

Neutrality With Perfection: The Convergence Thesis

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Abstract

This dissertation defends the view that the ideal of liberal neutrality in political philosophy cannot be divorced from perfection. Arguing against claims that neutrality and perfectionism exclude each other, the dissertation posits that liberal neutrality and perfectionism are convergent, not divergent, philosophical ideals.

The dissertation is divided into five distinct chapters. The introduction provides a general philosophical framework of the problem and contextualizes its significance against the extant literature. Chapter 1 argues that the ideal of liberal neutrality depends on the conception of the good defined by the value of autonomy. It surveys different philosophical arguments about neutrality, including theories of political liberalism based on epistemic, pluralist and reasonability reasons for neutrality and argues that none of these is sufficient to establish the principle of neutrality. Chapter 2 defends a particular understanding of autonomy. It argues that a horizontal, rather than hierarchical, theory better resolves some of the standard philosophical problems with autonomy. The chapter expands the theory by arguing that autonomy is best understood in terms of the open future principle that reconciles contingency and spontaneity with individual ability to act authentically.

Chapter 3 builds on these claims to argue that the normative value of autonomy cannot be fully appraised within anti-perfectionist theories of liberalism because their basic assumptions do not correspond to the horizontal theory. This theory presumes the fundamentally relational nature of autonomy that depends on a range of first-order facts and structures that make individuals capable of autonomous behavior. Against this background, the chapter suggests that liberal perfectionism needs to recalibrate its concern and focus on developing autonomy-building interpersonal relations. Chapter 4 argues that ideals of neutrality and perfectionism in liberalism converge by way of conceptual and practical reasons. Conceptual reasons imply that institutional requirements of neutrality and perfection serve to provide supporting

justifications to each other. Institutional neutrality is owed only toward individuals who have autonomously chosen and sustained their conceptions of the good. Institutional promotion of autonomy aims to ensure that neutrality requirements are satisfied. Practical reasons imply that normative requirements of open future demand convergence of neutralist and perfectionist claims. The chapter surveys different elements of social context that have normative significance for the convergence thesis.

Chapter 5 demonstrates that the thesis of convergence between liberal neutrality and perfection can be applied to concrete cases of social policy that involve conflicting demands based on differing conceptions of the good. The thesis is contextualized by controversies about sugary drinks regulation in New York City and neonatal male circumcision in Germany.

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INTRODUCTION

Toward Convergence

1. The Problem

More than fifty years ago, in *The Human Condition*, Hannah Arendt espoused a particular understanding of what it means to be human. She argued that the active life (*vita activa*) is a distinctively human feature. For her, action is

the exclusive prerogative of man; neither beast, nor a god is capable of it, and only action is entirely dependent upon the constant presence of others.¹

Though written half a century ago in circumstances significantly different from our time, this statement contains a conception of human personhood that may still be relevant. For Arendt, what defines human beings is the capability for action. However, action is not merely a physical interaction of an object in the world with other similar objects following innate drives, but a capability for autonomy – for spontaneous and unpredictable agency that can profoundly alter the exigent conditions of human existence. Scientific breakthroughs that have radically changed the human condition, such as the invention of the polio vaccine or landing on the moon, represent startling examples of the human ability to act. The capability for autonomous action – or as Arendt described it, the capability of creating something new – implies a distinct human ability to reflect on and engage the world in all its

¹ Hannah Arendt, *The Human Condition*, Chicago: University of Chicago Press, 1998, pp. 22-3.

complexity, free from inherited patterns of thought and agency. Only reflection and spontaneity can make humans create genuine acts and engage the conditions of their existence.

Half a century later, defending a particular understanding of liberalism in *Sovereign Virtue*, Ronald Dworkin argued that the ability to live one's life skillfully and respond spontaneously to given circumstances is a valuable way to define what a good life is. He contrasted this idea (which he called the 'challenge model of ethics') to the view that what makes a life valuable is the impact one makes upon the world (the 'impact model of ethics'). He argued that what makes a life good is not necessarily the result (impact) one makes in the world but rather the skill in engaging the circumstances of one's existence. Here's Dworkin in an oft-cited passage:

We admire a complex and elegant dive, for example, whose value persists after the last ripple has died, and we admire people who climbed Mount Everest because, as they said, it was there. The model of challenge holds that living a life is itself a performance that demands skill, that is the most comprehensive and important challenge we face, and that our critical interests consist in the achievements, events, and experiences that mean that we have met the challenge well.²

Though writing in different historical circumstances, addressing different sets of philosophical problems and belonging to different traditions of political and philosophical thought, both Arendt and Dworkin have touched upon a similar question. What Arendt describes as a genuine action Dworkin frames as a conception of a good life; what is constitutive for defining a human person for Arendt is understood as the best way to live one's life for Dworkin. Skillful performance in living is a form of autonomous action that, regardless of the results it creates, represents both the distinctively human and the best way to live a life (for a human).

² Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality*, Cambridge, MA: Harvard University Press, 2002, p. 253.

Arendt and Dworkin were also deeply aware of the complexity of the modern world. For example, Arendt understood that plurality is an essential element of politics. The scope of possibilities for any non-totalitarian political philosophy or practice is circumscribed by the factual reality of pluralism. Politically, we are never alone, but always co-exist with others who may be (or are) radically different from us. This is profoundly important for understanding the nature of politics. This is because, as she indicated, human agency and the presence of others go hand in hand. Autonomous action, as the possibility of creating something new, necessitates a community of others, to which we belong as a distinct acting unit. The relation is also constitutive for pluralism: only in a community of autonomous agents (acting individuals) is genuine pluralism possible.

It is no accident that two of the most influential philosophers of the twentieth century were concerned with similar issues. The question of what it means to live a good life has haunted philosophers at least since Plato. Short of consensus until today, many accounts of moral, social and political philosophy have aimed to address the issue and offer plausible answers.

This dissertation, however, does not share that aim. Here, I simply assume that Arendt and Dworkin were right in arguing for an active and autonomous life that skillfully responds to challenges of the human condition as the best way for human beings to lead their lives. In other words, I share their conception of the meaning of human personhood and the good life. What I do aim in this dissertation, however, is to ask a corresponding question: how can such a conception of the good life be promoted in the circumstances of pluralism that imply the autonomous possibility of rejecting such a conception?

What I have in mind is the following problem: as Arendt described, human action is intrinsically linked to the fact of pluralism. Agency exists within an environment of radical human distinctiveness, which implies a plurality of different views of what represents a good life. Dworkin has set his challenge model within a broader context

of human critical interests. Unlike mere volitional interests that are subjective and relative from person to person, critical interests refer to objective facts that make human life good, from health to family relations. The capacity for autonomous action is among the critical interests of all humans. Both Arendt and Dworkin recognized that. As a way to define human beings and describe what a good life is for them, autonomy has an objective value. However, the exercise of autonomy implies the free volition of individuals to choose their own ways of life. It is also manifested as the subjective sovereignty of individuals to do things their way. Thus, autonomy is simultaneously critical and volitional.

Given autonomy's dual status, its institutional promotion as a critical interest is controversial because the plurality of volitional interests, implying the freedom to choose subjective ways of life, is crucially important for the political legitimacy of a liberal order. Promoting autonomy by violating the individual autonomous will defeats the purpose and distorts the meaning of liberalism. Since volitional interests circumscribe liberal justification of political power, liberal philosophy must address the problem of promoting autonomous action as a good way of life amidst radical disagreement about what makes a life good. So how to promote autonomy as a conception of the good life while staying within the bounds of liberal normative commitments is a formidable challenge that makes up a big portion of the liberal philosophical agenda. In short, if we take autonomous agency and pluralism as the core content of our social values, they will provide not only the ends to which we can aim, but also the constraints on political action that we consider permissible.

2. The Claim

Addressing this problem philosophically has been manifested in the debate between authors subscribing to two different sets of arguments. The first set is the view that pluralism of individual volitions is a constraining condition upon liberal policy-making and that justification of legal and political norms has to derive from facts and

practices associated with it. These arguments suggest that the existence of plural worldviews and ideas of the good life mandates institutional neutrality and provides no justification for states to institute legislation based on ideas of the good life that are not shared across the board.

The second set comprises the view that if what defines human beings and makes a life good is the capability to act independently and skillfully, then institutions are justified in promoting these ways of life. Such arguments usually assume that personal autonomy is the underlying value that enables people to act and respond to challenges of circumstance. The first set of arguments is known as the theory of liberal neutrality and the second as the theory of liberal perfectionism. Liberal neutralists advocate institutional neutrality toward what they see as partial ideas of the good life (volitional interests), while liberal perfectionists advocate institutional promotion of human perfection, perceived here as the ability to sustain a reflective and autonomous way of life (critical interest).

Since the first philosophical elaborations of these views appeared in the literature, the theories of neutrality and perfectionism have been considered exclusive to one another. Political philosophers have either argued in favor of neutrality or in favor of perfectionism. This is not particularly surprising, given that both the predicament and the normative outcome of the theories are radically different. Where neutralists suggest state restraint, perfectionists suggest state intervention. Rarely, if ever, have there been views that aimed to converge the two in a single normative account.

However, convergence between these views may be both needed and useful on many grounds. For example, it may help us address the question of promoting the *vita activa* in circumstances of radical pluralism in a way that better reflects the complex and dual nature of personal autonomy. It can help us get past one of the most entrenched and divisive debates in contemporary liberal thought. Finally, it can help us understand that the liberal political project can be built upon a more unified and coherent liberal theory.

In this dissertation I wish to extend and elaborate the view that liberal neutrality and liberal perfectionism should not be considered as exclusive but complementary, consistent and convergent political theories. Contrary to the exclusivist views that have predominated much of contemporary political philosophy, I wish to argue that theorizing convergence between the two can be both philosophically and practically useful in addressing issues of value promotion in conditions of pluralism.

My strategy for arguing convergence revolves around theorizing the notion of autonomy within these philosophical frameworks. Obviously, autonomy plays a significant role in both theories. Within liberal neutrality, it is conceived as an ultimate constraint upon institutional action, a prerogative of individuals as participants and sources of legitimate political power that the state is not allowed to impinge upon. With some exceptions, neutralists almost never think of personal autonomy as a value that needs promotion, but rather as a fence that serves to delimit the realm of permissible institutional involvement in social and political affairs. On the other hand, within liberal perfectionist theory, personal autonomy is conceived as an intrinsic feature of humankind that justifies institutional efforts at its promotion and perfection. These efforts, for many perfectionists, also include the promotion of conditions and choices that aid and sustain autonomous ways of life.

At base, the problem is that neutralists and perfectionists subscribe to differing conceptions of personal autonomy. Some of them even think that no conception of autonomy is able to sustain an institutional commitment to both perfection and neutrality. For example, in *Liberalism Without Perfection*, Jonathan Quong says the following:

The value of autonomy can thus deliver a principled commitment to liberal toleration, or it can deliver perfectionism, but I doubt there is a coherent conception of autonomy that can deliver both.³

³ Jonathan Quong, *Liberalism Without Perfection*, Cambridge: Cambridge University Press, 2011, p. 71.

However, the view I defend in this dissertation opposes the skeptic view that no conception of autonomy is able to yield simultaneous support for neutralist and perfectionist arguments. Recent discussions in philosophy suggest that one may plausibly conceptualize personal autonomy in a way that will be more inclusive toward both normative paradigms. As feminists and other critics of liberalism pointed out, personal autonomy does not imply only a second-order reflection on first-order facts – a view many of the early neutralist philosophers supported – but also a range of first-order facts that are relevant for developing the capability for autonomous behavior. Additionally, contrary to Kantian views, personal autonomy does not exclusively mean reason’s detachment from inclinations, but rather the ability to (re)act spontaneously to the circumstances and conditions of everyday life. Reflecting on some of the recent discussions and novel ways of conceptualizing personal autonomy, as well as on some of its ancient precedents, can help us develop interpretations that are able to support the view that neutrality and perfectionism converge.

3. The Coordinates

This dissertation is set within the analytic political philosophy of liberalism. Though it inherits the tradition of arguments that start as early as Plato and Aristotle, its main predecessors are theories about politics that developed against the background of modern pluralism. The arguments that have found their way into contemporary theorizing of neutrality and perfectionism are developed and elaborated already by John Locke and John Stuart Mill. For example, in his writings on toleration, Locke argues for institutional restraint toward the imposition of religious conversion on the basis of the disvalue of an imposed judgment.⁴ As will be clear in the subsequent discussion, this theory of Locke’s is very important for contemporary claims of

⁴ John Locke, *Two Treatises on Government and A Letter Concerning Toleration*, New Haven: Yale University Press, 2003, pp. 211-257.

institutional restraint argued for by the liberal neutralists. Similarly, by introducing the harm principle as a constraint on political power, Mill provided an invaluable philosophical framework from which many contemporary theories of liberalism arose, including both those in favor of restraint as well as those in favor of value promotion.⁵

However, modern theories of neutrality and perfectionism have been developed and systematized only in the twentieth century. Two philosophers were crucial in this effort. First, John Rawls, with his theory of justice and political liberalism made the pioneering contribution. Arguing for a freestanding conception of justice not based on a single conception of the good but on an overlapping consensus, Rawls established the kernel of what is today considered the theory of liberal neutrality: the idea that justification of coercive laws must be neutral to different conceptions of the good.⁶ Rawls' ambition was to develop a theory of liberalism that would be not 'just another sectarian doctrine' but a philosophical system robust across different theories of the good life, potent enough to provide solutions to challenges of this multicultural age.

The second philosopher of crucial importance for the debate between neutralists and perfectionists is Joseph Raz. Contrary to Rawls, Raz thinks that state institutions have a duty to promote a particular conception of the good life. Arguing that autonomous life is valuable, Raz suggested that it is justified to use public power to promote conditions and choices that are favorable for the emergence of autonomous individuals and ways of life.⁷

The debate has been further enriched by numerous contributions from philosophers on all sides. Some, such as Charles Larmore,⁸ believed that post-metaphysical

⁵ John Stuart Mill, *On Liberty*, Broadview Literary Texts: Ontario, 1999, pp. 41-167.

⁶ John Rawls, *A Theory of Justice*, Cambridge, MA: Harvard University Press, 1971; also *Political Liberalism*, New York: Columbia University Press, 1993.

⁷ Joseph Raz, *The Morality of Freedom*, Oxford: Oxford University Press, 1988, p. 418.

⁸ Charles Larmore, *The Morals of Modernity*. Cambridge: Cambridge University Press, 1996.

conditions of modern life dictate a form of state neutrality because it is impossible to establish grand narratives about value, such as those within the realms of religion or science. According to these types of arguments, epistemic conditions of the modern world leave no other option to liberal states but to be neutral on the questions of the good life. Others, such as Bruce Ackerman, argued that by choosing one particular conception of the good over another, institutions express superiority over one group of its citizens, which is contrary to basic liberal intuitions.⁹ Brian Barry and Thomas Nagel joined Rawls in arguing that institutions should exercise neutrality because particular conceptions of the good will necessarily be controversial¹⁰ and because political legitimacy depends on a higher level impartiality that only a neutralist framework can deliver.¹¹ Though differing in their emphases on particular elements or arguments, almost all neutralist philosophers concur with Dworkin's statement that the doctrine of neutrality represents 'the constitutive political morality of liberalism'.¹² One reason the theory has become influential in liberal thought is because, as David Paris noted, it offered an opportunity both to specify the basic liberal commitments and to provide principles for defining and defending liberalism as a doctrine.¹³

The arguments from the perfectionist camp have been no less elaborate and persuasive. Some liberal perfectionists argued that pluralism is the good that states have reasons and justification to promote. For example, William Galston has been one of those voices arguing that one of the main duties of the liberal state is to protect diversity and pluralism.¹⁴ Stephen Gardbaum went further to argue that

⁹ Bruce Ackerman, *Social Justice in the Liberal State*, New Haven: Yale University Press, 1980, p. 10.

¹⁰ Brian Barry, *Justice as Impartiality*. Oxford: Oxford University Press, 2002.

¹¹ Thomas Nagel, 'Moral Conflicts and Political Legitimacy'. *Philosophy and Public Affairs*, Vol. 16, No.3, 1987, pp. 216-239.

¹² Ronald Dworkin, 'Liberalism', in *Public and Private Morality*, ed. Stuart Hampshire, Cambridge: Cambridge University Press, 1978, pp. 127-138.

¹³ David C. Paris, 'The "Theoretical Mystique": Neutrality, Plurality and the Defense of Liberalism', in *American Journal of Political Science*, Vol. 31, No. 4, 1987, p. 921.

¹⁴ William Galston, *Liberal Pluralism: The Implications of Value Pluralism for Political Theory and Practice*. Cambridge: Cambridge University Press, 2002.

liberal neutralists have misunderstood the relation between liberalism and pluralism. Their belief, according to him, that liberalism needs to respond to conditions of pluralism by remaining neutral to different conceptions of the good is profoundly mistaken. Liberalism, he says, is less a response to, and more a cause of, modern pluralism. Therefore, liberal institutions have a duty to support conceptions of the good that result in pluralism.¹⁵ Other philosophers focused more on arguing that liberal perfectionism must aim at perfecting rationality and autonomous reflection as parts of human nature.¹⁶ Regardless of the internal disagreements within the perfectionist camp, or the differences in theorizing legitimate promotion of value, almost all liberal perfectionists agree that neutrality is an implausible political ideal.¹⁷

Though many liberal perfectionists were quite confident that the reign of liberal neutrality theory in contemporary political philosophy was over (leading some of them to engage in the ‘autopsy’ of the ideal)¹⁸ recent theoretical contributions indicate that the pendulum seems to have swung in the opposite direction. In their recent publications, Martha Nussbaum and Jonathan Quong have attempted to revive the theory with a new emphasis on old arguments (Nussbaum) and new renderings of the anti-perfectionist tradition in liberal philosophy (Quong). Nussbaum stresses that Rawls’ ‘burdens of judgment’ argument still holds sway in its ability to ground the ideal of liberal neutrality.¹⁹ Quong, on the other hand, suggests that Rawls was wrong to position the overlapping consensus at the end of the procedure of choosing principles of justice. Rather, Quong believes that if we posit that value consensus

¹⁵ Stephen Gardbaum, ‘Liberalism, Autonomy and Moral Conflict’, *Stanford Law Review*, Vol. 48, No. 2, 1996, p. 389.

¹⁶ See Thomas Hurka, *Perfectionism*, Oxford: Oxford University Press, 1993.

¹⁷ In particular, see George Sher, *Beyond Neutrality: Perfectionism and Politics*. Cambridge: Cambridge University Press, 1997. Also, see Richard Arneson, ‘Perfectionism and Politics’, *Ethics*, Vol. 111, No. 1, 2000, pp. 37-63.

¹⁸ Richard Arneson, ‘Liberal Neutrality on the Good: An Autopsy’ in Steven Wall and George Klosko, *Neutrality and Perfectionism: Essays in Liberal Theory*, New York: Rowman and Littlefield, 2003, pp. 191-219.

¹⁹ Martha Nussbaum, ‘Perfectionist Liberalism and Political Liberalism’, *Philosophy and Public Affairs*, Vol. 39, No. 1, p. 16.

comes before the justice procedure, the anti-perfectionist argument can be much more plausible.²⁰

By arguing that acceptance of certain values must precede the procedure of choosing the appropriate principles of justice, Quong's argument comes one step closer to perfectionism than have any of the previous neutralist accounts.²¹ The gap between the two theories has also been shortened on the other side of the philosophical divide. Namely, writing from a perfectionist perspective, Steven Wall argues that neutrality and perfection are consistent as long as neutrality is restricted to ideals that are of equal or incommensurable value.²² Similar to Quong, he shows that establishing certain values as objective goods does not in principle rule out neutralist policies of state institutions. Though none of them specifically argues that requirements of neutrality and perfectionism can be integrated into a single framework, their ideas significantly point in this direction.

So where does the argument in this dissertation stand in relation to the existing literature? What are the main coordinates of the thesis offered here?

The first and most striking difference between the thesis advocated in this dissertation and the extant literature is the fact that, unlike most of the preceding accounts of neutrality and perfectionism, I claim that the arguments for neutrality and perfection are not mutually exclusive but complementary and convergent. However, I do not share Quong's and Wall's perspective in indicating (however indirectly they do so) the need to integrate hitherto opposed arguments. More specifically, I do not share Quong's overall constructivist framework, or his view that the notion of autonomy cannot ground a simultaneous commitment to neutrality and

²⁰ Jonathan Quong, *Liberalism Without Perfection*, Oxford: Oxford University Press, 2011.

²¹ Some have hinted at it in different ways, however. See Andrew Koppelman, 'The Fluidity of Neutrality', *The Review of Politics*. Vol.66, No.4 (2004), pp. 633-648; also Will Kymlicka, 'Liberal Individualism and Liberal Neutrality', *Ethics*. Vol.99, No.4 (1989), pp. 883-905. My account, as will be evident in the subsequent elaboration, is substantially different from these.

²² Steven Wall, 'Neutrality for Perfectionists: The Case of Restricted State Neutrality', *Ethics*, Vol. 120, No. 2, 2010, p. 233.

perfectionism. Quite the contrary, I believe that commitment to autonomy (as a precondition for justifying political power) brings one beyond the constructivist and anti-perfectionist frameworks that usually engulf theories of neutrality. Similarly, I believe personal autonomy is a concept broad enough to result in a more complex web of normative proposals than usually theorized within anti-perfectionist literature.

On the other hand, I do not share Wall's view that implies an asymmetric relation between neutralist and perfectionist commitments. For him, neutrality is plausible only if one is a priori committed to a perfectionist theory, according to which institutions are justified in promoting only a certain number of incommensurable values. Given their incommensurability, Wall suggests, institutions should be neutral. My intuition, however, suggests that the picture is more complex. Incommensurability is not absolute; it may not always mean that any ordering between values we consider worthy is not possible. We do not necessarily need to be committed to one framework in order to include the other on the lower level of generality. Wall does exactly that: he is committed to a perfectionist framework while believing that some neutralist institutional practices are not in principle excluded. My view is that neutrality and perfectionism should operate together in a more complex way, where one does not need to be a neutralist and believe that some perfectionist arguments obtain (which is similar to Quong's attempt) nor a perfectionist who believes institutions can still exercise some neutrality (which is Wall's thesis), but consider the ways in which both arguments can be contextually (and often simultaneously) employed to secure the legitimacy of institutional power and help resolve intricate policy issues that revolve around conflicting notions of the good. In other words, my approach suggests that there is no simple formula for integrating neutrality and perfection. However, that does not mean we cannot develop a theory that is capable of addressing this complexity and suggesting some normative avenues for consideration. The aim of this dissertation is to contribute to the development of such a theory.

In doing so, I rely on ideas already developed in the literature. For example, I endorse Raz's view that states are justified in promoting conditions for personal autonomy, but reject his idea that this promotion includes options that should be at the disposal of individuals to choose. Unlike most theories of liberal perfectionism, I try to narrow the scope of perfectionist requirements by emphasizing a particular site on which I believe perfectionism needs to be focused. I criticize Rawls and his followers for believing that all conceptions of the good should be kept at equidistance from institutional support, as well as for believing that personal autonomy is the default position of individuals who enter into procedure for establishing principles of justice. Furthermore, I reject epistemic theories of neutrality and suggest that 'burdens of judgment' are not sufficient to justify liberal neutrality. However, I do not yield to the perfectionist arguments that neutrality is a moribund ideal. I believe it still has validity and if justified by reference to something other than burdens of judgment or political constructivism, it can help us design valuable institutional solutions.

When it comes to pluralism, my view is that some perfectionists exaggerate when they assign it intrinsic value. I believe pluralism's value is not fundamental, but derived from the value of personal autonomy. Therefore, I defend a view that perfectionism needs to focus on developing personal autonomy rather than sustaining pluralism. Under conditions of freedom and autonomy, I believe, pluralism will occur without necessary institutional effort.

4. The Assumptions

Given the limitations posed by the form of a doctoral dissertation, there will necessarily be a number of assumptions feeding my views that cannot be properly elaborated or justified. The narrow focus of this thesis simply does not allow broad theoretical strokes that could explain away all possible questions about the fundamental philosophical claims and assumptions behind my main argument. Yet many assumptions will be relevant for a proper understanding of the scope, aim and

elaboration of the theory espoused in this dissertation. So, instead of leaving the reader to derive his or her own conclusions about the background of the arguments expressed here, I will bring some of these assumptions forward to make them explicit and provide additional information about the coordinates of my theory.

First, I assume that human agency and autonomy can be (and frequently are) constrained by forms of societal influence other than political institutions. I follow Arendt here in believing that

society expects from each of its members a certain kind of behavior, imposing innumerable and various rules, all of which tend to ‘normalize’ its members, to make them behave, to exclude spontaneous action or outstanding achievement.²³

In my view, liberal thought has been disproportionately more concerned with the constraining effects of political power, often ignoring other social forces that infringe on individual ability and opportunity to exercise autonomous judgment and action. Therefore, I assume that normative liberal thinking needs to address this problem.

Second, one part of my understanding of personal autonomy hinges on the fact that I follow Thomas Scanlon and Derek Parfit in being an objectivist about reasons. Namely, I fully subscribe to the view expressed by Scanlon:

For while it is up to us to judge whether appropriate reasons for that attitude are or are not present, it is not generally within our power to make it the case that these reasons are or are not there; this depends on facts outside us.²⁴

Therefore, I believe that the reasons for respecting and promoting critically important personal autonomy in many cases do not depend on volitional interests on individual

²³ Arendt, p. 40.

²⁴ Thomas Scanlon, *What We Owe to Each Other*, Cambridge, MA: Harvard University Press, 1998, p. 22.

members of the legislating polity, but rather exist as independent facts. These facts provide an objective standard for assessing the value of volitional interests themselves. Or, as James Griffin put it:

Why not think that behind our varying commitments to particular ways of life lie objective standards by appeal to which we can, among other things, settle the value of these commitments?²⁵

However, I do not share Scanlon's conviction that reasons are primitive. I choose to follow Roger Crisp in assuming that 'all practical reasons must be grounded in well-being.'²⁶ The reason we should value autonomy, in my view, rests on the fact that personal autonomy is part of the basic well-being of individuals. In that sense, this dissertation is framed within a broader view that sees well-being as the foundation of political morality. However controversial and lacking consensus among political philosophers, this view is implicitly assumed in this dissertation without further elaboration.

There is, though, a caveat in this way of thinking that needs to be addressed. Namely, it may sound that positioning personal autonomy-as-well-being at the center of political morality exhausts the understanding of what we should value politically. Some may think that, if political justification is to be derived from autonomy as a part of human well-being, then all other goods and values are subordinate to personal autonomy to the extent that human personhood is understood only as the ability to entertain second-order reflections on the first-order desires. The view of the advocates of so-called hierarchical theory of autonomy may lead one toward this view.²⁷ But, I do not share this intuition. As will be clearer in the chapters ahead, I think that one cannot understand autonomy – nor its position within political

²⁵ James Griffin, *Well-Being: Its Meaning, Measurement and Moral Importance*. New York: Oxford University Press, 1986, p. 53.

²⁶ Roger Crisp, *Reasons and the Good*. New York: Oxford University Press, 2006, p. 2.

²⁷ Harry Frankfurt, *The Importance of What We Care About*. Cambridge: Cambridge University Press (1998) p. 16; also 'Freedom of the Will and Concept of the Person', *The Journal of Philosophy*. Vol. 68, No. 1 (1971), pp. 5-20.

morality – without other goods and values that make up the human experience. I subscribe more to a horizontal understanding of autonomy, as well as to Sidgwick's idea that one cannot identify freedom and autonomy with rational reflection only, because there are cases when acting 'rationally' will be a form of slavery itself.²⁸ Some contemporary thinkers such as Bernard Berofsky, Diana T. Meyers, Marina Oshana and Paul Benson share a similar view.²⁹

5. The Contribution

The contribution of this dissertation to contemporary philosophical and political literature is twofold. First, it aims to bring an additional perspective into contemporary liberal theorizing by arguing that what has hitherto been considered a mutually exclusive way to theorize liberalism is not necessarily impervious to convergent and integrated arguments. We can have an integrated liberal theory that will be comfortable enough for claiming that both the neutrality of state institutions toward individual conceptions of the good and the promotion of the good life by the same institutions obtains. I believe this is a valuable theoretical attempt, the more so given recent tendencies in the literature to argue for some moderate inclusiveness of the arguments from the two camps. The argument in this dissertation reflects some of these tendencies, but also goes beyond and synthesizes the disparate intuitions into a coherent and hopefully novel form.

Second, it offers an interpretation that will help us understand alternative and creative, yet coherent and consistent, ways to respond to some policy dilemmas that stem from the conflict over the definition of the good life. As I will argue in Chapter

²⁸ Henry Sidgwick, *The Method of Ethics*. Indianapolis: Hackett Publishing Company, 1981, pp. 57-76.

²⁹ Bernard Berofsky, *Liberation from Self*. Cambridge: Cambridge University Press, 2007; Marina A.L. Oshana, 'Autonomy and Self Identity' in John Christman and Joel Anderson (eds.) *Autonomy and the Challenges to Liberalism*. Cambridge: Cambridge University Press, 2005, pp. 77-101; Paul Benson, 'Taking Ownership: Authority and Voice in Autonomous Agency' in John Christman and Joel Anderson (eds.) *Autonomy and the Challenges to Liberalism*. Cambridge: Cambridge University Press, 2005, pp. 101-127.

5 and the Conclusion, theorizing convergence between neutralist and perfectionist arguments can show us how liberal institutions can justifiably protect and promote personal autonomy with simple and unified legislative acts. Thus, I hope the argument in this dissertation will be useful not only for political theory but also for social policy.

Different chapters also aim at contributing to the literature in more specific ways. For example, by arguing that liberal neutrality is better conceived as a dependent rather than freestanding theory, Chapter 1 provides additional arguments for claiming that liberal neutrality can still have normative appeal, even to those authors who have rejected it on the basis of disagreeing with the broader constructivist bent of most preceding neutralist theories. Chapter 2 aims to contribute to the literature about personal autonomy by offering additional arguments in favor of a horizontal rather than hierarchical theory of autonomy. Similarly, by arguing that liberal perfectionism should focus more on building relational capacities for autonomy rather than developing options for individuals to choose, Chapter 3 contributes to the literature by further specifying how the liberal perfectionist argument can be more plausible and convergent with other liberal theories. Finally, by showing how neutrality and perfectionism actually converge, both in theory and practice, Chapters 4 and 5 contribute to a more integrated understanding of what liberal commitments in the context of conflict over the definition of good life may require.

I begin the dissertation by analyzing the ideal of liberal neutrality and offering a novel interpretation. I then venture into a more detailed discussion of what I take personal autonomy to be. After doing so, I go on to argue for an alternative understanding of perfectionism. Only after I finish elaborating on the two liberal ideals do I venture into showing how they can be theoretically and practically combined. The central chapter of the dissertation is Chapter 4, where I offer a theoretical analysis of the convergence thesis and demonstrate both conceptual and practical reasons behind the convergence. Finally, in Chapter 5 I look at two recent controversies over

practical policy-making that involves conflicting conceptions of the good. Analyzing the cases of the New York City soda law controversy and the disagreement over male circumcision regulation in Germany, I demonstrate the practical application of the convergence thesis.

CHAPTER ONE

Liberal Neutrality: A Dependent Ideal

1. Introduction

Liberal neutrality has been a contentious ideal in political philosophy for decades. At certain times it has been proclaimed as a new way to define liberalism itself,³⁰ at others a moribund³¹ ideal. Since the early 1970s, when John Rawls³² re-introduced the kernel elements of what would become the contemporary idea of liberal neutrality, political philosophers have debated this idea passionately.

Since then, liberal neutrality has been developed in a number of different ways, with each philosopher advocating his or her own interpretation. However, regardless of the interpretative differences, the idea remained firmly fixed within a particular family of liberal theories. Namely, most authors consider liberal neutrality an offshoot of liberal philosophies that try to limit, rather than expand the scope of state action.

³⁰ See Bruce Ackerman, *Social Justice in the Liberal State*. New Haven: Yale University Press, 1980, p. 10; also see his, 'Political Liberalisms', *The Journal of Philosophy*. Vol.91, No.7 (1994), pp. 364-386; 'What is Neutral About Neutrality?' *Ethics*. Vol.93, No.2 (1983), pp. 372-390; and Ronald Dworkin, 'Liberalism', in *Public and Private Morality*. (ed.) Stuart Hampshire, Cambridge: Cambridge University Press, 1978, pp. 127-138.

³¹ Richard Arneson, 'Liberal Neutrality on the Good: An Autopsy', in Steven Wall & George Klosko, (eds.) *Perfectionism and Neutrality: Essays in Liberal Theory*. Oxford: Rowman & Littlefield, 2003, pp. 191-219.

³² John Rawls, *A Theory of Justice*. Cambridge, MA: Harvard University Press, 1971. Also, *Political Liberalism*. New York: Columbia University Press, 1993.

Some of them find the roots of the idea in the classical liberalism of John Locke,³³ while others look to Rawls' late work and derive it from his theory of political liberalism.³⁴ In both cases, the gist of the idea remains the same: institutional legislation in a liberal state should refrain from making any reference to a particular way of life. Given different ways citizens conceptualize good ways to lead their lives, state institutions should remain neutral among these ways and restrain from imposing and/or promoting any particular conception of the good.

The conceptual relation of liberal neutrality to these broader philosophical traditions has brought a torrent of philosophical criticism upon it. Perfectionist political philosophers have attacked liberal neutrality precisely on the grounds of its minimal conceptualization. While some of them argued that there could be no neutral justification of laws and state policies, others claimed that the fact of citizen disagreement about the good ways of life does not warrant wide-scale institutional neutrality.³⁵

There are, however, few political philosophers who see neutrality not merely as a political but also as a moral (albeit minimal) ideal.³⁶ This idea implies that neutrality is not completely detached from considerations about conceptions of the good, but that it actually rests on a set of ideas about the good life. In this chapter, I wish to explore further this interpretation. Namely, I will show that neutrality can be a more plausible ideal if we understand it as dependent upon a particular conception of the good rather than detached from all ideas about the good life.

My aim in this part of the dissertation is to indicate that despite the vigorous criticism, the idea of liberal neutrality still has currency for liberal philosophy. We can

³³ Steven Lecce, *Against Perfectionism: Defending Liberal Neutrality* Toronto: Toronto University Press, 2008.

³⁴ Brian Barry, *Justice as Impartiality*. Oxford: Oxford University Press, 2002.

³⁵ Steven Wall, *Liberalism, Perfectionism and Restraint*. Cambridge: Cambridge University Press, 1998.

³⁶ Charles Larmore, *The Morals of Modernity*. Cambridge: Cambridge University Press, 1996.

still use it to shape the design of our liberal institutions in a way that will best protect individual freedoms but also respond successfully to the many challenges of our age.

There are two possible strategies for showing that liberal neutrality depends upon a conception of the good. The first strategy reveals that liberal neutrality, as espoused by its early advocates, implicitly rests on a theory of the good, although it tries to conceal this by appealing to notions of overlapping consensus, reasonability or forms of life. One may argue that these notions, when analyzed in detail, imply that neutrality is anchored in particular ideas of the good: shared ways of life or a life based on reason and reflection. So, the first strategy would consist in embracing this claim and suggesting that neutrality can still be a desirable ideal for shaping public institutions.

The second strategy shows that a plausible liberal interpretation of neutrality must assume the ideal's dependence on the good of personal autonomy. One may argue that the principle requiring institutional neutrality between citizens' ways of life and conceptions of the good can work only against the background of autonomous choice. In other words, liberal neutrality serves its liberal purpose only if individual views of the good life – toward which the state must remain neutral – are chosen and sustained autonomously. If they are not, then neutrality is not liberal.

In this chapter, I will consider the merits of both of these strategies, but will eventually choose only the second to argue my point further. I will call this strategy 'the dependence thesis' and argue that it offers a plausible way to conceptualize the principle of liberal neutrality. I will use this strategy to suggest that liberal neutrality should not be understood as a 'freestanding' political ideal, but as a political principle dependent on personal autonomy as an antecedently given conception of the good life. I posit this not as criticism: neutrality's dependence on autonomy is part of what makes it a worthwhile liberal ideal.

The chapter is organized in the following way: First, I briefly discuss different ways liberal neutrality has been theorized in the literature. Second, I indicate the main

deficiencies of what will be called the ‘freestanding’ theory of neutrality and outline the main benefits of an alternative, ‘dependent’ interpretation. After that, I try to fend off potential criticism of the idea that liberal neutrality depends on autonomy as a conception of the good life.

In the relatively short history of philosophical writing about neutrality, authors have used different terms to designate particular doctrines and views of life toward which the state must be neutral. Some follow Rawls in labeling them ‘comprehensive doctrines’, while others choose ‘conceptions of the good’, ‘views about the good life’, ‘evaluative standards’³⁷ or simply ‘values.’³⁸ In order to avoid possible confusion yet give justice to different authors’ preferences in citing and referring to them, I will use these terms interchangeably throughout the text. My personal preference is ‘conceptions of the good’ and I will stick to it wherever I am free to do so. By this term, I designate particular (individual or group) views, beliefs and judgments of what represents a valuable way to lead one’s life.

2. Freestanding Neutrality

As already indicated, there are many different ways philosophers can argue for the idea of liberal neutrality. Here, I will distinguish two broad frameworks and explore the arguments from both: ‘freestanding’ and ‘dependent’ neutrality. Broadly understood, freestanding and dependent neutrality differ in the way they conceptualize the reasons that serve as fundamentals of the principle. In the following sections I will analyze the merits of both and expand the interpretation of one.

The ‘freestanding’ theory of neutrality consists of several correlated families of arguments that share a common thread: the view that neutrality is not based on any

³⁷ Gerald Gaus, ‘The Moral Foundations of Liberal Neutrality’ in Thomas Christiano and John Christman (eds.), *Contemporary Debates in Political Philosophy*. Oxford: Blackwell, 2009, pp. 81-99.

³⁸ Barry, 2002.

particular conception of the good life, but that it ‘stands free’ from and above all particular ways of life. There is no necessary unity across different freestanding theories, but most of these authors do argue that the pluralism of worldviews necessitates institutional neutrality toward citizens and their conceptions of the good. The differentiation within the freestanding argument emanates from an epistemic watershed: on one side there are claims that neutrality is justified by the impossibility of telling the truth about different conceptions of the good; on the other side, the suggestions that, regardless of truth claims, institutions owe neutrality to individuals on the basis of their equal moral status.

2.1. Pluralism and Truth

The fact that there exist a plurality of incommensurable worldviews and ways of life is the general presumption of liberal philosophers who espouse the principle of liberal neutrality. Most of them believe that disagreement about the good life represents a key feature of modernity. However, only some of them claim that such a feature necessitates institutional neutrality by itself.³⁹

The conceptual link between pluralism and neutrality has often been considered fundamental to liberalism. In his 1978 essay on liberalism, Ronald Dworkin said that state neutrality represents ‘the constitutive political morality’ of liberalism.⁴⁰ Similarly, Steven Lecce defined liberalism as ‘a political morality developed in response to pluralism’.⁴¹ Echoing some of Rawls’ ideas, Lecce concludes that since pluralism is a permanent condition of the modern world, democratic regimes must not rely on any particular way of life in justifying the exercise of political power.⁴² According to this

³⁹ Larmore, 1996.

⁴⁰ Dworkin, 1978, pp. 127-138.

⁴¹ Lecce, p. 74.

⁴² See Rawls, 1993, pp. 97, 129.

interpretation, basing the justification of a liberal democratic regime on any particular doctrine is *prima facie* wrong.⁴³

But, what exactly is wrong with justifying political power on the basis of a particular conception of the good? Why does pluralism trigger thinking that liberal politics must not be partial toward certain ways of life?

