



Autonomy, Liberty and Neutrality in Liberal State

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Abstract

This paper analyzes the problem of neutrality of the liberal state. This area of enquiry poses a genuine and very important question for political theory: how should the state be constrained in relation to autonomous individuals and their various and conflicting conceptions of good and right. The presumption is that citizens are due certain non-preferential neutral treatment with the state not adopting nor enforcing any controversial values. Nevertheless, a justification and specification of this presumption is hard to find. I argue that even though this problem is genuine, its solution is necessarily derivative. The answer to the question “when does the state need to be neutral, how and why” presupposes a theory of rights and liberties. Only once the issue of protected personal space, beliefs and actions is resolved will it be possible to identify those particular areas of life into which the state is morally bound not to interfere (or, in some other cases, is bound to interfere) because of neutrality considerations.

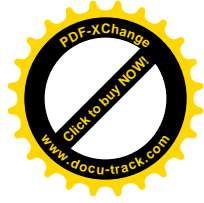


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Introduction

Liberalism is, and has been for many years, the most powerful stream in political theory. This is especially true amongst political philosophers. One can even say that the less practical a political theory is, the more liberal it has a tendency to be. Speculative political philosophy is almost exclusively liberal. In praxis, on the other hand, the theoretical preponderance is completely lost and political liberals tend to be a large minority anywhere they show up, giving their space to (political) conservatives, socialists, or even radicals. There are many conclusions that can be drawn from this observation. One that suggests itself says that liberalism in its various forms is far more appealing on the abstract level, where its fundamental notions gain the biggest force, than in the impure, shallow waters of practical politics. Or maybe it is just that liberals are generally far better at creating articulate philosophical theories than effective campaign slogans. The prevailing opinion on this issue among the population, however, is that people in the academia, like myself, simply do not understand the reality (which they cannot see from their ivory towers) and write incomprehensible lofty books instead.

This paper will elaborate on one part of this paradoxical relation of “practical” and “theoretical” liberalism. I will be exploring the bridge that connects theoretical roots of liberal theory to practical demands on the liberal state. The former will be represented in this paper by conceptions of autonomy and liberty, the latter by a postulate of neutrality for liberal state.

In terms of practical politics, every liberal theory throughout the history has held the view that the state is not omnipotent and has to respect certain limits. The main demand of everyday liberal politics is hence to set and justify the limits of the exercise of power by liberal state. This constraining demand on practical liberal politics has been defended in

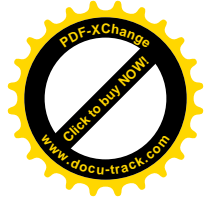


various ways, but the most powerful expositions of liberal theory in the last decades¹ have put state neutrality as an important if not crucial component of justification of this demand. The basic line goes as follows: the state cannot act in certain ways because of the demand of neutrality among citizens. Abandoning the concept of neutrality puts the state into a situation which is morally unacceptable and hence to be avoided. The examples of the most common forms of non-neutrality in the recent discourse have been the cases when the state had given its preference to a specific church, or endorsed a type of racial segregation, or expressed its support for a particular lifestyle.

The question is how any liberal conception of state neutrality is developed and justified. I will argue that there is a certain succession of ideas from theoretical notions to practical policies (forming a “bridge”) that every liberal theorist is required to undertake once he wants to arrive to a full-blown conception of liberal neutrality that would make sense. Put differently, the ultimate task of my analysis is to show the mechanism of how every theory of state neutrality has to tackle the theoretical foundations of liberalism in order to justify its practical demands.

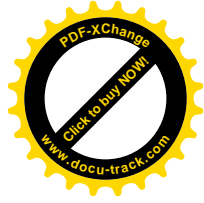
To put the skeleton of my argument crudely, I hold that every liberal in his very first argumentative step has to elaborate on the view of a person as an autonomous being: a being that forms its own beliefs and values (moral or non-moral). Moreover, a true liberal acknowledges that this person and his choices should be by the very fact of his personal autonomy protected. The problem is that the state cannot protect all the choices and actions of individuals because they often conflict and, at the same time, if it refuses to act, the ultimate result is likely to be anarchy or the state of nature. Following this simple claim, it can be inferred that even if individual autonomy requires the state to protect the choices of an individual to a certain extent, the protection can never be absolute. There are conceptions of

¹ Including theories of John Rawls, Ronald Dworkin, Thomas Nagel and Bruce Ackerman.



good to which the state is required to be neutral, as well as conceptions of good which it is allowed to ban and persecute. Moreover, there is a kind of morality the state can enforce (like criminalization of rape) and one the state cannot (like religious confession). Thus, the ultimate question of liberal neutrality is how this split within conceptions of good and right is arrived to. I hold that rights and liberties function as the only intelligible borderline within the personal moralities and conceptions of good. Those on the one side – tied with the exercise of personal rights and liberties - are to be protected by the state (which has to be neutral with respect to their exercise) and those on the other are not. Hence, the ultimate result of my deliberation is that the only way a theory of state neutrality can make sense is if it presupposes a theory of rights and liberties which delimits its scope and force.

To achieve this end, this paper follows a clear structure: I first analyze the notion of autonomy, which is for me (and in the liberal theory since Kant) the cornerstone and the true theoretical foundation of liberal theory. I then go on to look closely at the direct applications of the notion of personal autonomy for the conceptions of morality and value, as well as for the theory of rights and liberties. This provides me with the background I will be working with. At the next stage, I will develop a conception of the scope of liberal neutrality. The bulk of it will be concerned with how the previous analysis of conceptions of good, right and rights fits into neutral state and what the connections and interactions between these applications of personal autonomy and liberal neutrality are. The last positive step is a demonstration of mechanism of liberal neutrality. Using the apparatus I have developed in the preceding sections, I will provide an explanation of the liberal neutrality discourse, that is to say, I will identify a series of logical steps that are necessarily to be included in a viable theory of liberal neutrality. The last chapter of this paper is a “case study” of how the presented mechanism is implicitly at work even if it is not explicitly presupposed in the important and influential theory of liberal neutrality of Ronald Dworkin.

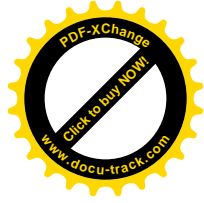


I. Autonomy and the State

At the beginning of every political philosophy has to stand a theory of human nature. Thomas Hobbes knew this and he was also the first one to take the theory of human nature as the essential starting point of the pioneer work in this field, *Leviathan*. He was right to do so; after all, the subject matter of political philosophy is concerned with, broadly speaking, the structure and characteristics of human communities. It is hard to imagine a political theory without at least an implicit account of its basic components. If a political philosopher does not know or care about the theory explaining the nature of humankind, he is undergoing an enterprise of depicting society out of undefined atoms, which is a task bordering on the impossible. These atoms, theoretical foundations of political philosophy, have to be either explicitly tackled or presupposed. Otherwise we face a very bad philosophy.

This conclusion is somewhat troublesome. Even though the realm of political philosophy is problematic and often equivocal, the realm of speculative metaphysics is even worse. “What man is” is an obscure question as old as philosophy itself and it has not yet yielded any results which would be satisfactory enough as to serve as a foundation of political philosophy. Luckily enough, recent philosophers rarely try to develop a complex theory of human nature the Hobbesian way. They tend to focus on more particular human features that eventually serve them as crucial bits in composing their views.

Concerning the theory of human nature, there is one feature of political philosophy during the last 200 years that is wholly untypical for this academic discipline. Even though details vary greatly, there has been a quasi unanimity, so rare in philosophical disputes, on the most important “political” characteristic of man. It is the Kantian notion of personal *autonomy*.



I am convinced that the prevalence of this Kantian picture is at least partially responsible for the eventual dominance of liberal thought during the past two centuries. When comparing a liberal viewpoint to its main contenders, the totalitarian or authoritarian theories, the disagreement between them concerns, on the most fundamental of levels, the characteristics of personal autonomy. The remaining two paragraphs of this section will show that the notion of autonomy liberals usually presuppose in their theories² is largely incompatible with totalitarian or authoritarian regimes.

Analyzing the notion of autonomy, the two main features that autonomous men possess and that are relevant in this context are the power to form beliefs and the power to act. These are taken as powers belonging to an individual, even if they are formed and executed in the larger framework of a community. Thus, men are considered to be agents who act, interact, form their beliefs, act upon them, do not act upon them, enter into various types of relationships, are generally responsible for their choices and so forth. The bottom line is that there is a certain kind of value attached to actions of these agents grounded in their nature as agents. This is exactly the point where this theory gets uncomfortable for a supporter of totalitarian regimes. If a theory of autonomy ultimately results in giving value to actions and beliefs of people, then if one adopts such a theory, it is not possible for him to hold that the state should squarely disregard its citizens and deny them various important options because of a “higher” goal(s).

