

Between Neutrality and Perfectionism

Raphael Cohen-Almagor

I. Introduction

It has been argued that the difference between liberal states and theocratic, communist or fascist states is not that the liberal states promote different ideals of the good, but that they promote none. Unlike illiberal states, which regard it as a primary function of the state to prescribe the moral character of society, liberal states shun such attempts and allow freedom to citizens to develop their own conceptions.¹

The aim of this paper is to analyze the notions of "conception of the good" and "neutrality" and to suggest a perspective which provides a middle ground between strict perfectionism, on the one hand, and complete neutrality, on the other. This perspective would allow plurality and diversity without resorting to absolute neutrality. It would involve some form of perfectionism without resorting to coercion. I will assert that liberal states do resort to some forms of perfectionism in conducting their policies. I will further argue that the policy they should adhere to is one of impartiality rather than one of neutrality.

II. Why do liberals advocate neutrality?

Many defenders of liberalism argue that liberalism is in some sense neutral with respect to competing conceptions of the good;² that instead of adopting an interventionist policy, liberal states should adhere to neutrality. Political neutrality requires that the justification of fundamental political principles should not rest upon the intrinsic superiority of any of the contested ideals. Liberals postulate that governments cannot use as their justification for any action the fact that one person's plan of life is more or less worthy than another's. In order to ensure that every person will be able to pursue his or her conception of the good, neutrality does not endorse any disposition which defines human good and human perfection to the exclusion of any other. It refrains from identifying essential interests with a particular conception of the good life and shrinks from the possibility that the government, which could be associated with one or more segments of society, might

The first drafts of this essay were written in 1990. Recently I read *Political Liberalism* where Rawls explains many of the issues that troubled him in his essays during the 1980s. The reading of Rawls's new book enhanced my understanding of his position. Several individuals contributed valuable suggestions and comments. I wish to thank Geoffrey Marshall, Ronald Dworkin, Joseph Raz, David Heyd, and Avner De-Shalit. I am also grateful to an anonymous referee of *The Canadian Journal of Law and Jurisprudence* for his/her thoughtful suggestions.

1. J. Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986) at 108.

2. R. Nozick, *Anarchy, State and Utopia* (N.Y.: Basic Books, 1974) at 33, 48-51, 271-74; B.A. Ackerman, *Social Justice in the Liberal State* (New Haven & London: Yale University Press, 1980) at 11-12, 347-378; R.M. Dworkin, "Why Liberals Should Believe in Equality?" (1983) XXX:1 *The N.Y. Review of Books* 32 at 32; R.M. Dworkin, *A Matter of Principle* (Cambridge: Harvard University Press, 1985) at 191-94, 205; W. Kymlicka, *Liberalism, Community, and Culture* (Oxford: Clarendon Press, 1989) at 76-85, 95-96; P. De Mameffe, "Liberalism, Liberty, and Neutrality" (1990) 19:3 *Phil. & Publ. Affairs* 253 at 253.

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impose its values and ideals on others, either by propagation or by force.³

Liberals often add separate, though related, arguments that in a democracy there are often conflicting and incommensurable conceptions of the good, and that having diverse ideals, in light of which people lead different ways of life, is the normal condition.⁴ Furthermore, this variety is conceived to be a good thing; that is, to quote Rawls, it is rational for members of a well-ordered society to want their plans to be different.⁵ For, as Rawls explains, human beings have various talents and abilities the totality of which is unrealizable by any one person or a group of persons. Thus we not only benefit from the complementary nature of our developed inclinations but we take pleasure in one another's activities.⁶ Hence liberals urge that citizens be allowed to follow their conceptions of the good as far as it is socially possible, rather than being obliged to live with convictions which they do not uphold. Neutrality is prescribed to ensure stand-off from support for what *prima facie* is conceived to be valuable and moral conceptions of the good. The qualification "so far as it is socially possible" implies that there is a place for some restrictions on citizens and organizations to maintain the framework of society, but when introduced they require some justification. I shall further elaborate on these arguments in section IV below. Here, however, some explanation is required in regards to the main themes of the discussion. The first is the "conception of the good", and the second is "neutrality". The latter theme will be examined in the context of the more general concept of anti-perfectionism.

Focusing attention on the first theme, Raz contends that the easiest explanation of what conceptions of the good are is to say that they consist of all aspects of morality other than the principle of neutrality.⁷ While this explanation may indeed be the easiest, the question remains as to whether it has any contribution beyond making a mere generalization. Moreover, Marxists and feminists contend that liberal conceptions are class-based and sex-based respectively.⁸ Thus, some further explanation would appear to be in order.

3. The assumption is that should governments not be neutral regarding the plurality of convictions that prevail in society, then their bias could generate intolerance.

4. B.A. Ackerman *supra* note 2 assumes that people pursue forms of social life in accordance with their conceptions of the good. Like him, other liberals use the terms 'ideals', 'ways (or plans or forms) of life', and 'conception of the good' interchangeably. J. Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971) at 446-52; J. Raz, *supra* note 1 at 110-33; W. Kymlicka, *supra* note 2 at 47-73, 74-99.

5. A well-ordered society is a society with just institutions and which accepts Rawls's two principles of justice; whose basic structure is publicly known to satisfy these principles, and whose citizens have a normally effective sense of justice and so generally comply with society's basic institutions. J. Rawls, *Political Liberalism* (N.Y.: Columbia University Press, 1993) at 35. See also J. Rawls, "A Well-Ordered Society", in P. Laslett & J. Fishkin, eds, *Philosophy, Politics and Society* Fifth Series (Oxford: Basil Blackwell, 1979) at 6-20; J. Rawls, "The Idea of an Overlapping Consensus" (1987) 7:1 *Oxford J. of Legal Stud.* 1 at 10 fn 17.

6. *A Theory of Justice*, *supra* note 4 at 448.

7. *Supra* note 1 at 134-35.

8. Marxists hold that the liberal conceptions are prejudiced by bourgeois capitalist considerations. C.B. Macpherson, *The Real World of Democracy* (Oxford: Oxford University Press, 1972); C.B. Macpherson, *The Life and Times of Liberal Democracy* (Oxford: Oxford University Press, 1977). See also M. Fisk, "History and Reason in Rawls' Moral Theory" in N. Daniels, ed., *Reading Rawls* (Oxford: Blackwell, 1975) at 53-80 esp. at 57-67. For a feminist perspective see A. Jaggar, *Feminist Politics and Human Nature* (Totowa, N.J.: Rowman & Allanheld Harvester Press, 1983); A. Nye, *Feminist Theory and the Philosophies of Man* (London: Croom Helm, 1988).