Liberals offer two possible answers to this question. The first answer assumes epistemic reasons behind neutrality. It implies that value pluralism is not merely a fact, but also a truth about the world. The thesis called the ‘truth of pluralism’ is built on epistemic skepticism and driven by the view that it is impossible to ascertain which of the competing conceptions of the good (and values implicit in them) are better. Values, goods, and views of life are, as Isaiah Berlin argued, incommensurable and very often in conflict with one another.⁴⁴ For adherents of this view, as Stephen Gardbaum notes, ‘it is impossible to rank competing views of the good life and thus impossible to say that one is better than another.’⁴⁵ The skeptical liberals conclude that imposing any of these particular values, and ways of life based on them, is inherently wrong. Mere skepticism about the good, they argue, warrants institutional neutrality.⁴⁶

This argument is not equivocal. It may imply three different things. First, it may suggest that, given their current knowledge, humans are incapable of determining if one conception of the good is better than another. Second, it may imply a stronger thesis: namely, that conceptions of the good are particular kinds of concepts that humans will never know how to order hierarchically, no matter how great their empirical knowledge is. This thesis suggests that conceptions of the good are empirically unverifiable and there is no point in even trying to do so. Third, it may

⁴³ For a version of this argument see Martha Nussbaum, ‘Perfectionist Liberalism and Political Liberalism’ in *Philosophy and Public Affairs*, Vol. 39, No. 1 (2011), p. 16.

⁴⁴ Isaiah Berlin, *Liberty*. Oxford: Oxford University Press, 2002.

⁴⁵ Stephen Gardbaum, ‘Why the Liberal State Can Promote Moral Ideals after All’, *Harvard Law Review*, Vol. 104, No. 6, 1991, p. 1356.

⁴⁶ Barry, 2002; see also Wall, p. 96.

imply that any attempt to discern the value of different goods relative to one another is itself bound to be controversial because people have different standards of assessing the ways of life they choose.

If we take the first implication to be the proper way to understand the argument, then the case for principled institutional neutrality loses much of its appeal. If it is, in principle, possible to know which way of life is better, then scientific effort and exploration will eventually resolve the dilemmas and institutions will be justified in promoting and imposing the best way of life. All we need to do then is to focus on scientific research and discover which is the best way to live our life.

The second, stronger, implication is conceptually problematic. Namely, if we accept the view that different ways of life are incommensurable to the degree that they escape any comparison, then we lose the principled ground for making any assessments about the world, including the one that posits the validity of incommensurability. In other words, the thesis that comparing goods and different ways of life is impossible because we lack the grounds to do so defeats itself.⁴⁷ Steven Lecce called this problem the ‘reflexivity thesis.’ If basing political justification on particular doctrines is illegitimate because they can be reasonably rejected as a result of their dubious epistemic status, then this claim is self-contradictory, ‘unless, per impossible, neutralist principles do not share this same status.’⁴⁸

The only plausible interpretation seems to rely on the third implication: particular conceptions of the good life are too controversial to serve as the basis of institutional justification. Actually, many philosophers have followed this line of argument, from John Rawls to Brian Barry. However, what does ‘controversial’ mean in this context is not sufficiently clear. It could mean the simple fact that people disagree about particular conceptions of the good life and that this disagreement cannot be resolved

⁴⁷ For a similar argument, see James S. Fishkin, ‘Can There Be a Neutral Theory of Justice?’ *Ethics*. Vol.93, No.2 (1983), pp. 348-356.

⁴⁸ Lecce, p. 230.

because people espouse different standards of judgment. But, this seems hardly sufficient to warrant institutional neutrality against controversial doctrines of the good. Does this mean that the state should, as Richard Arneson pointed out, remain neutral to controversial empirical doctrines, such as evolution or sexually transmitted diseases?⁴⁹ Clearly, ‘controversial’ as a formulation of particular doctrines of the good does a poor job justifying the proposed neutrality of liberal institutions. The mere fact that there is a disagreement between individuals about different theories and ideas of what represents a good life is not sufficient to justify the neutrality principle.

The thesis about the controversial nature of individual conceptions of the good also corresponds to the second possible understanding of pluralism, called the ‘fact of pluralism’ thesis, which perceives value pluralism as a mere social fact, without any epistemic assumptions. Within this view, the fact of the existence of multiple doctrines and ideas about the good does not necessarily imply the impossibility to tell which one is true, but still restricts the scope of institutional action. Stephen Gardbaum specifies this view as follows:

even if one way of life can be said to be better than others, the state must be neutral among them because no actual consensus exists concerning which way of life is best.⁵⁰

This view has been considered crucial for the liberal idea of tolerance, as most political liberals see it. As David Paris notes,

[w]hile relentlessly searching for some foundation for liberalism, liberal philosophers and politicians have maintained the necessity of at least

⁴⁹ Arneson, 2003, pp. 191-219.

⁵⁰ Gardbaum, p. 1357.

tolerating diverse and conflicting foundational beliefs. This kind of tolerance often lends itself to at least some modest form of skepticism.⁵¹

Thomas Nagel offered a similar view based on somewhat less demanding implications. For him, what ensues from disagreements based on such an understanding of pluralism is not skepticism, but a

kind of epistemological restraint: the distinction between what is needed to justify belief and what is needed to justify the employment of political power depends on a higher standard of objectivity, which is ethically based.⁵²

The ‘fact of pluralism’ thesis has become a promising way to defend liberal neutrality on the basis of pluralism because it does not presume any epistemological conditions and thus avoids problems with skeptics’ views. The force of the argument here is borne not by the impossibility of telling which way of life is better, but by the moral duty to respect different views of individuals, expressed in a plural context. The argument from equality and reasonability, discussed in the next section, is a more detailed variant of this view.

2.2 Equality and Reasonability

This view supplements the argument from pluralism. It appeals to the equal moral status of citizens who espouse different conceptions of the good. In this understanding, liberal institutions should remain neutral because only by doing so do they express equal concern for all individuals under their jurisdiction.⁵³ The argument also appeals to the notion of reasonability, of both citizens and doctrines. The claim

⁵¹ Paris, p. 921.

⁵² Nagel, 1987, p. 229.

⁵³ See Lecce, pp. 171 and 178 for a version of this argument. Also Dworkin, p. 127; Ackerman, p. 10;

is that it is wrong to base institutional policies on particular doctrines of the good because doing that

undermines an even deeper commitment of liberalism: that the basic principles of political justice be justifiable, as far as possible, to all reasonable persons that are subject to them.⁵⁴

This argument builds on the Rawlsian understanding of reasonability. It implies a normative commitment of individuals to moderate their demands toward others in the public arena. The commitment is based on the need to recognize the frailty of human judgment due to the complexity of the modern world and the fact that other people have different views and experiences.⁵⁵ Steven Wall called this the ‘contractualist’ understanding of reasonability. It implies that a doctrine

can be reasonably rejected if it could not be accepted by all people given their deeply held points of view and given their need and desire to come to an agreement on principles to regulate their political life.⁵⁶

This understanding of reasonability is not epistemic, but ethical: it implies a moral duty to respect the fact (but not necessarily the truth) of pluralism. The agreement that is reached among individuals on this basis is reasonable; it takes place within public reason and implies acceptance of the pluralism of opinion. Reasonable individuals are those who accept this method of governance and make only those political claims they can assume would be acceptable to others. Similarly, reasonable doctrines of the good are those that do not command intolerance and exclusion of alternative ways of life from the public arena.

⁵⁴ Yaakov Ben-Shemesh, ‘Neutrality Without Autonomy’, *Law and Philosophy*, Vol. 25, No. ???, 2005, pp. 462-3.

⁵⁵ Rawls, 1993, p. 129.

⁵⁶ Wall, p. 39.

This view has been popular among many liberal philosophers after Rawls. For Brian Barry, reasonable agreement is fundamentally important for justice.⁵⁷ Similarly, Charles Larmore's principle of 'equal respect'⁵⁸ and Thomas Scanlon's 'mutual recognition'⁵⁹ operate as expressions of this view. This kind of liberalism aims 'to forbid those policies that cannot be defended in terms of public reason.'⁶⁰ The neutrality that ensues from this understanding is 'freestanding': it is not grounded in any particular conception of the good but derives from the shared domain of public reason.

No matter how persuasive, this view faces a certain problem. Namely, if reasonability implies willingness to accept that others have differing views of the good life, this begs the following question: Why should we accept pluralism of reasonable opinion as the basis of neutrality? Individuals may be reasonable in the moral sense, but that does not mean their ideas about the good life will necessarily be correct or that they deserve to be treated on par with others. Why should institutions exercise neutrality toward individuals with worldviews based on faulty facts or bad reasoning? Suggesting that neutrality is required to protect equality and reasonableness omits considerations about the content of particular conceptions of the good. One may be a reasonable individual yet espouse a conception of the good that is based on erroneous reasoning. The advocate of biological creationism is a case in point. She may be reasonable according to the liberal criteria, and state institutions certainly owe her respect as an equal member of society. But does the institutional neutrality toward her worldview necessarily follow from her reasonability? Is the fact that she accepts that others have different views the ground of the neutrality principle or there is something else? If we are to avoid the retreat to skepticism, which has been shown inadequate to ground neutrality, we are led to argue one of these two claims:

⁵⁷ Barry, 2002.

⁵⁸ Larmore, 1996.

⁵⁹ Thomas Scanlon, *What We Owe Each Other?* Cambridge, MA: Harvard University Press, 1998.

⁶⁰ Robert Westmoderland, 'Realizing 'Political' Neutrality', *Law and Philosophy*, Vol. 30, 2011, p. 546.

- a) Institutions are required to be neutral toward individual conceptions of the good life because these conceptions share one or several common features. For example, individuals under one jurisdiction may share a common belief, tradition or set of cultural values and traits; or
- b) Institutions are required to exercise neutrality because they must respect individual autonomy to conceive of and sustain their views about the good. It is the assumption that individuals are able to create and sustain their own views of the good life, rather than the mere fact that they do so, that gives the neutrality argument its force.

Both of these arguments imply that ‘it is implausible to think that the civility consideration always takes precedence over content consideration, no matter what is at stake.’⁶¹ In other words, a mere respect for the existence of many views about the good life, derived from public reason, is not sufficient to ground the normative claim that state institutions should be neutral.

Still, pushing the reasonability argument further seems to escape contemporary liberal imagination in political philosophy. For example, for Martha Nussbaum, equal respect is a freestanding, not a dependent value.⁶² This is because if we accept the burdens of judgment,

then we have a reason to try to ground our political principles in a set of ‘freestanding’ moral ideas that can be accepted by citizens with a wide range of different views concerning the ultimate sources of value.⁶³

Here, the ‘burdens of judgment’ is the only premise from which the conclusion about basing political principles in ‘freestanding’ moral ideas is derived. There seems to be no second, intervening premise that could explain why accepting mere plurality of

⁶¹ Wall, p. 118.

⁶² Nussbaum, pp. 18-19.

⁶³ Nussbaum, p. 16.

views requires or legitimates neutrality. But, in order to arrive at the requirement of neutrality from the premise about burdens of judgment we need the second premise to support the whole construction: the burdens of judgment provide reasons for neutrality not because we are skeptics, but because we either accept that doctrines toward which institutions should exercise neutrality share certain common features or we accept that autonomous judgment is itself valuable and institutions ought to respect it. The missing premise specifies the link between reasonability and neutrality: shared beliefs or the value of autonomous choice. However, political liberals have rarely made this specification. For most of them reasonability is the basic moral value that underpins the principle of liberal neutrality.

2.3 Constructivism and Autonomy of the Person

Why does the freestanding argument recoil from specifying the intervening premise? I wish to suggest two possible reasons. First, by espousing neutrality, political (freestanding) liberals have tried to achieve more than one aim. David Paris argues that the very idea of neutrality is attractive to liberals because it simultaneously aims at defining and defending liberalism. For political liberals, neutrality is not merely one of the mechanisms liberal states have at their disposal to order political affairs. For them, neutrality is the quintessential requirement of liberalism because it stems from the core of how they see liberalism: a doctrine that makes no distinctions between valuable and non-valuable ways of life, but aims at regulating social and political life determined by a plurality of different and mutually conflicting value claims.

However, it seems that the task political liberals have implicitly set themselves – defining what liberalism is and specifying its requirements using the same principle for definition – is impossible. Paris expresses doubt that establishing external neutrality on some foundational principle and using that to define the whole liberal project is feasible, because

[n]ot only it is difficult to imagine finding such a point of certainty, it is equally difficult to imagine its ready applicability to the tasks of justifying liberalism or setting its internal conflicts.⁶⁴

The problem of the freestanding view of neutrality and its role within the broader justification of liberalism is that it fails to satisfy requirements of parsimony and substance. As Paris notes, the more requirements of a well-defined theory are met, the less likely will the principles defined be able to answer the questions they have been designed to answer: ‘the more substantively powerful the principles are claimed to be, the less likely they are to have the status of readily agreed upon axioms or definitions.’⁶⁵ Similarly, Janos Kis argued that it is incoherent for the state to remain neutral between the claim that it is required to apply neutrality and the opposite claim that it is not.⁶⁶

Second, the broader constructivist framework in moral philosophy is largely responsible for the way the freestanding argument for neutrality is designed. Namely, by rejecting the claims of moral realism and intuitionism, according to which moral facts and first principles from which justice can be derived are knowable independently of evidence (through theoretical reason), Rawls follows Kant in suggesting that there exist no antecedently given order of things ‘determining the first principles of right and justice among free and equal moral persons.’⁶⁷ In the constructivist view, principles of justice are created through a (freestanding) procedure and have no roots in comprehensive doctrines external to the procedure itself. Rawls calls this ‘pure procedural justice,’ the purpose of which is not to

⁶⁴ David Paris, ‘The “Theoretical Mystique”: Neutrality, Plurality and the Defense of Liberalism’, *American Journal of Political Science*, Vol. 31 No. 4, 1987, p. 921.

⁶⁵ Paris, p. 926.

⁶⁶ Janos Kis, ‘State Neutrality’, in Michael Rosenfeld & Andras Sajó (eds.), *Oxford Handbook of Comparative Constitutional Law*, Oxford: Oxford University Press, 2012, pp. 318-336.

⁶⁷ John Rawls, ‘Kantian Constructivism in Moral Theory’, *Journal of Philosophy*, Vol. 79, No. 9, 1980, p. 559.

develop the application of first principles to social institutions but to establish the first principles themselves.⁶⁸ This view has become the cornerstone of the freestanding view of liberal neutrality in implying that neutrality requires independence of institutional justification from particular doctrines external (antecedent) to the procedure.

However, the moral constructivist framework employed to support the freestanding argument for neutrality is fraught with difficulties. The most striking one is the assumption that individuals are autonomous prior to entering the construction procedure. This is a problem here not so much for the constructivist argument⁶⁹ as for the obvious mistake in assuming that development of personal autonomy falls beyond the duties of liberal institutions. Many freestanding neutralists seem to make this mistake. They assume that autonomy comes naturally to individuals, but also that individuals can choose to be autonomous or not. For example, Charles Larmore writes:

Observe that the idea of a person, to which my formulation of the form of equal respect appeals, involves simply the capacity of thinking and acting on the basis of reasons. Nothing is said about the source of a person's reasons. It is left open whether persons themselves decide what shall count as valid reasons or whether they see their reasons as stemming from a tradition to which they belong.⁷⁰

Political liberals have a very 'thin' understanding of the person who is supposed to participate in procedures for establishing the principles of liberal justice. Most liberals assume that individuals are autonomous by default and that liberal institutions are

⁶⁸ Rawls, 1980, p. 523.

⁶⁹ For a good elaboration about why this creates trouble for moral constructivists, see David O. Brink, 'Rawlsian Constructivism in Moral Theory', *Journal of Philosophy*, Vol. 17, No. 1, 1987, p. 73.

⁷⁰ Larmore, p. 139.

only to act against the background of autonomous individuals and their freely chosen conceptions of the good life. However, in order to rectify this wrong assumption, the principle of liberal neutrality needs to be interpreted in a different light.

3. Dependent Neutrality

There are two possible strategies to argue for a ‘dependent’ rather than ‘freestanding’ view of neutrality. The first strategy consists of showing that even the freestanding argument, when pushed to the interpretative extreme, reveals a core that is made of a particular conception of the good. This would be consistent with the perfectionist criticism of the neutrality principle outlined in the previous section and would imply embracing rather than rejecting this criticism. It would appeal to the implicit perfection within the principle of neutrality, while sustaining the foundational relevance of the freestanding domain of public reason.

The second strategy consists of making perfection explicit and foundational for the principle: showing that liberal neutrality is a plausible ideal only if understood to be dependent upon a specific conception of the good – personal autonomy. This strategy rejects the foundational role of public reason and anchors liberal neutrality in one particular conception of the good life. In the following sub-sections, I will analyze the merits of both strategies.

3.1 First Strategy: Implicit Perfection

Espousing his freestanding argument of liberal neutrality, Thomas Nagel suggests that liberalism depends on ‘the acceptance of a higher-order impartiality.’⁷¹ If institutions do not wish to treat people as means, political justification needs to be abstracted from partisan conceptions of the good. In other words, social disagreement about a particular policy will be resolved if the sides of the

⁷¹ Thomas Nagel, ‘Moral Conflicts and Political Legitimacy’. *Philosophy and Public Affairs*, Vol. 16, No.3, 1987, p. 216.

disagreement rise above their particular doctrines to a higher form of impartiality and seek to ground the solution in more abstract ideas upon which they can agree. As Nagel argues, this goes for all contested issues but not the matters of practical necessity.⁷² Issues related to the survival of the polity do not have to satisfy the stringent demands of higher-order impartiality.

At first glance, the rule of higher-order impartiality seems to be inclusive, not exclusive. It proposes to integrate different particular views into one framework and help them transcend disagreement by searching for the common denominator at the most abstract level. However, the rule clearly excludes those who are not willing to commit to the acceptance of the higher-order impartiality principle. The notion of reasonable agreement makes a clear distinction between reasonable and unreasonable individuals. Reasonable citizens are those who accept the burdens of judgment, while unreasonable citizens are those who do not. It is conceptually impossible to make such a distinction without differentiating between ways of life that are more and less valuable. Willingness to accept the burdens of judgment and moderate one's demands is obviously implied to be more valuable and thus more appropriate to frame agents' behavior in the public domain. If this is the case, though, then the freestanding argument for neutrality must answer the following question: If the justificatory mechanism for neutrality already contains a condition based on making distinctions between more and less valuable ways of life, why is making such a distinction on the higher level of justification proscribed?

The freestanding liberal could fall back on the argument of equality and argue that distinctions on the higher level would violate respect for individuals, but that would just beg another question: What decides which individuals deserve to have their views respected by political institutions? If it is because they are humans with particular conceptions of the good life then that would apply to all humans with all conceptions

⁷² Thomas Nagel, *Equality and Partiality*, Oxford: Oxford University Press, 1991, pp. 164-65.

of the good life. However, that would not be sufficient because some of the conceptions do not satisfy the requirement of reasonability (they are exclusive towards others) and we would have to make a distinction between those that deserve respect and those that do not. But, then we would be at the beginning: this reasoning is circular.

General merits of constructivism in moral and political philosophy notwithstanding, it seems that there is a problem with grounding neutrality on a constructivist basis because certain forms of perfection are difficult (if not impossible) to eschew. However, if one changes perspective and starts looking at the constructivist argument for neutrality as just one part of the justificatory picture of neutrality, supplemented by the view that ‘all plausible conceptions of political morality are, in fact, informed by ideals of human flourishing, whether their proponents admit it or not,’⁷³ then the argument for neutrality may appear more plausible. Interestingly, many political liberals had the intuition that constructivism may not exhaust the understanding of neutrality. For example, Rawls says that

to say that the procedure of construction is based essentially on practical reason is not to deny that theoretical reason has a role. It shapes the beliefs and knowledge of the rational persons who have a part in the construction.⁷⁴

Similarly, Lecce argued that contractualism represents the best political morality for a pluralist society precisely because

it addresses itself to the question of how legislation and public policy can be framed consistently with democratic equality, while remaining *as*

⁷³ Wall, p. 13.

⁷⁴ Rawls, 1993, p. 93.

silent as possible on the question of what specific content of that legislation and public policy should be. (italics added)⁷⁵

In this context, the phrase ‘as silent as possible’ is an implicit concession to the fact that contractualism cannot be the only normative framework that justifies neutrality. Institutions must specify a conception of the good life, or a range of conceptions, that will underpin institutional intervention with or without the broader consensus of the constituency. In that case, Nagel’s conception of the higher-order impartiality as a requirement of political legitimacy is not necessarily too strict or too loose as Joseph Chan suggested.⁷⁶ Relative to the conception of the good, the requirement will imply that either some particular good – say, the free market – is practically necessary for the functioning of liberal democracy and the state is justified in promoting the free market as a way of life, or that there is a majority consent among citizens about the appropriateness of the institutional promotion of the free market.

Appealing to the implicit perfection within neutrality implies accepting perfectionist criticism of neutrality and building it into the neutralist theory itself. It supplements the freestanding (contractualist) argument for neutrality with a conception of the good. How can we determine the conception of the good that should supplement the freestanding exercise of public reason? There are two options. The first is to take one conception to be necessary for the survival of the polity; the second is to take a conception everyone accepts. However, this strategy is problematic. Namely, while the first option Nagel suggested – conceptualizing some objective good as practically necessary for the functioning of the polity – may be acceptable from the liberal point of view, it begs the question about the criteria for establishing the ‘necessity for survival’ as well as the question about the meaning of ‘survival.’ It may be very likely that the criteria for establishing the necessity are also subject to reasonable

⁷⁵ Lecce, p. 196.

⁷⁶ Joseph Chan, ‘Legitimacy, Unanimity and Perfectionism’, *Philosophy and Public Affairs*, Vol. 21, No.1, 2000, p. 34.

disagreement. Is waging a war against a distant country with a terrorist insurgency really necessary for the survival of the home country? Is a free market really necessary for survival of liberal democracy? Also, what counts as ‘survival’ of the polity: continuity of institutions, or continuity of the population? What makes any of these intrinsically valuable? The second option – relying on majority consent regarding a conception of the good – is even more problematic because it might not necessarily lead to liberal outcomes at all. It could easily imply a justification rooted in tradition and culture rather than in liberal notions of autonomy, reason or equality. If this were the criteria for liberal perfectionism, then even a highly religious and restrictive country in which majority of the population accepts restrictions derived from the religious conception of the good (such as Saudi Arabia, say) would qualify as liberal.

Some liberals have pursued the second line of this argument, however. Charles Larmore famously claimed that ‘forms of life’ as found in particular countries should be understood as sources of (political) morality. He argued that our moral convictions do not necessarily have to be rooted in reason,

but rather in one or several traditions of moral thought and practice that are historically contingent ... and that we can elaborate and even change in part, but never completely leave behind, on pain of losing our moral bearings.⁷⁷

I find this type of argument ill-suited for supporting a liberal theory of political justification. The main reason for this is that refraining from specifying the conception of the good in substantial and universal terms will lead to scenarios in which many contingent and non-liberal forms of life will be used for justifying the

⁷⁷ Larmore, p. 56.

legitimacy of existing political institutions.⁷⁸ Therefore, I propose an alternative strategy for arguing that liberal neutrality is a dependent ideal relying on an explicit and precisely defined conception of the good rather than on ‘freestanding’ constructivist procedures of public reason.

3.2 Second Strategy: Explicit Perfection

Accepting an antecedently given good as a pre-condition for justification of a liberal political order is common for perfectionist, but not anti-perfectionist, (political) liberals. As evident from the great body of literature on the topic, this is what political liberals have been trying to avoid all along. However, recent writings from the anti-perfectionist camp disturb this balance between perfectionists and anti-perfectionists. Some political liberals, such as Jonathan Quong, openly concede that the acceptance of a particular set of values has to precede rather than result from constructing the principles of political justice.⁷⁹ Namely, he suggests that

we begin by asking what values or ideals citizens in an ideally well-ordered liberal society would all accept, and then we use those ideas as the basis for subsequent philosophical argument and public reasoning about the content of liberal justice.⁸⁰

Quong’s idea has attracted a lot of attention among liberal philosophers and theorists. One reason for this is his clever attempt to avoid the worries associated with the exact role of the overlapping consensus, which has burdened political liberalism since Rawls.⁸¹ Quong’s argument for ‘liberalism without perfection’ rests on his attempt to

⁷⁸ For another version of the argument that political liberalism cannot eschew relying on some (controversial) conceptions of the good, see David McCabe, ‘Knowing the Good: A Problem with Antiperfectionism’, *Ethics*. Vol.110, No.2 (2000), pp. 311-338.

⁷⁹ Jonathan Quong, *Liberalism Without Perfection*, Oxford: Oxford University Press, 2011.

⁸⁰ Jonathan Quong, ‘Liberalism Without Perfection: A Precise’, *Philosophy and Public Issues*, Vol. 2, No. 1, 2012, p. 4.

⁸¹ The dilemma is that overlapping consensus is ‘either superfluous to the justification of the political conception of justice since reasonable people will by definition endorse the political conception, or

provide an account of institutional authority justifiable only to individuals who already accept the core liberal values, such as freedom and equality. He does not specify the antecedent values any further (besides ‘asking what values or ideals citizens in an ideally well-ordered liberal society would all accept’), which may be interpreted as assuming that certain ideals make up the liberal worldview, or leaving the answer somewhat open to accommodate different ways liberalism has taken hold in different contexts. He says:

Political liberalism, as a theory, does not purport to provide a singular justification as to why citizens ought to be reasonable; why they ought to accord liberal justice priority over other considerations. Rather, it passes the buck on this task to citizens themselves. Political liberalism, as a theory, thereby remains epistemically abstinent while allowing citizens to decide why the political values ought to be accorded a certain deliberative priority.⁸²

The notion of ‘reasonability’ plays an important role here, since it serves as the anchor of the presumptions about the content of citizen ideals in liberal democracies. As discussed earlier, though, the notion of reasonability is not sufficient to ground the argument for institutional neutrality. But is leaving the specification of the ideals that ground reasonability open to citizens’ preferences sufficient?

Without specifying the content of the ideals that should underpin the reasoning behind the argument for political liberalism (and by extension to liberal neutrality) Quong’s thesis falls prey to two objections. The first is expressed by Lecce, who argues that:

else the consensus will make liberal justice hostage people who are unjust or otherwise illiberal in some way.’ See Quong, p. 190. For similar arguments see also Lecce, p. 196.

⁸² Quong, 2012, p. 5.

if the constraints that are ultimately introduced are selected on the basis of their according with some given conception of what political morality antecedently requires, then the idea of hypothetical ‘agreement’ at the core of contractualist justificatory strategy seems entirely redundant.⁸³

In other words, it still remains unclear what makes public reasoning normatively valuable if an a priori consensus over certain values and goods is established as the primary vantage point. Quong could defuse this objection in two ways. First, by arguing that this does not necessarily imply that all citizens agree to the same antecedent conception of the good, but rather that they use the overlapping consensus to ‘extract’ the elements of their particular (and generally different) conceptions of the good that are shareable with others. Therefore, the purpose of the constructivist justification would be to help individuals recognize the shared elements in each other’s conceptions and build political justification on the basis of that overlap. Second, he could point out that there are two types of disagreement: justificatory (where conflicting parties share certain premises which frame their dispute) and foundational (where there are no shared premises or frameworks between the parties – the dispute goes ‘all the way down’).⁸⁴ For his rendering of political liberalism, reasonable disagreement about principles of justice is justificatory but not foundational. Public reasoning is meant to resolve the justificatory disputes against the background of a more fundamental value agreement.⁸⁵ It helps to select the best possible political interpretation and justification of already accepted (given) values and goods.

The problem with the first argument is that it depends on the counterfactual assumption about the character of individual conceptions about the good life. It is

⁸³ Lecce, p. 184.

⁸⁴ Quong, *ibid.*

⁸⁵ Quong, 2011, p. 190.

plausible that different conceptions will share some common elements, but it is far from clear that the content they share will be sufficient to resolve the many disputes over public policy that occur in complex liberal democracies. Will a shared value of equality be sufficient to resolve specific policy problems, from abortion to food regulation? Shared foundational values will not necessarily flow over to the justificatory level and help resolve concrete social problems.

The problem with the second argument is that it does not necessarily disqualify certain perfectionist practices of the state because it does leave space for institutional promotion of ways of life favored by the majority of the population. Distinction between foundational and justificatory disagreements may not be sufficient to establish the argument that foundational acts of the state are non-objectionably non-neutral if the standard of objectionability is set outside the framework of foundational values. Quong's idea that liberalism can only be internally justified does not help much here because in that case we would lose the tools to normatively assess countries that satisfy any particular liberal-foundational value: even a society with a loose belief in equality and freedom could qualify as liberal.

However, it seems obvious why Quong avoids specifying the antecedent conception of the good as a normative requirement for liberalism. Had he done so, he would have altered the 'freestanding' quality of his liberal theory. He is aware that specifying the antecedent good would render his theory perfectionist rather than anti-perfectionist. If there is a concrete value citizens endorse before they enter the political procedure for establishing justice, then such a fact warrants political legislation on the basis of that value. The state would be legitimately perfectionist.⁸⁶

What may be a better strategy is to specify the antecedent conception of the good as

⁸⁶ For broadly similar worries about Quong's understanding of autonomy, see Andres Moles, 'Review of Liberalism Without Perfection by Jonathan Quong', *Journal of Applied Philosophy*, Vol. 30, No. 1, 2013, pp. 103-105.

a normative requirement more precisely. I suggest we do that by taking the good of personal autonomy as a precondition for the justification of liberal neutrality.

This strategy implies making a couple of arguments. The first argument suggests that liberal institutions are obliged to exercise neutrality toward individuals and their conceptions of the good on the basis of individuals' autonomous status, not on the basis of burdens of judgment, reasonability or pluralism. Here, personal autonomy is at the normative center of liberal justification. It takes over the role reasonability and pluralism play in political accounts of neutrality. This means that institutions must exercise neutrality not simply because there exist a plurality of conceptions of the good, nor because individuals are reasonable in accepting the fact of plurality – but because being neutral to their views is the best way they can express respect to their autonomous judgment. This view is related to some of the freestanding notions of neutrality insofar as it implies that respect for persons plays a role in justifying the principle. Namely, by respecting their autonomy, institutions also express respect for their equal moral status as beings capable of rendering best judgments about the ways to lead their lives.

Second, in order to exercise neutrality against their freely chosen ways to live, institutions must make sure that individuals are sufficiently autonomous to do so. Assuming simply that individuals are 'naturally' autonomous, as some political liberals have done, is not enough. Neutrality is warranted only if institutions can make sure individuals are autonomous beyond merely assuming so. This implies that securing personal autonomy falls within not beyond the bounds of liberal justice. It is internal to the principle of neutrality to the extent that without it the principle is implausible as a liberal ideal.⁸⁷

⁸⁷ Sometimes this will imply the possibility of non-neutral institutional actions in the name of neutrality. See Peter De Marneffe, 'Liberalism, Liberty and Neutrality', *Philosophy and Public Affairs*. Vol.19, No.3 (1990), pp. 253-274.

This view indicates that the principle of liberal neutrality is conceptually dependent upon the value of personal autonomy. By antecedently specifying personal autonomy as the good that serves as the primary vantage point of exercising institutional neutrality it is possible to develop a plausible theory of neutrality that will be more resilient to perfectionist criticism from the first strategy. If the condition of individual autonomy is satisfied, there is no institutional need to promote or suppress other (contested) conceptions of the good. The condition of autonomy will be sufficient to regulate the market of conceptions of the good to the degree required to sustain a stable and legitimate liberal political order. Will Kymlicka poignantly expressed this kind of understanding of liberal neutrality by saying that:

[l]iberal neutrality allow(s) each group to pursue and advertise its way of life, and those ways of life that are unworthy will have a difficulty attracting adherents. Since individuals are free to choose between competing visions of the good life, liberal neutrality creates a marketplace of ideas, as it were, and how well a way of life does in this marketplace depends on the kinds of goods it can offer to prospective adherents. Hence, under conditions of freedom, satisfying and valuable ways of life will tend to drive out those which are unsatisfying.⁸⁸

Joseph Chan was skeptical of this view, however.⁸⁹ He argued that there is no evidence to show that people will, even in conditions of freedom, choose worthwhile options.⁹⁰ But, the point of my argument slightly amends Kymlicka's idea to emphasize that what matters more than conditions of freedom are conditions of autonomy. As a more expansive notion than mere freedom, autonomy can enable individuals to choose options in a more substantive fashion that precludes external

⁸⁸ Will Kymlicka, *Contemporary Political Philosophy: An Introduction*. Oxford: Oxford University Press, 2002, p. 419.

⁸⁹ He wasn't the only one. See also Simon Caney, 'Consequentialist Defenses of Liberal Neutrality', *The Philosophical Quarterly*. Vol. 41, No. 165 (1991), pp. 457-477.

⁹⁰ Chan, p. 30.

assessments of worth and renders other forms of perfectionism illicit. If individuals choose their options autonomously there is no need to consider whether those options satisfy any other (external) standard of worth. While it is plausible to argue that mere freedom will not necessarily enable individuals to choose options that are good for them (or others), one can suggest that their capacity to make autonomous judgments and choices will do so. Of course, this could expand the purview of the liberal institutions' duties, but this is not necessarily a reason to refute the view that liberal neutrality hinges on the existence of autonomous individuals and that the liberal state has a duty to make sure they are capable of exercising their autonomous judgment.

Also, according to this strategy, value pluralism is not fundamental and intrinsic, but derived from a more basic moral value – personal autonomy and the value of human choice.⁹¹ As a derived value, pluralism is not naturally given. Certainly, individuals have an innate capacity for autonomy, but this capacity is individually and socially realized only if the institutional environment allows and supports its realization. In other words, pluralism is not a precondition for liberalism: it is one of its main consequences. The freestanding theory of neutrality is mistaken in its understanding of pluralism and the normative requirements that stem from it. As Gardbaum noted,

[l]iberalism should be understood less as the response to moral pluralism than as its sponsor, protector and cause. Accordingly, rather than exclusively and vainly seeking to accommodate, constrain, and overcome the fact of reasonable pluralism and the political problem that it is taken to pose, liberal political theory should acknowledge, embrace, and celebrate the extent to which its constitutive commitment to the ideal of autonomy

⁹¹ For a recent defense of the view about the value of choice as a morally basic value see T.M. Scanlon, 'Responsibility and the Value of Choice', *Think*, Vol. 12, No.???, 2013, pp. 9-16.

contributes creatively to the achievement of moral diversity and value pluralism.⁹²

Accordingly, there is strong asymmetry between pluralism and autonomy, where autonomy is intrinsically and pluralism extrinsically valuable. Meaningful autonomy can exist without pluralism, while meaningful pluralism cannot exist without autonomy. This does not mean that pluralism is not valuable for liberals; it is, but only as a derivative of something morally more basic: the value of autonomous judgment and choice. Therefore, it is more plausible to say that what the principle of neutrality needs to respond to in politics is not the danger of diminishing pluralism, but primarily the danger of diminishing individual autonomy. The forces infringing autonomy of persons in liberal societies are much more numerous and dangerous than the forces aiming to curb pluralism.

The dependent understanding of liberal neutrality presumes that heteronomy, not pluralism, is the conditioning force behind the requirement that institutions exercise neutrality. I will elaborate on heteronomy more in Chapter 4. Here, suffice it to say that heteronomy pertains to the wide array of social forces that limit the exercise of free will, self-determination and responsibility, from tradition and religion to politics and other social forms. If liberal neutrality is justified in terms of the good of personal autonomy, then the lack of autonomy is what triggers the need for institutionalization of neutrality.

4. Objections to Dependent Neutrality

There may be several ways to object to the dependence account of neutrality. One type of criticism will object to the obvious fact that dependence theory favors one

⁹² Stephen Gardbaum, 'Liberalism, Autonomy and Moral Conflict', *Stanford Law Review*, Vol. 48, No. 2, 1996, p. 389.

particular conception of the good life. This criticism may take the liberal form, in claims that liberal states will necessarily favor an autonomy-based way of life more than a religious one, or it may take a communitarian form, in claims that liberal states will necessarily favor the values of the dominant ethnic group (nation) than the values of minorities. Although this criticism derives from empirical assumptions, and thus does not rule out neutrality in principle, it still points to a conceptual fact about neutrality – decision making in liberal states will necessarily go in a particular direction and by such fiat will favor some and disfavor other options, rendering the state in some way non-neutral. But, as pointed out by some authors, the principle of liberal neutrality does not aim at complete neutrality of institutional acts.⁹³ Rather, it aims to rule out acts that are objectionably non-neutral; in other words, it forbids decisions that do not satisfy requirements specified by the principle.

The dependence theory of neutrality perfectly fits this understanding: it does not stand equidistant from all particular conceptions of the good. However, it tries to justify its value-based foundations through the appeal to autonomy as the condition of a meaningful and purposeful life. Forms of life that are imposed upon individuals or chosen by them in non-autonomous ways cannot have value. Promoting autonomy indirectly contributes to promoting all other forms that are worthy and good for those individuals who choose to adopt them. It is non-perfectionist in relation to those conceptions, which is the most relevant form of institutional non-perfectionism for liberals. It is perfectionist only to autonomy, both as a conception of the good life, and as a condition that sustains individual-relative worth of all other conceptions.

Another way this objection against dependent neutrality found expression is exemplified by Raz's remark that strict adherence to the doctrine of state neutrality

⁹³ Wall and Klosko, p. 12. See also Kis, 2012.

could ‘undermine the chances of survival of many cherished aspects of our culture.’⁹⁴ The dependent theory can reject such criticism by suggesting that respect and promotion of individual autonomy will indirectly contribute to preserving all those aspects of life that are valuable to individuals across cultures. Namely, forming and pursuing a conception of the good in any meaningful way will be impossible unless a person is sufficiently autonomous to choose her own conception. However, dependent neutrality does not suggest that this will apply in all cases, irrespectively of context. As many theorists of personal autonomy have argued, in order for the value of autonomy to make sense, it needs to be compatible with a range of other goods. Otherwise, autonomy will remain a shallow ideal.⁹⁵ I will have more to say about this in chapters 2 and 3.

Therefore, personal autonomy is a conception of the good that is not symmetrical to other ideas of the good to which public institutions should be neutral. It is a conditioning conception of the good, which is prior to any other, since it provides individuals with capabilities to form and revise them in accordance with their will. As Gerald Gaus admits, ‘[a]utonomy does not tell us what to choose; it only insists on the value of a chosen life.’⁹⁶ In that case, the dependent theory of neutrality cannot require states to be equidistant from autonomous and other ways of life in justifying coercive acts. Quite the contrary, neutrality is justified in terms of personal autonomy and requires state institutions to respect and promote it. As Stephen Macedo argued, autonomy as liberals should understand it, is

⁹⁴ Joseph Raz, *The Morality of Freedom*, Oxford: Clarendon Press, 1986, p. 162. Also, see Steven Wall, ‘Perfectionism in Moral and Political Philosophy’, *The Stanford Encyclopedia of Philosophy*, 2009, p. 19.

⁹⁵ See Gerald Dworkin, *The Theory and Practice of Autonomy*. New York: Cambridge University Press, 1988; John Christman, ‘Autonomy in Moral and Political Philosophy’, *Stanford Encyclopedia of Philosophy*, 2011; and Bernard Berofsky, *Liberation from Self*, Cambridge: Cambridge University Press, 1995.

⁹⁶ Gerald Gaus, ‘The Diversity of Comprehensive Liberalisms’, in Gerald Gaus and Chandran Kukathas (eds.) *Handbook of Political Theory*. London: Sage, 2004, p. 104.

not simply one ideal among others (though it will sometimes be treated as such). It is not to be regretted that liberal institutions help, in modest and gentle ways, to promote the ideal of autonomy, for that capacity helps make people more competent as liberal citizens and better able to flourish as persons in a liberal society.⁹⁷

It is also comprehensive, since it permeates all forms of social life and has the same effect on individuals irrespective of the character of their conception of the good. Even individuals who reject the value of individual autonomy under religious claims of divine determination cannot do without autonomy, since they are able to form and exercise their conception of the good life (god-serving and determined) only if endowed with cognitive and epistemic capacities to do so. Autonomy contributes to what Ronald Dworkin termed our fundamental ‘critical’ interests and well-being - achievements and experiences that make our lives not simply volitionally but critically better.⁹⁸

The ethics of autonomy is thus not something that should be a subject of political construction or the overlapping consensus, but something that enables individuals as agents of consensus to exercise their will and act as responsible social and political subjects. Pace Larmore, individuals cannot choose to be autonomous: the mere fact of choice testifies to their autonomous potential. Even rejecting the value of autonomy presumes an autonomous ability to make a judgment about it.