In a nutshell, I agree with Kant that individual autonomy is the backbone of liberal theory. If some (perhaps future?) society is to be composed of creatures that lack autonomy, be that zombies, robots or some genetically pre-programmed individuals who would not be capable of shaping their own lives, adopt life plans, have a sense of self-dignity and so on,³ then there would be no point in having liberal theory of any kind to set the structure and

² For one such example of a nice and thoughtful elaboration on what autonomy is, see J. Raz: *Morality of Freedom*, Clarendon Press, Oxford 1986, pp. 154-156.

³ Once again, see the footnote above for a more elaborated and stylistically appealing list.



functioning of this society. In this sense, a totalitarian ideal is to have a society composed of individuals who lack autonomy.⁴ This is the reason why Orwell's *1984* is so powerful and frustrating as the book draws to its end. The ultimate victory of the totalitarian state over an individual is achieved and completed in the very moment when this individual loses his capacity to act for himself and believe what he deems right. At that point, his autonomy is lost and the state is free to do whatever it pleases.

II. Between Right, Good and Rights

Leaving futuristic and pessimistic scenarios behind, we are lucky to be autonomous human beings with various powers and capacities. The next step of liberal theory is to go forward from the foundations laid by autonomy to various spheres where "autonomous" individual capacities are exercised. For the purposes of this paper and for the sake of clarity, I will make a rough distinction between three spheres to which personal autonomy is applied. These are 1) the sphere of right and wrong, 2) the sphere of conceptions of good, 3) the sphere of rights and liberties. I do not claim there is a clear and impenetrable borderline separating these spheres, nor that this is a complete list of applications of personal autonomy. However, I believe there is a core difference between them. Moreover, elaborating on these differences will help to stage the question of neutrality more clearly, which is the ultimate target for analysis in this paper.

The first sphere (the order is arbitrary, there is no priority of one over the other so far) is the sphere of right and wrong. An autonomous person is shaping his moral beliefs and

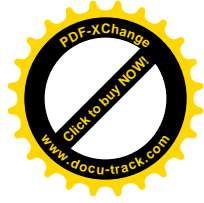
⁴ On this point, see also similar analysis of autonomy and totalitarianism in Isaiah Berlin: *Four Essays on Liberty*, Oxford University Press, Oxford 1969, pp. 136-138.



consequently has views on which actions are morally irrelevant, which deserve praise and which are outright wrong. The list of which actions can be considered wrong is infinite. Murder, rape, lie, worshipping a false god, sex before marriage, breaking a promise, genocide, being a communist, cheating on your lawful wife, consuming drugs, being a homosexual are sure to be among the possible candidates for morally wrong actions. What is important to note is that none of them is a *necessary* member of the domain of wrong acts. People are diverse and by this very fact it is obvious that there will be disagreement on even the most common-sense morality issues and that there are (and always have been) people that do not consider even the most horrifying things to be lacking in morality. The same lack of necessity applies to all other sub-domains of the sphere of right and wrong, be it morally indifferent or praiseworthy actions. The lack of necessity in these matters is caused by the very fact of personal autonomy; there is no single pattern of how moral judgments of an autonomous person are created. They are comprised of the entire body of influences and deliberations one encounters in the course of his life. And since these are infinitely diverse, the resulting moral beliefs just copy their very specific character.⁵

The second sphere is the sphere of conceptions of good. Apart from the beliefs about right and wrong, people form their opinions also about their preferences in life: about what is good and what is bad for them, or what is good and bad in general. This has a direct impact on their actions and lives. They choose to do certain things either because of the value they see in them, or in order to achieve something else they perceive as valuable. It may be enrolling at the university, inviting a friend for a date, watching child pornography, drinking beer, getting married, going to the theatre, reading Shakespeare, playing piano, helping grandma with the

⁵ Important point of clarification: I am not arguing for any kind of moral relativism here. The claims about autonomy laid here are descriptive; we see people forming their views on what is right and wrong in every color of rainbow. This does not mean that every conception of right and wrong is equally valuable. This descriptive claim is compatible with a strong morally objectivist view arguing that even if people believe all sorts of things, they are mostly mistaken and there is one and only right way to see what is wrong and what is right. And even though people have autonomy to choose their personal moral beliefs, they in a strong sense *ought* to choose the one right view. Thus, moral relativism in my opinion has no intrinsic connection to a view of moral autonomy of individuals.



dishes, stealing a chocolate bar in Tesco, becoming a fighter-jet pilot and so on. Once again, this is a direct exercise of personal autonomy in a sphere of good and bad and the lack of necessity of previous paragraph applies. Empirically, there is no way how there could be one single item that would be considered as equally valuable by everyone, or even valuable *simpliciter*. Possibly the most general thing regarded as good by individuals is their life. This is a strong consideration, one that in fact justifies Hobbes in building his theory upon it, but there still are important exceptions to be counted with. Descriptively, in every society, there is a certain number of suicides that disproves the claim that views life as the ultimate good for everyone. Even normatively, one can claim that there are certain goods and values one ought to sacrifice his life for. Survival of the rest of his family could be a decent candidate.

The actual process of forming a set of opinions on what is good and what is bad is, analogously to moral beliefs, a complicated and not easily traceable one. Here I am not interested in minute details of their psychological, sociological and philosophical development. What is of importance is that this process is carried out by an autonomous individual and as such results in irreducible plurality in every advanced contemporary society.⁶ The fact that these resulting sets of opinions and beliefs are held by autonomous human beings means that they should be valued. A liberal society should, as in the case of moral judgments, respect them at least to some extent and that is what creates a difference between it and a totalitarian regime.

There is one important point of clarification to be made before we move away from this sphere. There are two distinct notions fitting the presented definition of the sphere of conceptions of good; namely the notions of ethical goodness and moral goodness. The first is about preferences in life, the second about moral value of these desired preferences. But even though they are not identical, there still is a necessary and very strong relationship between

⁶ Again, I am not arguing for some value-skepticism. For explanation see the previous footnote.



them. At the end of the day, the most important component of moral goodness of any state of affairs would be the well-being of individuals, the satisfaction of their preferences - the ethical goodness. And even on the individual level, no conflict can arise between moral goodness and personal preferences under the presumption of full reasonableness (the very same goes for a conflict between different personal preferences). It is not possible to desire one state of affairs and at the same time acknowledge that such a state is, considering its moral value, despicable. So, at the end of the day, it is important keep in mind that the sphere of good and bad is represented jointly by intertwined considerations of ethical and moral goodness.

Before moving to the third sphere, let me first elaborate on the relationship between the first two, which, as the last clarification indicated, is not simple. The descriptions presented on the previous pages fit roughly into the uneasy and notoriously troublesome distinction between the right and the good, between deontological and teleological considerations. The sphere of good and bad is concerned with states of affairs as the ultimate goal for human actions; we want to be in such and such state, live such and such life, in order to satisfy our preferences about what is good for us and what is morally valuable. On the other hand, the sphere of right and wrong is about judging actions, not states of affairs. These actions are, depending on the concrete conception of morality, evaluated as right (when they maximize the moral good / fit the moral constraints / are an exhibition of virtuous character...) or wrong (the negation of previous parenthesis).

But, despite this distinctness of actions and states of affairs (which is anyway not to be loaded with too much pressure), the problem is that the sphere of right and the sphere of good generally are not separated from each other, there is a huge area where they overlap and even conflict. When we look at the examples I offered above, the conflict is visible right away. Some actions regarded as serving a particular good of an individual, like stealing a chocolate



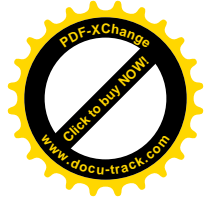
bar from Tesco or watching child pornography, are in immediate conflict with a class of actions that may be regarded as wrong. In this case it is stealing and child abuse.

The question is how these conflicts are to be resolved. There are two basic answers; either the sphere of right and wrong can stand on its own feet or it cannot. If it can, this means that the sphere of the right is partially independent from the sphere of the good and some things promoting the good can nevertheless be wrong. This would in fact mean that deontological considerations take precedence in making a moral judgment and deontology is prior to teleology, right is prior to the good. The resulting standpoint is that conceptions of good are constrained by morality. This is the path taken by most if not all of liberal thinkers;⁷ they claim that one is allowed to pursue his conception of good (moral or ethical) only if there are no serious breaches of moral constraints involved. Hence, a robber or a pedophile may have as big a preference for their respective conceptions of good as it gets, nevertheless, they will never be allowed to pursue it.

The second answer would be defining the right by the good. This entails the view that the right cannot stand on its own feet but is wholly derivative from the conception of moral goodness. This in fact creates a space for a lot of consequentialist positions. Traditional act-consequentialism would consider every act in light of general good it brings to sentient beings. Thus, stealing chocolate or watching child pornography will be allowed and justified if they, out of all the possible options, bring into existence the one with the most desirable state of affairs. Stealing a chocolate bar from Tesco may very well fit this criterion; for any scenario including child pornography it is doubtful to say the least.

