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Multicultural Conflicts and Liberalism: Toleration, Justice, and Neutral Governance

by

Jacques Saleh

**A dissertation submitted to the Graduate Faculty in Philosophy in partial fulfillment
of the requirements for the degree of Doctor of Philosophy, The City University of
New York**

2000

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Abstract**MULTICULTURAL CONFLICTS AND LIBERALISM:
TOLERATION, JUSTICE, AND NEUTRAL GOVERNANCE**

by

Jacques Saleh**Advisor: Professor Douglas Lackey**

The dissertation examines how liberalism, through toleration and justice, attempts to cope with pluralistic conflicts by trying to reach an ideal of neutral or impartial governance. The liberal goal is to reinforce principled social unity or the Rawlsian overlapping consensus by reconciling diverse citizenry around commonly shared ideals. After discussing the liberal justifications of toleration and Rawls's principles of justice, I argue that liberalism does not generate a neutral position, nor can it do so without betraying the principles it is committed to. My argument then shows, after examining perfectionism and the communitarian critiques of liberalism, that liberalism can rather be compatible with perfectionism and communitarianism in its defense and promotion of specifically liberal ideals of the good, and in its quest for common goods that are characteristically liberal and which help unite a liberal community.

Acknowledgments

I would like to thank Professor Douglas Lackey, my dissertation advisor, for allowing me much appreciated autonomy in developing my dissertation ideas, while providing enough insights and feedback to guide me along until the dissertation finale. His academic and personal support, which boosted my sometime sagging morale at a crucial point in my academic career, are greatly appreciated. My thanks go also to Professor John Kleinig for helping me, through early discussions that seem at this post-dissertation point ages away, to sort out through preliminary ideas that were to form important parts of my dissertation. I am also very grateful for the generous feedback, mostly positive, that Professor Peter Simpson has given me regarding the ideas and arguments of my dissertation, either by penning insightful and overall supportive comments on the margins of the dissertation draft, or through discussions during our informal coffee klatches.

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INTRODUCTION

By setting a goal of neutral governance liberal neutralists attempt to achieve two goals. The first goal aims to reconcile citizens with different ideals of the good in a pluralistic society, around basic principles that are impartial, having thus a universal appeal, in order to reach what John Rawls calls an overlapping consensus, that is, "a consensus in which (justice) is affirmed by the opposing religious, philosophical and moral doctrines likely to thrive over generations." (All quotations in the Introduction are taken from body of dissertation). Such basic principles, reflected in the basic structure of the polity, or its legal, political, social and economic framework, would purportedly be neutral or impartial, and would hence ensure civil peace based on principled reasons rather than pragmatic ones, the latter being purportedly unstable given the shifting bargaining powers among the different citizens or groups of a pluralistic state. The second goal of neutral governance that the liberal neutralists defend is that of upholding the concerns of the liberalism of fear (i.e., individual human rights, the rule of law, equality before the law, tolerance, so on), and of individual autonomy.

A claim of neutrality is a claim of impartiality or universality, entailing policies and practices that do not discriminate among different ideals of the good, and that do not presuppose that some ideals are superior to others. This implies that a common ground has to be found among the different conceptions of the good, and such a common ground ought to form the basis for setting public policies and settling public disputes. Neutrality, furthermore, is taken by many liberal thinkers to imply an anti-perfectionist public position, taking perfectionism to mean

the reinforcement or promotion, whether directly or indirectly, of some goods rather than others, of some virtues or character dispositions and habits instead of others. For instance, Charles Larmore asserts that neutrality denies "the state any right to foster or implement any conception of the good life." Similarly, Michael Sandel states that neutrality implies that liberalism should renounce "the formative ambition," while William Galston mentions that the neutral state means that "the state is not in the business of teaching and enforcing morality, nor can it promote a specific conception of happiness."

There are two principles that have been called upon by liberal neutralists to implement neutral governance and uphold its goals. The first one is that of toleration, as defended by Locke, Mill, and other liberal philosophers, on the basis of the irrationality of intolerance, skepticism, and individual freedom. The second one is that of justice, as presented by Rawls, following essentially the philosophy of Kant. The political practice of toleration would in effect establish in the polity a liberally defined free private sphere where citizens could legitimately pursue the private concerns of their conceptions of the good. As for the principles of justice, they would establish basic laws or constitutional essentials that all reasonable citizens could uphold, based on equal individual liberties and rights, along with economic equality, as qualified or moderated by the requirements of efficiency, a combination that would be for the economic betterment of everyone. Citizens of various ideals of the good are supposed to converge on this essential core of principles and practices which would give each a reasonable range of equal freedom and opportunities through the practice of toleration and justice. The reason is that toleration and justice are supposed to answer to the purportedly

universal concerns of the liberalism of fear and individual freedom, and would represent thus a universal or neutral position. For Rawls, the liberal principles of justice reflect the universal appeal of the primary goods, those goods that everyone would rationally want because they advance one's ends, goods such as rights and liberties, powers and opportunities, income and wealth, along with self-respect. The upshot, at any rate, is that the citizens holding incompatible ideals of the good in a pluralistic society would be united along a common core of regulatory principles, those of justice, yet be free enough, given toleration, to practice their own beliefs in what liberals would characterize as their private lives.

My claim is that the basic principles and practices that liberalism expounds as neutral, and hence as a ground for universal reconciliation, such as those of justice and toleration, are not in fact neutral. By examining the philosophical and moral justifications of each of toleration and justice, I have attempted to show how these justifications derive in the main from liberal philosophies that citizens with illiberal conceptions of the good would *prima facie* not agree to on principled grounds. Furthermore, I have shown that these principles and practices do not represent a core set of principles that all reasonable citizens with different ideals of the good could identify with as being universally appealing in a sufficient way. Moreover, my claim has been that rather than having a liberal neutralism deriving in effect from the practice of toleration and justice, we have in fact what seems to be a liberal perfectionism, that is to say, a liberalism that fosters some goods and virtues rather than others, that encourages the reproduction of some ideals instead of others, in other words, that regulates society and restricts or encourages the

reproduction of its goods according to a liberal ethos. Furthermore, I argue that only by being perfectionist that liberalism can ensure its survival, and that such perfectionism need not be incompatible with the concerns of traditional liberalism, those of the liberalism of fear and individual autonomy. On the contrary, I argue that such perfectionism may be necessary for the flourishing of the goods that the liberalism of fear and individual autonomy espouse, such as individual liberties and rights, security, peace, the rule of law, equality and efficiency, so on. Finally, I show that liberalism is compatible with perfectionism and communitarianism, which is a form of perfectionism, with its concern for the common good and tradition as guarantors for the survival of the polity. The upshot of my claim is that liberalism ought not to be timid about its principles and philosophy, as Rawls in his political liberalism seems to imply. On the contrary, liberalism ought to uphold the goods that its principles expound, that is to say, it ought to protect individual liberties and rights, foster equality and efficiency, encourage the virtues that are compatible with its practices, overall not shy away from being formative whenever it is practically feasible.

To defend my claims, I proceed as follows. In the first chapter, I examine the meanings of toleration, pluralism and legitimacy, arguing that the neutral concern aims at giving the liberal polity a legitimacy on principled grounds, in which case the basic liberal laws would be consented to by the diverse citizenry. In the second chapter, I examine the liberal justifications on the basis of the irrationality of intolerance, skepticism, and individual freedom. I argue, contra Locke, that intolerance could be rational, that skepticism opposes religious beliefs which some citizens could hold, and that Mill's defense of toleration does

lead, through the harm principle, to different and irreconcilable notions of harm, while it leads through the maturity principle to perfectionist consequences. In the third chapter, I examine the relationship between toleration and neutrality; I argue, furthermore, that the analysis of Mill indicates that tolerance and intolerance could both be virtues or vices, depending on the circumstances in which one applies either one; I indicate, also, that the liberal adoption and promotion of the virtue of tolerance implies a perfectionist stance.

In the fourth chapter, I examine the communitarian attacks on the liberal identity that underlies the defense of neutrality, such identity as represented by the Rawlsian primary goods. I argue that such identity does not necessarily represent our most significant self, which could be more particular and historically bound than the universal unencumbered self of our primary goods. These primary goods, it is argued, may be necessary but not sufficient to express one's full or authentic self. In other words, for many citizens in a pluralist society, the commitment of their particular identities may override the transpersonal appeal of the primary goods. Furthermore, I examine the different paths to neutrality, the one based on supreme value, the second based on a translation manual or a common valuation yardstick, the third based on the Rawlsian approach, and finally the one based on Bruce Ackerman's conversational restraint. I argue that all paths to neutrality fail to achieve their goal. Finally, I examine the concerns that inspired liberal neutralism, those of fear and individual autonomy. I argue that religion of fear could override the concerns of the liberalism of fear, or that the concerns of the latter may not be sufficient to override the concerns of the former. Furthermore, I argue that perfectionism is not *prima facie* incompatible

with individual autonomy, and that in some instances it could better serve the ends of individual autonomy.

In the fifth chapter, I argue that what we take to be liberal neutralism, characterized by the principles of toleration and the Rawlsian principles of justice, is in effect a form of liberal perfectionism, or could very well take such a form. Moreover, by characterizing liberalism as a tradition and as harboring and fostering common ideals and goods, liberalism becomes receptive to communitarianism. Hence, liberalism is reconciled with perfectionism and communitarianism.

Furthermore, I criticize Rawls's political liberalism as a failed attempt to detach his philosophy from the comprehensive doctrines of Kant and Mill in a pursuit for an elusive neutrality, while agreeing with him that liberalism has become a tradition that ties liberal citizens around common ideals of the good. These ideals would not in this case be necessarily chosen by the present liberal citizens, but would be part of their history and tradition, of an encumbered self that is part, as Sandel puts it with regard to the communitarians, "of membership in (a) community bound by moral ties antecedent to choice." Liberalism and communitarianism, in this instance, become compatible. I also show how perfectionism need not be unduly coercive, and could accommodate the concerns of the liberalism of fear and individual autonomy which inspired the call for neutrality. In the final analysis, I argue that liberal neutrality is a misbegotten and disingenuous doctrine, and it is mainly through an

indirect and direct formative ambition, along with a tradition of ideals, such as individual human rights and liberties, worth protecting, that liberalism has been able to, and could, widen the overlapping consensus of its citizens and ensure the greater social stability and unity of the liberal polity. It will be inevitable that with regard to some illiberal citizens the consensus, regarding the constitutional essentials and the practice of toleration, would not always be based on principled grounds, but more likely on pragmatic grounds that rest on relative bargaining powers, with the liberal majority asserting their ideals of the good and the rule of their laws upon the dissenters. At any rate, what has been described as liberal neutralism, aiming for a neutral governance based on the principles of toleration and justice, that is, on a sphere of common essential principles and practices that all reasonable citizens of a pluralist society would adhere to, has been shown to fail as a claim to neutrality or impartiality. In its stead, what we have seen is the reality of a liberal perfectionism, or the reasonable emergence of such liberal perfectionism, one that addresses in a more cogent way the same concerns of liberal neutralism, be they of social stability, security, or autonomy.

First Chapter

Toleration in Pluralistic Societies: Issues and Controversies

Toleration, Pluralism, Legitimacy: Preliminary Remarks

A) Toleration

A.1) Toleration and Liberalism

Toleration has been heralded by contemporary liberal thinkers as the central virtue of liberalism. Thus, according to Will Kymlica, “Toleration is considered a cardinal liberal virtue throughout the whole (liberal) tradition.”¹ Such opinion finds echo elsewhere, as Susan Mendus affirms that “toleration is often presented as a quintessentially liberal value.”² For yet other liberal thinkers, toleration is one of the fundamental ethical and political values of the liberal ethos.³ For John Rawls, liberal institutions reflect the principle of toleration. Such institutions emerged, according to Rawls, after intolerance was undermined as a means of securing the social unity of a polity. He states that while “intolerance was accepted as a condition of social order and stability...the weakening of that belief helps to clear the way for liberal institutions.”⁴

For reasons of clarity, the term "tolerance" will be used to indicate individual dispositions that reflect virtuous qualities, that is, socially or morally desirable character traits, provided of course that one views tolerance in a positive light. However, since the perspective I am examining with regard to tolerance is the liberal one, and since liberalism has been linked with tolerance by many liberal thinkers, as previewed above, then one can safely say that liberalism views tolerance as a virtue or a desirable character trait, whether this trait is motivated morally or practically.

The term "toleration", on the other hand, would indicate a practice, or the application in the social, political or public realms of a tolerant attitude, whether there are moral or non-moral motivations behind this practice. By "non-moral" motivations, I mean those motivations that are grounded in instrumental, balance-of-power, cost-reward reasons, that is, on a purely means-end rational calculus. In this case, the individual motives are purely pragmatic, and toleration would be a *modus vivendi* one, rather than moral.

Although I will try to hew to this semantic difference between tolerance and toleration whenever possible and relevant to the discussion, the reader should know that such semantic division is not necessarily

followed by the writers I have been quoting, although one could surmise the meaning from the context of the discussion or the excerpts themselves. Be that as it may, it will oftentimes be the case that toleration will stand for both, an attitude and a practice, since to have toleration presupposes a motivation, be it practical or principled (moral, religious, philosophical), which in turn grounds the attitude of tolerance. On the other hand to have the virtue of tolerance entails that one is willing to practice toleration. Hence, the semantic gap between the two terms may not be so serious as to preclude, for all practical and conceptual purposes, their being sometimes used interchangeably, at least whenever the discussion is not confined to considering separately attitudes and practices.

A.2: Toleration: Definitions and Problems

Toleration has been described overall as the acceptance of practices and values that one may dislike, find immoral, or simply irrational. Such acceptance translates into putting up with something one may disapprove of esthetically, religiously, morally, or rationally. Thus, Jeremy Waldron states that the principle of tolerance entails “not interfering with a person’s beliefs or practices even when we have reason to hold that those beliefs or practices are mistaken, heretical, or

depraved.”⁵ For D. D. Raphael, “toleration is the practice of deliberately allowing or permitting a thing of which one disapproves.”⁶

Moreover, such definitions of tolerance as the ones above may stand in the way of other moral prescriptions which recommend us to reduce evil or behaviors deemed seriously immoral, whether we judge the severity of the immoral practice in terms of utilitarian calculus, in which case we ought to strive to increase overall human happiness or that of all sentient beings, or in terms of deontological principles that prescribe impartial moral duties or obligations that may and often do override those of tolerance.

Furthermore, our sense of outrage and the furor that may follow from witnessing some practices that we consider quite evil, may make tolerance practically or humanly impossible. In that case, if one takes the ought-implies-can dictum as necessary for something to qualify as moral, then one can see already that the limits of what one should morally tolerate depend significantly on what one can emotionally or humanly tolerate. If that is true, it follows that the capacity to tolerate would depend crucially on one’s individual, social and cultural make-up, and that the substance of what to tolerate and to what degree to tolerate it would depend on such background factors. There seems to be here a dimension

of relativism which may be internally, or logically, linked to how much one can tolerate from a moral perspective. In this case, what I am able to tolerate would be fundamentally linked to my individual circumstances, to my moral, philosophical, religious and practical outlooks, rather than to principles that ignore these circumstances. At any rate, I will examine later on the liberal conditions that set limits on toleration.

A.3: Pragmatic and Moral Bases of Toleration

It is often the case that one would tolerate or put up with something one disapproves of only because it would not be rational to one's well-being or security to do otherwise. We may, thus, disapprove of the values and practices of some people yet tolerate what we dislike in them only because they have more power than us, or have enough power, to severely punish us if we do oppose them. Such punishment could be physical (a direct threat to our survival or to people who are dear to us, for instance) , financial (disrupting our economic and material security and well-being, putting obstacles to our career advancement, so forth), or could take any form of hindrance to our physical, psychological, moral, or even spiritual flourishing. Such may be the pragmatic reasons for tolerance, more the result of a Hobbesian *modus vivendi* or a fear for one's safety and well-being given the existing balances of power, than the

result of principled reasons for toleration. As David Heyd writes, “The attitude of tolerance should be clearly distinguished from...Hobbesian compromise, particularly if we wish to regard it as a personal virtue.”⁷

Hence, the case for liberal toleration, according to some liberal thinkers, is not simply pragmatic or rational, but also moral. It entails that we ought to tolerate even if we have the power to vanquish those we disapprove of. In that sense, liberal toleration would be based on a virtue that is justified morally rather than simply on pragmatic or rational grounds. For those liberal philosophers who insist on the moral justification of toleration, the latter is defined in terms of refraining from interfering in other people’s practices, accepting values and ways of life we disapprove of, when we do have the power to change them. Having the power to punish or restrain those we disapprove of and refraining from doing so makes power and its limitation, for many liberal thinkers, the litmus test that renders toleration genuinely moral, and not simply the result of a *modus vivendi* situation. D. D. Raphael states that “one can meaningfully speak of tolerating, i.e. of allowing or permitting, only if one is in a position to disallow. You must have the power to forbid or prevent...”⁸ John Horton echoes Raphael’s opinion, as he states: “It is widely agreed that the core of the concept of toleration is the refusal,

where one has the power to do so, to prohibit or seriously interfere with conduct that one finds objectionable.”⁹

However, for Bernard Williams, to tolerate is more a question of attitude than the ability to act on one’s attitude, a disposition that can be taken by the powerful and the powerless equally than one limited to the practices and dispositions of the powerful, be they moral or otherwise. He writes thus that “toleration is a matter of the attitudes of any group to another and does not concern only the relation of the more powerful to the less powerful.”¹⁰ One can imagine very well a powerless individual or group awaiting the opportunity to strike back at a more powerful party. The presently powerless group may be seething with vengeful desires, yet would in all likelihood hide its intentions since it cannot do anything about its situation. One would not consider this powerless group as a tolerant one. One might more accurately describe it as actually intolerant of its enemies, yet resigned to its fate. As Williams states, “A group or a creed can rightly be said to be ‘intolerant’ if it would like to suppress or drive out others even if, as a matter of fact, it has no power to do so.”¹¹ Furthermore, Williams defines the practice of tolerance thus: “One group as a matter of fact puts up with the existence of the other, differing, group.”¹²

Yet, the definition of toleration which was provided earlier entails conceptually that one refrains from exercising one's power in order to restrict the liberty of others, which implies that one has already the power to do so. Hence, when Raphael mentions that toleration is "the practice of deliberately allowing or permitting a thing of which one disapproves" (see Notes no. 6), the hidden premise is that one has the power to allow and permit that of which one disapproves. Similarly, when Waldron states that toleration means "not interfering with a person's beliefs or practices" (see Notes no. 5), the premise is once more that one had the power to interfere in the first place.

However, Williams's remarks help point to inner reasoning or learned dispositions, be they moral or pragmatic, which are at the basis of what we associate commonly with tolerant attitudes and practices. Furthermore, if tolerance is to be a liberal moral virtue, as stated previously, to limit only to the powerful the benefit of such a virtue robs the powerless from any moral merit attached to tolerance, but more importantly undermines the moral importance of one's attitude or disposition, of one's intentions or conscience, undermines the importance of these in the genesis of a moral action, and thus severs such action from

the underlying reasoning, intentions and learned dispositions (virtues) on which our moral practices, according to virtue ethicists and moral cognitivists, might take their sources.

Thus, if there is to be a moral merit to toleration, the dispositions to tolerate must be inculcated and justified, as is the case with other virtues and moral dispositions, whether one is powerful or powerless. Furthermore, given that powers can shift, that balances or imbalances of power are precarious in the long run, dire moral and practical consequences may ensue. For if we admit that only the powerful can be tolerant, we may be saying that only the powerful have to learn to be tolerant, thus neglecting to inculcate the value of tolerance to the powerless, or to justify such a value to them. Hence, when balances of power shift, the latter would have no principled justifications or learned dispositions for not being intolerant. Such goal cannot be the end of the liberal principled defense of tolerance. If tolerance is to be a moral virtue, it ought, for the liberals, to be taught with the aim that to tolerate is not simply to have the power to tolerate, but to be morally disposed to do so, that is to say, disposed non-instrumentally, irrespective of one's bargaining position. It is then the acquired disposition to be tolerant, whether one is practically able or powerful to be intolerant or not, that is

necessary for making tolerance a moral virtue that could override the effects of the inevitable shifts in bargaining powers among the different groups of a pluralistic society.

B) Pluralism

Just as toleration is found to be, for many liberal thinkers, one of the central virtues of liberalism, pluralism is considered to characterize liberal societies. Furthermore, toleration and pluralism are seen by liberal thinkers to be conceptually and practically entwined, since toleration entails conceptually that one accepts values and practices that are or seem alien to one's own, that one disapproves of or dislikes. This, in turn, implies that there are plural values and practices, that is, other values and practices which do not accord with one's own and which one, according to the principle of toleration, ought to accept or permit. Thus, Charles Larmore states that liberalism and pluralism are "often thought to be intimately connected ideas."¹⁵ He adds that "a prevalent view about the modern sources of liberalism is that it arose out of the acceptance of value pluralism. Liberalism and pluralism are indeed often thought to be connected ideas."¹⁴

What then is pluralism, and what is its connection to liberalism and to the central liberal virtue, that of tolerance? According to Larmore, "Pluralism is a doctrine about the nature of value. It asserts that the forms of moral concern, as well as the forms of self-realization, are in the end not one, but many."¹⁵ This gives pluralism a normative definition, since to accept the latter is to agree that there are many equally valuable moral and personal ideals or ideals of the good, which in turn implies that one's values and ideals are not necessarily or indiscriminately above those of others. Still, accepting that there are many valuable forms of life or ideals of the good does not necessarily entail the principle of toleration, as the latter is confined to values and practices that one dislikes or disapproves of, and the definition of pluralism which Larmore gives allows a certain range of acceptable values and ideals which may be as worthy of respect as ours.

Still, it may be that such normative definition incorporates the principle of toleration, as one may consider other values and ideals equally valuable to one's own because one ought to tolerate these, give them equal consideration and respect as one's own, and not because one is sympathetic toward such values and ideals and does approve of them.

Thus, the definition of pluralism by Larmore could well practically and conceptually incorporate the principle of toleration.

Such conceptual and practical links between pluralism and toleration is supported by Joseph Raz, who defines moral pluralism with an implicit nod to the principle of toleration. He states that "moral pluralism is the view that there are various forms and styles of life which exemplify different virtues and which are incompatible," adding that "moral pluralism claims not merely that incompatible forms of life are morally acceptable but that they display distinct virtues, each capable of being pursued for its own sake."¹⁶ However, while the definition of moral pluralism is descriptive, the claims that are attached to such definition do not necessarily follow unless one adduces a hidden premise that harbors an attitude of tolerance toward different moral viewpoints. Without the addition of such a premise, what "moral pluralism is", as defined by Raz, does not necessarily imply what "moral pluralism claims", which seems to be a principle of toleration, given that he asserts that "incompatible forms of life are morally acceptable", in other words, to be tolerated. Pluralism in the normative sense seems then to harbor the principle of toleration, bringing to mind conceptual and practical ties to

liberalism given that toleration characterizes, for many liberal thinkers, the latter.

In yet another normative approach to defining pluralism, John Kekes states that “the central thesis of pluralism is that there are many reasonable conceptions of a good life and many reasonable values upon whose realization good lives depend.”¹⁷ For Kekes, pluralism combines four theses, which may be summarized thus: the first one concerns the existence of “incommensurable values whose realization is required for living a good life”; the second states that because some values conflict with others “the realization of some excludes the realization of others”; the third thesis asserts that “there is no authoritative standard that could be appealed to resolve such conflicts”; finally, the fourth thesis states that “there are reasonable ways of resolving conflicts among incommensurable values.”¹⁸

From the third thesis, one may infer that there is no value which will always override others, and that “it is unreasonable to regard any value as being always overriding.”¹⁹ However, later on, Kekes seems to contradict this non-hierarchical view of values by trying to disengage his brand of pluralism from the clutches of relativism, as he states that, unlike relativists, “pluralists (recognize) that there are primary values and that

they need to be protected by deep conventions.”²⁰ Such “primary values” refer to “a context-independent ground to which we can reasonably appeal in settling conflicts between incompatible and incommensurable value.”²¹ If that is the case, then why shouldn’t such primary values be the overriding values, offering authoritative standards, which Kekes denies in the third thesis of his pluralism, and which all “reasonable” people should agree to in arbitrating their conflicts? Perhaps Kekes means such values to be primary or overriding in a *prima facie* way, at least with regard to those who are “reasonable” enough, by Kekes’s light, as per the fourth thesis of pluralism. Still, the case for conflict resolution in a pluralistic society awaits the reference to some core values to which all may appeal, something that is denied in the first and second theses.

What Kekes believes to be reasonable may be explained through his account of primary values, as he states that “the claims of primary values are conditional on their contribution to the realization of the agents’ conception of a good life.”²² However, in a pluralist society, the non-liberal elements, not sharing the liberals’ normative approach to pluralism which harbors the practice of toleration, may *prima facie* have different ideas than the liberals as to which values are to be primary, that is, which ones contribute to their conception of the good life. In fact,

Kekes points this out, writing that “it is readily acknowledged by pluralists - indeed it is part of their thesis - that there are vast historical, cultural, and individual differences about how primary values are enjoyed.”²³ Thus, one can deduce from the above that the fourth thesis of pluralism cannot quite square with the third one, or resolve the conflicts that might result from the first three.

Given that toleration is implicit in the above versions of normative pluralism, the above discussion draws a preliminary attention to some of the problems that confront liberal ideas within a plural society, and how attempts by liberal thinkers to resolve such problems, such as the one offered by Kekes, may seem inadequate. Thus, if the justification of toleration, implied in the normative definition of pluralism, must appeal to values which are primary to liberals, it does not follow that, in a plural society, other non-liberal groups will agree to these justifications.

For Rawls, a pluralistic society is one “divided along religious, ethnic, or cultural lines”, where “persons and associations have contrary conceptions of the good...(harboring) opposing religious, philosophical, and moral convictions...as well as different ways of evaluating arguments and evidence in many important cases.”²⁴ In contrast to Larmore’s definition, and to Raz’s implicit entailment between moral pluralism and

toleration, Rawls's definition is descriptive and does not imply necessarily any principle of toleration. Similarly, Kymlicka echoes Rawls in describing pluralism without any normative tinge. He asserts that multinational or culturally plural states imply that there are "two or more groups of people (in a political community) who have different cultures, speaking different languages, developing different cultural traditions."²⁵ While we may accept the fact that we are living in a pluralistic society, as defined by Rawls or Kymlicka, we would not necessarily agree to the equal worth or to the worth tout court of those positions that may be antithetical to ours in terms of religion, philosophy, morality, ways of life, or ethnic affiliation. The principle of toleration does not seem to enter conceptually or practically Rawls's or Kymlicka's definitions of pluralism.

At any rate, even if we do conflate the idea of pluralism with that of toleration, the liberal justification of toleration will have to stand on its own, since non-liberals sharing a polity with liberals will not necessarily agree to the normative dimension of pluralism that the latter may espouse, as we have seen earlier. However, even if we take the normative route to defining pluralism in terms of a society where the principle of toleration is already implanted, or the descriptive one whereby society's pluralism is

independent of any notion of toleration, the liberal case for toleration will have to be defended as much as the normative dimension of pluralism.

More fundamentally, if we take pluralism normatively, we could be practically and conceptually blurring two notions that would gain from being distinct. If we do that, we could not adequately discuss how much pluralism to tolerate, although the scope of toleration could be implicit in how many competing plural values to admit in the polity. But by saying that, we are introducing the idea of how much pluralism to tolerate, what values ought to be accepted even if we do not appreciate them entirely, so that establishing the limits of normative pluralism implies in the process establishing what kind of pluralism to tolerate. And this tolerated pluralism would be equivalent to normative pluralism. It would then seem that the idea of tolerance and its limits would determine what is the scope of pluralism that is to be tolerated, and the normative dimension of this pluralism, making thus the independent discussion of tolerance necessary for prescribing the right pluralism. Hence, to minimize conceptual and practical confusions, pluralism ought to be discussed from a descriptive stance, since to use the normative sense would incorporate the principle of toleration. This principle needs, however, to be defended on its own and, furthermore, would help determine the range of plural

values that ought to be accepted, thus would determine the normative nature and scope of this pluralism.

C) Legitimacy

The liberal quest for neutrality seems ultimately to be grounded in a quest for the principled legitimacy of the liberal ethos, its fundamental laws, and overall of the liberal polity. It is thus a quest for legitimacy, understood as an uncoerced approval of the constitutional essentials of the polity, of its moral and legal fabric. If we take neutrality to mean to be acting in an impartial and anti-perfectionist way towards all conceptions of the good, that is, not electing our conceptions of the good to be hierarchically superior to others, nor trying to promote the goods implicit in our conceptions of the good at the expense of other goods comprised in other conceptions, we may see the motive of such neutral quest as a quest for a principled, non-coerced legitimacy. In this case, our philosophical, moral and religious concerns, that is, our ideals of the good, are not imposed on other citizens with different ideals, through the election of a legal, moral and political framework that would be inspired by such concerns or ideals. Hence, it is necessary in the investigation of neutrality to examine what for liberalism is meant by legitimacy.