A person, as a moral agent, has her own conceptions of the moral life, and accordingly determines what she deems to be the most valuable or best form of life worth leading. It may be suggested that a conception of the good involves a mixture of moral, philosophical, ideological and religious notions, together with personal values which contain some picture of a worthy life. It must be noted that one's conception of the good does not have to be compatible with moral excellence. It does not mean a conception of justice. In other words, one's conception of the good does not necessarily have to be dominated by moral considerations. Leading a valuable life does not necessarily entail leading what liberals would consider to be a moral life. The second may guide the first, at least to some extent, when one develops one's own conception of the good. But it is equally plausible to think that the second may be subordinated to the first. Then morality is secondary to the desire of leading a valuable life and the conception of the good is dominated by that desire. The assumption is that a conception of the good comprises a basic part of our overall moral scheme and that it is public in the sense that it is something one advances as good for others as well as for oneself, consequently one would want others to hold a certain conception for their own sake. But when that desire is based on coercion then it cannot be said to be moral because people are no longer autonomous to decide on their own way of life. Then they are forced to follow a certain scheme which *they* do not consider to be a conception of the good life.

The way Israeli establishment treated the Middle-Eastern immigrants during the 1950s is a case in point. People arrived to Israel from different countries and cultures but, instead of encouraging cultural pluralism, the establishment did not hesitate to promote certain ideals of the good to the exclusion of others. It tunnelled the freedom of individuals and groups to develop themselves in accordance with some preferred ideals and conceptions, demanding to forego other conceptions conceived to be backward and primitive. All were required to follow a given set of norms dictated from above, which by contrast was envisaged as valuable. The Middle-Eastern immigrants were compelled by the establishment to accept certain cultural norms and to waive others conceived to be incompatible with the desired framework of the newly established state. This was done under the slogan which spoke of a common heritage, of creating 'one people and one language'.

The effort was to absorb the immigrants through modernization. By definition, this effort was anything but neutral, or impartial in its attitude to cultural pluralism. It was claimed that in due course 'they' (i.e., the Middle-Easterners) will thank 'us' for 'showing them the light'. The result was discrimination against everything which was connected with traditionalism.⁹ Although the government declared that it will fight against coercion in the spheres of economy, religion, education, and culture, it did not hesitate to impose its will in these spheres.¹⁰ The immigrants were

9. It should be said that western traditionalism (Yiddish, the life in the *ayara*, the Jewish small villages and ghettos) was rejected as well for the same reasons.

10. David-Zvi Pinkas's speech in *Divrei Haknesset* (Proceedings of the Knesset), 192 meeting, Vol. VII (20 November 1950) at 275. In his appearance before Justice Proomkin Commission of Enquiry on Education in *Olim* (Immigrant) Settlements, 1950, Pinkas MK claimed that the actions taken by the cultural division in the Ministry of Education constituted "cultural and religious murder". Archive of the State of Israel, G5543/3631, file 607 (IV) at 9.

required to cast away their folk stories and popular legends and beliefs. Side-curls of young boys were cut, sometimes forcefully, and attempts were made not to allow them to pray.¹¹ It was expected from them to change their predominantly traditional attitudes and behaviour into a modern, western approach and, *ipso facto*, to change their self-definition, identity and culture. Contrary to the prevailing liberal outlook, Israeli democracy intentionally endorsed (especially in its first decade) certain dispositions which aimed to define human good and human perfection to the exclusion of others. A certain culture was looked upon as more worthy than other cultures.¹² The Middle-Easterners were not able to enjoy the freedom to arrive at their own ranking, their own conception of the good, because this could have entailed that Israel might become just another Arab country.¹³ To avoid this consequence, the establishment identified itself with a particular conception of the good life and strove to impose its values and ideals on society. Cultural pluralism was not encouraged.¹⁴

Moreover, in Israel no separation between state and religion exists. Thus, a perfectionist element is incorporated in the definition of Israel. After the Holocaust, the goal was to found a safe haven for Jews all over the world so as to avoid the possibility of another horrific experience of that nature. Indeed, the United Nations acknowledged the need of establishing a Jewish state. This creation, however, based on a specific conception of the good, discriminates against the Israeli Arabs. Israel acknowledges the problematics involved in the introduction of this perfectionist element in its framework of ruling. To assure an equal status for the Arab minority, the Declaration of Independence holds that Israel will foster the development of the country for the benefit of all its inhabitants; that it will be based on the foundations of liberty, justice and peace; that it will uphold complete equality of social and political rights to all of its citizens irrespective of religion, race or sex, and that it will guarantee freedom of religion, conscience, language, education and culture. Yet, the explicit formulation of these principles could not make an Arab easily (if at all) identify with a state whose hymn speaks of Zion and of "the yearning of the Jewish soul".

Summing up the clarification of the term "conception of the good", it means a more or less determinate scheme of ends which the doer aspires to carry out for their own sake, as well as of attachments to other individuals and loyalties to various

11. Archives of the State of Israel, G5543/3631, file 607 (I), at 49, 105-106, and depositions of 9 March 1950 at 10-13; 17 May 1950 at 8-10.

12. In 1951 David Ben-Gurion wrote: "The immigration of today is mainly from the east, the countries of Islam in Asia and in Africa, where Jews of late could draw little enlightenment from Jewish or any other culture." D. Ben-Gurion, *Rebirth and Destiny of Israel* (London: Thomas Yoseloff, 1959) at 409.

13. Israel regards western tradition and culture as the 'significant other', as the frame of reference to which it wants to be associated. Its leaders hold that Israel maintains "a stable democratic regime", that it guarantees maximum degree of civic freedom, and that its "government holds no sway over that which is in a man's heart, or over aught concerning science, aesthetics and art". D. Ben-Gurion, *Israel: Years of Challenge* (London: Anthony Blond, 1964) at 233; D. Ben-Gurion, *supra* note 12 at 363-80, 280. In addition, the Education Law (1953) speaks of the strive to establish Israeli society on "liberty, equality, tolerance, mutual assistance and love of mankind".

14. For further discussion see my paper R. Cohen-Almagor "Neutrality, Culture, and the Nation—Building Ideology" The Rich seminar, Yarnton, Oxon. 1991.

groups and associations. This aspiration is legitimate in a liberal society as long as it is not based on coercion. A person moulds her way of living by bringing reasons for acting or reacting in a certain manner, for making decisions, and for reaching some practical conclusions in different situations. A person is free to revise her own conception of the good if she so wishes when deciding to change her form of life (say, upon joining the Hari Krishna), or in the face of new circumstances. One's conception of the good is based on rational calculations and judgments about oneself, one's short and long term goals, one's immediate surroundings, and society as a whole. These judgments may be subjected to revision time and time again. One's conception of the good also involves some normative assumptions with regard to these subjects. Consequently, it is internally complex and plural, encompassing both personal values and societal circumstances which may influence these values in one way or another. A pluralism of values presents us with a choice concerning the values we incorporate into our own conception of the good and this, in turn, means that some value ranking is required. Everyone can make his or her mixture which is regarded as the most valuable.

Indeed, it has been argued that people do not suppose that there is one uniquely correct objective ranking of values, one optimal mix that prescribes how trade-offs among them should be made. There is some range within whatever partial rankings of values are objectively correct.¹⁵ Likewise, there is not purported to be a single way to resolve conflicts between moral or other values. Ergo, if there is no one objectively "correct" set of values to guide us, then every person should be free to arrive at her own ranking, her own conception of the good. Tolerance has to prevail so as to enable individuals to pursue their convictions as they see fit and proper provided they do not harm others. Tolerance is advocated by both citizens and governments, in order to enable citizens to live their lives according to their moral considerations and the values which they hold most dear. On the part of the government, or the state, an additional policy of neutrality is called for.