In any case, there is a tension between the sphere of morality and the sphere of the good. What is its definite resolution presently does not concern our purposes; there is a lot of

⁷ Further question would be whether adoption of a priority of right over good is necessary step for every liberal theory. I am not sure at this point, but this interesting conclusion would definitely require an independent argument. I am not going to pursue the matter here.



literature on this problem elsewhere.⁸ This distinction would, however, play a role in later analysis of the problems of liberal neutrality.

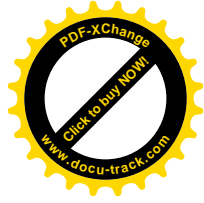
Finally, the third sphere, not yet described, is the sphere of rights and liberties. I hold that there is a gap between this sphere and the other two. All three spheres are intimately connected to personal autonomy, only in considerably differing ways. The first two were about the concrete exercise of autonomy, about personal morality and preferences for good and states of affairs by an individual. The last is about what such autonomous being deserves. The first two were about making choices; the last is about protecting those choices and acknowledging their value because they were brought about by autonomous beings.

In a certain sense, the sphere of rights and liberties is *the* proper liberal agenda. Once an individual and his choice are recognized and valued, an automatic question arises about their protection in face of other individuals, institutions or outside circumstances. Without advocating any concrete conception of rights and liberties, I hold that the general frame of the question rests upon two major areas. The first one is an area of “negative liberty” in Berlin’s sense of the word.⁹ An autonomous individual has to have a space of personal liberty that is unimpeded by others. The question of liberal theory is how big this area is and what it contains. It may be very large, as in the case of Robert Nozick,¹⁰ or comparatively smaller, as in the works of communitarian theorists. The second area is the area of rights. Generally speaking, if someone has a right to something, he has a certain kind of entitlement and it would be wrong for anyone to deny him of it. Therefore, rights form tangible constraints on actions of individuals and states. Others have, to use Hohfeld’s definition, a duty not to

⁸ Very inspiring, clear and ingenious consequentialist analysis of the moral right and moral good can be found for example in Shelly Kagan: *The Limits of Morality*, Clarendon Press, Oxford 1989.

⁹ Isaiah Berlin: *Four Essays on Liberty*, pp. 122-131.

¹⁰ Robert Nozick, *Anarchy, State and Utopia*, Basic Books, New York 1974.



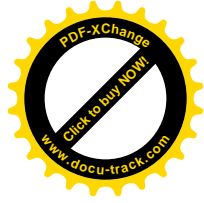
interfere. Rights limit what people can do with respect to other individuals and they also ground a set of positive choices that ought to be available to any autonomous individual.

Thus, a set of liberties-from together with liberties-to may very well be analogous or even identical to certain set of rights. Both create a negative space for non-interference and both can entail positive possibilities for an autonomous individual. Consequently, it is possible to take liberties as primary and consequently use them to define rights (this would be roughly the Nozickian and Berlinian way), or the other way around, take rights and define liberties as the space that rights give to individuals (this is the Dworkin's way¹¹).

The concrete frame and structure of the sphere of rights and liberties may vary greatly, but the sphere itself has its specifications that make it discernible from the other two aforementioned spheres. Rights and liberties are not about the exercise of autonomy, as the previous two definitely are, but about its justification on a theoretical level. They are, ultimately, concerned with the value of this exercise, while concluding that there are certain types of autonomous actions/beliefs (depending on the given theory) that deserve protection.

As far as the relation of this sphere to the other two is concerned, I do not see any direct relation between the sphere of conceptions of good and the sphere of rights and liberties (apart from the protective function I mentioned in the previous paragraph). On the other hand, I think there is a one-way relationship between the sphere of rights and liberties and the sphere of right and wrong. Regardless of the concrete conception, it is necessary for every theorist to hold that if he acknowledges that something is to be regarded as a fundamental liberty or if someone has a right to something, it has to be, consequently, morally wrong for this person to be deprived of this right/liberty. On the other hand, there is no necessity of this

¹¹ See R. Dworkin: *What Rights Do We Have*, in: *Taking Rights Seriously*, Harvard University Press, Harvard 1978.



kind in the opposite direction. If something is morally wrong, it certainly does not necessarily entail a breach of some rights or liberties.

This conclusion has led the majority of moral philosophers to claim that the sphere of rights and liberties is a subclass of a larger area of morality. The argument stated in the previous paragraph would definitely indicate that. If every breach of liberties or rights is necessarily morally wrong, then rights and liberties are *moral* items and they delimit the boundaries of morality with regards to one type of human action. This is a very plausible thought that may be of use in some contexts, but it is very important to mark the difference when analyzing the connection of autonomy and state neutrality. Having rights and liberties *solely* as a subclass of the sphere of right and wrong would confuse crucial analysis of personal autonomy, as will be explained later. This sphere is mostly about personal beliefs regarding morality and their justifications, though it may very well contain some complementary opinions on the worth of a person and similar. In contrast, the sphere of rights and liberties is in principle *indifferent* towards the content of personal beliefs; it is about their protection (together with the protection of conceptions of good and their exercise). An autonomous being *has* certain moral views and these views *deserve* protection and *have* some value, by the inherent virtue of being formed by an autonomous being. These are not the same things; having a certain belief is not on par with any opinion on intrinsic value of it.

Here, the starting point of personal autonomy is utilized in two completely different ways. One is its exercise and the other is the protection of this exercise. Even if the protection of this particular exercise of personal autonomy is, together with the exercise itself, explained in the language of morality, they are intrinsically different. The first one is about me making a moral judgment (and acting upon it), the second about the value of this judgment

To illustrate the case, imagine one person, John, who converts from Lutheranism to Catholicism. This conversion has some important consequences from the point of view of



personal morality. John no longer believes it shall be allowed for priests to marry and that women can be priests. He believes that pope is infallible and there is no redemption outside of Catholic Church. We may agree or disagree with all these statements. We may believe he is completely wrong about all of them and that he is even morally obliged to step down from this faith, but in this deliberation we never leave the sphere of right and wrong. The fact that John has such-and-such moral views and some other people have conflicting views (plus the analysis of reasonableness, rightness and justification of those views) empties this sphere of its content.

Nonetheless, this does not say anything about the *value* of these views, and what protection they are to be offered. The very moment we ask whether John is at liberty (has the right) to convert to Catholicism, we enter an entirely different sphere. We presuppose the choice is made and moral views are there (no matter whether we agree or disagree with them) and now we talk only about the value of this choice and its protection. Moral evaluation of the content of his choice is no longer a *necessary* part of what is going on. The only such thing is the significance and worth we assign to the specific exercise of personal autonomy. We claim that John as an autonomous being has a right to convert to Catholicism and the judgment concerning rightness or wrongness of this worldview does not enter the deliberation. Nonetheless, following the analysis of previous paragraphs, this right also entails a belief that it would be wrong for others to impede him in doing so - and this surely is already a part of the sphere of right and wrong. But still, the question of “what is an autonomous being worth” is a wholly different kind of deliberation than “what is right and what is wrong,” even in spite of this overhang.

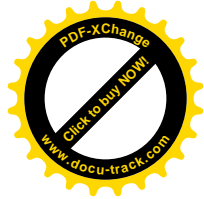
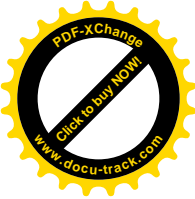
This difference is best visible on the level of the whole society. The belief about what is right and wrong can be, and many times is, private and no public recognition is necessary. On the other hand, a belief that something is considered a right or a liberty, that someone is



due something in virtue of him being human and autonomous, is necessarily public. Rights and liberties always require public recognition. Imagine that our Catholic John is a superaltruist; he believes it is right to give 60% of one's income to the poor and giving anything less is insufficient and morally wrong. He acts upon his beliefs and he encourages others to do so as well. Nevertheless, he can do that in private without any desire to coerce others to any action by establishing a 60%-of-your-income state-run system of redistribution. But on the other hand, if he believed poor people have a *right* to 60% of income of every well-off person, our example would change dramatically. Rights are not a private matter and if someone is due something by the virtue of him being an autonomous person, the state has to step up and ensure it.

In the light of these conclusions, it is possible to interpret the first formulation of Kant's categorical imperative. It goes as follows: *Act only according to that maxim whereby you can at the same time will that it should become a universal law.*¹² The crucial word in this formulation is "can." In the sphere of personal morality, of right and wrong, we *can* wish that our belief will be adopted by everyone and thus become a universal moral law. We do not have to enforce that. John is by no means obliged to try to persuade everyone about his moral beliefs; he can think that the world would be a nice place if everyone shared his views (thus fulfilling the imperative), but it is by no means necessary for him to desire their universal enforcement. In contrast, when John believes the poor have a right to the majority share of income of those who happen to be well-off, he not only *can*, but *must* believe it should become a universal law (with appropriate legal implications). If it was not a universal law, people would be allowed to deprive others of their rights/liberties and that is not a plausible outcome.