If we consider individual autonomy among the core values of the deontological liberalism I am focusing on, then the practical and moral legitimacy of the state, viewed from an individual perspective, ought to rest on the individual's own consent with regard to the legal and political authority of the state, leading to the unforced acceptance of this authority. In other words, legitimacy, within the individual autonomy's ethos, would consist in establishing public rules and laws that the individual citizen would have agreed to. These laws would be equivalent to those personal ones, inspired by practical and moral motivations, he would have freely elected to be ruled by. The practical motivations answer purely to rational aspirations, such as enhancing one's own good, be it material, economic, mental, so on, while the moral ones would answer to some universal principle, at least within the deontological Kantian perspective, which has provided some of the moral impetus of liberalism. This assessment of the moral dimension of legitimacy for liberalism is echoed by Seyla Benhabib, who views the "dominant models

of legitimacy in contemporary (liberal) political thought as ‘neo-Kantian’ approaches to the relation between morality and politics.” This indicates, according to Benhabib,

a continuity between Kant’s universalist and procedural moral philosophy based on the value of the autonomous personality and his theory of justice of such a nature that political institutions must be viewed - in Kantian language - as embodying those ‘external conditions of freedom’ most compatible with the dignity of the autonomous person.²⁶

In the Kantian liberal perspective, the public laws of the polity, in order to gain moral legitimacy, would have to mirror self-imposed moral laws, laws one would have chosen freely, without outside interference or manipulation, in order to guide one’s life. In this instance, individual moral autonomy, understood as self-rule and self-direction in one’s morals, would be compatible with the public laws if, and only if, these laws would have been elected according to one’s moral convictions or principles. It is only then that these laws would carry moral legitimacy for the Kantian liberal individual. This is in a way the corollary of Kant’s categorical imperative, which states the following: “Act only on that maxim through which you can at the same time will that it should become a universal law.”²⁷ The corollary would read as follows: “Act only on (ie, consider morally legitimate) those public laws through which you can at

the same time will that they should become your own maxim.” This view of moral legitimacy is reflected in the following statement by Jurgen Habermas,

those to whom the law is addressed can acquire autonomy (in the Kantian sense) only to the extent that they can understand themselves to be the authors of the laws to which they are subject as private legal persons.²⁸

Yet, given that by definition a plural polity will not harbor one homogenous community with similar ideals of the good, of which the Kantian moral perspective would be one, it follows that the principles chosen by a Kantian or even a Utilitarian liberal to be public laws would not necessarily be embraced by those of different religious, philosophical and moral ideological dispositions. Assuming they all embrace the same practical values of economic and material betterment, and thus accord the political institutions the practical legitimacy this may imply, it would still be the case that practical legitimacy does not necessarily imply a moral one, and the latter is the most important one for Kantian liberals for the following reason. Given that practical legitimacy could well accord with a coercive, authoritative regime, and morally unjustified coercion is antithetical with the Kantian liberal ethos, it follows that the deontological liberalism inspired by Kant would be mainly concerned with moral

legitimacy, since in that case the authority of the public laws derives from the moral laws or maxims one would have chosen to act on, and reflect procedurally the latter.

However, if one takes morality to be *prima facie* overriding prescriptions for the values and practices that are to be followed, then the nature of morality dictates that other groups than the Kantian ones would take moral legitimacy of paramount importance, or at least of greater prescriptive importance than the practical one. As Jean Hampton states,

in most political societies the people and their rulers accept that there are *moral constraints* (italics in text) defining the possible content of the commands of someone holding such authority, which means that in these societies rulers' commands can't preempt *all* (italics in text) reasons.²⁹

Some of the problems one could foresee is how, in plural polities, deontological liberals could reconcile their view of moral legitimacy with that of others in the polity who do not share their view. The problem may be most acute when one sees the contradictions which might stem from a principle of toleration which would prescribe that other moral, religious and philosophical views should not be barred from being reflected in public laws, and the criterion of moral legitimacy that the deontological liberal abides by, as per our discussion, and which prescribes that the public laws ought to reflect one's own moral convictions, assuming that

the principle of tolerance is not the most overriding moral principle one abides by.

Aside from such contradictions, it is obvious that in a plural state, some citizens who have deep ideological differences with the liberal citizens whose ideals are reflected in the fundamental political arrangements of the polity, would not consider the latter morally legitimate. And given the coercive authority exercised by the state, those who do not view the laws of the liberal state as reflecting their own moral convictions would consider this liberal state intolerant, thus non-neutral, that is, partial to those whose ideals of the good are echoed by the state's constitutional essentials, or its legal, moral and political framework.

Liberal theorists may reply that not all values deserve to be morally represented in the constitutional arrangements, so that some plural arrangements can be justifiably tolerated while others ought not to be. But that would render the stability of the liberal polity a *modus vivendi* one, subject to shifts in balances of powers between the liberal and illiberal elements, rather than a stability based on universally shared moral convictions impervious to prevailing bargaining powers. To give the liberal polity greater political stability, the moral legitimacy of this polity should be expanded to the greatest number of citizens that would

have enough justifiable power to hold illiberal elements at bay. This moral legitimacy of the liberal polity would be grounded for those who share fundamentally the liberal ideals, such as the value of individual autonomy, civil and political rights, so on. However, these values must be taught, assimilated, learned, reproduced socially and culturally. These values, just like virtues, are not innate, for otherwise there would not be different communities, each sharing different values and virtues. Only then, and for those who become convinced of the liberal principles, could one say that the neutrality of the liberal polity would apply. However, and paradoxically, it may seem that perfectionism will have to come first before neutrality is established. In other words, it may seem that the neutrality of the polity would presuppose its perfectionism.

In the next section, I will examine the principled justifications of toleration from the secular perspective of liberalism, that is to say, philosophical and moral underpinnings of toleration, to see if indeed liberal toleration could be seen as the bedrock of neutrality, or as the means to reach neutral governance. The analysis, while using some classical liberal thinkers who have influenced in a major way the liberal position on toleration and neutrality, is less historical than conceptual. In other words, it borrows from the concepts developed by these thinkers,

or concepts borrowed from others and elaborated by them, in order to justify toleration. These concepts, which could be gathered under the headings of rationality, skepticism, and individual freedom or autonomy, have at any rate continued to inspire modern liberal discussions on the topic from which I also draw for my argumentation.

Notes to First Chapter

1. Will Kymlicka, *Liberalism, Community and Culture* (Oxford: Clarendon Press, 1991), p. 9.
2. Susan Mendus, *Justifying Toleration: Conceptual and Historical Perspectives* (Cambridge: Cambridge University Press, 1988), p. 5.
3. David Heyd, "Introduction", in D. Heyd (ed.), *Toleration: An Elusive Virtue*, (Princeton, NJ: Princeton University Press, 1996), p. 3.
4. John Rawls (1987), "The Idea of an Overlapping Consensus", in Conrad Johnson (ed.), *Philosophy of Law* (NY: MacMillan, 1993), p. 197.
5. Jeremy Waldron, "Locke: toleration and the rationality of persecution", in Susan Mendus (ed.), *Justifying Toleration*, p. 63.
6. D. D. Raphael, "The intolerable", in S. Mendus (ed.), *Justifying Toleration*, p. 139.
7. Heyd, *Toleration: An Elusive Virtue*, p. 5.
8. Raphael, "The Intolerable", p. 139.
9. John Horton, "Toleration as a Virtue", in D. Heyd (ed.), op. cit., *Toleration: An Elusive Virtue*, p. 28.
10. Bernard Williams, "Toleration: An impossible Virtue?", in D. Heyd (ed.), op. cit., *Toleration: An Elusive Virtue*, p. 19.
11. Ibid.
12. Ibid.
13. Charles Larmore, "Pluralism and Reasonable Disagreement", in Ellen F. Paul et al. (eds.), *Cultural Pluralism and Moral Knowledge* (Cambridge: Cambridge University Press, 1994), p. 61.
14. Ibid., p. 61.
15. Ibid., p. 74.
16. Joseph Raz, "Autonomy, toleration, and the harm principle", in Susan Mendus (ed.), *Justifying Toleration*, p. 159.
17. John Kekes, "Pluralism and the Value of Life", in E. F. Paul et al. (eds.), *Cultural Pluralism and Moral Knowledge*, op. cit., p. 45.
18. Ibid., p. 44.
19. Ibid., p. 47.
20. Ibid., pp. 49-50.
21. Ibid., p. 48.
22. Ibid., p. 50.
23. Ibid., p. 49.

24. John Rawls (1975), "A Kantian Conception of Equality", in Robert M. Stewart (ed.), *Readings in Social and Political Philosophy*, (Oxford: Oxford University Press, 1986), p. 188.
25. Kymlicka, *Liberalism, Community, and Culture*, p. 135.
26. Seyla Benhabib, "Liberal Dialogue Versus a Critical Theory of Discursive Legitimation", in Nancy Rosenblum (ed.), *Liberalism and the Moral Life* (Cambridge, Mass.: Harvard University Press, 1989), p. 143.
27. Immanuel Kant, *Groundwork of the Metaphysic of Morals*, (New York: Harper & Row, 1964), p. 88.
28. Jurgen Habermas, "Struggles for Recognition in the Democratic Constitutional State", in Amy Gutman (ed.), *Multiculturalism: Examining the Politics of Recognition* (Princeton, NJ: Princeton University Press, 1994), p. 112.
29. Jean Hampton, *Political Philosophy* (Boulder, CO: Westview Press, 1997), p. 75.

Second Chapter

Liberal Justifications of Toleration

As mentioned at the end of the first chapter, three types of liberal justifications for toleration will be considered. The first will be the argument from rationality, inspired by Locke's "Letter Concerning Toleration". The second will be the argument from skepticism. The third one will be the one of individual autonomy and diversity, inspired by Mill's "On Liberty".

A) Argument from Rationality

This argument has been used by Locke with regard to religious toleration. Subsequent liberal thinkers have extended the argument into the general realm of secular toleration. The argument basically states that beliefs cannot be coerced, and that religion is based on genuine belief or faith. Thus, if a person is coerced into adopting a religion which is alien to that person's true belief, the aim which the persecutor wanted to achieve, which was the salvation of that person by changing the latter belief, cannot obtain since the new belief will be spurious. Hence, if we judge an action to be rational according to the means used to reach certain aims, intolerance with regard to religious matters would be, according to Locke, irrational, since the persecuted does not truly

embrace the religion the intolerant party is trying to coerce him into embracing. According to Locke, "Faith only, and inward Sincerity, are the things that procure acceptance with God."¹ He adds that "in vain therefore do Princes compel their Subjects to come into their Church-communion, under pretense of saving their Souls. If they believe, they will come of their own accord; if they believe not, their coming will nothing avail them."²

We can see how Locke's argument for irrationality of religious intolerance can extend to a more secular argument for toleration with regard to values in general. If we consider values to be the repositories of our philosophical and moral beliefs, besides the religious ones, then the Lockean argument with regard to the irrationality of bending religious beliefs through intolerance would apply, *mutatis mutandis*, to other types of fundamental beliefs, such as those that are philosophical and moral. These values, religious, philosophical and moral, translate into what we take to be the ideals of the good, giving the Lockean argument credence in a pluralistic society divided by ideals of the good that are not exclusively or necessarily religious. For Locke, beliefs are internal cognitive or mental processes that cannot be the object of coercive outside interference, that is, of intolerant practices. Thus, if we want to

change someone's beliefs and we want to be rational about it, that is, use the means that are appropriate for our task, we could instead "admonish, exhort, convince another of Error, and by reasoning to draw him into Truth."³ In other words, Locke is evincing the fact that to be tolerant is to be rational, at least when it comes to convincing others that their beliefs are wrong. Coercing beliefs will not let us reach, for Locke, the end we intend, which is changing these beliefs. Intolerance of beliefs, religious or otherwise, would thus be irrational. As Locke states, "nor are Fire and Sword any proper Instruments wherewith to convince mens minds of Error, and inform them of the Truth."⁴

More pointedly, Locke denies the polity any privileged access to truth, so that one's beliefs become one's own private affair not to be interfered with by the coercive power of the state. While he acknowledges that the state or political leader may have more power than the individual citizens, that does not translate into greater knowledge or wisdom. As Locke states, "Princes indeed are born Superior unto other men in Power, but in Nature equal. Neither the Right, nor the Art of Ruling, does necessarily carry along with it the certain Knowledge of other things; and least of all of the true Religion."⁵

We can, of course, add to “true Religion” philosophical and moral beliefs, making one’s ideals of the good beyond the reach of state coercion or intolerance, paving the way for the notion of political neutrality, that is, a public policy inspired by the practice of toleration.

Furthermore, through his separation of the Church and the State, Locke denies the former any use of worldly penalties, thus ensuring that one’s personal ideals of the good would be immune, within the boundaries of public order, from persecution. He thus asserts that “the only business of the Church is the Salvation of Souls.”⁶ By that he meant that the Church has no prerogative with regard to using physical force in order to reach its ends. He asserts thus, concerning the Church, that “no Force is here to be made use of, upon any occasion whatsoever: For Force belongs wholly to the Civil Magistrate.”⁷ While Locke accords the state the power to use “outward force”, he strips the Church from any right to use such force. The Church’s power privilege is limited to persuasion in order to affect people’s beliefs. He states that “true and saving Religion consists in the inward persuasion of the Mind, without which nothing can be acceptable to God.”⁸ Such “inward persuasion” is reached solely through “Exhortations, Admonitions, and Advices.”⁹ That is the extent of the Church’s power. At any rate, as we have already

noticed, even the State, according to Locke, does not have any power over people's religious beliefs. That also applies to their philosophical and moral beliefs, if we extend Locke's argument onto a discussion of fundamental values undergirded by fundamental beliefs. Thus, the quest for true beliefs is a private matter for Locke that neither the State nor the Church can attend to rationally outside the power of persuasion. Such quest comes from within, unaffected by coercive outside influence. Neither State nor Church can impose truth, as Locke asserts, "For Truth certainly would do well enough, if she were once left to shift for her self...She is not taught by Laws, nor has she any need of Force to procure her entrance into the minds of men."¹⁰

Some of the major liberal themes that transpire from Locke's treatment of toleration are the following: (1) neutrality, as expressed in the separation of State and Church; (2) a bias toward a Protestant ethic, with its emphasis on faith and beliefs with regard to salvation; (3) relativism or skepticism with regard to true religion; (4) an unencumbered self.

With regard to neutrality, we can say the following. If we take neutral governance to imply the application of the principle of toleration to public policies, thus prompting the State not to discriminate against

citizens according to their ideals of the good, then we can see that Locke does indeed favor such a neutral policy. He indeed asserts that “No man whatsoever ought therefore to be deprived of his Terrestrial Enjoyments, upon account of his Religion.”¹¹ Such alleged neutrality of the State in matters religious could be extended to all ideals of the good, that is, moral and philosophical values, since the latter are part of the beliefs it would be irrational to coercively attempt to change, as Locke had argued. Hence, the ideals of the good of citizens, their private beliefs, are given wide latitude by reason of State-Church separation, based itself in part on the irrationality of intolerance of fundamental beliefs.

The liberal separation of the public from the private finds echo in Locke’s analysis of toleration. The private is interfered with by the state when the public good is at stake. For Locke, “the Public Good is the Rule and Measure of all Law-making.”¹² What this “Public Good” translates into is “the Safety and Security of the Commonwealth, and of every particular man’s Goods and Person.”¹³ He illustrates his point by showing how the State is justified in overriding certain religious practices in order to justify the public good, by mentioning that if a religion demands the sacrifice of certain animals, such as calves, and “that the Interest of the Commonwealth required all slaughter of Beasts should be

forborn for some while...the Magistrate, in such a case, may forbid all his Subjects to kill any Calves for any use whatsoever."¹⁴ For Locke, this is not a religious, but a political matter, concerning the public good, which thus overrides the private matters of religion under certain circumstances deemed of practical importance, in this case, economic: "'tis to be observed, that in this case the Law is not made about a Religious, but a Political matter."¹⁵

Locke's argument regarding the irrationality of intolerance is, as has been shown, based in the main on the necessity of true belief for religious salvation, and the irrationality of eliciting under coercion outward signs of religious faith that do not correspond to inner convictions. For Locke, when such signs are spurious, they have no credence before God: "Whatsoever is not done with that assurance of Faith, is neither well in itself, nor can it be acceptable to God."¹⁶ Such statement echoes the Protestant credo which establishes faith or true belief at the foundation of eternal salvation. As John Horton and Susan Mendus assert, "(Locke's) argument, which has its roots in Protestant theology...justifies toleration in terms of the claims of conscience."¹⁷ This is confirmed by Waldron, for whom Locke's "case depended on the Protestant importance he attached to sincere belief."¹⁸ For other liberal

thinkers, Locke's "Christianity was of the minimal kind; he did not think it required of the believer assent to any dogmas in excess of the proposition that Christ is the Messiah and the soul is immortal."¹⁹ Needless to say, in pluralistic religious societies, citizens who hold beliefs that do not accord with the Protestant ethos and its minimal dogmas will be little inclined to agree with the religious premises of the Lockean argument. Hence, his appeal for toleration will not be heeded by those who deem the justification religiously partisan.

With regard to truth as a means to salvation, Locke seems to accord no certainty to any religion. There does not seem to be, for Locke, an indubitable true path for religious salvation. All religions appear somewhat under a haze of skepticism or relativism that subvert whatever certainties they may proffer. What needs to be protected or tolerated are simply one's religious beliefs, or the procedural aspects of belief acquisition, which, for Locke, is a free endeavor. Besides, persecution or intolerance would, for Locke, be irrational, since the end of such intolerance, which is to make others' beliefs accord with ours, would not obtain under coercive measures. At any rate, Locke seems to give every Church the benefit of the doubt as to its stand with regard to

truth, hinging thus on a call for relativism, or skepticism with regard to any primary source of religious truth. He states that

every Church is Orthodox to itself; to others, Erroneous or Heretical. For whatsoever any Church believes, it believes to be true...So that the Controversy between these Churches about the Truth of their Doctrines...is on both sides equal.²⁰

Moreover, Locke rules out the existence of a third party, a “truer” or true Church as it were, that could arbitrate such inter-religious disputes, thus giving the impression of a relativistic position, or somewhat of a skeptical one with regard to all claims to religious truths, and a fortiori to all truths, be they philosophical or moral. In the absence of a hierarchy among religious claims to truth, or one could say, mutatis mutandis, among all ideals of the good, all ideals could be for Locke equally valid in absolute terms, that is, if one does not take into account their practical consequences and their effect on the public order so dear to his concerns. Thus, according to Locke, no third party with superior credentials to truth could step in and arbitrate religious disputes or, by extension, those concerning different values or ideals of the good. He states that there is no “Judge, either at Constantinople, or elsewhere upon Earth, by whose Sentence (the Controversy between these Churches) can be determined.”²¹ However, for many faithful who believe their religion

to hold absolute truth, one revealed by God, Locke's relativistic position would seem too heretical to be taken seriously. Therefore, it would have little consensual appeal to bring inter-faith toleration and much civil peace in a polity divided by many religious denominations.

Finally, Locke's justification for toleration seems to depend in important ways on what the communitarians would call an unencumbered self, whereby the self is prior to or transcends its social attachments, its historical moorings, the contingencies of its communal ties, the culture into which it was born and by which it was shaped. Michael Sandel describes such "unencumbered self" as one "conceived as a pure subject of possession, distinct from its contingent aims and attributes, standing always behind them."²² For Locke, religion, or more broadly the ideals of the good, are not inherited along with the traditions or culture we grow up with, are not passed along by our family and community. Such fundamental values are, for Locke, simply an object of voluntary choice, of individual autonomy, of a self that knows no social or cultural fetters. It is a self that would have no prejudice for its cultural history or tradition, a radical self that can pick and choose the values and lifestyles it pleases, seemingly without any presumptions for choosing some ideals and not others. The choices seem to be arbitrary with regard

to one's flourishing, that is, little or not influenced by any prior social or communal habituation or conditioning. Locke states that "no Man by nature is bound unto any particular Church or Sect, but every one joins himself voluntarily to that Society in which he believes he has found that...Worship which is truly acceptable to God."²³

One wonders if indeed most people who follow a religious creed have done it voluntarily since their tender years, or if it is not the force of habit coupled with a self "encumbered" or conditioned and socialized by the culture it was born in, the family it grew up with, which renders one's faith less voluntary than simply learned and received. While the aim Locke is pursuing, which is the freedom to enter or quit a Church as one pleases, may be laudable to other liberal thinkers, it assumes a freedom, reflected in an unencumbered self, that may not be there and that others in the congregation or other religions may not share, especially if they do not agree with his alleged skepticism or relativism with regard to religious or revealed truth. The faithful may be too encumbered by the trappings of their faith, that is, the values, practices and obligations that go with such faith, to accept Locke's argument that everyone has the freedom to become a "heretic", and to claim what they deem to be untrue as true.

The four liberal themes which have been expounded above point to the problems in applying Locke's argument for toleration in a deeply pluralistic society, one divided along incompatible ideals of the good. For instance, the State-Church division which parallels the political/public-private division of later liberal thinkers, may not pass muster in some political societies, of which we could mention the Islamic ones, where State institutions are but a continuation of religious edicts, where the constitutional essentials are to conform with what religion proclaims and ordains. It is said, for instance, that Islam is "a total and unified way of life, both religious and secular...it is a polity and a method of governance...It is a spiritual and human totality, this-worldly and other-worldly."²⁴

This public-private division which was to reflect the neutrality of the political institutions, whereby the private ideals of the good of citizens are left to flourish independently of state interference or coercion, as long as the public good is not endangered, would not have much prima facie credence in those polities where religion and private values are considered to have political reach. In the latter case, citizens may demand that the basic laws of the polity reflect their private moral, philosophical and religious values and thus frame a cultural environment that is not

antithetical to these values. Although Locke warns that intolerance is ill-suited to pluralistic societies and may lead to civil strife, that “it is not the diversity of Opinions, (which cannot be avoided) but the refusal of Toleration to those that are of different Opinions, that has produced all the Bustles and Wars,”²⁵ this could be a price some citizens would be willing to pay if the outcome could be a cultural and political framework that accords with their values. The price of peace may be too high for some to pay when they feel their most cherished values could be undermined by the actions and beliefs of others. T. M. Scanlon writes in that regard that

the desire to prevent those with whom one disagrees from influencing the evolution of one’s society has been a main motive for restricting expression, for example, for restricting religious proselytizing...what the enforcers want is to prevent the spread of certain forms of behavior and attitude.²⁶

For Scanlon, preventing the contamination of society by ideas and values one deems antithetical to one’s own is not *prima facie* unethical or unreasonable. He states that “we all have a profound interest in how prevailing customs and practices evolve,”²⁷ adding that

(there is) nothing mistaken or illegitimate about at least some of the *concerns* (italic in text) that have moved those who advocate the legal enforcement of morals or who seek to restrict expression in order to prevent what they see as the deterioration of their society.²⁸

More damaging to Locke's argument, however, is the fact that intolerance can sometimes be rational, that is, accomplish the ends the intolerant deems desirable. Even if we admit that fundamental beliefs, be they religious, moral or philosophical, will not change under coercion, if the goal of persecution or intolerance is the containment of heretical ideas or practices, limiting the "spread of certain forms of behavior and attitude", as Scanlon stated above, then intolerance could accomplish this goal as long as one has the power to enforce it. Moreover, assuming that coercion or intolerance would not change religious, moral or philosophical beliefs, that the intolerant party could not rationally expect to change such beliefs, still, if such party is intent on pursuing the harshest measures of persecution and is able to do so, it may simply eliminate all those who hold the heretical beliefs. In other words, if Locke is right and beliefs cannot be changed through coercion, the persecutor could simply eliminate the believers. Such intolerant action would seem rational, since its intended goal, which was to get the alien beliefs out of circulation, could be reached through the annihilation of those who held such beliefs. While such assessment, which denies the necessary irrationality of

intolerance with regard to fundamental beliefs and values, runs contrary to that of Locke, it agrees with Mill's, as he states that

wherever persecution was persisted in, it was successful. In Spain, Italy, Flanders, the Austrian empire, Protestantism was rooted out...Persecution has always succeeded save where the heretics were too strong a party to be effectually persecuted.²⁹

Then, he gives the example of heretical sects that were exterminated with little of their ideals or beliefs left for others to ponder and possibly adopt. In the case of one of those sects, the Albigeois, "little is known (of their heretical doctrine) because of the genocidal ferocity with which they were executed by the Inquisition in the thirteenth century."³⁰

Furthermore, other forms of discrimination or intolerance, such as political or economic, which would affect one's flourishing though not one's beliefs necessarily, are not addressed by Locke's argument. As Waldron states, "if the reasons (for intolerance) are economic or political, then (Locke's) argument for toleration gets no grip whatsoever..."³¹ However, as has been shown already, even if the reasons for intolerance are aimed at changes of beliefs, the presuppositions that Locke bases his argument on may not be quite convincing to other religious groups in a

pluralistic society. They may have little incentives, other than pragmatic ones based on balances of power, or ones stemming from their own religion or moral values, to practice toleration. At any rate, Locke's argument would have no grip on their justifications, as they may deem it religiously partisan and philosophically alien, grounded in the Protestant faith and limned with metaphysical skepticism or relativism that is antithetical to what they would believe to be an unshakable revealed truth.

B) Argument from Skepticism

As has been seen already, skepticism seems to have entered Locke's argument in favor of toleration, as metaphysical truth was deemed to be the prerogative of so many religions as to become an irrelevant factor for justifying intolerance. Thus, if one's religion or ideals of the good are open to doubt, it becomes less urgent or necessary to enforce them on others, or to defend them against the encroachment of other values and practices. As Mendus asserts, "Very often in the history of philosophy the demand for toleration has been allied to skepticism, or even relativism."³² Moreover, liberalism has often been associated with skepticism with regard to metaphysical truths, or to values inspired by the latter, be they religious or philosophical. Hence, Sandel asserts that

“liberalism, in its contemporary versions, typically presents itself as immune to most controversies to which political theories have traditionally been vulnerable, especially questions of human nature and the meaning of the good life.”³³ This is echoed by Bruce Ackerman, who inquires,

But can we *know* (italic in text) anything about the good? Sure, all of us have beliefs; but isn't merely pretentious to proclaim one's *knowledge* (italic in text) on this subject?... The hard truth is this: There is no moral meaning hidden in the bowels of the universe.³⁴

Mendus describes the same liberal posture, as she writes that “Skepticism is also a prominent feature of twentieth-century liberalism, which frequently bases its commitment to toleration on moral skepticism.”³⁵ However, if one sides with David Hume in seeing morality more in terms of feelings and sentiments than truth, the skeptical argument which some liberal thinkers would want to endorse as a justification of toleration would sound hollow.³⁶ At any rate, even if our values are not based in part on sentiments, even if indeed it is the call of truth that makes us cling to our convictions and be intolerant of others who hold different beliefs, this argument may not win many adherents in a pluralistic society where other citizens share little of the liberal skeptical convictions or even ideals.

More damaging to the argument from skepticism is that there is no necessary correlation between skepticism and toleration. Actually, skeptics could arguably be intolerant of those believers in metaphysical truths, and they could be justified in being so simply because they feel the beliefs of the others may lead to political and cultural arrangements they simply do not like. Thus, another argument for toleration than the one from skepticism should be introduced for such skeptics to be tolerant of beliefs that are not to their liking. To be a moral, religious and philosophical skeptic does not entail necessarily that one has no beliefs whatsoever, and does not want others to share in one's beliefs. It does not entail also that one would not be exacerbated and be inclined to be intolerant if one feels other ideals are spreading instead of one's own

Furthermore, the argument from skepticism assumes that intolerance derives mainly from one's beliefs. Yet, there are many aspects of intolerance that have little to do with beliefs, and more with esthetic dispositions, sensations, feelings, emotions unmediated by conscious thinking or beliefs, or influencing these rather than being influenced by them. If one finds something intolerably distasteful, it may have less to do with truth-seeking and conscious belief formation than with prior

conditionings and acculturation that may trigger spontaneously our negative impressions. Even with regard to moral inklings, noncognitivists or emotivists would say that beliefs or truth-conditions have little to do with our moral impressions, so that the beliefs sustaining the rightness or wrongness of an act may have less to do with our cognitive capacities as much as with our purely emotional reactions to such act. Hence, it would seem, contrary to the skeptical argument, that skepticism about the cognitive underpinnings of morality and other philosophical principles would equally provide opportunities for intolerance as for the moral cognitivists and other believers in philosophical or religious truths, since many of our emotions, some of which ground the feelings of intolerance, may escape significantly our beliefs. As Wadron states,

It is sometimes said that toleration is the child of doubt...(and) that there is a philosophical connection between liberal doctrines and doubts about the objectivity of ethics. I have to confess that these connections escape me, and that the view that moral non-cognitivism generates a principle of ethical *laissez-faire* (italic in text) seems to me simply incoherent.³⁷

This is echoed by David Brink: “Neither noncognitivism nor relativism seems to have any special commitment to tolerance.”³⁸

However, it may be the case that in some instances one may be tolerant vis-à-vis some ways of life, for instance as regards the exhibition of certain sexual mores or practices, despite the contrary teachings of one's religiously inspired morality. Such alleged case of toleration may be the result of a benign skepticism with regard to the absolute truth of one's religion or the absolute irrelevance of others. More specifically, it may be the outcome of a believer putting some distance from religious views regarding lifestyles, practices or values that are not deemed crucial to the fundamental beliefs of one's religion. In other words, some actions which were deemed shockingly immoral at some cultural point in history become, after repeated exposure, somewhat banal and do not trigger the shrill emotive responses that prompt intolerant behavior. However, such alleged case of toleration would become more akin to indifference than to what an attitude of tolerance is assumed to be, which is a response to "things which we dislike, find distasteful, or morally wrong."²⁹ In our example, one either (a) does not see or feel the urgency or centrality of the religious teachings that condemn the exhibited behavior, so that the moral entailment from the religious teaching to the condemnation of the sexual behavior does not hold; or (b) one has become so inured to such formerly condemnable behaviors as to feel

rather indifferent when these occur, in which case neither distaste nor dislike occur to render what seems like indifference an instance of toleration. So, while instances of indifference may elicit similar behavioral patterns as those of toleration and induce the observer into confounding the two, the latter are not similarly motivated or justified, nor do they represent similar mental, emotional or moral dispositions to be the same. As Williams states,

In many matters, attitudes that are more tolerant in practice do arise for this reason, that people cease to think that a certain kind of behavior is a matter of disapproval...An extramarital relationship or a homosexual ménage may arouse no hostile comments or reaction, as such things did in the past. But once again, though this is toleration as a matter of practice, the attitude it relies on is *indifference* rather than, strictly speaking, *toleration* (italics mine).⁴⁰

Still, in societies which encourage or defend toleration of practices that some citizens, be they liberals or not, may dislike, find distasteful or even immoral, it is conceivable that such toleration would make those people who find such acts offensive at some point in time become rather indifferent to these after being exposed to them for some time, especially if the introduction of such practices is done gradually for people not to be too offended at first. Thus, a public policy of toleration with regard to certain practices may usher indifference after a period of

continuous exposure, so that it is not inconceivable that the two could be, in some instances, causally related.