⁹⁷ Stephen Macedo, *Diversity and Distrust: Civic Education in a Multicultural Democracy*. Cambridge, MA: Harvard University Press, 2003, p. 260.

⁹⁸ See Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality*. Cambridge, MA: Harvard University Press, 2002, pp. 484-5.

5. Conclusion

In this chapter, I tried to make several correlated claims. First, I argued that a freestanding view of neutrality, which draws on notions of pluralism, skepticism and reasonability, is not sufficient to ground the neutrality principle. The criticism mounted against this version of neutrality has successfully shown the weak sides of this theory: First, its reliance on skepticism is implausible because there is no way to show that the uncertainty about the value requires neutrality of institutions. Second, the jump it makes from the facts of pluralism to institutional neutrality is conceptually problematic because it fails to specify the intervening premise. Third, anchoring neutrality in the notion of reasonability begs the question, because when pushed further down the interpretative lane, reasonability reveals itself as a derivative of the value of autonomy.

What I offered as an alternative is to adopt one of the two strategies: Either to embrace the implicit dependent sources of neutrality as found in some freestanding theories, or to develop an explicit dependent theory of neutrality, which will show that the only plausible way for the theory of neutrality to succeed is to be interpreted in terms of personal autonomy as a conception of the good. I opted only for the second strategy because, as I argued, the first strategy does not necessarily specify the conceptions of the good that lurk beneath freestanding accounts of neutrality. Since there can be more than one conception of the good in this strategy, some of which may not necessarily be liberal, I suggested that the alternative way, in which the good is specified as personal autonomy, can be much more successful.

Finally, I attempted to show that a dependence view of neutrality better fits our broader intuitions about the elements of the principle. Value pluralism is not necessarily the circumstance to which liberalism as a doctrine responds. What liberal institutions must care about is protection of personal autonomy and prevention of other, non-state actors in limiting the ability of individuals to make autonomous

judgments and choices. This implies that the scope of neutrality has to be understood in a broader sense than usually assumed by political liberals.

In the next chapter I will venture into examining several questions that stem from the analysis of neutrality in this chapter. Namely, if autonomy is a requirement that helps institutions justify neutral treatment, we need to develop a much more detailed theory about autonomy itself. What is personal autonomy and how does the implications of such a theory bear upon liberal understanding of neutrality and perfection? I will examine autonomy in the next chapter and argue for a particular understanding that will have a functional role within this dissertation.

CHAPTER TWO

A Horizontal Theory of Personal Autonomy

1. Introduction

Personal autonomy has often been identified with the human ability to rise above immediate desires and assess them from a higher standpoint. It has been said that autonomy implies a second-order desire or volition that provides the person with the proper justification to act. Acting from immediate (or first-order) desires, this argument claims, is characteristic of animals and non-autonomous humans only. Autonomous persons do not act upon their immediate desires: they stop, reflect and decide the course of their action on the basis of deliberation and practical reasoning.

This deliberation is understood as the locus of the workings of autonomy. It implies a vertical detachment of individual identity from immediate desires. This ‘higher self’ is thought to provide the real source of individual action. Such theory of autonomy is considered hierarchical: personal autonomy derives from a causal order that originates in the individual’s higher self, his ability to re-consider lower impulses, emotions and desires.

In this chapter I wish to critically examine the hierarchical understanding of autonomy, discuss criticism leveled against this theory in the recent philosophical literature and I contribute to the ongoing discussion by theorizing a possible alternative. Ultimately, I argue for two ideas. First, I concur with claims stipulating that hierarchical theories of autonomy are unable to respond successfully to the criticism from the *ab initio*, infinite regress and tyranny of reason arguments. I also add that they fail to accord with recent advances in neuroscience and cannot

sufficiently ground the idea that personal autonomy entails agent causality. Second, I posit that a horizontal understanding of autonomy is better at resolving some of the standard philosophical problems with autonomy. I will expand the existing horizontal theory by arguing that autonomy is best understood in terms of the principle of open future that reconciles contingency and spontaneity with agential ability to act in a way that is truly her own.

I will argue for these claims in the following way. First I outline the hierarchical theory of autonomy and discuss the main points of criticism against this understanding. Second, I outline the alternative, horizontal theory and try to show that it succeeds in resolving the problems that plague the hierarchical understanding. I will work from there to construct my particular understanding of autonomy and defend it from potential criticism. I will then correlate my account of autonomy with two philosophical vocabularies, one ancient and one contemporary. The ancient vocabulary will find expression in the Stoic theory of *prohairesis* as a functional mechanism for living in accordance with nature. The contemporary will be expressed as a theory of an open future, a doctrine that has been successfully elaborated in the applied ethics literature.

Before commencing, a methodological remark is in order. Personal autonomy is one of the most intricate and complex concepts in philosophy. There are many definitions and concepts of autonomy and not all of them (if any do) imply the same. The result of this difficulty is that theorizing autonomy across different theoretical purposes becomes practically impossible. Personal autonomy as a skill in dealing with exigencies of daily life is different from a principle that helps us to determine moral or legal responsibility. This means that one cannot theorize autonomy from a neutral vantage point. How we construct autonomy bears heavily upon what we want the concept to do within our theory.⁹⁹ Therefore, we cannot approach it as if it were

⁹⁹ See Suzy Killmister, 'Autonomy, Liberalism and Anti-Perfectionism', *Res Publica*, Vol. 19, 2013, pp. 353-369.

some discoverable property that only awaits a proper scientific theory: we approach it as a mason building a house, by asking first what kind of house we need and what purpose it will serve before we start putting bricks together. This, however, does not have to indicate acceptance of relativism in dealing with autonomy. It can also indicate the breadth of this notion and the richness of philosophy that deals with it.¹⁰⁰

I will face this difficulty by building a particular conception of personal autonomy that can serve a specific purpose. Namely, I will argue for a functionalist understanding, according to which autonomy is related to human functioning and has a practical utility in terms of enabling individuals to live a life in harmony with their environment.

2. Hierarchical Theories

The idea in recent philosophical literature that autonomy implies existence of a higher self has been mostly associated with Harry Frankfurt and Gerald Dworkin. Both of them have, in their own way, entertained the idea that autonomy is related to the second-order desire, or the faculty of reason to assess first-order desires and impulses. Frankfurt's idea is that a person is autonomous not only if she reflects upon her first-order desire, but also if she has a desire to have that desire, or if she has a second-order desire about the first-order one and wishes that the first order desire

¹⁰⁰ Also, philosophical discourse about autonomy frequently overlaps with writings about free will, self and identity to the extent that it is difficult to distinguish between these terms. One may even argue that it is impossible because they share the core meaning: autonomous self entails free will and both are necessary parts of personal identity. I make no attempt at theorizing these differences and shades of meaning. Instead, I assume that autonomy and free will denote a sufficiently similar content. This will save me from extending the scope of the article by indulging in philosophical hermeneutics (and the seemingly endless discussions about free will), but it will also enable me to rely on a broader set of scholarly sources.

moves her to act.¹⁰¹ For Frankfurt, the second-order desire (or, as he prefers to call it, ‘second-order volition’) is essential for being a person.¹⁰²

Similarly, Dworkin suggests that a person is autonomous if he endorses his first-order desire. At any point in time there are a number of impulses and desires that compel individuals to act. According to Dworkin, we are autonomous to the extent that we (both procedurally and substantially) accept and endorse one particular desire and act upon it.¹⁰³

Hierarchical theories such as these share several features. First, they imply ‘internalism’ about autonomy, or the belief that we should conceptualize autonomy as a human faculty for internal self-reflection. Second, they imply ‘proceduralism’, or the belief that autonomy primarily requires the procedure of second-order reflection.¹⁰⁴ Third, they imply that autonomy is functionally correlated with moral responsibility, i.e., that it helps us determine the conditions for establishing individuals’ moral responsibilities for their actions.

2.1 Issues and Problems of Hierarchical Theories

Once conceptualized, the hierarchical theories appeared promising to provide both descriptive and normative criteria for establishing the bounds of autonomous agency. However, a number of different complaints have been raised that cast doubts on the ability of these theories to deliver this promise. In this section, I will discuss the elements of the hierarchical theory in more detail and discuss criticisms charged against it.

¹⁰¹ Harry Frankfurt, ‘Freedom of the Will and the Concept of a Person’ in *The Importance of What We Care About: Philosophical Essays*. Cambridge : Cambridge University Press, 1998, pp. 11-26.

¹⁰² Frankfurt, p. 16.

¹⁰³ Gerald Dworkin, *The Theory and Practice of Autonomy*. Cambridge: Cambridge University Press, 1988, pp. 3-21.

¹⁰⁴ Michael E. Bratman, ‘Planning Agency, Autonomous Agency’, in James Stacy Taylor (ed.) *Personal Autonomy: New Essays on Personal Autonomy and Its Role in Contemporary Moral Philosophy*. Cambridge: Cambridge University Press, 2005, p. 50.

2.1.1 Identification and Manipulation

The hierarchical theory implies that individuals are autonomous when they use their second-order volition to reflect upon their first-order desires. However, it is questionable whether this requirement alone can satisfy the demand of autonomy, because a mere reflection does not mean that the agent approves the first-order desire. Frankfurt's way around this was to suggest that an individual needs to identify with his first-order desire if we are to consider his acting upon this desire autonomous. In such a way, his second-order volition and first-order desire overlap: his higher self approves of his lower self's impulses and desires to act. By identifying with his first-order desires the agent acts authentically. Only then, his acts cannot be ascribed to forces (and sources) external to his will.

However, the identification requirement still did not satisfy skeptics about the early hierarchical theory. Several authors suggested that, for example, an individual might be manipulated by a neurosurgeon to make him identify with his first-order desire. Such a scenario would satisfy Frankfurt's requirements, but would still be insufficient to establish the agent's autonomy.¹⁰⁵ Others sustained doubts about the identification requirement even if manipulation by a third party did not obtain. As Tom Beauchamp suggested, 'the problem is that the identification with one's passions may be governed by the strength of the first-order passion, not by an independent identification.'¹⁰⁶ An alcoholic whose second-order volition is determined by the strength of his first-order desire for a drink cannot be considered autonomous, regardless of the satisfaction of the identification requirement.

John Christman also objected to identification as a possible device to ground individual autonomy. He holds that this is an implausible condition for autonomy because it is both too weak and too strong. It is too weak because individuals identify with many non-authentic aspects of their selves that they must admit form a part of

¹⁰⁵ See James Stacy Taylor, 'Introduction' in Taylor, p. 6.

¹⁰⁶ Tom L. Beauchamp, 'Who Deserves Autonomy and Whose Autonomy Deserves Respect' in Taylor, p. 318.

their identity.¹⁰⁷ On the other hand, it is too strong because individuals will sometimes not identify with many of their imperfections (authentic though they may be) because they do not approve of them.¹⁰⁸

2.1.2 *Ab Initio and Infinite Regress*

Another set of problems for hierarchical theories springs from their vertical chain of authentication. Namely, the requirement for higher volition endorsement of first-order desires raises an important question: where does the second-order desire come from? One may justifiably argue that positing higher-order selves unnecessarily complicates the matter by raising the number of contenders to the source of the individual's true identity.¹⁰⁹ Which level is fundamental? Where does the true self begin?

Faced with this problem, an advocate of the hierarchical theory has three potential avenues of argument. The first suggests that the second-order desire derives from a prior (third-level) authenticating desire. But such an attempt would necessarily raise the question about the origin of the third-level desire. Claiming that the third-level desire originates from a fourth is not satisfying because it would generate an endless regress of prior desires that must serve as authenticating elements of posterior ones. Joel Feinberg called this the paradox of self-determination, which can be avoided only by positing an infinite number of prior selves that operate as sources of the individual action.¹¹⁰ This is because, as Robert Noggle argued,

no finite chain of authenticating elements can provide an account of how any element is made authentic, because no element can be the last

¹⁰⁷ This relates to Neil Levy's claim that although decision-making is often unconscious, it doesn't matter much, 'for the mechanisms that make the decision are nevertheless ours, us; they have our values, they have our beliefs, our goals (we have them *by* them having them) and when they decide, *we* decide.' Neil Levy, *Neuroethics*. Cambridge: Cambridge University Press, 2007, p. 243.

¹⁰⁸ John Christman, 'Personal Autonomy and Liberal Legitimacy', in Taylor, p. 280.

¹⁰⁹ Gary Watson first offered this kind of critique. Gary Watson, 'Free Agency' in *Free Will*. Oxford: Oxford University Press, 1982, pp. 96-111. See also Taylor, p. 6.

¹¹⁰ Joel Feinberg, 'The Child's Right to an Open Future' in *Freedom and Fulfillment*, Princeton: Princeton University Press, 1992, p. 94.

member of the chain if every member must be authenticated by some other element.¹¹¹

Obviously, the argument from this first avenue is highly implausible. Humans do not possess an inexhaustible source of higher selves that serve as authenticating elements. Even if they did, it is questionable how such an infinite regress to secure authenticity could reconcile with the concrete need to act in a particular moment.

The second possible avenue is to claim that the second-order desire does not derive from any prior self, but that it is given to the agent by accident of birth or some other contingency. One may claim that while our first-order desires are open for reflection and change, our second-order faculty for reflection is not. It is an inborn feature of the human species and we can do nothing to change it. This argument is plausible to the degree of explaining why humans possess this faculty while most other species on the planet do not. Our ability to reflect upon our first-order desires has evolved together with our kind and it is there to serve a distinct evolutionary purpose.

However plausible from the etiological point of view, the problem with this argument is that it cannot ground autonomy within a hierarchical framework because it fails to specify how persons become autonomous to a feature through a process that was non-autonomous itself.¹¹² Namely, hierarchical autonomy implies that the first-order desires should not be taken as sources of individual action. The individual uses his second-order faculty to reflect upon the first-level desire and make the choice. However, as this argument suggests, the second-order faculty is not something an individual can reflect upon, or change. It exists in her without choice, as a given feature of her psychological constitution. How can individuals then be autonomous if they did not choose to be autonomous? It seems contradictory to argue that personal autonomy depends upon the existence of a non-autonomous faculty. A possible

¹¹¹ Robert Noggle, 'Autonomy and the Paradox of Self-Creation: Infinite Regresses, Finite Selves, and the Limits of Authenticity', in Taylor, p. 93.

¹¹² Taylor, p. 6.

rejoinder to this remark could say that persons do not need to be autonomous with respect to second-order faculties, only to first-order ones. But this would not help the argument much since we could turn the question around and ask if autonomy to the second-order faculty does not matter, then why does autonomy to the first-order desires matter? What makes one level more important to reflect upon than the other?

Finally, the third avenue is to suggest that the second-order faculty does not derive from any prior level, not because it has been put there by evolution or accident but because it is self-authenticating. This argument would suggest that the second-order volition uses reflection upon first-order desires to constitute itself, and by doing so, avoid the problem of the origins and the regress of the self. I will discuss this argument in more detail since it was so forcefully elaborated in the recent work of Christine Korsgaard.

Though not necessarily aiming to give her answer to the infinite regress debate in the literature about autonomy, Korsgaard provides an account of the autonomous self that may offer a solution to this problem. She shares the internalist understanding that echoes the Kantian idea that autonomy of the person's will denotes the property of the will to give a law to itself.¹¹³ Korsgaard believes in the hierarchy of self, and assumes that 'there is something over and above all of your incentives, something which is you, and which chooses which incentive to act on.'¹¹⁴ But, unlike other hierarchical theorists, she insists that the process of authentication does not derive from the prior self but from the action undertaken by the agent. She argues that there is no self prior to choices and actions individuals do because their identity is literally "constituted" by their choices and actions.¹¹⁵

¹¹³ Immanuel Kant, *Groundwork for the Metaphysics of Morals*. Cambridge: Cambridge University Press, 1998, p. 52.

¹¹⁴ Christine M. Korsgaard, *Self-Constitution: Agency, Identity and Integrity*. Oxford: Oxford University Press, 2009, p. 72.

¹¹⁵ Korsgaard, p. 19.

The necessity of action, for Korsgaard, springs from the human need to operate as unified agents, with coherent sets of dispositions and histories. She links self-constitution to the need to achieve psychic unity, which is a crucial prerequisite of agency. By acting autonomously, individuals constitute themselves as causes of ends, and not ends in themselves: we do not act unless we determine ourselves to be the cause of our agency.¹¹⁶ By claiming so, Korsgaard does not deny that there are forces in the external world that determine what happens to humans. Her compatibilism is reflected in the belief that humans determine themselves in a deeper sense by choosing their causality by way of inserting themselves into the causal order of the world and making a difference.¹¹⁷ Similar to Alfred Mele, Korsgaard sustains a view that we cannot choose the way different first-order desires and impulses come to our minds. Their coming to mind has only an indirect effect on our decisions, an effect that is mediated by our own assessment of these impulses.¹¹⁸

Korsgaard's account of action as the source of the individual's autonomous identity is a powerful one. It avoids the charge of criticism from the *ab initio* and infinite regress problems by positing that there is no self prior to the fact of concrete agency. If the self is created through action in the world then this action is the source of authentication and there is no need to posit a higher-order self that exists before the agent inserts herself into the causal order of the world. The origin of autonomous self springs from action and provides itself a platform on which it can stand.

However, the corresponding idea that autonomy implies agential causality is problematic. Namely, taking Korsgaard's account to reject the *ab initio* and infinite regress problems seems to be faced with a dilemma. On one side is the internalist claim that my action is only the one caused by me (and not by any external force). Accepting this claim may solve the question of origin but it brings us back to the infinite regress problem: if my action is only one caused by me, what causes me to

¹¹⁶ Korsgaard, p. 72.

¹¹⁷ Korsgaard, p. 110.

¹¹⁸ Alfred Mele, 'Agnostic Autonomism Revisited', in Taylor, p. 118.

exist? The possessive identity of action depends on the prior existence of possessor; there cannot be mine if there is no *me*.

On the other side is the externalist claim that there is no me before I *act*. Accepting this claim helps in rejecting the regress problem, but it is incongruent with the argument about agent causality. If action determines my selfhood then how can I be the sole cause of my acts? What is the role of other deterministic forces in shaping my autonomous selfhood, actions and identity?

I believe this problem can be resolved by dismissing the first side of the dilemma, or by giving up the idea about agent causality. Agent causality implies a hierarchical order in which certain elements of the self determine others by prior existence. However, hierarchical organization, as evident from the criticism, is too problematic to be plausibly sustained as a theory about the autonomous self that is the original cause of individual actions.

This leaves us with the second claim about action as constitutive for autonomy. Korsgaard's contribution in this regard is of utmost significance for a non-hierarchical theory of autonomy because it points into an important direction: agential action as product of the interaction between persons and forces in their environment. Its importance also derives from the fact that it is pregnant with considerations about the limits of self-constitution. What other forces, and in what way, co-constitute autonomous self and how can this be reconciled with a plausible understanding of autonomy? I will discuss this in the second part of this chapter.

2.1.3 Neuroscience

Recent advances in neuroscience pose a difficulty for theories that suppose the existence of a higher-order self that oversees desires and serves as the source of individual autonomy.¹¹⁹ Namely, the hierarchy accounts assume that while first-order

¹¹⁹ See Paul M. Churchland, *The Engine of Reason, the Seat of the Soul: A Philosophical Journey Into the Brain*. Boston: MIT Press, 1995; Patricia Smith Churchland, *Brain-Wise: Studies in Neurophilosophy*. Cambridge, MA: MIT Press, 2002; Paul M. Churchland, *Neurophilosophy at Work*. Cambridge: Cambridge

desires are a part of the physical world (by being caused by external facts and correlated with the individual psyche through measurable impulses), the second-order faculties are metaphysical facts about humans. They somehow exist outside of the physical (causal and deterministic) world and do not necessarily bow to its laws. However, recent findings in neuroscience have offered several arguments showing that this assumption is false.

First, the internalist and hierarchical idea about second-order volition assumes that this volition is the motivational source of autonomous action upon first-order desires. However, this assumption does not stand the test of scientific knowledge. As recent research in the science of the brain has shown, it is implausible to assume that motivation derives exclusively from reasoning faculties of the human constitution (faculties in charge of second-order reflection and volition). As a number of neuroscientists have claimed, patients with lesions in parts of the brain responsible for processing emotions (the ventromedial cortex) can process moral judgments, testifying to their capabilities for second-order reflection, but cannot procure the motivation to act upon it. A series of experiments indicated that these patients could, for example, recognize the wrongness of the act of pushing a man under a train, but would lack the motivation to refrain from acting in such cases.¹²⁰ The motivation for committing or not committing such acts needs emotional faculties to exist. Individuals with perfect abilities for second-order volition could not count as autonomous if their emotional capabilities were physically diminished.

Research in brain damage has also discovered that some people can achieve certain levels of autonomy even under deficient second-order faculties. A paradigmatic case of this is that of James Fallon, a neuroscientist who discovered that his own brain lacked activity in the orbital cortex, involved with impulse controls – a feature that

University Press, 2007; James J. Giordano and Bert Gordijn, *Scientific and Philosophical Perspectives in Neuroethics*. Cambridge: Cambridge University Press, 2010.

¹²⁰ See Adina Roskies, 'A Case Study in Neuroethics: The Nature of Moral Judgment', in Judy Illes (ed.) *Neuroethics: Defining the Issues in Theory, Practice and Policy*. Oxford: Oxford University Press, 2006, pp. 17-33.

indicates deficient second-order faculties (which also characterizes the brains of psychopaths and serial killers).¹²¹ In fact, Fallon discovered that his family has a history of violent behavior, providing more reason for assuming the links between the lack of activity in the orbital cortex and psychopathic behavior. However, he did not act upon his dispositions. Unlike some of his ancestors, he did not resort to violent behavior, but became an autonomous and responsible individual. The reason why Fallon did not act as his brain disposed him to, as he describes it, is because his upbringing helped him relate to his environment and other individuals in a way that enabled development of a spontaneous agency. Still, one may claim that this does not constitute autonomy, but the lack of it, since it was not he who determined his action but his immediate environment. However, this would be true only under the agential causality claim. Contrary to that, what Fallon's case amply shows is that one can still achieve the sort of behavior indicative of autonomy (critical assessment of one's own impulses, deliberation and spontaneous social behavior) under circumstances where something other than the agent (such as the immediate social structure) provides the primary impetus to act in a particular way.

What does this mean for autonomy? It means two things. First, that autonomous decision-making cannot be exclusively associated with the higher-order self. Autonomy also depends on the way impulses and first-order desires are organized in the relation between human brains and their environment. Second, even in cases where activity in the area of the brain in charge of second-order reflection is diminished due to an accident or genetic setup, autonomy is possible because social environment will play a role in shaping person's ability to act autonomously. The latter part of this chapter will elaborate more on how is this possible.

The role of the external environment brings us to a discussion about the second insight from neuroscience that sheds suspicion on internalist and hierarchical

¹²¹ Barbara Bradley Haggerty, 'A Neuroscientist Discovers a Dark Secret', *NPR*, June 29, 2010, <http://www.npr.org/templates/story/story.php?storyId=127888976> accessed on January 21, 2014.

accounts of personal autonomy. This insight comes from the neuroscientific and neurophilosophical understanding of the mind as extended beyond the internal workings of the human brain. Neil Levy calls this the ‘extended mind hypothesis,’ which implies that the scope of human mind includes a number of external elements we use for cognition, reasoning and decision-making.¹²² These elements include different tools we use to aid our cognition processes, but they may plausibly include other individuals, as well as social and environmental structures that affect our (self)understanding. Levy suggests that the external elements of the human mind are an inseparable feature of our species. They have become a part of the human phenotype. As he writes:

Some organisms grow shells by secreting minerals sourced from their food; clearly, these shells are part of their phenotype. Hermit crabs find their shells instead of growing them, but their shells play the same role in their life cycles as the shells of other crustaceans play in theirs. Beavers’ dams, spiders’ webs, birds’ nests: all of these count as part of their extended phenotype, on the same sorts of grounds. By the same parity argument, there is a strong case for considering our cognitive tools part of our phenotype: we are animals that owe our adaptive success to our ability easily to integrate external tools into our cognition.¹²³

This means that an internalist and hierarchical understanding of personal autonomy may be ill-equipped to account for the role different external elements play in the human ability for autonomous action. Though Levy’s account aims to show that an internalist conception of the mind is implausible, I believe it can be extended to the idea about autonomy as well. The notions of the mind and autonomous self have anyway been interchangeable (or at least coextensive) given the assumption that what

¹²² Levy, p. 40.

¹²³ Levy, p. 41.

distinguishes mind from brain is not necessarily a different kind of matter, but a different functional vocabulary within the same order of things. What neuroscience can show us about autonomy is that Gilbert Ryle was right to challenge the Cartesian assumption that the mind exists above matter. His view that overt intelligent performances are not clues to the workings of minds but that they are those workings¹²⁴ fits one of Korsgaard's claims I endorsed earlier: the argument that action in the phenomenal world plays a crucial role in defining personal autonomy.

However, it is important to note that the two insights from neuroscience do not imply that neuroscientific knowledge alone can determine autonomy. Independent of social standards, it is difficult to understand what type of neurological activity counts as more or less autonomous, or rational.¹²⁵ However, it does imply that personal autonomy cannot be equated exclusively with our internal abilities to reflect upon the external environment.

2.1.4 *The Tyranny of Reason*

Finally, the argument from the tyranny of reason claims that attempts to ground authenticity of action in the second-order faculty of reflection will lead to psychological rigidity and prevent individuals from spontaneous interaction with the world.

The idea that second-order reflection is the locus of autonomy and freedom of the human mind is Kantian in origin. Unlike first-order desires that belong to the phenomenal world (the world of sense), second-order reflection is often thought to reside in the noumenal domain (the world of understanding). Kant argued that freedom could not be achieved in the phenomenal world where causality reigns. However, when we enter the noumenal world and renounce the ego (in other words, when we detach from first-order desires using second-order faculties) we can break free from the causal order of the phenomenal world and become causes for

¹²⁴ Gilbert Ryle, *The Concept of Mind*. London: Hutchinson House, 1951, p. 58.

¹²⁵ See Thomas Buller, 'Brains, Lies, and Psychological Explanations', in Illes, pp. 51-61.

ourselves.¹²⁶ Korsgaard's idea about the agential causality clearly reflects this background.

However, according to some authors, this behavior is not a sign of personal autonomy but of the 'slavery to the tyranny of reason.'¹²⁷ Hierarchical theory implies that action upon any first-order desire that is not endorsed by second-order volition is non-autonomous. Autonomous individuals will, therefore, strive to reflect upon all impulses in order to achieve autonomy. But, as Ilham Dilman, Bernard Berofsky and others have shown, this behavior will render individuals slaves to the incessant requirement to reflect upon multitudes of daily impulses and events. Such individuals could hardly count as autonomous because their spontaneous behavior would be prevented by the overruling second-order volition. A paradigmatic example of this case is Sheldon Cooper, a fictional character from the TV sitcom series *The Big Bang Theory*. Sheldon is a theoretical physicist whose life is guided by the use of second-order reflection in every aspect of his life. He never lets his emotions, desires or bodily inclinations determine the choices he makes: the world of understanding and reflection is the ultimate source of his decision-making. But as the story continually shows, his reliance on second-order faculties alone brings him more problems than solutions. He is often unable to react spontaneously to other humans; the interaction with his peers is stymied by the incessant attempts to rationalize and reflect upon every impulse; ultimately, he comes across as a very rigid and dry character whose humanity resurfaces only when he succumbs to first-order desires without reflection.

Although a character from a popular sitcom is a far cry from arguments in philosophy, the case is important insofar as it shows that the ideal world of hierarchical theories about autonomy faces a serious problem. Even if the criticism from the ab initio, infinite regress and neuroscience arguments did not hold, it would be difficult to conceptualize autonomous humans in terms of their second-order

¹²⁶ Kant, *Groundwork*, p. 57. Also Ilham Dilman, *Free Will: An Historical and Philosophical Introduction*. London and New York: Routledge, 1999, p. 130.

¹²⁷ Dilman, p. 131.

capacities for reflection upon their first-order desires alone. Under such an ideal, the autonomous human resembles more a robot than a living being immersed in a messy world of causation.

The upshot of this argument is that humans are not beings of ether, whose authenticity and selfhood spring from a higher, non-psychical source. A much more plausible conception of personal autonomy would be one that is able to account better for a contingent and embodied nature of human agency. Such a conception would need to integrate the idea of authenticity with the larger picture in which causality and contingency play constitutive roles. I will outline and discuss such a conception in the remainder of this chapter.

3. An Alternative: Horizontal Autonomy

Horizontal theories of autonomy are those that reject the hierarchical ordering between first- and second-order desires. Instead, these theories insist that autonomous agency is constituted by the interplay between environmentally determined facts and the human ability for spontaneous (not directly determined) interaction with these facts. Unlike the hierarchical understanding of autonomy, there is no coherent body of horizontal theorizing of autonomy. Non-hierarchical accounts have only been recently popularized in philosophy, so it is still too early to talk about a new tradition of thought. These accounts vary among different authors and purposes, but they do share some common traits. I will outline some of these traits in this section and supplement their arguments with additional considerations.

One of the implicit assumptions of the horizontal understanding of autonomy is the rejection of necessary links between personal autonomy and moral responsibility. Most authors from the hierarchical tradition have conceptualized autonomy as a subsidiary of moral responsibility, but this is no longer the case in recent philosophical literature. Autonomy and moral responsibility are not necessarily

related. For example, a number of authors have shown that a person can be considered morally responsible for an act although he was not being autonomous in acting.¹²⁸ The consequence of the detachment between autonomy and moral responsibility is that the strong emphasis on establishing the ultimate source of the autonomous self has diminished. Under horizontal theory it is no longer important to determine the exact instance of the individual's internal authority and authenticity. What is more important is to establish how a person can achieve authentic and self-governed agency amid externally determined facts and structures.

3.1 Procedural v. Substantive

Hierarchical theories are procedural. They are primarily concerned with how individuals conceptualize and execute autonomous agency. If an individual properly reflects upon her first-order desires (identifies or endorses them), she will be considered autonomous no matter what the content of the first-order desire is. For example, if a person's decision to surrender herself to an authoritarian cult that will enslave her has passed the procedural requirements of hierarchical theory, there is no way to question that decision from the autonomy perspective: the decision is a legitimate product of autonomous agency.

However, as many critics of the hierarchical theories have argued, the content of the decision plays a role in establishing the autonomous character of decision-making. The claim is that individuals must (and this is a 'conceptual must'¹²⁹) have certain value commitments if their decisions are to be counted as autonomous. Such value commitments should not be in stark opposition to the procedure of the decision. If a person decides to reject his status as an autonomous being through submission to an authoritarian religious cult, he is not being substantially autonomous. The satisfaction

¹²⁸ See Michael McKenna, 'The Relationship between Autonomous and Morally Responsible Agency', in Taylor, pp. 205-235.

¹²⁹ Christman, p. 281.

of the procedural requirements to reflect upon his desire to join the cult is not sufficient to establish the autonomous nature of his actions.

This is the argument of many advocates of a non-hierarchical understanding, especially of the feminist critics of procedural conceptions of autonomy. For these authors, there is a range of options that agents cannot prefer without sacrificing their substantial autonomy.¹³⁰ Their decisions count as autonomous only if the content of those decisions reflects the substantial value of autonomy. This substantial value serves as a restricting mechanism on the outcomes of the autonomy-related procedure.

The emphasis on the content of autonomous decisions is a welcome addition to the alternative way to understand autonomy, with an important philosophical benefit. Namely, it can help us fend off the manipulation argument that is usually charged against hierarchical theories. A person who is manipulated into joining the cult fails to be autonomous because the content of his decision disagrees with the substantial value of autonomy.

However, the substantialist account of autonomy faces a problem. As Paul Benson argues, understanding autonomy only in terms of substance restricts the scope of autonomous decision-making. If all individual decisions reflected the substantive value of autonomy, would lead to ‘orthonomy’ and turn into a tyranny of the substance.¹³¹ At any point in individual lives there are situations when surrendering one’s freedom of choice is part of the normal and spontaneous course of living in a complex environment. Falling in love is the best example. Even joining a restrictive religious group may not necessarily imply non-autonomy.

A potential solution to this problem is in accepting some substantialist arguments about the content of an autonomous decision, while retaining the proceduralist

¹³⁰ Paul Benson, ‘Feminist Intuitions and the Normative Substance of Autonomy’, in Taylor, p. 133.

¹³¹ Benson, p. 132.

requirement that certain conditions for autonomous decision-making must be satisfied. This combines two arguments: the first demands a minimal substantialist requirement for autonomy, in terms of individual normative competence. As Benson argues, this competence implies that individual capabilities of perception, reasoning and motivation must be ‘connected in the right sorts of ways to what is really valuable or reasonable for them.’¹³² Requiring such competence, he points out, does not necessarily entail restricting individual preferences directly. It does, however, help us understand the importance of individual capability to form conceptions of the good and execute action aimed at living in accordance to their values. This requirement is not necessarily subjective: what is reasonable and valuable for humans does not come without boundaries to what can be considered beneficial or detrimental for human well-being (some forms of voluntary slavery would be on the other side of that boundary, while belonging to religious cults would not).

The second argument suggests that proceduralist conditions for autonomy (such as lack of coercion, manipulation and addiction) must be satisfied prior to substantialist conditions for individual endorsement of particular courses of action. This avoids the problem of equating autonomy with the individual’s identification with first-order desires without sacrificing the substantialist demand that normatively competent individuals should be able to decide and act upon whatever fits their values and conceptions of the good.¹³³ In other words, individuals’ immediate interests should be considered as autonomous and should not be overridden as long as the individual has the capacity to value, even if we talk about individuals at the ‘twilight of their agency.’¹³⁴

The combination of proceduralist and substantive accounts of autonomy has further benefits. First, it helps us understand the difference between dispositional and

¹³² Benson, p. 134.

¹³³ Killmister, p. 354.

¹³⁴ Agnieszka Jaworska, ‘Ethical Dilemmas in Neurodegenerative Disease: Respective Patients at the Twilight of Agency’, in Illes, p. 89.

accidental autonomy. The lack of autonomy at a particular moment does not mean that the person is not an autonomous agent overall.¹³⁵ If both proceduralist and substantive conditions are satisfied (and hold through time), any decision a normatively competent individual makes can be considered autonomous. Second, it helps us understand that a commitment to procedural autonomy necessarily implies a commitment to substantive autonomy and vice versa. For example, some people in contemporary liberal societies reject the substantive value of autonomy. Members of distinct religious or cultural communities, such as the Amish, frequently object to liberal legislation on the grounds that the values this legislation stands for (individual autonomy) is not shared by the members of this community. But, the rejection of the substantive value of autonomy hinges on the authority of the procedural understanding. Moreover, the argument about rejecting substantive value of autonomy depends on the endorsement of the procedural authority of autonomous action. In other words, why would we listen to religious communities' members if they did not have the authority to voice their values as autonomous agents? Their opinion would not be considered authoritative without an implicit acceptance that the status of autonomous agents lends authority to their demands. We are not obliged to listen to and satisfy demands of non-autonomous agents, such as children and the mentally ill. But, we are obliged to listen to and address the opinions, claims and demands of fully autonomous individuals, and both the addressants and addressees of the communicative act implicitly accept this requirement.

3.2 Spontaneity, Contingency and Skill

The most important element of the horizontal theory is the conceptualization of autonomy in terms of humans' ability to interact with their environment in a way that reflects their contingent nature through spontaneous agency and the possession of

¹³⁵ See McKenna, p. 208 for this argument. Also Bernard Berofsky, *Liberation from Self: A Theory of Personal Autonomy*. Cambridge: Cambridge University Press, 1995.

appropriate psychological and social skills. There are several separate yet complementary claims that can be made along this line of argument.

First, personal autonomy is not founded on metaphysical facts about individuals, but on a form of action that reflects individual's socio-relational position and her skills at interacting with the environment.¹³⁶ This claim is congruent with earlier arguments made with regard to the importance of action for personal autonomy. It suggests that the locus of autonomy is not in the metaphysical domain of second-order reflection but in the physical world of inter-personal interaction. In other words, autonomy is defined by how we act and not by the source of our action. Tainted origins of personal autonomy, as Bernard Berofsky suggested, 'need not threaten the autonomous character of a decision.'¹³⁷

The upside of this argument is that it brings the conception of autonomy more in line with recent research in neuroscience and post-Cartesian philosophy of the mind where the idea that autonomy derives from a non-physical entity concealed within individual internal faculties has been effectively discredited.¹³⁸ The downside of the argument, however, is that we are unable to determine if a person is autonomous before she acts. Autonomy is, in a relevant sense, a retrospective normative judgment about individual behavior. But, this is not necessarily a deficiency of horizontal theory. Quite the contrary, it is one of its main virtues, insofar as it indicates the contingent, context-relative and functional nature of autonomy as a human feature. It also enables us to reject the criticism claiming that autonomy conceptualizes a person as prior to and apart from all social roles, thus rendering 'person' to be a non-functional concept.¹³⁹

¹³⁶ Marina A. L. Oshana, 'Autonomy and Free Agency', in Taylor, p. 187.

¹³⁷ Bernard Berofsky, 'Autonomy Without Free Will', in Taylor p. 61.

¹³⁸ Paul M. Churchland, *The Engine of Reason, The Seat of the Soul: A Philosophical Journey Into the Brain*. Boston: MIT Press, 1995, p. 277.

¹³⁹ Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*. Notre Dame, IN: University of Notre Dame Press, 2007, p. 59.

Second, if metaphysical origins of individual action do not matter for autonomy, what matters is the type of relations between the individual and her world. We do not have the proper qualifying term that can describe this feature of autonomy. Some authors speak of spontaneity, but other terms can be also applied. The idea is that autonomous agents do not simply strive to be the primary cause of their actions, but that they successfully negotiate between various external causes (physical laws and deterministic events), internal impulses (desires and emotions) and their intellectual dispositions in a way that advances their overall well-being and status in the world. We cannot know in advance what will be the outcome of any given individual's autonomous decision. Agents may sometimes act as causes of certain events; at other times they may act as effects of another (internal or external) cause. The locus of the cause does not determine the autonomous status of the agency: the structure of the particular relation between the agent, agency conditions and the effects of agency does. Some actions that derive from the agent's second-order faculties will not be autonomous, as the argument from the tyranny of reason shows. Other actions caused by non-reflected impulses sometimes will count as autonomous, as the argument from neuroscience confirms. This means that personal autonomy is a modal property of human action: it requires both the necessity of first-order desire and the possibility of second-order reflection. Being such, it escapes an a priori conceptualization to sufficiently specific degrees and leaves us with retrospection as the only available tool for normative assessment.

