

THE PRIVATE SPHERE AND THE BOUNDARIES OF POLITICS

A thesis presented by

Roberto A. Castelar

In partial fulfilment of the requirements

for the degree of Master of Arts

in Political Science

Supervisor: Kis János

Central European University

Budapest, Hungary

June 2017

Abstract

The idea of the separation between the private sphere and the realm of politics is a relevant component of the moral vocabularies and common assumptions of western political thought. A large number of thinkers have posited that such separation is necessary for the preservation of both personal integrity and social stability. But the political value and convenience of this boundary has been seriously questioned by many other thinkers. They hold, in various ways, that the conception of a private sphere which is protected from politics is committed to untenable assumptions about human freedom or self-development, that it has played an exclusionary historical role, and that it might serve to conceal injustices in domestic spaces.

The main concern of this thesis is to develop a normative political theory in response to the problem about the moral desirability of construing the private sphere as inherently autonomous from politics. Whilst acknowledging that the critics are right on the interpenetration of the autonomy of the private sphere with many inadequate tendencies and historical injustices, this thesis argues, firstly, that the separation between the private and politics is necessary in a well-ordered polity on many grounds, and eschewing it is inadvisable; and, secondly, that there is no need to reject it in order to solve these problems, because its normative basis can be revised in such a way as to make it compatible with effective solutions for them.

In correspondence to the aforementioned arguments, and after clarifying the scope and terms of the problem and reviewing the main existing arguments in the debate (Chapter One), this thesis articulates a case for the separation between the private and the political (Chapter Two), and lays out general principles for the reconceptualization of the private sphere (Chapter Three) and its harmonization with justice (Chapter Four). It is proposed, more generally, that this theory provides good normative parameters to redirect toward effective solutions the various public discussions in which citizens invoke or contest the protected status of the private sphere.

Epigraphs

‘Our homes are our castles, and there we are free from official surveillance. This is, perhaps, the freedom that we most take for granted... so it is worth stressing how rare a freedom it is in human history.’

Michael Walzer (1984: 317)

‘... safeguards against intervention by the state, to men who are half-naked, illiterate, underfed, and diseased is to mock their condition... What is freedom to those who cannot make use of it?’

Isaiah Berlin (1969: 124)

Table of Contents

Abstract	iii
Epigraphs	iv
Table of Contents	v
Acknowledgements.....	vii
Introduction.....	1
Chapter One	5
1.1. General Aspects.....	6
1.2. Fundamental Concepts.....	8
1.3. Theories of the Autonomy of the Private: three arguments	12
a) The ‘non-interference’ argument	13
b) The ‘self-development’ argument.....	16
c) The ‘political distinctiveness’ argument	18
1.4. Criticism of the Autonomy of the Private Sphere.....	20
a) Vacuity	20
b) Individualism	21
c) Social justice.....	22
d) Undesirable de-politicization.....	22
Chapter Two.....	24
2.1. The Private Sphere and Rights	25
2.2. Four Arguments in Support of the Autonomy of the Private Sphere.....	26
a) The argument of self-development	26
b) The argument of logic of coordination and distribution	28
c) The argument of normative orders.....	30

d) The argument of dispersion of power	32
Chapter Three.....	37
3.1. A Political Conception of the Private.....	38
3.2. Drawing the Boundary	41
3.3. Reconceptualising Freedom and Politics	44
Chapter Four	49
4.1. On the Private and Historical Injustices	50
4.2. The Scope of Private Law and Welfare Provisions	51
4.3. Politicization.....	55
Conclusion	59
References	62

Acknowledgements

The idea of this thesis developed in 2015, when I conducted research for a paper on the notions of the public and the private in theories of totalitarianism, which I presented at the Sixth London Graduate Conference in the History of Political Thought. The Central European University afforded me the best intellectual milieu to bring this idea into concretion. I am grateful to all the scholars, colleagues, and friends who made this intense journey intellectually and personally enriching. I am foremost grateful to János Kis, who supervised this research and provided insightful comments and critiques throughout the whole process. His vast knowledge and his acute philosophical judgement were the best guide to the world of contemporary political philosophy. Any historical imprecision or weakness in my philosophical argumentation in this thesis is, of course, my own responsibility.

I should record also my gratitude to the various CEU scholars with whom I had the opportunity of exchanging many ideas on political theory, history, and methodology, including Zoltan Miklósi, Matthias Riedl, Zsolt Czigányik, Andras Bozóki, Lea Sgier, Nenad Dimitrijevic, and Anton Pelinka. I was helped a lot by many comments from fellow students, especially from Murat Karabag, Tingyi Yang, Jonathan Mulki, Ezgi Turcker, Danish Latif, and James McDonald. My studies and the research of this thesis were possible thanks to financial and institutional support of the Central European University. I record principally my gratitude to the staff of the Department of Political Science, principally to Eva Lafherton, and Tunde Szabolcs, which always offered their support and gave effective answers to my many questions about the programme, and to Carsten Schneider, Head of the Department, who authorised my participation in academic conferences abroad.

I am indebted most of all to my family and friends, whom from very distant places are always offering their support for my personal projects. I remember especially my parents Nury and Reynaldo, and also Javier, Nury, Sonia, Sarah, Sofia, Julissa, Ritza, Jorge, José, and many other relatives and

friends whose names would cover many pages. I should note, finally, that the title of this thesis was inspired by a thoughtful article by Elizabeth Frazer (2008).

Introduction

Conflicting Values

Private freedom and social justice are constant themes of concern for many philosophical, religious, and moral traditions. Given that the articulation of one is often perceived as unattainable without encroachment upon the domain of the other, these themes seem to be in permanent tension (see Rorty, 1989: xiv). Those who emphasise one might fear giving too much space to the other. But a constant theme has been, also, the possibility of harmonising and leading them together to a full flourishing. For some thinkers, this harmonisation necessarily involves a trade-off or compromise, a proportional reduction of private freedom to the benefit of social justice or vice versa (Berlin, 1969: 124-5). Other thinkers reject wholesale this project, arguing that their trade-offs are never permanent and always to be renegotiated (Mouffe, 2000: 92-3), or that they should be simply seen as incommensurable and used as ‘tools’ for different ends (Rorty, 1989: xiv-xv). Finally, there are those who, like Ronald Dworkin, believe that existing moral ideas can be reconceptualised in such a way as to make their practical implementation compatible (see Dworkin, 2001).

The debate over the separation between the private sphere and the political realm appears to be a relevant embodiment of this tension. A large number of prominent thinkers, including John Stuart Mill, Benjamin Constant, Michael Walzer, Jürgen Habermas, Richard Rorty, and Judith Shklar, have argued in various ways that some form of this separation is a requirement for the development of personal freedom or personal self-realization, and for political stability. This would guarantee that citizens have the possibility of crafting their life plans without external intrusion. But other thinkers

contend that this provision for private freedom comes with the cost of sacrificing the realisation of justice, or that the provision is based on the wrong assumption that freedom or self-realization requires any private sphere. Positing domains that are autonomous from politics might leave the vulnerable populations who inhabit them without help against their abusers, and might cover up violent and oppressive social patterns. It might also encourage an undesirable isolationism or individualism.

The tension is noticeable in daily political deliberation too, particularly in western societies. Public controversies about surveillance, drugs and alcohol consumption, public education, domestic violence, labour relations, domestic division of labour, regulation of leisure, bioethics, private property, healthcare, and others, generally involve citizens who, in function of specific interests, demand either the strengthening or the weakening, or in some cases even the abolition, of the autonomy of the private sphere. These demands are ordinarily framed in terms of support of either private freedom or social justice, in very different ways that might not cohere with each other. Both the people on the Left and the people on the Right would invoke or contest the claims to autonomy of the private from politics in many concrete issues and, thus, it is not possible to identify any of them exclusively with any stance.¹ It is assumed that different specific rights can be protected by either invoking or contesting the private.

Undoubtedly, there are many other relevant questions involved in these disputes. For many thinkers and political agents, it is not clear at all that a private sphere is needed to protect human freedom or human self-realisation. And the category of the private, as well as its most common pair, the public, does not appear to be a very useful tool for deriving moral obligations, considering especially the large array of meanings and usages that are attached to it in different places and contexts. Citizens include in the realm of the private many disparate things, and this variation is observable not only across societies but also throughout historical periods (Frazer, 2008: 191). And the reasons why

¹ See Wolfe (1997) for a detailed exposition with numerous concrete examples.

some activities or things are considered private and others are not have different theoretical origins, and it is perhaps impossible to find underlying common principles behind them (Geuss, 2001: 106). It might seem that such elastic conception cannot be relied upon to protect personal freedom, and much less to strike a balance between freedom and justice.

This thesis is a contribution to this debate. It was conceived as a response to the question of whether the private sphere ought to be considered autonomous from politics, and if so, which implications this fact would have for the humanitarian and ethical concerns that many critics of this autonomy have raised. The normative political theory that it proposes takes the form, firstly, of a case for the necessity of the political autonomy of the private sphere, both for the sake of each citizen's interests, and for the stability of political communities. This case is made by developing five arguments which recast elements from some well-known theories, primarily republican and liberal, and assemble them in a distinctive theoretical line. These arguments stress, among many other things, how the private sphere might also prove a useful tool for victims of historical systems of oppression.

The theory takes for granted the accurateness and ethical urgency of the various issues raised by the critics of the autonomy of the private, be it those which refer to the problems of the concept of a private sphere, or those who stress the historical injustices to which it has been associated. But the general implication of the first part of the theory is that any solution to these problems is wholly inadvisable if it implies eschewing the conception of a protected private sphere, given that the social costs would be too high and undesirable. In response to the question of how these social problems are to be solved in view of the latter argument, the theory follows Dworkin's strategy of seeking harmonization between seemingly conflicting values and conceptions, and proposes that a rejection of a separation between the private and the political is not necessary for this purpose. The notion of a protected private sphere can be reconceptualised in order to make it fully compatible with effective solutions to these problems.

The second part of the theory, consequently, proposes a system of principles for the reconceptualization of the private sphere, and its autonomy, including the definition of its content, its conceptual structure and implications, and its relation with freedom and politics. The third part, in turn, covers the relation between the private sphere and justice, and takes the form of a reconceptualization of the role of private law, and set of conditions for political intervention into the private and for the political redrawing of the boundaries between the private and the political. The first chapter addresses theoretical and conceptual presuppositions, and describes three major arguments in the existing literature in support of a protected private sphere, as well as the four major criticisms to the latter. The three aforementioned parts of this thesis' theory are developed in chapters two, three, and four, respectively.

On account of limitations of space and context, many aspects had to be assumed, many practical implications of principles were not fully articulated, and an array of relevant questions had to be omitted. This fact does not imply that all these aspects are considered unproblematic. Much pressure can be put on this thesis from these flanks, but their exploration has to be reserved for future research. Nevertheless, it is proposed that the contribution made in the present thesis is substantial and might help redirecting the debate in productive directions. It should be noted that many quotations from old authors that are used here reflect social hierarchies of the time in which they lived. This aspect of the quotations is treated here, of course, as a historical artefact and not as normative.

Chapter One

The Private Sphere in Political Theory

‘... Western social and political thought may have had the last *conceptual revolution* it needs. J.S. Mill’s suggestion that governments devote themselves to optimizing the balance between leaving people’s private lives alone and preventing suffering seems to me pretty much the last word.’

Richard Rorty (1989: 63)

‘Whether particular boundaries are good or bad, ethical or unethical... the drawing up of boundaries is a universal human collective practice, centrally anchored in the domain of politics’

Michael Freeden (2013: 116)

This chapter lays out the conceptual framework for the assessment of the problem of the autonomy of the private sphere. It also positions the problem in a proper intellectual context by synthesising the best existing arguments, in modern political theory, supporting and contesting the idea of a protected private sphere. The first section describes the general terms in which the problem is addressed; the second section delimits the content of four fundamental concepts, namely, the private, the political, autonomy, and politicization; the third describes three major arguments in favour of a protected private sphere; and the fourth section describes the major critiques to the autonomy of the private.

1.1. General Aspects

This thesis is concerned with a central normative aspect of the relation between the private sphere and politics, namely, whether the former is entitled to any form of autonomy from the latter or whether, on the contrary, the scope of the latter ought to encircle the former. It is concerned, furthermore, with the social implications of the solution to this question. The first thing to be noted is that this thesis does not assess the relation between the private and the public, but rather that between the private and the political. There is no space here to discuss the various meanings of the public, which is the most common concept paired with the private. It suffices to say that the various critics of the autonomy the private often invoke the need of a broader scope for specific political actions and regulations, and this is better represented by the concept of the political. Some thinkers identify the political with the public, but the latter concept does not necessarily convey the meaning of collective decision-making that is implied in the political. It is the political realm which is most pertinent for the present purposes.