However, in contradistinction to the liberal thinkers who defend the skeptical argument or harbor a skeptical attitude about fundamental values, there are those for whom liberalism is committed to certain basic values and beliefs from which the liberal stances on toleration and neutrality, among others, allegedly derive. These values and beliefs, while not necessarily metaphysical, emphasize certain human ideals, such as those of individual autonomy and rights, that need not be justified by controversial appeals to some transcendent reality or revealed truth, that is, that need not invoke for their justification more than the empirical facts of our human experience. Thus, liberalism's commitment to the Kantian and Millian individual autonomy and liberty, beside its commitment to toleration and the neutrality of the state in order to let individual autonomy and freedom flourish, are commitments to positive values that are far from a nihilistic position which radical skepticism might entail. As Mendus states

Liberty and toleration are part of the constitutive morality of liberalism, and it can hardly be open to liberals to defend these values on the skeptical ground that *no* (italic in text) values can be defended.⁴¹

She adds that “liberalism affirms what skepticism denies, namely that some values are objectively better than others - notably the values of freedom and toleration.”⁴²

However, the definite values to which liberalism would be committed may *prima facie* be seen as typically liberal in a pluralistic polity with clashing ideals of the good, so that what liberalism proclaims may appear no less than partisan or non-neutral by those holding incompatible conceptions of the good. Hence, while the liberals may insist on the values of individual freedom or autonomy to undergird their call for toleration and limit the intolerance of others, the latter may not share the liberal justifications or values to embrace toleration, as we shall see later on. According to Williams, “The liberal has not, in this representation of toleration, given (the non-liberals) a reason to value toleration if they do not share his or her other values.”⁴³ At any rate, we have seen so far that the liberal arguments from rationality and skepticism flounder and are not adequate for the task of grounding in a principled way toleration for both liberalism and its foes.

C) Argument from Individual Autonomy

The toleration argument from individual autonomy or freedom, expounded systematically by J. S. Mill in “On Liberty”, has been described by liberal thinkers as the one which accords the most with the liberal ethos. For Mendus, “the autonomy-based argument which Mill appeals to has been described as *the* (italic in text) specifically liberal argument for toleration.”⁴⁴ This opinion is echoed by Raz, who confirms that the argument from autonomy is “sometimes thought to be the specifically liberal argument for toleration: the one argument which is not shared by non-liberals.”⁴⁵ Again, Kymlicka speaks of “the ideals of personal liberty endorsed by liberals from Locke to Kant and Mill.”⁴⁶ In what follows, Mill’s defense of toleration and individual freedom will be examined, along with the relevance of such defense to the liberal arguments for toleration.

Mill’s main concern in “On Liberty” is basically the extent of legitimate, or morally justified, social, legal and political coercion that society can exert on the individual, and the extent of legitimate individual freedom the individual can enjoy within society qua individual and citizen. It follows from Mill’s concern between legitimate public coercion and

individual freedom that a principle of toleration ought to be found in order to regulate the relationship between the two and set the limits of each. The search for and the justification of a principle that could justly balance the claims of society and those of individuality, so that too much freedom does not lead to moral dissolution and social anarchy, and too much coercion does not lead to tyranny and to the suffocation of creative individual energies, is behind Mill's enterprise. Thus, he writes, "The subject of this essay is...civil, or social liberty: the nature and limits of the power which can be legitimately exercised by society over the individual."⁴⁷ This concern regarding the proper balance between the polity's coercive arm and the scope of individual liberty is eloquently expressed further on by Mill, as he writes,

What, then, is the rightful limit to the sovereignty of the individual over himself? Where does the authority of society begin? How much of human life should be assigned to individuality, and how much to society?⁴⁸

These are the pressing questions that animate his book and to which he attempts to provide the "rightful" answers. My analysis will proceed as follows: the justification of individual autonomy and the concomitant requirement of toleration which helps ensure the "rightful" degree of autonomy; the utility of individual freedom or autonomy as a

means to truth and individual flourishing; the restrictions placed on individual autonomy, or the limits of toleration; a critique of Mill's arguments.

C1) Justifying Toleration: Truth and Flourishing

The argument for toleration is based, for Mill, on the advantages of individual freedom or autonomy, expressed in conditional diversity, experiments in living, freedom of opinion, so forth. Such autonomy comprises, moreover, the following: "liberty of conscience...liberty of thought and feeling, absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological."⁴⁹ One of Mill's principal concerns is that restricting individual freedoms would rob humanity of an opportunity to advance truth. The reason is that even if the opinion is wrong, the exchange of ideas provide a forum where the established truth could appear under a better light and becomes enriched in the process, given "the clearer perception and livelier impression of truth produced by its collision with error."⁵⁰ Thus, freedom of opinion seems to be the royal road to truth, benefiting the latter whether the opinion is right or wrong, and anything which might hinder it would thus be hindering the progress to truth. Such hindrance, for Mill, is not simply legal, but could be social. Social approval being of utmost

concern to most people, it follows that one ought not to severely judge those who, through the legitimate exercise of their personal freedom, might express opinions that do not agree with the established consensus of society, or what Mill quotes derisively as "the deep slumber of a decided opinion."⁵¹ For Mill, society, through the power of public opinion, can exercise more tyrannical power than that of the political apparatus of the state:

(public opinion) practices a social tyranny more formidable than many kinds of political oppression (because) it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself.⁵²

Such is the power of public opinion, not to mention the political and legal coercive powers of the State, that for Mill the price to pay for intolerance, in terms of inhibiting people from stating their opinions, and consequently of blocking the progress of truth, is too onerous. Assuming one does not have enough courage to speak one's mind and oppose the "deep slumber of decided opinion", thus risk its opprobrium or risk ostracism from a public exercising its "tyranny", assuming thus that the risk to be taken would be too high for the slim personal rewards that might ensue, such as the public eventually embracing the individual's opinion or recognizing its import, then it is quite possible that the opinion

will remain shelved within the secrecy of one's timid mind or heart and, for Mill, the world would be the worse for it. The reason is that, as has been mentioned before, an opinion, whether right or wrong, will have for Mill its role to play on the path to truth. Thus, Mill asserts that while "our merely social intolerance kills no one...(it) induces men to disguise (opinions) or to abstain from any active effort for their diffusion."⁵³

Mill then seems to favor a dialectical method for reaching truth, in which case the play of opposite opinions become intrinsic to the discovery process, thus necessary to the end sought. An opposite opinion should then be welcome rather than shunned or deprecated, if one genuinely values truth. Mill states the dialectical matter thus: "Truth, in the great practical concerns of life, is so much a question of the reconciling and combining of opposites."⁵⁴ Elsewhere, he writes favorably of "the powerful dialectics which formed the intellects of the *Socratici viri*."⁵⁵ For Mill, then, to smugly side with the majority opinion, to prevent any opinion from challenging it, to rest on the laurels of acquired and fossilized wisdom, to disallow a diversity of opinions from flourishing in society's midst, run counter to a genuine quest for truth. The latter needs diversity to develop and thrive, and such diversity can be had when

different opinions are allowed free expression, in other words, when they are tolerated rather than cowered by the fear of public discredit or political and legal pursuits. For Mill, then, "the interests of truth require a diversity of opinion."⁵⁶

Besides truth, Mill believes that human flourishing and well-being require freedom and, what follows freedom, a diversity of situations. He thus credits European advanced civilization to the "remarkable diversity of character and culture" which makes up the European nations,⁵⁷ and declares "freedom and variety of situations...necessary conditions of human development."⁵⁸ Such human development need not be simply cognitive or truth-related, but can also refer to one's emotional, moral and esthetic flourishing. However, for this development to occur individuality and its correlate, diversity, must prevail, a condition that moral toleration by civil society, and political toleration by the state, would help fulfill. Mill practically equates individuality with development, and states that "it is only the cultivation of individuality which produces, or can produce, well-developed human beings,"⁵⁹ some of whom could become exceptionally talented in their individual endeavors, that is to say, geniuses. The latter, "being more individual than any other people...can only breathe freely in an atmosphere of

freedom.”⁶⁰ For Mill, then, to create a social and political atmosphere of intolerance amounts to the impoverishment of humanity, first by preventing the necessary conditions for exceptional characters or geniuses to emerge, and second by preventing people from fulfilling their own potential or living their own life, both guarantors of their own flourishing and well-being, since “one’s own mode of laying out his existence is the best, not because it is the best in itself, but because it is his own mode.”⁶¹

For Mill, intolerance can be exercised in two ways, each one able to prevent individuality from thriving along with the benefits, mentioned above, that follow from such individuality. On the one hand, there is the intolerance of the state and its coercive legal apparatus, or “physical force in the form of legal penalties,” and on the other that which is elicited by the “the moral coercion of public opinion.”⁶² Both can limit diversity, individual freedom, and thus prevent individual and human progress toward what Mill perceives as increased enlightenment, be it scientific, philosophical, moral, esthetic, or even religious.

C2) Utility, Truth and Freedom

This growing enlightenment which individual freedom ought to lead to, unfettered by excess legal and social intolerance, is gauged by Mill in terms of utility. This factor of utility accords somewhat with the

maximizing ethos of utilitarian calculus, as has been expounded in Mill's "Utilitarianism", in which the quality and quantity of pleasure or happiness that ensues from an act is what determine its greater or lesser moral worth.⁶³ Thus, assuming the majority of people condemn an act or an opinion expressed by one person, it would follow that the amount of disutility which obtains because of the number of people dissatisfied would *prima facie* render the act or opinion morally reprehensible. Yet, this may be counting without what Mill judges to be the quality that the free expression of an act or opinion bestows in terms of truth-seeking procedure, that is to say, in terms of its possible contribution to what seems to be the greater utility of truth. The quality of this utility seems to override whatever quantitatively determined disutility that may oppose it, that is, the quantity of disutility obtained by adding each individual's negative utility. Thus, Mill seems to rule out quantity as a decisive moral factor in judging the ethical worth of an action, giving quality infinitely more weight in terms of the final count in the utilitarian calculus. Hence, he writes, "If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing the contrary opinion..."⁶⁴ Elsewhere, he dismisses the

numerical importance that attaches to what is described as the will of the people, or that of "the most numerous or the most active part of the people - the majority...", then inveighs against what he terms as "the tyranny of the majority."⁶⁵ Hence, when it comes to personal freedom, he seems to discount the quantitative utilitarian import in favor of some higher principle of utility, concerning in this instance a qualitative appreciation of individual freedom.

Finally, he appends a temporal dimension to the utilitarian calculus, so that it is not the immediate net amount of happiness and unhappiness that should count, but the one that obtains in the long run. Thus, supposing a prophet starts preaching a new religion, or a scientist explaining some new theory that does not agree with the predominant religious or scientific view, or a philosopher expounding a new morality or worldview that does not sit well with the slumberous majority viewpoint, and assuming that these ideas or some of them represent genuine advances on established ones, are truly more useful to society, or anticipate its needs and help prepare it to face these needs when they arise, yet are vehemently opposed by most people at first and their holders persecuted or systematically shunned by their peers, if not ostracized by everyone. For Mill, these ideas, unhindered, should actually

add to the utility of society according to a temporally sensitive utilitarian calculus, more specifically one which is heavily weighted in favor of future utility. He unambiguously supports such "evolutionary" view of utility, stating thus: "I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being."⁶⁶ More significantly, given that the dialectical procedure or the clash of opinions is enlightening in itself for Mill, even if these opinions are mistaken the fact of their being expressed would add more to the general utility than if they were inhibited. As Mill says, "if (the opinion) is wrong, (those who silence it) lose, what is almost as great a benefit as if it was right, the clearer perception and livelier impression of truth by its collision with error."⁶⁷ Hence, it is, for Mill, the procedural aspect of reaching or approaching truth through the free exchange of opinions that adds to the general utility than simply the worth of the opinion itself. It follows that toleration of the free exchange of opinions would be morally justified and prescribed, given the greater utility that follows from the free exchange of opinions and the fact that, for Mill, utility is the criterion by which to gauge moral worth.

The problem with Mill's evolutionary view of truth is that, in terms of some religions and some moralities derived from these religions, the question of truth is less an evolutionary one than one that is revealed for all eternity. Hence, his discussion of truth with regard to morality or religion, and the importance of free exchanges of opinions, may not agree with the holders of such religious and moral beliefs deemed absolutely true. His arguments thus would have more relevance in the context of science than in other domains, at least in a pluralistic society with ideals incompatible with the liberal views on religion and morality. But even within liberalism, there may be philosophical views that do not take moral truth to be a relevant or sufficient criterion in guiding one's moral behavior. Among such views we could mention the emotivist or noncognitivist ones in general, where personal sentiments and interest play a more prominent role than some objective truth to be discovered or close in on. For the liberal holders of such views and other religious believers, Mill's arguments in defense of toleration in order to advance truth may not have any moral grip whatsoever.

Notwithstanding the above caveats, there are for Mill two main restrictions on individual freedom that need to be taken into account and, if neglected, cancel the utilitarian import of that freedom. First, the

individual opinions or actions should not harm the interests of others, in other words, should not be exercised at the expense of others in society. Second, to have a right to such freedom one should have reached the maturity of one's faculties; otherwise, for Mill, one will not be able to judiciously exercise this right to freedom. Thus, with regard to harm, Mill states that "the only purpose for which power can be rightfully exercised over any members of a civilized community, against his will, is to prevent harm to others."⁶⁸ With regard to maturity, Mill writes this qualifying statement, "It is, perhaps, hardly necessary to say that this doctrine (of freedom) is meant to apply only to human beings in the maturity of their faculties."⁶⁹ The relationship between these two qualifications is that one, with few exceptions, such as forfeiting one's right to personal freedom and selling oneself into slavery,⁷⁰ ought not to be restricted in self-regarding harm if one is mature, and ought solely to be restricted in such self-directed harm if one lacks maturity. The dichotomy between self-regarding and other-regarding harms, which justifies in the first case toleration, assuming personal maturity, and in the latter intolerance, is clearly set by Mill in the following statement:

The only part of the conduct of anyone for which he is amenable to society is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.⁷¹

Communitarians, however, would not agree to that dichotomous assessment of the self, even from within a utilitarian framework, for it is assumed by the communitarians that the self is embedded in its social and historical environment, it is encumbered by ties to others in the community where it is, be it family, friends, primary and secondary social groups, so on. It follows that the allegedly self-regarding action of such socially embedded self or individual would affect the overall utilitarian calculus since it would have some effect on those who know that person or who may be touched by his behavior. For the communitarians, there could not cogently be, in utilitarian terms, a total independence or autonomy from one's social environment that would allow such neat self-regarding and other-regarding division.

At any rate, some of the problems and controversies that may plague Mill's defense of toleration and individual freedom and might cast doubt on their soundness or their coherence will be investigated in the following section, according to the following thematic path: Mill's somewhat incoherent and limited analysis of customs, understood as

established norms and culture, and from which one could derive illiberal communitarian and perfectionist consequences; a normative criterion of maturity and harm which again could lead to illiberal consequences; a nebulous or shifting boundary between self- and other-regarding harms that undermines the harm principle as an objective factor for determining the scope of individual freedom; overall, the inadequacy of Mill's analysis of harm and the meaning one could, consistently with his exposition, apply to maturity, leading to illiberal restrictions on the scope of individual freedom.

C3) Mill and Customs: Perfectionist and Communitarian Implications

As has been indicated earlier, Mill's position on freedom and toleration is mainly based on a notion of utility that allegedly ensues from the practice of toleration. Such utility seems to crystallize partly in an evolutionary or progressive sense of truth that thrives in the clashes of opinions, in diversity rather than uniformity, basically in a dialectical dynamism which toleration of individual freedom would help materialize. However, truth comes in many guises, scientific, theological, philosophical, and for cognitivists moral, not all of them equally ascertainable, be it empirically or otherwise. Religious and moral truth

may owe much more to customs and local culture than science, or may have more of an emotional appeal and meaning to people than the advances of science. Yet, while Mill recognizes the importance of custom as a repository of experience and history in a community, and as he acknowledges the role of experience and history in guiding people's conduct, he recognizes that circumstances change and so must customs.

Thus, he states that

it would be absurd to pretend that people ought to live as if nothing whatever had been known in the world before they came into it; as if experience has as yet done nothing toward showing that one mode of existence, or of conduct, is preferable to another.⁷²

Then, he derides following a custom when one has reached maturity to make individual choices that agree with one's autonomous preferences or dispositions more genuinely than what custom recommends. He asserts that "he who does anything because it is the custom makes no choice", while "the human faculties of perception, judgment...and even moral preferences are exercised only in making a choice."⁷³

Yet, customs, just like truths, are not equally viewed by the people who follow them. Some are more deeply entrenched than others because they provide the community and the individuals in that community with a sense of stability, of deep meaning that may be necessary for one's flourishing. If religion and morality are parts of customs, and so are fashion and culinary taste, one could not confound the two categories into one easily expendable type. The truth that one might find in a religion, or the comfort one may find in the principal teachings of a morality, or the utility one perceives in having a community following commonly shared moral standards which are seen so fundamental as to be deemed necessary for the stability of such community, such custom- or tradition-based truths or practices may not be lightly cast off as if they were custom-based dictates of fashion. There may be a great qualitative difference in the import of different customs which Mill seems to oversee, as in the following sweeping statement: "He who lets the world...choose his plan of life for him has no need of any other faculty than the ape-like one of imitation."⁷⁴

One may see a radically anti-communitarian bias in such statements, as if the individual were an island and the community an entirely separate entity, or as if individuals exist in a social void with little

or no guidance and influence from others, from tradition, from history, or from common experience, minding their own lives independently from others, left to their own devices as long as no social harm ensues from their actions. Yet, Mill does not consistently espouse such a position. On the contrary, he admits to the social web that surrounds each individual, and recognizes that no individual is an isolated atom amongst others, each following its own asocial trajectory. He states thus that

it would be a great misunderstanding of this doctrine (of freedom) to suppose that it is one of selfish indifference which pretends that human beings have no business with each other's conduct in life, and that they should not concern themselves about the well-doing or well-being of one another...⁷⁵

Furthermore, he recognizes that maturity, which is the sine qua non condition that justifies such individual autonomy, whereby the person can rightfully sideline customs and the attendant ossified truths and strike out on his own, provided no harm to others ensues, such maturity thus is the result of education, or religious, moral and social upbringing. Yet, these owe a lot to custom or established culture, which Mill seems at times to stridently undermine in favor of a radically individualistic, even if mature, autonomy. And it might be at any rate that one happens to live in a society whose customary mores are that people ought to be autonomous, as Mill suggests, just as would be the case in an ideal

individualistic liberal society or, for some, as is the case in some actual liberal democracies.

This assessment of a liberal society accords with the way some communitarians and perfectionists might perceive society in general, one united by broadly shared common ideals of the good which education and common experience have shaped, and one whose values are to a large extent historically and culturally defined. Thus, Michael Walzers asserts that

men and women who acknowledge each other's equality, claim the rights of free speech, and practice the virtues of tolerance and mutual respect, do not leap from the head of Zeus. They are creatures of history; they have been worked on, so to speak, for many generations; and they inhabit a society that 'fits' their qualities and so supports and reinforces and reproduces people very much like themselves.⁷⁶

Such views which give a role to the community and to paternalistic or perfectionist training in shaping the individual's liberal values of autonomy can thus agree with the Millian notion of personal autonomy and its formative pedigree grounded in culture, history, and prevailing customs. In that case, Mill's argument, which in the main implies that autonomy must pass through the shaping effects of social customs, experience and history does deflect his criticisms of customs and help us reevaluate them within his overall account of the formative value

of education and experience. Thus, it may be said that his criticisms are not directed at all customs or established cultures, or at customs per se, but at the content of those customs or established cultures that discourage autonomous explorations that may veer from the established or customary values or practices.

Hence, perfectionism, for whom custom and culture represent the educational means and repository by which ideals are instilled, and communitarianism, for whom customs represent traditions and experience that bound communities together, can be accommodated by Mill commentaries on customs, since it is less these that are the targets of his attacks as much as certain types of binding ones, as already explained. Furthermore, customs being the repositories of experience and education, and these being formative of maturity, it follows that customs are necessary for one's maturity. At any rate, Mill writes of the beneficial aspects of common habituation which education instills, thereby crediting much utility to customs, which are in fact the perpetuation of acquired habits. He speaks thus of

the peculiar training of a citizen, the practical part of the political education of a free people...habituating them to act from public or semi-public motives...Without these habits...a free constitution can neither be worked nor preserved.⁷⁷

Thus, Mill does actually give education and the acquisition of habits or customs a pride of place in the formation and development of citizens, since these are the means for individuals to reach maturity and for making autonomous decisions. This perfectionist and social concern is echoed in the following statement:

(It is an) almost self-evident axiom that the State should require and compel education, up to a certain standard... (and that) to bring a child into existence without a fair prospect of (getting) instruction and training for its mind is a moral crime.⁷⁸

C4) Maturity Principle and Harm Principle: Mill's Illiberal Road Map

While education and training may be necessary, according to Mill, for the individual to claim mature status, one wonders if any education or training would do, and at what point in one's education and training one may be recognized to be sufficiently mature to claim the right to all the benefits of the Millian freedom. The answer to these questions is of paramount importance, given the crucial role maturity plays in Mill's defense of individual autonomy, and the fact that a lack of maturity justifies society and the state to interfere paternalistically in one's personal affairs even when one is allegedly versed in self-regarding interests. Immaturity, in other words, justifies society and the state, according to Mill, to strip the "immature" individual of his or her right to personal freedom. Mill compares this immaturity, in the case of countries, to a state of barbarity which justifies despotic interference in order to impose from without the "maturity" of Western civilization: "Despotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement..."⁷⁹ While Mill does not define maturity explicitly, he seems to equate it with a stage of human development, civility and morality for individuals, and of improvement or civilization in the case of countries, at which point the individual or mankind can

develop through “free and equal discussion...by conviction or persuasion.”⁸⁰ The concepts of freedom and equality mentioned here seem, however, to be as nebulous as the one of maturity to help clarify the meaning of the latter or determine a solid criterion for measuring objectively the degree of maturity achieved, that is, if it would be sufficient or not for interference by society and the state in the management of the individual’s personal affairs. Furthermore, the concept of freedom for Mill is value-laden, basically qualified by the notion of maturity, given that those who are not mature cannot or ought not to be free; the same goes for the concept of equality, since for Mill those who are immature are not or ought not to be equal to those who are. Thus, there is a circularity whereby freedom and equality cannot explain maturity, since to say that one is free and equal is to say, in the Millian understanding, that one is rightfully so, whereby “rightfully” refers to a state of maturity.

Moreover, the notions of conviction and persuasion may prompt the question as to who should convince and persuade whom, on the basis of whose criteria of improvement or betterment. However, Mill could simply apply his liberal notions of freedom and equality and claim that the illiberal individuals deny theoretically those, thus are not mature to be

given the rightful or qualified freedom, since he asserts that "Liberty, as a principle, has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion."⁸¹ However, if freedom and equality cannot be gauged without a satisfactory criterion of maturity, and since an objective standard of maturity is wanting, as per the above discussion, in order to determine impartially who deserves to be free from social and political interference in one's private affairs, the powers that be, whether liberals or not, would have to base their policies on subjective or idiosyncratic criteria of maturity that would be grounded less on ascertainable moral considerations than on pragmatic or *modus vivendi* ones. At any rate, one could interpret Mill's statement as saying that the liberals have *prima facie* the right to be intolerant of those illiberals who do not value freedom and equality, even if the meaning of these, along with the attendant concept of maturity, may be indeterminate or defined from a controversial Millian or liberal prism. It follows that one can view Mill as saying that the liberals should have no moral qualms about such intolerance because the autonomy or freedom of the illiberals, or those liberals who stray from the liberally sanctioned norms, lacking the

requisite maturity, will have forfeited their right to autonomy, just like those who would want to become slaves.

It does seem, then, that not any education and training would lead to the maturity, or to the freedom that is acceptable by the Millian criteria, since the sense that Mill assigns to maturity and freedom are normative ones, and depend crucially on what he takes to be the requisite background of liberal values, education and experience, and the fulfillment of certain normative standards that take their cue from such background. It follows that only liberal perfectionism is legitimately entitled to prevail, since the illiberal education and training would not lead to the requisite maturity, thus to the rightful freedom, which liberal education aims at. However, this Millian liberal perfectionism could not entail toleration, understood as the acceptance of values and practices one dislikes or disapproves of morally, since moral transgressions could be indicative of immaturity, thus becoming fair game for coercive paternalistic or perfectionist interference, or coercion tout court. Mill's liberal stance becomes, hence, that of a morally justified intolerance, or very much a socially and morally perfectionist position, whereby the social good to implement would be that of mature people acting "autonomously" in favor of certain predetermined goods that would be

given the liberal seal of approval. This seal would be defined according to the customs, tradition, experience and culture of a historically determined liberal society that would evaluate the individual according to a perfected or mature sense of autonomy, that is to say, one that accords with its standards of excellence. Such assessment will be reinforced in the following analysis of Mill's harm principle and his more substantive views on morality. It is, furthermore, echoed in the following statement by Mendus:

If liberalism seeks to justify its commitment to freedom and the toleration of diversity by a doctrine of autonomy, and if the doctrine of autonomy rests upon a belief in moral progress or perfectibility, then illiberal consequences will follow in all those cases in which freedom fails to promote the good.⁸²

So far, we have seen that the concept of maturity, which for Mill is a necessary but not sufficient condition for social and political toleration, may semantically be too dependent on background liberal norms to allow a morally justified policy of toleration. The reason is that maturity could be defined, based on Mill's analysis, according to the fulfillment of such background norms. If these are not fulfilled, one becomes immature and, given that immaturity is a sufficient condition for morally justified intolerance, or paternalistic and perfectionistic interference, then one could lose one's right to one's autonomy.

The other necessary criterion for morally justifying society and the state to meddle in someone's individual autonomy is that of other-regarding harm. As Mill says, "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others."⁸³ Yet the concept of harm can be as normatively and semantically controversial as that of maturity, given that what is to count as harm depends to a sufficient degree on one's own moral, religious and philosophical perspectives. As Mendus states, "My assessment of what is harmful may be essentially informed by my moral beliefs, not prior to and independent of them."⁸⁴

Furthermore, the rightful boundaries between the self and others cannot be objectively determined but depend to a great extent on background cultural criteria, customs, traditions, and generally one's conceptions of the good. More specifically, in a morally emotive sense, such boundaries depend on what someone is accustomed or inured to, so that while in certain cultures some immoral behaviors or values may be seen as mildly offensive, thus could fit in a self-regarding category of harm, given their benign emotional effect on others, under other cultures the same practices could be viewed as egregious enough to qualify as

other-regarding harm. Hence, depending on one's habituation some actions may elicit an indifferent yawn, confounded sometimes with that of tolerance, as was earlier discussed, or they may provoke a strident emotional reaction that no tolerant attitude could be morally summoned, if one hews to the ought-implies-can dictum.

Moreover, one may feel justified to curtail the offensive behavior or ideas, judging them to be socially harmful if one believes that these practices might spread and undermine the values or practices one cherishes. In other words, for some individuals or groups harm cannot be solely physical or economical, but carries a moral and esthetic social burden even when it seems to liberals self-regarding. At any rate, as we have seen, there does not seem to be an unerring boundary between self- and other-regarding harm, since the boundary shifts according to one's reaction to the harm, and this reaction in turn depends on what one is accustomed or inured to. Nor does it seem that there is an uncontroversial view of what constitutes harm, although material harm, which concerns mainly matters of economic and physical survival and well-being, might be seen by liberals as having more of a universal appeal.

However, such assessment may not be appreciated by those who do not share the liberal ideals, or for some liberals and others who find in moral and mental hardship a more distressing sense of harm than the paradigmatic cases of “death, bodily injury, and imprisonment.”⁸⁵ They may not partake of “a tendency prevalent in our times to think that material deprivations are always the most serious of harms, perhaps even the only ‘real’ harms.”⁸⁶ At any rate, even if they do agree that the criterion of other-regarding material harm is a very grave one that ought to be severely punished, this criterion need not be exclusive of moral, religious, and cultural harms. There does not seem, anyway, to be a *prima facie* moral justification, one that does not depend on embedded liberal customs and traditions, for considering material harm as the sole or universal criterion of other-regarding harm and for excluding the other criteria.

It is to be conceded though, that since the content of moral and mental harm in general is less universally or paradigmatically shared than the one of material harm, the boundaries between self- and other-regarding harm would become blurrier, given the more indeterminate, culturally embedded or relativistic attitudes toward matters of morality, religion and taste. This would make the appeal to a principle of toleration

based on a clear boundary between self- other-regarding mental harms rather controversial and unconvincing, since this boundary would shift according to one's cultural embeddedness. But that assessment should not necessarily entail that only material harms ought to be considered. It could rather entail that the harm principle itself is inadequate for reaching an uncontroversial principle of toleration, unless everyone has been trained according to similar cultural and moral standards. In that case, a compatible view of where the boundary should fall may be possible, though the means to reach such a view may be disallowed in pluralistic societies ruled after the principles of political toleration or neutrality. At any rate, cross-cultural agreements on the subject of moral and religious disputes may prima facie be hard to come by. Despite such misgivings, Mill does hold a moral and even cultural other-regarding harm, besides the material one. More controversially, he does consider some self-regarding moral and cultural harms as candidates for intolerance.

C5) Mill and the Possibility of Intolerance

While a perfectionist position is not necessarily antithetical to toleration, since the principle of toleration derives from a perfectionist policy which aims at promoting a good, in this case toleration, there are

of course perfectionist positions which subvert the principle of toleration. Mill's perfectionist position may be interpreted as justifying also intolerance if it is combined with a normative sense of maturity, as aforementioned, or for that matter of harm. At any rate, given that there is no paradigmatic sense of moral and mental harm, or an objective criterion that separates the self-regarding from the other-regarding mental harm, Mill's harm principle would seem to lead to more controversies than it would solve. Basing the principle of toleration on such a slippery notion of harm would render toleration itself controversial. For instance, when he asserts that "the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection,"⁸⁷ it is assumed that this self-protection takes for Mill a moral and material form, each generally justifying different forms of outside intervention, either by the state in the form of legal penalties, or by society in the form of social ostracism or censure.

However, as we have seen earlier, while physical harms might be seen as paradigmatic cases justifying legal self-protection, there may be some moral harms, purportedly self-regarding for some, which yet deserve for others legal constraint, given the egregious effect one might think they would have on one's valued social and moral environment.

One may be motivated by a perfectionism that does not consider toleration of immoral behaviors or other moralities as an ideal to be pursued, given the negative social consequences that might ensue, or given that alien moralities could dominate and change the character of the society one enjoys living in.

Yet, paradoxically, Mill does seem to favor such intolerant attitudes with regard to moral practices he deems unworthy, although intolerance would be exercised in most of these cases by means of social censure and ostracism than legal coercion. However, if we consider that social censure and ostracism could be quite distressing and tyrannical forms of punishment, as Mill himself suggests, given that society can “practice a social tyranny more formidable than many kinds of political oppression.”⁸⁸ one wonders what sort of tolerant attitude would recommend such severe punishment, and if it wouldn’t indeed be more humane or tolerant to establish legal penalties for the immoral behaviors and vices Mill condemns, the severity of the penalties being proportional to the gravity of the moral transgressions.