III. Neutral principles: four types

Liberals who endorse neutrality argue that governments should employ neutral considerations between conceptions of the good. There is, however, disagreement among liberals with regard to the specific sense and form of neutrality. What does neutrality mean in practical terms? The following approaches have been suggested:

1) *Procedural neutrality*—this approach holds that social and political institutions should be regulated in accordance with considerations that any reasonable person would accept as the basis of moral claims regardless of her conception of the good. Here neutrality refer to a procedure that can be legitimated, or justified, without appealing to any moral values at all. Or if this seems impossible, since showing something justified appears to involve an appeal for some values, a neutral

15. R. Nozick, *Philosophical Explanations* (Oxford: Clarendon Press, 1984) at 448. I am aware that there are people who would object to this supposition. Raz, for example, notes in his comments on this paper that people he knows would not agree with it.

procedure may be said to be one justified by an appeal to neutral values, and which furnishes equal opportunity for the contending parties to present their claims.¹⁶ In “The Priority of Right” Rawls writes that justice as fairness can be seen as exemplifying a kind of procedural neutrality.¹⁷ However, in his recent *Political Liberalism* Rawls conclusively contends that “Justice as fairness is not procedurally neutral”.¹⁸ Here he endorses what I call “qualified neutrality of aim”, to be discussed in a minute.

2) *Concrete neutrality*—this form of neutrality postulates that the state is not to do anything intended to favour or promote any particular comprehensive doctrine rather than another, to give greater assistance to those who pursue it, or to limit individual liberty in ways that advance one particular conception of the good.¹⁹ This conception of neutrality is advocated by Dworkin in his essay “Liberalism”.

3) *Neutrality of aim*—holds that the role of government is to secure equal opportunity for citizens to further any conception of the good they freely affirm.

4) *Qualified neutrality of aim*—holds that the role of government is to secure equal opportunity for citizens to pursue any *permissible* conceptions of the good. By ‘permissible’ it is meant conceptions which appreciate the accepted principles of justice. Rawls asserts that justice as fairness hopes to satisfy this variant of neutrality in the sense that the basic institutions and public policy are not to be designed to favour any particular comprehensive doctrine. He reiterates this point in *Political Liberalism*.²⁰

Conceptually, the four types of neutrality share the emphasis on plurality. Pluralism is commonly conceived to be an essential element of democracy, an indispensable feature for having the potential for good life. Methodologically, the idea of neutrality is placed within the broader concept of anti-perfectionism. The implementation and promotion of conceptions of the good, though worthy in themselves, are not regarded as a legitimate matter for governmental action.²¹ The fear of exploitation, of some form of coercion, leads to the advocacy of plurality and diversity. Therefore, government is not to act so as to affect some idea in a way that differs from its attitude toward other ideas. It ought to acknowledge that every person has her own interest in acting according to her own convictions; that everyone should enjoy the possibility of considering alternative conceptions. There is no single belief about moral issues and values that should guide all and, therefore, each has to enjoy autonomy and to have freedom to hold her ideals.

Raz sheds further light on anti-perfectionism, saying that it comprises the “political neutrality principle” and the “exclusion of ideals” doctrine. Raz views the “political neutrality principle” as holding that government policies should seek to

16. *Political Liberalism*, *supra* note 5 at 191. See also P. De Marneffe, *supra* note 2 at 253.

17. J. Rawls, “The Priority of Right and Ideas of the Good” (1988) 17:4 *Phil. & Publ. Affairs* 251 at 263.

18. *Political Liberalism*, *supra* note 5 at 192. Rawls explains that the principles of justice as fairness are substantive and express far more than procedural values, and so do its political conceptions of society and person, which are represented in the original position.

19. P. De-Marneffe, *supra* note 2.

20. *Supra* note 17 at 262-63; *Political Liberalism*, *supra* note 5 at 193-94.

21. *Supra* note 1 at 110.

be neutral regarding ideals of the good. It commands the government to make sure that its actions do not help acceptable ideals more than unacceptable ones; to see to it that its actions will not hinder the cause of false ideals more than they do that of true ones. As for the "exclusion of ideals" doctrine, it does not tell governments what to do. Rather it forbids them to act for certain reasons. The doctrine holds that the fact that some conceptions of the good are true or valid should never serve as justification for any political action. Neither should the fact that a conception of the good is false, invalid, unreasonable or unsound be accepted as a reason for a political action.²² The doctrine prescribes governments to refrain from using one's conception of the good as a reason for state action. They are not to hold partisan (or non-partisan) considerations about human perfection to foster social conditions.

Raz's distinction generates some confusion. None of the four types of neutrality are in accordance with the "political neutrality principle". Rather, they endorse the "exclusion of ideals" doctrine. The confusion is not only one of terminology. Raz argues that Rawls endorses the "political neutrality principle" but Rawls does not aim his theory to be neutral in its effects. In "The Priority of Right" Rawls specifically writes that even if political liberalism can be seen as neutral in procedure and in aim, it may still affirm the superiority of certain forms of moral character and encourage certain moral virtues.²³ Similarly, "qualified neutrality of aim" and "concrete neutrality" do not deny that not all conceptions of the good will fare equally under liberal institutions. Liberal thinkers see it the aim of a just governmental system to further liberty and certain egalitarian values.²⁴ The constitution is seen as a just political procedure which incorporates the equal political liberties and seeks to assure their fair value so that the processes of political decision are open to all on a roughly equal basis.²⁵ Liberals differ on the ways by which the common good may permissibly be promoted. If we take Rawls's and Dworkin's theories as examples, both hold that persons should be free to choose any conception of the good that does not violate the principles of justice, no matter how different it may be from the prevailing conceptions widely held by their community. Rawls endorses qualified neutrality of aim in order to warrant rights to basic liberties.²⁶ Dworkin's aim in advocating concrete neutrality is identical but his theory provides a wider range of individual liberties than that of Rawls's. Dworkin sees neutrality as derived from every person's right to equal concern and respect and insists on moral neutrality to the degree that equality requires it. As a result, it is argued that the government should ensure citizens an initially equal distribution and that it should help them to increase their welfare.²⁷

22. *Ibid.* at 110-11, 134-36. Raz uses the terms 'doctrine' and 'principle' interchangeably.

23. *Supra* note 17 at 263.

24. J. Rawls, *supra* note 4; J. Rawls, "Justice as Fairness: Political Not Metaphysical" (1985) 14:3 *Phil. & Publ. Affairs* 223; *A Matter of Principle*, *supra* note 2; B.A. Ackerman, *supra* note 2; C.E. Larmore, *Patterns of Moral Complexity* (Cambridge: Cambridge University Press, 1987).

25. *Political Liberalism*, *supra* note 5 at 337.

26. I think the same motivation guided Rawls when he spoke of procedural neutrality in "The Priority of Right". But then he realized that his principles of justice as fairness are substantive and express far more than procedural values and thus shifted emphasis to qualified neutrality of aim.

