

Liberal Neutrality: A Compelling and Radical Principle

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1 Introductory

Compared to other debates in contemporary political philosophy, the light-to-heat ratio of discussions of neutrality has been somewhat dismal. Although most political philosophers seem to know whether they are for it or against it, there is considerable confusion about what “it” is. To be sure, some of this ambiguity has been noted, and at least partially dealt with, in the literature. Neutrality understood as a constraint on the sorts of reasons that may be advanced to justify state action is regularly distinguished from “consequential neutrality”—that the effects of state policy must somehow be neutral.¹ Yet interpretations of neutrality are far more diverse than most analyses recognize.² Neutrality is sometimes understood as a doctrine about: the intent or aim of legislation or legislators,³ the proper functions of the state,⁴ the prohibition of the state “taking a stand” on some issues,⁵ the prohibition of the state enforcing moral character,⁶ or the requirement that the state take a stance of impartiality.⁷ Alternatively, neutrality can be understood as a requirement of a theory of justice rather than state action.⁸ There are also differences about whether neutral states (or theories

¹See Charles Larmore, *Patterns of Moral Complexity* (Cambridge: Cambridge University Press, 1987), pp. 43ff; Will Kymlicka, “Liberal Individualism and Liberal Neutrality,” *Ethics*, vol. 99 (July 1989): 833-905; Simon Caney, “Consequentialist Defenses of Liberal Neutrality,” *The Philosophical Quarterly*, vol. 41 (January 1991): 457-477.

²The most careful discussion is George Sher, *Beyond Neutrality: Perfectionism and Politics* (Cambridge: Cambridge University Press, 1997), ch. 2.

³See Jeremy Waldron, “Legislation and Moral Neutrality” in his *Liberal Rights* (Cambridge: Cambridge University Press, 1993), pp. 149ff.

⁴Peter Jones, “The Ideal of the Neutral State” in Robert E. Goodin and Andrew Reeve (eds.) *Liberal Neutrality* (London: Routledge, 1989), p. 9; Govert Den Hartogh, “The Limits of Liberal Neutrality,” *Philosophica*, vol. 56 (1995): 59-89 at p. 61.

⁵Colin M. MacLeod, “Liberal Neutrality or Liberal Tolerance?” *Law and Philosophy*, vol. 16 (Sept. 1997): 529-559 at p. 532; Paul Rosenberg, “Liberal Neutrality and the Social-Democratic Project,” *Critical Review*, vol. 8 (1994): 217-234 at p. 218.

⁶Wojciech Sadurski, “Theory of Punishment, Social Justice and Liberal Neutrality,” *Law and Philosophy*, vol. 7 (1988/89): 351-374 at p. 371.

⁷See Jones, “The Ideal of the Neutral State,” p. 9.

⁸See Philippe van Parijs, *Real Freedom for All* (Oxford: Oxford University Press, 1995), p. 28.

of justice, or legislators) are supposed to be neutral between conceptions of the good,⁹ particular sets of ends,¹⁰ comprehensive doctrines and conceptions of the good,¹¹ particular or substantive conceptions of the good,¹² ways of life,¹³ final ends,¹⁴ or controversial conceptions of the good.¹⁵ And it is unclear whether every principle of neutrality is inherently one of liberal neutrality, or whether liberal neutrality is a specific sort of neutral principle.¹⁶

How to select one conception of neutrality over its competitors? One method—implicit in many defenses of neutrality—is to select a conception that seems intuitively plausible in the sense that we can imagine that the principle could be followed by a state that does most of what our current liberal-like governments do. This conception of neutrality can then be offered as an articulation of the principle of legitimate state action underlying contemporary liberal-like states. In response, critics of neutrality can seek to show that the proposed conception cannot account for the state as we know it. I do not employ that method here. As I argue in sections 4 and 5, this approach is ideologically conservative, supposing that liberal neutrality must somehow justify current liberal-like regimes. The task of political philosophy is not to legitimate current regimes, but examine the conditions under which political coercion can be justified.

In any event, rather than presenting an independently intuitively plausible conception of neutrality and then seeking to defend it, I shall work the other way around. Section 2 derives a principle of neutrality, which I call Minimal Neutrality, from basic claims about the nature of morality and reasoning. The problem of selecting the appropriate conception of neutrality is thus solved by the derivation: the appropriate conception of neutrality is that which is derived from the foundational claims about moral reasoning. Because these basic claims are intuitively compelling, so too is the conception of neutrality to which they give rise. Liberal Neutrality, I argue

⁹Bruce A. Ackerman, *Social Justice in the Liberal State* (New Haven, CT: Yale University Press, 1980), p. 11.

¹⁰Jones, “The Ideal of the Neutral State,” p. 9.

¹¹See John Rawls, *Justice as Fairness: a Restatement*, Erwin Kelly (ed.) (Cambridge, MA: The Belknap Press of Harvard University Press, 2001), p. 152.

¹²See Brian Barry, *Justice as Impartiality* (Oxford: Clarendon Press, 1995), pp. 139-145; Ronald Dworkin, “Liberalism” in his *A Matter of Principle* (Cambridge: Harvard University Press, 1985), p. 191; Roger Paden, “Democracy and Liberal Neutrality,” *Contemporary Philosophy*, vol. 14 (no. 1): 17-20.

¹³Kymlicka, “Liberal Individualism and Liberal Neutrality,” p. 886.

¹⁴J. Donald Moon, *Constructing Community: Moral Pluralism and Tragic Conflicts* (Princeton: Princeton University Press, 1993), p. 55.

¹⁵Larmore, *Patterns of Moral Complexity*, pp. 53ff.

¹⁶ See Barry, *Justice as Impartiality*, pp. 125ff. Robert E. Goodin and Andrew Reeve, “Liberalism and Neutrality” in their edited collection, *Liberal Neutrality*, pp.1-8.

in section 3, can be derived from Minimal Neutrality by two additional claims. Although these claims too are compelling, they are somewhat more contentious than are the claims on which Minimal Neutrality is based; still, I shall argue, it is difficult to reject them. Hence Liberal Neutrality is also a compelling principle. Section 4 then argues that this favored conception of Liberal Neutrality is a radical principle, which shows much of what is currently done in the name of liberalism to be illegitimate. Section 5 concludes with a brief defense of radical political philosophy.

2 Minimal Neutrality

2.1 I begin with a moral judgment that is well-nigh universally accepted, and deeply compelling:

(I) (a) It is *prima facie* morally wrong for Alf to coerce Betty, or to employ force against her. (b) With sufficient justification, the use of coercion or force by Alf against Betty may be morally justified.

Claim (I) is certainly consistent with what Joel Feinberg has called the “presumption in favor of liberty”: “liberty should be the norm, coercion always needs some special justification.”¹⁷ And, as I have argued elsewhere, something like this presumption is foundational to liberalism.¹⁸ However, claim (I) is not a particularly liberal moral principle. It asserts nothing about a presumption in favor of liberty, only that, in the absence of adequate justification, it is morally wrong for Alf to coerce Betty. The core claim of (I) is that, other things equal, the use of force or coercion against another is wrong. To show that other things are not equal, and so that the use of force and coercion is morally permissible, a moral justification is required.¹⁹

A complete exposition of claim (I) would have to identify the set of agents who can occupy Alf’s and Betty’s roles. Philosophers disagree about how the set is to be defined: is it to be restricted to humans, or does it include some non-human animals? Does it include all humans, or only those who have a set of capacities that qualify them as persons (say, self-consciousness or project pursuit)? I shall put aside these disputes and suppose that we can identify a set of moral persons: agents who possess a minimal ability to direct their actions according to moral requirements. Given that my aim is to derive neutrality from basic moral intuitions, it makes sense to restrict our

¹⁷Joel Feinberg, *Harm to Others* (New York: Oxford University Press, 1984), p. 9.

¹⁸*Justificatory Liberalism* (New York: Oxford University Press, 1996), pp. 164ff; *Social Philosophy* (Armonk, NY: M.E. Sharpe, 1999), pp. 117ff.