Among the norms violations referred to are “lowness and depravation of taste”, justifying for Mill a show of contempt for those who harbor such attitudes, hardly an instantiation of a tolerant

disposition. Then there is the case of the individual who might be “doing no wrong to anyone (yet) compel us to judge him...as fool or as a being of an inferior order,”⁸⁹ thus deserving little of the equal respect that Mill and liberals might speak of in deference to one’s individual autonomy. In this case, Mill simply subverts the self- other-regarding harm boundary, in a way recommending that we do away with the distinction in the case of value judgments. Such position may not inspire much toleration with regard to some moral and cultural attitudes we might find “inferior” by our light, and it could actually undermine the principle of toleration altogether, this principle being the acceptance of attitudes and behaviors we dislike or disapprove of.

Moreover, Mill’s position could imply that individual autonomy is deserving of respect only if it fulfills certain standards of morality and taste which are established in the culture of the community, in this case the liberal community. Such position agrees with that of the communitarians for whom the self is embedded in the traditions, customs and history of its culture and ought to have its moral outlook attuned to a significant degree to the standards of that culture if it wants to earn self-worth and respect. In a similar vein, Mill seems to judge the autonomous self according to moral and cultural criteria which, if transgressed, would

justify intolerance and the devaluation of the self's social and moral worth, making his view of the autonomous self that of a socially and morally embedded one, and judging it according to the nature of this embeddedness, making his position compatible with that of the communitarians. Yet, given that some liberal thinkers define toleration as putting up with behaviors and values one might find distasteful or morally wrong, thus asserting the value of the autonomous self no matter what its choices, Mill's position, viewed from this liberal perspective, would be much less charitable or tolerant of individual autonomy than one might surmise from his rhetorical paeans to freedom.

The above assessment is reinforced by the way Mill views those who do not have the requisite moral mettle, recommending that ostracism and social censure be the order of the day: "We have a right, and it may be our duty, to caution others against (anyone) if we think his example to have a pernicious effect on those with whom he associates."⁹⁰ This applies not only to moral vices, such as "cruelty of disposition, malice... envy ... insincerity...the love of domineering,"⁹¹ but also to indecencies, or violations of good manners, though these are not well defined by Mill. Such violations are not only to be censured socially but also to be prohibited if done publicly:

There are many acts which, being directly injurious to the agents themselves, ought not to be legally interdicted, but which, if done publicly, are a violation of good manners and, coming thus within the category of offenses against others, may rightly be prohibited.⁹²

Thus, it is not simply material harm to others that could be prohibited, but also indecencies and bad manners which may not cause any material damage to others but are simply witnessed by others. At any rate, the leap from bad manners to immoral attitudes that are not injurious materially to others is easily made, since the public offense, dislike or disapproval felt at both would, qualitatively speaking, be the same and would justify, by Mill's light, not only public censure, but also prohibition, which could make morality, just like indecencies, part of the legal or political coercive domain.

C6) Mill's Two Perfectionisms

Furthermore, Mill's position on what might constitute acceptable substantive morality may clearly betray social and individual perfectionist stances that seem to be consistent with his seemingly intolerant attitudes. Such stances could be seen as harboring the moral standards or premises he does implicitly refer to in order to rail at moral and cultural sub-par

behaviors and attitudes, as we have seen earlier, and to recommend the tyranny of social opprobrium and ostracism to deal with these, if not legal prohibitions or coercion, as was the case with indecencies and bad manners. The Millian perfectionism referred to seems, on the one hand, to hark back to some Platonic tripartite division of the soul, with the intellect and impulses working in tandem to tame our base desires, and to the Aristotelian virtue-based ethics of moderation or mean between extremes, and on the other, to recall Nietzschean praises of individual self-glorification and outbursts against Christian slave morality and the herd mentality.⁹³

Thus, with reference to the Greek ideals, Mill states that “a person...who cannot live within moderate means; who cannot restrain himself from hurtful indulgence; who pursues animal pleasures at the expense of those of feelings and intellect - must expect to be lowered in the opinion of others.”⁹⁴ As for the Nietzschean connotations, Mill mocks the “pinched and hidebound type of human character (which duty-bound Calvinist Christianity) patronizes,”⁹⁵ derides Christian morality as one whose “ideal is negative rather than positive; passive rather than active; innocence rather than nobleness; abstinence from evil rather than energetic pursuit of the good; in its precepts...’thou shalt not’

predominates unduly over 'thou shalt.'⁹⁶ Furthermore, as he acknowledges how perfectionist policies shape character and culture and may bring about the wrong type of "maturity", Mill inveighs against the enfeebling elements of Christian ethics which have been infusing people with "a low, abject, servile type of character,"⁹⁷ resulting at the end of the formative journey in the "collective mediocrity" of the masses.⁹⁸

Such perfectionist fulmination find a resonant echo in Nietzsche's own attacks against the debilitating effects of a slave morality inspired by Christianity, whereby the weak would compensate for their weaknesses by infusing a guilt morality which subverts the power of the strong. In this instance, Nietzsche's assessment of the Christian ethics seems to parallel that of Mill, as he asserts that "all that remains according to the Christian scheme of values, is to sacrifice oneself... What is 'virtue' and 'charity' in Christianity if not... this solidarity of the weak,"⁹⁹ arguing, similarly to Mill, that such ethics have glorified mediocrity at the expense of individual nobility and genius, leading to "the instinct of the herd against the strong and independent... the instinct of the mediocre against the exceptional"¹⁰⁰

Mill's latter perfectionist position seems mainly to rail against the stifling power of society and prevailing morality in favor of thriving individuality, and may indicate that the only ideals or standards to follow are those stemming from one's own individual self or autonomy. Yet, Mill's other perfectionist stance refers to specific ideals that are not simply those of unfettered self-aggrandizement. Given, furthermore that, for Mill, established standards of morality and decency could legitimately limit the scope of freedom and toleration, as already seen, and that one could surmise from Mill's writing, that some Platonic and Aristotelian ideals ought to inspire such ideals, since he condemns to public ignominy those who contravene these ideals, as quoted above, then one can say that the latter Millian perfectionism ought for him to override the radically individualistic one. The individualistic one may be seen as simply clearing the way for the ideals to be asserted and which seem to borrow, however vaguely, from Aristotelian virtue ethics and Platonic views of the self.

At any rate, Mill's analysis of the harm and maturity principles do not seem to contradict such assessment since, as was explained earlier, maturity for Mill seemed to be less an issue of age or education than one of moral merit and competence. That means being trained, educated and socialized in a certain ideal way in order to fulfill some substantive

standards of morality and even taste. If that is the case, then one could see the Millian self not as the unencumbered one of the individualistic or deontological liberals, but one closer to that of the communitarians, whereby the self is embedded in ideals of the good acquired through socialization and acculturation processes, with these ideals serving overall as significant yardsticks for determining the worth of that self.

Moreover, if an ideal cultural education and moral training, as per Mill's perfectionism, are necessary for bestowing the status of maturity upon someone, and one is rightly treated as a mature person, that is, not repressed by society or the state for one's actions and values, provided one abides by these moral and cultural ideals, it follows that to be mature entails that one is moral and, conversely, to be moral entails to be mature, which makes maturity identical to morality. This mutual entailment between morality and maturity could be seen when we examine the interplay between the harm principle and maturity in terms of setting the limits of toleration. For instance, the harm principle, which for Mill entailed that social and political repression could be exercised on an individual only for other-regarding harm, assuming the individual is mature, was undermined by Mill for self-regarding moral and cultural harms, the latter being those which violate good manners, good taste, and

decency. Given that for Mill other-regarding harm and immaturity were the two explicit criteria for limiting individual freedom, then either he considers moral and cultural harms as other-regarding, even when no material harm ensues, or he simply takes immoral or amoral and ill-cultivated persons as immature, thus equating maturity with morality and vice versa. Either way, if the assessment is correct, Mill elicits a very repressive and intolerant attitude, at least if one judges him according to what contemporary liberal thinkers, by and large, take the principle of toleration to entail, which is “allowing or permitting a thing of which one disapproves,” (Raphael, see Notes no. 6), and, more specifically, the acceptance of beliefs and practices which we believe are “mistaken, heretical, or depraved,” (Waldron, see Notes no. 5).

Furthermore, if for Mill these moral and cultural ideals bear universal validity, that is to say, carry an unerring truth, then such position would not be consistent with his other view of truth as progressive or evolutionary, thus justifying individual freedom and diversity of situations. However, if that is not his real position, in which case those ideals of the good which he espouses are not infallible, then the repressive social or legal measures he recommends against those who transgress these ideals cannot be justified, at least when there is no

material harm that ensues. Since, moreover, genuine individual freedom, which Mill espouses at places with fanatical flourish, would entail that one could transvalue the established values and set forth in new and creative social, moral or religious ways, an entailment that Mill himself often draws, then one could see that his position on freedom and toleration is woefully incoherent. And it may be that one of the ways of making it coherent would be to equate maturity with morality, as aforesaid, with morality taking its cue from the ideals of the good that Mill espouses in his overriding perfectionism. In that case, what could be gained in terms of coherence would be irretrievably lost in terms of freedom and toleration.

Thus, we have seen that neither the argument from rationality, nor that from skepticism or individual autonomy could provide a cogent principled defense of toleration. The limitations of the arguments pointed somewhat to internal inconsistencies, false empirical assumptions, potentially coercive or intolerant perfectionist and communitarian strains, premises that were biased towards one's conceptions of the good that could hardly be reconciled with those of other groups in pluralistic societies. Thus, there does not seem to be morally and philosophically any justification of toleration that would *prima facie* undermine

perfectionist and communitarian ideals, although my argument will attempt to show that some of these ideals could be compatible with those that liberalism fundamentally embraces. In the next chapter, I will investigate the liberal defense of neutrality to see if such a defense could summon any justifiable moral, philosophical and even practical hurdles to the perfectionist and communitarian ideals I will discuss and defend.

Notes to Second Chapter

1. Locke, *A Letter Concerning Toleration*, p. 38.
2. Ibid.
3. Ibid, p. 27.
4. Ibid, p. 32.
5. Ibid, p. 36.
6. Ibid, p. 39.
7. Ibid, p. 30.
8. Ibid, p. 27.
9. Ibid, p. 30.
10. Ibid, p. 46.
11. Ibid, p. 43.
12. Ibid, p. 39.
13. Ibid, p. 46.
14. Ibid, p. 42.
15. Ibid.
16. Ibid, p. 39.
17. John Horton and Susan Mendus, *Aspects of Toleration*, J. Horton and S. Mendus (eds.), (London: Methuen, 1985).
18. Waldron, "Locke: toleration and the rationality of persecution." p. 81.
19. Maurice Cranston, "John Locke and the Case for Toleration". in S. Mendus and D. Edwards (eds.), *On Toleration* (Oxford: Clarendon Press), p. 112.
20. Locke, op. cit., p. 32.
21. Ibid.
22. Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982), p. 121.
23. Locke, op. cit., p. 28.
24. G. H. Jansen, *Militant Islam* (New York: Harper & Row), p. 17.
25. Locke, op. cit., p. 55.
26. T. M. Scanlon, "The Difficulty of Tolerance", in D. Heyd (ed.) *Toleration: An Elusive Virtue*, p. 229.
27. Ibid.
28. Ibid, p. 230.
29. Mill, *On Liberty*, op. cit., p. 27.
30. Editor's note 8, *On Liberty*, p. 27.
31. Waldron, op. cit., p. 77.
32. Mendus, *Justifying Toleration*, op. cit., p. 6.

33. Sandel, *Liberalism and the Limits of Justice*, op. cit., p. 10.
34. Bruce Ackerman, *Social Justice in the Liberal State* (New Haven: Yale University Press, 1980), p. 268.
35. Mendus, *Justifying Toleration*, op. cit., p. 2.
36. David Hume, *An Inquiry Concerning the Principles of Morals* (The Library of Liberal Arts, 1957).
37. Waldron, op. cit., p. 69.
38. David O. Brink, quoted in Gordon Graham, "Tolerance, Pluralism, and Relativism," in *Toleration: An Elusive Virtue*, ed. D. Heyd, op. cit., p. 47.
39. Mendus, *Toleration and the Limits of Liberalism*, op. cit., p. 55.
40. Williams, "Toleration: An Impossible Virtue?" op. cit., p. 20.
41. Mendus, op. cit., p. 78.
42. Ibid.
43. Williams, op. cit., p. 25.
44. Mendus, op. cit., p. 58.
45. Raz. "Autonomy, toleration, and the harm principle," op. cit., p. 155.
46. Kymlicka, "Two Models of Pluralism and Tolerance," *Toleration: an Elusive Virtue*, ed. D. Heyd, op. cit., p. 84.
47. Mill, *On Liberty*, op. cit., p. 1.
48. Ibid., p. 73.
49. Ibid., p. 11.
50. Ibid., p. 16.
51. Ibid., p. 41.
52. Ibid., p. 4.
53. Ibid., p. 31.
54. Ibid., p. 46.
55. Ibid., p. 43.
56. Ibid., p. 49.
57. Ibid., p. 69.
58. Ibid., p. 70.
59. Ibid., p. 61.
60. Ibid., p. 62.
61. Ibid., p. 64.
62. Ibid., p. 9.
63. J. S. Mill, *Mill: Utilitarianism - with Critical Essays*, S. Gorovitz (ed.) (New York: The Bobbs-Merrill Company, 1971).
64. Mill, *On Liberty*, p. 16.
65. Ibid., p. 4.
66. Ibid., p. 10.

67. Ibid., p. 16.
68. Ibid., p. 9.
69. Ibid.
70. Ibid., p. 101.
71. Ibid., p. 9.
72. Ibid., p. 55.
73. Ibid., p. 56.
74. Ibid.
75. Ibid., p. 74.
76. Michael Walzer, *Thick and Thin: Moral Arguments at Home and Abroad* (University of Notre Dame Press, 1994), pp. 12-13.
77. Mill, *On Liberty*; op. cit., p. 108.
78. Ibid., p. 104.
79. Ibid., p. 10.
80. Ibid.
81. Ibid.
82. Mendus, *Toleration and the Limits of Liberalism*, op. cit., p. 65.
83. Mill, *On Liberty*; p. 9.
84. Mendus, op. cit., p. 125.
85. J.R. Lucas quoted in Horton, "Toleration, Morality and Harm", in *Aspects of Toleration*, op. cit., p. 118
86. Horton, op. cit., p. 124.
87. Mill, op. cit., p. 9.
88. Ibid., p. 4.
89. Ibid., p. 75.
90. Ibid.
91. Ibid., p. 76.
92. Ibid., p. 97.
93. Cf. Plato's *The Republic* (NY: Penguin Books, 1987); Aristotle's *Ethics* (NY: Penguin Books, 1976); and F. Nietzsche's *Beyond Good and Evil* (NY: Vintage Books, 1989), *On the Genealogy of Morals* (NY: Vintage Books, 1989), *The Will to Power* (NY: Vintage Books, 1968).
94. Mill, op. cit., p. 76.
95. Ibid. p. 59.
96. Ibid., p. 47.
97. Ibid., p. 49.
98. Ibid., p. 63.
99. Nietzsche, *The Will to Power*, op. cit., p. 142.
100. Ibid., p.156.

Third Chapter

Toleration and Neutrality

Appraising Toleration in the context of Neutrality

We have seen in the previous chapter how the justification and effect of toleration could not be as neutral, that is to say, impartial and anti-perfectionist, as has been argued by many liberal thinkers. The arguments in defense of toleration which have been examined, those of irrationality, skepticism, and individual freedom, were shown to be flawed or invalid in terms of reflecting a neutral concern that would transcend the incompatible ideals of the good of a plural polity.

a) **The Argument from Irrationality**

The argument from irrationality, for instance, seemed to reflect Protestant predilection for inner beliefs and convictions as the basis for a relevant religious experience. However, it was shown that the argument which claimed intolerance to be irrational because beliefs cannot be changed coercively, from without as it were, does not stand up to empirical or conceptual scrutiny. On the empirical front, there is no evidence to suggest that coercion cannot under any circumstance change in time the convictions or beliefs of an individual, a community or people, or keep in check the beliefs of heretics if that is the intent of the coercive

practices. It is a well-known fact that the Moslem religion did not spread widely and quickly through simple persuasion, but to a large degree through the power of the sword. In Locke's own country, Britain, the Anglican faith did not supersede the Catholic one mainly through persuasion either, but imposed itself in many places through conquest and victories in battlefields. The same pattern applies also to France, where the overzealous French Catholics trounced the French Protestant Huguenots, who had to flee the country, making France somewhat homogeneously papal for most of its recent history. And over in Spain, the Inquisition and the fight against the Moslem Moors helped keep Spain tightly Catholic. From a means-end rationality, what was accomplished by the persecutors or intolerant in those countries could be seen as a success, thus rational.

Moreover, coercion could work through paternalistic interventions in the education of children, which could lead to many members of the younger generations believing in different ideals of the good than the previous ones, or at least considering alternatives to the practices and beliefs of their families or primordial groups. In addition, coercion could check the spread of undesirable beliefs, which could be the means-end rational goal sought by the intolerant group, as already

mentioned. Conceptually, other religious groups than the Protestant one may not take beliefs as representing the main or most important staple of one's religion. They may rather look at other aspects of one's religion as of more social and political consequence, such as the reflection of one's religion in one's moral or political behavior, and religious practices. They may care less about the beliefs of an individual or a group, which one cannot surmise with any certainty anyway, and concentrate simply on the manifest effects of one's religion in the social and political domains, which they deem to carry more threat to the social and political stability of the polity. Hence, conceptually, the argument from the irrationality of intolerance seemed less neutral than partial toward a Protestant ethos, as its justification draws on the latter and cannot claim a neutral ground vis-à-vis other religious convictions.

b) The Argument from Skepticism

The argument from skepticism suffered from similar non-neutral limitations, as it drew on the philosophical assumptions of those who are skeptic about metaphysical truths, believing that such skepticism should lead to toleration. Once more, there is outright partiality toward one philosophical doctrine that is incompatible with those religious doctrines that affirm the reality of revealed metaphysical truths, or with other non-

skeptical philosophical beliefs. That is a serious offense of non-neutrality in a plural polity divided by incompatible ideals of the good. Furthermore, it was shown that tolerance and intolerance do not depend simply on one's metaphysical beliefs, but also on other factors, such as feelings, esthetics, taste, unconsciously or irrationally driven likes and dislikes, habituation of the senses for certain things rather than others, and of course on humdrum beliefs that need not concern metaphysical truths. Moreover, skeptics may be quite intolerant in the defense of their own skeptic disbeliefs. The argument from skepticism falters thus empirically and conceptually by not drawing on impartial grounds that would reconcile different groups harboring incompatible ideals of the good.

c) The Argument from Autonomy

With regard to individual autonomy as a justification for toleration, we have seen that the harm principle and maturity principle, which were to set the limits of such toleration vis-à-vis individual autonomy, could be mired in controversy when their liberal justification is confronted with non-liberal ones. The liberal harm principle, which was to set up the limits of allowable or tolerable freedom, was steeped in the concept of material harm rather than moral one. It could not, therefore, sidestep clashes with other conceptions of the good, and thus establish

purportedly a neutral or impartial framework of toleration. However, bracketing off moral controversies will not necessarily ensure a neutral moral climate, nor will it necessarily ensure a neutral political structure that is not influenced by some moral and philosophical ideals rather than by others. More importantly, some religious groups may demand that their moral and religious principles be reflected in the public principles of the polity, making the public and the private less sundered than the liberals would want. In that case, bracketing morality on the basis of the liberal understanding of harm would be incompatible with their convictions, and such bracketing could not reflect neutrality on the part of the liberals. Notwithstanding these remarks concerning the harm principle and its focus on the materiality of harm, it was seen that the maturity principle was in essence a morality principle. This fact brings the Millian liberals more openly in conflict with those harboring moral and philosophical ideals incompatible with the liberal ones. That, in turn, undermines even further any claim for neutrality with regard to the liberal justifications of toleration, and thus to toleration itself.

At any rate, for the Millian liberal, tolerance would be a virtue, which is to say an acceptable character trait or disposition, if indeed it involves putting up with behaviors and values of which one disapproves,

provided the limits of harm and maturity are respected. The maturity proviso, however, contradicts what tolerance stands for, which is putting up with things one disapproves of, including moral and esthetic things, since this proviso says that whichever moral or taste-related practices or beliefs do not fit with the norms of our liberal culture and values should be condemned through ostracism, that is to say, not tolerated. There is, hence, an inconsistency in the Millian-based toleration that indicates that the toleration Mill defends is not actually what the definition of toleration points to. It is rather one that does not accept prima facie immoral acts or other acts we find depraved or tasteless by our liberal light.

One way out of this inconsistency is to interpret Mill as expounding two theses of toleration. One brings to bear the coercive power of the government and requires the application of the harm principle to determine its limits. The other does not appeal to coercive state power and requires the maturity principle for determining its limits. In the case of power-based toleration, the tolerating party happens to have the legal and political power of the state on its side. Furthermore, it exercises this legal and political power to prevent material harm from occurring, be it physical or economic: theft, robbery, murder, assault, rape, fraud, so on. Here, the government does not tolerate material harm,

and is not being immorally intolerant for doing so, according to the Millian liberal. In the case of behavior that is not materially harmful but is immoral for the Millian liberal, and is committed by people of mature age, one could say that Mill is suggesting material toleration, whereby the state does not bear down with its coercive legal and political apparatus on those who are not materially harmful with their immoralities or tastelessness. We are asked to put up in a material sense with such immoral or tasteless behaviors, that is, by not intervening physically or economically to prevent these, although we could very well ostracize those who commit them by choosing not to associate with them. By doing so, we remain justifiably tolerant, that is to say, virtuous by the Millian light. Of course if such immoral behaviors or actions are causing collateral material harm, be it economic or physical, such as social unrest or disorder, or economic decline, then the state could police justifiably the public manifestations of such "immoralities." For instance, pornography has been zoned out of certain areas because of its perverse effects on the economy, since the proliferation of porno shops was allegedly creating a climate that is not conducive to the conduct of normal business, especially one catering to families and children.

Hence, for the Millian liberal, we would still be tolerant, thus virtuous, if we respect these distinctions between material and moral harm and apply to each the kind of penalty or limitation it requires. We would be unreasonably intolerant if we coerce materially others for immoral or tasteless behaviors that do not bring material harm to others, and would be unreasonably tolerant if we allow someone to commit material harm to others without doing much more than ostracize him. In either case, we are not being virtuous in the practice of toleration and its limits, or in the practice of intolerance.

It is worth noticing that one can derive from the Millian theses the fact that tolerance is not necessarily a virtue, nor intolerance a vice, but that each can be a virtue or a vice, depending how we apply each. Thus, we can justifiably say within the Millian framework that tolerance and intolerance can be virtues or vices. In that case, one cannot speak of tolerance as a virtue or intolerance as vice in absolute terms, without caveats, since tolerance could be in some instances morally undesirable and intolerance morally desirable. None is good or bad without reservations, for what determines the goodness or badness of each, for the Millian liberal, are the Millian criteria we apply to determine the justifiable scope and limits of each.

It is still the case that the scope and limits given to toleration and intolerance may not sit well with those who do not approve of the Millian position, those for whom moral harm is as egregious as material harm, for whom questions of taste and morality are of paramount importance, because they fear that their moral and esthetic environment might be contaminated by alien moralities and tastes. For others, Mill may not be too tolerant by suggesting community ostracism against those who harbor morals and tastes that are outside the norms of the community, especially that he suggests that ostracism can in some cases be a more severe punishment than legal coercion. There does not seem to be a neutral or impartial viewpoint that people with different ideals of the good than the Millian liberals could agree on. What is to count as virtuous in the practice of toleration would still depend on background factors and parameters that many would reasonably find controversial. They will have much to dispute Mill and his followers about.

It follows from the above discussion that neither the argument from irrationality, nor from skepticism or individual freedom that the liberals advance to justify toleration are neutral justifications, or lead to neutral governance. Instead, they would reflect conceptually or

empirically liberal prejudices or experiences. In practical terms, this would mean that some aspects of toleration, being unjustified for non-liberal groups, or even liberal groups that do not agree with such justifications, would seem either too constraining or too lenient, more controversial and non-neutral than actually neutral. Neutrality would seem then, viewed from the perspective of this discussion, to be a chimerical ideal that agrees mainly with the dominating liberal ethos but not with those ideals of the good that are incompatible with this ethos. The appeal of neutrality seems to stem from basic rules that mainly liberals cling to. Furthermore, these rules may be significantly incompatible with the norms that guide citizens with non-liberal ideals of the good. This assessment accords with the following statement by Joseph Raz:

A second argument designed to show that neutrality is chimerical claims that whether or not a person acts neutrally depends on the base line relative to which his behavior is judged, and that there are always different base lines leading to conflicting judgments and no rational grounds to prefer one to the others.¹

We shall turn presently to examining the concept of neutrality, its connection with liberalism, and how in view of some perfectionist and communitarian concerns it seems to be a misbegotten principle that the liberals ought not to cling to.

Neutrality, Liberalism and Toleration

a) Neutrality, Impartiality, and Liberalism

If we take government neutrality to mean that the government ought not to favor some citizens and discriminate against others according to their ideals of the good, and ought not to derive its legal and political fabric from ideals of the good deemed superior to others, then we can say that liberalism has been associated with this state neutrality by many liberal thinkers. For Charles Larmore, "the distinctive liberal notion is that of the neutrality of the state."² He adds that the "ideal of neutrality can best be understood as a response to the variety of conceptions of the good life...without any perceptible hierarchy among them."³ For Michael Sandel, "the central idea (of a liberal political theory) is that government should be neutral toward the moral and religious views its citizens espouse."⁴ Explaining what neutrality would entail in practical terms, he adds that "since people disagree about the best way to live, government should not affirm in law any particular vision of the good life."⁵ Similarly, Stephen Macedo asserts that "liberals emphasize the fundamental importance of 'neutrality' or impartiality between parties who disagree about what is good in life."⁶ For Bruce Ackerman, neutrality entails that

no reason is a good reason if it requires the power holder to assert: (a) that his conception of the good is better than that asserted by any of his fellow citizens, *or* (b) that, regardless of his conception of the good, he is intrinsically superior to one or more of his fellow citizens.⁷

b) Toleration and Neutrality

One can see from the above excerpts that neutrality is to be the application of the principle of liberal toleration in a pluralistic polity, in which case one will accept other ideals of the good even if one believes that one's ideals are better than those harbored by other citizens. Extrapolating this toleration rationale to the political exercise of a liberal government, the latter will have to put up with ideals and practices harbored by certain citizens and which might be described by the majority of liberals as tasteless, depraved or immoral. Toleration implies thus the practice of political neutrality, whereby, to paraphrase Ackerman, no ideals of the good are considered intrinsically superior to others, or, as Larmore suggests, that there is no hierarchy between these. This leads to the government putting up with certain behaviors liberal citizens might consider tasteless or immoral. The outcome of such government neutrality is purportedly that non-liberal citizens would view the liberal political ethos as neutral or impartial, given that it does not treat their ideals as hierarchically inferior. The upshot will be that they would give

the liberal polity the uncoerced support or voluntary consent that would ground its legitimacy. Government neutrality would hence reflect Waldron's principle of toleration given in the first chapter, which entails "not interfering with a person's beliefs or practices even when we have reason to hold that those beliefs or practices are mistaken, heretical, or depraved."⁸

We could then see that the principle of neutrality is entailed by that of toleration. In that case, the principle of neutrality could be given the same scope or limits as those lent to toleration, in accordance with the harm principles and, for Millian liberals, of the maturity or morality principle, with the same caveats applying to each as for toleration. However, these caveats, it will be remembered, point to the fact that the focus on a material notion of harm, be it economic or physical, as has been the case for liberalism, may not convince those for whom moral or religious harm is as important as that of material harm. Similarly, to focus on a maturity or moral principle according to the liberal ethos or liberal culture, as per Mill, could easily alienate those individuals, groups or communities living under a liberal polity, who do not agree with the Millian liberal view of toleration. They may, for instance, prefer that legal

coercion rather than simple value judgments and ostracism be applied to values and practices they deem morally depraved or excessively tasteless.

The controversy surrounding the impartiality of the Millian criteria of toleration would also hover over liberal neutrality, given the logical connection between toleration and neutrality, and given that the limits that apply to toleration would apply to government neutrality entailed by the principles of toleration. Such controversy results from the fact that the non-liberals would perceive their ideals of the good to be crowded out or hemmed in by those of the liberals, in the name of the liberally justified limits to toleration, hence to neutrality. These liberally established limits would perforce make a sham of what, according to liberal thinkers such as Larmore or Ackerman, neutrality stands for, to wit, the absence of hierarchy among the conceptions of the good, or that one conception of the good is not better than another. The liberal may disingenuously affirm that, yet undertake a policy that contradicts such affirmation of neutrality by setting up limits of toleration and neutrality that accord chiefly with the liberal ethos. By introducing the notions of the harm principle and morality principle, and interpreting these according to their own ideals, the liberals are already establishing a hierarchical order among the diversity of values, some of which would be allowed and others of which

would be prohibited according to these principles. They are practically asserting that some ideals are better than others, that one base-line is superior to others. Given that the principles of harm and morality would determine the limits of toleration, that is, the acceptance of non-liberal practices and values by the liberal government, they would be judged to be neutral or non-neutral depending on how close or far one is from the liberal ethos.

c) Neutrality and Power

Government neutrality, by its very definition, which is neutrality exercised by those who hold the reins of state power, would conceptually be connected to that power-based principle of toleration whereby those who are to exercise toleration and define its limits are those who wield the greatest power. As we have seen previously, liberal thinkers, such as D.D. Raphael, make a conceptual connection between power and toleration, asserting that "one can meaningfully speak of tolerating, i.e. of allowing or permitting, only if one is in a position to disallow. You must have the power to forbid or prevent..."⁹ However, in a democratic liberal regime, where citizens vote or approve the policies to be adopted, and have an ultimate say on legally sanctioned non-neutral constraints, the scope of neutrality, barring some constitutional essentials that do not

admit of ordinary political bargaining, may depend on the legal constraints that citizens might vote for, whether directly or through their representatives. These constraints might apply, for instance, on free speech (i.e., libel or slander, hate or incendiary speech), on community standards (protecting a religious or puritan environment, barring pornography, so on), on religious freedom (i.e., making illegal certain religious practices such as Mormon polygamy or peyote smoking by some Indian tribe), on the interpretations of harm and its scope, or on economic policies. Still, the final arbiter on some of these issues would be, in the case of the United States, the Supreme Court, purportedly the guarantor of the constitutional essentials of the American polity. Yet, the political "color" of the Supreme Court justices, which determines to a great degree their decisions, might to a large extent be influenced indirectly by the voters. The latter, through their representatives, decide on the nomination of the requisite justices that fit their moral and philosophical mold, and in the process influence the interpretation of the Constitution and the cases that come before the Supreme Court.

d) Neutrality, Anti-Perfectionism, and Perfectionist Consequences

The upshot of the discussion is that the way the voters choose to exercise their powers, as they purportedly are the ultimate power-holders

in the democratic liberal polity, the upshot then is that the extent of the neutral policies would depend on the dispositions of the citizens to be tolerant or intolerant with regard to certain values and practices. Thus, tolerance as a character disposition or liberal virtue, be it according to the Millian ethos or otherwise, will have a say on the practice of power-based toleration as it would be reflected in turn in the practice of neutral or non-neutral policies. So “virtuous” training in liberal tolerance, if indeed we admit that virtues are acquired rather than innate, may have quite an effect on the practice of power-based toleration and neutrality or non-neutrality.