This conception of politics includes, but is not coterminous with, the state. It includes the whole body of citizens whom, as political agents, can promote and enact various constitutional mechanisms of decision-making. Although this thesis focuses on two categories, it does not assume a binary division of society. Besides the private and the political realms, it is assumed that other realms need to be recognised, including the social, the economic, the public, and the realm of the state considered separately. It is beyond the scope of this thesis to systematically address the relation between the private and these other spheres. Some of the necessary distinctions are hinted at times, but whenever autonomy of the private is mentioned it is primarily in reference to the political. The claims to autonomy among these other spheres had necessarily to be omitted.

Two great realms that are often included in the private sphere were excluded from the

conception of the private of this thesis, namely, the realms of the market and of what has been called ‘civil society’, including in the latter middle-range associations. It is proposed here that the distinctive features of these spheres require special approaches than those applied to the family, leisure, and smaller associations and that they are better conceptualised as constituting neither private nor public nor political spheres (see, on this ‘intermediary’ realm, Wolfe, 1997, 196). Another aspect that had to be excluded is that of private property, which would require an extensive and separate treatment. All these spheres are interconnected, and their specific conceptualisations have implications for the theory of this thesis, but these would have to be explored in future works.

The term ‘private’ is often used interchangeably with terms such as privacy, domesticity, intimacy, the personal, the familiar, the individual, the particular, and others. Nevertheless, these various concepts refer to very concrete activities, and adopting them might suggest partiality to definite conceptions of the private. Privacy, for instance, usually refer to informational or spatial access, and domesticity is largely a spatial concept. The private is a more abstract concept which can be used to encompass all of these, and it is in this sense that these terms are used here. Concerning the relation between the private and autonomy, the question of this thesis assumes that both are theoretically separable. Some criticisms, however, imply that rejecting private autonomy is tantamount to eschewing the category of a private sphere itself. The thesis, thus, is inclined toward the idea that some category of a private sphere can be preserved even if autonomy from politics is rejected, but arguing about this point would involve an unnecessary digression. The main focus is on the question of autonomy.

1.2. Fundamental Concepts

The main methodological issue that arises when addressing the question posited above is, as suggested in the introduction, the indeterminate content of the concepts of the private sphere and the political both in ordinary and philosophical language. The problem is more salient, perhaps, in the case of most important concept of this thesis, namely, the private. Notions of the private and the public appear to be recurrent in western political thought, principally on account of the pervasive influence of Roman law. As is well-known, the Romans distinguished between *publicum jus* (ordinarily translated as ‘public law’), and *privatum jus* (or ‘private law’),² the two notions being roughly equivalent to what concerns the political community and what concerns individual citizens, respectively. But this pervasive presence is concurrent with a plurality of historical meanings.³

The private is rarely a standing alone conception, as it normally involves a contrast with an opposite notion, such as the public, or the political, or the social (Weintraub, 1997: 4).⁴ The distinction between the private and the public is often invoked to contrast, as in the case of Roman law, what pertains to individuals and to political bodies, or simply what is perceived as individual and as social, respectively (see Geuss, 2001: 53; Bobbio, 1989: 3). It can be used also to contrast what is hidden or accessible only to a few, either in terms of space or of information, as ‘private’ letters, from what can be accessed to all, as ‘public’ resources (see Habermas, 1989: 1). The private is largely associated with the realm of the family and domestic life, including interpersonal relations and friendship. It might

² The former meant ‘that which respects the establishment of the Roman commonwealth’ and the latter ‘that which respects individuals’ interests’ (Justinian, Dig., 1.1.1.2).

³ Distinctive modern senses of these concepts originated, however, not before the 16th century. The notions of private sphere and private autonomy were influenced by the early modern recognition of the right to religious freedom (Habermas, 1989: 11).

⁴ See Weintraub (1997), and Benn and Gaus (1983), for detailed taxonomies of the sense of the private and the public.

refer to free economic activity, as opposed to state regulated economic practices. It works as the main qualifier for ownership, and also as coordinating concept for politeness, shame, disgust, and so on (see Geuss, 2001, 32).

The notions of the private and the public are also problematic for political theory because not all societies seem to have a correspondent distinction. It has been argued, for instance, that the modern sense of the distinction cannot simply be read back into the Middle Ages (Habermas, 1989: 9),⁵ and that is difficult to use it to analyse Soviet Russia and other Communist societies (Garcelon, 1997: 305). Furthermore, even within specific societies, conceptions of the private tend to change over time along with economic or political processes. The boundaries are not fixed. Labour contracts and wages were previously seen as private affairs and now are considered largely as public and political, and practices such as religion have been transferred from the public to the private realm (Frazer, 2008: 191). One of the distinctive aspects of modernity is that the provision of education, health, security, and socialisation were transferred from the family to the political realm and ceased to be private (Habermas, 1989: 154-5), and its economic functions were transferred to the market (19-20).

Despite this plurality of meanings and emphases, certain persistent patterns might be discerned in the various definitions, and in most cultures. There is, above everything, the intuition that spheres of jurisdiction or action ought to be separated and that a privileged access or protection from interference in specific activities is to be assured for individuals, and the intuition that personal self-determination requires these separations.⁶ Whilst all these conceptions and intuitions are relevant for a political theory of the private sphere, they can be variously framed in the terms of sociology,

⁵ Medieval thought, nevertheless, was strongly influenced by the Roman distinction between private law and public law. See for instance Aquinas, 2002: 8. Medieval and early moderns generally held rulers' encroachment upon family life was a distinctive trait of tyranny (see Walzer, 1983: 228; Bobbio, 1989: 94).

⁶ As Bobbio noted (1989: 12), even for a defender of absolute monarchy as Jean Bodin the monarch was not allowed to dispose of personal liberty and private property without a strong justification for it (see Bodin, 1992: 36-40)

anthropology, law, politics, and philosophy, and it is mostly with the latter two perspectives which such theory ought to be concerned. A philosophical conception must serve to distribute different principles and obligations, and should translate that plurality of meanings into a coherent content. This is the task that the next chapters undertake.

There are as many difficulties to define the second fundamental concept of the thesis, the political,⁷ but the problem is less salient for the present purposes because the critics of the private use it in a specific sense, as hinted before. Whenever the autonomy of the private is contested, what is normally invoked is the possibility of subjecting aspects of the private to collective deliberation, decision, and regulation, through the pertinent constitutional means. There are senses in which it can be said that everything is political as, for example, by positing that the political concerns power relations. In this latter sense, autonomy from politics would be almost impossible. The legitimacy of that and other conceptions of politics is not denied here, but these senses are less relevant when political agents deliberate about the status of the private. It is also important to distinguish political deliberation from public discussion.⁸ In this thesis, political regulation is the ordinary possible *direct* outcome of the former, but not of the latter. Autonomy from politics does not mean that anything private is exempt of public discussion, or that ought to be free from social criticism.

The other fundamental concepts of the thesis, namely, autonomy and politicization, have also a variety of senses, but they can be narrowed down for the present purposes to specific senses derived from the previous concept. Politicization should be simply understood as the subjection of specific activities to processes of political deliberation, decision, and regulations, and autonomy as the normative invulnerability to this politicization. Some qualifications are needed, however. Firstly, politicization of the private does not ordinarily mean that the individuals' entitlement to make personal

⁷ For a detailed discussion, see Frazer (2008).

⁸ As Habermas (1998: 313) put it, to discuss critically an issue is not necessarily to interfere in the affair itself.

choices is withdrawn and transferred to political bodies, or that the activities of the private ought to be ordained to fulfil state goals. Such an extreme view would coincide with what has been called ‘totalitarianism’, and ought to be rejected from the outset. What proponents of the politicization of the private argue for, in various is that private choices and private activities ought to be open to political regulation, intervention, and control, and there should not be moral claims to resist these operations (see, for discussion, Habermas, 1998: 312).

Secondly, the discussion on autonomy of the private does not seek to raise the question of the moral justification of private law as such, or the widely-accepted existing modes of private law. This justification is simply taken for granted. The fact that the state can intervene into the private in cases of domestic violence, for instance, is in no way cast in doubt. Intervention might be even firmer in these cases than in public law. The thesis, however, discusses how to relate this social fact with the notion of private autonomy. There might be, of course, private laws whose justice is disputable, and the theory of this thesis suggest some principles to determine these cases, including anti-paternalism. Restrictions of space, nevertheless, made impossible to give a full treatment to this topic. Thirdly, political regulations or interventions can take many forms, and deciding which is the appropriate for the private is an additional problem. This topic is also beyond the scope of the thesis, though.

This delimitation of the scope of fundamental concepts allows, now, proceeding to situate the problem in question in an appropriate intellectual context. A final observation for this section is in order, however. A critic might argue that there is no existing public discussion about wholesale politicization of the private, but rather a vast array of discussions about interference and non-interference in disparate issues. Moreover, total politicization might not be technically possible and it is probably not in the interest of existing governments. It would not be clear that the theory of the present thesis is more than an abstract discussion without real implications. To this it can be replied that what is at stake is whether private autonomy ought to remain a fundamental part of existing moral

vocabularies, and whether it is admissible in political deliberation. Accepting or rejection the legitimacy of the claim to private autonomy can significantly shape the course of these discussions about interference and non-interference.

1.3. Theories of the Autonomy of the Private: three arguments

This section is concerned with the most relevant arguments that have been proposed in support of a protected private sphere. It should be noted that the arguments described below do not represent, in any sense, traditions or schools of thought. Nor it is implied that such arguments necessarily correspond to what those authors would have understood as the *key* elements of their theories. Some authors would rather tend to agree with more than one of these arguments. In addition, their particular views were embedded in broader theoretical contexts which are not detailed here and which were, of course, different in each case. These thinkers paired and contrasted the private with different spheres, not necessarily the political, and might have understood some concepts in different sense. Nevertheless, it is proposed that these arguments capture the major theoretical patterns and emphases in their thought concerning the private sphere.⁹ It must be noted also that there are few systematic attempts to theorise about the private sphere. Most arguments follow from larger discussions about freedom, politics, and the public sphere. This thesis, in some form, contributes to fill this vacuum.

⁹ There are many other arguments that could not be covered here. One of these, very popular in the Cold War era, holds that abolition and political control of the private sphere is the distinctive aspect of totalitarianism (see Arendt, 1979: 475; Friedrich, 2009: 119). Other arguments hold that a protected private sphere is a minimum requirement for democracy (see, for instance, Bobbio, 1987: 44). They have been, however, less influential than the arguments discussed in the chapter.

It is opportune to say that the commonplace idea that holds that theories of private autonomy and their criticism are, respectively, exclusive elements of particular traditions of thought, is very inaccurate. Although theories postulating the public/private distinction are commonly associated with liberalism, and the criticism of the private is associated with feminism, socialism, poststructuralism, and critical race theory, the problem is not strictly a debate between liberalism and these traditions. Within each of these traditions many ideas in favour and against the protected private sphere might be found. Some liberal theorists less emphatic about the distinction (see Freedman, 2001: 114-6). Likewise, claims against political interference in the private have also a place in feminist theory, as part of their theorisation of such concepts as consent, choice, and opportunity (see Hirschmann, 2006: 207).¹⁰ And although radical socialists have for long been suspicious of the private sphere, not only private property, there are particular socialist theorisations about private autonomy.¹¹

a) The 'non-interference' argument

The first way in which the autonomy of the private sphere is usually postulated by political theorists is based on a strong commitment to the value of human freedom, understood in terms of non-

¹⁰ The feminist critique of the state and the law tends to be based on the claim that these institutions were formed in unjust, male-dominated and white-dominated conditions, and as such, might contain exclusionary social patterns. Hirschmann notes that whilst state intervention is needed to protect women from domestic abuse, it might unfortunately carry out the risk of exposing them to 'patriarchal and often racist state intervention' (2006: 202). Feminist arguments in support of a protected private sphere can be found also in Cohen (1997), Elshtain (1997; 1981), and Rhode (1991).

¹¹ Early socialists usually lamented the destruction of the familiar and private life of the workers brought forth by capitalism (see Walzer, 1983: 232-3). Marx and his followers tended to place the realisation of private autonomy for all only *after* the establishment of communism (see discussion in Habermas, 1989: 128-9). The standard socialist position, however, is simply that just economic conditions and opportunities are a precondition to the enjoyment of private freedoms (Habermas, 1989: 148; see also Cohen, 1991).

interference, or lack of external restrictions or coercion. An autonomous private sphere is posited as a necessary condition for human freedom: its contours would coincide with the range of activities and choices in the exercise of which human beings ought not to be obstructed by others. Although this kind of argument does not necessarily exclude commitments to other values, freedom is defined independently from them (see Pettit, 1997: 9). In other words, this is a perspective closely associated with the conception of freedom defined by Isaiah Berlin as ‘negative freedom’. Even when the authors who espouse this vision do not explicitly articulate a conception of protected private sphere, such a notion is usually implied in their argumentation. Broadly speaking, this argument emphasises the avoidance of external evils rather than the enjoyment of specific private goods.