27. The Respect for Others Argument urges us to give equal consideration to the interests of others, and to grant equal respect (within limits) to the way of life of others. R.M. Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1978) at 272-73; *A Matter of Principle*, *supra* note 2 at 181-204; R.M. Dworkin, "What Is Equality? Part 2: Equality of Resources" (1981) 10:4 *Phil. & Publ. Affairs* 283.

Dworkin also advocates subsidies for the arts, and for liberal education. This is because art and education make a general contribution to the community as a whole. Dworkin sees art as a mixed public good and justifies some state subsidy on the grounds that we are all trustees for protecting the richness of our culture for future generations and we have the duty, “out of simple justice”, to leave that structure at least as rich as we found it.²⁸ This argument regarding obligations we have to future generation is driven by a premise of official neutrality. It is a rather weak argument because if we are to leave *everything* that is existing today to our children and children’s children, and we are not allowed to apply value judgment in deciding *what* they should inherit, then we should leave them—among other things—famine, homelessness and ecologic disasters as well as parks, elephants and art. Let me consider Dworkin’s view in some more detail and proceed by discussing Rawls’s arguments.

IV. The Dworkinian and Rawlsian perspectives

In Dworkin’s theory individuals are conceived of as being entitled to the respect which enables them to determine the course of their lives as reasoning beings who are capable of deliberation, of taking responsibility for their specific conduct as well as for the kind of life that they wish to lead. That is, respecting others entails viewing others as people who are realizing themselves as autonomous choosers who examine their goals and, when needed, revise not only their ideas regarding their goals but also their views about the ways to seek them.²⁹

Dworkin believes that governments which take a stance and regard one conception as better, truer or more valid than others, might detract by the very taking of a position from other conceptions of the good, and thus deny pluralism. While citizens can follow their conceptions and debate with others so as to add more weight to their own conception, governments must grant citizens equal concern and respect, and should secure possibilities for them to pursue their chosen plans of life. The role of government is not to assign citizens one path over another, but it can and should help citizens to increase their welfare, as Dworkin postulates: “Politics should aim that people have better lives, on the whole, and to aim at this in some way that treats that highest-order interest as equally important for each person.”³⁰

Dworkin makes two important clarifications. He explains that our highest-order interest lies in having as good a life as possible, a life that has in it as much of what a life should have. Then he maintains that the saying that people’s highest-order interest lies in having a good life is very different from the claim that any particular

28. *A Matter of Principle*, *supra* note 2 at 229, 233.

29. This view is implied by the Kantian approach. Vinit Haksar, *Equality, Liberty, and Perfectionism* (Oxford: Oxford University Press, 1979) at 179 postulates that there is a second version which does not carry this implication. According to this second version, we can respect others by respecting their way of life and conception of the good, without necessarily respecting their autonomy.

30. R.M. Dworkin, “In Defense of Equality” (1983) *I Soc. Phil. & Policy* 24 at 26. This statement, among others, proves Raz wrong in saying that “anti-perfectionism is based on restraint, on not doing as much good as one can”. *The Morality of Freedom*, *supra* note 2 at 111.

person's life is *in fact* good or that her conception of the good life is worthy. So it could not provide an argument that people's lives are equally good or equally valuable lives or anything of that sort. It claims that, for any particular person, her life is, at least for her, a *subject* of value rather than an object of value.³¹ Thus to respect people as free human beings, so that each and every person could have a good life, entails that governments must not influence individuals (by propaganda, not to mention more radical measures) to choose one course of action over another. They must not exclude any idea but, rather, must allow for meaningful individual choice so that every person, whether considered alone or within a group, is able to adhere to her own conception of the good and to the values she appreciates most. To that effect Dworkin, among others, holds that neutrality is the policy to be adopted because no one should be allowed to dictate to any one else what their convictions and priorities in life should be.³²

Nevertheless, Dworkin and Rawls acknowledge that neutrality does not mean that individuals are allowed to further any conception of the good, whatever this might be. Dworkin qualifies his argument for equal respect and concern by saying that every person should be able to pursue her own conception of the good, as long as she does not harm others.³³ He acknowledges that some conceptions of a good or decent life could not be realized in a liberal state because what they enjoy would be either forbidden or economically impossible.³⁴ Similarly, Rawls concedes that no society can include within itself all forms of life. Rawls argues that, in a democratic culture, a workable conception of political justice must allow for a diversity of doctrines and the plurality of conflicting, and indeed incommensurable, conceptions of the meaning, value and purpose of human life affirmed by members of existing democratic societies.³⁵ But given the profound differences in beliefs and conceptions of the good, we must recognize that, just as on questions of religious and moral doctrine, public agreement on the basic questions of philosophy cannot be obtained without the state's infringement of basic liberties.³⁶ Rawls explains that conceptions which directly conflict with the principles of justice, or which wish to control the machinery of state and practices so as to coerce the citizenry by

31. *Ibid.* R.M. Dworkin at 27 (Dworkin's emphasis).

32. In R.M. Dworkin, "What Liberalism Isn't" (1983) XXIX: 21 & 22 N. Y. Review of Books 47 at 47 Dworkin writes: "Whatever we may think privately, it cannot count, as a justification for some rule of law or some political institution, that a life that includes reading pornography or homosexual relationships is either better or worse than the life of someone with more orthodox tastes in reading or sex. Or that a life suffused with religion is better or worse than a wholly secular life". See also *A Matter of Principle*, *supra* note 2 at 181-204, 221-33; Rawls *A Theory of Justice*, *supra* note 4 at 325-32 argues that from the point of view of the parties in the original position, no form of life is *intrinsically* better or worse than another form of life. B.A. Ackerman, *supra* note 2 at 6; W. Kymlicka, *supra* note 2 at 33-36.

33. R.M. Dworkin, "What Liberalism Isn't", *ibid.* at 47. We may respect our fellow man A, respect A's decision to steal from B, think that it is wrong, and with all due respect punish A. This is perfectly consistent with the Respect for Others Argument.

34. In comments made on a draft of this essay.

35. Rawls acknowledges that it is a disputed question whether and in what sense conceptions of the good are incommensurable. He states that incommensurability is to be understood as a political fact, an aspect of pluralism: namely, the fact that there is no available political understanding as to how to commensurate these conceptions for settling questions of political justice. "The Idea of an Overlapping Consensus", *supra* note 5 at 4.