¹⁹In order to simplify, I will henceforth refer to “coercion” rather than the more cumbersome “force and coercion.”

focus to those who possess, in some minimal degree, the ability to direct their actions according to moral requirements. It is not part of my thesis that those who do not possess moral personality so conceived are outside the protection of morality; that is another question. I shall simply restrict my focus here to the set of moral persons; I take it that this includes all but the most severely injured, insane or psychopathic personalities.²⁰ In any event, we shall see that this narrowing of the set of agents serves only to make the principle of neutrality less radical; those who seek to broaden the set will also even further radicalize the principle of neutrality.

2.2 I do not claim that it is impossible to deny (I), or that no one has ever done it. There are two paths to disputing claim (I). Neither, I think, has much plausibility.

(i) Most obviously, one may reject clause (a) by insisting that it is morally permissible for Alf to employ coercion against Betty without justification because there is no constraint at all on the moral permissibility of Alf coercing Betty. This might be because, first, there is no constraint on anyone employing coercion on anyone else. Hobbes held that in the state of nature each has a “blameless liberty” to use his power and ability as he sees fit.²¹ In this case each would have a Hohfeldian liberty to coerce the other: one may coerce another without offering any justification as one is not under any duty to refrain from coercing.²² A related way of denying clause (a) is to assert that *some people*, such as Alf, do not have to justify their coercive acts, though perhaps others do. Perhaps some naturally have a superior status over others such that they can coerce them simply to advance their own desires and purposes, and need offer no moral justification for doing so. Thus a Superman destroyer of conventional egalitarian morality, asserting his will over others, I take it, would deny clause (Ia).

²⁰On psychopathy see my *Value and Justification* (Cambridge: Cambridge University Press, 1990), pp. 292-330. Compare Rawls, *Political Liberalism*, paperback edn. (New York: Columbia University Press, 1996), p. 51.

²¹Thomas Hobbes, *The Elements of Law, Natural and Politic*, Ferdinand Tönnies (ed.), (London: Cass, 1969), p. 71.

²²According to Wesley Hohfeld Alf has a liberty to M if and only if Betty has no claim against Alf that he not M. But that Betty has no claim that Alf refrain from M-ing does not imply that she has a duty to let him M; thus just as he is at liberty to M, she is at liberty to anti-M. For Hohfeld, when we talk about a person having a right to do something, we sometimes mean that she is merely at liberty to do so; she has no duty to refrain. But merely to have a liberty to do something does not imply that you have a claim that others not interfere. The classic example is the liberty of two pedestrians to pick up a dollar bill laying on the sidewalk. Neither have a duty to refrain from picking it up, but neither has a claim on the other to stand aside and let her pick it up. Such “naked liberties” often characterize competitions; people have the liberty to win, but no one has a claim to win. For Hohfeld’s classic analysis, see his “Some Fundamental Legal Conceptions As Applied in Judicial Reasoning,” *Yale Law Review*, vol. 23 (1913): 16-59. See H. L. A. Hart, “Legal Rights,” in his *Essays on Bentham: Studies in Jurisprudence and Political Theory* (Oxford: Clarendon Press, 1982), pp. 171-172.

Neither a morality inspired by Hobbes's blameless liberty, nor a Nietzschean will to power, are compelling moral views; I shall not spend time here seeking to refute them.²³

(ii) Clause (b), following W. D. Ross, is put in terms of *prima facie* wrongness.²⁴ To say that an act is *prima facie* wrong is to say that other things equal, performing the action is wrong, or that the act is presumptively wrong, or that it has a wrong-making property; the wrongness, however, is only presumptive, and good reasons can show that the act is morally permissible. An absolutist pacifist might deny clause (b) by insisting that the use of coercion can never be justified. Given claim (II) below (§2.3), this implies that we ought not to defend ourselves against aggressors. Though some have advanced such views, the claim that one is not justified in employing coercion to repel aggression against oneself is highly counterintuitive; I will not pause to consider it further.

The absolutist may reply, however, by redefining “coercion” such that, if an act is morally justified, it is not truly coercive. Coercive acts, it may be argued, are inherently acts of unjustified use of force; thus if there are good moral reasons for the use of force, there is no coercion. That would render clause (Ib) self-contradictory. This reply is made more persuasive by an inspection of the philosophical literature on coercion, which reveals a dispute as to whether coercion is a descriptive term, or whether it presupposes a moral background of rights and duties.²⁵ Now we need not seek to define coercion here (indeed, it is doubtful that there are necessary and sufficient conditions for the proper use of “coercion”), but an interpretation of coercion that renders claim (I) not simply wrong, but senseless, is surely objectionable. The view being considered would render oxymoronic the idea of morally justified coercion—as soon as an act is justified, it would not be coercive (or an act of force). Surely, even if it is possible to hold that claim (I) is false, it is not meaningless.

Still, should someone wish to dig his heels in on this point, we can reformulate claim (I) to accommodate it:

Claim (I) (a) It is *prima facie* morally wrong for Alf to perform act M—an act of coercion or force against Betty.

(b) With sufficient justification what would otherwise be considered a M act, is shown to be K act, which is morally justified.

2.3 Building on claim (I), we also ought to embrace:

²³I have done so in *Value and Justification*.

²⁴W. D. Ross, *The Right and The Good* (Oxford: Clarendon Press, 1930), ch. 2.

²⁵See Alan Wertheimer, *Coercion* (Princeton: Princeton University Press, 1987).

(II) One ought not to engage in coercion or force if one does not have an adequate moral justification for it. [Or, following claim I', one ought not to engage in acts that would be coercive if one does not have adequate moral justification for performing them].²⁶

Claim (II) does not say that acts are wrong if one does not have justification for them, though that is consistent with claim (II). It could be that the wrongness of acts is purely an objective matter. For example, a utilitarian might hold that an act is wrong if it does not maximize utility, and whether it has the property of maximizing utility does not depend on one's reasons for doing it. Thus wrongness does not depend on justification, or one's reasons for performing the act. But insofar as morality is practical—insofar as it guides one's practice—one ought to do what one has the best moral reasons for doing, and so one ought to refrain from coercion if one does not have a moral justification for it. Let us call this the supposition of *the practical nature of morality*. Morality is about what one is to do, and one's reasons for doing it. To be a fully rational moral agent is to be guided by moral reasons in one's practice. Thus, although a utilitarian such as J. J. C. Smart does not think that the rightness or wrongness of actions is determined by one's reasons, Smart does think that when deliberating, one ought to do that which one has the best justification for thinking will make mankind happiest.²⁷

Claim (II) might seem inconsistent with an externalist conception of moral obligation according to which one ought to do what is right, and that says nothing about what one has reasons to do.²⁸ On further reflection, though, we can see that it is not inconsistent. Even allowing that one ought to do what is morally right (independently of one's reasons for thinking it is right), it still follows that a moral agent can only act on her best reasons; thus from the point of view of her practice, she morally ought to do what she has the best reasons to do. To deny this would divorce “moral ought” from practice. Suppose that we ought to do what is right, but we also believe that our reasons were very bad indicators of what this might be, so that it did not follow that an agent ought to do what she has best reason to think morally right. If so, we could not use morality as a guide to our practice, as we would have no epistemic access to its instructions. It would speak, but we would be deaf to it. This is the view of morality rejected by claim (II), the practical nature of morality.

²⁶I shall not henceforth note the necessary changes if one accepts claim (I') rather than (I).

²⁷J. J. C. Smart, “An Outline of A System of Utilitarian Ethics” in J. J. C. Smart and Bernard Williams, *Utilitarianism: For and Against* (Cambridge: Cambridge University Press, 1973), p. 30.

²⁸The classic paper on this issue is, of course, William K. Frankena, “Obligation and Motivation in Recent Moral Philosophy” in K. E. Goodpaster, (ed.), *Perspectives on Morality: Essays by William K. Frankena* (Notre Dame: University of Notre Dame Press, 1976), pp. 49-73. See also Philippa Foot *Virtues and Vices* (Berkeley: University of California Press, 1978), pp. 157-173.

Claim (II), then, is inconsistent with an esoteric conception of morality such as that discussed by Sidgwick, according to which only the elite is guided by good moral reasons while *hoi polloi* are best guided by bad reasons that lead them to do the correct action.²⁹ In a pretty straightforward sense, such a morality denies that *hoi polloi* ought to act on the best justifications or their best reasons. Rather than being treated as rational agents such an esoteric morality manipulates the masses to do what they ought to do, though they know not why they ought to do it. Claim (II) then expresses an anti-elitist view of the moral life.