Finally, rejection of the Kantian idea that the autonomous self belongs to the noumenal world presses the horizontal theory to come to terms with the contingency of the world of phenomena and the embodied nature of the human self. That autonomy must be reconciled with contingency implies recognition of the human self as a spatiotemporal concept, exposed to chance, luck and accident that often determine everything humans do.¹⁴⁰ Autonomous agency does not disrupt the causal

¹⁴⁰ Richard Rorty, *Contingency, Irony and Solidarity*. Cambridge: Cambridge University Press, 1989, p. 30.

order of things in the world. It moves across them as a vessel at sea, subject to existing currents and weather conditions, yet still able to steer in a desired direction. As John Anderson suggested,

[w]e do not, in fact, step out of the movement of things, as: ‘What am I to do?’ and having obtained an answer, step in again. All our actions, all our questionings and answerings are part of the movement of things.¹⁴¹

This, of course, does not mean that anything that humans do will qualify as autonomous, but only that a theory about personal autonomy needs to account for the fact that anything humans do happens in a world determined by an incomprehensible variety of causes that can tip the balance of human actions either way, at any point in time. This also means that we need a compatibilist conception of autonomy that is able to reconcile some forms of individual self-governance with a contingent world of causes. Such a conception should accord with the Aristotelian idea of a ship’s helmsman, who exercises practical wisdom and virtue in relation to considerations about his own capabilities and the external determinants of the situation at hand.¹⁴²

In the next section I will expand on this conception by reference to two distinct yet correlated vocabularies in political philosophy. One vocabulary is ancient and refers to Stoic ideas about autonomy and its relation to nature. The other is modern and refers to writings in contemporary applied philosophy and ethics about the need to sustain an open future of individuals.

¹⁴¹ A.J. Baker, *Australian Realism: The Systematic Philosophy of John Anderson*, Cambridge: Cambridge University Press, 1986, p. 127.

¹⁴² Thomas May, ‘The Concept of Autonomy in Bioethics: An Unwarranted Fall from Grace’, in Taylor, p. 307.

4. Two Vocabularies of Horizontal Autonomy

4.1 The Stoic Idea of Autonomy

A likely source of views about freedom, self and desire, Stoicism lends itself easily to philosophical discussions about autonomy and free will.¹⁴³ It is especially amenable to a non-hierarchical conceptualization due to several of its features.

First, Stoic philosophy in general is very simple. It does not fancy elaborate metaphysical views but aims at providing practical guidelines for a harmonious life. Similar simplicity and practical utility paint their views of personal autonomy. They build upon the concept of *prohairesis*, first developed by Aristotle to describe the human ability to use rational deliberation before making decisions¹⁴⁴ to create a notion of autonomous will as the ability to, as Michael Frede puts it,

make choices which are responsive to how things are, not distorted by false beliefs and misguided attitudes or by fantasies and wishful thinking.¹⁴⁵

In the Stoic reading, *prohairesis* (sometimes equated with soul in the Ancient discourses) is part of the material world and belongs to the nexus of other causal events. Tad Brennan puts it succinctly:

Their account of the soul makes it simply another parcel of the matter in the material world – a part of the cohesive and coherent pneuma that constitutes the cosmos. Had they wished to purchase it some

¹⁴³ See Michael Frede, *A Free Will: Origins of the Notion in the Ancient Thought*. Berkeley: University of California Press, 2011.

¹⁴⁴ Aristotle, *Nicomachean Ethics*. Cambridge: Cambridge University Press, 2004. Also, Richard Sorabji, *Self: Ancient and Modern Insights about Individuality, Life and Death*. Chicago: University of Chicago Press, 2006, p. 87.

¹⁴⁵ Frede, p. 87.

exemption from causation, they might at least have made it of a different stuff, or not stuff at all.¹⁴⁶

However ‘worldly’, the Stoic definition of autonomy still draws from the possibility to distinguish between the world of external causes and human abilities to discern and act amid the complexity of a causal order. The crucial element in this theory is the distinction between things that are ‘up to us’ and things that are not. Epictetus, one of the most notable Stoic thinkers, first made this distinction. Namely, he believed that the range of things that are under our control include ‘conception, choice, desire, aversion,’ while the range of things that are not under our control include ‘our body, our property, reputation and office.’¹⁴⁷ Prohairesis, for Epictetus, implies the ability of reason to assent to things that are ‘not up to us’, and act to change (if needed) things that are up to us.

The idea of assent to impulses that are ‘not up to us’ as the explanation of autonomous agency may strike one as being similar to Frankfurt’s requirement of endorsement of first-order desires by the second-order faculty. However, the way Stoics framed this idea is distinct from the hierarchical theory in a very important sense. Namely, their notion of autonomy does not imply assessment of the phenomenal world from a higher, noumenal place so individuals could act as causes of external events. It is inseparable from the broader picture of living in accordance to nature and well-being. The purpose of prohairesis ability to distinguish between what is up to us and what is not is practical; its aim is to select one’s commitments, and keep one’s emotional balance and serenity by not extending oneself to goals and values that lie beyond one’s control.¹⁴⁸ Epictetus believed that externals (things outside the human mind) are not good or bad in themselves. It is our attitude toward them that makes them so. It will become evident in the latter discussion that this conception of autonomy is, in a relevant way, similar to Dworkin’s idea of the

¹⁴⁶ Tad Brennan, *The Stoic Life: Emotions, Duties, Fate*. Oxford: Clarendon Press, 2005, p. 316.

¹⁴⁷ Epictetus, *Discourses and Selected Writings*. London: Penguin Books, 2008.

¹⁴⁸ A.A. Long, *Stoic Studies*. Berkeley and Los Angeles: University of California Press, 1996, p. 275.

challenge model of life, where what matters is not the impact one has upon the world (which would correspond to the argument from agential causality) but how skillfully one navigates the contingencies of one's life situation.¹⁴⁹

It might be posited that the distinction between 'up to us' and 'not up to us' reconciles the internalist and externalist views about personal autonomy. According to this claim, what defines autonomy is not exclusively the internal capacity of an individual for second-order reflection, but the interaction of his mind with things under and outside of his control. Epictetus' concept of *prohairesis* corresponds with this idea insofar as what concerns him is not necessarily the will's freedom from all antecedent causations, nor its full compliance with predetermined fate (as is often believed about Stoics). Rather, it is, as Anthony Long argues,

freedom from being constrained by ... external contingencies, and by ... the errors and passions consequential on believing that such contingencies must influence and inhibit one's volition.¹⁵⁰

Therefore, the point of autonomous action is not detachment from the worldliness of causation and commitments that derive from our physical, social, emotional and deliberative 'embeddedness' but in skillful interaction with causes that bind us, with the ultimate aim of achieving a harmonious life.¹⁵¹ Autonomy consists not in fighting the necessities of life, including chance, accident and fortune, but accepting them and learning to live within their limits.¹⁵²

The second important feature of Stoic ideas about autonomy is the connection they draw between *prohairesis* and nature. For Stoics, autonomy implies living in

¹⁴⁹ Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality*, Cambridge, MA: Harvard University Press, 2002, p. 253.

¹⁵⁰ A.A. Long, *Epictetus: A Stoic and Socratic Guide to Life*. Oxford: Clarendon Press, 2002, p. 24.

¹⁵¹ Julia Annas, 'Epictetus on Moral Perspectives' in Andrew S. Mason and Theodore Scaltsas (eds.) *The Philosophy of Epictetus*. Oxford: Oxford University Press, 2007, p. 148.

¹⁵² Dilman, p. 33.

accordance with nature.¹⁵³ Nature here does not mean any given condition of mankind, but the principle that reflects the highest good (*summum bonum*) of things constituted by nature in a particular way. Personal autonomy is in accord with human nature (and Nature¹⁵⁴) because it represents a life that corresponds to the natural functionality of humankind and reflects the ends distinctive of the human species.¹⁵⁵ It is, therefore, a form of human good, in terms of bringing happiness and harmony to individuals immersed in a contingent world. The notion of the good is tied to the concept of autonomy in Stoic thought through the understanding that the *telos* of autonomous agency is reconciling individuals with their environment. For Stoics, if autonomous life did not bring goodness to humans, it would not be valuable at all.

However, Stoics also recognized that the good for humans is not a universal and atemporal concept, but a context- and function-relative constitution of individuals that varies through time and circumstances. Unlike Platonism, which posited the existence of a transcendent and absolute good, Stoic philosophy assumes that goodness corresponds to the natural and physiological conditions of every single being.¹⁵⁶ They expressed this idea with the theory of *oikeiosis*, as a goodness-in-context. For example, Seneca was recorded saying that

[e]ach period of life has its own constitution, one for the baby, and another for the boy, one for the youth, and another for the old man. They are all put into a relation of *oikeiosis* with that constitution in which they exist.¹⁵⁷

In this sense, the final end of every particular individual, her *summum bonum*, is determined by the kind of being that individual is. *Oikeiosis* is a plastic principle that reflects different elements of individual well-being, from its internal (natural)

¹⁵³ Myrto Dragona-Monachou, 'Epictetus on Freedom: Parallels Between Epictetus and Wittgenstein', in Mason and Scaltas, p. 134.

¹⁵⁴ Brennan, p. 35.

¹⁵⁵ Long, *Stoic Studies*, pp. 141-2.

¹⁵⁶ John Sellars, *Stoicism*. Durham: Acumen, 2010, p. 108.

¹⁵⁷ Brennan, p. 155.

constitution to the social context of its existence. It is a form of an extended self, similar to the one argued for by neuroscientists. This ‘extended self’ changes in relation to the context (immediate environment) but also in relation to other individuals around us and the ways they exert influence on the formation of our own self.¹⁵⁸

The Stoic conception of personal autonomy differs significantly from hierarchical accounts and shares important elements with horizontal theory. It agrees with the weak substantialist understanding of autonomy, insofar as it emphasizes that the point of autonomy is a good and harmonious life. However, it also admits the importance of the proceduralist condition about the agent’s capacity to value, since the oikiosis theory permits context- and function-dependent human goods. It is also sensitive to the contingent and embodied nature of human action. Autonomy is part of the natural order of things, and its purpose is not to establish humans as causes of events, but to help them govern themselves in a way that reflects their particular position in the world.

4.2 Autonomy as An Open Future

The principle of an open future (POF), elaborated by Joel Feinberg, also offers an appropriate normative vocabulary that can help us integrate diverse elements of the horizontal theory into a more coherent account that corresponds with contemporary currents in moral philosophy.

Namely, first developed to provide normative bounds for parental authority in the upbringing of their children, the POF assumes that children possess ‘rights-in-trust,’ or future rights that wait for the development of their full autonomy to be actualized.¹⁵⁹ These rights constrain the scope of parental and societal authority in shaping the quality of external influences upon the child. The role of institutions here

¹⁵⁸ Brennan, p. 163.

¹⁵⁹ Joel Feinberg, ‘The Child’s Right to Open Future’, in Joel Feinberg, *Freedom and Fulfillment: Philosophical Essays*, Princeton: Princeton University Press, 1992, pp. 76-98.

is crucial: while they cannot select appropriate influences that are best for the child, they can insist that all public influences are kept open. This is done by the provision of education through which children become ‘acquainted with a great variety of facts and diversified accounts and evaluations of the myriad human arrangements in the world and in history.’¹⁶⁰ The point is in equipping the child with the knowledge and skills that can help her select forms of life that best fit her natural constitution. This is achieved only by keeping open as many opportunities as possible, thus maximizing the child’s chances for fulfillment.

Although the theory is designed to frame the normative bounds of parental authority, and has received due attention in applied ethics, its significance transcends this particular issue. Namely, one can plausibly say that personal autonomy, in the general sense, also requires that an individual have an open future, in terms of a variety of appropriate options and forms of life. The case of voluntary slavery may be a good example to describe this point: in order to count as autonomous, a person must have certain options open and must not be fundamentally restricted in changing the circumstances of her life. Even if a person enters restrictive conditions voluntarily, she may still count as autonomous if the exit option is always kept open.¹⁶¹

There are two possible ways of conceptualizing the notion of ‘open options’ or ‘possibilities’ here. The first entails existence of a quantifiable range of external options for individuals to choose. The second implies a particular disposition of the person’s character that enables her to alter her preferences and conceptions of the good in accordance with contingent circumstances as well as her psychological and social development. Though sometimes favored in the literature,¹⁶² the first option is problematic because it demands an additional specification of the type and nature of valuable options. As evident from the Stoic doctrine of *oikeiosis*, external options depend on functions and contexts: they vary in relation to the stage, natural

¹⁶⁰ Feinberg, p. 88.

¹⁶¹ Christman, p. 281.

¹⁶² See Joseph Raz, *The Morality of Freedom*. Oxford: Clarendon Press, 1986.

constitution and particular function of the agent in question. Specifying and providing for all possible options that should be available for an individual to choose at different points in time would be a daunting and hardly conceivable task.

The second option, however, appears more plausible. It demands not the provision of a specified quantity of options but a certain quality of the person's psychological disposition. Autonomous persons are individuals capable of adjusting, altering, amending and abandoning the conceptions of the good they have been brought into through their birth into a particular family or community. They do so by interacting spontaneously with their environment, learning about other forms of life and responding to circumstances of their contingent condition in a way that reflects their natural endowments and function. Also, this option better corresponds with the Epictetan idea that externalities are not good or bad independently from the human disposition towards them. Or, in John Christman's words,

the range and significance of options of the sort relevant to autonomy is a function of the value perspective that guides reflective agency, not an externally stipulated set of options.¹⁶³

There are several reasons why adopting the vocabulary of the principle of an open future fits arguments about autonomy expressed earlier. First, conceptualized in this way, POF is mid-way between substantialist and proceduralist accounts of autonomy. It can still require that a person undergo the appropriate procedure for accepting restricting arrangements, by expressing her normative competence and accepting the terms of the arrangement in light of her value system. But, it also requires that the substantial content of personal autonomy – freedom and ability to choose otherwise – be satisfied by the existence of permanent possibility for actualization.

Second, POF is a content-free description of an autonomous self. It assigns no metaphysical substance to the person's higher-level capabilities. It holds that there is

¹⁶³ Christman, p. 284.

no ‘source’ of the individual self; instead, it presumes that the foundation of the self is empty, a space filled with no substance. Personal autonomy is thus not a reflection of a pre-existing entity but a recurring activity of interactive re-constitution of the human agent that responds to function- and context-relative reasons.¹⁶⁴ Such conception of the self has no necessary need for metaphysical or other content. Its identity is not fixed to a particular social role; it can assume any role and take on any conception of the good.¹⁶⁵

4.2.1 Alternative Possibilities and Open Future

Similar ideas about personal autonomy have already been expressed by a number of authors. The principle of alternative possibilities (PAP) has often served the purpose of specifying the relevance of choice options for plausible conceptualization of personal autonomy. The initial impetus came from theories of moral responsibility, where PAP was designed to establish that a person is morally responsible for what he has done ‘only if he could have done otherwise.’¹⁶⁶ An analogous argument was made that the requirement of alternative possibilities also applies to autonomy.¹⁶⁷ A person is autonomous only if she has different options for action at any point in time. If she lacks alternative possibilities for action, she fails to be an autonomous agent.

This position might suggest that the POF implies PAP, i.e., that in order to have an open future, a person must have access to independently existing externalities that enable her to pursue the alternative course of action. But does PAP follow from POF? Are these two identical, or at least coextensive principles?

First of all, PAP is false and cannot establish moral responsibility. Frankfurt challenged the advocates of PAP by showing that a person can still be morally responsible even if he could not have done otherwise. Basically, an agent who does

¹⁶⁴ See Oshana, pp. 191-2 for a similar interpretation.

¹⁶⁵ See MacIntyre, p. 32.

¹⁶⁶ Frankfurt, p. 1.

¹⁶⁷ Ishtiyaque Haji, ‘Alternative Possibilities, Personal Autonomy and Moral Responsibility’, in Taylor, p. 235.

something is morally responsible for what he has done even if the options for him not doing so were limited by a third party without his knowledge. Agent Jones who kills Smith is responsible for the act even if Black, who also wanted Smith dead, arranged that Jones be prevented from changing his mind about killing Smith.

Extending the analogy further, some authors have claimed that the failure of PAP to establish moral responsibility also applies to autonomy.¹⁶⁸ In Frankfurt's scenario, the lack of alternative possibilities does not imply that Jones was non-autonomous. Though a third party limited his options, he still acted autonomously and killed Smith on his own.

This analogy shows that POF does not extend to PAP. Within POF, Jones' autonomous status does not derive from the architecture of his options but from the modal disposition of his mind. Jones is autonomous to the extent that he is practically able to conceive of alternative states of his mind and act upon those conceptions. This possibility, however, does not exist prior to his action; it is actualized in the moment he decides to conceive of an alternative and act upon it. While PAP accounts for the external structure of Jones' options, POF is concerned only with Jones' ability to form any conception of the good that is related to his natural constitution in a relevant way. If he is prevented from conceiving of an alternative form of life for himself and executing agency appropriate to that conception, he is not autonomous.

Therefore, POF is not to be identified with PAP, although some discussions in recent moral philosophy would have suggested that it should be. POF is more focused on the individual capability to value and act, while PAP emphasizes the particular pattern of organization and availability of external options.

¹⁶⁸ McKenna, p. 213.

5. Conclusion

In this chapter I have tried to argue for an alternative conception of personal autonomy. I rejected the hierarchical theories on the basis of their failure to account for a number of critical issues. They are unable to overcome problems of origin, infinite regress and the tyranny of reason. They are overly concerned with the location of the individual self so they could establish moral responsibility of persons. Instead, what I emphasized as important in discussions about autonomy is the ability to conceptualize this human feature in a way that better corresponds with the contingent nature of their actions, the myriad influences exerted upon them by their environment and other people and the need to allow for a spontaneous interaction between individuals and their natural setting.

I argued that a horizontal understanding of autonomy is able to combine substantive and procedural requirements of autonomy without sacrificing either; and that such a conception can account for spontaneity and contingency in a way that rejects metaphysical grounding yet accepts concreteness of the individual self. I claimed that this way of understanding autonomy could find philosophical expression in the vocabularies of the ancient Stoic doctrine of *prohairesis* and in the contemporary theory of an open future. The vocabularies of these two frameworks provide sufficient detail to design a theory of autonomy that is able to avoid problems of hierarchical conceptions and usher in new ground for theorizing the shape and nature of the autonomous self.

The question that remains unanswered is how can one square such a conception of personal autonomy with the requirements of liberal justice? Does it make development of autonomy-based duties and constraints of liberal institutions more or less difficult? This task is beyond the scope of this chapter. Answering that question, however, is constitutive of providing a full picture of what personal autonomy is and what that means for the way we conduct politics in a liberal democracy. I turn to this next. In the following chapter I ask: What does it mean for the state to promote

autonomy? How does the horizontal theory help us conceptualize autonomy-based liberal perfectionism that also allows liberal neutrality?

CHAPTER THREE

Personal Autonomy and the Site of Liberal Perfectionism

1. Introduction

A fair amount of ink has been spilled recently in liberal philosophy on different arguments along the lines of the perfectionism vs. neutrality (anti-perfectionism) debate. Both camps draw from the long tradition of liberal theory and employ a varied set of arguments to support their claims. The notion of personal autonomy has played a significant yet differentiated role within this debate. For example, some advocates of neutrality suggest that the concern for personal autonomy implies a restraint of the state from imposing particular notions of the good life on individuals. Under this theory, even promotion of autonomy itself is prohibited, because, they claim, autonomous life is just another conception of the good, usually not endorsed by all citizens. John Rawls, among others, is considered to be a champion of this line of thought, developed further in a series of successive anti-perfectionist arguments. Other, perfectionist philosophers offer a contrasting picture. One of the best known is Joseph Raz, who believes that the promotion of personal autonomy should be one of the key duties of the liberal state. Such a view renders promotion of autonomy foundational for perfectionist liberalism.

However, contemporary writings have challenged such a strict distinction, according to which anti-perfectionism rejects, while perfectionism endorses, state promotion of autonomy. Ben Colburn has recently offered a view arguing that anti-perfectionism is

consistent with state promotion of autonomy.¹⁶⁹ He even went further to say that anti-perfectionism demands state promotion of autonomy because autonomy is an unspecified second-order value and anti-perfectionism only rejects the promotion of specified first-order values. Others, such as Thomas Porter, disagreed, claiming that a consistent anti-perfectionism must be committed to a rejection of state promotion of autonomy because autonomy is a second-order value with first-order characteristics.¹⁷⁰

Clearly, the Colburn–Porter disagreement boils down to different interpretations of autonomy. This divergence has significant normative implications. In this chapter I look more closely at how horizontal theory of personal autonomy bears upon perfectionist and anti-perfectionist normative proposals. Especially, I question the locus of autonomy and suggest an alternative way to conceptualize the value of autonomy within the perfectionist theory. This way will, hopefully, enable a less expansive and more precise account of liberal perfectionism.

I use the horizontal interpretation of autonomy to claim that the site of liberal perfectionism – the domain in which perfectionist practices of the state institutions apply – should be conceptualized differently from some of the existing liberal theories. For example, Raz’s liberal perfectionist theory implies that state institutions must sustain a range of valuable choices that are necessary for the exercise of autonomy. Contrary to this, I follow arguments from the horizontal theory to stress the relational nature of autonomy and argue that the commitment to promote the value of autonomy should locate perfectionist practices in the set of social facts and relations that condition development of autonomous individuals, rather than in the exercise of autonomy or the provision of meaningful options. In short, I suggest that liberal perfectionism entails a state that actively promotes and supports structures, institutions and relational practices that develop individual capabilities to make

¹⁶⁹ Ben Colburn, ‘Anti-perfectionisms and Autonomy’, *Analysis*, No. 70, 2010, pp. 247-256.

¹⁷⁰ Thomas Porter, ‘Colburn on Anti-perfectionism and Autonomy’, *Journal of Ethics and Social Philosophy*, Discussion Note, September 2011.

autonomous choices but not the exercise of choices nor lifestyles that embody the ideal of an autonomous chooser of multiple options.

Specifying the location where perfectionist policies should apply is a debate about something I call *the site of liberal perfectionism*. In order to make such theorizing more precise and practically useful, I will also reflect on *the scope* of perfectionism. By scope I mean the range of social relations and structures conditional for the development of capabilities for autonomy. I presume that site and scope are co-dependent: the location of the site determines the scope of practices that come under the legitimate concern of perfectionist institutions. I will try to provide a non-exhaustive list of relations that come under such a scope.

Examining and discussing the issue of the site of liberal perfectionism can help us shed more light on the possible ways to theorize autonomy within contemporary liberal philosophy. It can also aid understanding of the controversy Colburn and Porter debated – the value of autonomy for perfectionist and anti-perfectionist theories. By providing some reflections on this controversy and discussing new possible ways to theorize autonomy within liberal theory, this chapter intends to contribute to that collaborative effort. In the context of this dissertation, the argument of this chapter serves to show that one may have a plausible conception of liberal neutrality that will not in principle exclude certain perfectionist policies. How exactly the two combine will, however, be addressed in Chapter 4.

2. Anti-Perfectionist Autonomy

How do contemporary anti-perfectionist liberals understand the notion of personal autonomy? This is a complex and broad question and answering it properly requires more than a section in the chapter. However, by analyzing some recent contributions, one may get a glimpse of the assumptions about personal autonomy underlining contemporary efforts in anti-perfectionist liberal philosophy. My aim is not to review

the entire field of liberal philosophy in search of a systematic account. Rather, in this section I aim to bring forward some of these understandings in order to show in what ways my conception is both similar to and different from existing accounts.

2.1. Second-order Value and First-order Characteristics

In his paper about anti-perfectionism and autonomy, Ben Colburn argues that, contrary to popular belief, anti-perfectionism is committed to state promotion of autonomy. In Colburn's view, anti-perfectionism and promotion of autonomy go hand in hand because we can distinguish two types of values: first-order and second-order values.¹⁷¹ First-order values are content specific because they fully specify the states of affairs that are valuable. For example, a statement that what is valuable in life is being able to play Bach's Cello Suites flawlessly is content-specific. Contrary to that, a statement that what is valuable in life is satisfaction of desire is content-neutral, because it does not specify the kind of desire one considers valuable. According to Colburn, the distinction between first- and second-order values enables us to see something about the nature of autonomy: if autonomy is defined in terms of persons deciding for themselves what is valuable in life, then such definition refers to secondary judgments of what is valuable. This is what makes autonomy a second-order statement about value, 'since its specification must be able to contain a second order variable.'¹⁷² Therefore, for Colburn, there is no incompatibility between the claim that states should not promote any particular value and the claim that states should promote autonomy, because

[a]s long as we understand [a]nti-perfectionism as concerning the state promotion of first-order values, and we take autonomy to be a second-order value, then the two claims are compatible.¹⁷³

¹⁷¹ See also Ben Colburn, 'Autonomy-minded Anti-perfectionism: Novel, Intuitive and Sound', *Journal of Philosophical Research*, Vol. 37, 2012, pp. 233-241.

¹⁷² Colburn, 'Anti-perfectionisms and Autonomy', p. 253.

¹⁷³ Colburn, p. 248.

This view implies a hierarchical understanding of autonomy. It is the understanding that autonomy involves much more than a simple freedom of choice. It means a capacity to reflect upon content-specific desires and acts.¹⁷⁴ If autonomy implies the mental capability to detach from one's primary desires, reflect on them critically and make a secondary judgment, then the liberal anti-perfectionist state is legitimate in promoting personal autonomy because it is conceptually different from other values. But, as discussed in the previous chapter, hierarchical theory faces serious problems and cannot sustain a plausible understanding of autonomy.

Furthermore, in *The Morality of Freedom*, Joseph Raz pointed to two things that may be relevant for assessing Colburn's account. First, he said that individuals must have the capacity for autonomy, which involves 'mental abilities to form intentions of a sufficiently complex kind and plan their execution.'¹⁷⁵ Although, as Thomas Porter admitted,¹⁷⁶ this does not suffice as an explicit specification of autonomy as a value, it does imply some sort of social structure that aids the development and exercise of human mental abilities to form and execute complex intentions and plans. The promotion and support of family life, early education and healthcare (as structural conditions for the development of mental abilities) are content-specific enough to bring Colburn's simultaneous commitment to anti-perfectionism towards first-order values and autonomy into question. Second, Raz also pointed out that in order to make autonomy meaningful there must be a range of available options from which individuals can choose.¹⁷⁷ Any specification of autonomy, as Porter suggested,

will include not only the second-order variable that Colburn highlights, but also straightforward specifications of states of affairs that are valuable in the manner of a first-order value.¹⁷⁸

¹⁷⁴ Dworkin, p. 20.

¹⁷⁵ Joseph Raz, *The Morality of Freedom*, Oxford: Clarendon Press, 1986, p. 372.

¹⁷⁶ Porter, p. 6.

¹⁷⁷ Raz, p. 373.

¹⁷⁸ Porter, p. 7.

In other words, defining autonomy will include a range of content-specific values and facts, from background conditions to choices at an individual's disposal. So, Porter's conclusion is that autonomy is a 'second-order value with first-order characteristics,' which thus runs counter to Colburn's claims that anti-perfectionism only prohibits promotion of first- but not second-order values. It shows that anti-perfectionism (as a political conception of state neutrality) cannot sustain a foundational account of autonomy because the normative assumptions about it are inadequate. What are these assumptions and why are they inadequate for a plausible anti-perfectionist liberal theory?

First of all, hierarchical theory assumes an overly strong detachment between the capacity for reflection and things that make it attainable. Individuals do not acquire the capacity for autonomy in isolation from a range of societal facts and values, specific institutional structures, processes and interpersonal relations. We all become capable of making autonomous choices through a long process that begins in our immediate family environment and continues throughout our active lives. In light of Porter's argument, all of these are content-specific values and content-neutral capability for autonomy is impossible without these in place. Therefore, an attempt to construe autonomy hierarchically often fails to take into account the myriad ways autonomy is related to other content-specific values and social relations that serve as its conditioning factors. Many feminist authors have argued along similar lines. For example, Marina Oshana suggests that 'autonomy obtains only when social conditions surrounding an individual live up to certain standards.'¹⁷⁹ Similarly, Catriona Mackenzie and Natalie Stoljar argue that personal autonomy has to be understood in terms of the social context in which individuals are embedded. For them, individual autonomous identities

¹⁷⁹ Marina A.L. Oshana, 'Autonomy and Self Identity', in John Christman and Joel Anderson (eds.) *Autonomy and the Challenges to Liberalism*. Cambridge: Cambridge University Press, 2005, p. 77.

are formed within the context of social relationships and shaped by a complex of intersecting social determinants, such as race, class, gender and ethnicity.¹⁸⁰

If this criticism is plausible then Colburn's type of anti-perfectionism may not be the most appropriate liberal framework for the promotion of autonomy as a value. This is because promotion of personal autonomy will have to involve institutional efforts at promoting certain first-order values and facts. Colburn's anti-perfectionism, as we have seen, does not accept this premise.

3. Perfectionist Autonomy

Anti-perfectionist assumptions about personal autonomy, outlined in the previous section, are not in line with the horizontal understanding of autonomy espoused in this dissertation. What about perfectionism? What kind of perfectionist understanding of autonomy can fit the outlines of horizontal theory? There are several different arguments that will be elaborated next.

3.1. Centrality of Autonomy

First, one needs to assert the centrality of autonomy for liberal philosophy. This involves both rejecting claims that autonomy is simply another value to be weighted against other values we care about (such as loyalty or commitment) but also stressing that autonomy, as Jeremy Waldron put it,

must be part of the background conditions against which an overlapping consensus or other sort of political agreement concerning principles of justice is to operate.¹⁸¹

¹⁸⁰ Catriona Mackenzie and Natalie Stoljar (eds.), *Relational Autonomy: Feminist Perspectives on Autonomy, Agency and the Social Self*. Oxford: Oxford University Press, 2000, p. 4.

However, this does not imply a return to an earlier claim, put forward by anti-perfectionist philosophers that autonomy is only a second-order value isolated from first-order values and other facts people may care about. Autonomy is intrinsically tied to other (first-order) values, but not in the symmetric way some authors would suggest. Its relation to society's value system is conditioning, assuming thus a central relevance for the entire liberal doctrine. Such understanding takes into account

the degree to which the conditions of autonomy concern a central aspect of the whole system of values of a society, which affects its general character.¹⁸²

This means that there are two broad ways one can argue for the centrality of personal autonomy for liberalism. The first argument is substantial and perfectionist: it builds upon the specific substance of personal autonomy and its intrinsic importance for human flourishing and well-being. Namely, if autonomy is a distinct characteristic of human beings that makes them different from any other species on the planet, then the exercise of this ability defines what it means to be human and what is distinctively good for humans. By having such a crucial position in defining humanity, autonomy is central for the understanding of what it means for human beings to flourish and enjoy well-being.¹⁸³ If flourishing is taken to imply development of individual capabilities to a degree allowed by the individual's constitution, then development of personal autonomy is the crucial element of flourishing. To live an autonomous life is to flourish as a human being and to live a good life. As a philosophy based on the concern for the individual, liberalism is predisposed to care for what makes individuals live as they see fit.

¹⁸¹ Jeremy Waldron, 'Moral and Personal Autonomy' in John Christman & Joel Anderson (eds) *Autonomy and the Challenges to Liberalism: New Essays*, Cambridge: Cambridge University Press, 2005, p. 319.

¹⁸² Raz, p. 394.

¹⁸³ See Richard Kraut, *What is Good and Why: The Ethics of Well-Being*, Cambridge, MA: Harvard University Press, 2009; and James Griffin, *Well-Being: Its Meaning, Measurement and Moral Importance*. New York: Oxford University Press, 1986.

The second way to argue for the centrality of autonomy is procedural and non-perfectionist: it outlines a particular relation between personal autonomy and other goods and values people care about. It argues that the specificity of autonomy's relation to other values makes it asymmetrically important for liberalism. Namely, unlike any other conception of the good, autonomous life enables individuals to create and/or recognize what is good for them. Autonomy is particularly important if one is an internalist about values and goods. From this perspective, exercise of personal autonomy is intrinsic to the practice of valuing: value exists only in an individual's internal disposition toward an external object, not in the object itself. Without dispositional ability to create a particular value relation to things, there could conceptually be no 'values' or 'goods.' Personal autonomy is this dispositional ability. But, autonomy is also relevant (though to a lesser degree) to an externalist about value. From that perspective, exercise of personal autonomy is crucially important for recognizing and distinguishing different values for and by different individuals. Value exists independently of the individual disposition, but only autonomous disposition makes individuals capable in recognizing the external goodness of things for them. Thus, autonomy enables individuals to relate to objects in their environment in a way that helps them perceive and interact with objects that are good for them.

In both cases, personal autonomy is an indispensable resource for understanding and relating values to human individuals. This means that personal autonomy, as a feature and a value, is not merely an a posteriori good that has importance because of its asymmetric relation to other values. Its specific status also stems from the fact that only personally autonomous individuals are capable of creating and distinguishing goods, which they recognize as valuable at a later stage. Being a philosophy of breaking with traditional authorities and unquestioned norms of behavior and social organization, liberalism leans on the understanding that creating or appraising the good by individuals themselves is substantially better than accepting norms inherited from an external authority, be it ancestors, culture or an authoritarian regime into which individuals have accidentally been born or brought. This implicit

understanding has been, directly or indirectly, reflected in liberal writings from John Stuart Mill to John Rawls.

3.2. First-order Factors: Choices or Capability?

In addition to specifying autonomy's centrality to liberalism, the perfectionist theory of autonomy requires one to specify what kind of first-order values are associated with autonomy and in what way this association should be normatively framed. There are two different avenues one can develop to justify such association. The first is to follow Waldron and Raz in claiming that autonomy implies both the capacity to choose and the range of choices available to individuals. For example, Waldron says that

[a] person is autonomous only if he had a variety of acceptable options 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 never aware of it, or never exercised choice in significant matters but simply drifted through life is not an autonomous person.¹⁸⁴

Raz shares such an understanding, but posits a more active principle. He goes further than Waldron and generates a normative principle that obliges the state to take care of both aspects of autonomy:

Autonomy-based duties, in conformity with the harm principle, require the use of public power to promote the conditions of autonomy, to secure an adequate range of options for the population.¹⁸⁵

In Raz's famous understanding, the state has not only the duty to prevent the denial of liberty and infringement of personal autonomy of individuals, but to promote liberty by creating conditions for autonomy. For Raz, such conditions involve the

¹⁸⁴ Waldron, p. 319.

¹⁸⁵ Raz, p. 418.

mental abilities for autonomous life and more importantly, the range of options and choices.

This second avenue is similar to, but narrower than, the first one. It implies following philosophers such as John Christman in suggesting that autonomy is a relational, diachronic and socio-historical principle that refers to individual capabilities, social connections and personal histories as conditioning forces behind the exercise of autonomous choice.¹⁸⁶ Such a view sees social interaction as a constitutive element of psychological states and processes characteristic of the ability for autonomous agency.

The difference between these two ways of conceptualizing a normative value of autonomy for perfectionism is that one of them is quantitatively broader than the other, including not only the individual's capability, but also a range of adequate options. But the difference is also qualitative. While Raz's and Waldron's views look inward (into the individual's mental capabilities) and forward (into the range of possible choices to make), Christman's view looks backward and sideward, into the processes and events that generated the capability to make a choice and into other (socially horizontal) facts, structures and relations that influence the individual's ability to exercise free choice.

I believe that the horizontal understanding of autonomy presses us to combine these two avenues and render a third account by selecting the best arguments from each. First, there are sufficient reasons to agree with Raz and Waldron that autonomy depends on both individual mental capabilities to make a choice and the range of available options. These are first-order characteristics that have a fundamental bearing on the meaningfulness of autonomous action. Accordingly, it seems plausible to accept the idea that the duty of liberal institutions is to take care of the social conditions that make the development of capabilities for autonomy possible.

¹⁸⁶ John Christman, *The Politics of Persons: Individual Autonomy and Socio-Historical Selves*, Cambridge: Cambridge University Press, 2009; also 'Relational Autonomy, Liberal Individualism and the Social Constitution of the Selves', *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition*, Vol. 117, No. 1-2, 2004, pp. 143-164.

However, consistent with the horizontal theory of autonomy and the vocabulary of the open future principle discussed in the last chapter, I reject the view that the creation of an adequate range of options comes under the umbrella of autonomy-related duties of the liberal state. There are two main reasons behind this.

First, my view of the perfectionist concern for the principle of autonomy is structurally different from Raz's. Namely, for Raz, autonomy is perfectionist because

[a]utonomous life is valuable only if it is spent in the pursuit of acceptable and valuable projects and relationships. The autonomy principle permits and even requires governments to create morally valuable opportunities, and to eliminate repugnant ones.¹⁸⁷

Contrary to that, I view autonomy as perfectionist not because it leads to morally valuable opportunities, but because it is by itself a valuable moral standard, which enables individuals to live meaningful lives in accordance with their nature.¹⁸⁸ Consequently, this means that the duties of liberal institutions should be limited only to one part of Raz's autonomy-based commitments, including:

creating inner capacities required for the conduct of an autonomous life. Some 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.¹⁸⁹

¹⁸⁷ Raz, p. 417.

¹⁸⁸ By doing so, I accept some of the constructivist criticism against Raz, but do not accept the solutions offered by constructivists. See Margaret Moore, 'Liberalism and the Ideal of the Good Life', *The Review of Politics*. No.53, Vol.4 (1991), pp. 672-690.

¹⁸⁹ Raz, p. 408.

The second reason for rejecting the claim that states should have a duty to create options derives from the dialectical nature of choice making. ‘A good choice’ is a contextual statement that makes little sense if bad choices are exterminated. In other words, the choice between good and bad will be meaningless if there are no bad options to choose. What constitutes the ‘goodness’ of a choice is (essentially, but not exhaustively) its difference from ‘bad’ choices. If this is so, then Raz’s commitment to institutions that promote good choices will demand from them to ensure there are enough bad options as well, so citizens can differentiate good from bad in an adequate fashion.¹⁹⁰ This would not only expand the purview of the liberal perfectionist state even more, but would lead to controversial practices under which liberal states should promote bad ends. In addition to this, the assumption that having more choices is always and necessarily better than fewer choices may not be fully correct. As Dworkin noted, such an assumption may ‘ignore the fact that the possibility of increased choices can affect (for the worse) the original situation.’¹⁹¹

If a plausible normative account of autonomy for perfectionism implies that liberal institutions should support only capabilities for personal autonomy, then we need to specify what the conditional factors of this capability are. What kind of first-order facts make individuals capable of autonomous reflection?

3.3. Relational Autonomy

Raz’s claim about the state’s duties to promote development of human capabilities for autonomy is one of the most important arguments one can make regarding this topic. Autonomy is not a natural state of human affairs that is given biologically, but depends on concerted societal efforts and external circumstances that have a bearing on individual ability to reason and make informed and conscious choices. Sharing this assumption, many feminist philosophers have argued further for views that specify

¹⁹⁰ Jonathan Quong made a similar observation. See the footnote No. 36 in his *Liberalism Without Perfection*, Oxford: Oxford University Press, 2011, p. 56.

¹⁹¹ Dworkin, p. 72.

autonomy in terms of social factors that condition it. They suggest that autonomy is relational. According to this approach,

persons are fundamentally social beings who develop the competency for autonomy through social interaction with other persons.¹⁹²

This approach assumes that certain forms of socialization and relation among individuals are indisputably beneficial or detrimental for the development of personal autonomy. Becoming autonomous, therefore, is not isolated from how one relates to other people. As Linda Barclay argues,

[t]he fact that any of us has the capacity for autonomous agency is a debt that we each owe to others.¹⁹³

It also means, as John Christman suggests, that we should see ourselves as formed by factors to a large extent beyond our immediate control. Moreover, '[m]ost of the central elements of our existence are things that were not (and in many cases could not be) chosen by us.'¹⁹⁴ Understanding this fact can help us, according to Christman,

accomplish two things: to provide grounds for the rejection of model of agency and citizenship that assume Herculean abilities to fashion ourselves out of whole cloth; and to force us to focus more carefully on what power to self-shaping we therefore are left with.¹⁹⁵

The lesson to be learned from feminist authors is that focusing on powers of self-shaping is only one part of what is needed for a proper understanding of autonomy.

¹⁹² Marilyn Friedman, 'Autonomy, Social Disruption and Women', in Catriona Mackenzie and Natalie Stoljar (eds.) *Relational Autonomy: Feminist Perspectives on Autonomy, Agency and the Social Self*. Oxford: Oxford University Press, 2000, p. 40.