36. J. Rawls, *supra* note 24 at 225-30.

employing effective intolerance should be excluded. The assumption is that these principles of justice underlie any conception of the good.³⁷ Rawls explicitly says that there is no social world that does not exclude some ways of life that realize in special ways certain fundamental values: "By virtue of its culture and institutions, any society will prove uncongenial to some ways of life. But these social necessities are not to be mistaken for arbitrary bias or for injustice."³⁸

In *Political Liberalism* Rawls further clarifies his position by drawing a distinction between comprehensive doctrines and *reasonable* comprehensive doctrines. Rawls explains that comprehensive doctrines include conceptions of what is of value in human life, as well as ideals of personal virtue and character, of friendship and of familial and associational relationships.³⁹ While reasonable comprehensive doctrines have three main features: they cover the major religious, philosophical, and moral aspects of human life in a more or less consistent and coherent manner; they organize and characterize recognized values so that they are compatible with one another and express an intelligible view of the world; and they normally belong to, or draw upon, a tradition of thought and doctrine.⁴⁰

Rawls argues that a modern democratic society is characterized not simply by a pluralism of comprehensive religious, philosophical, and moral doctrines but by pluralism of incompatible yet reasonable comprehensive doctrines. Political liberalism assumes that, for political purposes, this plurality is the normal result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime. Political liberalism also assumes that reasonable comprehensive doctrines do not reject the essentials of a democratic regime.⁴¹

Thus, Rawls believes that the public culture of democracy is obligated to pursue forms of social co-operation which can be achieved on a basis of mutual respect. This co-operation involves the acceptance of certain common procedures to regulate political conduct. In this context it should be noted that there is an important difference between the Rawlsian and the Dworkinian arguments for neutrality. Rawls's view is minimalist, believing that it would be impossible to decide on what is good for everyone, and therefore we have to reach a consensus on the most fundamental matters so as to secure social cooperation and to remain neutral in regards to all other matters. Whereas Dworkin advocates neutrality in order to respect the capacity

37. Rawls further asserts that if a conception of the good is unable to endure and gain adherents under institutions of equal freedom and mutual toleration, one must question whether it is a viable conception of the good, and whether its passing is to be regretted. It should be noted that Rawls speaks only of "just constitutional regimes". He admits that the questions of whether the corresponding form of life would be viable under other historic conditions, and whether its passing is to be regretted, are still left open. Rawls, *supra* note 17 at 266.

38. Rawls, *supra* note 17 at 265-66. See also J. Rawls, "Fairness to Goodness" (1975) 84 *Phil. Rev.* 536 at sect. VI; J. Rawls, "Representation of Freedom and Equality" (1980) LXXVII:1 *J. of Phil.* 535 at sect. II; *Political Liberalism*, *supra* note 5 at 196-97. A similar view is enunciated by Isaiah Berlin who holds that we cannot conceive a situation which would enable a joint realization of all values in one society. It is impossible to suppose that all goods and ideals can be united into a harmonious whole without loss: there are logical, psychological and sociological limits on what range of values one society can respect in the lives of some of its citizens. B. Williams, "Introduction" in H. Hardy, ed., *Concepts and Categories, Isaiah Berlin's Selected Writings* (Oxford: Oxford University Press, 1980) at xi-xviii.

39. *Political Liberalism*, *supra* note 5 at 13, 175.

40. *Ibid.* at 59.

41. *Ibid.* at xvi.

of persons as free citizens or autonomous agents to choose their conceptions of the good for themselves.⁴² Still Rawls's theory, as that of Dworkin's and other advocates of neutrality, seems to have the following assumptions in mind:

- A plurality of conceptions of the good is valuable for people like to be exposed to different views, to enjoy variety of possibilities. The argument is that it is better to have many conceptions and sets of values than one unified, dominant conception which might constrict life projects and might prescribe one pattern for all, and thus exclude the values and aspirations of minority groups within society. Having the ability to choose between alternatives contributes to the development of personal tastes, creative imagination, and independent attitude. In making choices one defines for oneself the level of conformity with one's society in general, and with prevailing specific fashions in different spheres. Indeed, the very making of choices may prove to oneself how capable one is to face dilemmas and find solutions. In addition, the choosing between conceptions of the good also contributes to the development of free, autonomous thinking. It fosters the intellectual and moral development of the individual. When one is faced with different options, one has to deliberate, to make calculations, and to reason what may be the best way of life to pursue.

- Diversity entails openness and more opportunities for living a valuable and richer life. Thus Dworkin argues that in the case of free political speech, we might concede that each person has an important interest in developing her own independent political convictions, because that is an essential part of her personality and because her political convictions will be more authentically her own, more the product of her own personality, the more varied are the opinions of the others whom she encounters. Dworkin maintains that we might also concede that political activity in a community is made more vigorous by variety, even by the entry of wholly despicable points of view.⁴³

From these arguments it would appear that advocates of neutrality, in their striving to convince us of the necessity of the doctrine, are conveying the assumption that the decision regarding the proper policy is crucial because its consequences are of grave importance. Neutrality entails pluralism, diversity, freedom, public consensus, non-interference, vitality, etc. If we do not adhere to neutrality, then we might be left with none of these virtues. This picture leads to the rejection of perfectionism, while this essay suggests a contesting view that observes conduct of policies on a continuous scale between strict perfectionism, on the one hand, and complete neutrality on the other. The policy to be adopted does not have to be either the one, or the other. It could well take the middle ground, allowing plurality and diversity without resorting to complete neutrality; involving some form of perfectionism without resorting to coercion. For perfectionism does not necessarily imply governmental exercise of force, nor does it impose the values and ideals of one or more segments of society on others, or strive to ensure uniformity,

42. In this connection see Michael Sandel's distinction between the *minimalist* or pragmatic view and the *voluntarist* view in M. Sandel, "Moral Argument and Liberal Toleration: Abortion and Homosexuality" (1989) 77 Calif. L. Rev. 521.

43. *A Matter of Principle*, *supra* note 2 at 352.

as neutralists fear. On this issue my view comes close to that of Raz. I shall call his view the *promotional approach*.

V. Raz's promotional approach and beyond

Against the assumption that moral pluralism necessitates neutral political concern, Raz argues that the introduction of some perfectionist elements is unavoidable in order to achieve this aim. He observes that many of the arguments in favour of any one of the anti-perfectionist doctrines can be used to support the other. Thus neutrality implies that governments must stay silent with respect to any individual's or party's endeavour to promote their own or anyone else's ideals of the good (as long as they do not entail harm to others). Expressing his disagreement, Raz explains that a liberal state is obligated to create and secure the conditions of autonomy as well as to promote pluralism of many forms of the good. However, these two obligations might come into a conflict, for pluralism has an inherent tendency to generate intolerance.⁴⁴ Raz sees it the right of the state and its duty to fight against worthless and demeaning conceptions of the good. He asserts: "Perfectionist goals need not be pursued by the use of coercion. A government which subsidizes certain activities, rewards their pursuit, and advertises their availability encourages those activities without using coercion."⁴⁵

By perfectionism, Raz means that government should support valuable ways of life, arguing that perfectionist ideals require public action for their viability. He offers a pluralistic account of perfectionism that aims to promote pluralism, liberty and autonomy, connecting personal autonomy with the ideal of free and conscious self-creation. According to Raz, self-creation must proceed through choice among an adequate (to be distinguished from endless) range of options. It requires awareness on the part of the agent of his options and of the meaning of his choices as well as independence of coercion and manipulation by others. This pluralistic view of perfectionism *ipso facto* draws governments away from neutrality. They allocate funds in a way which is conducive to liberty and autonomy of citizens. Against Dworkin's and Rawls's position Raz holds that neutrality is both an undesirable and morally unattractive idea.

Some may try to down-grade the importance of the dispute by asserting that Raz's position can be said to be much broader than that of Rawls and Dworkin, since Raz suggests that government can properly use its powers in order to subsidize worthwhile pursuits for citizens. But Raz's version of perfectionism endeavours to ensure diversity and plurality, the same values appreciated by neutralists. Rawls, Dworkin and Raz regard diversity and pluralism as essential for the development of personal autonomy. Consequently there is no real difference between Rawls, Dworkin, and Raz.