This may seem paradoxical, as some liberal thinkers take neutrality to be an anti-perfectionist practice. Larmore, for instance, asserts that neutrality denies “the state any right to foster or implement any conception of the good life.”¹⁰ This is echoed by Sandel, for whom neutrality implies that liberalism renounces “the formative ambition.”¹¹ Similarly, William Galston, paraphrasing Kant in *The Metaphysical Elements of Justice*, mentions that the neutral state, according to Kant, means the following: “The state is not in the business of teaching or enforcing morality, nor can it promote a specific conception of happiness.”¹²

Paradoxically then, while neutrality is taken partly to be an anti-perfectionist policy, one can see that paternalistic and perfectionist policies, which would be the inculcation of citizens in some basic values, in this instance by promoting the “virtue” of tolerance, may be the best means for increasing the scope of neutrality as impartiality. This would be the case at least for those liberal thinkers who seek to expand the scope of neutrality as a way to ground state legitimacy in a pluralistic polity, that is to say, by reducing maximally the level of alienation of the diverse citizens from public liberal policies. The fact remains, however, that while some communities or individuals might enjoy the wide scope of liberal neutrality towards their own values and practices, they may not be content that such neutrality can be liberally tolerant of practices and values they condemn. Unless they are versed in the virtue of liberal tolerance, which they must have acquired through socialization processes and education, they may not accept the state as neutral, that is, tolerant of ideals of the good that are incompatible with theirs. To become tolerant would not be easy, and will not occur spontaneously. As T. M. Scanlon asserts:

the desire to prevent those with whom one disagrees from influencing the evolution of one’s society has been a main motive for restricting expression...what the enforcers want is to prevent the spread of certain forms of behavior and attitude...we all have

a profound interest in how prevailing customs and practices evolve.¹³

Hence, to reach the anti-perfectionist and tolerant stance of neutrality, the state will have to encourage liberally paternalistic and perfectionist policies that socialize citizens in the liberal tolerant ethos. But this seems to be contradictory, given that neutrality as anti-perfectionism requires perfectionism for its acceptance, in this instance the acquisition of the liberal virtue of tolerance. However, the state cannot be concurrently neutral and perfectionist, promote the principles of tolerance and pretend to be neutral, which makes for a paradoxical situation for those who defend the neutrality of the state, and points to their failure.

Such contradiction may be averted if one hews to one sense of neutrality, that of impartiality, and foregoes the anti-perfectionist meaning. However, the two meanings seem to be linked conceptually together, since to be neutral-impartial entails treating all conceptions of the good equally, without any hierarchical ordering among them. This in turn entails preventing the promotion of any good from within any ideal of the good, since to do so would be giving such ideal a higher hierarchical order, and would be partial. So the paradox of defending

neutrality still stands, and points once more to the failure of those liberal thinkers who defend neutrality.

Notes to the 3rd Chapter

1. Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), p. 121.
2. Charles Larmore, *Patterns of Moral Complexity* (Cambridge: Cambridge University Press, 1987), p. 42.
3. *ibid.*, p. 43.
4. Michael Sandel, *Democracy's Discontent* (Cambridge: Harvard University Press, 1996), p. 4.
5. *ibid.*
6. Stephen Macedo, *Liberal Virtues: Citizenship, Virtue and Community in Liberal Constitutionalism* (Oxford: Clarendon Press, 1990), p. 257.
7. Bruce Ackerman, *Social Justice in the Liberal State* (New Haven: Yale University Press, 1980), p. 11.
8. Jeremy Waldron, "Locke: toleration and the rationality of persecution," in Susan Mendus (ed.), *Justifying Toleration*, p. 63.
9. D.D. Raphael, "The Intolerable," in S. Mendus (ed.), *Justifying Toleration*, p. 139.
10. Larmore, *op. cit.*, p. 46.
11. Sandel, *op. cit.*, p. 322.
12. William Galston, *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State* (Cambridge: Cambridge University Press, 1991), p. 83.
 13. T. M. Scanlon, "The Difficulty of Tolerance," in D. Heyd (ed.) *Toleration: An Elusive Virtue*, p. 229.

Fourth Chapter

Neutrality and the Ideals of Liberalism

Neutrality and the Problems of Identity

a) Neutrality and the Liberal Identity

As we said earlier, neutrality could take the form of an anti-perfectionist stance, whereby the state is not to get involved in the promotion of any particular good amongst its citizens. In other words, the state refrains from any policy that aims to encourage the reproduction of particular values, whether embraced by a majority or minority of its citizens. For George Sher, “in its generic formulation, neutralism asserts that the state should not promote any particular conception of the good.”¹

Neutrality could also take the form of impartiality, whereby the government does not discriminate among its citizens according to their ideals of the good, as it does not establish a hierarchy among these ideals. As we explained earlier, the anti-perfectionist stance of neutrality seems to follow from this impartial position, since to promote the goods of one ideal would be tantamount to viewing this ideal partially.

At any rate, neutral governance entails that the government strives to treat all citizens equally, according to the universal needs that all humans happen to have, no matter what their ethnic, religious, moral or

philosophical backgrounds, and without catering specifically to these backgrounds. In this case, we will have these needs necessarily by virtue of our belonging to the human species. This is akin to addressing what Rawls described as our primary goods, those goods which we shall all desire somewhat equally because they represent the satisfaction of needs that we all happen to have. For Rawls,

primary goods (are) things that every rational man is presumed to want. These goods normally have a use whatever a person's rational plan of life...the chief primary goods at the disposition of society are rights and liberties, powers and opportunities, income and wealth...self-respect...These are the social primary goods. Other primary goods such as health and vigor, intelligence and imagination, are natural goods; although their possession is influenced by the basic structure, they are not so directly under its control.²

And the more of these needs we satisfy, the greater would be our chances of success in life, regardless of our particular identities. In other words, neutrality would entail the state catering equally to what is our universal identity, that is to say, our trans-cultural, trans-moral, trans-philosophical, trans-ethnic, trans-religious identities, or to the aspects of our identities that emerge from behind the Rawlsian veil of ignorance.

As Rawls says, "with more of these goods men can generally be assured of greater success in carrying out their intentions and in advancing their ends, whatever these ends may be."³ These are generic

goods that we all purportedly seek equally, and the state, by affording us equal chances to pursue these goods, by not preventing some from pursuing them because of their particular ideals of the good or ethnic backgrounds, or favoring others because of such backgrounds, will be acting in the spirit of liberal neutrality. This assessment is reflected in the following statement by Amy Gutmann: “On this view (of neutrality) our freedom and equality as citizens refer only to our common characteristics - our universal needs, regardless of our particular cultural identities, for ‘primary goods’ such as income, health care, education, religious freedom, freedom of conscience, of speech... These are interests shared by almost all people regardless of our particular race, religion, ethnicity, or gender.”⁴ By way of illustration, Galston mentions some “neutral” universal goods, those “that human beings and citizens take to be fundamental... peace, security, freedom of pain and humiliation.”⁵

Such show of neutrality is given by Raz the name of “principled neutrality.”⁶ This notion translates into the following: “To be neutral... is to do one’s best to help or hinder the various parties concerned in an equal degree.”⁷ Such equal treatment could only be possible if we assume the truth of our primary goods, and more importantly their preeminence over our particular goods. Such preeminence is not necessarily assured,

since we may very well give priority to our particular goods over our universal ones. Religious or morally engaged people are willing to lose their security and their life, which are eminent primary goods, for the sake of asserting their faith and their beliefs. Philosophers, scientists, thinkers, and intellectuals may accept persecution, poverty or death rather than renege on their convictions, or become the mouthpieces of the wealthy or power-holders. Ethnic groups or different religious or moral communities may wage war against each other rather than agree to be united in one country and have their ethnic identities diluted or their conceptions of the good compromised. They may refuse to cooperate with each other because they need to stay true to their particular affiliations. Assuming that their unity or cooperation would ensure them greater prosperity, this prosperity is an instance of a primary good which they decline to elect in the name of principles grounded in their particular identities, or the preeminent good of preserving such identities.

There are many such instances where our primary goods do not hold sway over our particular ones, and where the latter cry out for much more public recognition than the former. Thus, to claim that neutrality is treating everyone equally according to their primary goods, may simply be a sham in view of what our particular needs and desires could mean for

us. Such neutrality could represent a betrayal of the most significant reality of our selves, of claims of identities that may be far deeper than the truncated versions the liberals provide with their account of the primary goods. This is a position that very much opposes what neutrality stands for, as a leveler of our particular goods and our particular identities in the name of some universal good we all are supposed to share. It is a position that opposes the politics of neutrality as an answer to the problems raised by pluralism and the plurality of goods in the polity. It is a position that refuses to cave in to the identification with a global identity that turns into a mishmash that may reflect little of what our true selves stand for. It is a position that refuses the following characterization by Larmore of what a liberal self will be, one whose contingent life circumstances are subsumed under the universal aspiration of the self for which the policy of liberal neutralism is intended: "In liberal societies the government is supposed to remain neutral with respect to different conceptions of the good life, so such societies consist of individualist selves who refuse identification with any contingent circumstances such as character, roles, or institutions."⁸ This would be too high a price to pay for many citizens who may not see political neutrality as what liberal

thinkers assume it to be, an adequate "response to the controversiality of personal ideals."⁹

In any case, Rawls characterizes our identity as those "basic aims and projects by which we characterize the kind of person we very much want to be."¹⁰ These "aims and projects" are not necessarily defined according to some universal or objective criteria of desirability, but could well be according to what we indeed may want most subjectively or particularly, be it as members of an ethnic group, of a religious or moral community, or of a philosophical outlook. This subjective slant to our identities is given by Charles Taylor, for whom identity "designates something like a person's understanding of who they are, of their fundamental defining characteristics as a human being."¹¹ He adds that the notion of individualized identity "arises along with an ideal, that of being true to myself, my own particular way of being."¹² Such ideal is that of "authenticity."¹³ We may see in these instances that what the liberal neutral concern addresses is not a full-blown description of what our identities are, a mixture of universal and particular needs, of objective and subjective aspirations, but rather addresses an impoverished version of our identity, of who indeed we are and what we aspire to be. In that sense, neutrality would be doing a serious disservice to the authentic

aspirations of our identities, and would represent more a policy of alienation to the polity than of integration as the liberals intended in the neutral project of erasing "the controversiality of (our) personal ideals."

c) The Encumbered and Unencumbered Self

The self that liberal neutrality seems to address can be described, following the communitarian position, as an unencumbered self, a self that is shorn of the particular moorings of its communal history and present commitment, its particular interests, the traditions of its particular group, be it ethnic or otherwise, its religion or philosophical ideals, a self detached from its primary social web (family, friends, immediate community), from the contingent life circumstances that are rooted in significant emotional ties for which the appeal to a universal reason of primary goods does not necessarily hold sway. In some way, one can say that the contrast between the liberal unencumbered self and the communitarian encumbered self is that between universal identity and particular identity, the universal in us versus the particular in us, the primary goods that we might all have and that unite us versus the particular goods that divide us and distinguish us, and which make us bond more significantly with one community rather than others, sympathize with some people and not with others. The fact that Rawl's

principles of justice rely on the notion of primary goods, on the universal self in us, on what is interchangeable with others, is expressed in the following statement by Rawls:

For the purposes of justice, the appropriate basis of interpersonal comparisons is the index of primary goods, and not strength of feeling or intensity of desire. The theory of primary goods is an extension of the notion of needs, which are distinct from aspirations and desires...as citizens the members of a well-ordered society collectively take responsibility for dealing justly with one another founded on a public and objective measure of (extended) needs...¹⁴

It is certainly not the case that one ought to remain moored into the particularities of one's life circumstances, but it helps to be reminded that the universal reason and primary goods that the liberal neutralists proclaim and ground their neutralism on could not and should not always prevail over the pull of our encumbered selves. The self may not be as free from its particular circumstances, nor could it be to the degree that the liberal neutralist may foresee by positing the unencumbered self as the paradigmatic one for neutralism. This is akin to making the self quite detached from the primary pull of its more immediate communal ties, harboring a Kantian transcendent freedom whose autonomy can and ought to overcome life's contingencies. As Macedo puts it, "Kantian freedom avoids a crude dependence on passions and desires, but at the

cost of a radical dissociation of reason from nature, desire, and social context."¹⁵ The liberal unencumbered self, the self of the primary goods and their priority, the self of a universal reason embracing the universal in us, the self that liberal neutrality posits, this self seems to be the illustration of this Kantian freedom and its unrealistic expectations. Such Kantian affinity to the Rawlsian original position and its attendant self unencumbered of all goods except the primary ones, is readily admitted by Rawls, who states that "the original position may be viewed, then, as a procedural interpretation of Kant's conception of autonomy and the categorical imperative."¹⁶ However, one cannot ignore, nor ought one to ignore, the pull of one's particular commitments. Deontological and consequentialist considerations could very well be tied to one's partiality. Besides, there are duties that ensue from one's religious commitments that are as deontological as the Kantian ones, proclaiming categorical imperatives that result from the partiality of one's religious commitment, just as categorical imperatives ensue from one's commitment to the Kantian liberal ethos. Furthermore, there may be duties bound to one's partial commitments (friends, families, ethnic group, primary communal bonds, so on) that could justifiably override the duties attached to some Kantian categorical imperative or some felicific calculus that is too

removed from the web of our most significant social and cultural circumstances. As Larmore puts it, "Partiality requires that we show an overriding concern for the interests of those who stand to us in some particular relation of affection."¹⁷

The reality and liberal rationale of the unencumbered self may be expressed in the following way, as per Rawls: "For the self is prior to the ends which are affirmed by it; even a dominant end must be chosen from among numerous possibilities. There is no way to get beyond deliberative rationality."¹⁸ If the unencumbered self is to be assimilated to "deliberative rationality," it remains the case, however, that such rationality would still have to deliberate about options or ends that are not as transcendent or universal as our primary goods, or that are not uniquely so. In other words, the pull of our particular life circumstances could still hold sway over us. Such pull, furthermore, can be more important than the pull of our primary goods, no matter how rationally deliberative we happen to be. Our deliberative rationality would simply be an irrelevant factor in the neutral or impartial search if the particular needs and desires that divide us are stronger than the ones that unite us. It would still be the case that our particular ends determine on which side of the universal-particular divide our deliberative rationality would land.

To express the unencumbered self in terms of the “self (being) prior to (its) ends...” may not be saying much if it is these ends that determine ultimately the choices of the self. In that case, one would be reasonably tempted to say that the ends are prior to the self, or at least that the reverse is not necessarily true. For if the reverse were true, we would fall into the unrealistic existential self that would purportedly deliberate transcendently, free from the pulls of any ends beyond those of pure, detached reason vying for absolute freedom. That would be too fanciful to take seriously. As Raz puts it, “The ideal of the perfect existentialist with no fixed biological and social nature who creates himself as he goes along is an incoherent dream.”¹⁹ Yet, this may be the existential path that liberal neutralists want to ground neutrality on, whereby what counts is less the ends than the ability to deliberate by being freed from such ends, for otherwise this power to deliberate is no more than a rhetorical device to assert an autonomy that does not actually exist. Such view of liberal autonomy accords somewhat with the way Taylor describes autonomy with regard to liberal neutralists: “this (liberal) view (of neutrality) understands human dignity to consist largely in autonomy...Dignity is associated less with any particular understanding

of the good life... than with the power to consider and espouse for oneself some view or other.”²⁰ If such “power” is given without any directions from the ends of our universal and particular needs and desires, then we are falling into the deliberative rationality or autonomy that the existentialist would espouse, which is churning out choices without much practical relevance to one’s reality. The unencumbered self would then be as incoherent as existential freedom. This agrees with the way Sandel describes our situation as unencumbered selves.²¹

This liberal view of the unencumbered self is then of a self that strives to transcend its particular needs and desires, or that ought to, if one takes the Kantian ideal of autonomy as a guide for our moral bearings, since such autonomy would rest on a sense of moral duty untainted by our desires or the contingencies of our lives. It is this Kantian autonomy unconditioned by our interests that seems to animate the liberal nexus of unencumbered self on which rests the ideal of neutrality. The obligations that derive from the view of the unencumbered self seem to coincide with those that derive from Kantian autonomy. As Sandel puts it, “We must stand to our circumstance always at a certain distance, whether as transcendental subject in the case of Kant, or as unencumbered selves in the case of Rawls.”²² If we equate

the liberal unencumbered self to the Kantian transcendental subject, liberal neutralism, which rests significantly on the notion of the unencumbered self, would in effect be trading the reality of the embedded or encumbered self for a self qua noumenal self, with all the unrealistic metaphysical baggage that comes with it. According to Sandel, "*Qua* noumenal selves, or parties to the original position, we arrive at principles of justice; *qua* actual, individual selves, we arrive at conceptions of the good."²³ When we understand that these principles of justice must satisfy the common and universal needs reflected in our primary goods, the "equal right to the most extensive total system of equal basic liberties..." as Rawls claims,²⁴ they are supposed to be in effect principles of neutrality, treating everyone equally or impartially according to the equality of our primary goods. The affinity between Rawls's original position and the Kantian transcendental position, which expresses the unencumbered self on which neutrality rests, is expressed as follows by Rawls:

The principles (a person) acts upon (according to Kant) are not adopted because of his social position or natural endowments, or in view of the particular kind of society in which he lives or the specific things that he happens to want. To act on such principles is to act heteronomously. Now the veil of ignorance deprives the persons in the original position of the knowledge that would enable them to choose heteronomous principles.²⁵

If liberal neutrality must then rest on the trappings of a transcendental or noumenal self, we could say that it rests on very shaky grounds for addressing the plural goods of citizens, those that go beyond the primary goods that purportedly unite them. In other words, neutralism will not address the needs of the "actual, individual selves" and their particular conceptions of the good, and many citizens who do not share the liberal ethos will feel alienated from its neutral stance, hence will view it as actually non-neutral or partial to such ethos. Instead of realizing the goal of integrating such citizens as the neutral project was supposed to accomplish, liberal neutrality would in effect be denying them the strivings that go with their particular, embedded identities, those identities encumbered by their "social position or natural endowments...(by) the particular kind of society in which (they) live...", whatever particularities that make them strive after "heteronomous principles" that answer more adequately to what they happen to be.

These seem to be some of the communitarian concerns about the liberal unencumbered self that grounds neutrality, whereby "what is denied to the encumbered self is the possibility of membership in any community bound by moral ties antecedent to choice."²⁶ Of course, being attached to "moral ties antecedent to choice" does not preclude choices,

that is to say, does not prima facie prevent one from choosing other ways of life with a different ethos than that prevailing in one's primary community, the one in whose values one was raised. Communitarian autonomy does not preclude rational revisability with regard to the options the self has. Such self could transcend some of its particular circumstances in search for more viable choices, but could not possibly transcend all of them, not at any rate in the manner of the Kantian autonomy which, per the noumenal self and transcendent freedom, is supposed to do so.

Communitarian autonomy takes into significant account the weight of one's particular history, custom, culture and social ties in determining one's choices, or in significantly influencing them. It does recognize the difficulty of transcending the values and customs in which one was raised and that bond one's communal ties. It does not deny that some acquired sense of duty or justifiable virtue will override and ought prima facie to override one's particular interests and commitments, but denies that this duty stems from a Kantian categorical vacuum, or is not the result of some social education and training that one must have acquired through socialization and cultural processes that one tradition or another has significantly influenced, or against which one reacts.

Communitarian autonomy does reject the unrealistic premise of the Rawlsian original position, as well as the Kantian autonomy that is grounded in a freedom that transcends one's particular goods, one's socially determined desires, in favor of a stern moralistic law, a right, which affirms a duty that is absolutely above the contingencies and determinacy of one's social experience. For Kant, "The practical necessity of acting on this principle - that is, duty -is in no way based on feelings, impulses, and inclinations, but only on the relation of rational beings to one another..."²⁷ This Kantian view of the unencumbered self contrasts with the way Alasdair MacIntyre describes the embedded self:

We all approach our own circumstances as bearers of a particular social identity. I am someone's son or daughter, someone else's cousin or uncle; I am a citizen of this or that city. I belong to this clan, that tribe, this nation. Hence, what is good for me has to be the good for one who inhabits these roles.²⁸

This is echoed by Larmore, who states the following with regard to the communitarian embedded self:

Communitarians of today (such as Alasdair MacIntyre and Michael Sandel) have stressed the values of belonging and custom. Some ways of life, they have argued, have a value we can appreciate only if we do not think of our allegiance to them as *elective*, as a matter of decision, but regard it instead as *constitutive* of what we hold to be valuable. That is, such ways of life (shared customs, ties of place and language, and religious orthodoxies) shape the sense of value on the basis of which we make whatever choices we do. We understand them as being ours

not because we elect them, but rather because they make up the traditions to which we belong.²⁹

However, Larmore's view of the communitarian self, just like MacIntyre's embedded self, could well belong to the liberal self. "Shared customs, ties of place and language" could very well be the characteristics of a liberal polity, which indicates that, Kantian and Rawlsian liberals notwithstanding, the liberal self could be as embedded by its "particular social identity" as the one communitarians describe, that it can be as imbued by its particular citizenship and nationality as MacIntyre asserts. Furthermore, it shows that liberal neutrality is not describing an unencumbered self that everyone could be molded into by way of the primary goods, but a liberally embedded self for whom the liberal ethos or the constitutional essentials, overall, the laws of the liberal polity, seem to be neutral or impartial but are actually partisan for the prevailing liberal ideology and against others that are not compatible with it. We have seen such partisanship in the determination of the Millian harm principle and maturity principle, which basically drew the limits on the conceptions of the good of the citizens that liberal neutrality could justifiably or reasonably tolerate. This will make this neutrality in effect non-neutral or partial for those citizens whose conceptions of the good are constrained

in accordance with the Millian liberal ethos. Such constraints could take effect also for the Kantian liberal, if one hews to the Rawlsian principles of justice which, through the construct of the original position that takes its cue from the unencumbered self, follow, as we have already seen, the Kantian ideals of transcendental autonomy. Thus, both kinds of liberal neutralism, the one inspired by Kant or by Mill, seem to end in a position of non-neutrality or partiality for those who do not share the Kantian or Millian ethos. It is only within the framework of each ethos that impartiality can take effect. This does not bode well for liberal impartiality vis-a-vis other conceptions of the good, especially those that are significantly incompatible with the liberal ones.

Three Paths to Liberal Neutrality

According to Bruce Ackerman, there are three paths which the liberal thinkers have borrowed "to blaze a path to neutrality."³⁰ The first one is "to isolate a single value that all people consider most important despite their transparent disagreement over other values."³¹ This is akin to affirming "the existence of a single supreme value that trumps all our lesser disagreements."³² The second path involves translating "my disagreements into a specially sanitized evaluative framework that promises to purge them of their non-neutral aspect."³³ The utilitarian

drive could fit such a model, as Ackerman states that "the classic example is Jeremy Bentham's felicific calculus" where disputes are translated "into the common denominator of utility."³⁴

The third approach is that of John Rawls's social contract theory which stems from a metaphorical original position in which the contractors are stripped, as we already discussed, of many aspects of their identity, such as their social position, ethnicity, race, nationality, material well-being, religion, psychological profile, and made to enter a social contract from behind this identity-stripping "veil of ignorance."³⁵ As Rawls puts it, "it seems reasonable and generally acceptable that no one should be advantaged or disadvantaged by natural fortune or social circumstances in the choice of principles. It also seems widely agreed that it should be impossible to tailor principles to the circumstances of one's own case..."³⁶ We may see the construction of Rawls's original position as one that levels the differences between individuals, making them in practice equal, denying them the reality or the particularities of their encumbered selves. Given these premises, they would perforce choose the same principles of justice, those that fit the universal unencumbered self with its generic primary goods, so that these principles are supposed to suit them equally. Such approach to the social contract

renders these principles of justice procedurally neutral, that is, not favoring *prima facie* some individuals nor discriminating against others. In the Rawlsian case, there is procedural neutrality by consent, where the laws and principles chosen are chosen by everyone in this contractual situation, according to a procedure that all will find impartial in their stripped-down original position. It is no surprise that Rawls asserts that "it seems reasonable to suppose that the parties in the original position are equal."³⁷ As Ackerman states, "Rawls's proposal is only the last in a long line of liberal exercises in transcendence."³⁸

The question is, how sound are those liberal arguments that support such transcendence, and how impartial are they for those who do not share the liberal ideals of the good which may inspire each path?

a) First Path: Supreme Value and Problems of Reasonableness

With regard to the first path, the discovery of a supreme value that should override all others and to which all reasonable people could agree, seems to stumble upon two major hurdles that undermine its cogency. One is that of finding such supreme value that all reasonable people in a plural polity could agree to. The other is the following: assuming such value could be found, it need not be sufficient to regulate all terms of cooperation between the diverse citizens; there could be other

values that might need to be expressed but which cannot be seen as overriding by all the reasonable parties in the diverse polity.

Part of my argument will be to analyze the concept of reasonableness by which I characterized the universe of citizens whose opinions would justifiably count for liberalism in reaching an agreement on social cooperation. For this concept seems essential for some liberal thinkers for identifying the supreme value and for justifying the priority of such a value in a plural polity. The term “reasonable” is used because liberal thinkers, such as Rawls and Larmore, distinguish between simple pluralism and reasonable pluralism, and argue that “toleration arises out of, and extends to, only (‘reasonable’ pluralism).”³⁹ Similarly, this inclusiveness of reasonableness in the liberally tolerable political association is expressed in the following statement by Larmore:

Liberalism is a distinctively modern political conception. Only in modern times do we find...the idea that the principles of political association, being coercive, should be justifiable to all whom they are to bind...These principles should rest, so far as possible, on a core, minimal morality which reasonable people can share...⁴⁰

Yet, what do liberal philosophers, such as Rawls and Larmore, take reasonableness to be, since it seems to be a significant normative criterion by which liberalism is to define who amongst the liberal plural polity to include in the dialogical social contract and who to justifiably

exclude, in other terms, who to justifiably tolerate and who not to? If reasonableness is gauged by a criterion of toleration, then the liberal could apply either the criteria of Mill with regard to the limits of toleration, by appealing to the harm and maturity principles, or the criteria of the Kantian-Rawlsian or deontological liberalism, that is, by appealing to the Rawlsian principles of justice and the reasoning behind their derivation.⁴¹ As we have discussed earlier, neither of the two approaches seems to guarantee neutrality or impartiality for those citizens whose conceptions of the good are incompatible with those harbored by the liberal polity. Are we to say that all these citizens are unreasonable as long as they do not agree with the liberal ethos, and therefore undeserving of liberal toleration and neutrality? This seems to restrict neutral policies to the liberals in this polity or those who do not have serious misgivings about them, while others could be discriminated against and coerced because they harbor conceptions of the good that do not cohere with the liberal ones and that the liberals find unreasonable. It follows for the Millian or deontological liberals that liberal neutrality need not integrate them, following the criteria of toleration and its justifiable limits which the liberals go by.

According to Larmore, “‘reasonableness’ (is) thinking and conversing in good faith and applying, as best one can, the general capacities of reason that belong to every domain of inquiry.”⁴² This doesn’t seem to find unreasonable someone who, in accordance with the edicts of his religion or the moral and philosophical outlook with which he is imbued, disagrees with many things liberalism stands for. This person can well be part of the reasonable people that liberalism ought not to exclude from its political association. Yet, this inclusion does not by all means guarantee the impartiality of the reigning liberal ethos. There may be religious edicts or moral prescriptions that this person could not freely practice or assert because of liberal prohibition. This could apply to marriage (monogamy versus polygamy), to sexual matters (introducing a climate of chastity versus having a liberally sanctioned climate of licentiousness; preserving puritan standards versus the proliferation of pornography), to free speech (prohibiting hate speech that may be directed at his community versus tamer speech), to gender relations (subservient and cloaked women versus liberated ones), or to education standards (introducing one’s own religious and moral teachings in one’s own schools, and banning liberally prescribed secular teaching). Thus, while this person may be considered reasonable, because he acts in good

faith according to the edicts of his religion and to his philosophical outlook, the liberal political association is giving short shrift to his religious and moral ideals, and would be far from exercising any political neutrality within the context of the prevailing reasonable pluralism. As Thomas Nagel puts it, “reasonable persons can disagree not only over religious doctrines and ultimate conceptions of the good life, but over levels of public provision of education and health care...and a host of other things that liberal societies determine by legislative action.”⁴³ It seems, thus, that even reasonable people could be discriminated against and constrained non-neutrally for harboring reasonable beliefs. Furthermore, the liberal criterion of reasonableness does not seem to distinguish significantly between simple and reasonable pluralism, since the liberally grounded limits of toleration, and thus of neutral concern, seem to apply independently of the reasonableness of the citizens, and refer mainly to their disagreement with the liberal ethos, whether they are reasonable or not.