Although Berlin was sceptical about the use of the private/public distinction, because, he said, ‘too many territories have been claimed by both’ (Berlin, 1991: 32), and argued that negative freedom could take many forms, including simply fundamental rights, a notion of protected private sphere was strongly implicit in his writings. Negative freedom, for him, was ‘the area within which the subject -- a person or group of persons-- is or should be left to do or be what he is able to do or be, without interference by other persons’ (Berlin, 1969: 121-2). He conceded that freedom was neither an absolute good, nor the primary good (123), and that there were circumstances in which a relative curtailment of freedom in favour of the protection of other values was justified.¹² Nevertheless, it was a requirement for him that there be a minimum of protected individual freedom, an ‘area of personal freedom which must on no account be violated... a frontier between... the area of private life and that of public authority’; (124) ‘...frontiers of freedom which nobody should be permitted to cross.’ (164)

¹² Berlin seems to admit that if the arbitrary, human causes of poverty can be established, then poverty can be construed as lack of freedom (1969: 123).

Proponents of minimal forms of state often defended similar arguments, albeit with very different qualifications. Friedrich Hayek's theory of freedom presupposed 'that the individual has some assured private sphere' (Hayek, 1960: 13) that protected him or her from being forced to be an instrument of others' designs. For him, 'a man's house is his castle and [...] nobody has a right even to take cognizance of his activities within it' (142). Hayek recognised that the state's threat of coercion was needed to protect coercion from individual to individual, and the interference of one in the private sphere of another (see 1960: 139), but argued that care should have to be taken to minimise this coercion as much as necessity allowed. A proper private sphere required that the people should be able to decide what should and should not be included in it, otherwise there might be risks of generating more coercion (139-140).¹³

This perspective was committed, in addition, to an implicit assumption that a retrenchment of politics was required for freedom, in such a way that the scope of these two aspects appeared to be inversely related. Hence, freedom would be better protected in that sphere in which politics was most absent. This conception was thus opposed to what was perceived as the ancient classical conception of freedom, that is, freedom as political action, which construed the non-political private realm as the sphere of necessity or unfreedom (see Arendt 2006).¹⁴ Unlike Hayek, Berlin agreed that politics and the state should have an extensive role in realizing social justice. But within the framework of non-interference from which he was writing, this could only be conceived as curtailment of freedom for the sake of greater goods (see Pettit, 1997: 35).

¹³ Hayek's viewed liberty, however, not in terms of non-interference, but in terms of non-domination, or absence of coercion.

¹⁴ A classical statement of this distinction was provided by Benjamin Constant. For him, the liberty of the ancients (political participation) was no longer possible in modern conditions. Modern liberty would consist, by contrast, in 'peaceful enjoyment' of the private life (Constant, 1988: 316). Nevertheless, the idea that the ancient Greeks and Romans understood freedom mainly in terms of political participation is not entirely accurate. Some notion of non-interference can be traced back to these cultures (see Pettit, 1997: 27-8).

b) The 'self-development' argument

The second way in which the normative value of a protected private sphere has been defended is by positing that it is necessary for the development of fundamental human capacities. This conception might be seen as closely connected with the conception of freedom that Berlin named 'positive', that is, freedom from restrictions to achieve specific goals. The various thinkers who have adopted this form of argumentation are not necessarily in agreement as to what kind of 'positive' goal should be achieved. For John Stuart Mill, it could be defined in terms of 'self-respect', 'self-development', 'duty to oneself' (1989: 79), 'self-regarding conduct' (84), or in Rorty's words 'self-creation' (1989: xiii). This is the position to what most liberal authors in the 19th century and first half of the 20th century subscribed, and it was to this that, in part, Isaiah Berlin and other liberal thinkers were reacting to in the 1950s.

Mill, Constant, and von Humboldt, and similar liberals or 'proto-liberals' did not hold a radical distinction between 'positive' and 'negative' freedom in the sense espoused later by Berlin.¹⁵ Although they agreed with a notion of freedom as non-interference, they went further and posited that some sort of private sphere was needed for particular forms of human self-realization or development (see Geuss, 2001: 92). It was crucial for these specific human capacities that they were left on their own to reach maturity and to flourish, without obstruction from the state (see, for instance, Mill, 1988: 327). This claim involved a commitment to the idea that some human purposes are more desirable than others, and emphasised more the concrete goods of the private than the avoidance of intrusion. These thinkers spoke constantly about the 'enjoyments' and 'pleasures' of private life.

¹⁵ Berlin, indeed, accused some of these thinkers of having driven away from presumably purer form of individualism (1969: 152).

Mill is known as one of the most important proponents of private autonomy. Although he did not theorise about the private sphere in the same terms in which this is done in contemporary contexts, the conception of a protected private sphere can be logically derived from his writings. What concerned Mill was the necessity of protecting dissenting minorities from the pressure of public opinion and state interference (see Mill: 1989: 83-4) and restraining what he called ‘moral police’ (85) or the enforcement of the religious-inspired laws promoted by the Puritans. As he puts it, ‘with the personal tastes and self-regarding concerns of individuals the public has no business to interfere’ (1989: 86). One of his central points was that the public power could be concerned only with those individual actions that caused harm to others. This is the well-known ‘harm principle’, which is the standard criterion to distinguish the limits of state jurisdiction, and which had been anticipated by Locke and other early modern writers (see Gobetti, 1997: 103).

Preventing these forms of regulation was crucial for the interests of personal development, including the formation of personal opinions and the flourishing of personal creativity. But self-development also required some form of interference: Mill lamented the lack of regulations of family relations that led to domestic abuses, and argued for the need of mandatory children education (1989: 105-6). Despite this, for some, this ‘self-development’ argument still relied on the assumption of the inverse relation between freedom and politics.¹⁶ Possibilities of self-development would increase with the absence of politics. As Constant puts it, the relation was directly proportional in antiquity, but in modernity it had to be inverse. Modern happiness required a separation between the political and individual existence (1988: 325).

¹⁶ Mill is an exception, however, given that he saw politics as a framework for self-development too.

c) The 'political distinctiveness' argument

The third way in which the normative value of a protected private sphere has been supported is by positing that it is required for the constitution of a well-ordered and peaceful public sphere, and for the appropriate working of politics. This perspective is strongly connected with what has been termed the idea of 'liberal neutrality' (see Kymlicka, 1989), or the claim that the state, and also the public sphere and the realm of politics should be neutral towards specific conceptions of the good life, or what John Rawls called 'comprehensive religious, philosophical, or moral' views (Rawls, 1993: xxv), and that their activities should be developed according a 'public reason' that is detached from them. The idea of the private simply follows, as a by-product, from such a view: the private sphere is that domain in which are confined all those aspects which ought not to be included in the political such as, in the modern liberal view, religion, special relationships and favouritism, metaphysical commitments, and so on (Geuss, 2001: 79).

Although proponents of this view do not normally deny value to the private, in itself, they tend rather to emphasise the political or public (see Weintraub, 1997: 28). The private is needed also for the integrity of the political, and they should be separated for the sake of the latter. It is evident that this argument involves a rejection of the assumption that freedom and politics are inversely related. For most of these thinkers the assumption is not simply inverted, because the private is associated with enjoyment of different forms of freedom. Some thinkers, on the other hand, were not particularly concerned with freedom at the political level or the integrity of political action, but were motivated rather by the idea of making politics less dangerous or less oppressive. Intractable conflict in the political realm is managed by reserving to the private what is highly divisive (Walzer, 1984; see also Mouffe, 2000: 28; for a critical account), or those ideals that are worthy but cannot be subjected

to critical scrutiny, such as beauty, perfection, religiosity, and happiness (Popper, 2008: 121 and 1990: 218).

The contemporary liberal approach has been dominated, of course, by John Rawls and his disciples. Rawls was uneasy about the term ‘private sphere’, on account of the individualism that it seemed to convey (Rawls, 1993, 220), but his theories implied a specific conception of a protected private domain. He preferred to distinguish between the ‘public’ and the ‘non-public’, and included among the latter the domains of voluntary associations and the family. For him, specific conceptions of the good life ought to be excluded from public deliberation, in order to develop a ‘public reason’ upon strictly political conceptions (10). Rawls proposed what he called a ‘division of labour’ between principles, arguing that *political* principles of justice should apply only *indirectly* to the family and other voluntary associations (Rawls 1997: 790).¹⁷ These principles would constrain the family and voluntary associations insofar as their members are citizens with rights, but these principles must ‘leave room for a free and flourishing internal life appropriate to the association in question’ (790).

Habermas’ theory of the public sphere and the political is a powerful rival of Rawls’, but both thinkers tended to agree on the character of private autonomy. In the early phases of his thought, Habermas was rather sceptical of the possibility of claims to private autonomy in modern societies, arguing that the private has been reduced to leisure and consumption, and that the modern family provides not more than an ‘illusion of privacy’ or ‘pseudo-privacy’ (Habermas, 1989: 157-9). His mature thought, however, upholds the need of a protected private sphere in which the personal rationalities which supply the public sphere are nurtured. He has argued that political and private autonomy are co-original and possess equal weight, presuppose and reinforce each other (Habermas,

¹⁷ ‘As he put it, ‘We wouldn’t want political principles of justice... to apply directly to the internal life of the family... at some point society has to rely on the natural affection and goodwill of the mature family members.’ (Rawls, 1997: 790)

1998: 314). During his debate with Habermas, Rawls accepted this conceptualisation, recognising the ‘mutual presupposition... between the ancient and modern liberties’ (Rawls, 1995: 163).

1.4. Criticism of the Autonomy of the Private Sphere

The criticism of the private sphere involves many complex arguments from a wide variety of theoretical perspectives. Most of them, nevertheless, tend to gravitate around the following general lines. The first two arguments described below underscore problems of coherence in the conception of a protected private sphere, and the other two arguments stress that private autonomy has undesirable social costs. Whilst the second chapter present arguments for a protected private sphere, responses to these criticisms are laid out in chapters three and four.

a) Vacuity

This critique holds that a protected private sphere is unnecessary, incoherent, or empirically impossible. It is usually posited that it is unnecessary because all the goods that it is supposed to protect are protected already by the existing package of constitutional fundamental rights (see Thompson, 1975). Claims to autonomy, therefore, are to be made simply in terms of these rights. It is argued, additionally, that it is incoherent because is not possible to reduce all the many usages of the notion of the private to a sound definition. Various activities are included in the private sphere for disparate reasons, and there are no common principles to ground these inclusions. As Raymond Geuss puts it, ‘We do not have a clear grasp... of public and private as marking out two clearly distinct domains... each of these categories is a disordered jumble of different things...’ (2001: 109). Finally, it

is posited that it is empirically impossible on account of the mutual interdependence and interconnectedness of human beings who live in modern societies. Technological advance would reduce the chances of enjoying private domains even more (see discussion in Habermas, 1989: 156).

b) Individualism

This argument holds that the idea of a protected private sphere are committed to untenable individualistic assumptions about the human condition, and ignore the way in which human beings are socially situated and are socially constituted (see Fairfield, 2005: 8). The problem with a conception of private autonomy would be that it wrongly assumes that citizens need to raise ‘walls’ between themselves to achieve their own self-realization (Geuss, 2001: 91). The development of the fundamental human capacities, however, requires the resources that can only be provided by larger societies and cultures, not by the family (see Taylor, 1985). It would be incoherent to encircle citizens, for the sake of self-development, between walls that would prevent them reaching the very resources that are needed for it. This critique, in turn, might simply take the form of a warning that the notion of a protected sphere fosters individualism. For Raymond Geuss, this ‘individual subjectivity’ that is ‘barricaded off against all others’ stands in opposition to a more-desirable notion of ‘fraternity’ (2001: 92-3).¹⁸

¹⁸ Geuss’ general point is that instead of separations from society, what needs to be assured to those who fear undue social pressure is that society is corrected (see Geuss, 2001: 93).

c) Social justice

This is, perhaps, the most common and most important critique of the autonomy of the private sphere. It holds that this autonomy has contributed historically to the oppression and exclusion of women, children, non-white populations, and others, and to conceal domestic abuse. This critique is particularly associated with feminism¹⁹ although, as said before, many feminist scholars propose a redefinition, not a rejection, of the conception of private autonomy. Feminism has held, in the words of Catharine MacKinnon, that for ‘women, the private is the distinctive sphere of intimate violation and abuse, neither free nor particularly personal. Men’s realm of freedom is women’s realm of subordination.’ (1989: 168). Feminist also argue that the distinction between the private and the public has obscured and excluded the realms of domesticity and the family from political theory (Pateman, 1983: 284; Weintraub, 1997: 28). This critique is also reiterated by critical race theorists, who have pointed out that the private sphere might serve to shield racist expressions and patterns, and to reproduce them in this way (see Goldberg, 2014: 29).

d) Undesirable de-politicization

This critique claims the opposite of the ‘political distinctiveness’ argument described in the previous section. Its main point is that a protected private sphere serves to exclude from the political and realm many aspects that have legitimate claims to be politically addressed. The argument assumes that citizens ought to bring into the political the interests of the local communities in which they are embedded, and that the distinction between the private and the political forces them to detach

¹⁹ Carole Pateman, for instance, has argued that the public/private distinction is ‘ultimately, what the feminist movement is about’ (1983: 281).

themselves from these interests, and to assume an abstract political role. As Marx puts it, the distinction implies that a citizen has to ‘divide up his own essence’ into private citizen and citizen of the state, and has to renounce his or her own ‘civil reality’ to enter into the public (Marx, 1992: 141-2). A large number of relevant aspects, such as class distinctions, are left without political significance (144). Political emancipation would be possible only when the abstract political citizen is united with the everyday human being (Marx, 1964: 31). Other authors, in turn, might argue that the separation between political and non-political is simply unrealistic (see discussion in Rorty, 1989: 85, and Sandel, 1998: 182)

* * *

These are, in sum, the most relevant terms of the debate, as it stands now. The contribution of this research, which is developed in the next two chapters, recasts and corrects elements from the various perspectives in the third section to build a new theoretical synthesis. Responses to the critiques to the autonomy of the private are implicit in the next chapters, but will be explicitly summarised in the conclusion.