Larmore seems to advocate this view. He distinguishes between expressivist theories and neutral theories, arguing that expressivist theories are perfectionist,

44. *Supra* note 1 at 401.

45. *Ibid.* at 417.

while neutral theories are not, although they include some ideas of the good.⁴⁶ Larmore explains that political expressivism demands that our highest political ideal be mirrored in our highest personal ideal. Political expressivism need not embody a commitment to liberalism and indeed it has been frequently connected with non-liberal views.⁴⁷ However, liberalism can also take an expressivist form if, as Kant maintained, our highest personal ideal is autonomy. Larmore argues that the Rawlsian theory is not all of one piece. Its liberalism contains both neutral and expressivist strands. Rawls seems to articulate the Kantian expressivism by advocating the priority of the right over the good in the organization of the political order as well as in shaping our views about the general ideal of the person. The idea is that even if the political theory is grounded on some set of values, it does not thereby become a perfectionist theory.⁴⁸ On this assumption, Rawls appears to argue that given the fact of pluralism, the conception of the citizen will differ from the conceptions of the person held by the citizens, at least insofar as the conception of the citizen will be abstracted from the plurality of conceptions of the person, and also because the conception of the citizen need only be adequate to construct a political theory rather than a comprehensive moral theory. In "The Priority of Right" Rawls explicitly maintains that justice as fairness does not seek to cultivate the distinctive virtues and values of the liberalisms of autonomy and individuality. For in that case it would cease to be a form of political liberalism.⁴⁹ Later on, in his newest book, Rawls explains that political liberalism presents a political conception of justice for the main institutions of political and social life, not for the whole of life. He discerns between political and ethical autonomy, articulating that full autonomy of political life must be distinguished from the ethical values of autonomy and individuality, which may apply to the whole of life, both social and individual. Justice as fairness affirms political autonomy for all but leaves the weight of ethical autonomy to be decided by citizens exercising their rational faculties.⁵⁰

Accordingly, Rawls thinks that ethical autonomy is a perfectionist (or expressivist) concept. He acknowledges that in the well-ordered society of justice as fairness, citizens share one very basic political end, but this is not autonomy but rather justice, or more specifically, "the end of supporting just institutions and of giving one another justice accordingly".⁵¹ Thus Rawls objects to the making of an appeal

46. Rawls resorts to a different terminology, describing the same notions. Rawls speaks of "comprehensive" doctrines as opposed to "political" theories, *supra* note 17 at 264; *Political Liberalism*, *supra* note 5 at 155, 175.

47. C.E. Larmore, *supra* note 24 at 76, 91.

48. In this context one should note that in *A Theory of Justice*, *supra* note 4 Rawls views the parties in the original position as people who are concerned with protecting their autonomy. However, it is plausible to suggest that people in the original position can prefer to choose *non-autonomous* lives. But Rawls thinks of the normative ideal of personhood as one which is "implicitly affirmed" by our living tradition of modern liberal-democratic judgments and practices. In adding autonomy to the original position it is implied that a government can use certain reasons to vindicate political endeavours. It may advance certain conceptions of the good at the expense of others.

49. *Supra* note 17 at 268.

50. *Political Liberalism*, *supra* note 5 at 175, 78. Rawls further explains, at 199, that the liberalisms of Kant and Mill may lead to requirements designed to foster the values of autonomy and individuality as ideals to govern much if not all of life. But political liberalism has a different aim and requires far less.

51. *Supra* note 17 at 269.

to autonomy, while Raz thinks that a liberal state is committed to the idea of autonomy.⁵² The crux of the matter lies in Raz's assertion that in deciding how to promote the social conditions and, in turn, individual freedom, an appeal to perfectionist ideals is unavoidable. Raz regards the autonomy principle as a perfectionist principle, asserting that autonomous life is valuable if it spent in the pursuit of acceptable and valuable projects and relationships. The liberal adherence to the autonomy principle permits and even requires governments to create morally valuable opportunities and eliminate repugnant ones.⁵³ On this view, autonomy entails that we undertake a specific mode of life, making its aims and significance our own, evaluating the strengths and weaknesses of freely chosen alternatives, comparing them with those of other available ways of life. The ultimate point of reference is the individual and not society at large. The individual well-being is conceived to be an end in itself, and society may (or may not) benefit from the satisfaction of individual interests.⁵⁴

Raz's reasoning seems to be valid. We should note that the basic characterization of liberalism lies in focusing on the individual, on viewing the individual as the core of attention. Communitarianism, fascism, and Leninism, among other perfectionist doctrines, consider groups as the centre of attention. The three doctrines see the role of government as promoting certain types of conceptions of the good. They assume that these conceptions should be pursued because they are conducive to human excellence and perfection. In liberalism, too, there is an underlying assumption regarding questions of the good that directs governmental activities. The liberal perspective is that citizens can realize their conceptions of the good only when possibilities are supplied for advancing their autonomy. Governments *can* use certain kinds of reasons to justify political actions. They may (and indeed, they often do) promote a certain set of conceptions of the good rather than others.

Consider for instance the educational systems of most (if not all) liberal democracies. Governments do cultivate certain values and symbols and endeavour to make them part of their civic cultures. As Rawls acknowledges, educational systems equip pupils with knowledge regarding their constitutional and civic rights so as to further their understanding of society.⁵⁵ In order to foster people's personal autonomy,

52. I should note that Dworkin's version of autonomy is a very specific one, and that it is very similar to Rawls's view of political autonomy. In comments made on this paper, Dworkin distinguishes between abstract autonomy as a general condition, within which a conformist life can be chosen and led, and autonomy as a substantive kind of life to lead, which emphasizes self-creation and the other virtues of originality. Dworkin argues that a liberal state is committed to the former.

53. *Supra* note 1 at 417. See also V. Haksar, "Autonomy, Justice and Contractarianism" (1973) III:Part 4 *British J. of Pol. Sci.* 487; and *idem*, *Liberty, Equality and Perfectionism*, 1979, *passim*.

54. F. Schauer, *Free Speech: A Philosophical Enquiry* (New York: Cambridge University Press, 1982) at 48; C.E. Larmore, *supra* note 24 at 74. Larmore emphasizes the notion of critical evaluation, seeing it an enterprise that agents should take upon themselves, reaching conclusions by exercising their own faculties. For further discussion see T.M. Scanlon, "A Theory of Freedom of Expression" in R.M. Dworkin, ed., *The Philosophy of Law* (Oxford: Oxford University Press, 1977) at 153-71.

55. Rawls further argues that educational systems should also prepare children to be fully cooperating members of society and enable them to be self-supporting; it should also encourage the political virtues so that they honour the fair terms of social cooperation in their relations with the rest of society. *Political Liberalism*, *supra* note 5 at 199. But these contentions beg the question as to where Rawls draws the line between full and ethical autonomy. It is not clear what makes Rawls conclude at 77-78, for example, that self-supporting is affirmed by the principles of justice and not by the ethical character of autonomy.

liberal democracies do not only provide information for different ways of life (i.e., not necessarily for *and* against) but also strive to secure certain conceptions, such as respect for others, not harming others, familiarity and comradeship. Furthermore, by encouraging competitiveness, excellence, and individual work, the educational systems of liberal democracies encourage and promote autonomy and individuality. This perfectionism is not only about the *reasons* for policies, but also about the *content* of beliefs.