2.4 Claims (I) and (II) presuppose an account of moral justification. What types of reasons provide moral justification? To have a moral justification for M-ing (a coercive act) cannot be simply to have reasons that are good reasons for you to M, based on your desires, ends, and so on. A moral justification for M-ing requires impartial reasons: a moral reason is not simply a reason from your point of view, but from some shared or impartial point of view. “[B]y the moral point of view, we *mean* a point of view which furnishes a court of arbitration for conflicts of interest. Hence it cannot (logically) be identical with the point of view of any particular person or group of persons.”³⁰ All plausible moral views, then, must accept:

(III) To morally justify coercion requires impartial reasons for the coercion.

It seems, though, that this drives us back to an intractable problem in ethics: seeking to characterize impartiality. Is an impartial morality one that treats each as one, and no one more than one?³¹ One that would be accepted by a view from nowhere?³² One that advances the good of everyone?³³ One that would be adopted by an impartial spectator? We need not, however, settle on any specific conception of impartiality here. Rather, I wish to advance a constraint on all plausible theories of impartial morality, which I shall call *the public reason principle*:

(IV) A reason *R* is a moral, impartial, reason justifying *M* only if all fully rational moral agents coerced by M-ing would acknowledge *R*, when presented with it, as a justification for M-ing.

²⁹Henry Sidgwick, *The Methods of Ethics*, 7th edn (Chicago: University of Chicago Press, 1962), pp. 489ff.

³⁰Kurt Baier, *The Moral Point of View*, abridged edn. (New York: Random House, 1965), p. 96. Emphasis in original.

³¹See R.M. Hare, *Freedom and Reason* (Oxford: Clarendon Press, 1963), p. 118.

³²This, of course, refers to Thomas Nagel, *The View from Nowhere* (New York: Oxford University Press, 1986), ch. IX.

³³See Baier, *The Moral Point of View*, p. 106.

This public reason principle rejects as genuinely impartial a view according to which one person may have a good moral reason for M-ing but some other fully rational moral agents are simply incapable of seeing this reason as a justification. Now this may seem vacuous: if *R* is a justification—a good reason—to M, then it must be the case that, by definition, all fully rational people acknowledge it as a reason. If I believe that *R* is a moral reason justifying M-ing, and you deny it, then I will simply conclude that you are not fully rational; for you have failed to see a good reason for what it is. What better indication could I have that you are not fully rational than you fail to see what is a good reason?

Even thus interpreted, claim (IV) is not vacuous. If one accepts claim (IV), and also claims that one has advanced a justificatory reason *R* that some others refuse to acknowledge as such, then one is committed to judging them to be less than fully rational. Thus one could not claim that some reason that was available to the faithful, but not to other fully rational moral agents, is justificatory.

However, we possess a notion of the rational that is not simply derivative of our understanding of what is the best reason. A rational person takes into account all the relevant available evidence, takes care when evaluating it, is not subject to various distortions of deliberation or action (e.g., she is not under the influence of drugs or compulsions), and so on. It is a demanding ideal, much more demanding than being simply a reasonable person (although it does not require omniscience; rational people do not know all there is to be known). Nevertheless, we can apply it even when we do not know what is the best reason. If a person displays the virtues of rational deliberation and action and none of the vices then, given our understanding of a rational agent, she qualifies as such. Given this, if Alf is to satisfy claim (IV), when he advances a purported justificatory reason that Betty, another moral agent, refuses to acknowledge, he is committed to the further claim that there must be some rational failure of Betty's that leads to this lack of appreciation of *R*: a cognitive flaw, processing error, inattention to sound information, or whatever. I am not saying that Alf must be able to show that such a flaw exists; after all, access to this information may be hard to come by. But he is committed to there being some such flaw if his claim about *R* is correct. Now the less plausible it is to attribute such a flaw to Betty—the more all the evidence suggests that she is an excellent cognitive and practically moral rational agent—the less faith Alf will have in his claim that *R* is an impartial justificatory reason. If Betty is a fully rational moral person, and if she does not recognize *R* as a justificatory reason, then Alf cannot claim that it is an impartial reason that meets the public reason requirement. Claim (IV), then, is by no means vacuous.

Some may reject claim (IV) on the grounds that reason *R* is impartial just in case *R* is true or correct, and its truth or correctness does not imply that all fully rational moral agents would acknowledge *R*. Consider, for example, a realist view according to

which R is an impartial reason just in case R is entailed by a moral truth T , and it is not the case that fully rational moral agents would necessarily both acknowledge T and that T implies R . Impartiality, on this view, is not what all rational moral persons would accept, but what is impartially true, though this truth is not available to all fully rational moral persons. The crux of claim (IV) is that this view is not sufficiently impartial. It does not represent a shared or common moral point of view: the claim that R is a reason is itself partial to a certain perspective, which is not shared by other fully rational moral agents. Suppose that the proponent of R is challenged by someone doubting whether it is really an impartial reason. In response the advocate of R would claim that it is based on truth T , but now we see that this claim is one that depends on his perspective, for he admits that other fully rational moral agents would not acknowledge T as a truth. Such an esoteric conception of moral truth, and so impartiality, is tantamount to an assertion that one's perspective yields privileged insight into the moral truth. Claim (IV) requires that one treat all fully rational moral agents as fellow participants in moral discourse and practice: it thus specifies a minimally anti-elitist conception of moral impartiality. Impartial morality speaks to all rational moral agents, and constitutes a common evaluative perspective.

I have identified the relevant public as those affected by M : only those who suffer coercion need acknowledge R as a good reason justifying M . If rational moral agents who are not themselves coerced would reject R , but all those who are coerced by M -ing do accept R , then M -ing is not morally wrong. Some perhaps are drawn to a stronger version of claim (IV) according to which all rational moral agents must acknowledge R : this would yield an even stronger version of the neutrality principle. I shall focus here on the more limited understanding of the public, and so a more circumscribed neutrality principle. The argument for the radical nature of liberal neutrality, though, is not weakened if one insists on a broader definition of the relevant public.

2.5 Together (I)-(IV) support:

(V) Alf ought not to coerce or force Betty unless Alf has an impartial reason justifying the coercion, a reason that as a fully rational moral agent, Betty would accept as justifying the coercion.

Although claim (V) follows from the intuitively compelling claims (I)-(IV), some contemporary philosophers appear to deny it. As I understand him, Steven Wall does so when claiming that "Sometimes people will rightly conclude that they must make demands—and attempt to enforce them—on others even when these demands cannot

be justified at all.”³⁴ If we take this as meaning that Alf may permissibly coerce Betty because Alf believes that he has good moral reasons to do so, although they are not recognized as justificatory reasons “at all” by other fully rational moral agents, we must reject Wall’s position. Alf’s claim that his reason is impartial would then be ill-founded; by his own admission, other fully rational moral agents do not acknowledge it as a reason. It is not an impartial reason that is confirmed from the moral point of view. (See further §3.4).

2.6 Claim (V) is about what one individual actor (Alf) can do to others. Now liberals—and many others join them—also insist:

(VI) Claim (V) applies to governments and its agents (qua agents), in particular it applies to them when they occupy the role of Alf.

Some have argued that the normal moral restraints that apply to individual actors do not apply to the state. Bernard Bosanquet famously insisted that “the State, as such, certainly cannot be guilty of personal immorality, and it is hard to see how it can commit theft or murder in the sense in which these are moral offenses.”³⁵ Even Bosanquet, however, insisted that, while the state as such could not be guilty of immorality, “if an agent, even under the order of his executive superior, commits a breach of morality, *bona fide* in order to do what he conceives to be a public end desired by the State, he and his superior are certainly blamable....”³⁶ However, there seems no good reason to follow Bosanquet’s Hegelianism and its allowance that, while its agents may be held accountable for personal immorality, the state as such cannot. Insofar as the state is an actor it is subject to the restrictions of claim (V). The distinction, however, is not of crucial importance, as the state can only act through its agents: if they ought not to coerce without good reasons, the state ought not.

