (1995), pp. 36-57.
- Kant, Immanuel, *Groundwork of the metaphysics of morals* (tr HJ Paton) (New York: Harper, 1964)
- Kant, Immanuel, The metaphysics of morals (tr Mary Gregor) (Cambridge: Cambridge University Press, 1996)
- Kant, Immanuel, Political writings (tr HB Nisbet) (Cambridge: Cambridge

- University Press, 1970)
- Keat, Russell, Cultural goods and the limits of the market (Houndmills, Basingstoke, Hampshire: Macmillan, 2000)
- Keegan, Paul, (ed) *The New Penguin Book of English Verse* (London: Penguin, 2000)
- Kymlicka, Will, Contemporary political philosophy (2ed) (New York: Oxford University Press, 2002)
- Larmore, Charles, Patterns of moral complexity (Cambridge: Cambridge University Press, 1987)
- Locke, John, *Two treatises of government* and *Letter concerning toleration* (New Haven: Yale University Press, 2003)
- Lukes, Stephen, Power: A radical view (1974)
- Macedo, Stephen, Liberal virtues: Citizenship, virtue and community in liberal constitutionalism (Oxford: Clarendon Press, 1990)
- MacIntyre, Alasdair, After virtue (2ed) (Notre Dame, Indiana: University of Notre Dame Press, 1984)
- Mill, John Stuart, *On liberty* (Indianapolis: Bobbs-Merrill, 1956)
- Montefiore, Alan, (ed) Neutrality and impartiality (Cambridge: Cambridge University Press, 1975)
- Mulhall, Stephen, and Swift, Adam, Liberals and communitarians (2ed)
 (Oxford: Blackwell, 1996)
- Neal, Patrick, "Perfectionism with a liberal face? Nervous liberals and Raz's political theory," Social Theory and Practice 20 (1994), pp. 25-58
- Nozick, Robert, *Anarchy, state, and utopia* (New York: Basic Books, 1974)
- Phillips, Derek, Looking backward: A critical appraisal of communitarian thought (Princeton: Princeton University Press, 1993)
- Rawls, John, "Kantian constructivism in moral theory," The Journal of Philosophy 77 (1980), pp. 515-72
- Rawls, John, "The priority of the right and ideas of the good," *Philosophy and Public Affairs* 17, 4 (1988) pp. 251-76

- Rawls, John, A theory of justice, A (Revised edition) (Oxford: Oxford University Press, 1999)
- Rawls, John, *Political liberalism* (New York: Columbia University Press, 1993)
- Raz, "Facing diversity: The case of epistemic abstinence," *Philosophy and Public Affairs* 19, 1 (1990), p. 14.
- Raz, Joseph, "Facing up: A reply" Southern California Law Review 62 (1989), pp. 1153-235
- Raz, Joseph, "Liberty, and trust" in Robert George (ed) Natural law, liberalism and morality (Oxford: Oxford University Press, 1996), pp. 113-29
- Raz, Joseph, *The morality of freedom* (Oxford: Clarendon Press, 1986)
- Rousseau, Jean-Jacques, *The social contract and other later political writings* (tr Victor Gourevitch) (Cambridge: Cambridge University Press, 1997)
- Sandel, Michael, (ed) *Liberalism and its critics* (Oxford: Blackwell, 1984)
- Sandel, Michael, Liberalism and the limits of justice (Cambridge: Cambridge University Press, 1982)
- Scanlon, Thomas, 'Contractualism and utilitarianism' in Sen, Amartya, and Williams, Bernard (eds), *Utilitarianism and beyond* (Cambridge: Cambridge University Press, 1982), pp. 103-28
- Sher, George, *Beyond neutrality: Perfectionism and politics* (Cambridge: Cambridge University Press, 1997)
- Taylor, Charles, 'What's wrong with negative liberty?' in A Ryan, (ed) The idea of freedom: Essays in honour of Isaiah Berlin (Oxford: Oxford University Press, 1979) pp. 175-93
- Waldron, Jeremy "Legislation and moral neutrality," in Goodin, Robert, and Reeve, Andrew, (eds) Liberal Neutrality (London: Routledge, 1989), pp. 61-83
- Waldron, Jeremy, "Autonomy and perfectionism in Raz's Morality of freedom,"
 Southern California Law Review 62 (1989), pp. 1098-1152
- Wall, Steven, and Klosko, George, (eds) *Perfectionism and neutrality* (Lanham: Rowman and Littlefield, 2003)
- Wall, Steven, Liberalism, perfectionism, and restraint (Cambridge: Cambridge University Press, 1998)

• Waluchow, WJ, 'Critical notice of Joseph Raz's *The morality of freedom*' (1989) 19 Canadian journal of philosophy 477-90