Hence, there can be no sense in any suggestion of total or absolute neutrality with respect to each and every possible conception or to any option that might ever be exercised by any citizen in society, no matter whether or not it might harm others. Rawls and Dworkin agree with this statement. Other liberal neutralists remain unclear concerning this issue. Bruce Ackerman, for instance, holds that every person should be able to pursue her own conception of the good, whatever this conception may be. He further asserts that any form of social life that makes sense to any significant group will find a place in the liberal state.⁵⁶ Moreover, many liberals (Rawls and Dworkin included) neglected addressing the connections between the concepts of neutrality, perfectionism and autonomy in an adequate manner. It seems that questions about these concepts are more complex than the structure liberals have suggested.

Dworkin has recently changed his views regarding these matters. He now thinks that neutrality should be regarded as a theorem rather than an axiom of liberalism.⁵⁷ That means that the character of liberal neutrality should be fixed not *a priori* but as the result of a variety of arguments and considerations about equality, distributive justice, and the conditions of philosophical autonomy. By taking this view, Dworkin introduces some new nuances to what he had said in the past. For my part I think that the introduction of some element of perfectionism is unavoidable. Here we may recall that Rawls, while saying that perfectionism would be rejected for not defining a feasible basis of social justice, maintains in the same breath that "[e]ventually of course we would have to check whether the consequences of doing without a standard of perfection are acceptable".⁵⁸ In addition, we may note that the fundamental liberal concept of tolerance in itself is incompatible with neutrality, at least in so far as the process of establishing a position is concerned. True as it is that the underlying motivation for tolerance may be neutral, i.e., respect for others; nevertheless tolerance in itself *cannot* be value-neutral, for it assumes the taking of a certain disapproving stand against the conduct or phenomenon in question. Tolerance is thus bound to be biased in favour of certain opinions and beliefs that are important to the tolerator. More specifically, if we reflect on the implicit assumption that neutrality alone is conducive to pluralism, we may argue that there is no *inherent* contradiction between non-neutral policies and pluralism. Conductors of policies may reject perfectionism and still regard refraining from taking *any* position as being no less harmful than perfectionism. The middle ground which this essay

56. For Ackerman's unqualified advocacy of neutrality see B.A. Ackerman, *supra* note 2 at 11, 43, 346-48.

57. In comments on an earlier draft of this essay.

58. *A Theory of Justice*, *supra* note 4 at 331. Larmore would probably call this statement "expressivist".

advocates combines perfectionism with the Respect for Others Argument without distorting or vilifying ways of life that some people hold to be valuable.⁵⁹ It acknowledges the importance of cultural considerations and justifies granting of subsidies for public commodities which are valuable to us. It allows governments to take a stance in regards to certain practices so long as the decision is based on justifiable grounds. Now I have to explain what constitute justifiable grounds.

My mid-ground position is influenced, even dictated by two principles. I suggest that any liberal society is based on the idea of respect for others, in the sense of treating citizens as equals, and on the idea of not harming others, in the sense that governments should interfere against attempts made to harm others, either physically or psychologically. Accordingly, restrictions on liberty may be prescribed when sheer threats of immediate violence are voiced against some individuals or groups and also when the expression in question is intended to inflict psychological offence, morally on a par with physical harm.⁶⁰ Dworkin (among others) may argue that this mid-ground position is not significantly different from the position he now takes, but then clarity necessitates resorting to different terminology. Thus I submit that governments should adhere to *impartiality* rather than to *neutrality*.⁶¹

Following this argument, consider the example of certain orthodox Jewish sects who do not allow the study of biology in their classes. Specifically they do not welcome (to use an understatement) Darwin's theory of the genealogy of persons. As long as they limit the restriction of this study to their own schools one may say that we should respect their autonomy and that no overriding reasons exist to interfere in the conducting of affairs in their own community. But when they try to force their truth on people outside their community, then there is a case for state interference. The reason for respecting the other's beliefs, as well as minority rights, is to enable "meaningful individual choice" so that every citizen, whether considered alone or within a group, can exercise her liberties in the way she wishes. Thus, e.g., allowing religious coercion might be considered as giving the coercer "meaningful individual choice", but it comes at the expense of the right of the coerced to seek "meaningful individual choice" for herself. Here my view comes close to that of Rawls' concept of justice in the sense that the suggested principles limit the conceptions of the good that are permissible. Rawls's theory is independent from and prior to the concept of goodness. Likewise, my advocacy of impartiality would not be congenial toward those who believe that their personal conception of the good involves enforcing others who do not hold the same conception to abide by it. The assumption is that those who belong to the religious community see the

59. The Respect for Others Argument is based on the Kantian, deontological arguments. It holds that we ought to respect others as autonomous human beings, who exercise self-determination to live according to their own life plans. We respect people as self-developing beings, who are able to develop their inherent faculties as they choose as long as they do not harm others. In turn we respect them so as to enable them to realize what they want to be. Each individual is conceived as a source of claims against another person, just because the latter's resolution is her own, made by her as a free agent.

60. R. Cohen-Almagor, "Harm Principle, Offence Principle, and the Skokie Affair" (1993) *XL1:3 Pol. Stud.* 453.

61. In "The Priority of Right", *supra* note 17 at 260 and *Political Liberalism*, *supra* note 5 at 191 Rawls contends he believes that the term "neutrality" is unfortunate. I concur and think it should be replaced by impartiality.

limited individual choice that is given to them as meaningful and we respect their decision. The rationale is that of 'live and let live': you may be allowed to conduct your affairs as you wish and we expect you not to interfere in our business with the aim of limiting our choice in the pursuit of knowledge and truth.

Now, however, we may press a further question concerning the autonomy of sub-cultures. That is, whether or not the dominant culture has any right to interfere with the business of the cultural minority, if one or some of their norms are conceived as having no place in a liberal society because they cause harm to members of that same minority culture. In other words, the question is whether cultural norms possess enough weight to allow things that are conceived as having no place in a liberal community; whether culture (*A*) may supply reasons for the toleration of behaviour which is regarded as unacceptable when evinced by other members of society (*not A*), i.e., by citizens who are not members of the considered culture.