¹² Immanuel Kant: *Groundwork for the Metaphysics of Morals*, Cambridge University Press, Cambridge 1998.



To conclude this section, I have shown that the main difference between the sphere of right and wrong and the sphere of rights and liberties is that the first is about the exercise of autonomy, which can be (and many times is) private, and the second is about protection of this exercise, which can never be private and has to be public (which means, under these circumstances, that it shall be ensured and enforced by the state).¹³ Thus, the analysis of the three spheres of the exercise of autonomy and their inner characteristics and relations, even though it is undeniably complicated at times, is complete. It is now time to turn to its possible import.

III. The Scope of Liberal Neutrality

Looking at the discourse of liberal neutrality *prima facie*, it seems clear that neutrality is concerned only with conceptions of good for an individual, the second sphere of my taxonomy. Rawls, Dworkin and others keep stressing that the question of neutrality of liberal state is concerned with neutrality between various conceptions of good that are held by citizens of a given state.¹⁴ In this respect, the state is not allowed to pursue certain conceptions of (moral or ethical) good while leaving the conceptions of good of others unsupported or even obstructed. This would be an example of state acting in a non-neutral way towards its citizens, creating a morally unacceptable situation with regard to their personal autonomy.

¹³ For the similar kind of analysis see Jeremy Waldron: *A Right to Do Wrong* in: *Ethics*, Vol. 92, No. 1. (Special Issue on Rights) 1981. Here Waldron does not claim the distinctness of the sphere of morality and the sphere of rights and liberties, but only claims that there are two moralities: “morality of rights” and “morality of rightness and wrongness.” These two have distinct functions: *The former has the function of protecting choices and the latter the function of guiding them* (p.37). In the end, I do not see any significant difference between our positions outside of labels.

¹⁴ John Rawls: *A Theory of Justice*, Harvard University Press, Cambridge MA 1971; Bruce Ackerman: *Social Justice in a Liberal State*, Yale University Press, New Haven 1980; Ronald Dworkin: *A Matter of Principle*, Harvard University Press, Cambridge MA 1985; Charles Larmore: *Patterns of Moral Complexity*, Cambridge University Press, Cambridge 1987.



However, in spite of the fact that many true giants of political philosophy in recent years have held the view that state neutrality is concerned only with conceptions of good, this restricted view is untenable. The ultimate reason for this impossibility is a precarious interconnectedness between the domain of good and the domain of right. Let me once again mention the above stated list of wrong actions and things considered to be good. Wrong actions included murder, rape, lie, worshipping a false god, sex before marriage, breaking a promise, genocide, being a communist, cheating your lawful wife, consuming drugs, being a homosexual. List of “goods” included enrolling at a university, inviting a friend for a date, watching child pornography, drinking beer, getting married, going to the theatre, reading Shakespeare, playing piano, helping grandma with the dishes, stealing a chocolate bar in Tesco, becoming a fighter-jet pilot. There are many if not all conceptions of good, including most of the items on this list, which are possibly morally objectionable. The most obvious is definitely child pornography and stealing, but drinking beer can too be considered morally deficient on many grounds, both religious and secular. It has even been prohibited by law in a country known for its most distinct liberal tradition. Becoming a fighter jet pilot is wrong and offensive from various pacifist viewpoints and even going on a date can be viewed as morally problematic. Keeping this in mind, it can be observed that “neutrality in conceptions of good” cannot be contained into the second sphere. Hence, there is a fundamental problem of scope of state neutrality. Having said that, it is evident that an eventual solution to this problem would have to take on the issue of priority of right over good and the relation of the two spheres, which would establish a more precise scope of state neutrality. That would be the topic of the next few pages.

If we presuppose that the right is prior to the good,¹⁵ we immediately face a couple of dilemmas about how this priority is to be applied. I see four possible options. Either the

¹⁵ This will be my presupposition from now on. Even if, as mentioned previously in footnotes, it is not *prima facie* clear that a liberal cannot be utilitarian, there is a vast consensus on liberal theory giving priority to

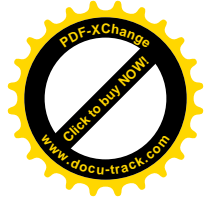


conceptions of good will be constrained by every possible conception of right, or will be left unconstrained, or will be constrained by one adopted conception of right, or there would be some kind of split in the sphere of right (in morality) and one side of this split would constrain the sphere of good and the other one not. I hold that all these options but the last are implausible. Let me explain why.

The first option of the relation between the priority of right over good claims that the state should be neutral towards conceptions of good of its citizens, excluding all those which are *on some grounds* morally questionable. This is untenable for two reasons. The first reason is that it would in reality mean that the range of actions that anyone can do with a guaranteed state non-interference is drastically and implausibly limited. It will exclude, using once again my list of possibly wrong actions, any religious practice, because every god is false at least to someone, leaving aside the exercise of certain political views (being a communist) and so on.

The second reason, however, is much more important. If all potentially morally wrong actions are excluded, then we in fact endorse the standpoint that a particular moral view of one person can be allowed to impede the actions of others even if there is no connection whatsoever between the two persons. The best example of this principle concerns the laws banning homosexuality and homosexual practice, historically quite frequent in Europe as well as in the US. In this example, two consenting adult males do something in private with no harm done to the society, nor to each other, in no way endangering the freedom or values of others. Therefore, there exist no practical, non-moral reasons to ban it. In that case, freedom of one is sacrificed solely for the sake of a group of persons deeming a certain practice disgusting or morally questionable. In fact, there are few breaches of autonomy that are clearer than this case. Individual's choices of good and bad are threatened by something that,

deontological considerations over teleological. I will follow that consensus and elaborate on its possible import to the question of neutrality.

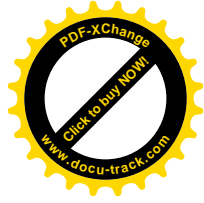


strictly speaking, has nothing to do with the act itself being wrong or bad, only with the opinion of certain people on what is natural and what is not. Hence, the view claiming that conceptions of good might be circumscribed (with state's non-neutrality towards it) on the basis of another person's differing moral view is untenable because it attacks the core of autonomy as the basic liberal value.

The second option of the scope of state neutrality within the spheres of the right and the good excludes morality, which was proven to be problematic, completely from the realm of the state. It proclaims that even though the right is prior to the good, the state should be neutral towards the conceptions of good of people and disregard moral demands altogether. It should be neutral towards the various conceptions of good and it should not let morality distort the picture.

This is also unacceptable. Practically speaking, state would in this case be neutral towards the conceptions of good of pedophiles, murderers, and thieves. It would do nothing to enhance the security of its citizens because its breach might be considered good by someone and there is nothing that tells the state which conceptions of good are worth protecting. In fact, this is a situation when the state does not do anything at all, when it is neutral to the point it is virtually non-existent.

The terrible picture painted by the previous paragraph is the Hobbesian idea of the state of nature. As in Hobbes, morality is completely absent in it. The pragmatism of state is overridden by the priority of right over good and this deontological claim is inert, does not do any work. The inevitable outcome of this awful option is the claim that morality *has to* play some role in state's actions. Without it, there would be no state, no society to build upon. This would constitute a sure death (or, in Hobbes' case, a beginning from non-existence) of the

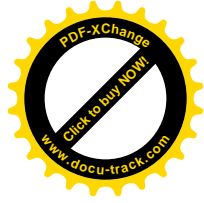


idea of political community. That is why morality needs to have some import over state neutrality towards conceptions of good and why the second option is untenable.

The third option of scope of state neutrality involves morality, but not in the overarching sense of the first option. It is objectivist, claiming that even if there is a plurality of opinions on morality, there is only one set of actions that are right and one set of actions that are wrong. If the priority of right over good perseveres, it means that the state ought to be neutral towards the conceptions of good *unless* they conflict with the adopted (correct) conception of morality.

This is so far the most plausible option. It is not in any sense horrifying or *prima facie* wrong. Nonetheless, it is not tenable on rather similar grounds with the option number one; it significantly invades the space of personal autonomy. Even though it leaves some area for it within the conceptions of good (which depends on the conception of morality adopted by the state), there is *no* room left for it in the domain of right and wrong. Citizens can choose and develop some limited range of conceptions of good, but they are no longer responsible for forming their beliefs about morality. The state establishes what is right and wrong on the grounds that it is objectively so and the common man has no other option but to abide the law.

But the view that morality is fixed and that the state is its watchdog is also very dangerous. There is no “privileged access” of state or any state official to the sphere of morality. The state does not necessarily know any better what is right and wrong than an ordinary citizen. The assumption that the state *does* know better and, moreover, that it is its responsibility to enforce this knowledge *fully* amongst its citizenry is simply incorrect. When the state becomes *the* moral actor and the citizen is put aside as a non-autonomous observer, the pathway towards totalitarianism is wide open and personal autonomy suffers.