Chapter Two

Reasons to Separate the Private and the Political

‘... a man’s castle building at his fireside... is one thing, while what happens in a great Assembly, when one shrewd idea devours another, is something quite different.’

Georg W F Hegel (1952: 294)

‘... let us ask the authorities to keep within their limits. Let them confine themselves to being just. We shall assume the responsibility of being happy for ourselves.’

Benjamin Constant (1988: 326)

The main criticisms of the autonomy of the private that were laid down in the previous chapter are tantamount to two major claims: that such autonomy (a) is unnecessary, and that (b) it has undesirable consequences. The apparent consequence of these assertions would be that the concept of a protected private sphere ought to be discarded and that the private has to be extensively politicised, or at least remain widely opened to politicization. The theory proposed by this thesis responds to these claims sequentially. This chapter addresses the first claim by arguing that there is a need of acknowledging to the private sphere some form of autonomy from politics in modern societies, both for the good of citizens and for the stability and justice of their political communities; and that this necessity is of such extent that abolishing any notion of a separation between the private and the political would incur in many undesirable social and political costs. The first section addresses the question of the private

sphere and rights; the second section posits four arguments that show that a protected private is necessary as much as the protection of fundamental rights.

2.1. The Private Sphere and Rights

One of the most important debates about the private concerns its relation with fundamental rights (see Thompson, 1975, and reply by Scanlon, 1975). It might seem that a protected private sphere is justified only if it can provide at additional value or benefit that it is not already provided by these rights.²⁰ The distinction between fundamental and political rights in modern constitutionalism, in some sense, mirrors the private/public distinction (see Habermas, 1989: 223). There is no space here to address the many aspects of this debate, however. The arguments described below do not consider many aspects in which the functionality of the private might overlap with that of rights. They propose a set of benefits that cannot be provided entirely by an approach that focuses exclusively on rights, and hence, imply that an approach that combines both fundamental rights and a protected private sphere is better for modern political communities.

There are also structural differences in the conceptions of rights and a protected private sphere that generate diverse and complementary benefits. The former are universal and more abstract categories (as the right to personal integrity) and the latter are formulated in more specific terms (as the right to control personal information). Whilst the former is open to interpretation and application to specific contexts, the latter could serve, then, to protect the culturally-specific form of certain activities. Thus, not all human beings belong to a religious community, and there cannot be

²⁰ This problem is similar to the problem of whether fundamental rights suffice for addressing multicultural aspects, or whether additional principles are needed (see Barry, 1997: 4; Kymlicka, 1995: 5-6).

universal rights that protect *everything* that concerns the complexity of religious practice. Claims to protected spheres of action, or lack thereof, are helpful to assess divergences in the application of political morality in these cases.

2.2. Four Arguments in Support of the Autonomy of the Private Sphere

There are at least four main reasons to argue that some form of autonomy of the private sphere from politics is necessary for modern political societies. These are described below. On account of the interdependence of the various parts of the theory proposed by this thesis, some elements that are discussed in the next chapters might be anticipated in the present discussion.

a) The argument of self-development

This argument is a revised form of the second argument described in the third section of the first chapter. It holds that an autonomous private sphere is a precondition for the development of fundamental human capacities, or as Charles Taylor calls them, a set of capacities ‘which commands respect’ (1985: 192). It is clear that citizens are entitled to make free choices concerning their orientation of their life plans and activities. But in modern conditions, they have to develop their activities in a context that presupposes the jurisdiction of private law, the legitimate scope of the activities of other citizens, and the welfare operations of the state. Both private law and welfare provisions can be construed as creators, not obstructers of freedom, as will be seen in the last chapter. But, on account of this constant interaction between politics and personal choices, the danger of

encroachment of the former upon the latter becomes permanent. Individuals must be entitled, then, to claims to defend the autonomy of their choices in these cases, and this is provided by a protected private sphere.

Claiming that specific rights are being violated by these encroachments might be effective, but the moral discussions are improved significantly if individuals can refer to specific activities that are presumed to be protected from interference. It should be noted that this argument is not committed to very specific and concrete visions about human self-development or perfection; it rather gives to this concept sufficient wideness as to accommodate different conceptions of the good and different forms of ‘self-creation’, whilst preserving the necessary conceptual boundaries to affirm the worth of certain human activities. There is no need to accept what Geuss somewhat disparagingly calls ‘Romantic goals’ (2001: 91), then, to agree with this argument. Positing that there is a pre-established goal of self-realization underlying these many activities, might be defensible on other grounds, but this is beside the point.

The argument does not imply either that self-development requires isolationism. Wants, preferences, and aspirations are socially formed; they depend on the options that society provides to people, and the means it offers to attain them (Dewey, 1927: 106). Moreover, self-realization almost invariably involves social practices, such as friendship or work. But individuals are entitled to choice between these options, and within these options, and to integrate them all into their life plans, according to their designs. And they need moral claims to protect the activities that are tied to these choices, whenever there is a threat that political encroachment, or social intervention, might disrupt them. Political regulation is needed in most spheres, but the responsibility for delimiting its proper space cannot be left to politics itself alone, and individuals must have resources to defend the spaces for their choices and activities.

Many liberals like Berlin tend to be sceptical of any affirmation of self-development as a basis for political norms, because they tend to assume that such affirmation could lead to a dangerous paternalism, or would simply violate the neutrality of the state, committing it to a sort of conception of the good life that is not shared by all. But these problems are neutralized if the idea of self-development is separated from particular life orientations. Of course, it is clear that positing a private sphere is not enough to ensure a proper self-development. This measure ought to be accompanied by a proper protection of each's place in the public, social, and political spheres (see Habermas, 1998: 400-1). But a necessary condition to ensure this self-direction, and the integration to the various activities into a meaningful life plan, is that citizens be to some extent protected from societal or political pressure. This is particularly beneficial for historically-oppressed populations, exposed as they are to discriminatory bias in the ordinary operation of political bodies.

b) The argument of logic of coordination and distribution

Relying on Michael Walzer's theory of complex equality (1983), this argument holds that the relations, goods, and values that are proper to affection, friendship, and family ties possess a logic of distribution and coordination on their own that is distinct from the logics of distribution of other domains.²¹ This logic cannot be transferred to social or political bodies or processes without severely disrupting these goods and values. Too much political regulation would limit the ways in which these goods are shared according to their own logic. Furthermore, the logic of distribution of politics itself ought to be

²¹ The word 'distribution' is used here in a very general sense, and does not entail 'commodification' of such goods as love and friendship. But the fact that this usage might appear improper supports the very point of this argument.

protected from the latter as, for instance, in the prevention of nepotism or subjective favouritism in public processes (see Walzer, 1983: 227). Therefore, a sphere in which affection, friendship and families ties is separated from politics is necessary. The constitutive elements of that logic would include love, loyalty, forgiveness, shared memories, and so on, all of which, according to general intuitions, are closely tied to personal choice, consent, or spontaneous affection, and whose control cannot be absolutely delegated to others.

Walzer's claim that the principles of distribution of goods are intrinsic to their social meanings has been strongly criticised, and for very good reasons (see Barry, 1995: 71; Arneson, 1995: 239-40). But it can be safely argued that such claim coincides with general moral perceptions at least in the case of love and affection, religious and personal experiences, and similar dimensions, so much that these goods are considered spurious when are not personal and freely-given or freely-accepted (Miller, 1995: 5). As Judith Andre puts it, the 'essence of friendship and love is an inner attitude beyond the reach of the law' (Andre, 1995: 175). Undoubtedly, this argument presupposes the presence of a private law the main function of which is preventing that personal relations become harmful to the rights of the involved individuals. Thus, the law ought to prevent and halt sexual intercourse between adults and minors, marital rape, children abuse, domestic violence, and so forth. But individuals are not only concerned with the protection of their rights, but also with the protection of free relations or communities of affection.

Additionally, personal and familial ties are intermingled with relations of economic and political dependence and acquired obligations on which many of these rights hinge and, hence, it is pertinent for private law to care about these obligations. But private law ought not to go beyond protecting the context in which affective ties develop, and should be careful not to disrupt these ties, or impose upon them an orientation that does not come from those who are directly concerned with them. Thus, for instance, it is accepted that children can be legitimately separated from their own

families when their well-being is in risk. But this practice, indisputable in cases of serious danger, ought to take in consideration the affective disruption that the separation implies for the children themselves, and ought not to be extended beyond what is proportionate to this cost. For the judgement of these and similar cases, it is necessary to define a boundary that demarcates the logic of distribution that is proper of these personal goods and values.

c) The argument of normative orders

The previous argument established that some logics of distribution are intrinsic to some goods, and that these are non-political. This argument, in addition, proposes that individuals are entitled to devise logics of distribution on their own for specific goods and values, and that these might constitute local ‘normative’ orders of customary, voluntary, and socially-shared codes, which are entitled to some forms of private autonomy from politics. The reason is that citizens have not only the right to discern personally upon the proper conception of the good life, without interference, but also of pursuing it in their own lives. And this pursuit would require the adoption of particular patterns of life, or personal norms, ideals, and aspirations that shape the orientation of the actions of each person, and provide the parameters by which these actions are integrated into personal life-stories. These patterns might be personally crafted, or drawn from existing moral traditions, secular or religious, might adopt the form of virtues, or duties, or civility norms, but they would serve the same function.²²

²² It is not implied, of course, that all these domains of personal ethics are right or equally valuable. The various moral views of citizens might be incompatible, but this argument does not require adopting the relativist position that conflicting general principles are equally right. It is implied, simply, that politics ought not to decide on behalf of individuals, and that the latter are morally responsible for their moral choices. But these choices might be legitimately criticised (and defended) from others’ moral points of view, at the social (non-political) level.

But if other normative orders encroach too much upon the dominion of these private orders of personal and interpersonal ethics, the function of the latter might be impaired.²³ It is clear that they can never be absolutely separated, for these ethical domains presuppose the respect of public and private law. But Private law does not ‘create’ relations and local norms; it rather *superimposes* new norms upon existing institutions with internal norms on their own (Habermas 1998: 353). Otherwise, the political order would import patterns of behaviour into the domain of personal ethics, and the person’s capacity to orientate his or her behaviour according to a personal life plan might be compromised.²⁴ This is also true of families and voluntary association where communal forms of life are shared: these are entitled to develop their own internal codes in order to develop their shared goods and values. Religious institutions, for instance, require internal norms that are specifically suited to religious purposes and which are legitimate and ought to be free from politicization insofar as they don’t involve harm, violation of fundamental rights, or violation of the law.

This separation from politics is also required to preserve the dynamic of communication that is required by domains of private morality. People perceive the world and their life experiences through the languages and universes of discourse in which they are embedded. It is crucial that everyone should be able to participate in the shaping of these languages, and that everyone should be able to articulate their own experiences in the language that is proper to them. A product of the historical denial of this opportunity is that many minorities had to learn to think, communicate, and understand themselves using linguistic patterns that have been shaped by privileged sectors of society

²³ Law and morality are not, of course, two separate domains. Private law interpenetrates with the private, and morality should also regulate the political. The political/private distinction cannot be made to correspond to the law/morality distinction (see Habermas, 1998: 109). But these are normative contexts in which more particular domains of politics and personal regulation can be distinguished.