The question involves conflicting considerations. Respecting one culture could entail allowing members of that culture to show disrespect to some of its own members.⁶² If we believe that a liberal society should tolerate all norms so as to allow each member of society to follow his or her own inclinations and beliefs without interference, then we should tolerate things such as widow burning, female infanticide or female circumcision. The question is whether or not these norms, which deny basic rights that everyone is supposed to respect, have a place in a liberal democratic society.⁶³ True as it is that to forbid these cultural norms is certainly to interfere with the possibility of making "meaningful individual choice"; yet again, by the same token, this act abridges the woman's right to seek meaningful choice for herself, and it contradicts the two basic liberal norms that underline, in my view, a liberal-democratic society. It violates both the requirement of not harming others and that of respecting others. The government has, therefore, every right to be partial in these matters and it should interfere with the aim of curtailing those cultural conducts. Here Montefiore's example of a referee in a football game seems to be, at least in some respects, relevant:

There is only one class of conflicts in which the referee can intervene *qua* referee, namely the class of game-conflicts, the very possibility of which is created by and dependent on the constitutive rules of the game.... The role of the referee...is a neutral one in that its duties are so defined that any influence that the referee may exercise on any footballing conflict is to be determined solely by factors for which provision is made within the rules of the institution and which could, in principle, count for or against any conflicting party."⁶⁴

62. By 'disrespecting' others it is meant denying a person the right to live as a free, autonomous human being.

63. The saying "everyone is supposed to respect" relates only to liberal societies, not necessarily to all societies. We, of course, may urge all societies to accept the Harm Principle and the Respect for Others Argument; but these principles are not necessarily derived from their moral outlook. On the other hand, these principles are derivative from the liberal outlook. For further discussion see R. Cohen-Almagor, *The Boundaries of Liberty and Tolerance: The Struggle Against Kahanism in Israel* (Gainesville, FL: University Press of Florida, 1994).

64. A. Montefiore, ed., *Neutrality and Impartiality* (Cambridge: Cambridge University Press, 1975) at 224-25. See also J.S. Mill, *Utilitarianism, Liberty and Representative Government* (London: J.M. Dent, Everyman's Edition, 1948) at 42, where Mill explains that it is inconsistent with justice to be partial, while impartiality does not seem to be a duty in itself, but rather instrumental to some other duty.

If we follow this example, when a referee gives a penalty kick against side *A* she is obviously in one sense helping *B*. Yet we cannot accuse her of lack of neutrality, for she is applying the rules impartially, meaning that she is awarding penalty kicks only where appropriate fouls are committed, whether by side *A* or side *B*. Impartiality requires that she not show more concern for one side (for which she may feel some sort of affection, whether genuine or the result of antipathy for the other side) than for another. The impartial agent is a person whose judgment and reasoning are not prejudiced by her selfish, partisan interests or by her personal feelings.⁶⁵ Her impartial exposition will aim not to distort any of the rival views, in so far as they permit clear exposition.

Accordingly, a government has to play the role of an umpire both in the sense of applying just considerations when reviewing different conceptions and also in trying to reconcile conflicting interests, trends and claims. This is a delicate task, one which demands integrity as well as impartiality: to refrain from identifying with one group rather than with the other,⁶⁶ not to exploit its role for self-advantage; bearing in mind when making decisions the relevant considerations and demands which concern society as a whole, and not only one or some fractions of it.

Let me round off the argument by making one final thought. Earlier I have discussed justified reasons for interference and now I wish to employ the impartiality reasoning to speak of unjustified reasons for perfectionist policies. Here we may reflect once again on the Israeli society during the 1950s and the way its establishment treated the Middle-Eastern immigrants.⁶⁷ We may argue that instead of promoting only the western culture there should have been pluralism of cultures. The claim that no other alternative was open for the decision makers, given the adverse conditions of the 1950s, is at best a rationalization of the past.⁶⁸ Israel could have been built upon pluralism and impartiality between different conceptions of the good. The possibility of promoting and implementing different conceptions of the good was available to the decision makers but they consciously decided to curtail the legitimacy of some sub-cultures and did not hesitate to promote certain ideas and to fight against others. The view was that the backward Easterners had to be 'reformed' according to European standards. The policy was, therefore, not one of 'absorption through acceptance', but rather of 'absorption through rejection'. That is to say, in the cultural sphere the establishment tried to build the future on the rejection of the past culture of the Middle-Easterners. The end was to dissolve the Oriental culture in the European 'melting pot'.

However, there was not 'a built-in' necessity to decide between modernism and

65. If we take a Rawlsian position we may say that an impartial judgment is one rendered in accordance with the principles chosen in the original position. An impartial agent is one who forms judgments according to these principles without bias or prejudice.

66. It has to be emphasized that I am not speaking of all groups within society, but only of those who accept the Respect for Others Argument. Groups of terrorists, murderers, rapists, etc. are subjected to partial treatment by government.

67. *Supra* section II of this paper.

68. By "extremely adverse conditions" decision makers and many scholars researching the 1950s refer to the massive immigration, where many of the *olim* had little or no experience with democratic order; the presence of ethnic, cultural, linguistic, religious and national differences; severe economic difficulties, and the grave security threat.

traditionalism, that one should come at the expense of the other at all spheres in all times through the implementation of coercive means. Rather, one can be compatible with the other if a balance is drawn through the promotion of tolerance, understanding of different needs of different sectors, and the making of compromises. People do not have to change their names in order to become part of society (as was expected from the Middle-Easterners in order to become Israelis). They do not have to give up their traditional customs, songs and dress and to accommodate their views about family and religion. The very idea of integration between *galuyot* (exiles) comes to mean that all come with what they could offer and together create something new combined of the contributions of each and every group.

Nowadays, the absorption of the Ethiopian *aliya* (immigration) during the 1980s and the early 1990s suggests that yet again Israeli establishment did not learn from the mistakes of the past. This issue deserves separate analysis but it seems that the Ethiopian Jews were and are going through a process of acculturation which does not encourage cultural pluralism but, quite contrary, aims at transforming them into a new kind of being compatible with the Sabra image. For example, there are instances where teachers decide for children of Ethiopian origins Hebrew names and influence them to forego their cultural heritage.⁶⁹ Moreover, writers, composers and singers of Middle-Eastern origins frequently complain today as in the past that their songs do not receive ample attention by musical editors in the media. They agree that there is a significant advancement in their status in society but still argue that no adequate correlation exists between public preferences and the preferences of those who decide what will be broadcasted. This argument seems to be valid. In the cultural sphere prejudice and ethnocentrism are still prevalent in the considerations of the Israeli decision makers.

VI. Conclusion

Governments should not reject out of hand considerations deemed to be relevant and cling to neutrality when this policy is thought to contradict basic values and rules. There must be rules, for otherwise there can be no game. This reasoning applies to a football game as much as it does to democracy: there could hardly be a game if some footballers would decide, e.g., to play wearing spurs on their shoes. We obviously would regard this as a clear violation of the rules, as defeating the notion of a 'game' altogether.

The analogy between games and politics focuses on the need to safeguard some basic rules. Certain fundamental values and rules should bind everyone. In the context of democracy the most fundamental principles that should be secured are not to harm others and to respect others.⁷⁰ The state can be impartial in regards to conceptions that are appreciated by the liberal culture. It *cannot* be neutral with regard

69. Political Supplement *Yedioth Ahronoth* (Israeli daily newspaper 12 February 1988) at 6.

70. For an elaborated explanation of these two principles see my *The Boundaries of Liberty and Tolerance: The Struggle Against Kahanism in Israel*, *supra* note 63.

to certain conduct which fall within the parameter of harming others; when the dangers to democracy, to our fellow citizens, to the moral basis of society, to values which we hold dear, might be too grave.