¹⁹³ Linda Barclay, 'Autonomy and the Social Self', in Catriona Mackenzie and Natalie Stoljar (eds.) *Relational Autonomy: Feminist Perspectives on Autonomy, Agency and the Social Self*. Oxford: Oxford University Press, 2000, p. 57.

¹⁹⁴ John Christman, *The Politics of Persons: Individual Autonomy and Socio-Historical Selves*, Cambridge: Cambridge University Press, 2009, p. 10.

¹⁹⁵ Christman, p. 10.

The other part involves understanding what the social forces and relations are that exert a constitutive influence on our capability to become and remain autonomous.

If Christman and the feminists are right, and I believe they are, then combining their insight with the previous argument about the autonomy-based duties of the state yields the following conclusion: the purview of the liberal perfectionist state should be determined by the scope of relational social facts that exert the largest influence on the development of our powers to shape ourselves. It means that institutional duties to develop ‘inner capacities’ for autonomy should not be limited only to matters pertaining to our inner self, but should take account of a myriad of external factors and elements that fundamentally affect these capabilities. Liberal perfectionism needs to be organized around the key insight of the relational accounts of autonomy, which is, as Joel Anderson and Axel Honneth said,

that full autonomy – the real and effective capacity to develop and pursue one’s own conception of a worthwhile life – is achievable only under socially supportive conditions.¹⁹⁶

The big question this chapter tries to answer is what are these ‘supportive conditions’ of autonomy and how should liberal institutions go about addressing them? These issues will be tackled in detail in the next section.

4. The Site (and Scope) of Liberal Perfectionism

If what is intrinsically valuable is not having a range of choices, but, as Dworkin puts it, ‘being recognized as the kind of creature who is capable of making choices,’¹⁹⁷ how do we make that happen? What duties do institutions have in developing individuals

¹⁹⁶ Joel Anderson and Axel Honneth, ‘Autonomy, Vulnerability, Recognition and Justice’ in John Christman and Joel Anderson (eds.) *Autonomy and the Challenges to Liberalism*. Cambridge: Cambridge University Press, 2005, p. 130.

¹⁹⁷ Dworkin, p. 80.

capable of making choices and being recognized as creatures defined by such a feature? Though some authors, such as Raz, noted that institutions have capability-developing duties, while others perhaps assumed this, few philosophers actually specified what this means exactly and what kind of policies result from such a view. One aim of this dissertation and this chapter is to elaborate these duties and provide a more detailed account of its normative underpinnings.

Specifying institutional duties requires a precise argument about the site of liberal perfectionism. I believe that discussion about the site is important for a number of reasons. First, it allows us to determine precisely what it means to promote autonomy under a horizontal theory. Second, it can provide us with a specific and practically relevant set of factors for developing a plausible perfectionist normative theory. Finally, and perhaps most importantly, it allows us to justify the idea of liberal perfectionism with recourse to a more widely shared set of intuitions. Before going into detail, though, it is important to define what the site of perfectionism precisely means. What exactly do we examine when we discuss liberal perfectionism's site?

4.1. Defining the Site (and the Scope)

By the site of liberal perfectionism I mean to denote the domain in which perfectionist practices of the liberal state should apply. More precisely, the site denotes a particular factual content that should be the object of institutional concern and intervention under the liberal perfectionist theory. What is this factual content?

The horizontal theory of autonomy, discussed in the previous chapter, is crucial for determining the site of liberal perfectionism. Namely, because the contextual and relational account of autonomy has a better grasp of its enabling conditions, it is more closely related to the nature of autonomy. Autonomous judgment is constitutively relational.¹⁹⁸ It depends on the ways individuals relate to their

¹⁹⁸ See Diana Tietjens Meyers, 'Decentralizing Autonomy: Five Faces of Selfhood' in in John Christman and Joel Anderson (eds.) *Autonomy and the Challenges to Liberalism*. Cambridge: Cambridge University Press: Cambridge, 2005, pp. 27-56.

environment and other individuals. Therefore, institutional focus on social relations and facts that contribute to the development of individual capability for autonomy are the proper site of liberal perfectionism. Perfectionist political practices should apply only to those facts and relations that directly contribute to the development of individual capabilities to make autonomous and spontaneous decisions.

As already argued, this differs significantly from Raz's and Waldron's understanding of the autonomy-bound duties of the state. I reject specifying liberal perfectionism in terms of the plurality of choices because such a concern would go beyond justifications based on the notion of autonomy (it would be 'too thick', as it were). Stretching the institutional concern over these would transcend the core of the liberal perfectionism advocated here, and cause a conceptual spillover into other types of perfectionism. However, the horizontal theory does suggest that those facts, practices and values that have a bearing on autonomy development, but which are also simultaneously objects of autonomous choice, do deserve perfectionist concern and institutional promotion. Their perfectionist status within institutions should not be derived from this fact but from their autonomy-developing features. In this way, some choices will come under the liberal perfectionist purview, which may lead one to think this account is close to Raz's. The main difference here is that the justification for their perfectionist promotion derives not from their 'choice' but from their 'autonomy-developing' features.

This conceptualization also implies a particular view of the scope of liberal perfectionism. By scope of liberal perfectionism I mean the range of societal facts, relational practices and structures that have a direct bearing on the development of individual capabilities for autonomy. By scope I do not imply a range of individuals included in the perfectionist practices of the state, though some considerations of autonomy will indicate to whom the state owes perfectionist duties.

4.2. Promoting Capabilities for Autonomy: The Scope

The argument about the site of liberal perfectionism is sufficiently similar to the notion of capability espoused by Martha Nussbaum. Nussbaum provides a list of ‘central human functioning capabilities’ that, among other things, include bodily health, imagination, memory, emotions, practical reason, affiliation and play.¹⁹⁹ Attaining a normal functioning level of autonomy requires concern for much of that. However, postulating health, memory and education as conditional for autonomy is fairly uncontroversial. Hardly anyone would deny that these have a profound influence on the possibility of developing capabilities for reflection. There is, however, a range of social relations that are also constitutive for personal autonomy. This is often ignored in liberal discussions on the topic. Thanks to the feminist criticism and the horizontal view of autonomy, we are now able to understand and theorize these relations within a liberal normative theory. This is an important task because even Nussbaum’s ‘universal norms of human capability’ are internal to social relations and interactions. How we relate to each other is fundamental to and constitutive for personal autonomy.

The crucial argument in the broader thesis about the relation between personal autonomy and a range of other first-order facts and relations entails establishing a functional link between these two. This broad task consists of two smaller ones. The first is providing a clear argument about the concrete relation between some particular first-order goods (such as economic or family relations) and personal autonomy. The second one is specifying what kind of institutional action this entails. So what are the horizontal social relations constitutive of autonomy?

4.2.1 Family Relations

Given that the primary socialization in terms of establishing interpersonal relations occurs within nuclear families, family relations are fundamentally important. In order

¹⁹⁹ See Martha C. Nussbaum, *Women and Development: The Capabilities Approach*, Cambridge: Cambridge University Press, 2000, p. 35.

to become capable of autonomy, individuals need to be raised in fairly functional families. Since the notion of a ‘functioning’ family is controversial, minimal definition will suffice. A functional family is a socializing unit in which socialization takes place against the background of mutual respect; economic, emotional and psychological support; and care between members.

In order to secure family relations occur against this background, liberal institutions have a duty to provide for legal frameworks that enable voluntary establishment, functioning and decomposition of family units. This means regulating that individuals are free to enter family relations through marriage (and exit through divorce), but also that individual members of the family treat each other with respect. It also means regulating other socio-economic dimensions of families, such as inheritance, in a way that recognizes special obligations between family members. Though much of this sounds trivial since most liberal states do regulate family relations in the ways enumerated, it does not necessarily need to be so. In many states only particular forms of marriage are allowed. Preventing the commencement of marriage or failing to regulate socio-economic aspects of non-recognized family units will leave those members short of functioning autonomy. For example, individuals unable to socialize in families that distribute economic support to their members will lack abilities for autonomous agency.

4.2.2 Gender Relations

As a conceptual extension of family, gender relations also condition the capability to function autonomously. Most obviously, gender inequality within families and other multi-person groups will prevent development of social (and in many cases other functional) skills among the members of the discriminated gender. Discrimination and inequality between the sexes will affect a healthy development of identity, self-worth and personal accountability. Relations of dependency that usually follow gender inequality, be it physical, economic or cultural dependency, will prevent the development of individuals capable of psychologically and socially unconstrained agency.

Besides providing for a legal environment in which genders are formally equal, liberal institutions have an autonomy-bound duty to prevent gender inequality that occurs in non-political domains, such as families, cultural groups and so forth. Institutional involvement should extend beyond simply providing laws and boundaries for relations between the genders. Consistent with liberal perfectionist aims, institutions should provide for additional opportunities for the discriminated gender to acquire skills and capabilities needed for autonomy. These could include different educational and socializing opportunities that would otherwise be unavailable.

4.2.3 Political Relations

Given the relational conditions of autonomy, it is plausible to assume that in order to fully develop abilities for autonomous action, individuals must have the opportunity to participate in collective decision-making processes. Besides having the bodily capabilities to do so, they need to exist within social structures that enable freedom of expression and provide channels for voicing opinions. These pertain to basic matters in community organization, but also to more complex forms of institutional organization that encourage political participation of various cultural, racial, ethnic and other minorities.

The autonomy-bound duty of liberal institutions is to enable political participation by providing tools and policies for all members of the polity. These include standard means of democratic communal decision-making, but also special policies that aim at addressing inherited structural inequalities between different cultural or social communities.

4.2.4 Cultural Relations

There are two broad ways cultural relations affect personal autonomy. The first (call it low-cultural) way pertains to different forms of intra-cultural socialization. Namely, some forms of culture are more and some less beneficial for the development of autonomous individuals. Even more, the reproduction of many cultures depends on the individual's emotional attachment, rather than reflective assessment of her

cultural frames. There are cultural forms that discourage individuals from attaining the skills needed for reflection. Sometimes this includes intra-cultural segregation of certain groups of people, such as children, women or the ill, or sexual and other micro-cultural minorities.

The second (call it high-cultural) way pertains to the form of communication between high culture and individuals. Some forms of this communication tend to be more inclusive and benefit the development of autonomous skills by exposing individuals to different varieties of sensory and intellectual experiences. These will broaden their experiential knowledge and enable them to make new connections and distinctions crucially important to the ability for reflection and autonomous agency.

The responsibility of liberal institutions in this regard derives from the need to help individuals relate to forms of low culture in a way that encourages rather than discourages the growth of their autonomy capabilities. This means that institutions should in some cases intervene in those aspects of interpersonal relations within cultures that openly discriminate against and exclude certain minorities and prevent their personal autonomy. This is somewhat controversial, given liberalism's commitment to respect (cultural) pluralism, but as already indicated, pluralism is not foundational but derived from autonomy. Only if individuals autonomously choose to reproduce cultural forms are liberal institutions bound to respect them.

Also, institutions should help individuals relate to forms of high culture as well. This can be achieved through various subsidies to high-cultural contents and events that are open to the wider population. State funding of the arts, therefore, can be justified by the institutional duty to support the development of personal autonomy.

4.2.5 Economic Relations

Finally, different types of economic relations within society affect the possibility of attaining autonomy skills for individuals. First, the macro-economic organization will exert a profound influence. The conditions of planned and state-controlled economies, in which individuals and groups are a priori assigned production goals,

quotas and rewards within a system with no private enterprise, are detrimental to the development of personal autonomy. There can be no spontaneous and reflective agency in a system that disallows individual production and control over the means and rewards of economic entrepreneurship.

Similarly, in a system where private ownership reaches macro proportions and starts monopolizing opportunities for private economic initiative, the possibilities for full personal autonomy will also be diminished. Only within a balanced economic system that provides the opportunity for production and commerce to all individuals will individuals be able to develop their potential for spontaneous and autonomous agency.

Second, micro-economic relations also have a significant influence on the possibility of personal autonomy. Here I have in mind the relations between workers and employers, as well as economic relations within families. If workers are underpaid, have long working hours or are unable to access social, health and vacation benefits associated with their workplace, their personal autonomy will be diminished: they will lack psychological and bodily energy as well as time for the socialization needed for development of their agency abilities.

Therefore, the responsibility of liberal institutions is to sustain an economic system in which all individuals have the opportunity to engage in the production and mutual exchange of goods and services that are free from societal pressure, and have access to fair remuneration, vacation time and other benefits inherent to fair working relations.

4.3. Dynamic Autonomy-based Perfectionism

This is far from an exhaustive (and fully specified) list of the social relations that affect the development of personal autonomy. One reason for this is the nature of the phenomenon of autonomy and the fact that it is constituted by external factors, many of which are dynamic and therefore impossible to pinpoint as fixed variables.

This means that the scope of liberal perfectionism will be dynamic to a certain degree, and will change in accordance with local circumstances and global knowledge, including scientific discovery and philosophical reflection. The preceding is more an outline of the major domains of interpersonal relations that contribute to or prevent a proper development of autonomy in human agents. The list and its requirements can be further specified depending on the particular social context and differing circumstances.

Also, this list does not mean that all first-order facts are only instrumentally valuable because of their conditional importance for autonomy. Many items on the list have intrinsic value, and reducing them to autonomy-generating instruments would clearly be mistaken. The value of autonomy, however, relates to them in more than one (conditioning, in this case) way. As outlined earlier, a plausible account of personal autonomy must make it compatible with a range of other values and goods. Autonomy gives additional meaning to all other human goods and values; it brings them together in a coherent and meaningful way.

The relational understanding of autonomy means that none of the conditioning factors will be satisfied without a concerted involvement of institutions and society. Society has the ultimate bearing on whether some factors benefit or impede the development of autonomous individuals. Given relational and contextual character of autonomy, liberal institutions have to promote not only biological conditions, such as bodily and mental health, but also social conditions for autonomy, from basic education to different types of social relations beneficial for spontaneous action. From an institutional perspective, promoting the capability for autonomy implies an active concern for an entire structure of factors and relations that exert a crucial effect on the development of autonomy-capable persons.

The upshot is that the relational and contextual nature of autonomy entails the autonomy-bound relation of obligation among members of the society. If how we relate to each other is constitutive for the development of autonomy, we are obliged

to provide for biological and social conditions that contribute to the development of each other's capabilities for reflection and spontaneous agency. We are obliged to provide for each other's healthcare and education, as well as to ensure that different forms of socialization are provided and circumscribed in a way that is beneficial for autonomy.

5. Objections: Trivial, Wide, Formal?

There may be several objections to this understanding of autonomy and liberal perfectionism. One of them could claim that the account does not differ significantly from already existing liberal perfectionist theories. After all, do perfectionist liberals concerned with autonomy deny that conditions for development of autonomy are important?

True, most liberal perfectionists recognize the importance of conditions of autonomy and assume that they should be included in the institutional concerns of liberal states. Raz and Waldron are among these theorists, and their views on this were made explicit earlier. However, the fact is that none of these accounts claims that liberal perfectionism should focus only on social relations that contribute to the development of autonomy. They do not focus on social relations in a constitutive way that is normatively relevant for liberal perfectionism.

Also, Raz and Waldron offer an overly expansive perfectionist theory. According to their theories, promoting capabilities is just one of the duties of liberal institutions. Beside the problem with the possibility of promoting bad choices, this position is also difficult because it may imply a conflict between two possible features of the same set of facts. Namely, some social structures may simultaneously be conditions of autonomy and be potentially bad choices for individuals to make. Unless taken to suggest that such cases are impossible, Raz's account seems unable to make a principled resolution of such a dilemma. Contrary to that, my account does not face

these kinds of problems. If a particular social fact or structure has a bearing on the development of autonomy, liberal institutions are *prima facie* obliged to promote it, regardless of the fact that some may consider certain choices bad in some sense.

On the other hand, feminist accounts that understand autonomy in a relational way rarely theorize autonomy-bound duties of institutions under the liberal perfectionist theory. They provide a valuable criticism of liberal assumptions of autonomy but do not develop the liberal perfectionist theory further on the basis of these assumptions. So the theory espoused in this chapter fills the gap that has been left open by diverging theoretical emphases of liberal perfectionist and feminist interpretations of personal autonomy.

There are two additional challenges stemming from a specific character of the account of liberal perfectionism offered in this chapter. The first is the possible objection that this account of the state will be too wide, and permitting an overarching and unjustifiably paternalistic state. If so many relations condition personal autonomy, then the purview of liberal perfectionism will be extended to cover them all. My response is the following: this is already a trimmed version of liberal perfectionism. Raz's and Waldron's version is much broader inasmuch as it includes the promotion of good choices and options. Also, many of the relations constitutive for autonomy are already objects of liberal state intervention in different contexts. For example, as mentioned earlier, states do regulate some family relations in ways consistent with my theory, but they may do so for other reasons. So the first part of refuting this objection is to interpret some of the existing liberal regulative duties in terms of the value of autonomy for liberalism. The second part is to show that the logic by which the existing practices are justified in terms of concern for autonomy can in principle extend to other practices that are not yet established because many (political liberals and others) think they lack legitimacy. Some liberals think that state constraints in terms of political relations are justified because there is an overlapping consensus on such practices, but state-mandated vacation time is not, because there is

simply no consensus on the matter. However, consensus does not play a normative role in this framework, so the objection does not hold. What is normatively relevant here is the logic by which the cases outlined above belong to a single justificatory thread: their conditioning effect on the objective value of personal autonomy. This logic serves as a limiting mechanism on the scope of perfectionism, so liberal perfectionism does not go too wide.

The second challenge is related to comparable arguments raised in response to Nussbaum's capability approach. As Richard Arneson pointed out, Nussbaum's preference for capability rather than functioning may raise doubts over the substantial value of capability as such, rendering it purely too formal for a genuine value. Namely, to see that this issue 'involves more than metaphysical hairsplitting,' Arneson invites us to consider the case of someone who achieves the capability for something but no one knows for certain that such capability will be exercised.

The individual has no use for the capability and regards its provision a matter of indifference. If one's ultimate ethical concern is the quality of the lives that people lead, then capability provision that in no way enhances anyone's life is pointless.²⁰⁰

The objection can be applied to my account of liberal perfectionism: if someone is capable of autonomy but chooses a non-autonomous way of life, and becomes a monk in a secluded religious sect, what is the value of autonomy? The response to this objection is as follows: the non-exercise condition for personal autonomy hardly functions as an objection because even the decision not to exercise autonomy can be an act of an autonomous individual. Personal autonomy is not a detached feature of individuals that one can distance oneself from reflectively. A person who decides reflectively and autonomously to devote her life to a religion, cover her face and live in seclusion is not necessarily less autonomous than one deciding not to do this.

²⁰⁰ Richard Arneson, 'Perfectionism and Politics', *Ethics*, Vol. 111, No. 1, 2000, p. 60.

What matters here is that the person who chooses one or the other way of life has her capability for autonomous decision-making developed through a series of life-affecting structural facts and relations, from basic health to personal relations and access to voice, culture and politics. The capability for autonomy is thus essentially valuable, regardless of the choices people make. It is a form of a good life per se, defined objectively and without exclusive recourse to the content of its decisions. Because it is structurally conditional for every subjective decision (even the one that denies it) it transcends not only first-order individual desires but also other considerations about the quality of life. We may even encounter cases in which autonomy will result in the lower quality of life for the individual. Examples of autonomous decisions to withdraw from social life and success for reasons related to the character of society can bring individuals to the brink of poverty and exclusion. Even in such cases we would not say that an autonomous life is less valuable than a non-autonomous one, because the capability for autonomy developed in such an individual is what makes the possibility of such a choice valuable. In my understanding, perfection is located in the individual capabilities to make a range of different choices, not in the nature and results of any particular choice of life. Or, as Arneson notes,

[p]erhaps the best interpretation of the norm that society owes its members capability for flourishing rather than flourishing itself is to fold that each person has a right of autonomy or personal sovereignty in self-regarding matters. One has the right to lead one's life as one chooses within moral constraints even if it can be ascertained with certainty that one will lead one's life in an inferior way and that the loss in well-being that one will suffer is not compensated by gains in well-being that one will accrue to other persons.²⁰¹

²⁰¹ Arneson, p. 61.

5.1 The Proviso: Equal Autonomy

Finally, promotion of the capability for autonomy comes with an important proviso: the equality of autonomy. Namely, the ethical core of the liberal perfectionist account of autonomy provides that the state should take care that each individual is capable of making her own autonomous choices. The equality of autonomy, in this context, does not mean the equality of the exercise of autonomy, or the equality of choices available to individuals. It means the equal access to social factors and relations that contribute to the development of individual capabilities for autonomy. This equal access aims at developing the capabilities of individuals up to a certain threshold level, above which individuals are considered capable of autonomous judgment and action.

6. Conclusion: Capability Perfectionism?

Is this a new form of liberal perfectionism? Not necessarily, because it builds on many preceding theories of liberalism that have been concerned with similar problems. For example, it inherits the objectivist attitude toward value from other liberal perfectionist theories. It also inherits the concern for personal autonomy. The only difference is in the way it locates some of the recurrent liberal perfectionist arguments. Unlike perfectionist theories that aim to promote a particular way of autonomous life or a particular quantity and quality of choices, this account suggests that perfectionist practice of the liberal state should be exercised only within the domain of relations that condition individual capabilities for personal autonomy. In that sense, I view this account as an additional contribution to the existing attempts to theorize liberal perfectionism, rather than as an attempt to carve out a new theoretical trajectory. The capability perfectionism advocated here is a more precisely defined liberal perfectionism, based on the value of autonomy for human lives.

However, there is a way in which this discussion can transcend merely fine-tuning liberal perfectionism. That way has to do with the discussion the chapter started with:

the question about which liberal framework is better in promoting the quintessential liberal value – personal autonomy. As I believe to be implicit in the arguments of this chapter, liberal perfectionism fares somewhat better when it comes to ways to conceptualize practical political concern for personal autonomy. It does so because the assumptions that feed perfectionist accounts seem more adequate to grasp the nature of the autonomy phenomenon. Personal autonomy is not a detached, synthetic and isolated ability of humans to reflect upon their desires and wishes. It does not come to us naturally: it needs to be nurtured by a benevolent society's careful hand and a state that cares for its members. Political liberals seem unable to theorize personal autonomy in ways that will be richer than mere considerations about non-interference and detached second-order reflection against our first-order desires. This may be because, as I mentioned earlier, any plausible conceptualization of autonomy will commit one to a form of moderate perfectionism that will not insist on state mandate of choices or ways of life, but that will ensure individuals are capable enough to make free choices for themselves. Such moderate perfectionism has a different site, and pointing to that site was one of the main aims of this chapter. This conceptualization of liberal perfectionism may provide more arguments for the plausibility of the entire family of liberal theories, but also shed more light on the ways to theorize personal autonomy within liberalism and make it more resistant to criticism.

However, this does not mean that the argument for liberal neutrality has no value. As argued in Chapter 1, neutrality is still a valuable political ideal because it is also based, in its own way, on the value of autonomy.

How liberal perfectionism and neutrality relate and complement each other will be discussed in the next chapter. There I will take on the central problem of this dissertation and examine the way liberal perfectionism, as interpreted previously, can be coherently combined with neutralist arguments. I will build on the understanding of autonomy and the site of perfectionism espoused here, and argue that it converges

with neutrality arguments by virtue of providing the reasons for institutions to exercise neutrality towards autonomously acquired conceptions of the good.

CHAPTER FOUR

Neutrality, Perfection and Context

1. Introduction

As two distinct liberal approaches to problems of conflict over the good life, liberal neutrality and perfectionism radically diverge in their normative proposals. Political liberals advocate institutional neutrality and restraint from regulating anything on the basis of a single definition of the good life, while perfectionist liberals opt for an institutional promotion of particular ways of life. Since the early developments of both theories of liberalism, mutual exclusion has been the norm for most authors in the discipline.

In the past several years, however, liberal philosophy has witnessed modest attempts to bring these two closer to one another. In a recent article on this topic, Steven Wall argued that neutrality and perfection are consistent as long as neutrality is restricted to choices that are of equal or incommensurable value.²⁰² Namely, if we presume that both perfectionists and neutralists accept the thesis of value pluralism, there will be a number of incommensurable definitions of the good life. According to Wall, when forced to choose, liberal institutions should favor these options over others deemed unworthy, but be neutral among them. The result is something he calls the restricted neutrality principle, implying that neutrality is owed toward equally worthwhile

²⁰² Steven Wall, 'Neutrality for Perfectionists: The Case of Restricted State Neutrality' *Ethics*, Vol. 120, No. 2, 2010, p. 233.

choices based on conceptions of the good that have adherents in a particular society.

Wall's account rests on the acceptance of the strong thesis about value pluralism. According to this thesis, options are incommensurable across different contexts and situations. It assigns cardinal measures to different individual choices and conceptions of the good because the site of his perfectionism is located in a range of worthwhile options. The existence of a number of incommensurable goods and options is taken as the basic normative fact. But, if the site of liberal perfectionism is located in the capability of personal autonomy, there can be a weak thesis about value pluralism. According to this thesis, personal autonomy of adherents to different options is the basic normative fact. It implies that valuable options are not incommensurable in a way that precludes any preferential ordering because some options will be adopted autonomously while others will not.

The disadvantage of assuming the strong thesis is that it leaves little or no room for accounting for the social context in which different options and conceptions of the good are adopted and sustained. The context is relevant because it affects the way individuals pursue their choices. Presumably, liberalism favors a system in which options are chosen autonomously, not heteronomously. So the fact that there are a number of incommensurable social goods and options does not say much about how these goods were selected. Contrary to that, assuming the weak thesis enables us to look more closely at the nature of the social contexts that affects individual choice because it allows us to look beyond reasons for assigning ordinal value to some options at particular circumstances.

This chapter aims to provide outlines for thinking normatively about context within the debate between liberal neutralists and liberal perfectionists. I will presume the weak thesis about pluralism and suggest that accounting for normatively relevant facts of context is possible only if we posit that neutrality and perfectionism converge

in a way different from Wall's suggestion. This alternative way assumes that neutralist and perfectionist requirements need to be satisfied simultaneously: neutrality against individual choices is predicated on the individual capability to sustain autonomous judgment and action, rather than on the existence of a range of incommensurable goods.

There are two main claims I will develop and discuss in this chapter. The first claim suggests that neutrality and perfectionism are not mutually exclusive, but inclusive ideals of liberal philosophy. I argue that they are convergent and interdependent. There are conceptual and practical reasons for their convergence. The conceptual reasons derive from their shared concern for personal autonomy. Convergence mandates that policy regulation (pertaining to conflicts over policy choices that reflect divergent notions of the good) cannot be exclusively neutralist or exclusively perfectionist, but must strike the right balance between the two. I will argue that the legitimacy of the regulation is reached only when both requirements simultaneously obtain.

The second claim suggests that the context of social policy decision-making operates as a practical reason behind the need for convergence. In order to account for normatively relevant facts of context, we must have a theory that implies convergence between requirements of neutrality and perfection. I also argue that social context has a normative value in defining the terms of this convergence.

The discussion will proceed as follows. I will start elaborating the chapter's main claims by arguing for conceptual reasons behind the need for combining neutrality and perfection. Then, I will briefly examine the notion of heteronomy to outline an important assumption behind my understanding of the role of social context in normative analysis. This will have significant effect on the subsequent elaboration, in which I will discuss the normatively relevant factors of context as practical reasons

behind the convergence thesis. I will show which elements of social context matter normatively and why.

2. Neutrality and Perfection: Conceptual Convergence

Liberal neutrality and perfectionism are forms of liberal theory that conceptualize the notion of autonomy in radically different ways. Consistent with previous chapters, I wish to argue, however, that this appearance is misleading. More than that, neutrality and perfectionism are just different ways of accounting for the value of autonomy and disvalue of heteronomy for liberalism. In this section, I will develop the argument that, given their concern for personal autonomy, neutrality and perfectionism converge rather than diverge as normative theories. This is a conceptual and normative argument that will be put to a practical test in the latter part of the chapter.

2.1 Partial Ideals

The main reason behind my concurrence with Steven Wall's assumption that neutrality and perfectionism are consistent with each other is the presumption that they are partial ideals. This presumption, namely, stipulates two things. First, that neutrality and perfectionism are valuable liberal theories in their own right. As we have seen from the previous chapters, they both have a role in the development and application of a broad range of policies undertaken by liberal institutions. Wall's analysis is a good indicator of this. It shows that for a liberal state it can be important to be both perfectionist and neutral in different circumstances. Second, neutrality and perfectionism are more plausible as normative ideas if they are taken in concert, rather than in isolation.

The latter claim, which is more difficult to defend, is based on the understanding that the principle of autonomy underpins both philosophies. If we take liberal neutrality to imply the requirement that all public affairs reflect an impartial stance of

institutions towards individual choices on the basis of the equal moral status of individuals as autonomous beings,²⁰³ it is clear that autonomy plays a central role in defining and justifying the principle. Equal moral status of autonomous beings is at the core of the requirement for impartial treatment because the principle of neutrality derives from the value of autonomy. This claim builds on the arguments developed in Chapter 1, which suggested that liberal neutrality is better understood as a dependent rather than a freestanding theory. Its foundations are grounded in the value of personal autonomy. Also, the claim is consistent with recent suggestions²⁰⁴ that neutrality is derived from a prior moral commitment rather than earlier claims²⁰⁵ that neutrality itself is a foundational principle.²⁰⁶

Similarly, autonomy is central to liberal perfectionism as well. If we take liberal perfectionism to imply the promotion of human capabilities for flourishing in terms of developing their nature²⁰⁷ or in terms of promoting an objective conception of the good,²⁰⁸ autonomy will play a crucial role in defining human nature and the character of human good. For some perfectionists, the two are intrinsically related. Richard Kraut suggests that a healthy development of human beings over the course of a

²⁰³ There have been many theories of neutrality so far. As elaborated in earlier chapters, this is the understanding I share. For related accounts, see Steven Wall, *Liberalism, Perfectionism and Restraint*. Cambridge: Cambridge University Press, 1998; also Joseph Chan, 'Legitimacy, Unanimity and Perfectionism', *Philosophy and Public Affairs*, Vol. 21, No.1, 2000, p. 34.

²⁰⁴ Janos Kis, 'State Neutrality', in Michael Rosenfeld & Andras Sajo (eds.), *Oxford Handbook of Comparative Constitutional Law*, Oxford: Oxford University Press, 2012, p. 319.

²⁰⁵ Bruce Ackerman, *Social Justice in the Liberal State*, New Haven: Yale University Press, 1980, p. 10.

²⁰⁶ If we accept that neutrality is derived, there are two possible sources of the principle: equality and autonomy. The statement that neutrality implies impartial treatment of individuals as equals *on the basis* of their autonomous status indicates that the relation between equality and autonomy constitutes the fundamental dynamic underlying the neutrality principle. Impartiality toward individual choices is owed only toward autonomous individuals capable of making reflective and responsible choices. However, in practice, the direction in this dynamic follows the logic of lexical priority: before equality takes place, individuals making choices must be autonomous. So, different neutralist philosophers agree at least this much: neutrality aims at protecting individual autonomy to choose and pursue their particular conceptions of the good.

²⁰⁷ Thomas Hurka, *Perfectionism*. Oxford: Oxford University Press, 1993, p. 3.

²⁰⁸ Roger Crisp, *Reasons and the Good*. New York: Oxford University Press, 2006; also George Sher, *Beyond Neutrality: Perfectionism and Politics*. Oxford: Oxford University Press, 1997.

lifetime gives us insights into the objective nature of the good. For him, a flourishing human being

is one who possesses, develops, and enjoys the exercise of cognitive, affective, sensory, and social powers (no less than physical powers). Those, in broadest outline and roughly speaking, are the components of well-being.²⁰⁹

For many liberal perfectionists, being capable of personal autonomy is part of what it means to be human, but also part of what is good for humans. It is part of the way we define ourselves, but also part of how we see the nature of well-being.²¹⁰ The lack of autonomy implies the lack of humanity and an impoverished life. Consistent with such views, liberal perfectionists look for different ways personal autonomy, as a form of the individual good, can be promoted and developed. As discussed in the previous chapter, some opt for promoting individual capabilities for autonomy, while others advocate the institutional role in sustaining valuable choices for individuals.²¹¹ As argued there, I opt for a view that locates the site of liberal perfectionism in social relations and structures that contribute to the development of autonomous capabilities.

Since both neutrality and perfectionism are based on a prior appreciation of the value of personal autonomy, they share a significant common ground by mere default. However, closer examination shows that the plausibility of neutralist and perfectionist arguments, when taken separately, depends on the fact that both simultaneously obtain. Namely, in order for the neutralist requirement (that institutions owe

²⁰⁹ Richard Kraut, *What is Good and Why: The Ethics of Well-Being*, Cambridge, MA: Harvard University Press, 2009, p. 137.

²¹⁰ James Griffin, *Well-Being: Its Meaning, Measurement and Moral Importance*. New York: Oxford University Press, 1986, pp. 40-72.

²¹¹ See Joseph Raz, *The Morality of Freedom*. Oxford: Oxford University Press, 1985.

impartial treatment to all individual choices on the basis of individuals' equal moral status as autonomous beings) to obtain, the perfectionist requirement (to promote the autonomy of individuals) must obtain as well.

As indicated earlier, personal autonomy does not occur in individuals without any involvement of their environment. Humans are not born autonomous: they become autonomous through a whole series of events that substantially depend on social structures. Though a reflective capability of humans, personal autonomy hinges on a number of facts and relations. Without basic health, education and a network of social relations that aid the development of capabilities for autonomous reflection, there can be no autonomous individuals. It is plausible to say that these first-order facts, as social determinants of autonomy, are sufficiently provided only within a moderately perfectionist liberal context, where institutions have a duty to sustain provision of conditions for autonomy.²¹²

Therefore, in order to be able to exercise neutrality toward autonomous individuals, institutions need to promote the development of their autonomy. The requirement of neutrality is institutionally satisfied in a meaningful way only against the background of autonomous individuals. Otherwise, neutrality is a shallow ideal, aimed to preserve the status quo under the guise of sustaining a liberal institutional structure.

Similarly, if perfectionist promotion of autonomy is to be purposeful, institutions must exercise neutrality against choices autonomous individuals make. Autonomy is a valuable ideal, but its value is manifested only in social contexts that it bounds. Otherwise, autonomy has no meaning. Therefore, the most important political implication of the perfectionist promotion of autonomy is the subsequent exercise of neutrality. From the institutional perspective, having autonomous individuals is not

²¹² See discussion in Joel Anderson and Axel Honneth, 'Autonomy, Vulnerability, Recognition and Justice' in John Christman and Joel Anderson (eds.) *Autonomy and the Challenges to Liberalism*. Cambridge: Cambridge University Press, 2005, pp. 127-150.

the final end of autonomy-promotion efforts. Liberal institutions promote personal autonomy so they can exercise impartiality towards individual choices. Paradoxical as it may sound, the institutional exercise of neutrality is the ultimate aim of liberal perfectionism.

There is thus an intrinsic conceptual link between neutrality and perfectionism. Properly understood, these ideas are not contenders for institutional justification but complementary ways to account for a range of liberal institutional requirements. This is because, consistent with claims from the previous chapter, perfectionism applies to conditions for autonomous capabilities of individuals, while neutrality applies to the ends autonomous individuals choose.

Understanding the consistency between neutrality and perfectionism is important because it bears on the legitimacy of institutional decisions that touch upon their requirements taken separately. Supporters of exclusive neutrality or perfection will diverge in pointing to the sources of institutional legitimacy. They will point either to the institutional duty of restraint from imposing conceptions of the good or to the need to contribute to human well-being and development of human nature. However, a better way of conceptualizing legitimacy of institutional decisions in such contexts suggests that the legitimacy of an institutional decision about a social policy that pertains to some conception of the good derives from simultaneous satisfaction of both requirements. The decision is legitimate and sufficiently justified only if institutions promote the development of individual capabilities for autonomy and at the same time exercise neutrality toward individuals' choices on the basis of their equal status as autonomous beings. Because liberal perfectionism is based on the value of autonomy rather than on a range of other values, institutions owe neutrality toward individual choices only under the condition of their autonomous acquisition and pursuit.

The legitimacy of institutional decisions in such cases will derive from constitutive co-dependence of neutralist and perfectionist requirements. The institutional exercise of neutrality toward particular individual choices is fully legitimate only if it occurs against the background of institutional promotion of personal autonomy. Similarly, institutional promotion of personal autonomy is fully legitimate only if it happens against the backdrop of institutional neutrality toward autonomous choices. Neutrality and perfection provide background conditions for each other's legitimacy in a liberal political context.

2.2 Convergence

Simultaneous satisfaction of both neutralist and perfectionist requirements may seem both theoretically and practically impossible to many. The reason for this is mainly because neutrality and perfectionism are considered to belong to radically opposed approaches for understanding moral justification: deontology and consequentialism. Namely, the neutrality principle is often justified in terms of deontological constraints on institutional action, while perfectionism is understood to imply the consequentialist rule that institutions should promote the largest amount of personal autonomy as the liberal good. Those who consider doctrines mutually exclusive believe that either institutional constraint precludes promotion of any good or that such promotion implies no principle-based constraints on institutions. But do different background systems of moral justification really render neutrality and perfectionism incompatible?

Not necessarily. Recent writings in political philosophy have shown that one may integrate deontological and teleological requirements in a single normative framework. For example, as Derek Parfit indicates in *On What Matters*, deontological requirements may be plausibly combined with consequentialist ones to create a unified theory of morality. Parfit achieves convergence through a strategy that involves several steps. First, he merges Kantian contractualism with rule consequentialism by arguing that Kant's formula of Universal Law cannot succeed

unless it implies some consequentialist moral intuitions. One of those intuitions understands moral behavior as implying that everyone should choose optimific principles, or those that would make things go the best. These principles are the ones ‘whose universal acceptance everyone could rationally will, or choose.’²¹³ Then, he adds Scanlon’s contractualist formula, according to which everyone should follow principles nobody could reasonably reject, to the picture and gets something he calls the triple theory. According to this theory,

[a]n act is wrong just when such acts are disallowed by the principles that are optimific, uniquely universally willable, and not reasonably rejectable.²¹⁴

The result of this idea, Parfit argues, is that it is a mistake to think Kantians, contractualists and consequentialists are in a deep disagreement with each other. Instead, they are essentially ‘climbing the same mountain on different sides.’²¹⁵

Without discussing the merits of Parfit’s construction, it seems reasonable to assume that he has indicated that convergence among different moral positions so far considered rivals is not impossible in principle.²¹⁶ Provided that one accepts the analogy from private to political morality, this idea is relevant for the overlap between neutrality and perfectionism in the following way.

Namely, the inner structure of Parfit’s convergence relies on the notion that the position argued for is teleological in terms of its content, but deontological in terms of the reasons why the principles should be followed. A similar structure can underpin the position that neutrality and perfectionism converge rather than diverge. Neutrality’s deontological requirement to extend impartial treatment to individuals on the basis of their autonomous status provides sufficient reason for institutions to

²¹³ Derek Parfit, *On What Matters*, Volume I, Oxford: Oxford University Press, 2011, p. 24.

²¹⁴ Parfit, p. 419.

²¹⁵ Parfit, *ibid.*

²¹⁶ Samuel Scheffler made a similar argument. See Scheffler’s introduction to Parfit, p. xxii.

respect and follow it. However, the reasons make sense only because its content – personal autonomy of individuals – is understood in teleological terms, as the conception of the good institutions should promote. The reason for adopting the principle of neutrality by institutions is, therefore, given by the objective standard that derives its force from the consequentialist good of autonomy.²¹⁷ Conversely, the good providing the basis for the standard entails the validity of the reason behind the requirement. In that sense, one may say that neutralists and perfectionists have also been climbing the same mountain from different sides.

The mountain of social policy-making in liberal societies can therefore be approached through the convergence of hitherto differing but essentially consistent and compatible methods of dealing with policy issues that imply various choices and conceptions of the good. This convergence indicates that liberal policy-making can be normatively multi-paradigmatic, rather than limited to a single justificatory framework. Going beyond the extreme teleological and deontological positions means allowing for the occurrence of convergence that might be both normatively sound and practically potent in resolving difficult social policy problems.