²⁴ Interestingly, it has been noted that intensive politicization of the private has a counter-productive effect. It has not normally produced more public participation, as people tend to retrench to more private areas or activities (see Weintraub, 1997: 16; Mill, 1989: 83; Bobbio, 1987: 56). This was the case in the Communist experience (see Garcelon, 1997, 16; Shlapentokh, 1989: 227)

(Hirschmann, 2006: 209-10), and which often contained patterns of exclusion and domination. Protecting the freedom of these communities has been tied to the project of opening spaces for them to shape the societal conceptual frameworks (217). But for this purpose, claiming protection of fundamental rights is not sufficient; what is needed is to protect from interference specific channels of communication and self-regulation.

This argument does not imply that a common social language is unnecessary, or that import and export of concepts between different spheres of society might not happen. But private domains should be allowed to develop a set of linguistic patterns by which they can articulate their life experiences. Politicization, insofar as it would lead to an immediate translation of private experiences into a common political language, and would import political concept directly into the private, might obscure much of the particularity of these experiences, and obstruct the channels of communication that are internal to families and small communities (see Habermas, 1998: 369). For the development of these linguistics practices, a relatively self-contained sphere of communication is needed, and this is provided by an autonomous private sphere. As said previously, the private might serve as instrument of justice by allowing minorities to frame their experiences in their own linguistic frameworks.

d) The argument of dispersion of power

This argument holds that an autonomous private sphere is required to maintain an adequate distribution of power among citizens, both to prevent the coercive use of centralized power, and to ensure that citizens are sufficiently empowered to establish, demand, and protect fair relations between themselves, and between them and their respective governments. It is held, in this view, that permitting the extensive politicization of the private would have as a result a strong centralization of

power in collective action and decision, and will deprive individuals from the necessary conditions to dissent and resist in the cases in which collective action might take an arbitrary direction. The power afforded by the private to its owners is that of having the capacity to claim autonomy from politics in a number of activities which are fundamental for their life, reducing the range of possible coercion, and in activities which, even as private actions, are a crucial basis for their action as political agents.

In the liberal and republican traditions, as is well-known, a crucial element has been the awareness of the possibility that power might be misused for oppressive purposes, even this power is already embodied in well-functioning and good institutions. The solution has been, of course, to disperse power and to prevent its concentration (see Pettit, 1997: 177-80), so that if one power-holder deviates from its legal course, it might be contained by the other centres of power. This is a generally-accepted principle that does not deserve any special comment. The present argument, nevertheless, goes farther than the standard interpretation of this principle by holding that the separation between the political and the private ought to be included among the standard modern institutional separations (see, for a similar claim, Walzer, 1984), so that a necessary amount of power is distributed to all people, and the capacity of regulation is never transferred in its *totality* to the realm of collective action and decision.

The benefit indicated above is straightforward. Because individuals have legitimate claims to autonomy over certain activities and affairs, limiting in this way the ordinary scope of politics, an arbitrary turn in the political might have in principle a limited range of activities that it could subject to arbitrariness, and those would exclude activities that are fundamental for citizens. This purpose is to some extent achieved by fundamental rights. But the conception of a private sphere allows protecting more specific activities, channels of communication, and spaces increasing the individuals'

share of power even more.²⁵ This argument, of course, relies on the idea that an arbitrary deviation of collective decision-making is always a possibility, even if political institutions have performed well for a long period of time, and is as such deeply rooted in the ancient liberal tradition. This is the reason why Mill, Tocqueville, and others, not only advocated the strengthening of the public sphere but also, at the same time, warned about its possible deviations.²⁶

Thus, the argument is strongly tied to the principle of contestability of political institutions which, from a certain point of view, might be considered even more important than consent (Pettit, 1997: 12). This principle is based on the idea that, besides of the competence of the government to constantly survey the protection of individual rights of citizens, there is a need that citizens should exercise surveillance upon the incumbents in the government. But the possibility of this double surveillance is best assured when there is concrete sphere in which individuals are free from state surveillance. Otherwise, the differential level of immediate power between the government and individuals might work at the latter's disadvantage. Undoubtedly, there is no guarantee that a government would respect the boundaries of the private after a strong authoritarian turn, but a broad dispersion of power facilitates less such event that a given concentration of power in public bodies.

This argument can also be framed in terms of non-domination, of what has been called the neo-Roman or republican conception of liberty. This conception holds that freedom requires not only absence of arbitrary interference from others, but also that these others should significantly lose the

²⁵ Because the concept of fundamental right is more abstract, there is a need to develop specific interpretations to connect it with some particular activities, and political bodies have power over the final interpretation. The conception of a protected private sphere, by contrast, starts by the presumption that some activity ought to be protected from interference, and then this presumption needs to be proved or defeated. Access to both increases individual chances for contestation.

²⁶ Furthermore, whilst the public and political spheres might provide a healthy scrutiny of private actions, they might represent in some cases, 'compulsion toward conformity' (Habermas, 1989: 133).

power or capacity to interfere in one's affairs (see Pettit, 1997: 5).²⁷ Pettit and other proponents of freedom as non-domination acknowledge, of course, that the state is always a potential dominator, and argue that proper constitutional checks are needed to prevent that it become an actual dominator (Pettit, 1997: 36, 150). The constitutional checks are helpful for these purposes, but they cannot guarantee a general invulnerability to arbitrary interference. And they constitute, as such, an element that is internal to the potential dominator's power share. But such invulnerability might be best assured by establishing, in addition to these checks, norms that increase the share of power of citizens vis-a-vis political bodies, and this objective can be achieved (if not totally at least significantly) by limiting the scope that can be regulated by political processes, and this is provided by a protected private sphere.

* * *

There are other arguments worth considering in this respect, but which had to be excluded on account of restrictions of space. One of these holds that a protected private sphere is needed for the development of the rationality which supplies the public sphere (see Habermas 1998: 368-9). Nevertheless, the four arguments presented above suffice for making a case in support of separating the private and the political. Undoubtedly, a number of objections to them might be anticipated. Critics might argue, for instance, that the third argument provides no solution to the problem that many local communities might develop normative orders that are highly detrimental to their members, although they do not involve the violation of fundamental rights that would make an intervention

²⁷ As Pettit put it '[t]he point is not just to make arbitrary interference improbable; the point is to make it inaccessible.' (Pettit, 1997: 74)

indisputable. These and other similar problems, it is proposed, could be solved by adopting the reconceptualization of private autonomy that is laid out in the next chapters.

Chapter Three

Reconceptualising the Private Sphere

‘The idea of privacy presupposes the equal value... of all private lives; what goes on in an ordinary home... is entitled to as much protection, as what goes on in a castle.’

Michael Walzer (1984: 320)

Liberalism ‘must reject only those political doctrines that do not recognize any difference between the spheres of the personal and the public... The important point for liberalism is not so much where the line is drawn, as that it be drawn, and that it must under no circumstances be ignored or forgotten...’

Judith Shklar (1989: 6-7)

Having established in the previous chapter that a protected private sphere is required for the justice and stability of a well-ordered society and for personal self-realization, a theory is proposed now that attempts to modify the normative basis of the autonomy of the private in order to harmonize it with effective solutions to the various problematic aspects and historical injustices to which the private has been associated in the past. This chapter, thus, argues that there is no need to eschew the conceptualisation of an autonomous private sphere to properly address these various problems. The first section proposes a new conceptualisation of the private; the second section examines the definition of the content of the private; and the third section reformulates the relation between the private, freedom, and politics.

3.1. *A Political Conception of the Private*

It is convenient, first of all, to determine the concrete internal structure of this new conception and the conditions that are required for its proper normative application. The first aspect to note is that it is not possible to speak of a concentrated and self-contained ‘sphere’. Critics have rightly argued that the sum of all the ways in which society often draws the distinction between the private and the political generate not a clear boundary but ‘a series of overlapping contrasts’ and that the many goods or activities included in the private tend to be very disparate, and the reasons to define them as ‘private’ in ordinary life are often disconnected, and do not cohere with each other (Geuss, 2001: 6, 105). Since the various conceptions of the private are ‘neither mutually reducible nor wholly unrelated’ (Weintraub, 1997: 2), it is a complex task to find a general principle that is valid for all of them.

It is clear that such terms as ‘sphere’ and ‘realms’ are metaphorical constructions, albeit necessary, not designating any visible spatial dimension, nor any kind of scope that could be easily transposed into a graphic representation (see Freeden, 2013: 114). Although many activities of the private would tend to fall *per se* in domestic spaces, and the principle of inviolability of one’s home as such is a proper constitutional guarantee of one’s privacy, private activities take place outside domestic spaces, and aspects such as domestic violence are of political concern.²⁸ Furthermore, a large number of activities considered as private would rather be intermingled with others which can be considered as social or public, as in the case of driving cars. Hence, the principle of the autonomy of the private

²⁸ Some notion of spatial distribution of principles, however, might be applied to the notion of privacy (which is, as said before, usually connected to the notion of accessibility and information). But even here, the requirements of privacy do not ordinarily require a specific space, and its assignation would depend on the context.

does not delimitate domains as such, but rather *activities* and *goods* that would tend, in some cases, to interpenetrate in certain spaces.

The autonomy of the private should be understood, as Rawls (1997: 791) suggested, as a differentiating principle by which the moral and political standing of certain activities and goods are determined, and the principles that apply to them are defined. In a nutshell, the autonomy of the private is that principle by which citizens could legitimately claim that certain activities or goods are not political or ought not to be politicized, and by which political organs might decide that it is not appropriate to interfere. Although, in reality, the activities and goods for which the principle of the autonomy of the private can invoked and those for which it cannot might interpenetrate (1997: 791), this fact does not mean that the conception of the private has no real effect in daily life, because these activities and goods are interpreted and ranked differently by citizens, and the various public activities would normally serve as backdrop for the integration of the various of private activities into personal life plans with narrative unity. The sum of these various activities and goods constitute the private sphere, and the notion of ‘boundary’ embodies the normative claim of autonomy.

Although Geuss and other are right in pointing out the impossibility of reducing all common definitions of the private into a single coherent one, this is not a problem because such an exercise is not necessary. It suffices simply to define a *political* conception of the private sphere which does not coincide with all the ways in which the notion of the private is invoked in ordinary language, but which is primarily concurrent with a fundamental usage, namely, that of immunity for politicization. It is this usage which is, ultimately, crucial for the reasons laid out in the previous chapter, and it is not a problem of notions of the private are used differently in other contexts (to describe economic activity, or information, or accessibility, or etiquette, and so forth). This would give to the conception a level of concreteness that permits its transposition to different contexts and different discursive universes whilst conserving a definite meaning, within the domain of a given political society.

Nor it is a problem that the various goods and activities included in the private sphere, and the reasons to include them, do not cohere with each other (see Geuss, 2001: 10). Unlike the public, the conception of the private is essentially a *negative* conception, that is, the description or prescription of the *absence* of something, in this case, political interference. There might several reasons for which politicization of concrete activities is undesirable, and there is no need for them to have coherence between them. The principle that qualifies all of them to be included in a private sphere is precisely that all of them have a legitimate claim to be protected from politicization. Surely, there must be coherence in how the principle is applied, so that the same thing that is defined as private in a given democratic society for one is defined for all citizens, and these definitions should be maintained unless the boundaries are politically redrawn. But there is no need to have a single principle to define all that is private. It suffices to have a pool of independent or dependent claims to freedom from politicization.

Nevertheless, even if this single principle is not available, the previous chapter suggested a number of major organising principles that might orientate the definition of the private. These include, primarily, (1) the realm of affection, family, friendship, and interpersonal relations, (2) the realm of those elements needed for the development of a self-directed plan of life, (3) and the realm of personal morality and responsibility. Reducing these general statements into concrete elements involves a process of interpretation that might lead to disparate perceptions and a need of deliberation. But they offer an orientating parameter to identify relevant private aspects in most societies. A number of aspects, of course, that cannot be associated with these large dimensions might also have a legitimate claim to autonomy from politics, based either on social conventions or the outcomes of political processes.

Finally, it should be emphasised that the political conception of the autonomy of the private helps separating practices, activities, and goods, but not persons (Walzer, 1984: 325). People are

embedded in networks of relationships and interactions, in which both public, state, social, and private practices interpenetrate. Likewise, they participate in all these spheres in different levels, moving from one to the other continuously. They can separate the activities in which they are involved between political and non-political, and other categories, whilst at the same time remain embedded in their various social contexts, and they can welcome into their private activities those whom they please. It is not accurate to say, then, that positing a conception of an autonomous private necessarily entails an individualistic conception of the human condition. It entails simply that various spheres of action and the interaction with various goods can be fairly separated from political interference.