2.7 In order for claim (V) to be relevant to most action by government and its agents, it must be the case that most of their actions are coercive. Hence:

(VII) Government actions are coercive. So by (V) and (VI), government and its agents ought not to act unless they have impartial justificatory reasons.

³⁴Steven Wall, *Liberalism, Perfectionism and Restraint* (Cambridge: Cambridge University Press, 1998), p. 118. This same view is suggested by Moon in *Constructing Community*, p. 63.

³⁵Bernard Bosanquet, *The Philosophical Theory of the State* in Gerald F. Gaus and William Sweet, (eds.), *The Philosophical Theory of the State and Related Essays* (Indianapolis: St. Augustine Press, 2001), p. 285.

³⁶*Ibid.*, p. 284.

Again, some deny this. Taking up on some themes in Rousseau's political philosophy, it might be argued that (a) laws that express the general will express what people really wish to do, and (b) one cannot be coerced into doing what one really wants to do. Even if we accept part (a), (b) does not follow, and certainly Rousseau didn't accept (b). After all, it was Rousseau who insisted that one could be "forced to be free"; that coercion is consistent with freedom would not show that it was not really coercive.³⁷

J. S. Mill suggests a more modest way to reject claim (VII). Mill distinguished authoritative from non-authoritative interventions by government; while the former take the form of a command backed by enforcement, the latter gives advice and information, or establishes an agency to deal with a problem while allowing others to compete. Although the government threatening drug users with prison sentences is indeed an act of coercion, drug education programs, on this view, would not be coercive. George Sher makes much of this point. In order to promote certain aims, governments might offer rewards, engage in economic policies that favor the aim, fund educational programs, and so on.³⁸ If these policies are not coercive, then they do not fall under claim (I).

What is sometimes called the "libertarian" response must be right here: each of the supposedly non-coercive measures is only possible because of a prior act of coercion, be it threats associated with the tax code, threats that back up banking regulations (relevant, say, to setting interest rates), and so on. The action "conduct an educational program" presupposes the action "raise via taxation the revenues to conduct the program." Assuming the former is impossible without the latter, it is inappropriate to separately evaluate them. An act that depends on having certain resources or powers cannot be evaluated without consideration of the legitimacy of obtaining those resources or powers. Here at least is a case where the dictum that "He who wills the end must also will the means" is appropriate: to insist that there is nothing coercive about the end, when the only way to achieve the end is through a coercive means, is disingenuous. The object of evaluation should be the complex act {raise revenues through taxation & spend them on an educational program}. That the complex should be the focus of evaluation is by no means simply a libertarian view: the American Civil Liberties Union sues public authorities that use tax money to advertise religion (say, by using public workers to erect signs saying "Jesus is Lord").³⁹ The idea is that this is not a mere educational measure that does not impose burdens on some; it does impose burdens that must be borne by dissenting citizens because of threats of punishment by the Internal Revenue Service.

³⁷Jean Jacques Rousseau, *The Social Contract*, Maurice Cranston (trans.), (Harmondsworth: Penguin, 1968), Bk. I, ch. 7.

³⁸Sher, *Beyond Neutrality*, pp. 34-37.

³⁹*The Times-Picayune* (New Orleans), Sunday February 24, 2002, Metro Section, p. 1

It can, though, plausibly be maintained that some state actions are less coercive than others. Just as a threat of a short prison sentence is less coercive than threat of a long one, and threat of a small fine is less coercive than threat of a moderate jail term, so too the coercion involved in a extra one percent marginal tax rate is typically less coercive than the threat of jail.⁴⁰ Thus, if we concern ourselves with the strength of the justifications required to legitimate the coercion, then a distinction between stronger and milder forms of coercion will be relevant. But that distinction is not relevant to claim (VII), which concerns the set of actions that require justification.

2.8 Again, though, many resist this. They insist that what the government does should be evaluated independently of the means required to do it. Although, as I have said, this seems quite wrong, to some extent we can put this dispute aside as there is another way to arrive at a principle akin to claim (VII). On the modern view of the state, it is not the private domain of some political actors, nor is the public weal identified with the private good of any person or section of the public. In contrast to private actors, public authorities cannot with legitimacy act on the basis of whim, personal aims or sectarian advantage. Such action is corrupt. Public officials occupy a position of trustees acting in the interests of the citizens. Consequently, they are only authorized to act for good reasons: *everything they do must be done for good reasons*. Public officials require a warrant or authorization to act, and they are always subject to a demand that they justify their actions as falling under that authorization.⁴¹

Moreover, given the modern democratic view of the state, its members are citizens, not subjects. An implication of this is that what constitutes a public reason must be one that fully rational citizens could recognize as such. In a Hobbesian state each becomes a subject, and public reason is simply the reason of the sovereign.⁴² In a democratic state, however, reasons that do not speak to the public at large are not truly public: if the state is the trustee of the public, then its justifications must be directed at what fully rational trustors understand as good reasons. If justifications are offered that are not good reasons to a fully rational person, then the government is not acting as a trustee in relation to him; it treats him as a subject to whom it is not responsible. This line of reasoning—which I will not develop further here—points to a principle along the lines of:

⁴⁰See Daniel M. Weinstock, “Neutralizing Perfection: Hurka on Liberal Neutrality,” *Dialogue*, vol. 38 (1999): 45-62.

⁴¹See S. I. Benn and G. F. Gaus, “The Public and Private: Concepts and Action” in S. I. Benn and G. F. Gaus (eds.) *Public and Private in Social Life* (New York: St. Martin’s Press, 1983), pp. 3-27.

⁴²See David Gauthier, “Public Reason,” *Social Philosophy & Policy*, vol. 12 (Winter 1995): 19-42, pp. 19-20. Reprinted in Fred D’Agostino and Gerald F. Gaus (eds.), *Public Reason* (Aldershot, UK: Ashgate, 1998), pp. 43-66.

(VII) Governments ought never to act without justifying reasons that all fully rational citizens would acknowledge as such.

2.9 Claims (V)-(VII/VII') lead to the conclusion that governments ought not to act unless they possess a reason that would be acknowledged as justifying the action by every fully rational moral person/citizen⁴³ coerced by the action. We are thus led to a Minimal Principle of Neutrality:

(VIII) A government ought never to act without impartial justification; *R* is an impartial justificatory reason for action *M* only if it would be acknowledged as justificatory by every fully rational citizen coerced by the government's *M*-ing.

Let us say that a purported justificatory reason *R* is *rationaly rejectable* if and only if a moral agent could reject it without thereby showing herself to be less than fully rational. It thus follows that Minimal Neutrality requires that a government and its officials are justified in *M*-ing only if they can advance reasons for it that are not rationally rejectable.

Neutrality is often understood as prohibiting government actions that can be justified only by appeal to a controversial conception of the good. The Minimal Principle of Neutrality does not go that far, for it says nothing about whether reasons based on the good are rationally rejectable (see below, §3.4). But insofar as any reason is rationally rejectable, the Minimal Principle of Neutrality deems that reason unacceptable as a justification of government action. Government thus must be neutral with respect to citizens' reasons that are rationally rejectable by others.

3 Liberal Neutrality

3.1 Our very concept of morality and moral reasoning, then, leads us to the Minimal Neutrality Principle. Although some nihilistic and elitist conceptions of morality reject it, they are implausible views. The Minimal Neutrality principle, however, allows government acts and policies that run afoul of "neutralist" liberalism as it is typically understood. T.H. Green held that each person's "real self" sought self-perfection and development; thus a policy that aimed at developing the perfection of each could be justified to all, since all fully rational citizens would act on their real selves, as opposed to their actual selves.⁴⁴ On the basis of this reasoning Green and his followers

⁴³Claim (VII) points to the class of moral persons, claim (VII') to the class of citizens. I will employ these specifications of the class interchangeably though, of course, they are not equivalent.

⁴⁴See T. H. Green, "On the Different Senses of 'Freedom' as applied to the Will and the Moral

advocated paternalistic policies, such as regulating alcohol sales for the good of the working class. More generally, contemporary perfectionists argue for government programs that either discourage people from seeking goods that they would not want if they appreciated and acted upon good reasons (cigarettes, other drugs) or else endeavor to provide people with goods that they would want if they were enlightened, or could properly appreciate good reasons (e.g. public broadcasting, art galleries).