In fact, we may take historical instances best exemplifying such a scenario: villages during the deep feudal Middle Ages, the towns under the Calvinist rule such as Geneva in the 18th century. Here, the morality was the business of the authorities (village priests and municipal officials respectively) and each and every moral wrong in the adopted conception was punishable by the law. The conception of right and wrong was enforced *as a whole*. This is a deeply illiberal picture; liberalism and personal autonomy cannot be accommodated with one rigid view on what is moral and what is not, enforced consequently by the authorities. That is why liberalism and liberal neutrality have to go necessarily with the last option.

The fourth option is the most complicated one. It claims that there is, on the one hand, a space for the exercise of autonomy within the sphere of the right and the good. On the other hand and necessarily - as the previous three options showed - there needs to be a space among various conceptions of good that is set by the state as beyond the limits of the acceptable for purely *moral reasons*, such as watching child pornography, stealing a chocolate bar or the conceptions of good of pedophiles, murderers and thieves. This means that there is a *class of moral reasons that the state acknowledges and enforces* and thus it limits the exercise of chosen conceptions of good. Hence, the state can be neutral between conceptions of good, but only within a limited range of conceptions that are not overruled by *certain* moral reasons.

This creates a big puzzle. It seems that the only option for state neutrality is to split the domain of morality into two, one that state has every right to adopt and enforce and one that is left unresolved for autonomous individuals to settle for themselves. This may resemble Rawlsian “comprehensive conceptions of good” versus “political conceptions of good”¹⁶, only with the involvement of morality, however, the impression is misleading. The split of the domain of morality is not traceable with a simple key “pertaining to the basic structure and

¹⁶ See John Rawls: *Political Liberalism*, Columbia University Press, New York 1993.



institutions of society – not pertaining to the basic structure and institutions of society.” It would seem, for example, that the liberal state has a duty to remain neutral on, for instance, the issue of worshipping a “false” god or being a communist, which are often much more public in their exercise and impacts than for example consuming drugs or watching child pornography, which may very well happen in private and not harm anyone directly. In spite of this fact, virtually all liberal theorists would argue that the state has every right *not* to remain neutral in the second group of issues, but has a duty to remain neutral with respect to the first group.

Hence the question of neutrality of state is fundamentally about providing a justification for the split of the sphere of morality into 1) a part in which the state ought to remain neutral and allow/protect resulting conceptions of good (in order to respect personal autonomy of its citizens) and 2) into a part in which it has to maintain a moral stance and not allow certain acts to happen, thus outlawing the exercise of certain conceptions of good. Consequently, when liberal theorists talk about the ideal of state neutrality, what they mean is that the state is neutral in the sense of the first half of the division and protects the options of citizens within this defined realm. On the other hand, they are perfectly fine with the fact that it is allowed or even morally expected for the state to act against the “wrong” actions belonging to the second half.

But how can we split morality into the two realms that these theories presuppose? As far as I know, the only philosopher who noticed such a tension within the question of liberal neutrality was Joseph Raz when commenting on Robert Nozick’s conception of neutrality. In his interpretation of Nozick, he claims that the theory of “side constraints” from *Anarchy, State and Utopia*¹⁷ defines the scope of state neutrality. The area of side constraints serves as *the* part of morality which is in Raz’s expression “politically relevant” (analogous to my 2) in

¹⁷ Nozick, Robert: *Anarchy, State and Utopia*, Basic Books, New York 1974.



previous paragraph) and everything else is left unresolved with state being neutral towards the individuals' choices. But, Raz claims, *others have been much less explicit regarding the way they wish to divide morality into a part which is politically relevant, and a part which is not.*¹⁸ This is a part of broader Raz's critique of liberal neutrality.¹⁹ He claims that such an elaboration on the distinction between the right and the good is 1) necessary for any conception of neutrality and 2) so elusive that it in fact undermines any possibly meaningful conception of liberal neutrality. From that analysis he concludes that we should better avoid liberal neutrality altogether, because it can never make sense.

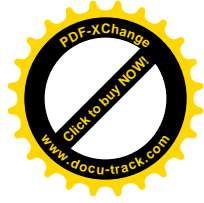
In any case, Raz's critique of liberal neutrality is very accurate. Liberals do need a split in the realm of morality and it may not be very easy to distinguish a (moral) area in which state *has to* be neutral (including e.g. religion) and area where it *must not* be neutral (including drugs/stealing chocolate). But even if such a split is extremely difficult to identify, that alone does not constitute a ground for rejecting state neutrality altogether. As I have shown above, state neutrality within morality and conceptions of good is a necessary outcome of the doctrine of personal autonomy and also state's "moral" involvement in certain kinds of exercises of conceptions of good and bad is necessary. Thus, the split between the area of state neutrality and area of state (moral) involvement is also necessary.

The question now is how this split is arrived to and justified. Liberal pragmatics, like William Galston,²⁰ do have a theory, as they see justification of the sphere of liberal neutrality in pragmatic reasons; society is far happier, flourishing etc, when the state is restricted in a certain way (like not enforcing one religion or not prosecuting adultery). But when it is restricted in certain other ways (like not defending public order), the society gets upset. In this

¹⁸ Joseph Raz: *Morality of Freedom*, p.137.

¹⁹ Joseph Raz: *Morality of Freedom*, pp. 110-162.

²⁰ See for example his paper *Defending Liberalism* (*The American Political Science Review*, Vol. 76, No. 2, 1982, pp. 621-629) or his book *Liberal Purposes* (Cambridge University Press, Cambridge 1991, especially pp. 79-118).



case, it is the role of the state to step up and engage in a specific sort of activities, just because the lack of its engagement inevitably brings about negative consequences – and *mutatis mutandis* with positive consequences.

To some extent, such pragmatic thinking is correct. After all, the state should be interested in the well-being of its citizens. But these pragmatic considerations are not the whole story. More than a few totalitarian regimes have grown out of liberal regimes because some restrictions of freedom were “required” by outside situation, public disorder, bloodthirsty enemies or other pragmatic considerations. When analyzing only pragmatic aspects of the situation, the value of autonomy drops out and liberal regime becomes only a *contingent* feature maintained because it can assure some limited social peace under certain circumstances. This in fact means that liberalism has no independent justification apart from the benefits it brings to the society. This, in a strong sense, goes against the idea of an autonomous individual standing at the very beginning of this paper. Thus, on top of pragmatic considerations, there has to be (or had better be) a justification of a different sort if we wish to maintain the liberal theory as we know it.

IV. The Mechanism of Liberal Neutrality

With the split of the sphere of morality to the area of state neutrality and the area of state active involvement on mind, I will analyze my own positive solution. In my view, the split of morality goes along the above-mentioned involvement of the sphere of rights and liberties into the sphere of morality. State neutrality is determined by the extent of rights and liberties each theory attributes to an individual. More precisely, the mechanism goes as



follows: A theory of rights and liberties postulates which choices (broadly taken) of an individual need to be protected. These protected choices then become an area in which state neutrality is required. Outside this area, the choices of an individual are not protected and the state can be involved in various matters without violating its neutrality. Possible actions and policies of the state that are outside of the sphere of rights then do not concern neutrality and as such do not breach any obligations of the state towards its citizens.

So, the basic schema goes as follows: *autonomy determines rights and liberties all autonomous persons have* (can vary from conception to conception) *and liberties and rights of persons determine the scope of state neutrality*. The state is allowed and required to enforce morality if and only if it is connected to the breach of rights or liberties. Also, conceptions of good involving such a breach are banned by the law on moral grounds. On the other hand, when conceptions of good and right are within the scope of adopted rights and liberties, the state has to remain neutral towards them, not disallowing or favoring any single one as this would constitute an invasion of the space of protected personal choice. Outside of this schema, neutrality-based considerations do not arise.

To defeat this schema, a very easy step is needed: it is sufficient to find a right grounded in personal autonomy whose breach would not morally require any action by the state. Or, in the opposite direction, to find something which is neither a right nor a liberty, but still morally requires the state to protect it and remain neutral. I cannot find such a thing in either direction. That is why I think the schema holds.

However, even if the case for rights is pretty clear, there are a few important clarifications needed when considering liberties. As for the first clarification, if there is a liberty to drive on the right side of the road, it would seem that the state can breach it without any moral implications and hence it would constitute a needed counterexample from the previous paragraph. But I strongly believe there is no such liberty. In this sense, I agree with

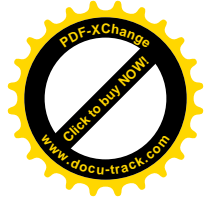


Dworkin's *What Rights Do We Have?*²¹ Even if in a normal discourse we can speak of liberties to smoke in the bar, listen to loud music after 10pm and similar, these are not liberties pertaining to the autonomy of an individual, which is the kind of liberties I am interested in. Autonomy of an individual is not anyhow obstructed when a municipality issues a decree on acceptable degree of nocturnal noise. That is why liberty to listen to loud music is not a consequence of autonomy, and as such its breach is not a breach of required state action. Hence, the schema holds.