3.2. Drawing the Boundary

Among the most relevant authors referred to before, only Arendt seems to have assumed that the boundaries of the private are fixed (Arendt, 1958: 73). The majority of authors admit that the boundaries might be drawn differently. Defining the boundary is a matter of ‘haggling’ (Berlin 1969: 124) or experimentation (Dewey, 1927: 64-5), and redrawing them is a ‘perfectly normal political practice’ (Shklar, 1989: 6). A theoretical basis is needed, nevertheless, to determine how these decisions are to be taken. It is highly advisable to preserve Mill’s harm principle as central criterion to distinguish the private from the political. But it is clear that it alone is not sufficient, as it is difficult to apply in cases such as surveillance, the public role of religion and nationality, personal information, and many others. Dewey’s principle of consequences or effects of one’s actions (1927: 12), by contrast, is too vague to be useful (see Geuss, 2001: 81).

In principle, the content of the private sphere is defined by each society, it is derived from what Michael Walzer has called ‘social meanings’ (1983: 10). Habermas has also noted that it depends

on ‘historical circumstances and... on *perceived* social contexts’ (1998: 314). But this criterion cannot be taken as absolute. Otherwise, it is hard to see how social criticism would be possible and how unjust claims to private autonomy might be seriously questioned. The historical experience shows that social understandings might reflect exclusionary, authoritarian or abusive patterns, as for example, when societies have understood domestic violence as a private issue protected from external interference. Criticising them requires moral standards that are external to the various social meanings of the community.

But a political theory cannot demand a *specific content* for the private sphere in all societies. A few liberals adopt that line when they argue, for instance, that religion or nationality should be private in every society; but politicization of these activities has been required for many groups to achieve recognition or to redress historical injustices committed to their communities. Additionally, living a meaningful life, for which the protections of the private are need, can require different activities and resources in each society. A political theory of the private, then, needs to combine both dimensions. It must be open to the context-specific social understandings of the private and allow each culture to define its content, but must provide general norms to assess when such social understandings should be subjected to criticism.

Concerning these general norms that are required for determining the boundary between the private and the political in all societies, and which would constitute the standard by which culturally-specific understandings of the private are to be scrutinized, the following principles are proposed here.

1. There must be equal access of every human being to some form of the private sphere, even if legitimate forms of the private might take different shape and content in different contexts, and for different people. This principle fosters what Habermas (1998: 401-402) has called the ‘equal distribution of individual liberties’.

2. Nobody's activities should be restricted exclusively to the private as a matter of entitlement, and everyone should have access to the social, political, and public realms, in the particular conditions of each case. Pairing the private/political distinctions with gender distinctions, or other distinction of this sort, is not acceptable.
3. Although the private might be construed as corresponding to particular groups, such as the family, voluntary associations, friendly associations, and so on, all these communal forms of the private are always reducible to the claims to the private of each of their members; in other words, each of these members are entitled to claims to the private within these particular groups (see Kymlicka, 2002: 395).
4. The autonomy of the private from politics is itself a political conception, which should be formulated, reformulated, and defended through the appropriate political means.
5. The assistance of politics is needed to support the *context* of private autonomy, and this assistance might not imply, under certain conditions, encroachment of the private.
6. Finally, in extraordinary circumstances, although the boundary between the private and the political should rely on social conventions, this boundary might be redrawn through political means, in reference to a particular activity and a particular good (see Frazer, 2008: 192). In other words, certain private activities might undergo a process of politicization, and some political activities and goods might undergo processes of privatization, in specific circumstances.

The last two principles require further exploration given that they, it is argued here, provide the ground for the harmonization of the autonomy of the private with social justice, and for the prevention of abuses in the private sphere. The next chapter will be devoted to them. Nevertheless, it is convenient before to lay out the framework of reference in which this conception of the autonomy of the private sphere ought to be better understood.

3.3. Reconceptualising Freedom and Politics

The idea of a protected private sphere is perhaps mostly associated with the ‘non-interference’ argument described in the first chapter. But preserving this association is very problematic. Considering such as aspects as private law, welfare provisions, and interdependence of everyday human activities, its demands appear to be unrealistic. In the second chapter, a strong association was posited between the private and self-development, an understanding that would qualify as ‘positive’ freedom in Berlin’s terms. It was suggested also that republican freedom, or freedom as non-domination should be adopted. These associations have two major advantages. Firstly, it is possible to modify the conceptualisation of private law and welfare provisions, for they would no longer appear as encroachments on private freedom that need justification, but rather as assistance to freedom, inasmuch as they contribute to self-development. Secondly, it is possible to narrow the range of protected activities those who are very meaningful to the individuals’ life plans. In this view, regulation of seat belts do not appear to be encroachments on private freedom (see Taylor, 2006)

Some implicit notion of ‘negative freedom’ is to be preserved, nevertheless, in order to avoid the danger of paternalism. A conceptualisation of the private sphere allows on the hand, maintaining some of the notions of self-development that Berlin eschewed, and on the other hand, protecting

individuals from what Berlin precisely feared, namely, some coercing others into particular paths of development (Berlin, 1969: 132). In addition, the inverse relation between freedom and politics, which is typical of many arguments in favour of private autonomy (as pointed out in the first chapter), should not be taken in absolute terms. To the extent that absence of politics means self-direction, and might involve all the benefits highlighted in the second chapter, this view is sound. Nevertheless, emphasizing too much this idea might obscure the fact that politics might *serve* to protect the private, and might intervene into the private in order to protect the very same goods and activities the integrity of which the private sphere is also expected to protect. Politics might be freedom-creating not only in the public sphere, but also in the private sphere.

Thus, although politics is not the proper and ordinary lieu of the private, and this absence is needed for freedom, legitimate interventions of politics into the private are also needed for fostering and protecting self-development. Undoubtedly, the principles of contestability and ‘eternal vigilance’ would advise caution before pressing this point too much. Politics can be *either* a source of undue and abusive encroachment of legitimate private pursuits, or a source of protection of private autonomy. Keeping these two possibilities in view, nevertheless, and denying exclusive emphasis to any of them gives an orientation to the conception of the private that is distinct from the one it had in the thought of Isaiah Berlin and others. The same might be said of the conception of the state. Although most of the proponents of the autonomy of the private have relied on a conception of the state that construed it as a permanently and potentially dangerous, albeit necessary, institution,²⁹ it should be better construed as both the permanent creator and permanent threat of private freedom.³⁰

²⁹ As Karl Popper argued, many liberal thinkers of his generation saw in the state ‘an evil, although a necessary evil’ (Popper, 2008: 123).

³⁰ This was the view of New Deal and Interwar liberals. For Collingwood, for instance, both political interference in order to enforce upon individuals their own self-development (what Berlin feared), and to leave them without appropriate political assistance for that development, would be a mistake. (Collingwood, 1959: vii) See also Dewey (1927: 71, 73).

Finally, it should be acknowledged that it is not possible to posit a private sphere and a political sphere that are radically separated (see Rawls, 1997: 791). The way in which these spheres are truly separated presupposes not only their interpenetration with private and public law, but also a wider social background in which the effects of one sphere reach indirectly upon the other, so they both cannot stand as ‘an opposition but as a nexus of reciprocal connections’ (Habermas, 1998: 397). Because, as said before, it is practices and activities which are separated, not persons, and the same persons ‘inhabit’ these spheres, it is clear that their experiences in each of them will have indirect effects on their experiences in the other. The fact is evident, for instance, in the inculcation of democratic education at home which might produce good citizens, and in effects that public empowerment often have in the terms in which people frame their personal relations in intimate spaces. Critics, thus, are right when they point out the unrealistic implications of conceptions of the private sphere which demand a radical separation.

A strictly interference-free world is not possible. Human beings are, as Alasdair MacIntyre wrote, ‘dependent rational animals’ (1999: 5). But this fact does not mean that it is impossible, within these networks of interactions, to formulate standards by which certain activities are significantly separated from others. Clusters of activities can be accurately identified and their boundaries properly defended from encroachment by each other. But acknowledging this interconnection has important implications. The first is that changes upon one sphere can be effected *indirectly* by provoking changes in other spheres. Injustices or general problems in the private sphere might be corrected by strengthening the position of citizens in the public sphere, or more generally by provoking changes in the culture and society (see Hirschmann, 2006: 211).³¹ Just institutions can prompt just patterns of

³¹ This is because the personal preferences, desires, and choices for which individuals demand freedom are socially shaped (Hirschmann, 2006: 203; see also Taylor 1985). They choose what to do with these ‘resources’ but they inherit them from the communities in which they live. Changes in culture shape, thus, the options from which citizens choose the ‘components’ of their life plans.

behaviour in the private sphere. If they cannot make them entirely just, at least they might decrease their injustice. This was what Tocqueville observed about the effects of democracy on the American family (Tocqueville, 1969: 585).³² The influence might be stronger nowadays, given that citizens are no longer socialized exclusively by the family (see Habermas, 1989: 177).

The second implication is that, even if politics does interfere in legitimate private activities, political processes must take in consideration the indirect influence of both spheres upon each other. Thus, for example, division of domestic labour impacts on public activity, and the law might be appropriately adapted to handle these indirect effects, but should have also in view also what the effects of legislation would be for personal life (see Rawls 1997: 792-3). A third implication is that private autonomy is needed to allow a better flourishing of those aspects which have impact on other spheres, principally the political and the public.³³ Free citizens develop the political means to protect their own autonomy, but these free citizens are formed in autonomous spaces (Habermas, 1998: 314).³⁴ In this way, both the freedom of the private sphere and political freedom presuppose and reinforce each other.

* * *

³² The family remains, however, the *major* source of preferences, capacities, customs, shaping the opportunities that will be available to individuals in their adult life (Walzer, 1983: 229; Rawls, 1997: 778)

³³ Some might argue that, because of the indirect impact of the private on the public, more political control of the former is justified. But the result would be the undermining of the original contributions of the private, and a consequent weakening of the political. As H.P. Bahrdr put it, 'If the element of distance that is constitutive of the public sphere is eliminated, if its members are in too close touch, the public sphere is transformed into a mass...' (quoted by Habermas, 1989: 158-9)

³⁴ And, thus, the private sphere becomes, it was at the dawn of modernity, 'the training ground for a critical public reflection' (Habermas, 1989: 29).

The arguments proposed above respond mainly to the objections of ‘vacuity’ and ‘individualism’. It has been shown that a coherent concept of the private can be formulated despite the cultural variability of the conception and the disparate character of the many activities included in the private sphere. It has been shown also that positing a protected private sphere does not necessarily entail individualism or isolationism. The next chapter responds to the remaining objections.

Chapter Four

The Private Sphere and Justice

'Rules of law... canalize action; they are active forces only as are banks which confine the flow of a stream, and are commands only in the sense in which the banks commands the current.'

John Dewey (1927: 54)

'If the so-called private sphere is alleged to be a space exempt from justice, then there is no such thing.'

John Rawls (1997: 791)

The final chapter shows that the conception of a protected private sphere can be successfully harmonised with social justice. The first section makes a few remarks on the general association between the private and historical injustices, and its implications; the second section proposes a reconceptualization of the role of private law and welfare provisions, and their relation with the private sphere; and the third section addresses the terms in which the boundary between the private and the political can be redrawn. These aspects, it is argued, demonstrate how effective solutions to the various injustices that might take place within the private sphere can be achieved without compromising private autonomy.

4.1. *On the Private and Historical Injustices*

Critics rightly point out that the private sphere has been historically intermingled with exclusion of women and minorities from the public sphere, and that it has served to protect and cover up domestic abuses. As such, it became source for the reproduction of structures of domination. Nevertheless, it is not clear that the existence of a private sphere as such constituted the major problem. In the first of these claims, the problem was rather that these spheres were unequally distributed and under unfair conditions, among the population, and that private autonomy was not enjoyed by all in the household. Despite the various abuses, it is clear that many of the people that were at disadvantage in these ancient systems had, in diverse form, access to some of the goods of the private that have been highlighted before here, such as affection, friendship, self-expression, and others. Granted the arguments of the second chapter of this thesis, a proper response would be to direct efforts to ensure the enjoyment of private autonomy in a private sphere, as well as an equal and just access to the public sphere, to everyone.

Concerning the second claim, at least in Antiquity it is not evident that the absence of a private sphere would have been helpful either. Ultimately, the laws and the dominant culture were also exclusionary and unfavourable to the oppressed populations. The problem was not so much that vulnerable people were unprotected from the law by a private sphere, but rather they had to conform to a system that was exclusionary in its many dimensions. Acknowledging to these populations an entitlement to a private sphere in the household, as a personal privilege (including a claim against the *paterfamilias*' authority), would have paradoxically protected them from an exclusionary legal and social system. As pointed out in the second chapter, a private sphere can prove a strong instrument to allow people excluded from the dominant culture to structure the world in their languages and expressions.