However, much more worrying perfectionist policies might conform to the Minimal Neutrality principle. Just as it can be held that drugs interfere with self-development and perfection, it can, with at least equal plausibility, be held that superstitious beliefs, such as those associated with organized religion, thwart people's development, especially vulnerable children. Thus a perfectionist might propose a policy that would tax religious observances, or a regulation that would allow only adults into church services. More mildly, mandatory atheism classes might be included in all school curricula. Since fully rational citizens would not have such superstitious beliefs, they would tend to approve of such policies as ways to promote development, either of others, or of themselves in their weaker moments. I must confess they strike me as excellent perfectionist policies; that contemporary perfectionists do not recommend them is something of a testament to the anti-rationalistic nature of our times.

3.2 Although I think these would be excellent perfectionist policies, they surely would be illiberal. Liberalism emerged as a distinct political theory as a call for freedom of speech and *of thought*. As John Plamenatz observed, freedom of thought “is an idea which emerges slowly in the West in the course of the sixteenth and seventeenth centuries; and yet today, in the eyes of the liberal, it is this liberty which is most precious of all.”⁴⁵ Right from the outset, the liberal case for freedom of thought has derived from devotion to human reason.⁴⁶ Although an important ground for freedom of thought is as a means to produce truth—“Let her [i.e., truth] and falsehood grapple: who ever knew truth put to worse, in a free and open encounter?”⁴⁷—a more fundamental ground of freedom of thought is respect for the reasoning powers of each individual. Each has a right to believe as his reason dictates. Now typically this is understood as simply an external moral right not to be interfered with in certain activities related to belief formation and expression. But one of the puzzling aspects of

Progress of Man,” in Paul Harris and John Morrow (eds.), *Green's Lectures on the Principles of Political Obligation* (Cambridge: Cambridge University Press, 1986).

⁴⁵John Plamenatz, *Man and Society* (London: Longman's, 1973), vol. I, p. 46.

⁴⁶See further my *Contemporary Theories of Liberalism: Public Reason as a Post-Enlightenment Project* (London: Sage Publications, forthcoming), ch. 1.

⁴⁷John Milton quoted in D.J. Manning, *Liberalism* (London: Dent, 1976), p. 46. Cf. John Stuart Mill, *On Liberty*, in John Gray (ed.), *On Liberty and Other Essays* (New York: Oxford University Press, 1991), ch. 2.

freedom of thought is that in an important way merely external restraints typically do stop one from freely thinking. Brainwashing does occur, but rarely. Much more commonly one is punished for communicating or expressing one's thoughts; rarely does this actually interfere with a person's thinking what he wishes. If in fact it is actually difficult to interfere with a person's thinking, why do people claim freedom of thought rather than simply freedom to speak, to publish, to worship, and so on?

As long as we see *freedom of thought* as purely a moral right involving external actions, it will seem a misnomer; and it will not respect people's reasoning, as much as their actions that express their views, and their rights to gain access to the views of others. The fundamental place of freedom of thought becomes apparent, though, if we do not insist on a sharp distinction between moral and epistemic rights, what one is warranted in doing and what one is warranted in believing. To respect a person's reason and his freedom of thought is to grant to him a right to think as he pleases in the sense not only of external moral rights, but a claim that *his* deliberations properly determine what *he* ought to believe. When someone says he has a right to his opinion he is not merely claiming that he cannot legitimately be forced to abandon it; he is insisting that his opinions properly track his own deliberations. That is, freedom of thought supposes the right to believe that which one has deliberated on and has determined to be well-founded. Or, as I shall say to stress its epistemic aspect, one has some warrant to believe that to which one's deliberations lead. I shall call this *respect for the people's deliberations*:

(IX) That Betty's deliberations lead her to conclude p rather than not- p , is itself a warrant for Betty believing that p .

Claim (IX) is inconsistent with a certain sort of epistemology—which I shall call the Manual View—according to which the warrant of a belief is entirely a matter of impersonal standards. On this impersonal view, ultimately the only warrant for Betty believing p is that p conforms to the correct epistemic standards as they are laid out in the best Manual of Epistemology. Thus, if the best Manual of Epistemology says that the reasons for p , given belief system B , support a level of confidence in p of, say, .6, then Betty and anyone else with B is warranted in attributing to p a level of confidence no less and no greater than .6. But clearly the Manual View, while useful when we are trying to think through our commitments and beliefs, is not the way we decide whether a person's beliefs are warranted. Warrant is to a great extent *process-dependent*. That *you have deliberated* and concluded p itself confers warrant on *you* believing that p .

Even an advocate of the Manual View can attribute to actual deliberations the role of indicator of warrant, though not an independent source of warrant. Given the complexity and diversity of people's systems of reasons and values, it is very hard to know just what level of confidence in belief in p is justified. Thus the results of

thinking through the justification of p on the basis of standards that approach those in the Manual of Epistemology is *evidence* of what the manual recommends. So even a proponent of the Manual View can take warrant as process-dependent, though only because the process has evidential value of the upshot of the standards set out in the Manual of Epistemology regarding p .

This justification of the process-dependency of warrant, to which I have been much attracted, has much to recommend it, but I now think that it is not the whole story. It falls short in two ways. Suppose that I am in general uncertain about what is the best manual: I cannot then base my evaluation of the process by whether it approaches the best manual, should the recommendations of my preferred manuals diverge. In this case I am uncertain what is the belief recommended by the Manual View, yet the mere fact that I have thought things through increases my warrant for the belief I settle on. Those who are devoted to rival manuals can converge in approving of beliefs that result from deliberation, and not just because these beliefs are apt to conform their preferred manual.

The second shortcoming of the purely evidential justification of process-dependent warrant displays an interesting intersection between ethics and epistemology. To be a rational believer and agent is not simply to be someone who has rationally justified beliefs; it is to be a producer of such beliefs and actions based on them. Now respect for this status of others as producers of beliefs requires that the fact that a deliberator has herself actually produced p rather than not- p gives her some epistemic-moral claim to believe that p . Consider the denial of this right. Suppose that as a result of your deliberation that p was the thing to believe, you had no more warrant to believe p than not- p , if another person, equally acquainted with your belief system and equally competent as a reasoner, concluded that not- p is what your system commits you to. Surely this would undermine your status as the rightful producer of your own beliefs. Your deliberations are not merely, as it were, one consideration in favor of you believing that p . They cause you to believe it.⁴⁸ One's status as a consumer of beliefs cannot be abstracted from one's status as a producer of beliefs: what one is warranted in consuming depends to a great extent on what one has produced.

It does not follow from this that whatever beliefs, reasons, etc. one has produced one is warranted in believing, etc. The Manual View has this much to say for it: we do have access to some impersonal standards. We also have reason to think that some manuals are better than others: as I have argued elsewhere, manuals that allow for some variation in standards from one system to another are to be preferred to manuals that insist on all the same standards for all systems of reasons, beliefs and values.⁴⁹ Still, sometimes we can be extremely confident that basic standards have been flouted

⁴⁸See my *Justificatory Liberalism*, ch. 2.

⁴⁹*Ibid.*, chs. 3-4.

by a believer, and so we can with justification say that she is not warranted in believing the upshot of her own deliberations. Claim (IX) is consistent with this use of the Manual of Epistemology to dispute a person's warrant for her belief.

3.3 This analysis, though, would seem to have an unwelcomed implication: if freedom of conscience is grounded on claim (IX), and the process-dependent warrant for believing is not absolute—it can be overturned by manifest violations of epistemic standards—it would seem to follow that freedom of conscience is also not absolute. A person whose beliefs typically and manifestly violate basic epistemic norms is not warranted in those beliefs, and if freedom of thought is bound up with epistemic warrant at all, this would seem to imply that the justification for freedom of thought does apply to this person. Three replies are in order.

(i) I have not claimed that the entire case for freedom of thought rests on respect for the reasoning of others. As Mill shows in the second chapter of *Liberty*, we can have strong grounds for insisting on the liberty to entertain and express patently absurd claims. Simply having false views to argue against may sharpen our own understanding. It is also surely true that granting the state authority to determine which views are sound and which are absurd would threaten the freedom of all.