The second clarification is about a distinction of moral / non-moral conceptions of liberty. Similarly to the argumentation in the previous paragraph, if there is a liberty to go and murder someone, this is an issue outside of required state neutrality and as such can provide a possible counterexample to the schema. But, as in previous paragraph, "liberty to murder" or a "liberty to do whatever I want" is not a consequence of personal autonomy and as such is not relevant for state neutrality. In this sense, the resulting conception is a moral liberty, liberty that does not entail any action that can seriously harm others. The reason for that is that liberty to harm can never be entailed by the conception of autonomy. That is why it is important to spell out the whole schema, not only the determination from liberties and rights to state neutrality, but also the determination from autonomy to *these* liberties and rights.

There are a few possible problems connected to the conception of state neutrality that has just been spelled out. The first one involves certain opacity in enforcement of moral rights and liberties by the state. Two basic questions emerge. 1) Does the state need to enforce all rights and liberties? 2) What does this enforcement mean for the actual functions and actions of the state?

²¹ Ronald Dworkin: *What Rights Do We Have?*.

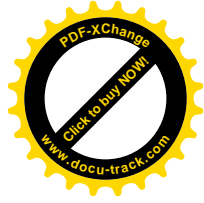


The answer to the first question is traceable already in the paragraphs above. I hold that the state should enforce all rights and liberties grounded in the notion of personal autonomy. For the present purposes, I do not hold any view on whether there are some rights or liberties not connected to such autonomy. There may very well be such things, but they do not have any relevance to the issue of state neutrality.

If rights and liberties arise from the conception of personal autonomy, the state has an obligation to enforce them. If an autonomous being is due some treatment, needs to have some choices open and has to live unobstructed in certain areas (because of his character as an autonomous being), I hold that the state, as a community of autonomous beings, has to act and try and ensure for every individual to have these liberties. Otherwise, such a state fails to fulfill its obligations towards its citizens.

With regard to the second question, the shape of the state enforcement (or, in other words, the extent of state obligations towards its autonomous citizenry) is defined by the concrete conception of rights and liberties employed. The involvement of the state will depend on how broad and how deep this conception is. Take a few controversial examples. Can a neutral liberal state support art? Can it provide for its poor without breaching its neutrality? Can it express a view on abortion (without necessarily banning the choice)? Can it have a mandatory system of state-run education? These and similar questions have been haunting the controversy on liberal neutrality for a few decades now without any glimpse of a solution coming within sight. The ultimate reason for the fruitlessness of these debates is that they were missing the point. The question “On which issues must state be neutral and how?” is unanswerable without a concrete theory of rights and liberties of autonomous individuals coming in. Take the examples one by one.

Can a neutral state support art? This question is in the scheme I proposed earlier translated as follows: Are there any rights or liberties whose exercise would conflict with a

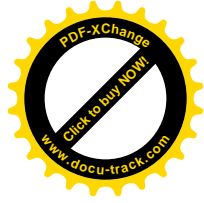


state-run supporting scheme for various arts? If the answer is no, then the question is outside the realm of state neutrality and it is only upon a pragmatic political decision whether such a supporting scheme would be adopted or not. State neutrality will never be touched, whatever the result might be. On the other hand, if there is such a right, the state cannot support arts because of concerns for neutrality. A good example for this case is embodied in Dworkin's work.²² He has a very strong conception of a right for equal treatment of persons. If we adopt such a conception, there is a danger that if the state supported arts (and consequently art lovers), it would not treat equally those citizens who happen to prefer beer or football. Because of this right to equal treatment, the state would exhibit a lack of respect for a conception of good that includes beer, football and no arts. As such, state neutrality towards exercise of rights of autonomous individuals would be breached and the state would find itself in a morally unacceptable position. That is why it cannot support arts, at least in this chain of thought.²³

In the issue of the state supporting the poor, the role of rights in state neutrality is even more visible. Libertarians like Robert Nozick acknowledge that every person has a right to his property. In this conception of rights, the state remains neutral only if no property is taken away and owners are protected. On the other hand, more "left-oriented" liberals claim that there is a right to a decent life. In that case, the state is neutral only if it takes some share of property from the rich and gives them to the poor in order to maintain the life-standard worthy of an autonomous being. Only when this condition is fulfilled can the state be neutral towards choices these individuals living decent lives make. (Needless to say, one cannot hold at the same time a view that individuals have *absolute* right to their property and that the poor have

²² Ronald Dworkin, *Can a Liberal State Support Art?* in: *A Matter of Principle*, Harvard University Press, Cambridge 1985, pp. 221-233.

²³ Dworkin himself, even though he sketches this option, disagrees with the result. He thinks that there are other considerations (involving a state duty to ensure that citizens have possibility to enjoy certain conceptions of good) that in the end transform the original consideration of equal treatment. As a result, state can support art without any offence against its neutrality. I do not think this reasoning is sound, but I am not going to take upon the issue now. The purpose of this passage is only to demonstrate how the questions about state neutrality ultimately boil down to the questions about rights.



a right to live decent life provided by a scheme of redistribution – so there cannot be a deep conflict within state neutrality which would not translate into an incoherent theory of rights.)

Much the same, *mutatis mutandis*, goes for the issues of abortion, state education and so on. There may exist, for instance, a right to life of the fetus, a right to choose of the mother, but not both. Overall, what we have in front of us is a sketch of three areas completing the conception of state neutrality. The first is the area of exercise of rights and liberties. This is the area of state neutrality – the state does not trespass onto it as its potential intervention is morally untenable. Then there is the area of state obligatory involvement – this is the area of moral duty of the state to try to prevent breaches of rights and liberties. And then there is the area utterly unconnected to rights and liberties – and there no claims of state neutrality arise. In the first area, state involvement is unacceptable. In the second area, it is an imperative. In the third area, it is optional. In any case, the solution to the problem of state neutrality presupposes *some* conception of rights and liberties. Without it, it is hopelessly confusing and insoluble.

The second possible problem of my conception takes the issue of liberal neutrality one level higher. If I am right, it would mean that even though the state has to be neutral as far as individual and conflicting conceptions of good or personal moral beliefs are concerned, the state can never be neutral in the domain of rights and liberties. It needs to adopt one specific conception of rights and liberties and is obliged to adhere to it. The reasoning is simple. If this domain constitutes the scope of state neutrality, then applying the state neutrality back to rights and liberties would be squarely circular with no way out. I believe this can be problematic. One can construe an argument stating that such a view on rights and liberties that is determined and enforced by the state somehow inherently involves a breach of autonomy, because in this case there is no space left for an individual choice. In fact, this is, in my



opinion, one of several motivations for philosophical anarchism. If my argumentation holds, it will result in the *necessity* for every state to have a conception of rights and liberties, however codified (constitution, tradition...), which needs to be enforced. If this is so, then it is possible to maintain that every single state (even the liberal one) assumes the supreme position of a (partial) moral umpire and that *necessarily* breaches personal autonomy (again, according to my argumentation). That is why my argumentation is in fact incomplete and anarchy is the only morally viable option respecting autonomy of an individual.²⁴

Almost needless to say, I disagree with such a conclusion. We need to live in communities; we are social creatures who, at a certain level of development, need a state to function properly. And the most fundamental decision in an organized community is to come up with an answer to the equally fundamental question: “What is the value of an individual and his choices?” The answer to this question is *a* theory of rights and liberties. That is the fundamental cornerstone of human society, because it ultimately determines the space in which an individual can pursue his conception of good with the guarantee that the state will not step into it and will remain neutral.

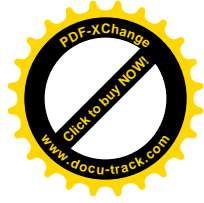
Thus, it is not a shocking conclusion that the existence of state presupposes a conception of rights and liberties. Since this conception is necessarily public, as I have argued above, it only means that a common collective deliberation is needed to adopt it. Such a collective deliberation, today mostly through continuous constitutional changes by democratically elected officials with a lot of procedural safeguards, does not breach the autonomy of an individual (on the condition that he is not excluded from the process of deliberation). It is just an expression of the brute fact that if we live collectively, we have to decide on certain issues collectively. Only an “every man is an island” logic adopted by anarchists can prove state to be necessarily immoral from this standpoint.

²⁴ For this type of reasoning see for example Robert Paul Wolff: *In Defense Of Anarchism*, Harper & Row, New York 1970, pp. 3-19.



However, this does not mean that we are to take the issue of rights and liberties lightly. Deciding on this matter is the most important collective responsibility of each and every citizen of a democratic state. We have a moral obligation to ensure that our state fully respects what every person is entitled to. In fact, constitutional practice is just a political philosophy collectively exercised. It is a precarious thing because people can always err and safeguards, however sophisticated, can always fail. But still, we live in organized communities and that is what we need to do.