To reply to Larmore, one can then think and converse “in good faith” yet refer to a background of religious, philosophical and moral beliefs that are quite incompatible with one’s liberal interlocutor and that don’t bring any common values, considered supreme, that one will

consider overriding in a principled way. A consensus might be struck in a modus vivendi manner, but such modus vivendi agreements are mainly based on comparative bargaining power rather than on principled grounds, and they would not seem impartial from the viewpoint of those whose bargaining power was not sufficient to have their values reflected sufficiently in the public sphere. Reasonable people would not necessarily perceive the impartiality of the liberal ethos, nor experience enough of the toleration this ethos prides itself on. More importantly, the values that are agreed upon will not be seen as supreme values by those whose values have been sidelined by the greater bargaining power of the liberals. Such values might be abided to by the non-liberals, not out of moral conviction but pragmatic one, which is less stable given the shifts in bargaining powers, and does not seem as impartial as the morally grounded agreement.

Rawls gives the following assessment of the conception of the reasonable:

When attributed to persons, the two basic elements of the conception of the reasonable are, first, a willingness to propose fair terms of social cooperation that others as free and equal also might endorse...and second, a recognition of the burdens of judgment and acceptance of their consequences for one's attitude (including toleration) toward other comprehensive doctrines.⁴⁴

In one sense, and assuming the proviso of the burdens of judgment is fulfilled,⁴⁵ reasonableness indicates a commitment of reasonable people to cooperate justly with others who are equally reasonable, which implies a sufficient degree of reciprocity. This procedure should lead to finding a common moral and pragmatic terrain on which to agree and which would constitute a universe of overriding values to which all other values ought *prima facie* to defer. Reasonable citizens will have thus to be willing to find commonly acceptable terms of cooperation which should establish values that would be considered overriding or prior to the divisive ones. However, the readiness for proposing “fair terms of cooperation” notwithstanding, and assuming the normative term “fair” is unpacked to the satisfaction of all citizens willing to cooperate, there is still the knotty problem of the “burdens of judgment.”

The burdens of judgment refer basically to our limitations in reaching truth, due to our mental imperfections and our fallibility when having to “draw inferences, weigh evidence, and balance competing considerations.”⁴⁶ The upshot of these burdens is that we are bound to have “difficulties in our making sound reasonable judgments,”⁴⁷ leading to the fact that “it is not to be expected that conscientious persons with full

powers of reason, even after free discussion, will all arrive at the same conclusion.”⁴⁸ We are thus to be tolerant, pace Rawls, simply because we are not sure if our conclusions are correct, if our convictions are right as opposed to those of our interlocutors. This seems to be an argument harking back to skepticism, a controversial philosophical doctrine in its own right as we have seen earlier when examining the skeptical argument for toleration. It does look like Rawls is saying that to be reasonable it is necessary for us to be skeptical, to be least convinced in any of our beliefs, for the mind is fallible. It may be the case that I ought to be skeptical about some of my reasoning, some of my inferences - although I may have trouble knowing which ones -, recognize the limitations of my ability to find truths, but surely there would be some convictions about which I may be more certain than others.

In the case of a religious believer, it does not seem pertinent to say that he should harbor the burdens of judgment towards his faith, towards the moral teachings that derive from his religious doctrine, or to have similar doubts towards his religious convictions as towards his general ability to reason from the empirical evidence at hand. The truth that he believes in is, for some religions, supposed to be a divinely revealed truth, one that for the believer will not admit any of the

compromises of the burdens of judgment. It is a metaphysical truth that cannot be compared to the frailties of human truth. Why should such a believer be tagged as unreasonable, simply because he does not waver in his religious and moral beliefs?

Furthermore, our belief system is not a homogenous one. We do generally have a hierarchical order about which beliefs are held most dearly to us, which beliefs we have most emotional attachment to, which beliefs admit least cognitive compromise or dissonance, which beliefs are more cognitively central and which are more peripheral. To attach the burdens of judgment equally to all our beliefs, without any consideration for the ranking of each in our holistic cognitive system, is to make a mockery of the complexity of this cognitive reality. To build reasonableness on such a shaky argumentation is to defeat beforehand any realistic basis for agreement amongst citizens.

It would then be more cogent to dismiss Rawls's argumentation with regard to the burdens of judgment as a basis for reasonableness, and hold on to the criterion of cooperativeness. He seems to share this criterion with Larmore's notion of conversing "in good faith," the latter implying a willingness to cooperate without malice. One could also interpret Rawl's "fair terms of social cooperation" in terms of absence of

malice. Still, such a criterion of reasonableness does not seem to be sufficient to bring diverse reasonable people to agree on some common good, a supreme value as it were, that ought to override all other ideals of the good. While reasonable, they may still vociferously disagree about the common good that ought to reign supreme, and they may not be able to summon such a supreme common good or hypergood that will be neutral-impartial to all reasonable citizens, that is to say, a good that would seem to treat all reasonable citizens equally. By being neutral-impartial, it would not be promoting a conception of the good belonging to reasonable citizens rather than another, it would not constrain some ideals of the good more than others belonging to those same reasonable citizens. The impartiality of the hypergood entails that all reasonable citizens appreciate it equally because it does not promote or constrain their conceptions of the good more than those of other reasonable citizens, and they are equally satisfied with the good that is promoted and the constraints involved with regard to other goods as are other reasonable citizens.

However, there are doubts that such an impartial hypergood would necessarily be found in a reasonably plural polity, or that it would be sufficient to override one's other conceptions of the good so that, as

per Ackerman's first path to neutrality, there will be a supreme value to which all reasonable citizens would defer. For Ackerman, liberalism's first path to neutrality entails isolating "a single value that all people consider most important despite their transparent disagreement over other values."⁴⁹ We could add the proviso that the people looking for such a supreme value are reasonable, since unreasonable people, acting from bad faith, could always scuttle any attempt at a comprehensive agreement. Ackerman's analysis would then be more palatable to liberal thinkers such as Rawls and Larmore, and would also be more practical, given the prima facie uncooperative propensity of unreasonable citizens as we have concluded before. Reasonable people will have then, according to the first path to neutrality, "to affirm the existence of a single supreme value that trumps all our lesser disagreements."⁵⁰

This quest for a "single supreme value" is akin to searching for some supreme primary good that will override all other goods. The question is why stop at one primary good, and not get to all primary goods, as per the Rawlsian analysis leading to his principles of justice. The problem with one primary or supreme good is that, while it may be overriding, that will not mean that the other goods that are less supreme need not also be expressed. Assuming we establish the priority of the

hypergood, that does not mean that other goods will not have a hierarchy amongst them, leading to conflicts, sometimes serious, as to which good should override which other.

Furthermore, not all goods are comparable or commensurate, that is to say, judged by similar yardsticks. Agreeing, for instance, that physical security or non-violence might be a supreme value does not preclude the fact that some people would prefer to practice monogamy and others polygamy, that some people would want to be able to practice religious duties that have nothing to do with violence but which might be extremely shocking to other people. There may be also disagreements about things that eschew issues of violence, disagreements for instance between those who want to impose public standards of decency upon a community and those who favor a climate of unbridled pornography, between those who defend the latter as the expression of free speech and those who oppose it because it does violence to the body. These issues about the good may have nothing to do with the supreme value of peace, except for resolving peacefully the disputes. But trying to resolve peacefully the disputes does not mean that they will be resolved. At any rate, if we are to resolve them, it is by appeal to some common values

that both parties to a dispute would consider relevant or supreme, and that could not be simply the supreme value of peace.

Thus, despite the existence of a supreme value, there would be a proliferation of secondary values that would have to fight it out in the plural normative horizon and that could not be arbitrated sufficiently by one supreme value. In other words, assuming there is an impartial supreme value, say peace, there could still be many secondary values competing between themselves and between which the supreme value would not be able to arbitrate. Then, there must be other superior values that must be agreed upon among the disputants and which must be appealed to in order to resolve their innumerable disputes. However, this would deny the relevance of a supreme value to neutralism. As long as there would be controversial beliefs and practices between which the supreme value cannot be the necessary and sufficient arbitrator, the first path to neutralism would degenerate into irresolvable conflicts about secondary values. To reach neutralism, it would be necessary for the citizens to agree not only on one supreme value, but on many secondary values that arbitrate their secondary disputes. Such universal agreement about all important values would, however, be *prima facie* precluded for a pluralistic polity.

Furthermore, it is possible that reasonable people would want to exercise their superior bargaining power in order to let their principles prevail, or be better reflected in the constitutional arrangement of the polity, especially if no common values could be appealed to in important disputes. In other words, it may be the case that not all reasonable people will take peace to be of supreme value. Ackerman mentions the Hobbesian supreme value of life, given that death is what all people seem to want to avoid most of all. That, however, does not take into account, as Ackerman himself states, that there will be people willing to die for their principles, as has been the case with the Christian martyrs or those who have been persecuted and killed by the Christians but did not renege on their faith. Moreover, many reasonable people may risk their lives for conceptions of the good that do not take life itself as *prima facie* of supreme value.

Thus, finding a supreme value as a path to neutrality fails on two accounts. One is that, assuming a supreme value is found, this does not preclude that other goods will continue their autonomous existence and that they will be asserted independently from what the supreme value proclaims, in other words according to criteria that go beyond the sphere of the supreme value. While non-violence, life or non-suffering may be

taken as supreme values, while they may be necessary values that all reasonable people will admit to be supreme, they may not be sufficient in guiding the outcome of all disputes about conceptions of the good, because they may not be relevant to the topic of the disputes. Other conceptions of the good could obey to a hierarchical conative order that may be quite independent from what the supreme value proclaims, or that goes beyond its necessary sphere of influence. In other words, finding a prima facie supreme value does not preclude the proliferation of other goods that have their own hierarchies and that obey to prescriptions that are not exhausted by one hypergood. What applies to one primary good could also apply to many primary goods. There may be goods that need to be asserted or unconstrained and that are not sufficiently overseen by those primary goods. Thus, since the hypergood is not sufficient in ruling over all goods, people could reasonably, in some circumstances, assert the priority of other goods. For instance, someone who chooses to die for his principles is actually claiming that life is not necessarily the supreme good. Furthermore, the principle he is dying for does not reflect the supreme value.

The second reason for the argument's failure is simply that reasonable people would most likely not agree on a supreme value that

should be overriding, assuming that it would override all other values. In a pluralistic polity, citizens are encumbered by different conceptions of the good. While they may agree that some values are necessary, this agreement does not mean that these values will be consistently overriding in their conceptions of the good. At any rate, it is not necessarily the case that reasonable and diverse people will agree on a supreme value. Given their incompatible background principles, they will tend to assert different conceptions of the good. That does not bode well for finding a supreme value on which all reasonable citizens will agree, nor many such values to which they will collectively assent.

b) Second Path: Looking for a conciliatory “Translation Manual”

The second path aims to find a common valuation yardstick on which all reasonable citizens will agree and which will transcend the pluralistic disputes stemming from incommensurate causes. Incommensurateness follows from the fact that values cannot be compared on the basis of some basic standard. Utilitarianism has been such an attempt to erase the handicap of comparing incommensurate values according to one major yardstick. The reductive common parameter was found to be happiness, expressed as the most basic utility. Thus, disputes are “translated into the common denominator of utility.”⁵¹

While, for Ackerman, the first path to resolving pluralistic disputes follows a trumping strategy, the second path borrows a translation strategy. According to Ackerman, “we are invited to translate our moral categories into some allegedly uncontroversial framework of political assessment.”⁵²

However, the choice of happiness as the paradigm example of utility that all reasonable people will agree to, seems to hark back to the first path’s strategy, whereby there would be some supreme value that all other values will have to defer to. In other words, there could be disputes about which value to choose as being the paradigm of utility. Why should happiness be such value? Reasonable people may dispute such paradigmatic choice, and state that there cannot be one standard. Besides, happiness is not an empty concept, but is a value-laden one, whereby what makes me happy may very well depend on principles and values I cherish that have little to do with happiness. Happiness is not thus like a universal exchange currency that one can translate into a given quantity of goods at one time. The nature of happiness does not only depend on the outcome of normative or perfectionist forces which might have shaped the principles, tastes, standards and ideals of the good that a person happens to cherish and follow. Happiness also depends on

idiosyncratic factors that make one person different from another, apart from the cultural and social factors that went into differentiating them. This is akin to what liberal thinkers, such as Rawls, state about utilitarianism, which is that it conflates the differences between persons and does “not take seriously the plurality and distinctness of individuals.”⁵³

Utilitarianism, then, seems to assume too much in commonality between the persons. It seems to resolve the problems that plagued the first path to neutrality, by affirming that there is a common value all reasonable people will agree to and that they will hold as supreme, which is happiness. More importantly, it seems to transcend the difficulties of how much happiness each will see in some goods or values, which may differ from one person to another. Thus, it does not seriously take into account the different factors that make each one of us happy or unhappy, as we all had already similar values and outlooks to see happiness in the same perspective. To do that, we must already agree about the most overriding background values that we could think of, something that was seen to be an almost impossible task among people harboring incompatible conceptions of the good, as per the first path to neutrality. In other words, utilitarianism will have to resolve the problems plaguing

the first path to neutrality before stating some common value of happiness that we all agree upon. As Ackerman puts it, the “translation manual” which the utilitarian urges us to use “will provoke the very kind of un-neutral dialogue that he wished to avoid in the first place: Why does my desire for pushpin merit two utility points while your desire for poetry merit four?”⁵⁴ In other words, different people see happiness differently, some giving more utility to poetry, others to pushpins, some to democracy and rights, others to dictatorship and highly coercive paternalism and perfectionism. We are hence back to square one in the middle of the first path, when people couldn’t agree about the common values they should espouse, as each conception of the good reflected its own universe of supreme values.

Utilitarianism, which overall entails prescribing those practices and values that bring the most happiness, will have, furthermore, to resolve the problem that one will be willing to accept that one’s welfare ought to be consistently overridden by the welfare of others, if indeed the utility or number of utility points of happiness that result are greater than otherwise. This, once more, is ruled out by other thinkers harboring different conceptions of the good, such as those conceptions espoused by Rawls who, in the name of his principles of justice and his deontological

liberalism, states that “each member of society is thought to have an inviolability founded on justice... which even the welfare of every one else cannot override.”⁵⁵ Already then, in a plural polity or a universe made of two liberals, one deontological, the other utilitarian, we do seem to have an intractable problem about the value of utilitarianism as a normative principle all ought to abide by. For a deontological liberal, balancing “the gains and losses of different persons as if they were one person is excluded.”⁵⁶ In other word, even in a world inhabited by liberals, the viewpoint which shall prevail, either the deontological or the utilitarian, cannot be impartial for the other one. And there does not seem to be any middle ground that can reconcile both points of view and translate them into a melting pot of common values both will embrace.

Finally, there seems to be an implicit normative principle that does animate utilitarianism, and that one will have to adopt before adopting utilitarianism. For what could be the reason given to an individual to embrace utilitarianism and accept to have his own welfare consistently compromised in the name of the greater welfare of all? Surely, it cannot be utilitarianism itself, for one can simply refuse such a self-sacrificing principle, as it would be rational to do so. There is thus a hidden normative premise that does not seem to be explained or simply divulged.

Either utilitarianism assumes an extraordinary level of altruism in people, in which case they will accept self-sacrifice for the sake of greater overall happiness, or it seems to be saying implicitly that people will accept the principles of utilitarianism because there is some hidden normative principle that says they ought to. For there is no logical or necessary connection between the fact of my accepting that utils of happiness should express the basic language of our values, on the one hand, and the fact that I should prescribe the morality of utilitarianism which is that the overall welfare calculus should consistently override mine, on the other hand. By what rational principle should my actions be guided solely on what number of utils of happiness is obtained? Rationality does not seem to enter much into a principle that can be so detrimental to one's own welfare.

Then, there must be some other principle which is moral, hidden behind the prescriptions of utilitarianism. What could that principle be? Assuming it exists, then it would be prior to utilitarianism, and one will have to examine it in order to judge the validity of utilitarianism itself. Actually, this principle remains undisclosed. Could it be the Christian principle of charity, the turning of the other cheek, the golden rule of treating others as you would want them to treat you, or devoting yourself

to the welfare of others at the expense of you own? Whatever it is, it is certainly not a principle of egoism, in which case it would be that it is my own welfare that ought to override all other welfare. An egoist could well rationally choose his own physical well-being for the destruction of much of the world. Utilitarianism cannot say cognitively that the egoist is mistaken, since utilitarianism needs more rational justification than if we hew to the theories of evolutionary psychology and Darwinian natural selection. According to these theories, it would be far more rational to seek our own well-being and survival than to sacrifice oneself for the welfare of others, as utilitarianism asks us to.

Furthermore, utilitarianism cannot claim that emotively it is more justified than egoism, since my emotions are at least as much of a concern to me as those of others, if not much more. I could care about other people's emotions out of pity and empathy, but that does not mean that in every pitiful or empathetic instance I will be willing to sacrifice my own welfare for the sake of others if greater utility ensues, as utilitarianism would suggest. My welfare and my survival are *prima facie* paramount to me, so that I could not rationally choose that overall utility calculation should systematically override my self-interest. Rationally speaking, I would have no reason to choose utilitarianism over egoism, and actually I

would have no reason to choose utilitarianism at all. If there is some implicit morality utilitarianism is grounding its faith on, then why should one choose utilitarianism over the moral principles that are prior to it? At any rate, we have seen that among rational principles, utilitarianism cannot be the higher rational principle that one would choose, unless one is guaranteed to be consistently amongst those who harbor the greater number of utils. Otherwise, it would harbor instances of extreme self-sacrifice, such as the one whereby one's death or suffering brings more utils to the community than if one was guaranteed some rights that prevent arbitrary punishments. Such guarantee, however, does not exist under utilitarianism.

Thus, the second path to neutrality seems to bring more controversies than reconciliation among citizens harboring incompatible conceptions of the good. First of all, there is the problem of choosing utils of happiness as the exchange currency or the translation manual by which everyone will weigh their values. If a religious person follows the edicts of his religion, it may not be for one's immediate happiness, but future, metaphysical happiness, or because he believes these edicts bring order and happiness if followed by everyone. How could that be reconciled with someone who only takes material happiness to be

paramount, who is a miscreant for whom religious edicts have no currency, and only happiness in this earth should count? Or how could that be reconciled with someone from another religion, for whom the path to happiness requires different values and practices than those harbored or promoted by this religious faithful? Already, we need another translation manual than happiness to reconcile these points of view, since, assuming both believe in happiness as a basic exchange currency, one sees it for here and now the other for a transcendent heavenly later, and in one case both see it for later but each requiring a different path than the other.

Furthermore, there is the problem of how many utils we attach to some values and practices as opposed to others. If I see some values and practices as morally, religiously or philosophically very dear to me, I cannot see myself reneging them simply because others do not see in them much utility and happiness, or because the majority derives more utility from contrary values and practices. We would then be back to the ways of the first path to neutrality, bickering about whose value should be overriding, wallowing in the same problems pertaining to that path, and the result would not necessarily be an impartial outcome. Finally, assuming all citizens agree that utils of happiness are to be the translation manual of their values, that even if they attach the same utils to their

different values, it is still quite a logical leap from accepting that to accepting the premise of utilitarianism, which is to defer to the greater welfare no matter one's own. Thus, there does not seem to be a logical connection between having a translation manual into the utils of happiness and choosing utilitarianism, which asks us to sacrifice our happiness if greater happiness will ensue.

c) Third Path: Rawls's Transcendental Approach

As previously stated, Rawls's contractual theory derives from an original position in which the contractors are stripped of their particular identities under the guise of a veil of ignorance that makes them, by and large, equal, somewhat interchangeable, and thus vying for similar principles of justice. These principles are to inspire the constitutional essentials or the fundamental laws of the liberal polity. Given that everyone in the original position who is reasonable and rational would choose these principles, according to Rawls, it follows that such principles will be judged to be impartial by all those whom they will govern. The only problem, as we have seen earlier, is that this is the view stemming from the liberal take on personal identity, which in this case characterizes the self as one unencumbered by its particular circumstances, by its cultural and historical context, its communal and

religious setting, its moral upbringing and possibly primordial ethnic ties. The latter may be summed up as the linguistic, religious, historical and moral ties that make a community distinct. As Ackerman puts it, "Rawls, especially in his Kantian phase, seemed to be inviting us to gain perspective on our primary moral disagreements by trying to strip away all the particular life experiences that make them so important to us."⁵⁷

For Rawls, the differences in our identities seems to take a back seat to our common needs, as represented by the primary goods we all seek. The parts of our selves that are hidden behind the veil of ignorance are those particularities of our identities that go beyond the reality of our primary goods, and that do not seem to have a legitimate say in the formation of the principles of justice. Particularities bring divisiveness, and make the derivation of the principles of justice an impossible or much more formidable task in a diverse polity. With the premises of our primary goods, a conciliatory stance leading to these principles seems to be inevitable, since Rawls brings to the bargaining table the universal and common in us rather than what makes us different. The outcome is bound to be impartial if we restrict our needs to those underlying the primary goods. However, while these needs, such as economic well-being and physical security, may be necessary, they are not sufficient.

Other needs, reflecting the particularities of our identities, demand also satisfaction. I may have moral, religious and ethnic preferences, with attendant obligations or duties attached to such partialities, which the principles of justice may unfairly constrain or simply not address. As a member of an ethnic group, I may want differentiation rather than the equalization that the principles of justice may entail, especially the first principle which stresses equal access to “basic liberties compatible with a similar system of liberty for all.”⁵⁸ What makes me part of a particular group, with my self defined according to that primordial group, is not the primary goods I seek but what would, for Rawls, be the secondary ones. These can be as important as the primary ones, yet they do not enter in the formation of the principles of justice, they are not reflected in the genesis of these, given “the astonishing ignorance of the inhabitants of the ‘Original Position.’”⁵⁹

It is ironic that Rawls, who upbraids utilitarianism for not taking into serious consideration the differences between persons, for conflating people’s particular needs and desires in the name of the greater happiness principle, while he does not shy away from such a procedural approach. As we have seen, the original position and the veil of ignorance do actually erase our differences and particularities in favor of universal

beings whose main concerns are the primary goods, and who will thus reach without any major hitch similar principles of justice. Viewed from the perspective of our primary goods, these principles would prima facie seem impartial, that is to say, not favoring one individual or group, nor discriminating against others as long as they hew to the principles of justice. Since these principles would have been consented to by all reasonable and rational people stripped of their particular identities, following the veil of ignorance, they would perforce seem impartial given such anemic identities. But for those who need to assert their particular identities more so than the liberals would need to assent to, be it because they are part of a very strong ethnic or religious affiliation, or because their morality demands more than the liberals are willing to allow in the public domain of the law, then for them "it is precisely this affirmation of (liberal) recipe for transcendence that (they) find morally objectionable."⁶⁰ At any rate, Rawls does not seem to take people's differences and particular identities any more seriously than the utilitarians. What he seems to promote is an "extraordinary kind of self-immolation,"⁶¹ pushing aside identity differences and concentrating on common needs in order to usher the principles of justice. These will not seem impartial when the full account of our identities are weighed in, especially when those identities

harbor religious and moral edicts that do not coincide with the Rawlsian principles, or that are not as austere in their abdication from religious and moral obligations in the public sphere.

While many liberal thinkers take the original position as an impartial framework,⁶² we have seen that its outcome is not one that is quite impartial. The reason is that the principles of justice do not reflect certain identity claims. Furthermore, they would constrain these claims once they are to be asserted publicly, or if their private affirmation is contrary to the spirit of equality and promotion of primary goods that the principles of justice entail. Moreover, Rawls himself does not take the principles of justice to be impartial, either procedurally or in outcome. We can define procedural neutrality as follows: "A decision can count as neutral only if it can be justified without appealing to the presumed intrinsic superiority of any particular conception of the good life."⁶³ For Larmore, procedural neutrality characterizes the neutrality-impartiality of the liberal state, as opposed to neutrality-impartiality of aim or outcome.⁶⁴

The latter entails the following, according to Rawls:

- a. that the state is to ensure for all citizens equal opportunity to advance any conception of the good they freely affirm;
- b. that the state is not to do anything intended to favor or promote any particular comprehensive doctrine rather than another...;
- c. that the state is not to do anything that makes it more likely that

individuals accept any particular conception rather than another...⁶⁵

We can see that with regard to (a), the constraints imposed by the principles of justice do not allow the promotion of any conception of the good. Thus, equal opportunities cannot be provided in this instance. With regard to (b), one can realize that the liberal polity and its ideals are promoted through the principles of justice, ideals such as those of equal liberty for all and the priority given to the promotion of the primary goods, those material goods that are least controversial in the view of the liberals. With regard to [c], we can observe that neutrality translates into an anti-perfectionist stance. However, as will be seen later on, the principles of justice and their constraints may have formative outcomes that are far from impartial, and that are akin to perfectionist ambitions.

At any rate, Rawls does assert that his principles of justice, or justice as fairness, are not neutral-impartial procedurally, but may be in terms of outcome. For Rawls then, "Justice as fairness is not procedurally neutral. Clearly its principles of justice are substantive and express far more than procedural values."⁶⁶ With regard to neutrality of aim, Rawls has this to say:

The priority of right excludes the first meaning of neutrality of aim, for it allows that only permissible conceptions (those that respect the principles of justice) can be pursued...As for the second meaning, it is satisfied in virtue of the features of a political conception expressing the priority of right: so long as the basic structure is regulated by such a view, its institutions are not intended to favor any comprehensive doctrine...In regard to the third meaning, however, it is surely impossible for the basic structure of a just constitutional regime not to have important effects and influences as to which comprehensive doctrines endure and gain adherents over time...⁶⁷

With regard to (a) and [c] Rawls's assessment does not differ from mine. He does recognize that for (a) limitations are to be imposed on the conceptions of the good allowed to flourish in the shadow of the principles of justice, and that the latter will determine these limitations. Also, he does acknowledge that for [c] perfectionist or formative outcomes will inevitably ensue from a constitutional regime ruled by justice as fairness, since some comprehensive doctrines (philosophical, moral and religious outlooks) will prevail over others, and such prevalence will no doubt follow from the fact that the principles of justice allow certain things to flourish and others to be hemmed in. However, with regard to (b), Rawls seems to assert that neutrality of aim could be fulfilled, whereby "basic institutions and public policy are not to be designed to favor any particular comprehensive doctrine."⁶⁸ Yet, following what Rawls says with regard to [c], we cannot help but notice

that the principles of justice, which influence decisively the basic structure, or the polity's "basic institutions and public policy," will "have important effects and influences as to which comprehensive doctrines endure and gain adherents over time."⁶⁹ That translates into a perfectionist outcome that contradicts what (b) asserts as far as neutrality of aim, and what Rawls hews to with regard to this neutrality. At any rate, Rawls himself does betray in this instance a perfectionist disposition as he unabashedly asserts that his political liberalism "may still affirm the superiority of certain forms of moral character and encourage certain moral virtues."⁷⁰ He adds that "justice as fairness includes an account of certain political virtues - the virtues of fair social cooperation such as the virtues of civility and tolerance, of reasonableness and the sense of fairness."⁷¹

Political liberalism, which Rawls embraces in his later writings, in contrast to comprehensive liberalism, could be understood as a liberalism that does not depend on the overall philosophical and moral doctrines of liberal thinkers such as Kant or Mill.⁷² It does seem, however, that such liberalism does not necessarily shy away from an anti-neutral or perfectionist stance, at least in an indirect way, as we shall develop this idea more explicitly in the final chapter. The upshot of the discussion is

that neither neutrality of procedure nor that of aim seems to follow from the Rawlsian position and the liberal polity constructed according to his principles of justice. As Ackerman puts it, "Trying to transcend our moral disagreements seems, in short, no more promising than translating or trumping them."⁷³

d) Ackerman's Conversational Restraint

Ackerman suggests a new tack on the path to neutrality-impartiality which attempts to eschew the three previous paths. His approach rests on what he calls "conversational restraint." In that case, if we disagree morally, "we should simply say nothing at all about this disagreement and put the moral ideals that divide us off the conversational agenda."⁷⁴ Yet, one may legitimately wonder why he ought to shelve some of his important moral principles simply because they are controversial to others. Is public controversy to be the sufficient criterion for amorality, or for bracketing one's ideals of the good? Is getting along with others necessarily better than our substantive conceptions of the good? Or is getting along peacefully with others to become *the* conception of the good that ought to dominate all others?

Ackerman seems to ground his neutrality-impartiality on a *modus vivendi* position, whereby our agreements are not to reconcile our

controversial principles but to bracket them in order not to undermine public order, economic expansion and civil peace. But to do that, he must urge us all to believe in the overriding value of material well-being, which translates into economic and physical securities, which is the flip side of the liberal harm principle, which urged us to minimize economic and physical insecurities and not to extend toleration to the causes of such insecurities. Ackerman, in other words, is simply applying the liberal bias for materially-grounded values to the search for impartiality. He seems to ignore Mill's maturity or moral principle in order to concentrate on the materially grounded harm principle, and from the values that define the harm principle he derives the values that should usher neutrality.

Yet, Ackerman's move depends crucially on all reasonable citizens believing in his materially-slanted values as overriding their own values, and furthermore on bracketing their "controversial" values in order to promote these material values. This seems to hark back to the first path, in which case Ackerman is asserting some supreme material value to which all reasonable citizens ought to defer, and in the name of which they ought to bracket whatever controversial values they hold. Yet, we have seen already the limitations of the first path in our earlier discussion. Ackerman's approach seems to espouse the supreme value of pragmatism.

This makes his arrangement a *modus vivendi* one, whereby we refrain from asserting certain controversial principles simply to safeguard civil peace and economic development, assuming the bargaining powers of the other parties are sufficient to undermine our material well-being. One problem with this line of thought is that if the bargaining powers are very unequal so that one party can sufficiently coerce the other into submission, then the winning party will have no qualms about asserting publicly its controversial conceptions of the good, that is, reflecting them in the laws and the constitutional essentials.

The other problem is that by giving civil peace and material well-being an overriding importance, we are indeed elevating them to a position in which they would assume supreme value, and we are again back to the first path, whereby others would see such a supreme value as itself sufficiently controversial, thereby a candidate for conversational restraint. There may simply be some ideals of the good that are too important for some individuals or groups to have them “placed off the conversational agenda” and ignored, even if others find them too controversial. There is a third problem in Ackerman's approach, which is the epistemic problem of comparing the weight we attach to each of the values that we are to bracket. Who is to arbitrate when controversies

arise as to the weight of each in our scheme of values versus others' schemes of values? There seems to be a fundamental epistemic problem akin to comparing all value-based utils, a problem that pertains to utilitarianism, and which most likely leads to an epistemological dead end or to epistemological controversies that would in turn fuel all the other controversies we were trying to extinguish in the first place. This problem eventually collapses into the controversies that plagued the second path, that of utilitarianism, which was discussed earlier. In the final analysis, it seems that Ackerman's "conversational restraint" and pragmatic approach are unable to infuse the discourse on liberal neutrality with any more convincing arguments than those he rejected.