The problem becomes clearer in modernity when legal and political systems expand and develop capacities to prevent and halt domestic abuses, and when the public sphere becomes more inclusive, and claims to the autonomy of the private sphere were used as a tool to prevent the inclusion of historically-discriminated populations or the intervention of the law and the state in cases of domestic abuse. A protected private sphere, thus, served to obstruct desirable social developments. But even in this case, the problem is attributable to a particular conception of the private, and not to the notion of the private as such. A rejection of the whole notion would be justified if it had been devised no more than for these exclusionary purposes, but the notion was itself connected to a number of goods that were owed and were denied to those who suffered private abuse. Interventions to solve these problems had to override these claims to autonomy and de-politicization, but they might have been construed as necessary defences of the claims to private autonomy and enjoyment of private goods of the affected populations.

4.2. The Scope of Private Law and Welfare Provisions

The reconceptualise the role of private law and welfare provisions, a distinction between the *context* and the *content* of the private sphere is crucial. The former would include all those primary goods and facilities that allow living a worthwhile life in a given society, and the latter would include the activities chosen or inherited by citizens and which embody their life stories. The latter corresponds to the definition of private sphere given previously. The context is all that is necessary for everyone to develop private freedom; it must include respect to fundamental rights and access to proper opportunities in fair conditions. Having the appropriate context for private freedom means, to borrow Pettit's words, 'to have the wherewithal to operate normally and properly in your society without

having to beg or borrow from others, and without having to depend on their beneficence', or in other words, 'to have the basic capabilities that are required to for functioning in the local culture' (Pettit, 1997: 158).

But the possession of these basic capabilities is not tantamount to self-development or to the realization of one's conception of the good. It is simply a common denominator upon which one's distinctive life plans and private activities should be superimposed. It is this common denominator, and not the life story that develops within its bosom that is the proper scope of both private law and welfare provisions. In this sense, both cannot be seen as encroachment upon private freedom but rather, as suggested in the previous chapter, as the providers of the conditions that are necessary for the flourishing of the goods of the private sphere. Surely, for many centuries the private realm was also responsible for the provision of these basic capabilities, but in the contemporary conditions the family or other private realms cannot provide alone all that is needed for the development of fundamental capacities (Taylor, 1985: 205; see also Habermas, 1989: 156, 227).

In the case of education, for instance, it is responsibility of political bodies to make reasonable educational options available to individuals, and even enforcing an educational minimum required for survival in today's societies. But these political bodies cannot dictate to citizens what to do with their education, what profession to choose, or how to employ elsewhere what they have learned. The former refers to interventions in the context of the private, and the latter to the freedoms of the private sphere properly. To the extent that the line between these two dimensions is respected, the operation of both private laws and welfare provisions does not imply a loss of freedom; they rather become enablers of private freedom. They create the conditions for personal choices and activities in contemporary societies, but ought not to influence these choices and activities. The same should be said of the enforcement of rights. Interventions in the family to protect fundamental rights and

personal integrity do not constitute encroachments upon private freedom; they are, instead, protections of the fundamental conditions of the private freedom of those affected.

This distinction does not imply that politics has an absolute dominion over the context of private freedom or that it could dispose of it in every possible way. Nor does it imply that providing the conditions for private is responsibility of political bodies exclusively. The operation of private law and welfare provision over the context of private freedom is constrained by fundamental rights and shared principles of distributive justice. Society and politics ought to make available to all citizens as many opportunities and resources as possible, in fair conditions, but it is their personal responsibility to achieve these resources fairly and to develop them. If achieved in fairness, they acquire rights over them, and such possession is crucial for the maintenance of their own private freedom (see Dworkin, 2001: 254). Private law and welfare provisions, in this sense, have to be balanced with other strong principles.

Discussing what would constitute arbitrariness and non-arbitrariness in private law or welfare programmes would involve an unnecessary digression. The central point is simply that, insofar as they are fair, and do not encroach upon the content of the private, they cannot be *per se* construed as interference on individual freedom, but rather as the conditions for its development. In this sense, the autonomy of the private sphere can be compatible with a large number of forms of private law and welfare state. Defining what amounts to contextual conditions would, in turn, depend on the specific conditions of each society. But these would tend to include what has been called ‘presumptive goods’ (Klosko, 1987: 246) or goods that respond to basic needs of everyone and that, as such, can give rise to a presumption that citizens would want them without having made any request. These goods are ordained to the creation of well-being, but not of happiness or self-realization. What is crucial is that politics should provide the roads, as Constant argued, (1988: 323) without telling citizens which route to take.

A fixed element of the context of private autonomy is, of course, the package of fundamental constitutional rights.³⁵ Abuses of fundamental rights within the private sphere should not be merely seen, in this light, as undesirable instances in a protected realm of autonomy, but rather as the violation of the private autonomy of some people by others, a violation that require that private law should help restoring the conditions for the exercise of that autonomy. This would refer, of course, to the various cases of domestic violence. In these cases, as Habermas puts it, '[w]hat appears as a restriction is only the flip side of the enforcement of *equal* liberties for all' (Habermas, 1998: 401).

Concerning direct interventions in the content of the private, care should be taken that these do not provoke a disruption in the normal relations, channels of communication, proper activities, and life plans of the private sphere. Determining the right equilibrium depends, of course of each particular case. In various cases there will be a need of striking balances between different principles and social realities. A number of general principles, however, can provide a helpful orientation. Firstly among these are the principles of proportionality, necessity, and reasonable goal. Secondly, the intervention should become less necessary as long as it is effective and achieve its objective: it would have to favour a return to normal conditions once this objective has been achieved. Thirdly, the principle of 'negative' liberalism can help maintaining a proper distance and neutrality vis-a-vis the life plans and private autonomy of those involved in the cases in question.

'Negative liberalism' refers, properly speaking, to the doctrine elaborated by Karl Popper and others,³⁶ which holds that public bodies ought not to have as objective of their policies the production of happiness, but rather the alleviation of suffering (see Popper, 2008: 125; Shklar, 1989: 9-12). It

³⁵ It has been posited that regulations in the private should be even stronger than public law, on account of the need to protect and enforce fundamental rights (see Habermas 1998: 398)

³⁶ Benjamin Constant anticipated this theory when he claimed: '... let us ask the authorities to keep within their limits. Let them confine themselves to being just. We shall assume the responsibility of being happy for ourselves.' (Constant, 1988: 326)

implies acknowledging, as Popper puts it, that human beings have no claim to be made happy, but have strong claims not to be made unhappy, the former being exclusively their responsibility (Popper, 1991: 158). Adopting this position does not compromise state neutrality as the fostering of particular positive choices, as well as positive conceptions of the good life, is avoided. It only requires preventing the undertaking of a number of considerably bad choices, or halting their effects. It relies only on common intuitions about what constitute particularly grave social evils, intuitions about which it might be easier to achieve general agreement among the population (Shklar, 1989: 11). By observing this doctrine, political action can perform interventions into the private without disrupting citizens' own life-plans and private values.³⁷

4.3. Politicization

Under specific circumstances, on a case-by-case basis, some elements commonly understood as part of the content private might become concerns of determinate political processes (see Habermas, 1998: 400), and in other cases, the boundaries of the private might be redrawn through political means, so that what is included within the content of the private might, through political processes, become a direct concern of political regulation. The difference between these two might depend, undoubtedly, of whether the problem that deserves such procedure is isolated or belong to a general/structural pattern that needs a broad approach to be corrected. Politics might, in these case, take a critical position towards cultural conceptions of the private. The paradigmatic case is, of course, that of

³⁷ Mill opposed the idea of giving the state the right to prevent bad choices, because he thought it would be abused (see Mill: 1989: 82, 84). But in his time private law was less developed. In contemporary times, when the interpenetration of legal regulation and everyday life is higher, this principle can help separating supportive political action from paternalistic imposition of choices.

domestic violence, which for many time was considered a primarily private issue, and which feminists and other activists managed to make, after a long struggle, an object of public concern (see Habermas, 1998: 312).

This openness to politicization and to the redrawing of the boundaries does not weaken claims to autonomy of the private, but implies that in certain cases they cannot be considered absolute. In ordinary political processes, these claims ought to have a significant force so that any fact that overrides it must be properly justified. The process of politicization of private concerns, in turn, is not totally open. It requires a particular deliberation and measurement of motives according to determinate normative principles, and these processes might be properly contested by political agents. The process might be accompanied by unintended consequences: as Norberto Bobbio has argued, historically, the politicization of the private is often accompanied by reactive and concurrent processes of privatization (Bobbio, 1989: 17). Although an exhaustive exposition of the necessary principles to judge processes of politicization of the private is not possible in this space, the most relevant of these can be highlighted.

To politicize a private issue, it must ordinarily become first a matter of public discussion, and then of political deliberation. This constitutes what Habermas calls a ‘public struggle for recognition’ (see Habermas, 1998: 314, 381). The distinction between these two processes is that the former involves societal criticism but does not include any political processes, as the latter does. It is clear that, as Habermas argued (1998: 313), public criticism does constitute involvement in the private affairs of anyone. The political agents that are interested in the process of politicization would have to raise the issue to this level. When the topic is taken up by authorities, put into the legislative agenda, and a new regulation is established, then, the boundaries between the private and politics are redrawn (Habermas, 1998: 314). It would be part of the process to pay attention to those who would contest

the intended politicization of the private, and the officials should judge according to the established procedures.

In general, politicization of the private should be allowed only when it can be safely determined, through the competent procedures and organs, that is in the interest of society that such aspect should be regulated. To determine this case, the following specific principles should be helpful. Firstly, politicization depends on the failures of the private, of personal ethical systems, responsibilities and relationships. Where the private works properly there is no need for politicization (see Pettit, 1997: 148). Secondly, Mill's harm principle should preserve its prevalent status as criterion for politicization. Thirdly, following Mill's advice too, politicization of the private might be necessary to preserve the voluntariness of the relations and practices in the private sphere, so that it is ensured that everyone is entitled to detach himself or herself from any private practice that he or she considers detrimental to personal life purposes or simply not a part of these, and if any disadvantage is undertaken, this should be voluntary and not forced (see Mill, 1989: 92; Hayek, 1960: 138; Rawls, 1997: 792).

Fourthly, when private relations involve not only the communication of affection or leisure, but also the (intermingled) distribution of primary goods, and constant outcomes are severely disadvantageous for the people involved, politicization might allowed in order to ensure equality of status and fairness (Dewey, 1927: 62). Fifthly, when a determinate population is convinced that a certain private feature of their private lives is essential for the appropriate representation of their political interests and the protection of their political rights, then the politicization of this aspect might be permissible. The paradigmatic case of the latter is, of course, multiculturalism and identity politics in which, on account of historical experiences, such aspects as nationality, ethnicity, or identity are given prominent political salience, whilst in other places these aspects remain largely as mere private issues.

* * *

Among the most important implications of the points discussed above is the fact that claims to the autonomy of the private cannot be employed against established usages of private law or standard welfare provisions such as mandatory primary education or vaccination. The case might be, sometimes the opposite: entitlements to private autonomy in a private sphere would ground claims over what is needed for develop that autonomy, in terms of private goods. Claims to private autonomy, might be valid, nonetheless, when it is perceived that both private law and welfare provisions might encroach upon the *content* of the private sphere. The second implication is that legitimate claims to private autonomy might be defeated when, through a proper political process, it is decided that the boundaries are to be redrawn, and certain aspects of the content of the private ought to be politicized. Such politicization, of course, would have to be justified, and might be contested before the law is reformed. In these cases, it is proposed here, the social issues raised in the two last criticisms can be properly addressed.

Conclusion

General Theoretical Implications

The argument laid out in the previous pages constitutes, primarily, a defence of an existing moral vocabulary against the most important critiques which it has received in the last decades. On account of this fact, little could follow from the present thesis that can serve to demand particular changes in political institutions or practices, except perhaps as a reiteration of the necessity of respecting the private sphere in those places in which authoritarian governments seem to have a special interest in private ideological mobilisation. Nevertheless, the retrieval and reconceptualization of the private and its relation with the political that is offered here can have significant influence in the way in which political agents and political philosophers structure the world they discuss about. Organising concepts divide the map of reality to make communication and understanding easier, but the way they perform this dissection can have serious consequences on how human beings understand and frame their moral obligations in that world.

If the argument of this thesis is accepted, the first relevant implication that follows is that political philosophers ought not to be concerned about formulating a unitary concept of the private that can subsume all the various senses in which the word is used in ordinary life. A political conception of the private suffices for the purposes of political arguments about interference and the limits of politics. The second implication is that they cannot continue formulating the conception of the private purely in terms of non-interference or negative liberty, and that they cannot uphold a vision in which politics is inversely proportional to freedom. Such formulations, as it has been shown, will

render the conception problematic and difficult to conciliate with established measures of social justice. Nor could it be sustained in the context of a purely negative view of the state and politics: it requires attentiveness to both the potentialities and dangers of politics, at the same time.