To recapitulate the last two chapters, I firstly posed a question to what spheres the neutrality of a liberal state applies. Using the taxonomy presented beforehand, I argued that neutrality cannot be solely concerned with conceptions of good, but has to involve some moral component. Running through the possibilities of involvement of morality in conceptions of good, I found out that the only viable alternative is to concede that there is a split within the sphere of morality, into a part that is enforced by state and a part which is not and where state's neutrality is preserved. Looking for a justification of that necessary split, I argued that what actually marks the scope of liberal neutrality is the interference of the sphere of rights and liberties into the sphere of morality. Rights do double work there. Firstly, they mark the area of necessary state involvement (for their protection), and secondly, they create the realm which is "untouchable" for the state – it has to remain neutral there. Hence, the basic argumentation scheme of liberal theory stems from personal autonomy to rights and liberties and from them to state neutrality. This argumentation schema not only constrains the state in specifying which policies the state cannot implement, but it also positively justifies the coercive involvement in the areas where state is required to act. What now follows is a demonstration of these results on a full-blown theory of liberal neutrality.



V. Dworkin's Liberal Neutrality: A "Case Study"

Having in front of us the body of argumentation from the previous sections, it is now time to illustrate it on a full-blown conception of neutrality. If I am right, then it will be possible to show that every conception of liberal neutrality either does not make sense or has to, in the end, presuppose a theory of rights and take for granted that this presupposed theory marks the scope of liberal neutrality by providing a dividing line within the realm of morality. For this task, I will analyze perhaps the most influential conception of neutrality of the last 25 years, i.e. Dworkin's.²⁵ In this chapter, I will firstly expose Dworkin's ideas in a short summary in order to provide the most unbiased view of his conception possible. Only after that will I apply my analysis to his body of argumentation and see whether they are compatible and how.

Dworkin starts his analysis of neutrality with the following question: *What does it mean for the government to treat its citizens as equals?*²⁶ This is for him an essential point, because "treating citizens as equals" seems to be a part of every political theory in the past 200 years and the ultimate difference between these theories is shaped by a different approach towards "equal treatment" of citizens. Moreover, the answer to this question needs to presuppose some view on the neutrality of the state. Either the state does not adopt any view whatsoever on what is good for its citizens and remains neutral in this respect, or it adopts one and treats its citizens equally with respect to a particular adopted conception of good. The former state is liberal, the latter, depending on the adopted conception of good, may be authoritarian, communist, fascist, conservative and so on.

²⁵ I will mostly comment on his famous essays *Liberalism* and *Why Liberals Should Care About Equality* in: Ronald Dworkin: *The Matter of Principle*, Oxford University Press, Oxford 1985.

²⁶ Ibid. page 191.



Here starts Dworkin's epic story of the liberal state. We have the question "how should state treat its citizens as equals without adopting any particular conception of the good." Dworkin will descend step by step from the ideal world to the demands posed by our perplexing reality. Firstly, he presupposes a state where everyone has the same conception of good and the same talents and abilities. In this world, the state would, without adopting any conception of good, ensure that everyone has an equal share of desired good. There is no other possible just scenario.

One step lower, people still possess the same talents and abilities, but do not have the same preferences. Here, state that strives to remain utterly neutral will ensure proper functioning of the market. Market will justly determine the cost of goods and thus facilitate the neutrality and comparability among various conceptions of good.

Another step lower, we find ourselves in our reality. People differ not only in preferences, but also in their abilities to satisfy them under normal market conditions. Here, neutral state has to compensate for the lack of luck of the unfortunate ones, who are disadvantaged and under the conditions of free market cannot satisfy their preferences and live according to their chosen conception of good. State neutrality towards their conception of good requires intervention, because if the state let the market decide, it would leave these people on the social periphery. This would result in a situation when the state, through its inactivity, in fact favors conceptions of good of those better situated at the expense of those worse off. And that would be a non-neutral, unacceptable result. Being neutral thus requires the state to at least try and justly compensate for contingencies of fortune, so that people have at least roughly equal chance to live according to their conception of good. Hence, the requirement of equal neutral treatment requires state to constrain one of the two big "liberal" institutions: free market.



Also the second of these institutions, democracy, is not left unlimited. Even though democracy, just like free market, is the purest expression of personal conceptions of good, it has to be constrained because minorities may suffer when they do not get a chance to express their views in the face of large majority. That is why liberal regime needs a scheme of rights to rectify the inherent faults of majoritarian decision-making. Only with that can a liberal regime ensure the equal and neutral treatment of its citizens.

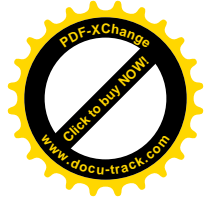
Hence, Dworkin comes to a conclusion that

Liberal, drawn to the economic market and political democracy for distinctly egalitarian reasons, finds that these institutions will produce inequalitarian results unless he adds to his scheme different sorts of individual rights (that is rights in economical sphere, like a right to decent life, as well as in political sphere, e.g. free speech – added by me). These rights will function as trump cards held by individuals; they will enable individuals to resist particular decisions in spite of the fact that these decisions are or would normally be reached through normal workings of general institutions that are not themselves challenged.²⁷

The order of analysis in just presented Dworkin's position seems to be quite the opposite of mine. He starts with the question about equal respect and comes up with the condition of "neutrally equal" respect for every citizen by every liberal regime. With this condition in mind, he sets the basic framework for liberal institutions, including conception of rights and liberties. That is the opposite of my "from rights to neutrality" analysis.

Interestingly enough, this tension does not signal either that I am wrong, or that his conception of neutrality does not make sense. In fact, I hold that Dworkin is implicitly pursuing the same sequel of argumentation arranged in the very same order of priority, but a different order of presentation. When we look at the text closely, we find out that there are

²⁷ Ibid. p. 198.



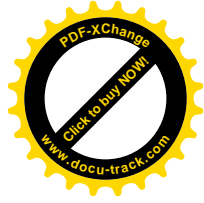
remarks about “individual worth” scattered all over it. He claims that (the state) *should impose no...constraint on any citizen...abandoning his sense of equal worth*,²⁸ or elsewhere: *The ultimate justification of rights is that they are necessary to protect equal concern and respect*.²⁹ These remarks point towards one direction. Dworkin’s basic question is: *What does it mean for the government to treat its citizens as equals*, but there is something behind it. The more fundamental question is: Why should governments try to treat citizens as equals in the first place? Here, as his remarks cited above indicate, he would respond by saying that it is because citizens *are due* equal respect, concern and worth. Another “why” question ultimately results in saying that people are autonomous beings capable of making their choices (about what is good and what is right). That is why Dworkin at the end of the day has to make personal autonomy his point of departure. Otherwise, his starting claims about equal treatment rest unsupported together with his whole theory.

But even if we share (on his side implicitly) the same starting point, the order seems to be different. He argues from autonomy to equality to neutrality to rights, while I argue from autonomy to rights to neutrality. Here, I hold that it is exactly as I proposed in the beginning of this section. Either we would consider his ordering as only rhetoric, hiding the correct development of issues, or it would not make sense.

Let me first consider the “equal treatment” claim he starts with. This, as I have analyzed in the previous paragraphs, is a claim about what autonomous beings are due. Thus, at the end of the day, even if Dworkin does not use the word at that stage, he speaks about a *right* to be treated equally by the state. From this right springs the neutrality condition and, at the next stage, *for distinctly egalitarian reasons*, the institutions of free market and democratic rule are adopted. Then, in the very last phase, other rights are created in order to make up for inequalities and other possible breaches of the individual worth of citizens.

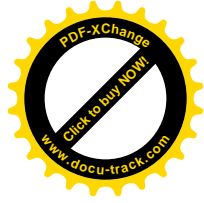
²⁸ Ibid. p. 205

²⁹ Ibid. p. 198.



Even though very appealing, this conception starts to look on the second thought rather suspicious. It does make sense when we adopt an “evolutionary” perspective and we talk about how neutral institutions are made and amended, but when we take a closer look without such a particular perspective, we see that state neutrality is even in Dworkin by no way prior to the rights of persons. The crucial question is about deliberating in which areas the state is or should be neutral. This is about defining the scope of neutrality, not about painting an epic picture of development of liberal institutions. I am deeply convinced that Dworkin has no option left but to define liberal neutrality with what the persons are *due*, or in other words, with individual rights and liberties. Only such a thing can define liberal neutrality. When it is abandoned, the phrase “neutral towards conceptions of good” is drained of its meaning, because it does not provide any clue on what the state is supposed to do when facing free market and unconstrained democratic rule.

Thus, stripped of its epical arrangement, I hold that Dworkin’s theory makes sense only if it is exposed in a chain of argumentation I proposed earlier in this paper. Dworkin starts from the autonomy of an individual, who is capable of exercising his own choices. This is the first crossroad. Dworkin holds that this autonomous person chooses his conception of good and this fact is worth protection. That is why states should not be allowed to adopt their conceptions of good and treat their citizens accordingly. The most distinctive mark in Dworkin’s theory emerges in the third step. He establishes rights of individuals with a great stress laid on the right to equal treatment. This determines the shape of his whole conception. With the “egalitarian” rights dominating, his neutral state would be largely redistributive. It will be neutral only if it can guarantee an equal starting line for even the worst-off and its ideal is to compensate fully for all the inequalities one encounters in the course of his life. His state is thus neutral to the citizens in the respect that it is trying to redeem all kinds of undeserved inequalities: social, natural, health-related, in talent or appearance.