(ii) Insofar as our devotion to freedom of thought derives from respecting the reasoning and deliberations of others, those who are systematically irrational are indeed not the sorts of reasoners who merit respect. The insane, the deeply emotionally disturbed, the senile, and those in the grips of delusions really are harder cases for freedom of thought than are competent deliberators. So too, I think, are those who adopt manifestly irrational views such as flat earthers: if people typically used their freedom of thought to arrive at loony conclusions, freedom of thought could not be based on our respect for people's reasoning. And we certainly would not hold freedom of thought in such high regard. The liberal tradition in politics is not irrationalist or even skeptical about the ability of reason to arrive at truth. Liberals have been impressed by the ways that our reason lead us to different conclusions, but this has not led them to depreciate reason, or like some post-modernists, to call the very idea of reason itself into question. Those contemporary defenders of freedom of thought who insist that it is in no way grounded on the respect for our reasoning powers are departing from, not articulating, the liberal tradition.

(iii) Those who insist that the case for freedom of thought has nothing to do with respecting the reasoning of others, and so applies as much to the insane or the manifestly absurd as to the reasoned conclusion, nevertheless ought to accept claim (IX) as a principle of warranted belief. One can reject my thesis that claim (IX)—respect for people's deliberations—is a ground for freedom of thought while still embracing claim (IX) as an epistemological principle. (Likewise, those who reject (IX) as an epistemological principle might nevertheless endorse a version of it on purely moral grounds.)

3.4 Claim (IX) makes it much more difficult to provide impartial justificatory reasons, as required by claim (VIII). If one important warrant for a person believing not-*R* is that not-*R* is the result of her own deliberations, then there is real barrier to the state justifying its actions by showing that there exists some reason *R* that all fully rational moral agents will acknowledge. In short, if we add to the idea of a publicly justified morality (claim V) that applies to all the state's actions (claim VIII) a further requirement that each person's reasoning merits some respect (claim IX), we generate a neutrality principle according to which many reasons that might *prima facie* appear to justify state action are excluded. Now in order to arrive at Liberal Neutrality as it is usually understood we must also add:

- (X) (a) Reasons that presuppose values, claims about the good life, or about human perfection rarely if ever can justify coercion by the state.
- (b) Reasons that presuppose basic rules of justice can justify coercion by the state.

Claim (Xa) articulates the often-repeated claim that the state must be neutral between conceptions of the good. However, unlike many accounts of Liberal Neutrality, it is not incumbent upon us to explicate the idea of a "conception of the good," "comprehensive doctrine," "notion of the good life," etc. These ideas are not foundational to my account (hence they come at the end). The important point is that reasons that rational moral agents or citizens can reject as justificatory are excluded; the questions of what precisely these reasons are is not basic to the defense of Liberal Neutrality. There is, though, powerful reason to think that few reasons based on values or goods will qualify.

To see why, consider a philosophically well-grounded perfectionist theory, such as those proffered by George Sher or Joseph Raz.⁵⁰ For any such theory there is a well-grounded philosophical rejection, for example, a well-developed subjectivist account of value. Now suppose that a perfectionist state inspired by Sher or Raz offers a justification of its action by appeal to one of these perfectionist theories, call this *R*. A subjectivist citizen can point out that her account of value denies *R*. Her theory functions as a defeater doctrine: whether true or false, she is warranted in believing it, and so appeal to reasons such as *R* that are inconsistent with it fail to qualify as moral justifications that respect the reasoning of each. Whether or not perfectionism is the correct philosophical doctrine is beside the point. The question is whether perfectionism provides the basis for an impartial reason that respects the reasoning of each: a doctrine can be true and still fail to qualify.

Perfectionists such as Wall, as I have said (§2.5), find this implausible. How can a

⁵⁰See Sher, *Beyond Neutrality*, Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986).

moral agent not act on the best reasons as he sees them? How can morality itself dictate that a person not act on what he thinks are the best moral reasons? As Wall understands it, a theory that restrains citizens from relying on their best reasons in this way privileges civility (not imposing reasons on others) over content (the best reasons). While it might be plausible for civility to *sometimes* override content surely, Wall points out, it is not plausible to say that it *always* overrides it.⁵¹ This, though, wrongly characterizes the issue. If reasons are not impartial, they are not moral reasons. Morality requires taking up a point of view that addresses reasons to all. So the fact that other reasoners fail to accept your reasons impugns the impartiality of those reasons; you are asserting the specialness of your reasoning over fully rational others on issues that involve their lives (§2.4). All this is implied by the Minimal Neutrality Principle. Liberal Neutrality adds an extra constraint: we must be extremely cautious in claiming that others are in error about what they ought to believe, for to a significant extent the warrant for a person believing something is process dependent (claim IX). Given this, the perfectionist himself ought to conclude that while he has a plausible theory of good moral reasons, the case for these reasons is too weak to make out the claim that they really are impartial reasons suited for justifying coercion. Thus liberals must reject Wall's claim that if you have "sound political views....the fact that some may reasonably reject" them does not itself show that you should not enforce them.⁵²

Moral theory does not yield applied ethics in the way so many contemporary philosophers would have us think. According to what might be called the "Textbook View of Applied Ethics" one does moral theory in Part One, deciding which is the best moral theory. Having done that, in Part Two one proceeds to apply it, and this not simply in the sense that one guides one's own actions by it, but one employs it to force others to conform to it. Having decided that perfectionism was correct in Part One (hence one knows the correct "content"), one proceeds to advocate perfectionist coercive policies in Part Two (even if this requires overriding "civility"). But Part One had a number of competing theories, which have by no means been decisively defeated. Given this, one's claim that one is giving impartial reasons, which all fully rational moral agents must acknowledge, is false despite one's plausible claim that if everyone were as enlightened as you are they would embrace these reasons.

Claim (Xa) does not insist that all reasons based on conceptions of the good fail to qualify as justificatory reasons in the requisite sense. I, indeed, think that some notions of autonomy, which are implied by the very idea of morality, provide such reasons. And Rawls may be correct that a list of basic goods can function as public reasons. The problem is not whether a reason concerns "the good," but whether it is such that

⁵¹Wall, *Liberal Perfectionism*, pp. 80ff.

⁵²*Ibid.*, p. 101.

all rational citizens must acknowledge it as justificatory.

3.5 Now it may well seem that the argument for (Xa) shows that (Xb) is false. If we exclude as genuinely justificatory those reasons that are based on value, because they would with warrant be rejected by some reasoners, then surely we cannot justify principles of justice, for they too can with warrant be rejected by some.

Observe first that this seems like the right sort of challenge for a liberal theory. As Robert Nozick, James Buchanan and John Simmons all realize, liberalism is at the edge of anarchy, in the sense that liberal principles, if carried to their extreme, appear to lead to anarchism.⁵³ If liberty is so fundamental, justifying any limitation on it may be a real challenge. A colleague of mine once suggested that an anarchist is a “200-proof liberal.” While I think this is wrong—an anarchist is not a pure liberal—it does indicate the direction in which liberalism is pulled. Because of this, I would venture, one indication of whether an account is genuinely liberal is how much of a challenge anarchism poses.⁵⁴ If anarchism never seems a threat at all, it may well be because the account is not liberal at all. Today this is perhaps forgotten: theories that call themselves liberal are often modified forms of socialism or collectivism; carried to their extremes, these theories lead to statism.

Can the challenge be met, or is Liberal Neutrality really Anarchist Neutrality? The case against anarchism is itself an important part of liberalism, and it certainly cannot be given, or indeed, really summarized here.⁵⁵ We can, though, point to two lines of argument that a defender of liberalism ought to employ in fending off the anarchist challenge.