The great advantage of tying the conception of the private to a positive conception of liberty is that it permits reconceptualising the role of private law and welfare provisions, as well as general interferences to protect rights at the private level, in terms of protection of the conditions and the enjoyment of private autonomy, for everyone. Liberals need not to fear compromising the principle of state neutrality, as long as such positive conception of liberty remains indeterminate, to be filled with each citizen's own conception of the good, and as long as it remains non-teleological. The distinction between the context and the content of private autonomy might not offer a definitive parameter to delimit the scope of legitimate action for private law and welfare provisions, but it certainly can offer a strong guidance, as an organising principle. These conceptual changes provide a framework for the harmonization of the defence of the freedoms of the private realm with the requirements of social justice in a democratic society.

Concerning the arguments in favour of the necessity of a protected private sphere, most of their components are not necessarily original in substance, but these components have not been related to a private sphere explicitly before, or only in loose form. The originality of this thesis, in that particular section, consists in developing the connection between these components and the autonomous private sphere. This is particularly the case of the arguments of dispersion of power, non-domination, private languages, and personal normative orders. A general implication of these arguments, beyond their immediate purpose, is that they can relate the phenomenon of a private sphere with broader topics in democratic theory and social theory, particularly in regard to theories of power, social communication, constitution of the self, identities, and personal ethics. Thus, the

argument can prove useful in various moral discussions beyond those which concern political interference specifically.

Undoubtedly, there is a considerable distance between the formulation of principles and their application. Therefore, the principles that have been delineated here, on their own, cannot provide complete solutions to the concrete cases in which they are applied. In each case, there might be a need to strike balances between different principles. The private and the political are organising principles which have to interact with other organising principles of an equal or higher level of complexity. But it is posited here, nonetheless, that the theory of this thesis is strong enough to shape moral discussions and to orientate them in definite and productive directions. It can provide valuable distinctions and theoretical connections that can help addressing the various situations in which political agents and political philosophers invoke or contest, or cast in doubt, the separation between the private and the political.

References

Andre, Judith, (1995), 'Blocked Exchanges: A Taxonomy', in Miller, David, and Walzer, Michael, eds., *Pluralism, Justice, and Equality*, Oxford: Oxford University Press, 171-96

Aquinas, Thomas, (2002), *Political Writings*, ed. R.W. Dyson, Cambridge: Cambridge University Press

Arendt, Hannah, (2006), 'Freedom and Politics', in in Miller, David, ed., (2006), *The Liberty Reader*, Boulder, CO and London: Paradigm Publishers, 58-79

————— (1979), *The Origins of Totalitarianism*, Orlando, FL: Harcourt Brace and Company

————— (1958), *The Human Condition*, Chicago: The University of Chicago Press

Arneson, Richard, (1995), 'Against "Complex" Equality', in Miller, David, and Walzer, Michael, eds., *Pluralism, Justice, and Equality*, Oxford: Oxford University Press, 226-252

Barry, Brian, (1997), 'Liberalism and Multiculturalism', *Ethical Perspectives*, 4:2, 3-14

————— (1995), 'Spherical Justice and Global Injustice', in Miller, David, and Walzer, Michael, eds., *Pluralism, Justice, and Equality*, Oxford: Oxford University Press, 67-80

Benn, Stanley, and Gaus, Gerald, (1983), 'Introduction: The Public and the Private: Concepts and

Action', in Benn, S., and Gaus, G., eds., *Public and Private in Social Life*, London & New York: Croom Helm and St Martin's Press.

Berlin, Isaiah, (1991), *The Crooked Timber of Humanity*, London: Fontana Press.

————— (1969), *Four Essays on Liberty*, Oxford: Oxford University Press.

Bobbio, Norberto, (1989), 'The Great Dichotomy: Public/Private', in Bobbio, Norberto, *Democracy and Dictatorship*, trans. Peter Kennealy, Cambridge: Polity Press.

————— (1987), *The Future of Democracy*, Cambridge: Polity Press.

Bodin, Jean, (1992), *On Sovereignty: Four Chapters from The Six Books of the Commonwealth*, ed. and trans. Julian H. Franklin, Cambridge: Cambridge University Press.

Cohen, Gerald, (1991), 'Capitalism, Freedom, and the Proletariat', in Miller, David, ed., *Liberty*, Oxford: Oxford University Press, 163-182

Cohen, Jean L., (1997), 'Rethinking Privacy: Autonomy, Identity, and the Abortion Controversy', in Weintraub, Jeff, and Kumar, Krishan, eds., *Public and Private in Thought and Practice: Perspectives on a Grand Dichotomy*, Chicago & London: The University of Chicago Press

Collingwood, R. G., (1959), 'Translator's Preface' in De Ruggiero, Guido, *The History of European Liberalism*, trans. R.G. Collingwood, vii-viii

Constant, Benjamin, (1988) 'The Liberty of the Ancients Compared with that of the Moderns', in Constant, Benjamin (1988), *Political Writings*, ed. and transl. Biancamaria Fontana, Cambridge: Cambridge University Press, 309-328

Dewey, John, (1927), *The Public and Its Problems*, London: George Allen & Unwin LTD

Dworkin, Ronald, (2001), 'Do Values Conflict? A Hedgehog's Approach', *Arizona Law Review*, 43:2, 251-60

Elshtain, Jean, (1997), 'The Displacement of Politics', in Weintraub, Jeff, and Kumar, Krishan, eds., *Public and Private in Thought and Practice: Perspectives on a Grand Dichotomy*, Chicago & London: The University of Chicago Press, 1-42

————— (1981), *Public Man, Private Woman: Women in Social and Political Thought*, Princeton, NJ: Princeton University Press

Fairfield, Paul, (2005) *Public/Private*, Oxford and Lanham, MD: Rowman and Littlefield Publishers.

Frazer, Elizabeth, (2008) 'Political Theory and the Boundaries of Politics', in Leopold, David, and Stears, Marc, eds., *Political Theory: Methods and Approaches*, Oxford: Oxford University Press, 171-95

Freeden, Michael, (2013), *The Political Theory of Political Thinking: The Anatomy of a Practice*, Oxford: Oxford University Press.

Friedrich, Carl, (2009) 'Secrecy versus Privacy: the Democratic Dilemma' in Pennock, James, and Chapman, John, eds., *Privacy and Personality*, New Brunswick NJ, and London: Transaction Books, 105-20

Garcelon, M., (1997) 'The Shadow of the Leviathan: Public and Private in Communist and Post-Communist Society', in J. Weintraub, K. Humar (eds.), *Public and Private in Thought and Practice: Perspectives on a Grand Dichotomy*, Chicago, IL and London: The University of Chicago Press, 303-32

Geuss, Raymond, (2001), *Public Goods, Private Goods*, Princeton: Princeton University Press

Gobetti, Daniela, (1997), 'Humankind as a System: Private and Public Agency at the Limits of Modern Liberalism', in Weintraub, Jeff, and Kumar, Krishan, eds., *Public and Private in Thought and Practice: Perspectives on a Grand Dichotomy*, Chicago & London: The University of Chicago Press, 103-132

Goldberg, David Theo, (2014), *Sites of Race: Conversations with Susan Searls Giroux*, Malden, MA: Polity Press.

Habermas, Jürgen, (1998), *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, Cambridge, MA: MIT Press.

————— (1989), *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, trans. Thomas Burger and Frederick Lawrence, Cambridge: Polity Press.

Hayek, Friedrich, (1960), *The Constitution of Liberty*, London: Routledge

Hegel, Georg W F, (1952), *Philosophy of Right*, trans. TM Knox, Oxford: Oxford University Press

Hirschmann, Nancy, (2006), 'Toward a Feminist Theory of Freedom', in in Miller, David, ed., (2006) *The Liberty Reader*, Boulder, CO and London: Paradigm Publishers, 200-222

Justinian, (1985), *The Digest of Justinian: vol. 1*, edit. and trans. Alan Watson, Philadelphia: University of Pennsylvania Press.

Klosko, George, (1987), 'Presumptive Benefit, Fairness, and Political Obligation', *Philosophy & Public Affairs*, 16:3, 241-59.

Kymlicka, Will, (2002), *Contemporary Political Philosophy: An Introduction*, 2nd ed., Oxford: Oxford University

————— (1995), *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Oxford: Clarendon Press

————— (1989), 'Liberal Individualism and Liberal Neutrality', *Ethics*, 99, 883-905

MacIntyre, Alasdair, (1999), *Dependent Rational Animals: Why Human Beings Need the Virtues*, Chicago and La Salle, IL: Carus Publishing Company

Marx, Karl, (1992), 'Critique of Hegel's Doctrine of the State' in Marx, Karl, *Early Writings*, trans. Rodney Livingstone and Gregor Benton, London: Penguin Books, 57-198.

————— (1964) 'On the Jewish Question', in Marx, Karl, *Early Writings*, trans. T.B., Bottomore, New York, Toronto, and London: McGraw-Hill Book Company.

MacKinnon, Catharine, (1989) *Toward a Feminist Theory of the State*, Cambridge MA and London: Harvard University Press

Mill, John Stuart, (1989), *On Liberty: with The Subjection of Women: and Chapters on Socialism*, ed. Collini, Stefan, Cambridge: Cambridge University Press.

Miller, David, (1995), 'Introduction', in Miller, David, and Walzer, Michael, eds., *Pluralism, Justice, and Equality*, Oxford: Oxford University Press, 1-16

Mouffe, Chantal, (2000), *The Democratic Paradox*, London and New York: Verso.

Pateman, Carole, (1983), 'Feminist Critiques of the Public/Private Dichotomy', in Benn, Staley, and Gaus, Gerald, *Public and Private in Social Life*, London & Canberra: Croom Helm, 281-303.

Pettit, Philip, (1997), *Republicanism: A Theory of Freedom and Government*, Oxford: Oxford University Press.

Popper, Karl, (2008), 'Public and Private Values', in Shearmur, Jeremy and Tuner, Piers, eds., *Karl Popper: After the Open Society: Selected Social and Political Writings*, London and New York: Routledge.

————— (1991), *The Open Society and Its Enemies, vol. I: The Spell of Plato*, London: Routledge

Rawls, John, (1997), 'The Idea of Public Reason Revisited', *The University of Chicago Law Review*, 64:3, 765-807

————— (1995), 'Political Liberalism: Reply to Habermas', *The Journal of Philosophy*, 92:3, 132-80

————— (1993), *Political Liberalism*, New York: Columbia University Press

Rhode, Deborah, (1991), *Justice and Gender*, Cambridge, MA: Harvard University Press

Rorty, Richard, (1989), *Contingency, Irony, and Solidarity*, Cambridge: Cambridge University Press.

Sandel, Michael, (1998), *Liberalism and the Limits of Justice*, Cambridge: Cambridge University Press

Scanlon, Thomas, (1975) 'Thomson on Privacy', *Philosophy & Public Affairs*, 4:4, 315-322.

Shlapentokh, Vladimir, (1989), *Public and Private Life of the Soviet People*, Oxford: Oxford University Press.

Taylor, Charles, (2006) 'What's Wrong with Negative Liberty' in Miller, David, ed., (2006) *The Liberty Reader*, Boulder, CO and London: Paradigm Publishers, 141-162.

————— (1985), 'Atomism', in Taylor, Charles, *Philosophy and the Human Sciences: Philosophical Papers*, Cambridge: Cambridge University Press, 187-210.

Thomson, Judith, (1975), "The Right to Privacy", *Philosophy and Public Affairs*, 4: 295–314

Tocqueville, Alexis de, (1969), *Democracy in America*, ed. JP Mayer, transl. George Lawrence, New York: Harper & Row Publishers.

Walzer, Michael, (1984), 'Liberalism and the Art of Separation', *Political Theory*, 12:3, 315-330

————— (1983), *Spheres of Justice: A Defence of Pluralism and Equality*, Oxford and Cambridge, MA: Blackwell Publishers.

Weintraub, Jeff, (1997) 'The Theory and Politics of the Public/Private Distinction', in Weintraub, Jeff, and Kumar, Krishan, eds., *Public and Private in Thought and Practice: Perspectives on a Grand Dichotomy*, Chicago & London: The University of Chicago Press, 1-42

Wolfe, Alan, (1997) 'Public and Private in Theory and Practice: some implications of an uncertain boundary', in Weintraub, Jeff, and Kumar, Krishan, eds., *Public and Private in Thought and Practice: Perspectives on a Grand Dichotomy*, Chicago & London: The University of Chicago Press, 182-203