To some extent, this already reflects the intuition of many practical liberals, who are not necessarily opposed to or enthusiastic about government involvement in various individual affairs. It largely depends on the context and particularities of the cases at hand.²¹⁸ Similar intuition has been expressed in the form of the theory of ‘libertarian paternalism,’ developed recently by Richard Thaler and Cass Sunstein, according to

²¹⁷ Structurally, this is a view similar to Roger Crisp. See his *Reasons and the Good*. Oxford: Oxford University Press, 2006. For alternative view see Thomas Scanlon, *What We Owe To Each Other*, Cambridge, MA: Harvard University Press, 1998.

²¹⁸ For example, see N. Scott Arnold, *Imposing Values: An Essay on Liberalism and Regulation*, Oxford and New York: Oxford University Press, 2009, p. 8.

which institutions are permitted to promote certain behavior on the basis of a particular conception of the good while respecting personal freedom of choice.²¹⁹

So, the convergence argument complements some already existing liberal intuitions about the problems of practical policy-making. These intuitions are based on the notion that deontological moral commitments and the need to promote certain ends do not necessarily exclude each other. They may constitute complementary parts of a single normative framework.

The greatest advantage of the convergence thesis is that it is able to account for particular circumstances in which institutions will have to exercise neutrality while at the same time fulfilling the perfectionist requirement that individuals are capable of autonomous choice. This is especially difficult given the nature of social context and the forces of heteronomy inherent to it. By accounting for different factors of the social context that prevent individual autonomy, the convergence thesis will be able to satisfy perfectionist requirements without breaching the limits posited by the principle of neutrality.

Understanding these forces, however, is difficult without a prior understanding of the nature of heteronomy. If heteronomy is more than an external force infringing upon individual ability to act, it needs to be conceptualized in a way that gives us sufficient normative guidelines for proper institutional action. This is more the case having in mind that, as a theory about political morality based on individual freedom, liberalism is naturally disposed against heteronomy. Moreover, most liberal theories aim at preventing the occurrence of individual heteronomy, in one way or another. Some of them assume individual autonomy as a standard from which principles of justice are

²¹⁹ See more in Cass R. Sunstein and Richard H. Thaler, 'Libertarian Paternalism is Not an Oxymoron', *The University of Chicago Law Review*, Vol. 70, No. 4, 2003; also, see their more recent book *Nudge: Improving Decisions About Health, Wealth and Happiness*. New Haven: Yale University Press, 2008.

developed,²²⁰ while others argue for institutional involvement in preventing heteronomy and developing autonomous individuals.²²¹ In any case, understanding the nature of heteronomy is crucial for understanding the normative relation of social context to institutional exercise of liberal requirements. In the next section, I discuss the notion of heteronomy and propose a perspective for framing heteronomy within a liberal normative theory.

3. Heteronomy

As elaborated in the previous chapter, many philosophers have persuasively argued that a hierarchical and internalist conception of autonomy, according to which individuals assume Herculean abilities to ‘fashion themselves out of whole cloth,’ with disregard to circumstances and contingent relations is unsustainable.²²² Contrary to that, they argue that personal autonomy is horizontal, relational, contextual and diachronic: it pertains to circumstances of human existence as much as to their inner capabilities for self-determination.²²³ According to these accounts, but not exclusive to others, autonomy implies individual ability to reflect upon the world in a way that allows for a relational, diachronic and spontaneous constitution of their selves in different circumstantial contexts.

²²⁰ This is the case with most contractarian accounts of justice, especially from Rawls onward. For a recent example, see Steven Lecce, *Against Perfectionism: Defending Liberal Neutrality*. Toronto: Toronto University Press, 2008.

²²¹ This is the case with Joseph Raz’s theory, but also with other philosophies aiming to prevent heteronomy. For such an account, see Anderson and Honneth, 2005.

²²² John Christman, *The Politics of Persons: Individual Autonomy and Socio-Historical Selves*, Cambridge: Cambridge University Press, 2009, p. 10. See also Mary Donnelly, *Healthcare Decision-Making and the Law: Autonomy, Capability and the Limits of Liberalism*, Cambridge: Cambridge University Press, 2010, p. 272, and Catriona Mackenzie and Natalie Stoljar (eds.), *Relational Autonomy: Feminist Perspectives on Autonomy, Agency and the Social Self*. Oxford: Oxford University Press, 2000. For preceding accounts, see Gerald Dworkin, *The Theory and Practice of Autonomy*. New York: Cambridge University Press, 1988.

²²³ Also, see John Christman and Joel Anderson (eds.) *Autonomy and the Challenges to Liberalism*. Cambridge: Cambridge University Press, 2005.

Understanding what autonomy is may not be sufficient, however. It is of equal importance to understand what autonomy is not. As a term in political philosophy, autonomy shares a conceptual boundary with its direct opposite – heteronomy. A particular understanding autonomy has to imply an understanding of heteronomy. In cases of direct opposites such as these two, the conceptual content of one term will reflect itself in the other. So, if autonomy is to be understood in relational terms, how should we understand heteronomy? If autonomy is not to be confined exclusively within inner capabilities of individuals for second-order reflection, as some authors have suggested,²²⁴ should heteronomy be externalized beyond their reflective selves or should it be somehow associated with the individual's rational self?

Within a Kantian philosophical framework, heteronomy implies being subject to a law or a standard external to oneself. Acting heteronomously means acting in accordance with one's desires rather than with reason or moral duty. Kant's notion of heteronomy hinges on the centrality of reason in determining the principles of morality. For him, determining moral principles on the basis external to self is heteronomous. Here is Kant's famous view about heteronomy:

If the will seeks the law that is to determine it anywhere else than in the fitness of its maxims for its own giving of universal law – consequently if, in going beyond itself, it seeks this law in a property of any of its objects – heteronomy always results. The will in that case does not give itself the law; instead the object, by means of its relation to the will, gives the law to it.²²⁵

From a Kantian perspective, an individual acts heteronomously whenever the principles of her actions are determined by objects external to her will, or to her

²²⁴ Marina A.L. Oshana, 'Autonomy and Self Identity' in John Christman and Joel Anderson (eds.) *Autonomy and the Challenges to Liberalism*. Cambridge: Cambridge University Press, 2005, pp. 77-101.

²²⁵ Immanuel Kant, *Groundwork for the Metaphysics of Morals*, Cambridge: Cambridge University Press, 1997, p. 47.

rational self. But, how do we demarcate the boundaries of the self? How do we tell that the self is the originator (the source) of the individual's actions? What is self, after all? Addressing these questions is beyond the scope of this chapter (some of them were examined in Chapter 2). However, the rest of this discussion relies on a number of non-Kantian assumptions about heteronomy and the self. I wish to bring these assumptions forward and make them explicit, without elaborating more deeply about their philosophical plausibility.

First, I reiterate the view that agents are rarely (if ever) original sources of action or value. This view builds on Bernard Berofsky's insight that the Kantian location of autonomous action within the individual self is untenable, because

[t]here is little reason to think that second-order reservations about first-order desires are closer to the core of the person than those desires themselves or that they fail to derive from sources external to self. In fact, the paradigm case of heteronomy for David Shapiro is the rigid individual, one whose life is saturated by principles. In this case, the principles are internal voices, rigidly applied to situations, and estranging him from his own feelings and motivations.²²⁶

Berofsky suggests that an individual behavior saturated with principles is not informed by the independent (external) data and adjusted accordingly, so the individual is incapable of spontaneity. The only way for such an individual to achieve autonomy is to shed these encumbrances and allow an open engagement with the world. The proper conception of autonomy from the horizontal theory implies individual ability to expand their horizons and have capacities to respond to their environment rationally and flexibly, in accordance with the principle of open future. This means that autonomy is not constituted by something inside of humans, but 'by

²²⁶ Bernard Berofsky, *Liberation from Self*, Cambridge: Cambridge University Press, 1995, p. 8.

the manner in which an agent is engaged in her world rather than the metaphysical origin of her motivations.²²⁷

My assumption is that if autonomy implies spontaneity of human relation with its environment, heteronomy must imply the lack of such spontaneity. In this case whether heteronomy originated within the person's self or outside does not matter. Berofsky and other writers have shown persuasively that the boundaries of the self are anyway philosophically problematic. It is far from clear that heteronomous choices are always those imposed from the outside of the individual's self. They may be, as in cases of coercion or extreme deficiencies of person's physical setup, but this does not imply that a heteronomous choice will always be something beyond individual comprehension. Therefore, heteronomy is better conceived in terms of individual disability to engage with the environment in a reflective, responsive and spontaneous way. Heteronomous individuals are unable to adjust their behavior to changes in environment and acquisition of new information. They are incapable of genuine human agency, in which persons are not mere recipients but creators of value.

This conception of heteronomy fits well with horizontal and relational assumptions about autonomy. If personal autonomy depends upon individual ability to reflect upon facts of the world while sustaining relations with other individuals, personal heteronomy implies individual inability to relate to others in an appropriate way. Unlike autonomy, heteronomy prevents individuals from engaging the world and others in reflective, dynamic and spontaneous ways that involves two-way relations and recognition of contingency. It implies rigidity of individuals and disposes them to programmed forms of behavior, such as predictable reactions and adoption of immutable behavioral patterns.

²²⁷ Berofsky, p. 1.

These forms of behavior may not necessarily originate in overt coercion or manipulation coming from without, but can also come from within individual rational selves. This, however, does not mean that it will no longer be possible to tell the difference between autonomy and heteronomy in individual decisions. It does, however, mean that accounting for autonomy will in many cases involve more than simple recognition of an individual's sovereignty to make choices based on her volition. Some patterns of behavior and practice that are substantially heteronomous will be deeply internalized by individuals so as to merely mimic spontaneous reflection, but will essentially imply an unreflective personal internalization of these patterns.

This also relates to another of Berofsky's insights, according to which heteronomy and autonomy are not mutually exclusive states of being a person. Both autonomy and heteronomy can be accidental and dispositional. In other words, persons generally disposed to heteronomy can be capable of episodes of autonomy and vice versa.²²⁸ This implies that what appears to be an autonomous decision may not necessarily be so. An individual might be simply exercising an autonomous choice, but his general disposition can remain heteronomous. Similarly, when we look at the genealogy of an individual's intellectual development, it becomes clear that autonomy does not come into being from itself, but rather through a sequence of events, many of which will be heteronomous, i.e., imposed upon the individual by some external force, from society to parents to relatives. Therefore, the development of personal autonomy may sometimes even require heteronomous external structure.

Though it implies the disability to relate, heteronomy is manifested in the relational domain – in the realm of political and non-political interactions between persons, groups and institutions. A particular pattern of social organization will either encourage spontaneous human agency, or discourage it through acts that result in

²²⁸ Berofsky, p. 208.

non-reflective and predictable behavioral patterns. Because of this, the character of the social context in which institutions operate is relevant for understanding what contributes to personal heteronomy and what liberal institutions can do to promote autonomy.

Somewhat under-theorized due to its elusive nature, social context is also important for understanding practical reasons behind the need for the convergence of neutrality and perfectionism. In the next section, I elaborate factors of social context that are normatively relevant due to the fact that they circumscribe individual action and have the power to prevent spontaneous behavior. I will also show that social context is normatively relevant for reasons pertaining to structures that require a multi-paradigmatic approach of liberal institutions to resolve certain types of policy conflicts.

4. Factors of Social Context: Practical Convergence

4.1 The Normative Value of Social Context

Does social context have any normative value? If yes, why? I argue that context is normatively valuable for devising liberal institutional solutions to policy issues on the basis of the convergence thesis, for two main reasons. The first reason is external and additive: context matters simply because we cannot apply perfectionist political norms blindly, with disregard to social circumstances, many of which will require the exercise of institutional neutrality. The second reason is internal and constitutive: if relations matter in defining autonomy and heteronomy, then social context, as the bedrock of social relations, will be indicative of the quality of relations that serve as perfectionist requirements for institutional neutrality.

4.1.1 First Reason

The social world in which policy regulation takes place is not an ideal world. There we find no clearly demarcated domains of autonomy and heteronomy and cannot

know in advance how a particular policy measure will correspond to different elements of social reality. Understanding this is important because the basic assumption of many liberal policies is that a society of autonomous individuals represents the fundamental liberal ideal. This assumption operates at the level of ideal theory, but also feeds some elements of non-ideal theorizing, most notably the notion of autonomy promotion and development. Given the contingent fact that liberal institutions will, in many cases, deal with non-autonomous individuals whose capabilities for autonomous choice need to be developed, a question arises about the means and methods of this development. The non-ideal conditions will include individuals who volitionally reject the value of personal autonomy for their lives, preferring values of communal belonging or non-reflected belief instead. The question here is how liberal institutions should realize their deepest philosophical ideal: the society of autonomous individuals.

The most appropriate metaphor for describing the problem comes from the literature about institutions and institutional development. Authors from this field have used Otto Neurath's notion of 'rebuilding the ship at sea' to describe the situation in which we must design new institutions in a world already shaped and determined by existing institutional arrangements.²²⁹ This implies that we cannot topple the current institutions to build new ones; instead, we have to work within and amend the given institutional frameworks to establish new ones. A similar conceptual structure pertains in the context of institutional concern with autonomy. Liberal institutions, presumably, aim to create a society of autonomous individuals, whose choices and preferences about personal and collective matters will be respected as sovereign decisions. But, the world in which liberal institutions operate is characterized by the contextual (non-ideal) conditions in which only a certain number of people are sufficiently autonomous to make their own sovereign decisions. To some degree this is an unalterable fact, given that children are non-autonomous beings by default and

²²⁹ See for example Jon Elster *et al.*, *Institutional Design in Postcommunist Societies: Rebuilding the Ship at Sea*. Cambridge: Cambridge University Press, 1996.

there will always be a need to develop their autonomous capacities. But, there are also a number of mature individuals who are either non-autonomous by accident (for example the mentally challenged) or are non-autonomous by personal choice – such as deeply religious or communal individuals who reject the notion of self-determination and believe their lives are ultimately determined by facts beyond their choice. The apparent paradox in the case of the latter group lies in the fact that they exercise their free volition (often associated with autonomy) in rejecting the value of autonomy. Their volition, as ‘accidental autonomy,’ provides constraints on institutional action, so liberal institutions are not justified in imposing coercion on individuals to ‘force them to be autonomous.’

This apparent paradox indicates one reason why social context, as the non-ideal world, is normatively relevant. Clearly, liberal institutions cannot exercise perfectionist measures and promote the good of personal autonomy without regard for choices of individuals. Some of them reject the value of autonomy; imposing it on them would not only be illegitimate but would also defy the substance of personal autonomy as the basic liberal commitment. This can be called the autonomy dilemma: the problem of promoting personal autonomy in a society in which some individuals exercise their (presumably autonomous) will and reject the value of autonomous life.

4.1.2 Second Reason

The second reason pertains to factors that include relevant relations between individual selves and their environment, which either help constitute individuals as autonomous beings or prevent their spontaneous engagement with the world. Without accounting for context, it is difficult to know if a particular act is an expression of accidental or dispositional autonomy. Individual choices may be influenced by a number of secondary facts that are not independently justifiable, and hence shape their preferences in a way that only seems autonomous, but is essentially heteronomous and not reflective of what would be their choice under different circumstances that allow for more spontaneous (re)action. Apparently autonomous individual choices may be heteronomous in a dispositional sense because they are

framed by structural injustices in society,²³⁰ various forms of invisible (discursive or material) discriminations, adaptive preferences or of domination.²³¹ These structural facts and circumstances constitute the normative value of context: social policy decision-making needs to account for them in order to create balanced and properly informed liberal regulation.

4.1.3 *Blurred Boundaries*

The two reasons behind the normative value of context indicate that realizing the convergence between neutrality and perfectionism cannot be done through clear-cut and mutually independent measures of autonomy promotion and protection, such as the one for which Steven Wall argues. Institutions cannot simply impose personal autonomy because, as the first reason indicated, some individuals rightly reject its value. Also, institutions cannot simply exercise neutrality because, as the second reason indicated, some individuals will lack dispositional autonomy. The non-ideal world of context is messy and the boundaries between domains are blurred. It is impossible to expect liberal institutions to engage in two activities through completely separate measures: promoting and protecting autonomy needs to be done simultaneously and often applies in singular cases. There will be situations in which liberal institutions have to create policy solutions that at the same time protect and promote individual autonomy. In some cases institutions will have to provide normative remedies for situations in which non-political institutions will infringe on individual autonomy in an objectionable way. For example, the market as a non-political institution will often transgress and violate certain liberal principles (including autonomy), and state institutions will have to act to remedy the situation.

In the following subsections I elaborate more on specific factors of context that are left unaccounted for by Wall's argument about consistency between neutrality and

²³⁰ See Anderson and Honneth, 2005.

²³¹ For example, see Marilyn Friedman, 'Autonomy and Male Dominance', in John Christman and Joel Anderson (eds.) *Autonomy and the Challenges to Liberalism*. Cambridge: Cambridge University Press, 2005, pp. 150-177.

perfectionism. This elaboration should tell us more about these factors and indicate how institutions can account for them by converging the requirements of neutrality and perfectionism. However, the following discussion should not lead one to conclude that liberal (and other) societies are overly determined by these factors. I do not intend to imply strong determinism, but I do wish to suggest that in particular situations a network of power will exert an influence that needs to be accounted for by the institutions of the liberal state.

4.2 Configurations of Power

Relations of power left unaccounted for by the institutional order determine many social situations. These relations usually involve inherited or deeply rooted forms of knowledge and communication that operate at formal and informal levels of society. If unaccounted for by the design of liberal institutional efforts to protect and promote personal autonomy, these forms can significantly increase heteronomy and constrain individual spontaneity and authenticity in conceptualizing their notions of the good. I distinguish two forms of configurative power: epistemic and discursive.

4.2.1 *Epistemic Power*

Epistemic power pertains to the existing systems of knowledge production, the content of socially available knowledge paradigms and their influence on how individuals conceptualize themselves and their notions of the good. An individual exerts dispositional autonomy and is able to respond to her environment in a reflective and spontaneous way only within an epistemic configuration that recognizes and promotes spontaneous action as the main relational social standard. This implies a social structure in which educational, scientific and regulatory systems rely on a reflective and spontaneous conception of the person as the main element of the social order. Accordingly, such a structure invests in creating conditions and resources for individual reflective and spontaneous development, from compulsory educational programs for not-yet-autonomous individuals to voluntary means of

autonomy development, such as non-formal education, public campaigns and information dissemination activities.

This ideal picture, however, does not correspond to the reality of many (contemporary) liberal societies. In many of these, epistemic power is largely determined by reductive structures of education whose primary aim is the development of marketable rather than spontaneity skills.²³² The marketable skills primarily emphasize individuals' compatibility with the prevailing forms of economic production and only secondarily develop their ability for reflection and spontaneous reaction to the world. In some cases, even when there is a primary emphasis on reflection, it is usually taken to be instrumental to the aim of job market compatibility and not as an end in itself. This significantly affects the ability of individuals to relate to their environment in reflective and spontaneous ways. Individuals educated exclusively to perform certain market-driven skills will not have an autonomous disposition.

The epistemic configuration of power also pertains to informal systems of knowledge production, exchange and dissemination. These are usually manifested in the existence of different traditions and cultural forms of understanding and interpreting the human environment. Unlike the formal systems, which in many cases have at least a secondary and instrumental aim to develop human reflection, the informal configurations of epistemic power are mostly oriented around goals of group and cultural continuity.

In seeking how to resolve a policy issue involving conflict over different policy options based on conceptions of the good, liberal institutions must account for the epistemic configurations of power and determine to what extent they contribute to individual autonomy and/or heteronomy. If the personal autonomy of individuals is

²³² For a similar argument, see Martha C. Nussbaum, *Not for Profit: Why Democracy Needs Humanities*, Princeton: Princeton University Press, 2010. Also, see Mark Olssen and Michael A. Peters, 'Neoliberalism, Higher Education and the Knowledge Economy: From the Free Market to Knowledge Capitalism', *Journal of Education Policy*, Vol. 20, No. 3, 1995, pp. 313-345.

not to be assumed merely because there are educational systems in place, institutions cannot exert impartial treatment of autonomous individuals because not all individuals will necessarily be autonomous. This means that mere exercise of autonomous choice is not itself a sufficient reason that can justify institutional neutrality. The perfectionist requirement, in terms of dispositional autonomy, needs to be satisfied as well so institutional neutrality can be justified.

However, this does not imply that institutional involvement ceases at the point of determining whether individuals involved in the conflict over the good in social policy possess dispositional autonomy. Because dispositional autonomy plays the crucial role in justifying institutional neutrality, institutions have a role in bringing it about through different structural means, within the bounds of basic liberal commitments.

4.2.2 *Discursive Power*

Discursive power pertains to the prevailing modes of communication, including availability of communicative channels, forms of communicative agency and the character of permissible discourses. Basically, these three denote the dominant ways public communication takes place, the social presence of media and its responsiveness to different social groups, frames of representation of social groups and customary and legal norms that bind the scope of public discourse. They significantly contribute not only to the development of the capability for individual autonomy but also to its unconstrained expression in the public sphere.²³³ Namely, the character of permissible social and political discourse in a society has a profound effect on the individual abilities to reflect and reassess notions of the good, including the prevailing social norms. If this character is significantly limited and allows for only a narrow range of permissible individual expression, dispositional autonomy will

²³³ For a version of this argument, see See Paul Benson, 'Feeling Crazy: Self-Worth and the Social Character of Responsibility', in Catriona Mackenzie and Natalie Stoljar (eds.) *Relational Autonomy: Feminist Perspectives on Autonomy, Agency and the Social Self*. Oxford: Oxford University Press, 2000, pp. 72-94.

be hampered and individuals will hardly develop a full set of reflective skills. Similarly, if communicative agency does not allow for the spontaneous creation of information sources and exchange networks, individuals will have difficulties shaping their reflective skills in a spontaneous and dynamic way required by relational autonomy standards. Also, poor availability of communicative channels will prevent expression of dispositional autonomy (where it exists) but will also hamper interactive formation of communicative agents and stymie development of alternative discourses.

Therefore, liberal institutions must make sure that there are no unjustified bounds on the availability to form alternative communicative channels, diverse communicative roles and permissible discourses. Exercise of neutrality against autonomous individual choices needs to be conditioned by these requirements, whose substance is conceptualized in the form of a teleological good of dispositional autonomy that is responsive both in terms of capability and responsibility for autonomous choices.²³⁴ If there can be no dispositional autonomy in the context in which channels of communications are limited, forms of communicative agency are scarce and permissible discourse is narrowly defined, and institutional neutrality merely sustains the status quo and perpetuates existing configurations of power, which may not be independently justified. Thus, prior to exercising neutrality, liberal institutions must ensure discursive power is accounted for and properly justified.

4.3 Structural Domination

Besides epistemic and discursive configurations of power, normative value of context also rests on accounting for other forms of domination in society, many of which take the form of deep-rooted structural inequalities, reflected often in the skewed architecture of different (policy) options.

²³⁴ For a similar account, see Paul Benson, 'Taking Ownership: Authority and Voice in Autonomous Agency', in John Christman and Joel Anderson (eds.) *Autonomy and the Challenges to Liberalism*. Cambridge: Cambridge University Press, 2005, pp. 101-127.

The concern for structural inequality surrounding sensitive policy cases parallels similar efforts in social and political philosophy to theorize ways personal (dispositional) autonomy is limited, from Foucauldian²³⁵ emphases on structurally dispersed forms of power to critical republicanism, espoused by authors such as Cecile Laborde²³⁶ or Philip Petit.²³⁷ Similar to feminist critics, republican philosophers oppose liberal theories of neutrality and suggest we should worry about hidden forms of domination and look not only at state institutions but also at non-state actors and practices as sources that limit individual freedom and autonomy.²³⁸ This understanding builds on a distinction Philip Petit made between two classical models of domination, drawn from Roman law: *imperium*, the arbitrary power exercised by the state and its agents; and *dominium*, the arbitrary power exercised by private and collective persons in society. By suggesting that we should worry about relations of domination in individuals' public and private lives, in formal and informal settings, Petit joins other critics of liberalism in 'expanding the scope of the political to the spheres long considered to be immune from public scrutiny, notably the family, the workplace and religious groups.'²³⁹

Complementing the earlier expressed concern with different forms of configurative power, accounting for structural domination implies that liberal institutions must address the character of those spheres of social life that are usually off the liberal agenda. These include not only communal norms and rituals of minorities (from cultural groups to families) that may directly frame individual options, but also assumptions and background practices of the majority that are frequently outside the institutional purview. However, unlike critical republicanism, which emphasizes the

²³⁵ Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*. New York: Pantheon Books, 1980.

²³⁶ Cecile Laborde, *Critical Republicanism: The Hijab Controversy and Political Philosophy*, Oxford and New York: Oxford University Press, 2008, p. 168.

²³⁷ Philip Petit, *Republicanism: A Theory of Freedom and Government*. Oxford: Clarendon Press, 2002.

²³⁸ For feminist accounts, see Mackenzie and Stoljar, 2000.

²³⁹ Laborde, p. 151.

importance of the common political identity (citizenship) as a remedy for certain ailments of structural domination, the approach that emphasizes convergence between neutrality and perfectionism is concerned merely with ensuring that factors of social context are properly accounted for so institutions can treat individuals as equals on the basis of their status as autonomous human beings.

Structural domination, however, does not necessarily have to be expressed in terms of imperium or dominium. It can be formed in a way less centered on definable subjects and objects (individuals and structures) but organized as a center-less architecture of political and policy choices presented to individuals and institutions. Through empirical examples and theoretical discussion, Richard H. Thaler and Cass R. Sunstein have persuasively shown that the way different options are organized affects the way individuals choose: the display pattern of different meals in the school restaurant, for example, significantly affects the way students decide what they will eat for lunch.²⁴⁰ They have concluded that there is no neutral choice architecture. Every organization of choices will necessarily affect the way individuals choose.

If this premise is accepted,²⁴¹ it implies that policy-making in cases where there are two or more contestable goods to be chosen, the way these goods are organized in institutional and public spheres matters. Some patterns of organization will appeal more to individual affective inclinations and encourage unreflective and non-spontaneous decision-making, while others will require more demanding levels of reflection and spontaneity. If individual choice depends on the structural organization of contestable goods, liberal institutions must ensure that this organization reflects the good of autonomy. In other words, institutions should affect the architecture of choices in a way that prevents unaccounted structural domination and supports

²⁴⁰ See Thaler and Sunstein, pp. 2-3.

²⁴¹ There are some reservations, however. See 'Introduction' in Christian Coons and Michael Weber (eds.) *Paternalism: Theory and Practice*. Cambridge: Cambridge University Press, 2013. More will be said about this in the next chapter.

reflective decision-making of the individuals involved.

4.4 Ethics as Politics: Moral Vectors

Normative relevance of context is not only backward-looking, in terms of factors that make individuals heteronomous and require the perfectionist action of institutions. It is also forward-looking, in terms of circumscribing opportunities for realizing basic liberal commitments on a time scale.

Politics is one such forward-looking contextual factor relevant for convergent decision-making of liberal institutions in good-related policy conflicts. There is no policy regulation in a vacuum: every decision an institution makes will be both constrained by and have an effect on the immediate political environment. Therefore, political facts need to be taken into consideration and addressed in such a way to support (protect and promote) the long-term liberal commitment to autonomy. What does this mean for a convergent liberalism?

This means that there has to be a principle-based flexibility in institutional regulation of sensitive policy cases. Personal autonomy is important, but should not be turned into a shallow moral benchmark against which everything is measured, because contexts change and it is people and politics that contribute to that change. Also, personal autonomy is not the only objective good; there are others that may plausibly, in some cases, override concern for autonomy. Essentially, this approach harbors a view that the principle of personal autonomy (as a particular ethical norm) is an expression of a longer historical project that is in constant flux, developing and evolving through both philosophical reflection and social experience.²⁴² Personal autonomy in context, therefore, can be conceptualized as a form of moral vector. It

²⁴² For an elaborate analysis of the evolutionary view of morality, see Philip Kitcher, *The Ethical Project*, Cambridge, MA: Harvard University Press, 2011.

does not sustain a temporally relative stance to all ethical norms, but believes that crystallization of principles derives from points where philosophical reflection meets the world of practice. Therefore, the presumption that ethics of personal autonomy is not anchored in one historical moment but constantly progresses should generate the understanding that political negotiation must be a constitutive part of liberal regulation. We have to see the principle of personal autonomy not through the lens of a particular slice of time, but through a series of linear progressive political events that lead to a better realization of the principle in future time. This fits well with earlier expressed assumptions about autonomy and heteronomy: neither autonomy nor heteronomy is genealogically self-sufficient. They are both closely intertwined, with no definite vantage points.

Practically, conceptualizing the value of personal autonomy in terms of moral vectors can help liberal institutions justify temporal concessions to a particular configuration of context and the contingent organization of relevant social and political elements. This means accepting that compromise, balancing and trading are legitimate tools of instituting ethical norms through political means. Given the notion that ethics emerges from the meeting of reflection and experience, politics is constitutive of ethics and there is no reason to retreat from political practice in developing ethics-based policies of liberal institutions.

The result of the notion that moral vectors are part of normatively relevant social context is that liberal institutions can account for political negotiation and compromise through proper balancing of neutrality and perfection requirements. If the context enables institutions to act in such a way that will increase dispositional autonomy of individuals in the future through remaining neutral to their choices in the present, this approach to liberal policy making would advise them to do so. Conversely, if the future liberal neutrality is achievable only through more interventionist measures in the present, institutions are justified to act in such ways.

However, the notion of moral vectors also implies that hard-core measures of policy resolution, such as legislation and law enforcement should not be the only means of achieving desired liberal aims. Other forms of liberal involvement should also be a part of the institutional repertoire, such as public deliberation, active citizenship and other soft-core means of social engagement.²⁴³

4.5 Fluidity: The Contextual Convergence

Converging neutrality and perfectionism in context, as advised by this approach, will never reach perfect theoretical precision because the nature of the social world in which liberal institutions operate is in constant flux. There are few, if any, Archimedean points institutions can permanently rely on to drive policy regulation. That is why theoretical discussion remains only at the level of abstraction, unless applied directly in the context of particular policy cases, which can demonstrate the practical plausibility of the norms of theory. This may be understood as a weakness of this approach.

However, it can also be understood as one of its main advantages. The reason this may be so is the simple fact that both policy cases that cause conflicts over the definition of the good life as well as the social context in which this takes place evolve over time. The change is sometimes so profound that any fixed normative solution is bound to be relevant for only a limited period. This is not to suggest that one should aim for creating absolute normative frameworks. However, since changes of social context, in terms of different configurations of power, structures of influence and domination, as well as political agency in contemporary world have an unprecedented pace, liberal institutions need at least some form of stability and consistency in approaching resolution of sensitive policy problems.

²⁴³ See Seyla Benhabib, *Democracy and Difference: Contesting the Boundaries of the Political*. Princeton: Princeton University Press, 1996.

The advantage of this approach is the fact that it has a consistent internal structure: it is firmly based in the ethical understanding that a good life for human beings is a life in which they are capable of reflective and spontaneous engagement with the world. This demands the creation of political institutions concerned with both respecting and promoting personal autonomy. This is where arguments of liberal perfectionism have the most strength. According to these arguments, institutions need to promote personal autonomy and make sure that factors of social context, such as unaccounted forms of epistemic and discursive power, as well as structural inequality and domination do not work against individual capabilities for autonomy. In many cases they will affect personal autonomy by preventing individuals from engaging in reflection and spontaneous action: epistemic forms of power will work to predispose individuals to certain forms of behavior; discursive power will stymie creation and communication of alternative views and discourses; structural domination will prevent individuals to express their identities in unconstrained and spontaneous ways. In short, different factors of social context will render individuals heteronomous by preventing them from engaging the world and each other in spontaneous ways. These are the normatively relevant factors of context that liberal perfectionism must account for if it wishes to ensure broader legitimacy for liberal policy- and decision-making in cases of conflict over the good.

But, the approach also has a flexible dimension, expressed through its concern for other factors of the social context that require a balanced application of neutralist requirements. In principle, institutions should exercise neutrality against autonomous choices of individuals. However, in some cases institutions may legitimately exercise neutrality against heteronomous choices if such acts can be understood in terms of a longer political project aimed at contributing to development of dispositional autonomy of particular groups or individuals.

5. Conclusion

This chapter aimed to tackle an important, complex topic. It tried to pick up on a modestly expressed intuition in recent political philosophy that hitherto exclusive ways of framing liberal commitments in cases of policy conflict are mutually consistent and to suggest its own rendering of that consistency. It argued that liberal neutrality and liberal perfectionism are not necessarily exclusive, but consistent, convergent and mutually dependent liberal doctrines. They are both valuable ways of approaching regulation of social and political life in liberal contexts, but they can be fully legitimate only when they are taken in concert, or only when both requirements are satisfied.

Against this background, the chapter suggested that achieving convergence is not simple, however, because the social world in which we live and operate institutionally is not an ideal world where context does not matter normatively. On the contrary, the social context, due to its features constitutive of both heteronomy and autonomy, has a distinct normative value that liberal institutions need to take into account while devising various regulative measures. The factors of social context are relevant for understanding how requirements of neutrality and perfection are mutually related in that particular context, and what the best way is to achieve an appropriate balance in which both will be equally satisfied. Without knowing and accounting for contextual factors, liberal institutions will have a hard time understanding what kind of policy strikes the right balance.

In this chapter I argued that institutions need to account for different types of configurative power in exercising regulation of policies that involve potentially conflicting conceptions of the good. Acts of neutrality toward individual choices will lack sufficient justification if the configurations of power do not allow for epistemic and discursive development of individual capabilities. In order to make institutional neutrality legitimate in this case, liberal states need to ensure that social configurations of power do not constrain development of individual autonomy. They will have to

employ perfectionist measures to account for the constraining effect of these configurations of power. In this way, perfectionist measures will provide legitimacy to state neutrality. Similarly, institutional perfectionism will have to remedy different forms of structural domination that prevent spontaneous and reflective exercise of individual autonomy. These will sometimes involve non-political relations, such as relations within religious communities and even families, where unaccounted power asymmetry will prevent some individuals from exercising their autonomy. Finally, I also argued that liberal institutions must understand personal autonomy as an evolving political ideal that mandates flexibility in terms of principle-based policy regulation. Only an approach that combines and integrates perfectionist and neutralist requirements will be able to generate policy measures flexible enough yet anchored in a principled commitment to personal autonomy as a conception of the good life.

There are several additional advantages to this approach. First, this approach indirectly suggests that liberal institutions should be dynamic, context-sensitive and active. They should be vigilant, not inert. The way to sustain this vigilance is through a contextual application of the two basic liberal commitments: to be neutral against individual choices and to promote individual capability for autonomy. Second, this approach can help us reconcile weak value pluralism with demands for consistent and principled policy-making in cases of value conflict. While we may still believe that some goods will be broadly incommensurable and equal in value, it should not prevent us from devising policy solutions that bring specific measures and contextually select the best liberal ways to regulate our social life. Third, it shows that philosophical liberalism can be sensitive to hidden forms of domination and equality that limit individual choices. By doing so, it can refute republican and feminist criticism of the liberal inability to account for the structural inequalities and domination. This approach argues that there is a way for liberal theory to overcome these deficiencies and offer normative proposals addressing different contextual factors that have previously fallen under the liberal normative radar. This type of

liberal theory is critical: it internalizes the concern for deep contextual structures that limit the scope of individual abilities for a reasoned reflection.

One great disadvantage of this theory is that it is highly abstract, due to the complexity of the matter and the messy nature of social context. However, the abstract character of the discussion in this chapter will be remedied by an extensive elaboration of two concrete policy contexts. In the next chapter I examine two cases in light of convergence theory and argue that this theory offers plausible ways for liberal institutions to grapple with conflicts involving different definitions of the good life.

CHAPTER FIVE

Convergence in Practice: Two Case Studies

1. Introduction

In this chapter I take on two social policy controversies to show how convergence thesis applies in practice. I attempt to demonstrate that the thesis offers a more plausible way to approach resolving controversies about different conceptions of the good than existing alternatives. The policy cases are the recent issue of regulating sugary drinks in New York City and the controversy over the regulation of male circumcision in Germany. I take each case separately, describe the factual background and discuss normative implications in light of the theoretical framework developed in earlier chapters.

I discuss three alternative solutions to these policy problems. First, I examine whether exclusive neutralist and perfectionist perspectives can offer plausible approaches to resolve these controversies. I take applied philosophical, bioethical and analytic writings as proxies for the respective normative frameworks and discuss their merits. I argue that neutralist and perfectionist philosophies, taken separately, fail to address the problems in an appropriate way. For the soda law case I take analytic and conceptual criticism of the New York City administration presented through political commentary. For the circumcision case I focus on the arguments espoused in recent writings by Joseph Mavor, Michael Benatar and David Benatar and others.

Second, I examine whether paternalist proposals can do better. For discussion of the first case, I take on the recent paternalist theory developed by Sarah Conly in her *Against Autonomy: Justifying Coercive Paternalism* to argue that they cannot. Paternalism of this sort is unable, I argue, to find a value-based yet liberal solution to conflict over social policies based on different conceptions of the good life. For the second case, I examine perfectionist legislation brought by a regional court in Germany as well as conceptually similar arguments from bioethics and suggest that they fail to address relevant contextual facts in an appropriate way.

Third, I discuss an alternative theory that proposes integration of two hitherto exclusive justificatory frameworks: the libertarian paternalist theory developed by Cass Sunstein and Richard Thaler in their *Nudge: Improving Decisions About Health, Wealth and Happiness*. For the soda law case I discuss Thaler and Sunstein's contribution. I argue that despite all the benefits of the integrated perspective, the libertarian paternalism fails by being too wide or too narrow, and inappropriate to express respect for authentic individual agency. For the circumcision controversy I point to comparable proposals in medical practice and argue that, if justified through the convergence of neutralist and perfectionist requirements, these practices could point to plausible normative solutions. I look at the so-called 'Seattle Compromise,' a medical controversy in the US state of Washington, and discuss the merits of the case through my theoretical prism.

A note on the elaboration of case studies: I discuss cases in depth separately and provide synthetic conclusion in the end. I discuss the sugary drinks controversy in New York City first, and the circumcision controversy in Germany second. Given the fact that the case of circumcision has a much longer history (at least some 2,000 years longer) and has already had a share of interest in the philosophical and bioethical literature, the examination of this case will be somewhat longer and more elaborate. Though the practice of regulating what and how much Americans can drink has it precedent in the prohibition era during two decades of the early 20th

century, the recent attempt at regulating soda drinks is conceptually different, since, as will be seen, its justification rests more in institutional concern for a particular problem of individual health rather than for social stability. This concern is of recent date and only so much has been written about it. Thus, the case is treated in a way that includes less reference to academic publications and arguments. Nonetheless, I strongly believe the case merits a serious philosophical discussion.

2. The Soda Law Controversy in New York City

In late 2012, New York City mayor Michael Bloomberg proposed adopting a legal ban on the sale of large sugary drinks. The new city policy aimed to prohibit the restaurant, theater and street cart sale of any cup or bottle of a sweetened drink larger than 16 fluid ounces. According to the proposal, New York City residents would be unable to buy a single cup of soda larger than 16 ounces, but would retain the liberty to buy and consume a limitless quantity of smaller portions of the drink. The proposed law was justified in terms of New York City's interest in promoting citizens' health, since large sugary drinks contribute to obesity, one of the most significant health problems in the United States.²⁴⁴

Many arguments have been made against Bloomberg's proposed legislation.²⁴⁵ Most argued that imposing such a law would drastically limit individual autonomy to choose a way of life. For critics, this was unjustified government interference into individuals' private affairs, infringing upon their autonomy. These arguments eventually brought the proposed law to its end. The New York State judiciary found Bloomberg's law unconstitutional and struck it down. However, the law remains interesting for its peculiar nature. Namely, this case exemplifies a conflict over a

²⁴⁴ 'New York City bans supersized sodas', BBC, see more at: <http://www.bbc.co.uk/news/world-us-canada-19593012>, September 13, 2012.