(i) First, it is important that impartial reasons have not been characterized as reasons that are in fact accepted by all. Although one’s warrant for believing is partially process dependent, it is not wholly so. A strong enough case may provide an impartial justification even in the face of actual disagreement. Thus, for example, those who reject all coercive states on the grounds that, in the absence of the state, people would all voluntarily do the right thing and contribute to the public welfare, are making claims that fly in the face of everything we know about human psychology and collective action problems.⁵⁶ They are unwarranted beliefs, and so cannot block a

⁵³See Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974); James M. Buchanan, *The Limits of Liberty: Between Anarchy and Leviathan*. (Chicago: University of Chicago Press, 1975); John A. Simmons, *On the Edge of Anarchy: Locke, Consent and the Limits of Society* (Princeton: Princeton University Press, 1993).

⁵⁴See Eric Mack and Gerald Gaus, “Classical Liberalism and Libertarianism” in Gerald F. Gaus and Chandran Kukathas (eds), *Handbook of Political Theory* (London: Sage Publications, forthcoming).

⁵⁵I have provided a case in *Justificatory Liberalism*, pp. 180ff.

⁵⁶See Michael Bakunin, “Statism and Anarchy” in Sam Dolgoff (ed.), *Bakunin on Anarchy* (New York: Vintage Books, 1871), pp. 323-351.

public justification.

(ii) The basic liberal claim, then, is that the total absence of a coercive state is impartially demonstrably worse than a limited state that enforces personal rights and some system of property rights. This, we might say, is the master argument of the social contract tradition, and there is little point in repeating its familiar conclusions. What ought to be pointed out is that the argument does not depend on a decisive argument for a single best system. That is, a typical objection to a social contractualist account is that, although it shows that some limited states are better than anarchy, it cannot show that everyone has decisive reason to embrace the same regime. Thus, it is said, the argument is inconclusive. But a justification of a regime need not proceed by showing that there are direct decisive reasons to embrace this particular regime in all its particularity. The most plausible line of argument is to show (a) that there is a set of regimes that everyone has decisive reason to prefer to anarchy and (b) that there is some sort of procedure that can be justified (say, democratic ones) for selecting within the set.⁵⁷ (See further §4.2.)

4 Radical Neutrality

4.1 To paraphrase Nozick, so strong and far-reaching is Liberal Neutrality, that it raises the question of what, if anything, the state and its officials may do.⁵⁸ Although, I have argued, the liberal tradition, and especially contractualism, shows that some state action can be justified, it is doubtful that much in the way of public policy survives the neutrality test. Daniel M. Weinstock apparently disagrees. He believes that “a public conception of the good” can be justified. “[S]ubstantive values can constitute part of a conception of public reason when they either are or could be shared by different contending conceptions of the good.”⁵⁹ Weinstock argues that a value can be part of public reason when one of three conditions are met. (i) If some value *V* is shared by all conceptions of the good, it can be supported by the state; (ii) if some value *V* is presupposed by all conceptions of the good, in the sense that all conceptions of the good require *V* for their realization, *V* can be appealed to; (iii) there may be empirical evidence that some actions are required to promote everyone’s values. “For example, non-coercive measures promoting physical exercise can ultimately be grounded in the empirically verifiable view that moderate amounts of exercise contribute causally both to the length and to the quality of life, as can the state’s mildly coercive policies aimed

⁵⁷See *Justificatory Liberalism*, Part III.

⁵⁸Nozick, *Anarchy, State and Utopia*, p. ix.

⁵⁹Daniel M. Weinstock, “Neutralizing Perfection: Hurka on Liberal Neutrality,” *Dialogue*, vol. 38 (1999): 45-62, at p. 55.

at making smoking less attractive.”⁶⁰

Weinstock’s three basic claims are correct. Insofar as all fully rational citizens have warrant for sharing a value, or warrant for believing that some good is necessary for all values, or for believing empirical propositions that have manifest implications for their values, appealing to such values and claims in justifying state action does not violate Liberal Neutrality. If the claims are not rationally controversial, they do not run afoul of Liberal Neutrality. However, Weinstock makes much too quick a jump from the claim that (i) value *V* embraced is by every fully rational moral person/citizen to (ii) *V* provides a reason *R* that justifies policy *P* that all fully rational moral person/citizen would accept.

The crucial problem is the rankings of values. *R* is not an impartial justification for *P* unless it would be accepted by all fully rational moral persons/citizens. Now although a rational Betty might reject *R* as a reason because it appeals to a value that she does not share, another reason that she will reject it is that it appeals to a ranking of values, or a trade-off of values, that she does not share. According to Milton Rokeach, a psychologist, Americans agree in affirming a set of thirty-six values; what they differ on is “the way they organize them to form value hierarchies or priorities.”⁶¹ If so, our main disagreements about the good are not about what is of value, but the relative importance of values. After all, what is a ranking of values but a “conception of the good?” Liberal Neutrality requires justification by impartial reasons, and reasons that presuppose a controversial value ranking do not qualify. Consequently, even if everyone agrees that smoking causes cancer, rational people clearly do disagree about whether the pleasures are worth the risk of death. Given that rational people weigh the relative values of pleasure and safety differently, coercive acts that can only be justified on the grounds that the pleasure does not outweigh the risk to health fail to provide a neutral case. Thus, although the badness of ill health caused by smoking can, as Weinstock says, be invoked in a neutral justification, that its badness outweighs the goodness of the pleasure of smoking cannot; and without that, no state policies discouraging smoking will be justified. This has direct relevance to United States drug policy, which is based on certain middle class value rankings, and which results in policies that place inordinate costs on the poor.⁶²

This same problem applies to the goods that we all share. There is a long tradition in moral and political philosophy of arguing that, since we all agree on what is good, these are impartial considerations. According to Kurt Baier, for example:

⁶⁰Ibid.

⁶¹See Milton Rokeach, *The Nature of Human Values* (New York: The Free Press, 1973), p. 110; Milton Rokeach, “From Individual to Institutional Values,” in his *Understanding Values* (London: Collier Macmillan, 1979), p. 208.

⁶²See J. Donald Moon, “Drugs and Democracy” in Pablo De Greiff (ed.), *Drugs and the Limits of Liberalism* (Ithaca: Cornell University Press, 1999), pp. 133-155.

I take a person's good, what is for his good, to be roughly things such as health, wealth, power, longevity, having friends, about which experience suggests that they are a good thing from anyone's point of view. . . . We are quite confident in saying that everyone prefers being healthy to be sick, that everyone is better able to attain his objectives whatever they may be if he is healthy rather than sick and so on. Nevertheless, even in the case of health what makes it important, really worth caring about, being of value to one, is the central and almost indispensable role it plays in virtually everything one wants to do.⁶³

Surely we all—or at least very nearly all—can agree to advance these values or goods. Again, though, to publicly justify a state action or policy it is not sufficient to show that we all accept these values or goods, but that there is a trade-off rate or ranking that all fully rational citizens would accept. But one of the ongoing disputes in our society is, for example, the proper way to trade-off our interest in making our own choices (the value of liberty) and the good of being healthy. Consider the case of mandatory motorcycle helmet laws. The point of helmet laws is to advance motorcyclists' good by keeping them alive and healthy. From the perspective of that ingredient of their good, it seems to many uncontroversial that motorcyclists have reason to embrace such laws. But many motorcyclists prefer the freedom to choose—to run the risk of a serious accident and brain damage, to ride with the wind in the hair—and so resent these laws because they take away their freedom of choice. Now many legislators appear to assert that there is a trade-off rate that all fully rational citizens would embrace: it is unreasonable to reject mandatory helmet laws because the health gains outweigh the losses to liberty. To many motorcyclists, however, this is simply the trade-off rate of middle-class, middle-age people, who are risk-averse. Is it not clear that it is the motorcyclists who are being unreasonable.

4.2 Weinstock suggests another way to avoid the apparent radical implications of Liberal Neutrality: it can be applied at different levels.⁶⁴ Rawls, for example appears to apply it only to constitutional matters; or it might be applied only to matters of basic justice. The more we restrict the scope of neutrality, it seems that the less radical will the principle be. Suppose, however, that we have a neutral justification of a constitution, and now are advocating policy *P*. There are two possibilities. It might be that the constitution which is, *ex hypothesi* neutrally justified, authorizes *P*. In this case *P* does have a neutral justification insofar as it is justified through the constitution which is neutrally justified. The issue here, though, is how extensive a constitution

⁶³Kurt Baier, "Comments" in J.B. Schneewind (ed.), *Reason, Ethics, and Society: Themes from Kurt Baier, with this Responses* (Chicago: Open Court, 1996), p. 216.