Conclusion

Even after these few pages of my deliberations, the problem of state neutrality remains unresolved. I did not give the answer to the question in which specific cases should the state remain neutral, nor how and why. But that was never my ambition. I rather wanted to look at the vast literature on this problem and find some sense in it. The problem of state neutrality is a genuine problem of how the state should act in the face of its autonomous citizens. Political philosophers have a strong intuition that its actions should be somehow constrained because of respect these citizens are due, but it is not easy to find an answer how. At the end of the day, even though I did not provide an answer, I have found and explored at least its roots – rights and liberties of autonomous individuals.

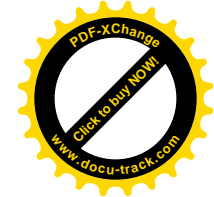
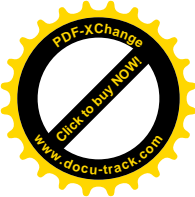
I have argued that the only intelligible structure of justification and specification of liberal neutrality stems from personal autonomy. Looking at the three spheres where autonomy is exercised, namely the sphere of conceptions of good, sphere of right and sphere of rights and liberties, I argued that every liberal state needs to, on the one hand, allow its citizens to exercise their autonomy in certain areas but, on the other one, constrain it firmly in others. This demarcation line is provided by the theory of rights and liberties. It is evident and historically proven that every wholesome liberal theory contains a conception of rights and liberties. If that is so, every liberal theory has by virtue of this conception a designated area of constraints of neutrality put upon the state. In this sense, every liberal state *is* necessarily neutral towards its citizens according to its conception of rights. Otherwise, it is not a liberal state.

Having this general view on liberal neutrality, there is one specific reason why I did not provide my own conception of rights and liberties autonomous beings have, with which



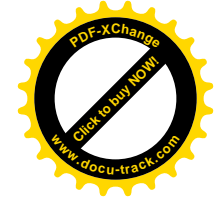
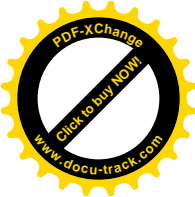
the argumentation in this paper would contain a full framework of liberal neutrality and would thus be “complete”. Together with Rawls and his *A Theory of Justice*, I do not think there is anything like *the* conception of rights and liberties. There is only one thing constant in the political theory: the nature of men. That, together with all the resulting characteristics (for example autonomy), does not change. What does change is the situation mankind and particular societies find themselves in. With this inconstancy of their situation, it is impossible to know once and for all what autonomous persons are due as autonomous persons. Rights as well as liberties have to reflect the circumstances of their respective societies. Freedom of press or right for information was not an issue in Ancient Greece, but it is now. Certain political rights were not even imaginable in the medieval states, but they became very relevant in the 19th century.

The task of political philosophy is thus to reflect upon the changes of fundamental organization and powers of human communities and contemplate about (not necessarily without controversy) what human beings are due, what are their rights and liberties. Some of them are very constant, like the right to life and security. But some, like a right to internet access, have no precedence and may just spring out of the latest technological development. This is no sci-fi and the novelty of such right does not make its enforcement less pressing. After all, the time may come very soon, that an individual wanting to exercise his autonomy would simply have to have unconstrained access to the internet. And governments not willing to respect it, like the Chinese for instance, would earn the contempt of every single liberty-loving individual and state on this planet.



Bibliography

- Ackerman, Bruce: *Social Justice in a Liberal State*, Yale University Press, New Haven 1980.
- Berlin, Isaiah: *Four Essays on Liberty*, Oxford University Press, Oxford 1969.
- Bohman, James; Richardson, Henry S.: *Liberalism, Deliberative Democracy, and "Reasons That All Can Accept,"* *Journal of Political Philosophy* 17, 2009, 253-274.
- Dworkin, Gerald: *Non-Neutral Principles*, *Journal of Philosophy*, Vol. 71, No. 14, 1974, pp. 491-506.
- Dworkin, Ronald: *Liberalism*, in: *The Matter of Principle*, Harvard University Press, Cambridge (MA) 1985.
- ~ *Why Liberals Should Care About Equality?* in: *The Matter of Principle*, Harvard University Press, Cambridge (MA) 1985.
- ~ *Can a Liberal State Support Art?* in: *A Matter of Principle*, Harvard University Press, Cambridge (MA) 1985.
- ~ *What Rights Do We Have*, in: *Taking Rights Seriously*, Harvard University Press, Harvard 1978.
- Galston, William: *Defending Liberalism*, *The American Political Science Review*, Vol. 76, No. 2, 1982, pp. 621-629.
- ~ *Liberal Purposes*, Cambridge University Press, Cambridge 1991.
- Gardbaum, Stephen A.: *Why the Liberal State Can Promote Moral Ideals After All*,
- Gaus, Gerald F.: *The Moral Foundations of Liberal Neutrality*, in: Thomas Christiano, John Christian (eds.): *Contemporary Debates in Political Philosophy*, Wiley-Blackwell, Oxford 2009.
- Hobbes, Thomas: *Leviathan*, Cambridge University Press, Cambridge 1993.
- Kagan, Shelly: *The Limits of Morality*, Clarendon Press, Oxford 1989.
- Kant, Immanuel: *Groundwork for the Metaphysics of Morals*, Cambridge University Press, Cambridge 1998.
- Klosko, Wall (eds.): *Perfectionism and Neutrality*, Rowman & Littlefield Publishers, Oxford 1993.
- Kymlicka, Will: *Rawls on Teleology and Deontology*, *Philosophy and Public Affairs*, Vol. 17, No. 3, 1988.
- ~ *Liberal Individualism and Liberal Neutrality*, *Ethics*, Vol. 99, 1989, pp. 883-905.
- Larmore, Charles: *Patterns of Moral Complexity*, Cambridge University Press, Cambridge 1987.
- Marteffe, Peter De: *Liberalism, Liberty and Neutrality*, *Philosophy and Public Affairs*, Vol. 19, No. 3, 1990, pp. 253-274.
- Mill, John Stuart: *On Liberty*, Bobbs-Merrill, Indianapolis 1956.
- Nagel, Thomas: *Equality and Partiality*, Oxford University Press, Oxford 1991.
- ~ *Moral Conflict and Political Legitimacy*, *Philosophy and Public Affairs* 16, 1987, pp. 215-240.
- ~ *Rawls on Justice*, *Philosophical Review*, Vol. 82, No. 2, 1973, pp. 220-234.
- ~ *Progressive But Not Liberal*, *New York Review of Books*, May 25, 2006.
- Nozick, Robert: *Anarchy, State and Utopia*, Basic Books, New York 1974.
- Orwell, George: 1984, KMa, Prague 2000.
- Rawls, John: *Political Liberalism*, Columbia University Press, New York 1993.
- ~ *A Theory of Justice*, Harvard University Press, Cambridge MA 1971.



- ~ *Justice as Fairness, Political not Metaphysical*, *Philosophy and Public Affairs*, Vol. 14, No. 3, 1985, pp. 223-251.
- ~ *The Idea of Public Reason Revisited*, *The University of Chicago Review*, Vol. 64, No. 3, 1997.
- ~ *The Idea of Overlapping Consensus*, *Oxford Journal of Legal Studies*, Vol. 7, No.1, 1987.
- ~ *The Priority of Right and Ideas of the Good*, *Philosophy and Public Affairs*, Vol. 17, No. 4, 1988, pp. 251-276.
- Raz, Joseph: *Morality of Freedom*, Clarendon Press, Oxford 1986.
- Scanlon, Thomas: *Preference and Urgency*, *The Journal of Philosophy*, Vol. 72, No. 19, 1975.
- Schwartz, Adina: *Moral Neutrality and Primary Goods*, *Ethics*, Vol. 83, No.4, 1973, pp. 294-307.
- Sher, George: *Beyond Neutrality*, Cambridge University Press, Cambridge 1997.
- Sinopoli, Richard C.: *Liberalism and Contested Conceptions of Good: The Limits of Neutrality*, *The Journal of Politics*, Vol. 55, No. 3, 1993, pp. 644-663.
- Waldron, Jeremy: *A Right to Do Wrong*, *Ethics*, Vol. 92, No. 1. (Special Issue on Rights) 1981.
- ~ *Law and Disagreement*, Oxford University Press, Oxford 1999.
- Wall, Stephen: *Perfectionism in Politics: A Defense*, in: Thomas Christiano; John Christian (eds.): *Contemporary Debates in Political Philosophy*, Wiley-Blackwell, Oxford 2009.
- Wolff, Robert Paul: *In Defense of Anarchism*, Harper & Row, New York 1970.