²⁴⁵ See Bettina Elias Siegel, 'Bloomberg vs. Big Soda: Portion Size, Paternalism and Politics', *Huffington Post*, June 1, 2012, more at http://www.huffingtonpost.com/bettina-elias-siegel/nyc-mike-bloomberg-soda-ban_b_1560967.html

public policy proposal based on differing conceptions of the good life. Presumably, for the New York City administration, a good life implies a healthy life, unencumbered by obesity and the health problems associated with excessive intake of sugar. For its critics, this conception of the good life is controversial and institutions are not justified in preventing individuals from choosing their own ways of living and, accordingly, choose the size of their beverage. Also, for many of them, the ability to choose is part of their definition of the good life. I will analyze different arguments along these lines in more detail.

2.1 Neutrality Arguments

Most critics of Bloomberg's proposal embodied the spirit of the neutrality principle, according to which institutions should remain neutral against individual choices and should not interfere in their ways. Their argument was that the New York City administration proposal to regulate drink portions negates individual autonomy to choose their own way of life. Autonomous individuals are free to choose to trade their personal health for some other good, such as the enjoyment of sugary drinks. But is this argument sound? Is neutrality principle appropriate to justify regulation (or the lack thereof) of this issue?

As we have seen in earlier chapters, many proponents of liberal neutrality today think that autonomy principle is the boundary for establishing the limits of law: there is a constraint on state power to interfere in private affairs of individuals, which is waived only in cases of preventing the harm one individual might do to another. Many think that this is one of the main reasons similar laws, such as those prohibiting indoor smoking in public places, are in principle justified, because secondary smoking constitutes harm. Since having a large cup of soda does not cause any secondary harm, the principle of institutional respect to individual autonomy should apply.

However, consistent with previous arguments about autonomy, this response begs the question about the ability of individuals to make autonomous decisions about drinking large quantities of sugary drinks. Neutralist liberals, together with many

critics of the Bloomberg administration, simply assume that individuals are sufficiently autonomous to think for themselves and to decide rationally what kind of and how much drink to have. However, can we presume individual ability for autonomy before the drink choice? Are there any autonomy-infringing facts of social context that might question this neutralist assumption? If yes, what are they?

If institutions must account for the context of their decision-making, as I argued in the previous chapter, there are several important contextual facts relevant for this case. Namely, one must not forget that people's ability to moderate intake of sugary drinks is limited in part by their (mild, but sufficiently worrisome) addictive features. Recent scientific research has shown that sugar is an addictive substance.²⁴⁶ More significantly, though, individual ability to decide about sugar intake is also limited by soda producers' cunning marketing techniques that deliberately aim to disarm individual autonomy and promote unreflective and programmed consumption. The aim of contemporary marketing is not to help individuals reach spontaneous decisions through reflection and understanding, but to affect their actions through inculcation of predictable forms of behavior and programmed reactions to artfully designed and cleverly timed sensory impulses. The marketing techniques of big soda companies, such as Coca Cola or Pepsi, represent the most elaborate and successful strategies of mass persuasion in the history of human communication. Unreflective individuals are easy prey for them.

These marketing techniques constitute normatively relevant elements of social context pertaining to forms of communication. If we presume that education in contemporary American society does not necessarily aim to develop reflective as much as marketable skills,²⁴⁷ it is plausible to suggest that the epistemic power in this

²⁴⁶ See Kitta MacPherson, 'Sugar can be addictive, Princeton scientist says', *News at Princeton*, see more at:

<http://www.princeton.edu/main/news/archive/S22/88/56G31/index.xml?section=topstories>, December 10, 2008.

²⁴⁷ Which is a presumption confirmed by the existing research in sociology of education. See Mark Olssen and Michael A. Peters, 'Neoliberalism, Higher Education and the Knowledge Economy:

case is skewed to satisfy the corporate rather than the individual interest. Because of the likely inability of many individuals to create a reflective distance from an abundance of (often subliminal) marketing messages, their apparently unconstrained decisions to consume large amounts of soda drinks is often non-autonomous.²⁴⁸ Reaching for a third can of soda is less spontaneous than it may seem.

We have reasons to assume that the neutralist assumption about the autonomy of individuals is not properly grounded in factors of social context, and thus cannot provide a plausible background for the claim that institutions should remain neutral to individual choices about large sugary drinks. The neutrality argument does not work because the background assumption that individuals are sufficiently autonomous to choose their own drinks is questionable. If taken in isolation from the factors of context, the neutralist claim simply turns into an argument for the status quo that protects corporate rather than civic interests. However, if context is accounted for, the argument needs to be supplemented by an institutional duty to help individuals develop their autonomy skills and choose their drinks more reflectively and spontaneously, balancing the contextual configuration of power. We need perfectionist arguments as well.

2.2 Perfectionist and Paternalist Arguments

If neutrality fails to address the controversy in a normatively satisfactory way, what about arguments claiming that some forms of perfectionism and paternalism fare better in providing plausible normative solutions?

There are different types of perfectionist response to this case. The first type locates perfection in the form of well-being based on individual health and comes close to paternalism of the kind espoused by Sarah Conly. Namely, Conly questions the

From the Free Market to Knowledge Capitalism', *Journal of Education Policy*, Vol. 20, No. 3, 1995, pp. 313-345.

²⁴⁸ This heteronomy is often manifested as a bias toward the *status quo*. Marketing induces the development of certain habits in individuals, which they are not prone to change.

assumption that humans are pre-eminently rational creatures capable of choosing wisely how to live their lives. Moreover, according to her, there is ample evidence

from the fields of psychology and behavioral economics that, in many situations, this is simply not true. The evidence of irrationality is much higher than our Enlightenment tradition has given us to believe, and keeps us from making the decisions we need to reach our goals.²⁴⁹

According to this view, people are not necessarily rational choosers. Very often they are deeply irrational and need organized assistance for reaching their goals. Assuming that all individuals ultimately aim at living long and healthy lives, she argues that a coercive paternalism that limits their autonomy in choosing bad options (ways of life not conducive to health and longevity) is justified. In short, people should be forced to do what is good for them. From this perspective, the Bloomberg soda law is justified but mild. Given individual irrationality in sugary beverage consumption, even more stringent measures should be undertaken.

The second type of perfectionist argument builds on the notion of personal autonomy and suggests that institutions must ensure individuals are autonomous before allowing them to choose. There is a hard and a soft version of this argument. The hard version proposes that all autonomy-infringing factors of social context should be eliminated by institutional intervention. This implies a highly regulated communication in which existing forms of commercial marketing are outlawed. From this perspective the proposed soda law is justified but should be supplemented by more radical marketing regulation. On the other hand, the soft version of the argument proposes that institutions invest as much effort as possible in building individual capabilities to act spontaneously and reflect critically upon suggestive communication, while at the same time regulating marketing communication in such a way to prevent misinformation, manipulation and dishonesty, without open bans on

²⁴⁹ Sarah Conly, *Against Autonomy: Justifying Coercive Paternalism*. Cambridge: Cambridge University Press, 2013, p. 7.

any type of commercial marketing. This version would justify Bloomberg's proposal as it was originally proposed.

So what is the potential of these different types of perfectionist argument in addressing the merits of the soda law case? Can any perfectionist perspective successfully justify the New York City policy proposal?

The perfectionist/paternalist argument Sarah Conly develops cannot. Her thesis fails to address this issue properly for the following reason. Namely, the conception of well-being she employs to support her claim unjustifiably excludes autonomy as a constitutive part of human well-being. While health is most certainly important for a well-rounded and good life, so is the ability to make one's own choices. A healthy-but-non-autonomous life may actually be less valuable than a not-healthy-but-autonomous life for many individuals. Provided that individuals are sufficiently autonomous and able to critically assess the pervasive marketing techniques, they can justifiably choose to trade the value of personal health for the taste of a large Pepsi or Coca Cola cup. By excluding the value of autonomous choice for individuals, Conly fails to provide a plausible account of well-being against which cases such as the soda controversy should be assessed. This failure also reflects a strange view of human nature, according to which what matters more in defining humans is the quality and duration of their lives rather than their ability to reflect and critically engage their environment. It seems strangely inappropriate to imply that health and longevity define humans more than autonomy does.

The hard version of the second perfectionist argument fares even worse in this case because it would require illiberal measures of limiting any communication that could affect individual decisions about the preference for the taste of sugary drinks over their personal health. This view also implies an account of personal autonomy according to which autonomy requires a complete detachment of second-order reflection from the first-order facts, which is, as indicated earlier in the dissertation, implausible. The soft version appears to be much better, given its proposal to work

on building individual capacities for autonomy while regulating marketing in a way that does not restrict freedom of communication and expression. However, the deficiency of this view is the fact that it cannot function as a standalone normative proposal. If liberal institutions do invest as much as possible in autonomy development and regulate marketing practices in an appropriate way, exercising neutrality toward individual choices that occur against that background is the next logical step. Institutional perfectionism of this kind needs to be supplemented by the exercise of institutional neutrality.

Although the perfectionists and paternalists would certainly be in favor of the New York City soda regulation (and would in some cases propose even more stringent measures), the justifications they would offer cannot withstand critical analysis.

2.3 Libertarian Paternalism

A different way to approach this issue could integrate two separate justificatory frameworks into a single normative theory. Before discussing the response of the convergence thesis advocated in this dissertation to the soda law case, however, it is worth examining the libertarian paternalist argument offered by Sunstein and Thaler in their recent publications.²⁵⁰ By advocating a view that merges two apparently conflicting normative frameworks – libertarianism and paternalism – their claim can be considered somewhat similar to the convergence thesis. What is their argument and how successful it is in addressing the case of the sugary drinks controversy in New York City?

Thaler and Sunstein work under a premise similar to Conly's, according to which humans are not the wisest choosers of means to their ends. Given natural biases, reasoning mistakes, temptations and the disposition to 'follow the herd', humans are very bad in selecting appropriate courses of action in their everyday lives. Assuming

²⁵⁰ See more in Cass R. Sunstein and Richard H. Thaler, 'Libertarian Paternalism is Not an Oxymoron', *The University of Chicago Law Review*, Vol. 70, No. 4, 2003; also, see their more recent book *Nudge: Improving Decisions About Health, Wealth and Happiness*. New Haven: Yale University Press, 2008.

that all of us wish to be healthy, wealthy and happy, they suggest that reasoning imperfection prevents us from reaching our ultimate goals. Their theory differs from Conly's, however, in believing that 'people should be free to choose'²⁵¹ instead of being forced to adopt unwanted ends that serve their presumably wanted aims. The theory they call 'libertarian paternalism' builds on the value of choice but argues that, given human reasoning imperfections, the options at individual disposal should be organized in a way that 'nudges' them to choose those that will make their lives 'longer, healthier and better.'²⁵² By acting as 'choice architects,' liberal institutions should help individuals live better while preserving their freedom to choose.

The 'nudge theory' has received a lot of attention in the literature and appears successful in providing a plausible solution to the sugary drinks controversy. One might claim that the ban to sell large-sized, but not medium- and small-sized soda drinks in any amount the individual wishes, represents a type of choice architecture that nudges people to choose better options – less consumption of beverages that have a potentially damaging effect on their health. But, there are three problems with the theory that call into question its overall justifiability and the normative appropriateness for this case.

The first problem is the notion that institutions should regulate choices. As already discussed in Chapter 3, the view that liberal perfectionism should focus on promoting valuable choices implies an overly expansive range of institutional duties. A world in which state institutions manage the way choices are organized is not only practically too complex to imagine, but also borderline illiberal. It stretches liberal perfectionism too far and threatens to turn liberal institutions into overblown managers of value responsible for all aspects of individual lives, from university cafeterias to cosmetic surgery. In this way, the theory is too wide.

²⁵¹ Sunstein and Thaler, 2008, p. 7.

²⁵² Sunstein and Thaler, *ibid.*

The second problem derives from the fact that the theory focuses only on choices, while leaving aside the wider context in which individuals choose. Ignoring different social configurations of power that affect the individual ability to reflect and act spontaneously achieves little in terms of helping individuals choose options that are authentically theirs. In this way, the theory is too narrow.

Similarly, the third problem points to what some authors see as the theory's disrespect toward individual evaluative perspective. Unlike traditional paternalism, the 'nudge theory' does not ignore the individual's view of what a good choice is for her, but aims at supplanting it with the view of the choice architect about what is objectively good. Christian Coons and Michael Weber argue that

[i]f traditional paternalism is somehow guilty of 'violating' our rights to autonomy or self-sovereignty, libertarian paternalism treats us as beings that could not be even owed such rights.²⁵³

Though claiming to respect the individual freedom to choose, the 'nudge' theory, after all, fails to express the proper respect for individual ability to critically assess all choices and form a spontaneous and reflective decision that represents an authentic view about life. In this way, the theory fails to respect the authenticity of individuals. What may be needed in the soda law case are not individuals 'nudged' to opt for less consumption of soda, but individuals substantially capable of weighing the choice between a) lives richer in palate taste (of sugary drinks) but poorer in personal health; and b) lives poorer in palate taste and richer in personal health, in a way that reflects their authentic agency. It is this capability for an authentic engagement with the world that needs proper normative articulation.

²⁵³ Christian Coons and Michael Weber (eds.) *Paternalism: Theory and Practice*. Cambridge: Cambridge University Press, 2013, p. 23.

2.4 The Convergence Argument

As already elaborated, the convergence thesis rests on a relational understanding of autonomy and heteronomy, as well as on concern for the factors of context. This implies that thinking about personal autonomy in terms of constraints to harm is only one of the ways to conceptualize the responsibility of liberal institutions toward individuals. We should simultaneously think about autonomy in consequentialist terms, which would imply that neutrality towards individual choices is only one of the tools for protection of personal autonomy that can, in relation to the context, be supplemented (and sometimes outweighed) by other, more important considerations.

For example, the ban on the sale of heroine, although apparently infringing upon the individual freedom to buy and consume the drug (which does not necessarily harm anyone but the user) is perfectly justified within a liberal framework because, being highly addictive, heroine severely diminishes individual wellbeing given that it limits the capabilities of individuals to make autonomous choices and thus decreases their freedom of action. In this case, autonomy is interpreted in terms of individual wellbeing, as the end, and not merely the constraint upon construction of a meaningful individual life. Regardless of the fact that a heroine addict chooses the drug among a variety of life options, his choice will be merely accidentally autonomous, while his general disposition will remain heteronomous if he lacks the abilities to reflect upon the options in a spontaneous way that will help him appreciate and choose objectively among the alternatives.²⁵⁴ As already indicated, the convergence thesis implies not only legal fences for the protection of individual freedom, but also active development of individuals capable of being free and autonomous. Sometimes, this will imply laws that go against individual short-term wishes and preferences, in order to promote their long-term interests and autonomy as wellbeing. The legal obligation to complete primary education is a case in point.

²⁵⁴ See Berofsky, p. 223 for a similar argument.

The Bloomberg soda law, as espoused by the city administration, fits the convergence theory interpretation of liberal commitments to autonomy, because it exemplifies a care for personal autonomy as both an exercise of personal choice and the long-term disposition as a form of well-being. If research showing that sugar can be as addictive as any narcotic substance is true, then it makes sense to claim that limiting the availability of high-concentrate sugary drinks can be beneficial to personal autonomy, because addictions, in principle, deteriorate individual abilities to make fully autonomous decisions. If autonomous decisions to moderate the consumption of sugar are diminished due to its addictive features, then the obesity that results from limitless sugar intake constitutes a health problem that justifies a wider state intervention. Moreover, one could also claim that obese individuals are less free and autonomous than non-obese ones: they can have a limited scope of physical movement and in many cases be dependent on a caregiver for the performance of basic everyday tasks, from climbing stairs to taking a shower. It thus makes sense to have a policy measure that aims at preventing such situations.

However, given that the levels of addiction between heroine and sugar, as well as their other effects on human health differ significantly, an outright ban on the consumption of sugary drinks would be unjustified and would tip the balance between perfection and neutrality too far toward the former, turning into a rigid paternalism. Because sugar is nutritionally important in the right amount, but can be damaging if excessively consumed, the convergence thesis would justify this law in terms of helping individuals be more conscious of the amounts of their sugar consumption in order to make reflective decisions when to go beyond the suggested health limit for the sake of palate. That is why merely a limit on the size of one portion, rather than a total ban of sugary drinks, strikes the right balance between neutralist and perfectionist requirements: it stays neutral to individual choices but ensures individuals have the opportunity to distance themselves from the marketing-induced automatism and reflect upon their choice spontaneously. In this way institutions ‘nudge’ individuals not toward choosing a healthier option but toward a

more reflective expression of their authentic autonomy and an open future. With such a policy regulation, the individual autonomous choice, as a form of wellbeing, is not only promoted in the long run, but also given the opportunity for exercise through a potential for conscious decision to reach for an additional cup (or more) of soda.

By arguing in this way for the justifiability of the New York City soda law proposal, the convergence thesis avoids problems of disregard for unaccounted configurations of power, failure to respect individual agency and merely biological conceptions of the good that other possible alternatives to this case face. It balances the autonomy-infringing marketing by ‘nudging’ individuals to rethink the automated actions they would have otherwise made; it does not additionally limit communication but tries to account for its power misbalance. It does not disrespect individual agency: moreover, it tries to build on the assumption that authentic individual agency is the main ground of liberal regulation. It also presumes a conception of the good life that is much more appropriate for a plausible definition of persons: human are defined by much more than a healthy and long life and cutting autonomy out of the humanity picture is incorrect. Finally, by doing so the convergence thesis advocates a balanced, context-sensitive and agency-driven liberal approach that overcomes deficiencies characteristic of narrower normative frameworks.

The convergence thesis, as I am attempting to show, is capable of addressing other problems of public policy that involve conflicting conceptions of the good and require institutional regulation. By switching to a different cultural and political context, I intend to demonstrate the applicability of the convergence argument to a wider palette of social policy problems. In the second part of this chapter, I look at the recent circumcision controversy in Germany. I discuss normative responses to male infant circumcision in general first, and then situate the narrower moral background into a wider social and political framework.

3. The Circumcision Controversy in Germany

Non-therapeutic male circumcision has been a contentious issue for the past 2,000 years, if not more.²⁵⁵ From the times early Christians debated with their fellow Jews about the propriety of corporal circumcision to modern debates about the health-based justification of genital cutting in medical journals, circumcision has always been something people disagreed about. Relative to the context, the disagreement has been perceived as a religious, cultural, medical and even political controversy, as the recent developments in Germany seem to indicate. In June 2012, the court in the city of Cologne ruled that ritual male circumcision performed on neonates in Jewish and Muslim traditions constitutes a bodily harm because it involves boys too young to provide consent.²⁵⁶ The court decision disrupted what was, until then, a regular practice in these communities and initiated an international controversy over issues of bodily integrity, minority rights and integration. It was a perfectionist measure of a state institution that broke with the tradition of institutional neutrality towards circumcision as a cultural practice.

The German disagreement about circumcision involves strong emotions on both sides of the divide: deep-rooted beliefs about metaphysical meanings of circumcision, cultural continuity, human rights, personal hygiene and disease prevention have been fueling passionate expressions of support or criticism of circumcision of male

²⁵⁵ 'Male circumcision that is performed for any reason other than physical clinical need is termed non-therapeutic (or sometimes "ritual") circumcision'. See British Medical Association, *The Law and Ethics of Male Circumcision: Guidance for Doctors*, June 2006, p. 1; an earlier version available in *The Journal of Medical Ethics*, Vol. 30, No. 3, 2004, pp. 259-263.

²⁵⁶ See Melissa Eddy, 'Accord Sought in Germany over Circumcision Issue', *The New York Times*, August 21, 2012. See more at http://www.nytimes.com/2012/08/22/world/europe/germany-explores-legal-protection-for-circumcision.html?_r=0. Also, see Press Release, *Landesgericht Köln, Urteile des Amtsgerichts und des Landgerichts Köln zur Strafbarkeit von Beschneidungen nicht einwilligungsfähiger Jungen aus rein religiösen Gründe* [Judgments of the Local District Court and of the Cologne Regional Court on the Criminalization of Circumcision of Non-Consensual Boys for Purely Religious Reasons], JUSTIZ-ONLINE [Landgericht Köln website] (June 26, 2012); Decision of May 7, 2012 [in German], Docket No. Az. 151 Ns 169/11, Landgericht Köln Cologne.) The reference drawn from http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403226_text.

children throughout the western hemisphere. The case is an almost perfect example of a disagreement over conflicting ideas of the good life.

Addressing this controversy in a normatively satisfactory way is a great challenge. Because the right answer about the permissibility of the circumcision practice is hard to flesh out, given the myriad of variables affecting its moral status, it is very difficult to come up with a satisfying normative account that can be applied not only in Germany but also in other social contexts. This is the main deficiency, as I will argue in this section, of the existing normative attempts at framing the circumcision issue. However, I wish to demonstrate that the convergence thesis can offer an account that will include multiple perspectives – moral, cultural, social, political and medical – and produce outlines of a coherent normative response to this controversy. Here I will discuss the existing normative analyses of the issue and suggest that the convergence thesis fares better in squaring this sensitive issue in a more plausible and acceptable normative way that combines moral reasons with a wider social and political background.

In this section, I will elaborate on two questions. First, I will examine some of the arguments offered in support of the thesis about the moral permissibility of circumcision that have arisen in contributions on this topic. Namely, I will focus on one strand of arguments: those claiming that social and cultural benefits can justify parental authorization and institutional performance of the procedure. Contrary to those, I will suggest that cultural reasons cannot justify non-therapeutic circumcision. I will follow and try to improve the arguments made by some authors to claim that infant circumcision violates the child's right to future autonomy. Second, I will take this argument to test the ability of the convergence thesis to provide the solution to the distinct policy problem this controversy raised in Germany. I will ask if the moral reasons against circumcision warrant perfectionist institutional measures. Ultimately, I will argue that the convergence approach enables us to combine moral and socio-political reasons in a coherent way.

Before commencing the discussion, however, I wish to make an important methodological remark. Namely, I develop the arguments against the background lack of scientific consensus about medical harms or benefits of the circumcision procedure.²⁵⁷ Together with the wider medical community, I assume that there are no unequivocal proofs for considering circumcision as either medically beneficial or harmful.

3.1 Neutrality: the Cultural Benefits of Circumcision

How does the argument about potential cultural benefits of circumcision go? In this section, I will focus on two different ways to conceptualize this argument, espoused by three authors from the discipline: Joseph Mazon and Michael and David Benatar. Though they differ in analysis and normative proposition, the arguments of all three authors aim to provide conceptual reasons for the justification of infant circumcision on social and cultural (as non-medical) grounds. It is a form of neutrality argument, which claims that institutions should remain neutral toward the practice given its cultural benefits relative to the individuals and groups involved and the parental discretion in exercising their right to child upbringing.

3.1.1 Rights and Interests: Joseph Mazon's Argument

Joseph Mazon claims that we have sufficient reasons to think that bodily integrity should not be conceptualized in terms of rights-as-trumps. This conceptualization, which he tracks back to Ronald Dworkin, implies that rights trump or outweigh 'any mere interest or collection of interests in our moral calculus.'²⁵⁸ Mazon believes that circumcision is conceptually similar to cases of vaccination or cleft lips, when parents seem justified in authorizing an invasive intervention into their children's bodies for

²⁵⁷ See for example British Medical Association, *The Law and Ethics of Male Circumcision: Guidance for Doctors*, June 2006, p. 3; an earlier version available in *The Journal of Medical Ethics*, Vol. 30, No. 3, 2004, pp. 259-263. Also, see American Academy of Pediatrics (AAP), Task Force on Circumcision, 'Circumcision Policy Statement', *Pediatrics*, Vol. 103, No. 3, 1999, p. 691; and The AAP Task Force on Circumcision 2012, 'The AAP Task Force on Neonatal Circumcision: a call for respectful dialogue', *Journal of Medical Ethics*, Vol. 39, 2013, pp. 442-3.

²⁵⁸ Mazon, p. 422.

their (children's) benefits. Similarly, Mazor thinks that children cannot have any meaningful right to self-determination, because they are not sufficiently autonomous to exercise that right.

What he suggests is to replace the notion of rights to bodily integrity and self-determination with the notion of interests, secularly and religiously defined.²⁵⁹ The benefit of doing so would be, according to him, the possibility of weighing the interests of bodily integrity and self-determination against other possible interests instead of simply trumping them.

There are several additional interests that he argues are morally relevant in discussing the permissibility of circumcision. First, there is the interest in avoiding pain and discomfort the person would feel if he decides to undergo circumcision later in life (assuming he would like to do it for religious or cultural reasons).²⁶⁰ For him, this interest is stronger than the interest in self-determination because he believes that parents of a male infant are much better positioned to know what is best for him and are not likely to experience the present bias. Also, in the religious case, the assumed probability that the religious adult will decide to get circumcised increases the weight of the argument about reducing the later costs of circumcision by performing it on the person as a child.²⁶¹

Second, there is the interest in moderately decreasing sexual pleasure so other pursuits could be more substantially emphasized.²⁶² Though he concedes this interest is problematic, it implies that it may be reasonable to claim that a moderate decrease in sexual pleasure can be beneficial for the child's flourishing as an adult. Third, there is the religious interest in fulfilling the covenant with God, which characterizes the Jewish faith in particular. Fourth is the interest in remaining within the religious and

²⁵⁹ Mazor, p. 423.

²⁶⁰ Benatar and Benatar espouse a similar claim. See Benatar and Benatar, p. 37.

²⁶¹ Mazor, p. 426.

²⁶² Mazor, p. 424.

cultural community, characteristic of both Jewish and Muslim conceptions of circumcision.²⁶³

For Mazor, the moral permissibility of circumcision hinges on the possibility of weighing different interests of the child. He disagrees with those views that claim that only medical or autonomy factors (bodily integration and self-determination) should be taken into consideration. This occurs if we take these interests as rights that trump other moral variables, including wider social interests of the infant. Instead, we have to consider other possible interests and figure them into the moral calculus of circumcision. These other interests give us reason, according to this line of argument, to believe that institutional neutrality is the best policy response to this case. Institutions should remain neutral because only parents can determine the most appropriate balance of interests for their children.

3.1.2 Social and Cultural Benefits: Michael and David Benatar's Argument

Somewhat similar to Mazor, Michael and David Benatar argue that a weighing exercise will tell us a lot about whether circumcision is morally permissible. They suggest that non-medical factors should supplement medical ones.

Namely, Benatar and Benatar claim that given the equivocal nature of the scientific data about potential medical benefits or harms of circumcision, it is impossible (at this point) to say that circumcision represents a medically harmful invasion into infant bodies. Instead, they see circumcision as a discretionary matter of the child's parents, who are justified in deriving the reasons for circumcising their sons from domains external to medicine: primarily, from culture. It follows that institutions should remain neutral toward the parental decision.

Suggesting that it is plausible to assume that there might be benefits to circumcision other than medical ones, they argue that the crucial question is whether the relevant presumption should be that:

²⁶³ Mazor, p. 426.

1. Surgery is impermissible unless it offers a clear and significant net medical benefit; or
2. Surgery is impermissible unless it offers a clear and significant net (medical or nonmedical) benefit.²⁶⁴

For them, those opting for the first option would have to explain why it is that medical benefits are the only relevant ones. Medical benefits are not necessarily or always more important than non-medical ones and there are a number of cases when a medical intervention yields more non-medical than medical benefits. Therefore, decisions about circumcision should not be made without considering other possible benefits for the child. If there are clear and significant social or cultural benefits, then the surgery is morally permissible.

Though Benatar and Benatar do not discuss what the potential social or cultural benefits of circumcision are, it is plausible to assume that they imply benefits of communal integration, fulfillment of religious duties or plain conformity with tradition. Socio-cultural benefits may also include beliefs about hygiene (presumptions that a circumcised penis is easier to clean or that it corresponds to some cultural standards of hygiene) as well as notions of similarity to fathers and other male members of the family.²⁶⁵

3.1.3 The 'Cultural Benefits' Argument

Though they do not enumerate or elaborate the cultural reasons for circumcision per se, Mazor's and the Benatars' discussion sufficiently indicate the shape of the argument about cultural benefits of circumcision. Here, I will try to exercise what I call the 'cultural benefits argument' to make its reasoning more explicit and easier to analyze.

²⁶⁴ Benatar and Benatar, p. 45.

²⁶⁵ For these notions, see Leslie Cannold, 'The Ethics of Neonatal Male Circumcision: Helping Parents to Decide', in David Benatar (ed.) *Cutting to the Core: Exploring the Ethics of Contested Surgeries*. New York: Rowman & Littlefield Publishers, 2006, pp. 52-4.

First, the ‘cultural benefits argument’ assumes that though there are morally relevant medical factors, they are not decisive because sufficient scientific proof about medical harms or benefits of the procedure is lacking. This presumption feeds the claim that other non-medical considerations can be taken into account. For Mazor, these considerations include not only bodily integrity and self-determination (which are non-medical considerations the critics of circumcision usually invoke), but also interests of communal integration, avoidance of later discomfort or religious salvation. Benatar and Benatar do not specify the kinds of non-medical considerations, but their thesis builds on the assumption that some of them are decisively relevant for rendering the practice morally justifiable.

Second, the cultural benefits argument claims that circumcision is morally permissible because parents who authorize it do so for the alleged cultural benefit of the child. The argument claims that the child has a range of cultural interests that are better catered to by performing the procedure at this early age instead of waiting for the child to decide once he is an adult. Mazor believes, for example, that the (inevitable medical and cultural) costs of the procedure are much lower if it is performed while the child is very young. By having undergone the procedure at a young age, he may be spared later discomfort and social awkwardness that might accompany the procedure. Benatar and Benatar think that the social and cultural net benefit outweighs these costs.

Third, the cultural benefits argument assumes two forms: secular and religious. The secular form pertains to claims about cultural standards independent of religious perceptions of the world. These standards include beliefs about pain, the value of sexual pleasure, physical similarity with male parent(s), bodily aesthetics and genital hygiene. The religious form pertains to claims about religious salvation or communal belonging. It suggests that circumcision benefits the child by satisfying his metaphysical interests (covenant with God), by satisfying his communal interests

(integrating him into the community) or by conforming to the cultural tradition of that particular ethnic or religious group.

In the next section, I will critically review the cultural benefits argument, in both its secular and religious forms. Also, I will question the assumptions on which it depends.

3.2 Critique of the Cultural Benefits Argument

There are several problems that the cultural benefits argument faces. I will address them by analyzing separate arguments made by Mazor and the Benatars. Only after I address individual claims will I examine the plausibility of the cultural benefits argument as a whole and discuss the alternative way of framing the entire issue.

3.2.1 *The Secular Form*

Irrespective of one's moral assessment of the case, one may be easily led to agree with Mazor's attempt to formulate some notions related to circumcision in terms of interests rather than rights. Namely, it is plausible to assume that this might be the case with the notion of bodily integrity. A child has an interest in bodily integrity that can be outweighed by his or her other interests; the interest in long-term health or the interests in disease prevention are cases in point. Vaccination and operations on cleft lips fall within this domain. Parents are justified in authorizing their child's vaccination and cleft lip repair surgery – which intervene in their bodies and thus violate their bodily integrity – because these interventions serve long-term interests of the child in a disease-free and impairment-free life. Moreover, this intuition fits some earlier theories advocating that due to their vulnerability and incapacity, children cannot be viewed as proper rights bearers.²⁶⁶ These kinds of arguments claim that the

²⁶⁶ See David Archard and Colin M. Macleod, 'Introduction', in David Archard and Colin M. Macleod (eds.) *The Moral and Political Status of Children*. Oxford: Oxford University Press, 2002, p. 5.

language of rights should be reserved for beings capable of agency.²⁶⁷ This would include older children, but not infants.

However, it is not completely clear that we should replace all talk of children's rights with the talk of interests. As Harry Brighouse has shown, we can posit two types of rights applicable in the case of children. First, there are agency rights that are attached to personhood and protect the freedom to choose. Second, there are interest-based rights that protect children's welfare.²⁶⁸ Because they lack the capacity for competent choice, children's rights are interest- rather than choice-based. This means that some rights can serve as trumps that prevent the violation of children's welfare in the name of some future benefit. It also means that Mazor's strategy of distinguishing between rights and interests hinges on a prior assumption that rights are only choice-based, which, as some authors claim, may be mistaken.²⁶⁹ Still, this does not disarm Mazor's argument completely, since he might respond that a child has an interest-based right to avoid future discomfort or to belong to a community and achieve metaphysical salvation. However, showing that these rights outweigh the interest-based right to the child's bodily integrity would need additional justification to show why future interests of salvation outweigh present interests of integrity of one's body. I doubt such justification is plausible (and will address why in the next section).

In addition, one can also question the view that an infant cannot have choice-based rights because he is incompetent of making sovereign choices. As shown by Joel Feinberg and a number of other authors, there may be choice-based rights that are

²⁶⁷ See James Griffin, 'Do Children Have Rights?' in David Archard and Colin M. Macleod (eds.) *The Moral and Political Status of Children*. Oxford: Oxford University Press, 2002, pp. 19-31.

²⁶⁸ See Harry Brighouse, 'What Rights (if any) Do Children Have?', in David Archard and Colin M. Macleod (eds.) *The Moral and Political Status of Children*. Oxford: Oxford University Press, 2002, p. 38.

²⁶⁹ Samantha Brennan, 'Children's Choices or Children's Interests: Which do Their Rights Protect?', in David Archard and Colin M. Macleod (eds.) *The Moral and Political Status of Children*. Oxford: Oxford University Press, 2002, p. 59.

‘rights-in-trust,’²⁷⁰ which reflect a child’s future interest in exercising his right to make his own choices. This understanding would merge the interest and choice conception of rights: a child has a present interest-based right to the future exercise of choice-based rights.

Mazor’s view also mistakenly assumes that parents are much better positioned than the child will be as an adult to know what is best for him. He believes that the uncircumcised adult will experience the present bias (a preference toward the existing state of affairs) and will thus refuse to undergo the procedure that may be (culturally) beneficial for him. Therefore, it is better for him to be circumcised as a child because the decision of his parents to have him circumcised will be less under the influence of the present bias. However, assuming that parents experience less present bias, especially when the practice of circumcision is culturally shared and the family is immersed in this culture, is unwarranted. Parents who wish to circumcise their son for cultural reasons (Jewish or Muslim) may be no less under present bias than a grown adult who considers undergoing the procedure. Peer and cultural pressure can contribute to the present bias much more than the simple reluctance to experience moderate pain.

Furthermore, Mazor’s assumptions about potential benefits of the moderately decreased sexual pleasure caused by circumcision, strike me as unusual, to say the least. The notion that less sexual drive can be beneficial to an individual by allowing him to devote more time and energy to other pursuits²⁷¹ is a form of illiberal perfectionism that lack sufficient justification. First, what kinds of other pursuits might this assumption have in mind? Second, even if the alternative pursuit is defined in reasonable terms (say, pursuing moral philosophy) it seems hardly justified to say that circumcision is permissible because it might provide the person with more

²⁷⁰ See Joel Feinberg, ‘The Child’s Right to Open Future’, in Joel Feinberg, *Freedom and Fulfillment: Philosophical Essays*, Princeton: Princeton University Press, 1992, pp. 76-98. I will expand on this notion in the subsequent section.

²⁷¹ An idea first espoused by Maimonides in the 12th century. See Gollaher, 2001, and Glick, 2005.

energy to do other things because one can never know if the child would find any of the alternative pursuits valuable in the future. We cannot know whether the circumcised child as an adult will appreciate sexual pleasure more than moral philosophy. It is an unwarranted counterfactual supposition.

Notions of physical similarity with parents, bodily aesthetics and genital hygiene are often invoked as secular forms of the cultural benefit of infant circumcision. All three are problematic for the same reason: they assume the parents' rather than the child's standards of physical semblance, beauty and responsibility for cleanliness and thus position the child as a mere means for their parents' ends. Children should not bear the burden of their parents' views about what constitutes a sufficient physical resemblance between family members and physical aesthetic, nor should they bear the burden of the parents' responsibility for their hygiene.²⁷² The cultural belief about hygiene is especially problematic, given its striking discrepancy with moral intuitions about the status of other parts of the human body that are even more demanding in terms of cleanliness. The belief that a child's body parts can be surgically removed because they demand additional hygienic attention is unwarranted and unjustified.

3.2.2 *The Religious Form*

The claims of the religious form of the cultural benefits argument are not directly evident. Neither Benatar and Benatar nor Joseph Mazor discusses at length the cultural benefits of circumcision associated with religion, though they assume there are morally relevant religious benefits. However, I will try to infer from their writing what these benefits might consist of.

I believe there could be three separate claims. First, the argument might claim that circumcision serves the child's metaphysical interests in salvation or fulfilling the covenant with God. This would particularly be the case within Jewish religious interpretation. For Jews, circumcision represents the *brit milah*, an act of covenant

²⁷² See Cannold, pp. 51-2 for a similar argument.

between man and God.²⁷³ It could be said that male children are circumcised to bring the covenant into existence and form a bond between the metaphysical and the physical.

Second, the argument might claim that circumcision represents an initiation of the infant into the community of the faithful. This would be the case for both Jews and Muslims. Muslims in particular believe that circumcision is obligatory because the Prophet Muhammad advised it – it is *sunnah*, the perpetuation of the Prophet's tradition.²⁷⁴ Through circumcision, so the argument could go, male children become fully-fledged members of the community and receive all the benefits that accompany such membership.

Third, the argument might also claim that circumcision is justified because it represents a way of distinguishing members of one religious (or ethnic) community from another. Therefore, circumcision would not only be a sign of a covenant with God or the perpetuation of tradition but also a way to (re)produce cultural difference among religious and ethnic groups and keep a particular cultural and religious tradition alive. This could be a plausible argument from within both Jewish and Muslim perspectives.

Are any of the possible religious forms of the argument sufficient to justify infant circumcision? The first claim builds on several problematic presumptions. First, it presumes the existence of a divine entity that commands the performance of circumcision. While the question about the existence of such an entity is a matter of personal persuasion, the mere presumption can hardly warrant authorizing invasive intervention into the body of another human being, even in cases of parents and their children. Without a definite proof that such an intervention would bring metaphysical benefits (provided these are defined more precisely) to the child, circumcision cannot be justified.

²⁷³ Glick, p. 14.

²⁷⁴ Gollaher, pp. 31-53.

However, one may claim that authorizing or initiating circumcision represents an expression of the deepest concern and love for the child by parents who sincerely believe that without circumcision, their child will suffer eternal damnation. This claim is plausible and it may be true for many families. However, in any similar case, in which an objectively unwarranted parental belief about some benefit authorizes an invasive intervention into the child's body, our basic intuitions militate in the opposite direction. Take the hypothetical case of parents who would wish to surgically engineer an irreversible removal of hair from their newborn child, so as to secure its eternal salvation in the eyes of God. One may have no doubts that such parents or system of belief might exist, but it is difficult to accept that such beliefs can justify the procedure. The reason feeding this intuition is the notion that infants' bodies should not be instrumental to satisfying unwarranted (metaphysical and other) beliefs of the parents. The intuition would hold even if the putative salvation-conferring procedure were not scientifically proven to be decisively beneficial or harmful, such as circumcision.

Second, the claim about the metaphysical salvation presumes that the child will necessarily share their parents' metaphysical beliefs once he has grown up.²⁷⁵ It is plausible to assume that most children end up having the same religious beliefs as their parents, but this is not necessarily so. Individuals often change their beliefs, shed the religious assumptions inherited from parents or adopt new ones. Undergoing an irreversible bodily modification when non-autonomous to provide consent can significantly affect the subsequent development of the individual. It can diminish their sense of selfhood by limiting the degree of self-determination and control over one's life.