⁶⁴Weinstock, "Neutralizing Perfection," p. 54.

could be so neutrally justified. It seems doubtful indeed that, for example, a constitution that allows the government to use taxation to discourage smoking is capable of neutral public justification. Given what has been said in section 4.1, there is a strong presumption that all coerced citizens could not be given impartial reasons of the requisite sort for granting the state authority over that matter. The other alternative is that the constitution is neutrally justified, but only the constitution; there is no indirect neutral justification via the constitution for policy *P*. Policy *P* simply is another matter. In this case, it looks as if *P* violates claim (I): it is a coercive act without justification.

Neutrality cannot be restricted to a certain “level” since claim (I) is a fully general principle, applying to all coercive acts. Witness how questions as to the proper specification or the Liberal Neutrality, or debates about its proper application or scope, are avoided by the derivation of Liberal Neutrality from more fundamental moral principles. The favored interpretation is determined by the derivation: the scope of the principle is determined by its reliance on claim (I).

4.3 It should be noted that although Liberal Neutrality is a radical principle, and severely limits what policies a state can pursue, it is not a libertarian principle as that is normally understood. In any political society, some set of laws defining property rights must be publicly justified. Property rights involve coercion: the holder of the right can force others not to use, transfer or destroy that over which he has property. Thus they stand in need of justification. Yet without a distinction between mine and thine, peaceful and cooperative social life is not possible. Thus some system of property rights is necessary. Now the favored impartial justification of property is a matter of dispute. So called “left-libertarians” such as Hillel Steiner⁶⁵ insist that egalitarian distributions are required to justify individual property rights, while “traditional” libertarians insist that redistributions violate rights to property. This dispute, over what is required for a justified property regime, is about what is required for Liberal Neutrality. There is a conclusive case for property rights, but reasonable dispute about the impartially justified system.

Doesn't this leave Liberal Neutrality open to precisely the same objection as that levelled against Weinstock in section 4.1? I argued above that, while we all may agree that *V* is a value, because we rationally disagree on the relative value of *V* and, say, *W*, no appeal to the superiority of *V* over *W* can provide an impartial reason of the required sort. Similarly, one may say that while everyone agrees that some system of property rights is better than none, no argument for a specific system of property can function as an impartial reason of the requisite sort, as it will be rationally rejected either by a left- or a right-libertarian. The difference between the smoking case and

⁶⁵Hillel Steiner, *An Essay on Rights* (Cambridge, MA: Blackwell, 1994).

the property rights case lies in where the option “no policy at all in this matter” is on each rational citizen’s rankings. Suppose that all rational citizens endorse or prefer systems of property $\{P_1, P_2, P_3\}$ over no system of property rights, but prefer no system of property rights over $\{P_4, P_5\}$. If so there is a Liberal Neutralist justification for selecting from the set of $\{P_1, P_2, P_3\}$; in addition, of course, we require a selection procedure that also can be so justified.⁶⁶ If we can do that, then we will have a fully justified system of property rights despite the disagreements between right- and left-libertarians on the relative merits of $\{P_1, P_2, P_3\}$. The contrast to most public policy cases is that, over a very wide range of political issues, it would seem that for *each and every* proposal P in the set of options, a number of citizens rank P as inferior to “no law at all on this matter.” No law at all will be preferred, first, by those who prefer no law to any policy, and so rank P and all other policies behind no policy at all (e.g., classical liberals regarding pornography regulation). Second, P will also be ranked worse than no policy at all by those who prefer some other policy P^* to no policy at all, but prefer no policy at all to P .⁶⁷ Thus on issues where some rational citizens fall into one of these two groups no public justification of P can be advanced. Of course, if impartial justice requires P or a policy like P , then we move to a case much more like that of property rights. It is very likely, though, that once we take account of comparative judgments, Liberal Neutrality precludes most contemporary legislation; it certainly excludes most of what “liberal perfectionists” would have the state do.

5 Conclusion: In Defense of Liberal Radicalism

Liberal Neutrality is a radical principle. Some think that radical principles are implausible just because they are radical. Referring to a radical understanding of liberal neutrality according to which the state must be neutral between “all matters relating to the human good,” Weinstock insists that this leads to “complete state inaction, something which no liberal thinker, not even libertarians like Robert Nozick, ever advocated.”⁶⁸ Even speed limits, Weinstock argues, would be prohibited, since they “place an obstacle in the way of those who value thrills over safety.”⁶⁹ Such a radical

⁶⁶I have argued that constitutional democracy is such a procedure in *Justificatory Liberalism*, Part III.

⁶⁷I explore this problem in much more depth in “The Legal Coordination Game,” *American Philosophical Association’s Newsletter on Philosophy and Law*, forthcoming.

⁶⁸Weinstock, “Neutralizing Perfection,” p. 47.

⁶⁹Ibid. Again, we see how confusions result from separating the justification of raising revenues from the justification of expenditures (§2.7). Weinstock supposes that there simply are roads out there, and then there is an entirely distinct issue of whether there will be speed limits. Surely we have to ask whether the provision of roads without speed limits can be justified to all taxpayers. I assume it is manifest that the thrill seekers would not be able to get others to pay for their public racetracks, and probably would be unable to pay for them themselves. No doubt the others could well afford to pay for a system of roads without including thrill seekers, should the thrill seekers really prefer not using

conception of neutrality, says Weinstock, “would be absurdly self-stultifying.”⁷⁰ Now I have already argued that the social contract tradition provides an extended reply to the anarchist challenge, one that I believe is clearly successful. Impartial reasons can be provided to justify at least some state activities; so whether or not Weinstock’s criticisms apply to the specific interpretation of neutrality he is considering, I believe that there are good grounds for maintaining that anarchism does not follow from our radical interpretation of Liberal Neutrality. In concluding, however, I wish to focus on the implied premise of Weinstock’s argument: a principle that might show the state to be morally illegitimate is absurd, and so a conclusion in favor of anarchism functions as a *reductio ad absurdum*. Liberals, Weinstock insists, should not be not be “self-stultifying.”

Weinstock’s position presupposes what liberals must question: that state coercion is justified. If we embrace Weinstock’s assumption, a conclusion that state coercion cannot be justified simply shows that our premises are wrong: since we know that coercion by the state is justified, any principle that indicates that it is not is *ipso facto* absurd. I see no compelling reason to accept what amounts to a presumption in favor of state force. Such a presumption, of course, is part and parcel of conservative thinking, but the liberal tradition in political philosophy takes the state, and all coercion, as requiring justification. To appropriate a contemporary if not pellucid term, the state is problematic. That is why the classic social contract theories begin with the state of nature and seek to justify the creation of a state. Weinstock’s presumption reverses this: we start out with a presumption that a large range of state activities are justified and use this as benchmark for testing our principles.

Some may justify this manifestly conservative approach to justification by appeal to reflective equilibrium; indeed, in contemporary political philosophy, reflective equilibrium is almost an orthodoxy. Careful consideration of reflective equilibrium, I have argued elsewhere, shows it to be fraught with difficulties, especially as a method of moral decision making and argument, as opposed to a standard of correct belief.⁷¹ Even if we embrace reflective equilibrium, however, and so hold that acceptable moral and political principles must accommodate certain considered judgments, this hardly shows that the accepted contemporary understanding of the limits of state action qualifies as such a touchstone judgment. Supposing it is true that “daily politics is irretrievably perfectionist,” this would by no means show that anti-perfectionism is absurd or misguided. The liberal tradition denies that the justification of organized coercion is a settled conviction that can overturn fundamental moral principles. If

roads to paying for roads with speed limits. Of course private roads would solve this difficulty. Witness again the conservative horizons of the analysis.

⁷⁰Ibid.

⁷¹See my *Justificatory Liberalism*, pp. 101-109.

compelling moral claims such as (I)-(X) imply that most state coercion is unjust, then the loser is state coercion, not these fundamental moral convictions.

Liberal moral principles are indeed “self-stultifying” when what is being stultified is unjustified coercion of some by others. Morality stultifies a host of things that we may wish to do, including making others more perfect in our own eyes.

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