Justifying Neutrality: Liberalism of Fear and Individual Autonomy

The main justifications that liberal thinkers have advanced to defend neutrality have been liberalism of fear and individual autonomy. This is illustrated in the following statement by Sher: "It can be argued that nonneutral governmental decisions (1) violate the autonomy of citizens, or (2) pose unacceptable risks of oppression, instability, or error."⁷⁵ Hence, in order to ensure optimal citizens' autonomy and minimize state oppression, the latter being the main concern of the liberalism of fear, a neutral polity is to be implemented. I will discuss

each of the concerns that follows from the liberalism of fear and individual autonomy, along with their reasons for recommending state neutrality.

a) Liberalism of Fear

Liberalism of fear takes physical security to be paramount. This entails a lesser intrusive and perfectionist state, one that does not use its coercive apparatus in order to promote some ideals of the good or to suppress and persecute others. It is a liberalism that defends a least coercive and most legally bound state, a state that upholds the individual rights of the citizens, does not practice arbitrary arrests, and refrains from exercising despotic cruelty upon its people. By being neutral, by not having an agenda to promote overtly some ideals of the good and restricting openly others as some perfectionists might prescribe, the state would purportedly have less reasons to coerce its citizens. As Sher puts it, "By limiting government to its most essential functions, we may at least minimize the dangers of abuse."⁷⁶ Such government neutrality would be akin to having the government off the people's backs in more ways than government non-neutrality or government perfectionism. It would mean that the government has no business asserting or encouraging any ideal of the good, nor impeding others. Given the coercive weight of the state,

government neutrality seems to be an ideal that all citizens might reasonably choose, given that prima facie less external coercion is better than more. However, it is also reasonable, given the use some make of their freedom, to expect some citizens to want more government coercion exercised against what they view as abuses of individual freedom. Furthermore, they would be willing to have their own freedoms restricted somewhat in the process. In other words, they would very much prefer the government to adopt, with regard to certain practices and beliefs, more vigorous perfectionist or restrictive policies rather than sticking to neutral ones, and they would consider the perfectionist or restrictive policies more just than the neutral ones, even if all hopes of impartiality are dashed afterward.

Liberalism of fear seems to depend in some sufficient measure on a skeptical attitude about governments and the goodness of people who hold power, or the goodness of people in general. It is no doubt inspired by what history has taught about the cruelty and arbitrariness of those who wielded power and brought so much fear and misery to their people. In a sense, it may be a defense mechanism that mirrors the Nietzschean slave morality, whereby those who do not hold power or have little chance of acquiring it, apply such morality in the creation of the political

institutions and fundamental laws that ought to protect them from the aristocrats, or power holders.⁷⁷ As Judith Shklar puts it, "(liberalism of fear) wishes to secure...freedom from the abuse of power and intimidation of the defenseless."⁷⁸ Hence, doubts about the goodness of those who wield power, or about humankind in general, besides doubts about the good to be promoted, lead to this position of neutrality. Such neutrality, inspired by liberalism of fear, Sher calls "prophylactic neutrality."⁷⁹ The idea behind such neutrality is that "the modern state's power is so vast, and those who wield it so flawed, (that) no government can be *trusted* to promote its citizens' good."⁸⁰ This mistrust towards the channels of power is echoed by Shklar, whereby liberalism of fear implies "that the governments of this world with their overwhelming power to kill, maim, indoctrinate, and make war are not to be trusted unconditionally."⁸¹ Such mistrust and skepticism toward state power leads to defending the virtues of limited government, which an anti-perfectionist and impartial, that is, neutral government would purportedly illustrate.

We have seen that a prevalent skepticism about the human good, what may be called a humanistic skepticism, as opposed to the metaphysical kind about some transcendent truths, seems to underlie

fundamentally the liberalism of fear. It is a skepticism that rejects the Platonic paradigm of the philosopher-king, whereby knowledge is intrinsically correlated with wisdom, hence with goodness. Knowledge or expertise is simply severed from the quest of wisdom and of goodness, the latter two being intimately connected in the Platonic idealistic pantheon. Liberalism of fear believes in external checks and balances rather than trusting that these will emerge from within the philosopher-king who will guide the nation without falling into the sheer quest of unbridled power for himself and his cronies. For liberalism of fear, power corrupts, it has hence to be reduced to bits and pieces that many will share somewhat equally. The upshot is that the power-holders become the mutual providers of checks and balances, limiting the power of others while having their own power limited in turn. By severing knowledge from wisdom or goodness, the liberalism of fear has put to rest the Platonic philosopher-king as a model of public governance, and introduced suspicion at the foundation of such governance.

For Shklar, liberalism of fear addresses universal concerns in us. It vies for a position of impartiality, whereby everyone consents readily to what this liberalism defends. If everyone is mostly concerned about their physical security, about being free from cruelty and arbitrary governance,

then liberalism of fear aims at satisfying the primary good of our physical and emotional security. Such primary good being universal, that is, cross-cutting purportedly the variety of the conceptions of the good that are rife in a pluralistic polity, it follows that the liberalism of fear becomes impartial, hence neutral, since all reasonable and rational citizens will assent to its concerns. According to Shklar, "That evil (we all know and want to avoid) is cruelty and the fear it inspires...To that extent the liberalism of fear makes a universal and especially a cosmopolitan claim."⁸² What then is this cruelty that all humans seemingly and universally abhor? It is for Shklar "the deliberate infliction of physical, and secondarily emotional, pain upon a weaker person or group by stronger ones."⁸³ Of course, one can see that the Nietzschean conception of the good, the philosophy of the *übermensch*, of the aristocrats who ought not to heed the concerns and fears of the slave morality, those who don't take the avoidance of pain as some sort of supreme principle that their other principles ought to defer to, for those then, the liberalism of fear will not seem a means to neutral governance. Notwithstanding the hierarchical Nietzschean position, or the Platonic one for that matter, with the philosopher-king reigning supreme along with his guardians over the plebs, there will be religious groups for whom pain and chastisement may

be a means to self-purification, of expressing their distrust of the body and the material goods. Liberalism of fear will seem far from addressing the concerns of either one of these groups, and may actually be at odds with the elitist ideals of some.

Furthermore, liberalism of fear may be opposed to religion of fear, whereby one takes concerns about after-life rewards and punishments to be much more worrisome or important than concerns about security in this life. If one's religion does not give the pleasures and comfort of the body much credence, and rather sees the punishment of the body and one's self-abnegation, rather than self-indulgence, as the means to achieve internal purification and eternal bliss, then the concerns of the liberalism of fear seem off the mark, and far from universally or neutrally appealing. Liberalism of fear does propel cruelty to the level of a summum malum. This contrasts with those citizens harboring a serious religious bent, for whom the summum malum would be committing heretical deeds that deserve eternal damnation. The latter would be in keeping with religion of fear. At any rate, elevating a practice to the level of a summum malum is in a way stating that the reverse of this practice, in this instance non-cruelty, would be the supreme value that all citizens of a diverse polity would assent to. But we have seen already that the elitist citizens, those

harboring hierarchical conceptions of the good, along with those citizens harnessed to the religion of fear, would not agree to such a supreme value. Moreover, this call for a supreme value harks back to the first path to neutrality-impartiality, which we have already examined and judged to be inadequate as far as being universally, thus neutrally, appealing.

While we may agree with Shklar that “of fear it can be said without qualification that it is universal as it is physiological.”⁶⁴ this does not entail that we shall interpret similarly or attach the same values to fear, nor that we will assign similar values to the causes of that fear, be they physical or metaphysical. While we may all have similar physiological reactions to fear, our conceptions of the good determine to a large extent how we view each instance of fear, and how we determine hierarchically which tokens of fears would supersede others, depending where we view ourselves in the fear spectrum, that is, as partisans of the liberalism of fear or adherents of the religion of fear. We may also see fear differently, if we happen to be amongst the aristocratic power holders in a Nietzschean possible world. Such aristocrats may have much more opportunity to inflict pain upon others than the plebs they are ruling. They will have little incentive to abide by the ethos of the liberalism of fear. Furthermore, they may see chastisement, suffering and pain as steps

in aristocratic self-aggrandizement or promotion among their peers. They may be enraptured by a belligerent and martial code of honor they deem sacred, in which their elitist conceptions of the good clash head-on with the more egalitarian ones of the liberalism of fear. In either case, those who harbor strong religious or elitist values do not seem readily pliant to the concerns of this liberalism. It follows from our analysis that fear and cruelty, which represent the summum malum underlying the liberalism of fear, do not seem to be necessary nor sufficient to assert the universal or neutral appeal of a supreme value that would reconcile citizens harboring diverse ideals of the good, among them those with a strong religious or hierarchical bent.

b) Individual Autonomy

For many liberal thinkers, individual autonomy has been one of the main moral reasons why state neutrality ought to prevail. The assumption being that if the state is in the business of promoting the ideals of the good, the individual is left without a moral domain where his autonomy can be properly exercised. For those liberals who espouse the Kantian ideals, such prospect leaves much to be desired, as individual freedom or autonomy is what determines the moral merit of one's actions. Thus, to preclude autonomous actions would be tantamount to banishing all

pertinent talk of morality, at least in the Kantian pantheon. Letting the state determine the course that the ideals of the good should take is to let heteronomy take center stage in the determination of moral value, something that Kant has steadfastly opposed.⁸⁵ For the deontological liberals, then, the moral argument for neutralism is one founded on the value of individual autonomy as the repository of morality. Such autonomy means “the ability of each person to determine for himself a view of the good life.”⁸⁶ For the deontological liberal who espouses the Kantian principles, it entails, furthermore, state neutrality or anti-perfectionism:

For procedural liberalism...the case for religious liberty derives...from the need to protect individual autonomy; government should be neutral toward religion for the same reason it should be neutral toward competing conceptions of the good life generally - to respect people's capacity to choose their own values and ends.⁸⁷

One may wonder, however, if indeed perfectionist state policies are necessarily antithetical to autonomy. Those who embrace such an opinion must equate state perfectionism necessarily with coercive and anti-autonomous policies. This need not be true. The state may seek to advance certain conceptions of the good without being oppressive or coercive in doing so. Thus, individual autonomy may still flourish under a

perfectionist state that respects such autonomy, yet seeks to advertise some ideals of the good which it judges to be necessary for the polity to thrive. Once we sever the link between perfectionism, which is the promotion of some good, and oppression or coercion, then there will be room for individual autonomy to assert itself. For instance, the government may believe in the harm of pornography and strive to promote values which it believes to be decent and that oppose those of pornography, yet admit the freedom of speech of pornography advocates who bandy about what they believe to be the good of a pornographically unfettered possible world.

Moreover, the state may be anti-perfectionist, that is to say, refrain from promoting any ideals of the good, from taking a moral position in any controversy between virtues and vices, yet be through its laws restrictive toward some ideals of the good as to be non-neutral or partial for those who embrace these ideals. Its anti-perfectionism would not guarantee its impartiality. It would, furthermore, imply putting a crimp in individual autonomy, the supreme value of the deontological liberals, making such government immoral. We can illustrate such government anti-perfectionism by stating that it does not strive to promote any virtues, keeping in effect its nose off the moral agenda

altogether, allowing its citizens to live their private lives as they please, yet extending its legal arm where the private becomes part of the public domain. Yet, in this instance, we are back to the private-public controversy, whereby different people with different ideals of the good may see the limits between the two as too restrictive of their individual autonomy, thus non-neutral or partial. While the government may be adamantly anti-perfectionist, it can still be seen by the autonomy supporters as egregiously biased, since it would be restrictive of one's autonomous moral domain.

Similarly, perfectionism need not be anti-autonomous. The government may promote ideologically the values of decency versus indecency, of pro-choice versus pro-life, of civil virtues versus non-civil vices, of pacifism versus belligerency, of civil peace versus civil war, of pornography-free communities versus pornography-rife ones, of drug-free neighborhoods versus drug-infested ones, of sobriety versus inebriety, of the work ethic versus the slothful ethic, of modesty versus profligacy, and so on, yet refrain from applying the coercive arm of the law given one's choices in these matters, unless one's private morality, considered to be of his private autonomous domain, spills onto the public domain where the material harm principle, for instance, takes over. It seems, then, that

both perfectionism and anti-perfectionism can infringe upon individual autonomy and limit the scope of one's moral domain, and that they both may respect in an equal measure large patches of private autonomy. Thus, both perfectionism and anti-perfectionism may be seen as possibly non-neutral or biased, at least viewed from the perspective of individual autonomy. Moreover, as we have seen, perfectionism need not be coercive, that is, infringing upon individual autonomy. As Raz affirms, "Not all perfectionist action is a coercive imposition of a style of life. Much of it could be encouraging and facilitating action of the desired kind, or discouraging undesired modes of behavior."⁸⁸

Furthermore, state perfectionism may seek to promote autonomy, that is to say, recognize the value of individual autonomy or freedom and strive to promote the conditions which should enhance autonomous choices. Such focus on autonomy as a good to promote is compatible with perfectionism, which "includes a particular view, or range of view, about what dispositions and attributes define human perfection, and (it) views the development of these as our essential interest. Perfectionists demand that resources should be distributed so as to encourage such development."⁸⁹ Assuming that economic well-being or the freedom from indigence allows one to be more autonomous than otherwise, given

the greater options one can choose from, the government can create the ideal conditions for enhancing everyone's economic opportunities, hence increasing the scope of their autonomy. Perfectionism, in this instance, can be sufficiently compatible with autonomy, and actually would be enhancing its range.

On the contrary, a government that may be too deep in its neutralism, letting for instance the invisible hands of the market determine in an unbridled fashion one's economic fate without a safety net to help those who do not make it in the economic free-for-all, supposedly in the name of individual freedom and its concomitant free market ideal, would be doing a great disservice to the autonomy of those who fail in this economic environment. If, furthermore, government neutrality entails not promoting any good, implying for instance that the government would not be in the business of promoting for everyone the value of a good, such as education or economic opportunity, then it follows that those who lack the wherewithal to educate themselves will be eventually left at the mercy of the educated ruling classes and will have few of the means that allow broader autonomous choices. In both cases, government neutrality would be hindering autonomy for many rather than enhancing it. As Raz claims, "the conditions of autonomy... consist of three

distinct components: appropriate mental abilities, an adequate range of options, and independence.”⁹⁰ If we specify that this independence will have also to be an economic one, and that to have an adequate range of options we ought to have the means to choose among these options, we can see how governmental perfectionism, in its promotion of the goods of education and economic opportunities would enhance the case for autonomy. This makes state perfectionism a much better political option than neutralism in the promotion of autonomy. In a way, political authority becomes a better ally of autonomy than the abdication from such authority as in neutralism. As Raz puts it, “the doctrine of autonomy-based freedom is not inimical to political authority. On the contrary, it looks to governments to take positive action to enhance the freedom of their subjects.”⁹¹

For Galston, perfectionism entails a “philosophic attempt to identify superior aspects of human existence or traits of character and, once having identified them, to use them as goals of political life.”⁹² One can very well identify some of the “superior aspects of human existence or traits of character” to be individual autonomy and seek to promote it by providing for the conditions that should enhance such autonomy, be it

education and economic betterment, and encouraging the virtues that would protect it, such as work ethic, private initiative, tolerance of others within the liberal limits, so on. The liberal polity that supports individual autonomy is not necessarily incompatible with perfectionism. On the contrary, it may seek such perfectionism to sustain greater autonomy among its citizens. One wonders why such perfectionism has been so often described as antithetical to individual autonomy, as necessarily authoritarian or coercive, when it can actually help reinforce it more so than neutralism. As Raz affirms, "Governments are subject to autonomy-based duties to provide the conditions of autonomy for people who lack them."⁹³ Such duties are what government perfectionism could entail, and it need not be antithetical to individual autonomy.

We have seen thus that neutralism can be more inimical to individual autonomy than some type of perfectionism that might be called, appropriately enough, autonomy-based. This is because neutralism abdicates from asserting or defending any conception of the good except its own, and individual autonomy was seen to be a good that needed promoting and defending. It was clearly seen that such a good was quite vulnerable in view of the inequalities of the market place which, if allowed to remain unchecked, would favor some at the expense of enslaving

others. Thus, this good of autonomy needed adequate protection in order to thrive, which autonomy-based perfectionism seems to provide more adequately than a neutralism that by definition would ignore the problem altogether.

In the next, and final, chapter I will focus on reconciling liberalism with the perfectionist and communitarian concerns. This reconciliation will be done without, however, betraying the fundamental liberal concerns which grounded the call for neutralism, those of the liberalism of fear and individual autonomy. In this chapter, I have tried to show how the call for state neutralism was ill-founded. In the next chapter, I will explain how heeding the calls of perfectionism and communitarianism does not necessarily betray the basic premises of liberalism, and that liberalism actually is more perfectionist and communitarian than liberal neutralists are keen to admit.

Notes to the 4th Chapter

1. George Sher, *Beyond Neutrality: Perfectionism and Politics* (Cambridge: Cambridge University Press, 1997), p. 34.
2. John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), p. 62.
3. Ibid, p. 92.
4. Amy Gutmann (ed.), *Multiculturalism*, p. 4.
5. William Galston, *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State* (Cambridge: Cambridge University Press, 1991), p. 300.
6. Raz, op. cit., p. 113.
7. ibid., Raz quoting A. Montefiore, from *Neutrality and Impartiality*.
8. Charles Larmore, *Patterns of Moral Complexity* (Cambridge: Cambridge University Press, 1987), p. 24.
9. ibid., p. 106.
10. Rawls, "The Idea of an Overlapping Consensus," in C. Johnson (ed.) *Philosophy of Law* (NY: MacMillan, 1993), p. 187, footnote 17.
11. Charles Taylor, "The Politics of Recognition," in A. Gutmann (ed.), op. cit., p. 25.
12. ibid., p. 28.
13. ibid.
14. Rawls, "A Kantian Conception of Equality," in Robert M. Stewart (ed.), *Readings in Social and Political Philosophy* (NY: Oxford University Press, 1986), p. 192.
15. Stephen Macedo, *Liberal Virtues: Citizenship, Virtue and Community in Liberal Constitutionalism* (Oxford: Clarendon Press, 1990), p. 212.
16. Rawls, *A Theory of Justice*, op. cit., p. 256.
17. Larmore, op. cit., p. 132.
18. ibid., p.560.
19. Raz, op. cit., p. 155.
20. Taylor, op. cit., p. 57.
21. Sandel, "The Procedural Republic and the Unencumbered Self," in Robert E. Goodin and Philip Pettit (eds.), *Contemporary Political Philosophy: An Anthology* (Cambridge, MA: Blackwell Publishers Ltd., 1997), p. 250.
22. ibid.
23. Sandel, *Liberalism and the Limits of Justice* (NY: Cambridge University Press, 1982), p. 177.
24. Rawls, op. cit., p. 302.

25. *ibid.*, p. 252.
26. Sandel, "The Procedural Republic and the Unencumbered Self," *op. cit.*, p. 250.
27. Immanuel Kant, *Groundwork of the Metaphysic of Morals*, translated by H. J. Paton (NY: Harper & Row, 1964), pp. 101-102 (434).
28. Alasdair MacIntyre, *After Virtue* (Notre Dame, Ind.: University of Notre Dame, 1984), pp. 204-5.
29. Larmore, *The Morals of Modernity* (NY: Cambridge University Press, 1996), p. 129.
30. Bruce Ackerman, "Why Dialogue?" *Journal of Philosophy* 86, 1 (January 1989), p. 13.
31. *ibid.*
32. *ibid.*, p. 14.
33. *ibid.*
34. *ibid.*
35. Rawls, *op. cit.*
36. *ibid.*, p. 18.
37. *ibid.*, p. 19.
38. Ackerman, *op. cit.*, p. 15.
39. Galston, "Two Concepts of Liberalism," *Ethics* 105 (April 1995), p. 518.
40. Larmore, "Pluralism and Reasonable Disagreement," in Ellen Paul et al. (eds.), *Cultural Pluralism and Moral Knowledge* (NY: Cambridge University Press), p. 61.
41. See Rawls's *Theory of Justice*, *op. cit.*, especially pp. 11-22, 60-65, 150-161, 251-257.
42. Larmore, *op. cit.*, p. 74.
43. Thomas Nagel, "Moral Conflict and Political Legitimacy," *Philosophy and Public Affairs* 16, 3 (Summer 1987), pp. 231-32.
44. Rawls, *Political Liberalism* (NY: Columbia University Press, 1996), p. 375.
45. See Rawls, *ibid.*, pp. 54-58.
46. *ibid.*, p. 55.
47. *ibid.*, p. 56.
48. *ibid.*, p. 58.
49. Ackerman, *op. cit.*, p. 13.
50. *ibid.*, p. 14.
51. *ibid.*, p. 14.
52. *ibid.*, pp. 14-15.
53. Rawls, *A Theory of Justice*, *op. cit.*, p. 29.

54. Ackerman, *op. cit.*, p. 14.
55. Rawls, *op. cit.*, p. 28.
56. *ibid.*
57. Ackerman, *op. cit.*, p. 15.
58. Rawls, *op. cit.*, p. 302.
59. Ackerman, *op. cit.*, p. 15.
60. *ibid.*, p. 16.
61. *ibid.*
62. See Sher, *op. cit.*, p. 31, and p. 79: "premises about the good life are not allowed to shape the principles of justice." See also Raz, *op. cit.*, p. 117: "no perfectionist standards will be adopted." See also Larmore, *Patterns of Moral Complexity*, p. 44: "Rawls's original position is best understood as a position of neutrality..."
63. Larmore, *Patterns of Moral Complexity*, *op. cit.*, p. 44.
64. *ibid.*
65. Rawls, *Political Liberalism*, *op. cit.*, pp. 192-193.
66. *ibid.*, p. 192.
67. *ibid.*, p. 193.
68. *ibid.*, p. 194.
69. *ibid.*, p. 193.
70. *ibid.*, p. 194.
71. *ibid.*
72. *ibid.*, p. xxix.
73. Ackerman, *op. cit.*, p. 16.
74. *ibid.*
75. Sher, *op. cit.*, p. 15.
76. *ibid.*, p. 107.
77. See F. Nietzsche, *On the Genealogy of Morals* (NY: Vintage Books, 1989).
78. Judith Shklar, "The Liberalism of Fear," in Nancy Rosenblum (ed.), *Liberalism and the Moral Life* (Cambridge, MA: Harvard University Press, 1989), p. 27.
79. See Sher, *op. cit.*, chapter 5.
80. *ibid.*, p. 106.
81. Shklar, *op. cit.*, p. 29.
82. *ibid.*, p. 30.
83. *ibid.*, p. 29.
84. *ibid.*
85. See Kant, *op. cit.*
86. Taylor, *op. cit.*, p. 57

87. Sandel, *Democracy's Discontent*, op. cit., p. 66. See also Larmore, *Patterns of Moral Complexity*, op. cit., pp. 51-52.
88. Raz, op. cit., p. 161.
89. Kymlicka, op. cit., p. 33.
90. Raz, op. cit., p. 372.
91. Ibid., p. 427.
92. Galston, *Liberal Purposes*, op. cit., p. 79.
93. Raz, op. cit., p. 415.

Chapter 5

Liberalism, Perfectionism, Communitarianism: A Reconciliation

In this chapter, I will expand on the idea I have limned before, namely that perfectionism and communitarianism need not be incompatible with the liberal concerns that the principle of toleration and the principles of justice seem to address, those of the liberalism of fear and individual autonomy. This will be done by showing that liberalism actually is perfectionist and communitarian in many essential respects, such as in the principles of right or justice it defends. To prove my thesis, I will examine in more detail the liberal principles of justice as expounded by Rawls, showing that these principles are non-neutral, and actually harbor fundamentally perfectionist and communitarian affinities, while addressing the concerns of fear and autonomy. I have already argued that liberal toleration was non-neutral yet addresses, at least for many liberal thinkers, the concerns of the liberalism of fear and autonomy. In this chapter, I will turn to examining the non-neutrality of the liberal right or justice, or rather the perfectionist and communitarian strands they harbor.

By arguing that liberalism, through its principles of justice, harbors perfectionist concerns, I mean that it embraces conceptions of the good which enter into the construction of these principles and which it seeks, whether directly or indirectly, to preserve or reproduce. Perfectionism, indeed, asserts that there are moral doctrines, religious or secular values and practices, and philosophical ideals which are deemed superior to others, conceptions of the good that are worth preserving and need to be reproduced socially and culturally. By referring to its communitarian affinities, I mean that liberalism comprises a philosophical, moral and religious tradition which shapes a common conception of the good that unites the liberal citizenship on a principled basis. Communitarianism asserts that there is a common good, and a tradition of a common good, or one that carries conceptions of the good, which help unite civil society and bring social stability, mainly on principled grounds.

Basically, it will be shown that liberal neutralism, as espoused by some liberal thinkers such as Rawls, and as reflected in his principles of justice or the right he advocates, while striving to conceal its partisanship, betrays perfectionist and communitarian sympathies. I will expand on my previous analysis of Rawls's principles of justice in order to show why such principles do not yield a neutral position, and rather sustain

perfectionist and communitarian tendencies. If we take liberal toleration and principles of justice as the two mainstays of the liberal neutral concern, and having already argued how liberal toleration is not neutral, this chapter will be devoted to the discussion of the neutral claims of the liberal principles of justice.

The Right and the Good

a) Different Views of the Right and the Good

One of the contentious points between liberalism, on the one hand, and perfectionism and communitarianism, on the other, has been the relation between the right and the good. While liberalism has established the priority of the right over the good, as we have seen before, both perfectionism and communitarianism emphasize the good for a morally grounded social unity, the former in promoting goods essential for the reproduction of values or virtues essential for the survival of the polity, the second in its quest for a common good around which citizens will unite. Whereas perfectionism wants the state to promote or strengthen the good, liberal neutralism wants the good to be outside the public agenda, at any rate outside the determination of the state's basic structure, that is to say, its legal, social, economic and political structure. Furthermore, communitarianism disputes that the right is prior to the

good or ought to be, and claims that the latter is derived, whether implicitly or explicitly, from the ideals of the good. For the communitarians, the good is a important if not more important than the right, as we have seen in our discussion of the encumbered and unencumbered selves. At any rate, for communitarians, the right takes its cue from the good, and not vice versa, understanding the good in the broader sense of ideals of the good. Both perfectionists and communitarians would want to close the gap between the right and the good, and would argue that a society is strengthened when this gap is not as great as liberal neutralists would paint it to be.

b) Defining the Right and the Good

One can say that the liberal right, similarly to a Kantian duty or categorical imperative, is ideally removed from all traces of partiality, or heteronomy, and affirms a universal or transpersonal ambition. This conception of the right means that “there are obligations unconditionally (or ‘categorically,’ as Kant would say) binding on all agents, whatever their interests or desires.”¹ As such, it would be the arbitrator of conflicts between our particular commitments, which would be the domain of the good. According to Sandel, the principles of right “express the autonomy of the agent and must be free from contingencies, (while) the conceptions

of the good are understood to be heteronomous throughout.”² For Sher, the conception of the good would include “religious doctrines, ideals of character and virtue, aesthetic and cultural values, and norms of sexual behavior,”³ to which we should add philosophical doctrines. By establishing the right prior to the good, liberal neutralists strive in effect to establish a value-domain that transcends the particularities and partialities of our ideals of the good that purportedly divide citizens of a plural state. By doing so, the right becomes a domain where impartial judgments are made, judgments that all reasonable citizens would agree to because they reflect their universal identity, which in turn reflects their universal or transpersonal needs. In that way, the right becomes the domain of neutrality.

The right, moreover, would be for deontological liberalism similar to the two principles of justice advanced by Rawls, which express essentially the following: “first, equal basic liberties for all, and second, only those social and economic inequalities that benefit the least-advantaged members of society (the difference principle).”⁴ These principles are to arbitrate between the conflicts of the good among citizens and remain removed from controversies swirling around the good. As Rawls puts it, “In a constitutional democracy the public

conception of justice should be, so far as possible, independent of controversial philosophical and religious doctrines.”⁵

c) Conflicts of Priority

Yet, while the liberals want to place the right above the good or prior to it, there is much controversy surrounding this priority, a controversy that denies the impartiality of the liberal position. In a way, liberalism attempts to describe the right as a position of neutrality, one that could impartially arbitrate among conflicts of the good, one to which all reasonable citizens harboring different conceptions of the good could defer. Such deference would follow the recognition of its impartiality or non-hierarchy among ideals of the good. This neutrality would purportedly ensure the legitimacy of the liberal state, as citizens with different ideals of the good would embrace the neutral state which does not discriminate against any of their “reasonable” ideals, although reasonableness, as we have seen earlier, will be defined according to liberal criteria. However, as communitarians such as Sandel have explained, the priority of the right rides on a notion of an unencumbered self that is impossible to sustain, given that our identities are embedded in significant particular commitments and attachments, in partial conceptions

of the good which provide us, following what Rawls says, with the “meaning, value and purpose of human life.”⁶

According to Sandel, deontological liberalism “asserts the priority of the right over the good...(and) it is above all a theory about justice, and in particular about the primacy of justice among moral and political ideals.”⁷ This priority means, furthermore, not only that the claims of the right “take precedence, but also...(that) its principles are independently derived.”⁸ This is echoed by Rawls who states that “our way of life, whatever our particular circumstances, must always conform to the principles of justice that are arrived at independently.”⁹ Rawls derives his principles of justice by relying on the artificial construct of the original position, whereby the particularities of our encumbered identities and the knowledge of our conceptions of the good are taken away pursuant to a veil of ignorance. We are then left with the common needs we have with others, with the goods that are universally expressed, those that purportedly all persons want, things such as material betterment, physical security, health, freedom, so forth. Rawls expresses this commonality in the following way: “We suppose that all citizens have a rational plan of life that requires for its fulfillment roughly the same kind of primary goods.”¹⁰

Yet, one realizes that the price to pay for getting to principles of justice derived somewhat independently from our conceptions of the good, would be quite an impoverished identity. These principles of justice, in other words, may satisfy the requirements of this impoverished identity, yet they would leave our fuller identity, our encumbered self, in a state of frustration. In other words, the right may become prior to some good, but cannot be prior to all of our goods or contents of our conceptions of the good, those conceptions that express our fuller identity, our selves embedded in our social, cultural, moral, communal, linguistic, religious, philosophical commitments and attachments, since the right addresses mainly the concerns of our primary needs and primary goods.

d) Priority of the Right and Neutrality

If the right is to express a position of impartiality or neutralism, this may not happen for two reasons. One is that our conceptions of the good, which express, as we have said, “the meaning and value of human life,” could entail commitments that contradict the principles of justice or whatever right is posited prior to the good. We may have religious and moral duties, or ethnic commitments, that contradict the Rawlsian principles of justice with their abstract emphasis on equality, liberty, and

the difference principle. Second, these principles of justice may simply offer a necessary condition of impartiality but not a sufficient one, since there are many goods that the right could not arbitrate over, as the principles of justice (or right) are derived not from our full identity, but from a partial, stripped down, version, and seem to address mainly the claims of this version. As Rawls says,

The idea of restricting appropriate claims to claims to primary goods is analogous to taking certain needs alone as relevant in questions of justice. The explanation is that primary goods are things generally required, or needed, by citizens as free and equal moral persons who seek to advance (admissible and determinate) conceptions of the good.¹⁰

While Rawls may affirm that “our desires and aspirations are restricted from the outset by the principles of justice,”¹¹ those desires and aspirations that would be restricted may be those belonging to conceptions of the good that are antithetical to the liberal ethos. While they may express our fuller identity, these conceptions of the good, along with the desires and aspirations they entail, are not “admissible” if they are incompatible with liberalism, or the liberal conception of the good. As we shall see later on, the reason that the Rawlsian right or principles of justice are compatible with the liberal ethos or conceptions of the good is because this right is derived from these conceptions, be it the

philosophy of Locke, Kant or Mill, and the Protestant outlook that inspired their philosophies, as we have seen when discussing toleration.