The claim about communal initiation suggests that by circumcising their sons, parents help them become full members of the community and reap the benefits of such

²⁷⁵ See J. Steven Svoboda, Robert S. Van Howe and James G. Dwyer, 'Informed Consent for Neonatal Circumcision: An Ethical and Legal Conundrum'. Faculty Publications, Paper 167, 2000, p. 74.

membership. While this argument may certainly reflect parental concern for their child's social well-being and integration, it is hardly justified because it also builds on an unwarranted assumption and implies a mistaken conception of the relation between individuals and communities. Namely, presuming that the child will want to be a member of the given community once it reaches adulthood is unwarranted. True, most men circumcised for cultural reasons stay within the communal bounds of their birth, but many do not. A plausible valuation of communal membership must be accompanied by the exit option that allows members to opt out freely at any time without grave consequences. When the membership is involuntarily imposed and marked by an irreversible bodily modification, the exit avenues are significantly narrowed. The fact that few men choose to opt out later in life may actually reflect the fact that they have been physically marked as members, rather than the assumption that they do not wish to opt out because they value their community.

However, one may also suggest that opting out from Muslim and Jewish communities has nothing necessarily to do with circumcision: men can freely exit these communities and circumcision does not prevent them from doing so. Furthermore, one may claim that circumcision is a fairly inconspicuous modification of the body, so no necessary stigma is attached to communal disintegration of the individual. True, circumcised men may be free to exit one community and integrate into another without visible marks, but this argument is sustained only against an externalist assumption about identity. One's identity is not necessarily affirmed or altered through a visible (external) change. Inner self-understanding and perception play an important role as well. A bodily modification such as circumcision can significantly diminish the ability of a person to perceive himself as a member of the non-circumcising community.²⁷⁶

²⁷⁶ Though, as many authors report, there are surgical procedures that can restore the prepuce, they merely recover the aesthetic but not bodily functions of the foreskin. See Gollaher, 2001 and Glick, 2005.

The claim about communal integration also sustains an implausible conception of the relation between the individual and the community. Namely, the argument about benefits implies that circumcision is a small sacrifice (in both literal and symbolic sense) of the infant individual for the large cultural (and sometimes even material) benefit that comes with communal membership. It is assumed that the practice is a form of trade between individuals and their communities, where the community reciprocates the individual sacrifice with access to communal wealth. In other words, circumcision is a form of investment that will yield cultural capital to the infant once he reaches adulthood. As far as the exchange of symbolic and real sacrifices for the benefit of cultural capital goes, this assumption is correct. Individuals do trade their personal energy, time, aesthetic preferences, and even body parts for some forms of social and cultural capital. But the plausibility of the assumption builds on the understanding that the trade between individuals and the community reciprocating with cultural capital takes place voluntarily. The argument about trade, thus, makes sense only against the background of a free exchange of goods and benefits: if not free, the exchange of goods is not a trade but extortion. Therefore, performing circumcision on a non-autonomous infant as a form of his sacrifice for the future gain in cultural capital is contrary to the meaning and spirit of trade relations between individuals and groups.

Finally, the claim about cultural benefits of circumcision also suggests that the value of the procedure stems from its difference-making properties. Namely, the argument assumes that circumcision helps particular groups build and sustain the boundary against other groups. Again, as in some of the previous claims, this argument is insufficient to justify the procedure because it treats individuals as means to the end of boundary-making. In case of fully autonomous individuals, the use of bodily modification for sustaining boundaries is morally permissible because it can be based on the voluntary acceptance of the individuals involved. However, in cases of infants, who are incapable of giving their permission for the procedure, bodily modification is morally unjustified. This claim can be further confirmed through a comparison with

other (hypothetical) cases of infant body modification for communal boundary-making purposes. Even in cases in which the modification would not necessarily be medically harmful, it is difficult to accept that infant bodies can bear the burden of sustaining the communal boundary. Take the example of a parental couple that would wish to tattoo their newborn baby with the symbol of their community. Our basic moral intuitions suggest that parents are not morally permitted to authorize any irreversible modification of their children's bodies for the purpose of creating or sustaining a communal boundary. Children cannot be treated as a means for communal ends.²⁷⁷

3.3 Why the Cultural Benefits Argument Does Not Work

It is clear from the enumerated examples and claims that the argument about the cultural benefits as a plausible justification for non-therapeutic infant circumcision is burdened with a number of problems. Even if circumcision is not necessarily medically harmful, as Benatar and Benatar seem to demonstrate successfully, it still does not mean that other, non-medical reasons, such as social and cultural benefits, are sufficient to justify parental authorization and institutional neutrality against such a procedure. Moreover, the examination in this section shows that contrary to the Benatars' and Mazor's claims, cultural benefits cannot serve to justify authorization of the circumcision procedure.

The problem with the foregoing references to potential cultural benefits as grounds for justifying circumcision is that they have not been assessed in sufficient detail to argue that they are morally decisive factors in determining the permissibility of the procedure. Benatar and Benatar simply assume that, provided culture is critically appraised, it can serve as a justifying argument for parents to authorize and hospitals to perform circumcision. Such a claim needs to be examined further. What kinds of

²⁷⁷ For a similar argument, see David Archard, 'Children, Multiculturalism and Education', in David Archard and Colin M. Macleod (eds.) *The Moral and Political Status of Children*. Oxford: Oxford University Press, 2002, pp. 142-160.

culture-based arguments are used? Does any argument based on tentative cultural benefits work? The aim of this section has been to analyze some of the potential ways to argue for cultural benefit as the justification for institutional neutrality toward infant circumcision. It attempted to show that none of the plausible ways to frame the argument works. They all fail to provide sufficient grounds for justifying neutrality against the procedure, even under the assumption that the procedure is (relatively) harmless.

So far I have rejected arguments claiming (or implying) that cultural benefits can justify circumcision and command institutional neutrality. In the next section I will focus on examining the normative background of the reasons for rejecting the cultural justification of circumcision more closely. In particular, I will discuss the argument that non-therapeutic circumcision violates the child's right to open future as a perfectionist argument based on the interpretation of autonomy from Chapter 2. In the following, I will endorse this view but also try to strengthen it through further elaboration.

3.4 Perfection: The Open Future Argument

I find that the most powerful rebuttal of the claim that institutions should be neutral toward infant circumcision practice because it causes no harm to the child and confers a number of socio-cultural benefits upon him is the open future argument. This argument suggests that infant circumcision, even if it does not harm, violates the child's right to an open future by closing off some options for him in adulthood. It claims that the main requirement for exercising neutrality – the satisfaction of the perfectionist condition of autonomy – has not been met.

In its general form, the argument was first introduced by the legal philosopher Joel Feinberg. Namely, he suggested that, unlike adults, children possess something called 'the rights in trust' – rights that children cannot exercise now but will be able to do so once they reach adulthood. While adults have a right to autonomous self-

determination, children only have ‘anticipatory autonomy rights,’²⁷⁸ rights-in-waiting as it were, which will be exercised at a later stage of their life, but whose exercise is normatively relevant at any earlier point in their lives.

These rights imply that a range of relevant life-affecting scenarios must be available to children in the future. Committing acts that narrow the range of these scenarios now violates their right to have an open set of alternative ways of life in the future. An example of such a right is the option to travel abroad. Even if the child is unable to do so while an infant, permanently closing this opportunity for him would violate his right to choose a traveling way of life once he is an adult. This normative theory helped Feinberg and others explain why the Jehovah’s Witnesses parents’ refusal of life-saving blood transfusions for their children would be morally impermissible. Bioethicist Dena S. Davis applied similar reasoning to assess *Wisconsin v. Yoder* to suggest that these and similar cases reflect the need to establish the child’s right to an open future as an important normative principle.²⁷⁹

It was only recently that the principle has been applied to circumcision. In his 2013 article for the *Journal of Medical Ethics* special issue on circumcision Robert J.L. Darby used the open future principle to show that infant circumcision is morally unjustifiable. According to Darby, the open future argument developed by Feinberg and Davis is “applicable to parents who deliberately remove a boy’s foreskin because they want his penis to be like his father’s, to fit the norms of a religious or ethnic group, because they think it is cleaner or for any reason other than medical necessity” because it indicates that doing so violates the child’s right to an open future.²⁸⁰

According to this view, the procedure deprives the child of the opportunity to make his own decision about the social and cultural value and benefits of circumcision. It

²⁷⁸ Feinberg, p. 77.

²⁷⁹ Dena S. Davis, ‘The Child’s Right to Open Future: Yoder and Beyond’, *Capital University Law Review*, No. 26, 1997, pp. 93-105. Also ‘Genetic Dilemmas and the Child’s Right to an Open Future’, *Hastings Center Report*, Vol. 27, No. 2, 1997, pp. 7-15.

²⁸⁰ Robert J.L. Darby, ‘The Child’s Right to an Open Future: Is the Principle Applicable to Non-Therapeutic Circumcision?’ *Journal of Medical Ethics*, No. 39, 2013, p. 267.

closes off some options for him and thus violates his right to a range of options from which to choose: most importantly, it violates his right to choose if he wants to have a foreskin or not. Thanks to Darby's analysis we can see that the analogy Mazor made between cleft lips or vaccination and circumcision does not hold: unlike vaccination or restorative lip surgery, circumcision narrows rather than expands the range of life scenarios available to the child in the future. An adult can choose to surgically shape his lips in any way he desires, but cannot choose to restore his foreskin with all the functions it would have had had it not been removed in his youth.

3.4.1 An Objection to the Open Future Argument

However persuasive, the open future argument is not free from objections. I will address one of the most serious objections and try to show that it still does not endanger the validity of the argument or its application to the circumcision case.

Namely, one of the driving mechanisms in the open future argument is the assumption that circumcision permanently deprives the child of some options in his future life. Most notably, it deprives him of the opportunity to choose if he would like to have the foreskin on his penis. The physical nature of the procedure is what, according to some advocates of the open future argument, makes circumcision especially wrongful. For example, Darby argues that

[w]hile it may be possible to change one's mind about religion or other values, it will not be possible to erase permanent physical marks or to restore lost capabilities or body parts.²⁸¹

This argument hinges on the difference between physical and non-physical ways to constrain the range of future scenarios. It implies that a child's future is somehow more narrowed by the physical than the non-physical parental intervention. The early literature about the open future argument has mostly been concerned with education and religious upbringing as non-physical modes of narrowing or expanding child's

²⁸¹ Darby, p. 465.

future options. Davis and Darby have shown, however, that when parental actions involve alteration of some physical properties of the child, the principle of open future has an even greater relevance because the physical removal of a body part has more limiting power. Davis discussed the case of deaf couples trying to genetically engineer their baby so she is also born deaf.²⁸² These attempts were made under the pretext of Deafness as a culture rather than an impairment, and the parents felt entitled to transmit that culture to their children. Because transmitting culture in this case involved bestowing a limited range of future possibilities in the strong physical sense, Davis argued it is morally unjustifiable. Darby took the Deafness case as an analogy to suggest a similar normative assessment of circumcision: physical removal of a body part for non-therapeutic reasons is impermissible.

However, the argument that a child's future is significantly more narrowed by removal of a body part than by inculcation of religious doctrine is not self-evident. Theoretically, it may be easier to shed a belief than to grow an inch of skin, but this is not necessarily the case in practice. Children brought up within particular cultural and religious beliefs may not be more able to radically alter these beliefs than to grow a new body part. Assuming that non-physical change is more constraining contradicts the existing historical experience: in most cases, children grow up having the same belief systems their parents (or the society into which they have been socialized) had. So, there may be no normatively significant difference between physical and non-physical cases, because non-physical parental determination of the child's future prospects is no less powerful than the physical one.

This poses a threat to the open future argument. It suggests that if the argument is to be valid, it needs to apply to both physical and non-physical cases. However, the non-physical examples indicate that there may be nothing wrong with transmitting parental beliefs and values to their children. Parents, as Feinberg argued, have a legally recognized right to the custody of their child, which includes the right to

²⁸² Dena S. Davis, 'Genetic Dilemmas', 1997, pp. 7-15.

transmit their culture to them, and the institutions should infringe upon this right ‘with the greatest reluctance and only for the most compelling reasons.’²⁸³ If circumcision does not necessarily constitute a medical harm, should it be then impermissible? To parents from religious or cultural groups in which circumcision has a special (metaphysical or communal) meaning, the procedure represents a form of cultural reproduction, comparable to transmission of cultural narratives, values and norms. What, then, is the compelling reason behind arguments for restricting circumcision?

3.4.2 Response to the Objection

The physicalist assumption that circumcision is morally impermissible while inculcation of parental beliefs is permissible needs additional justification. Merely assuming that the physical nature of the restricting act of circumcision makes it more wrongful is insufficient to ground the validity of the argument. However, I believe this objection is not fatal to the open future argument, which still has currency to address the circumcision case.

Namely, the objection that circumcision is justified because there is no significant difference between circumcision as a physical act and religious upbringing as a non-physical act of shaping the future of the child rests on an assumption that needs additional warrant. To make such a claim one needs to presume that any kind of parental intervention in the child’s future, in terms of transmitting cultural (or religious) beliefs and value systems to the child, is *prima facie* justifiable. The presumption holds that parents are allowed to convey any kind of belief to their child without special moral responsibility.

Parental authority to inculcate beliefs into their children is not without certain boundaries. As J. Morgan argued, the child’s right to an open future ‘does not preclude parental influence on the child, but it does suggest limits to such

²⁸³ Feinberg, p. 88.

influence.’²⁸⁴ These limits establish the rule that the child’s education must not shut off the variety of social influences on him, but leave them open. The parents are allowed to transfer their beliefs to the child but they are not allowed to prevent the child’s exposure to alternative beliefs and values. For Feinberg, state institutions have a crucial role in securing that these varied influences remain open to children irrespective of the nature of their parental upbringing. They should

insist that all public influences be kept open, that all children through accredited schools become acquainted with a great variety of facts and diversified accounts and evaluations of the myriad human arrangements in the world and in history.²⁸⁵

If a child is brought up in a closeted and exclusivist culture that prevents him from experiencing alternative beliefs, values and explanations, his right to an open future has been violated. Morgan provides an indication of how the open future argument works in such cases:

For example, a homophobic parent could bring her children to a church that expressed its strong disapproval of homosexuality, but would have no right to prevent her child from participating in educational programs designed to combat discrimination against gays and lesbians.²⁸⁶

Therefore, the assumption that parental education and upbringing through inculcation of their values is justified is not warranted without additional specification. Such upbringing is justified only when it is supplemented by institutional efforts to secure the exposure of the children to a variety of social

²⁸⁴ J. Morgan, ‘Religious Upbringing, Religious Diversity and the Child’s Right to An Open Future’, *Studies in Philosophy and Education*, Vol. 24, 2005, p. 369.

²⁸⁵ Feinberg, p. 88.

²⁸⁶ Morgan, p. 373. For similar arguments see also Robert Noggle, ‘Special Agents: Children’s Autonomy and Parental Authority’, in David Archard and Colin M. Macleod (eds.) *The Moral and Political Status of Children*. Oxford: Oxford University Press, 2002, pp. 97-118.

influences. Without it, parental belief inculcation lacks sufficient justification and represents a violation of the child's right to an open future.

Plugging this understanding back into the circumcision context allows us to see that the initial objection to the open future argument about circumcision's lack of moral justification does not work. This is because the difference between physical and non-physical nature of parental interventions into their child's future is after all a warranted assumption behind the argument. Individuals are able to shed their parental beliefs if their education has taken place against the background of an institutionally guaranteed exposure to variety of social influences and belief systems. There is no such guarantee in cases of physical removal of body parts. The act cannot be balanced against alternative scenarios because such a bodily modification does not allow for a functional restoration of the prepuce: the cut of circumcision is permanent and irreversible.

The open future argument is thus still a valid normative framework for assessing the morality of circumcision and framing possible institutional policies. Its claim that circumcision, due to its physically invasive nature that implies removal of the part of a child's body, is impermissible because it violates the child's right to an open future is plausible and persuasive. It still represents the best possible refutation of the claim that cultural and social benefits can justify parental authorization of and institutional neutrality toward the procedure.

However, it does not necessarily follow that circumcision should be banned outright, as both the German court and some authors have suggested.²⁸⁷ Since I believe there may be potential solutions that will involve amendments to the practice by altering the physical effect of the procedure, liberal institutions should explore alternatives to regulate the procedure in a more culturally sensitive, yet rights-based way. These

²⁸⁷ See Dena S. Davis, 'Ancient rites and new laws: How should we regulate religious circumcision of minors?' *Journal of Medical Ethics*, Vol. 39, 2013, pp. 456-458; also Reinhard Merkel and Holm Putzke, 'After Cologne: male circumcision and the law. Parental right, religious liberty or criminal assault?' *Journal of Medical Ethics*, Vol. 39, pp. 444-449.

alternatives should account for the social context in which both circumcision, and its opposition, occur and manifest.

3.5 Policy Response: Factors of Social Context

Due to its attachment to a set of cultural meanings, rites and communal traditions, circumcision has become a very sensitive social and political issue on both sides of the Atlantic. The prevalence of the practice among Jews in the United States, and among both Muslim immigrant and native Jewish communities in Western Europe, makes it very difficult to discuss and legislate exclusively on the basis of perfectionist justifications for the procedure. Because the position of these communities in largely Christian (and ‘post-Christian’ secular) environments is fraught with a number of contentious issues involving both past and current challenges, restricting circumcision on perfectionist reasons may cause social and political conflict. The reactions of Jewish and Muslim communities to the recent decision of the court in Cologne show to what extent this is the case.²⁸⁸

Does this mean that one needs to rethink the ethical considerations about the permissibility of circumcision just because there are groups of people who would oppose such a change? Obviously, it does not. I wish to suggest, though, that institutional regulation in such a sensitive area needs to account for contextual factors by combining neutralist and perfectionist requirements as proposed by the convergence thesis. Before proceeding with the convergence argument, however, it is necessary to establish the merits of the claim that these communities’ wishes deserve to be heard and considered. This is because, in principle, a communal claim to an invasive procedure on non-autonomous individuals should not a priori be given any legitimacy without a sufficient reason. So what is the contextual reason to listen to Muslim and Jewish arguments about circumcision in Europe?

²⁸⁸ See Kate Connolly, ‘Circumcision ruling condemned by Germany’s Muslim and Jewish Leaders’, *The Guardian*, June 27, 2012. More at: <http://www.theguardian.com/world/2012/jun/27/circumcision-ruling-germany-muslim-jewish>.

First, obviously, one needs to look at European history. The opposition of the majority (usually Christian) society to circumcision as a ritual of the minority has not always been based on arguments of human rights. Especially in the context of Jews, the rite of circumcision has been used to justify prejudices about them as either bloodthirsty molesters of children or as a religious sect obsessed with corporal and material matters. These kinds of perceptions led to countless pogroms and false accusations over the centuries that Jews steal Christian children to draw their blood for ritual purposes (the Christian blood libels).²⁸⁹ No surprise then that the targeting of Jews in World War II as suitable enemies has gotten so many supporters: many Christians by default believed Jews to be materialistic and overly concerned with bodily matters because circumcision was used as the most indicative example of this. In devising policy solutions to circumcision, one simply cannot lose sight of history.

Second, one needs to understand the wider social context and the existing integration problems some minority communities in Europe, such as Muslims, face.²⁹⁰ In many European countries – Germany included – individuals from Muslim communities very often have trouble accessing the full range of citizenship rights provisions normally available to non-immigrant members of society.²⁹¹ Especially after the September 11 attacks and the resulting counterterrorism initiatives of the US and European countries in the Middle East (as well as the murder of Theo Van Gogh in the Netherlands) the position of Muslims in Europe has become precarious. Faced with wider social distrust and the lack of institutional measures to support their

²⁸⁹ David Gollaher writes about an archetypal example that appeared in a 15th century woodcut illustration of the murder of Saint Simon of Trent. Namely, ‘in the wake of a religious uprising shortly before Easter in Trento, Italy, in 1475, the body of a child was discovered near the house of a local Jew. All local Jews were arrested; eight were executed immediately, five later. (...) The prototypal image of Saint Simon’s martyrdom ... portrays Jews circumcising the two-year-old while they bleed him to death, purportedly saving his blood for use in their Passover ritual.’ See David L. Gollaher, *Circumcision: A History of the World’s Most Controversial Surgery*. New York: Basic Books, 2000, p. 39.

²⁹⁰ By this I imply both directions of the problem: from Muslims to host societies and from host societies to Muslims.

²⁹¹ For some arguments, see Christian Joppke, ‘State Neutrality and Islamic Headscarf Laws in France and Germany’, *Theory and Society*. Vol.36, No.4 (2007), pp. 313-342.

integration into mainstream society, many Muslims retreated into their cultural shells and became extremely sensitive to victimization and vulnerable to the views of the majority society.²⁹² Therefore, it is plausible to suggest that attempts to restrict circumcision on the basis of ethical reasons is interpreted by Muslim communities as just another form of pressure to acquiesce to the majority's terms and give up parts of their own identity. The pressure also takes the form of a power to define the (cultural) boundaries of citizenship and the consequent access to citizenship rights. Therefore, it is understandable why many Muslims in Europe may feel this way: the recent history of multiculturalism and integration failures in Europe might give them good reasons to do so.

The perfectionist institutional policies, such as the initial decision of the Cologne court to outlaw the practice, ignore these kinds of contextual facts and fail to express the proper respect of persons and care for structural inequalities and forms of invisible domination that frame individual capability for personal autonomy. As many writers have so far argued, personal autonomy is also intrinsically related to the feeling of self-worth and the capability for responsibility in a dynamic social context.²⁹³ Without the possibility of individual social and political agency, the prospects of autonomous decision-making are diminished. Any perfectionist institutional practice that overlooks these factors will fail to ensure the legitimacy needed to regulate a highly diverse society.

What is to be done? How is it possible to come up with a policy solution that is grounded in moral reasons of autonomy as open future, while being sensitive to historical and political context and the configuration of power in which the minority communities who practice circumcision find themselves represented?

²⁹² European Monitoring Centre on Racism and Xenophobia, *Muslims in the European Union: Discrimination and Islamophobia*, EUMC, 2006, p. 3.

²⁹³ See Paul Benson, 'Feeling Crazy: Self-Worth and the Social Character of Responsibility', in Catriona Mackenzie and Natalie Stoljar (eds.) *Relational Autonomy: Feminist Perspectives on Autonomy, Agency and the Social Self*. Oxford: Oxford University Press, 2000, pp. 72-94.

3.6 The Convergence Argument

However liberal and grounded in wider justificatory frameworks for guiding public policy issues, exclusive neutralist and perfectionist approaches to circumcision are fraught with problems. First, as we have seen in examples from bioethics, a neutrality approach would fail to address the independent merits of the cultural argument about circumcision. Institutions cannot remain neutral toward this practice because the arguments from culture are insufficient to justify it.

On the other hand, the perfectionist ban of the practice does not address the historical, social and political context of circumcision-practicing communities, such as Jews and Muslims in Europe. Although right in suggesting that imposing an invasive procedure onto non-consenting individuals is unjustified, the liberal perfectionist approach would be too rigid in suggesting the type of policy solutions in sensitive situations involving minority aberrations from majority norms. Simple restriction of the practice, as suggested by the perfectionist decision of the court in Cologne, without involvement of minority communities or creation of transitional solutions seem to be justificatory insufficient and could lead to deepening social mistrust and failed integration of minorities into mainstream social life. In other words, liberal perfectionism needs to find an alternative way to deal with culture (as a contextual reason) in the circumcision controversy.

Yet both neutralist and perfectionist arguments are valuable in providing important benchmarks for moral reasoning about the issue. We do not want liberal institutions to impose ways of life on minorities; we want them to be flexible in dealing with cultural differences. The principle of neutrality covers much of that ground. But we also want our liberal institutions to ensure all cultural practices are sustained through the autonomous will of their members, and not through the indirect practice of custom and tradition or unaccounted social pressure of the majority culture. Therefore, we need an alternative liberal approach that will seek convergence of

different perspectives. This kind of approach has to be critical in combining its commitment to an ethical understanding of liberalism with more sensitivity to historical, social and political contexts of the policy issue at stake.

The convergence thesis implies that there are objective reasons for restraining from imposing conceptions of the good on autonomous individuals. This should apply to infants who undergo the circumcision procedure as well as to parents who espouse different conceptions of the good and choose ways of life for their children. While parents do have prerogatives to decide the character of family values their children will be socialized into, their discretion is limited in cases of practices that are irreversible. In cases such as circumcision the return to the pre-procedure default (that might be desired by the infant once he becomes autonomous) is practically impossible. The merits of the discretion argument are, therefore, questionable. Mere neutrality is not sufficient.

The convergence thesis advocates two things. First, it argues in favor of an independent assessment of the cultural practices that put such invasive demands on its newborn members. Understanding that the right to belong to a community comes with the right to exit from it, the neutralist part of the convergence thesis suggests that any cultural practice that prevents individuals from choosing (including the change of previous choices) their conceptions of the good is *prima facie* unjustifiable. Second, it suggests that the choice of adopting and sustaining a particular communal practice must be, as much as possible, free from unaccounted configurations of power. These include not only power factors internal to the community, but also power factors that define the standing of that community within a wider context and affect its members' ability to act autonomously. As we have seen earlier, the power configurations that frame Jewish and Muslim communities' standing in Europe infringe upon the members' ability for autonomy by creating a social environment in which their sense of worth and agency is diminished due to their minority status and

lack of alternative possibilities for self-expression. Their insistence on neonate circumcision may be one of the last instances of cultural reproduction at their disposal, since other possible tools such as language, religion and custom are being overrun by the majority culture.

Therefore, to ensure broad legitimacy, resolving a policy issue such as circumcision must be made in concert with addressing other structural issues that predispose the minorities to feel threatened by circumcision regulation. Institutional perfectionism that would establish a ban on ritual circumcision needs to be legitimated by the balanced institutional neutrality toward other dimensions of the minority culture. This neutrality would also provide needed avenues for the cultural community to ensure its cultural reproduction through other means that do not necessarily aim at imposing invasive bodily procedures on their infant members. In short, had Jewish and Muslim groups not been facing different structural inequalities in the largely Christian and post-Christian settings of Europe, and had their loyalties and enjoyment of citizenship rights not been questioned, the reaction to the Cologne court decision might not have been so intense.

As already argued in Chapter 4, the convergence thesis implies that development of autonomy is not necessarily anchored in one historical moment but can progress in a series of consecutive steps. This means accepting that political negotiation, compromise and trading should be a constitutive part of regulating on a principled basis. This idea has found a practical application in one case that attracted the attention of scholars and practitioners involved in issues of circumcision. The example involves female rather than male circumcision, but the structure of the case and the related proposal merit a normative correlation with issues discussed in this paper.

Namely, the case goes as follows: As Doriane Lambelet Coleman discusses in her

paper, several Somali women refugees in Seattle gave birth at the Harborview hospital in 1996. During labor, nurses asked them the routine question:

If it's a boy, do you want him circumcised? 'Yes', replied some of the women, 'and also if it's a girl.'²⁹⁴

In an attempt to follow their tradition and perform communal rituals, the families of Somali girls wanted them circumcised and asked the hospital staff to perform the procedure. At the reluctance of doctors to perform what they considered genital mutilation, they asked the staff to make an exception and perform a symbolic version of the ritual by simply making a small 'nick' on the hood of the clitoris, drawing a drop of blood but not removing any parts of the skin or genital tissue. The hospital declined to do even that, and the community members told the hospital that if they did not perform the procedure, they would go to some of the local Somali midwives in the Seattle area or fly their daughters back to Somalia to have the procedure done in its entirety, i.e., removing the clitoris in total, as demanded by the traditional norms of female circumcision. Faced with such a choice, the hospital convened a committee of doctors to come up with a proposal to resolve the issue. The committee suggested that the hospital compromise and perform a symbolic procedure, as originally suggested by some of the Somali women. The rationale behind the compromise was the understanding that, if the hospital did not perform the symbolic procedure, it was very likely that the girls would face the prospect of having to go through the real genital cutting.

The case attracted public attention and the hospital eventually had to withdraw the compromise proposal due to increased pressure from anti-circumcision groups and citizens. It remains unknown whether the girls from the group had to undergo the

²⁹⁴ Doriane Lambelet Coleman, 'The Seattle Compromise: Multicultural Sensitivity and Americanization', *The Duke Law Journal*, No. 47, 1998, p. 739.

procedure performed by Somali midwives in Seattle or in Somalia, but it seems very likely that they did, given the prevailing norms of their tradition. However, the case exemplifies a situation in which an immigrant community, whose culture involves procedures that defy the host society's ideas of normality, but also potentially (or really) violate the bodily integrity of minors, is willing to make a compromising step that alters the nature of the ritual, but sustains its symbolic and communal meaning for the sake of social integration.

On the one hand, the opposition of human rights and anti-circumcision groups was justified to a certain degree. Liberal societies that respect bodily integrity of all individuals, including children, cannot allow the violation of that principle in the name of some communal tradition. There are no exceptions when it comes to the rights to personal integrity of all citizens. However, because the case involved a choice between a concession to a small, symbolic and medically non-threatening incision and the principled rejection that would lead to the performance of a significant, medically unjustified, risky and invasive procedure, rethinking the institutional stance made not only political but also ethical sense. So, on the other hand,

Harborview['s] compromise with its patients might have sent positive messages about the need for immigrant communities to understand the limits of our society's tolerance for certain practices ... and at the same time its ability to engage in pragmatic discussions to resolve cultural collisions that implicate issues of great significance for immigrant communities as well as for larger community as a whole.²⁹⁵

The 'Seattle compromise', as this case has become known, provides an example of a progressive understanding of the ethics of personal autonomy because it recognizes

²⁹⁵ Coleman, p. 773.

that instituting a perfectionist practice takes more than a slice of time and stretches into a sequence of events that brings the value of autonomy into fruition historically. This is especially important when the issue applies to a community uninformed by such ethical requirements but which lives in a majority society where those requirements are already a part of the background justice. The compromise also exemplifies a multi-paradigmatic approach to the normative justification of its policy substance: though the deontological requirement of not violating a person's bodily integrity without her consent is a strong one, the context of the case clearly indicated that this requirement had to be balanced with a consequentialist consideration that looked at the potential results of the failure to compromise. The prospect of having the girls undergo true genital mutilation counterweighs the deontological rejection of many liberals to compromise with a backward cultural practice.

The example of the Seattle compromise indicates that, as an approach to resolving sensitive cases of public policy, the convergence thesis is concerned not only with institutional forms of respect for personal autonomy but also with a variety of invisible (background) structures that shape individual preferences and limit their choices. These structures constitute the social determinants of autonomy. A plausible application of basic liberal commitments in culturally complex societies requires a concern for them.

In its measures, the Harborview proposal was limited by the nature of its institutional mandate: it was a hospital whose duty was not to resolve issues of communal (in)justice but to come up with justified medical procedures. However, the convergence argument demands that, faced with such cases, responsible liberal institutions should address these structural issues simultaneously or even prior to resolving concrete case-based problems. Concern for the social context of autonomy must feed into the normative design both in proposing political and legislative measures, as well as in building the social legitimacy for the actions proposed.

Transposed to the circumcision controversy in Germany, this implies that government institutions must simultaneously address all aspects of the case, including not only valid norms of children's bodily integrity but also the myriad of structural inequalities Jewish and Muslim communities face in their everyday life, if they want to ensure that their decisions reflect liberal concern for personal autonomy in terms of an open future for all. It also shows that political negotiation with the individuals and communities involved can be a legitimate way out of the social and policy conflict. In these kinds of cases, value of personal autonomy, facts of social context and moral vectors converge to create normatively relevant factors for decision-making of liberal institutions. In order to respond creatively and ensure a wide legitimacy of their decisions, normative proposals by the institutions need to converge as well.

4. Conclusion

Addressing a sensitive public policy issue such as circumcision or sugary beverage regulation from a liberal perspective requires more than simply a commitment to a set of liberal values. One needs to understand the context of the case in point and use the principles only as a yardstick to evaluate the nature of the problem, its structural background, its main actors as well as its possible consequences before proposing elements of normative resolution. In doing so, one needs to muster a range of political tools to address not only the normative, legal and social specifics of the case but also all the relevant structural conditions that serve as a background to the problem.

In this chapter, I have tried to demonstrate that the convergence thesis fares better than its alternatives in addressing two contemporary cases of public policy that involve conflicting conceptions of the good life due to its more flexible, diverse and target-specific measures. In the first part, I examined the case of the soda law controversy in New York City and showed that proposals based on exclusive

interpretation of neutrality and perfectionism face serious difficulties in addressing the case. I argued that a convergent approach, which combines neutrality to account for institutional restraint and perfectionism to account for background social conditions, offers plausible normative solutions.

In the second case study I focused on the policy controversy involving the practice of ritual circumcision of male boys in Germany's Jewish and Muslim communities. I have argued that non-therapeutic circumcision of infants is not justified because it violates the open future of not-yet-autonomous individuals. However, I have tried to go beyond the bioethical discussion, where notions of permissibility and impermissibility operate as exclusive benchmarks of the debate, and examine the relevance of a wider range of external reasons. I suggested that, though neonatal circumcision for cultural reasons is *prima facie* unjustifiable, the nature of the social and political context mandates a more flexible institutional response, which can combine deontological requirements of respecting cultural diversity with consequentialist aims at increasing personal autonomy of the individuals and groups involved.

In addressing both cases, I operated under the assumption developed earlier that neutralist and perfectionist approaches in liberal theory, when taken exclusively, are insufficient to address sensitive issues of contemporary social policy. Liberal neutrality undeservedly gives too much authority to cultural norms and the existing structures of power, while perfectionism is too insensitive to structural facts that determine the nature of individual preferences and the choices at their disposal. Critical in its commitment to the goodness of personal autonomy and in its concern for structural (institutionally invisible) forms of inequality and other social determinants of autonomy, the approach advocated in this dissertation aims for convergence of arguments from neutralist and perfectionist camps. It argues that a combination of liberal arguments that come from different corners but converge over the concern for autonomy can help us understand the best ways to resolve complex

issues through a set of socially reflexive, politically pragmatic and ethically progressive measures. The aim of this chapter was to show that the convergence thesis is not only a conceptually, but also a practically, viable addition to contemporary theorizing in liberal political philosophy.

CONCLUSION

In this dissertation I attempted to demonstrate that a plausible way to interpret liberal neutrality and liberal perfectionism in political philosophy does not imply mutual exclusion of these ideals. I tackled philosophical assumptions (and arguments) that they are conceptually independent from each other. Contrary to these, I attempted to show that liberal neutrality and perfectionism are convergent philosophical ideals. I defended the convergence by indicating reasons, internal and external to both ideals, for a principled and consistent overlap between neutralist and perfectionist institutional requirements. I developed the theory and showed how it could apply in practice.

In the introduction I set the thesis within the wider philosophical framework. Aiming at transparency of my philosophical and value background, I outlined a number of assumptions that drive the analysis. I also contextualized the significance of discussing the convergence thesis against the extant literature about neutrality and perfectionism. I showed that many classic and some contemporary theorists of neutrality exclude the possibility of convergence. However, I also showed that, despite the skepticism, there are philosophers who share the intuition that the ideals are not as divergent as usually thought.

In Chapter 1 I reviewed the most significant literature about neutrality. I surveyed different philosophical arguments about neutrality, including theories of political liberalism based on epistemic, pluralist and reasonability reasons for neutrality. I argued that these arguments could not offer a plausible way to interpret and establish the principle. My counterargument claimed that the ideal of liberal neutrality depends

on the conception of the good defined by the value of autonomy. Neutrality's conceptual dependence on an a priori conception of the good led me to conclude that liberal neutrality should be understood as a dependent, rather than freestanding, ideal in liberal philosophy. Sustaining such an interpretation, I argued, can help us preserve the validity of the neutrality ideal, reject some of its criticism and pave the way for a more integrated liberal theory. At the end of this chapter, I suggested that, if neutrality is dependent and based on autonomy, then the requirements of liberal institutions do not cease at exercising neutrality but must include a theory of institutional promotion of autonomy that can complement the requirements of neutrality.

In Chapter 2 I developed a theory of autonomy. I advocated for a horizontal, rather than hierarchical, understanding of autonomy. Hierarchical accounts perceive autonomy in terms of human second-order capability to reflect on first-order facts and assume that human agents can act as ultimate causes of external ends. Horizontal theories, on the other hand, reject such views and argue that personal autonomy is much more about the individual ability to relate to the external world in a spontaneous manner. For advocates of horizontal understanding, myself included, the metaphysical origin of human action is not important. Rather, what matters is the ability of individuals to relate to their environment and other humans in a way that reflects their authentic, contingent and spontaneous agency. I situated this theory within two distinct vocabularies, one ancient and the other contemporary. I argued that the Stoic notion of *prohairesis* and Feinberg's notion of an open future offer good ways to conceptualize personal autonomy within a horizontal framework.

Chapter 3 developed a theory of liberal perfectionism compatible with this understanding of autonomy. There I continued the elaboration from previous chapters and argued that the notion of autonomy and its normative value cannot be adequately appraised within anti-perfectionist theories of liberalism because their basic assumptions do not correspond with the horizontal understanding of

autonomy. Many feminist authors develop the horizontal theory further by claiming that personal autonomy is fundamentally relational and that it depends on a range of first-order facts and structures that make individuals capable of reflection and spontaneous behavior. I adopted feminist claims and developed a corresponding theory of institutional requirements to promote personal autonomy. Against this backdrop, I suggested that liberal perfectionism must recalibrate its institutional focus in terms of interpersonal relations that directly and indirectly contribute to the development of autonomy skills. I rejected earlier theories that located the site of liberal perfectionism in the exercise of autonomy or in the range of options available to individuals to choose. I tried to show that re-focusing the site yields a less expansive and more precise theory of liberal perfectionism. The chapter also provided a tentative list of interpersonal relations that should come under the scope of liberal institutional duties.

The integration of claims from Chapters 1 and 3 is developed in Chapter 4. There I engaged the arguments about dependent neutrality and capability perfectionism to suggest that ideals of neutrality and perfectionism in liberalism converge. I examined conceptual and practical reasons for convergence. Conceptual reasons imply that institutional requirements of neutrality and perfection serve to provide background justifications to each other. First, institutional neutrality is justified only against the background of autonomously chosen and sustained conceptions of the good. Second, institutional promotion of autonomy is purposeful only if institutional neutrality toward choices autonomous individuals make follows. Practical reasons build upon an understanding of heteronomy and imply that the normative exigencies of social context additionally demand convergence of neutralist and perfectionist requirements. The chapter surveys different elements of social context that have normative significance for the convergence thesis.

The convergence thesis intends to be practically useful for liberal policy-making in cases of conflict over the definitions of the good life. Given this, I attempted to

situate the theory within real-life policy controversies. In Chapter 5 I demonstrated that the thesis about convergence between liberal neutrality and perfection is practically relevant. I selected two recent conundrums in liberal policy-making. First, I discussed the controversy about sugary drinks regulation in New York City, where the attempt of the city administration to regulate a commercial practice based on health reasons was met by the outrage of neutralist and other liberals who deemed such actions an unjustifiable breach of institutional duties under liberalism. Second, I discussed the controversy over neonatal male circumcision in Germany, where the decision of a regional court to ban the practice in the name of the bodily integrity of children was met by the outrage of Jewish and Muslim communities for whom circumcision represents a significant part of minority identity within a majority environment. I took the arguments made earlier in the dissertation to show that the convergence thesis can be plausibly utilized for understanding and resolving these policy conflicts in a consistent and principled yet sensitive and flexible liberal manner.

This dissertation tackled a complex problem in liberal philosophy. There are a number of arguments and claims expressed in the five chapters that require further elaboration. The aim here was not to offer an expansive and overarching theory of convergence that would give all possible answers, but merely to provide some theoretical indications that convergence is possible and potentially useful for liberal theorists and practitioners alike. The next stages of this research should focus more closely on examining notions of heteronomy and social context in detail and finding more precise ways of situating the promotion of personal autonomy within a myriad of social relations.

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