Moreover, the fact that many important aspects of our identity have been shunted aside in the construction of the original position, in favor of the universality of our primary goods,¹² would point to a liberal bias toward an unencumbered or Kantian autonomous self, a self shorn of tradition-based morality, of religious affiliation, of communal or ethnic sympathies, of socially embedded desires, of particular history, of ethnic affiliation, thus a bias toward a philosophical conception, toward ideals of the good that inform the derivation of the principles of right. If that is the case, how could liberal thinkers, such as Rawls, affirm the priority of the principles of justice? If indeed they are derived from liberally conceived conceptions of the good, such as basic rights and liberties, besides the emphasis on economic goods, if they are guided by these, then these are prior, that is to say, the good would in fact be prior to the right. This contradicts the basic claim of deontological liberalism which, according to Sandel, expresses the following:

For Kantian liberals...the right is prior to the good, and in two senses. First, individual rights cannot be sacrificed for the sake of the general good; and second, the principles of justice that specify these rights cannot be premised on any particular vision of the good life.¹³

Yet, we see that the vision of the primary goods is inspired by a liberal vision of the good, whether deontological or not. Such primary goods, which enter into the construction of the Rawlsian principles of justice, are based on conceptions of the good that express Lockean, Kantian and Millian philosophies, with their emphasis on basic rights, equality and individual autonomy. As Sandel puts it, "Don't arguments about justice and rights unavoidably draw on particular conceptions of the good life, whether we admit it or not?"¹⁴ Moreover, the drive to equality, basic rights and individual autonomy, not to mention the emphasis on the priority of the right, could also express religious visions of the good, among others those of the Christian faith, as we have seen when examining some of the bases of toleration. According to Larmore, there are clear Christian roots underlying the Kantian liberal emphasis on the priority of the right over the good. He writes:

It has its beginnings among later medieval Franciscans such as Scotus and Ockham. Rejecting the idea of a perspicuous natural order in the name of God's omnipotence, they shifted the source of moral principles from what men naturally desire to what God commands. Indeed, Scotus startlingly anticipated later developments we associate with Kant when he argued that the Christian rule of loving others for their own sake and thus a real sense of justice cannot draw on that natural desire for self-perfection which, as he observed, underlies Aristotelian and

Thomistic ethics, but only on a freedom of the will that can suspend that desire.¹⁵

Rawls, furthermore, asserts that the original position is a procedure, a decision-making process which “incorporates...commonly shared presumptions.”¹⁶ If we take these presumptions to be liberal conceptions of the good, then we could say that the Rawlsian principles of justice, the right, are derived from liberal conceptions of the good. This is quite contrary to what the Kantian or Rawlsian liberal claims, as when Rawls asserts, in the above-mentioned quotation, that “our way of life, whatever our particular circumstances, must always conform to the principles of justice that are arrived at independently.”

Rawls’s Political Liberalism

a) Appealing to Liberal Intuitions

To avert these criticisms, which point to principles of justice embedded in liberal and Christian conceptions of the good, or in comprehensive doctrines, Rawls devises his political liberal strategy, whereby the principles of justice are derived not from “general and comprehensive moral doctrines,”¹⁷ such as those of Kant and Mill, but from the principles that are latent in a liberal democracy. This takes him from the concept of justice as fairness to that of a political conception of

justice, reflected in what he calls political liberalism. As he says, a political conception of justice “is not formulated in terms of a general and comprehensive religious, philosophical or moral doctrine but rather in terms of certain fundamental intuitive ideas viewed as latent in the public political culture of a democratic society.”¹⁸ In other words, for those citizens of liberal democracies, the justification of the political conception of justice will not be, as per the justice as fairness, the philosophies of Locke, Kant or Mill, which other citizens might balk at and find controversial, but simply democratic intuitions we happen to have because we grew up in a democratic tradition.

Thus, Rawls in drawing his political conception of justice, has distanced himself from the philosophical doctrines of Kant and Mill which entered into the configuration of his principles of justice, doctrines that he calls general and comprehensive. This means that they apply “to a wide range of subjects,” hence general, and include “conceptions of what is of value in human life, ideals of personal virtue and character that are to inform our thoughts and conduct as a whole,” hence comprehensive.¹⁹ So in order to take into account reasonable pluralism Rawls asserts that political liberalism “transforms the doctrine of justice as fairness as presented in *Theory* into a political conception of justice that applies to

the basic structure (society's main political, constitutional, social, and economic institutions) of society."²⁰ This political conception of justice will be "freestanding when it is not presented as derived from, or as part of, any comprehensive doctrine."²¹

The problem with Rawls's political conception of justice is that it takes for granted that in a society divided by reasonable pluralism, the citizens will agree on the same principles of right to arbitrate between their conceptions of the good. The idea that the right will be derived from latent ideas in society may be too optimistic when significant differences divide citizens' ideals of the good. Unless such pluralism is benign and does not involve deep religious, philosophical and moral rifts, then one could not assume that the diverse citizens would agree on common principles of justice that would arbitrate amongst their diverse ideas of the good. In order to reach common principles of justice acceptable to all citizens there ought to be significant compatibility and agreement between their conceptions of the good. This agreement is not necessarily a given. If there is no such agreement, one cannot sweep the deep differences aside and claim that the principles of justice address the main problems dividing the polity, when these principles simply reflect a

partial agreement, and are not comprehensive and general enough to address serious contentious issues that involve ideals of the good.

Furthermore, to rely on democratic intuitions that are latent in our democratic societies, assuming they are widely prevalent to assert a politically assertive majority that will give much greater bargaining power to the liberals than to the non-liberals, means that we are simply borrowing an indirect route to the comprehensive doctrines of Locke, Kant, Mill and other liberal thinkers who influenced the formation and development of our liberal institutions. The fact that our democratic intuitions are the result of liberal philosophies that influenced the institutions which in turn influenced these democratic intuitions, does not make our recourse to these existing intuitions any less a recourse to the liberal philosophies that influenced them. Furthermore, assuming we have to argue our liberal beliefs with non-liberals, are we to sustain our argumentation by saying our beliefs rely simply on intuitions that exist broadly in our society? What arguments can we offer to other societies that have prevailing non-liberal intuitions (few human rights and individual freedom, predominance of group rights, caste-system, so on)? Can we simply affirm that their intuitions are well supported, simply

because they happen to live in a society where those intuitions are prevalent?

b) Liberal Tradition and Communitarian Inklings

At any rate, Rawls seems to appeal to a tradition of democracy to sustain his right, a tradition which the communitarians would view as a good inspiring the right, or which they have clamored is absent from liberalism. As he says, the intuitive ideas which should inspire his political justice and which “are used to articulate and order in a principled way its basic political values,” hence to bring about the right, are derived from “a tradition of democratic thought, the contents of which is at least intuitively familiar to citizens generally.”²² He adds that “these ideas and principles can be elaborated into a political conception of justice, which we hope can gain the support of an overlapping consensus.”²³ Finally, he asserts that “what is important is that, so far as possible, these fundamental intuitive ideas are not taken for religious, philosophical or metaphysical ideas.”²⁴

There are many problems in the above assessment of the political conception of justice. One is that the democratic tradition and the ideas latent in this tradition may not be shared by all citizens or all communities in the diverse polity, and the intuitive ideas found in a democracy, for

instance of equality and freedom,²⁵ may be too philosophically and religiously situated to give Rawls much credence when he claims that the intuitive ideas are “not taken from religious, philosophical or metaphysical ideas.” As Jean Hampton puts it, “What justifies the inclusion of a belief in our freedom and equality in such a consensus, particularly if some members of the pluralist society do not accept them, or have substantially different interpretations than Rawls of what these concepts mean?”²⁶ She goes on to talk about democratic societies that “included citizens who embraced a religion that used certain criteria to divide people up into different castes that defined their status.”²⁷ As Hampton says, “Such people, in view of their religious beliefs, would reject and take to be unreasonable the use of political power to enforce Rawls’s idea of equality.”²⁸

Furthermore, while Rawls is suggesting that there are intuitive ideas in a democratic tradition from which the right is to take its cue, this implies that these intuitions are automatically right, and that one is to take the rightness of a tradition for granted. One may, however, espouse moral, philosophical or religious principles that are antithetical to what this tradition stands for, as we have seen already. Why should these principles defer to the intuitive ideas found in society? It looks like Rawls

is making tradition the purveyor of his principles of justice or of his right, no matter what that tradition may be. This is akin to making the “theory of justice entirely contingent on what fundamental beliefs people happen to believe.”²⁹ As we happen to share a democratic tradition and the fundamental beliefs rife in that tradition, then principles of right compatible with this tradition and beliefs will ensue. Furthermore, there could be, in a plural society, different traditions that are in the shadow of a dominant one. Why would these traditions take the dominant one to be the right one? Is it simply because it is dominant that most people ought to abide by it? Does majority or tradition necessarily equate rightness? It seems that Rawls, through his political conception of justice, is saying just that. As Hampton asks, “Does (Rawls) think (the beliefs comprised in a liberal democracy) should be allowed to play a normative role in the society only because (as it happens) they are common ground?”³⁰

Moreover, by not being exhaustive enough, or general and comprehensive, the political conception of justice which Rawls affirms, may become irrelevant in many disputes between the conceptions of the good of citizens, aspects touching their morality, their religious practices, their philosophical disputes. And even if the principles of justice should apply, one can deny the relevance of principles based on a tradition.

Furthermore, this tradition has not come about from thin air, as we already saw. It has been guided and nurtured by many religious, philosophical and moral ideas, visions of the good that instructed its development and evolution, and which supported it when controversies arose as to its rightness. Thus, it is the result of religious, moral and philosophical doctrines, as we said before, such as the ideas of Christian theologians and the philosophies of Locke, Rousseau, Kant, or Mill, not to mention all the philosophers who influenced these, and influenced to some degree the development of the democratic tradition. To say that democracy is simply a tradition without such philosophical and religious lineage, or to ignore the latter, and to claim that by grasping at the intuitive ideas that a tradition expresses one does not grasp at the “religious, philosophical or metaphysical ideas” which these intuitions presuppose, is to commit intellectual dishonesty.

Be that as it may, the fact that the political conception of justice will be purportedly derived from intuitions latent in our liberal democracies, makes this conception less freestanding than steeped in the “good” one finds in that tradition. And that “good” expresses the ideals of the good presupposed by that tradition or that helped create that tradition. We are thus back to the priority of the good over the right,

since the right in this case is derived from the former. Given, as we said, that these intuitive ideas which the tradition harbors are themselves distilled from conceptions of the good expressing philosophical, religious and moral doctrines, then one can see how this right is indeed derived from a comprehensive vision of the good. It follows that the right that is derived is less impartial or neutral than deontological liberals or liberal neutralists could claim, since it reflects ideals of the good, and these cannot be seen as impartial when publicly affirmed by those espousing ideals of the good incompatible with those of other citizens. The outcome is that the liberal society with its intuitive democratic ideals would be “theoretically partisan rather than neutral.”³¹ As Hampton puts it, “The search by Rawls (and others) for a neutral but genuinely legitimating form of liberalism is quixotic.”³²

We have seen so far that in both approaches to the right, whether through the principles of justice as fairness justified by the comprehensive doctrines of Kant and Mill, among others, or through the political conception of justice justified by the latent democratic intuitions prevalent in a constitutional democracy, Rawls is actually justifying his principles of justice on the basis of explicit or implicit ideals of the good. These ideals are simply the philosophical, moral and religious doctrines and thoughts

that influenced the development of a democratic society, be it the ideals of toleration advanced by Locke and Mill, those of individual autonomy espoused by Kant, the defense of basic rights and equality promoted by many philosophers of the liberal tradition, so on. So in both cases the quest for the right passes actually through the good. The liberal neutralist quest, which aimed at reaching the right that is prior to the good and that is independent of the latter, a right above the controversies surrounding the different ideals of the good and that would arbitrate impartially among these controversies, a right that is consented to by all reasonable citizens, independently of their ideals of the good, and that is thus legitimate, such neutralist quest seems to come to naught when the right is found to be actually significantly steeped in ideals of the good that happen to be liberal.

Furthermore, to make the good in fact prior to the right, in the sense that the latter is derived from it, makes the liberal position to some extent a communitarian one, since for communitarians the good is prior to the right or at least is at an equal footing with it, if we understand broadly the good as conceptions of the good carried through tradition. If we take the good and its conceptions to be part of the tradition of a community or a society, as communitarians claim, it is obvious that Rawls

in his political conception of justice is ushering us into this traditional route by asking us, in our search for the right, to refer to the ideas latent in a democratic tradition or whatever predominant tradition we happen to be in. This means that in order to reach the right we have to take into account the situation of our encumbered selves, the selves embedded in the customs or traditions of the societies we grow up in. As Sher puts it, “one of the (communitarian) most prominent themes is that each person’s identity is somehow bound up with his society’s practices, conventions, and history.”³³ In other words, each person’s identity is encumbered by his society’s tradition, and Rawls is telling us to heed the call of our encumbered selves. If we take the right as prior to the good to entail a disencumbered self, as Sandel claims,³⁴ then appealing to our encumbered selves to derive the principles of right, as Rawls suggests, makes the good prior to the right.

So in both cases, whether the principles of justice are derived from Kantian and Millian general and comprehensive philosophies, or justified by appeal to these, or whether these principles are derived, as per political liberalism, from the intuitions latent in democratic tradition we happen to be in, the good becomes in effect prior to the right. Although the right will be prior in the sense that it places a “constraint (on) the

pursuit of the good,”³⁵ or that citizens will accept “to conform their conceptions of their good to what the principles of justice require,”³⁶ still the content of these principles of right depends crucially on what the conceptions of the good stipulate, whether expressed in an unexamined tradition or in examined philosophical and moral comprehensive doctrines carried by tradition. The nature of the right becomes then significantly subordinate to the nature of the good. Such subordination of the right to the good makes the liberal position more dependent on the notion of a liberally encumbered self, one steeped in the liberal tradition or brought up absorbing the philosophical, moral and religious doctrines that have nurtured this tradition, in which case this liberal position becomes closer to the communitarian one than the liberal neutralists surmise. Being partial to the liberal traditional ethos or its philosophical and religious premises, the right espoused by deontological liberalism becomes one that is far from the neutrality or impartiality it aimed for, a neutrality which was to legitimate the liberal polity in the eyes of its diverse citizens. In that case, liberalism remains a partisan doctrine with a misbegotten impartial goal. As Hampton puts it, “the growing literature purporting to develop a ‘neutral’ form of liberalism is deeply misguided.”³⁷

At any rate, the present analysis of Rawls's justice as fairness and political justice indicates that Rawls does not in fact hew to what he claims in his *Theory of Justice* : "Our way of life, whatever our particular circumstances, must always conform to the principles of justice that are arrived at independently."³⁸ He adds that "the arbitrary features of plans of life do not affect these principles, or how the basic structure is to be arranged...The priority of the right prevents this."³⁹ Elsewhere, he asserts that "in justice as fairness the concept of right is prior to that of the good...something is good only if it fits into ways of life consistent with the principles of right already on hand."⁴⁰ However, Rawls does not recoil from any notion of good from his construction of the principles of justice. He does appeal to a thin theory of the good, which rests on his notion of the primary goods. In this regard he writes:

But to establish these principles (of justice) it is necessary to rely on some notion of goodness, for we need assumptions about the parties' motives in the original position. Since these assumptions must not jeopardize the prior place of the concept of right, the theory of the good used in arguing for the principles of justice is restricted to the bare essentials. This account of the good I call the thin theory: its purpose is to secure the premises about primary goods required to arrive at the principles of justice.⁴¹

However, we have shown already that the "notion of goodness" on which Rawls relies is fundamentally thicker than "the thin theory" of

goods as reflected in the primary goods. In other words, there is a disingenuous appeal to primary goods which all citizens purportedly share, while the real premises of his principles of justice are the comprehensive conceptions of the good, as filtered through the philosophies of liberal thinkers, such as Locke, Kant, or Mill, among others, and many aspects of the Christian ethos, or the democratic tradition which has been influenced fundamentally by these. Such philosophical references, as has been shown, feed not only into justice as fairness but also into political justice.

Of course, to deny the priority of the right over the good does not mean that the contingencies of life circumstances will guide our life, that there will be no duties to which we shall abide and that we believe must inspire our practices. The denial of such priority is simply to say that the right is itself derived from conceptions of the good rather than "independently derived." For the liberal neutralists to claim otherwise in their quest for a vantage point of right that will be impartial to all citizens has been shown to be disingenuous. So there is an element of confusion when Sandel asserts that "unlike the principles of right, which express the autonomy of the agent and must be free from contingencies, conceptions of the good are understood to be heteronomous throughout."⁴² For

while conceptions of the good may be "heteronomous throughout," they could lead to principles of justice that are considered "free from (present) contingencies." Thus, one may agree with the deontological liberal, for whom "the priority of justice...derives in large part from its freedom from the contingencies and accidents of the world,"⁴³ as long as these "contingencies" are current ones represented by our passing desires, whims and interests, and not the ones represented by our liberal tradition, the philosophical and moral principles we have inherited or absorbed from liberal thinkers and that represent the tradition of good we happen to have adopted and which inspired the construction of our principles of justice. In other words, if we believe in those ideals of the good that inspired our principles of justice, we shall embrace the latter and believe that, while they may not represent "the interests and attachments we may have at any moment,"⁴⁴ they do serve the deeper interests of our philosophical, moral and religious commitments. This, in the final analysis, seems to suggest that, ultimately, the principles of justice must defer to our conceptions of the good, our moral, philosophical and religious ideals. In other words, the good, in the broader sense of the overall ideals of the good, will be prior to the right, or the right, to be genuinely accepted on principle, must ultimately derive from the good. This, of course, would give the lie to

Rawls's priority of the right, as when he writes: "We should therefore reverse the relation between the right and the good proposed by teleological doctrines and view the right as prior."⁴⁵

Liberal Assumptions in Constructing the Right: Non-Neutral Implications

For Rawls, "justice as fairness tries to uncover the fundamental ideas (latent in common sense) of freedom and equality."⁴⁶ He goes on to write that "the constraints imposed on the parties in the original position, and the manner in which the parties are described, are to represent the freedom and equality of moral persons as understood in such a (well-ordered) society."⁴⁷ For Rawls, a well-ordered society is one that is

effectively regulated by a public conception of justice; that is, it is a society in which every one accepts, and knows that others likewise accept, the same first principles of right and justice. It is also the case that the basic structure of society, the arrangement of its main institutions into one social scheme, actually satisfies, and is believed by all on good grounds to satisfy, these principles. Finally, the public principles of justice are themselves founded on reasonable beliefs as established by the society's generally accepted methods of inquiry...⁴⁸

We see that Rawls's principles of justice rest fundamentally on the ideals of equality and freedom or autonomy, both notions deriving essentially from the Kantian moral philosophy, and both of which have inspired much of the liberal thought and ethos. This Kantian pedigree is

affirmed by Rawls, who sets out to explain "the Kantian roots of that conception (of justice)."⁴⁹ He goes on to assert that "the adjective 'Kantian' expresses analogy and not identity; it means roughly that a doctrine sufficiently resembles Kant's in enough fundamental respects so that it is far closer to his view than to the other traditional moral conceptions that are appropriate for use as benchmarks of comparison."⁵⁰ Furthermore, he points to the notions of freedom and equality which the Kantian doctrine affirms, and from which the principles of justice derive their inspiration: "[A] Kantian doctrine joins the content of justice with a certain conception of the person; and this conception regards persons as both free and equal."⁵¹

The original position, which Rawls uses to construct his principles of justice, is steeped in the liberal predilection for equality and freedom. As Rawls puts it: "Since the original position situates free and equal moral persons fairly with respect to one another, any conception of justice they adopt is likewise fair."⁵² It is in the name of such predilection for equality and freedom that the veil of ignorance is introduced in the original position and in the construction of the principles of justice. Or it is such predilection which shapes the nature of the veil of ignorance, that is to say, what to admit and what to omit in constructing the original

contractual position from which justice as fairness should derive, how much of our circumstances and identity are to be factored in and how much to be extirpated. As Rawls says, "In order to ensure that the original position is fair between individuals regarded solely as free and equal moral persons, we require that, when adopting principles for the basic structure, the parties be deprived of certain information; that is, they are behind what I shall call a 'veil of ignorance.'"⁵³ Purportedly, by denying us some crucial information about our selves, such as our "place in society, (our) class position, or social status...(our) fortune in the distribution of natural talents and abilities...(our) conception of the good...(our) distinctive psychological dispositions and propensities" we are led to view ourselves as free and equal, or to elect principles of justice that respect fundamentally freedom and equality. The point is to eliminate "disparate bargaining advantages that would affect the agreement reached..."⁵⁴ To do so, we must eliminate certain information so that "no one is to be advantaged or disadvantaged by natural contingencies or social chance in the adoption of principles."⁵⁵ The veil of ignorance ensures that the persons in the original position "are situated equally as moral persons."⁵⁶

This fundamental emphasis on freedom and equality in the derivation of the principles of justice shows the debt of Rawls and that of the right he advocates to liberal conceptions of the good as represented by Kant. For Rawls, the general conception of justice implies a fundamental equality, whereby "all social primary goods - liberty and opportunity, income and wealth, and the bases of self-respect - are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored."⁵⁷ Similarly, the first principle of justice states that "each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all."⁵⁸ However, this emphasis on equality is not simply drawn from Kant's moral theory, but from liberal contract theorists, such as Locke and Rousseau, who contrived an original state of nature where all individuals are supposed to be equal. As Rawls puts it, "In justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract."⁵⁹

This Rawlsian drive to ensure equality and freedom in the construction of the principles of justice betrays obviously non-neutral liberal biases inspired by the liberal philosophies of Locke and Kant, among others, not to mention the Christian tradition that seeped into

these philosophies. As Brian Barry puts it, "Rawls's construction of the original position is anchored in substantive moral considerations at both ends."⁶⁰ Such drive leads Rawls to include in and omit from his original position differentiating identity traits that could yield principles of justice incompatible with the liberal moral and philosophical tradition. For Barry, "This, too, clearly embodies a fundamental moral commitment: a distinctively liberal idea about the way in which conflicts between conceptions of the good should be treated."⁶¹ Furthermore, the selection of the identity traits that are most appropriate to the liberal ideals of equality and liberty, will not meet with the approval of those who want the principles of justice to reflect more than minimalist claims. There may be other convictions that the original contractor would not want to be edited out in the original procedure, convictions that may have to do with a bias toward inequalities, to differentiation according to natural talent, social standing, caste or gender divisions, to religious beliefs that cannot be ignored. In this regard, the original position would be controversial, thus non-neutral, throughout, since it seems to affirm the hierarchical superiority of the liberal convictions. As Barry asserts, "no unreconstructed Thomist can be reconciled to justice as impartiality in any of its forms. Invited to step behind the Rawlsian veil of ignorance, he

will insist on taking with him his knowledge of natural law and divine revelation, thus subverting the whole exercise.”⁶²

Furthermore, Rawls in his treatment of the primary goods betrays a bias toward individual autonomy that is in the Kantian liberal tradition, as the rationale for primary goods is given in terms of individual autonomy. Before discussing this specific point, I will mention the connection between the primary goods and the principles of Justice. As Rawls says, “In justice as fairness primary goods enable us to make interpersonal comparisons in the special but fundamental case of political and social justice.”⁶³ He adds, “My thesis is that the problem of interpersonal comparisons in questions of justice goes to the foundations of a conception of justice.”⁶⁴ In other words, the “interpersonal comparisons” which the primary goods afford us enable us to ground the conception of justice, or to form its basic elements. This assessment is confirmed by Rawls: “By relying on primary goods, justice as fairness asserts that for questions of justice only certain kinds of considerations are relevant...primary goods are things generally required, or needed, by citizens as free and equal moral persons who seek to advance (admissible and determinate) conceptions of the good.”⁶⁵ The problem is to assess by whose criteria certain “considerations are relevant” and others are not.

Certainly, a vision of the good, and a liberal one at that, must guide Rawls in determining which will be relevant and which will be irrelevant. Such vision of the good is bound to clash with others, as we have seen when examining the liberal bias for equality earlier, so who is to arbitrate between these clashes? Assuming most citizens will embrace the notion of the primary goods, since they afford everyone the better pursuit of their conceptions of the good according to Rawls, yet they will not be sufficient to arbitrate between conceptions of the good. If they were, there will be no intractable conflicts between these conceptions, as the principles of justice, reflecting the primary goods that are embraced by everyone, will be deferred to by everyone, and they would regulate all “reasonable” conceptions of the good. However, Rawls does believe that the primary goods are sufficient for building principles of justice that are encompassing enough to arbitrate between conflicts of the good. He says, “The notion of primary goods...rests on the idea...that a partial similarity of citizens’ conceptions of the good is sufficient for political and social justice.”⁶⁶ This is due to the fact that “(citizens’) particular conceptions of the good, however distinct their final ends and loyalties, require for their advancement roughly the same primary goods, for example the same rights, liberties and opportunities, as well as certain all-

purpose means such as income and wealth.”⁶⁷ Besides the controversy surrounding an equality of rights, liberties and opportunities, as we have discussed in the treatment of equality, which does not make as universal as claimed, there is still the problem of sufficiency: are these goods enough to yield principles of justice that would convincingly arbitrate between all conflicts of good. Our “unreconstructed Thomist,” among others, wouldn’t think so.

The controversy surrounding the primary goods, with regard to their comprehensiveness or sufficiency, not to mention the bias toward equality that they betray, stems also from the fact that they are inspired single-mindedly by the principle of individual autonomy. In other words, they seem to express the two main strands of liberalism, those of equality and autonomy, and these are controversial in their own right, as they derive from liberal ideals of the good that are necessarily antithetical to illiberal ones. In wanting to explain “why it is rational for the parties (in the original position) to assess the principles of justice in terms of primary goods,”⁶⁸ Rawls states the following, which reflects conceptions of the good that are clearly liberal in their celebration of individual autonomy:

(i) The basic liberties (freedom of thought and liberty of conscience, etc.) are the background institutions necessary for the development and exercise of the capacity to decide upon and revise, and rationally to pursue, a conception of the good...

- (ii) Freedom of movement and free choice of occupation...are required for the pursuit of final ends as well as to give effect to a decision to revise and change them, if one so desires.
- (iii) Powers and prerogatives of offices of responsibility are needed to give scope to various self-governing and social capacities of the self.
- (v) Income and wealth...are all-purpose means...for achieving directly or indirectly a wide range of ends, whatever they happen to be.⁶⁹

The appeal to autonomy is clearly indicated in each of the four items: “the capacity to decide upon and revise...a conception of the good,” “the pursuit of final ends as well as...to revise and change them, if one so desires,” “self-governing,” “achieving...a wide range of ends, whatever they happen to be.” So primary goods seem to be a celebration of the liberal ideal of autonomy. As such, they reflect ideals of the good that are inspired by liberal philosophies, such as those of Locke, Kant and Mill, philosophies that would not be uncontroversial or neutral for citizens harboring other visions of the good. Rawls’s principles of justice will not be neutral when they appeal so blatantly to certain conceptions of the good which they implicitly declare to be superior to others. So the choice of the primary goods has been made with an eye on individual autonomy, which means that an ideal of the good that is not universally shared, being intrinsically liberal, has entered into the equation. This makes the primary goods and the principles of justice that derive from

these less comprehensive, less sufficient, and more controversial than Rawls would assume. This reliance on liberal conceptions of the good to yield the primary goods and the principles of justice give the lie to Rawls when he asserts that “this conception of justice is independent of an prior to the notion of goodness in the sense that its principles limit the conceptions of the good which are admissible in a just society.”⁷⁰ Rather than principles of justice derived independently from any conception of the good arbitrating between ideals of the good, we have actually one conception of the good, the liberal one, which fundamentally shapes these principles and which has the final say as to which conceptions of the good are admissible. This makes for a hierarchy among conceptions of the good, making one superior to the others, in this instance the liberal one, which makes for essentially non-neutral principles of justice, as these are derived fundamentally from one conception of the good.

The non-neutrality of the principles of justice will prevent an overlapping consensus from developing, if we take the latter to mean “a consensus in which (justice) is affirmed by the opposing religious, philosophical and moral doctrines likely to thrive over generations.”⁷¹ For Rawls, an overlapping consensus is one built on principled reasons, thus will lead to greater social unity and stability than agreements based

on bargaining powers. As he says, “a basis of justification that rests on self- or group-interests alone cannot be stable; such a basis must be...a mere *modus vivendi*, dependent on a fortuitous conjunction of contingencies.”⁷² For Rawls, “such a consensus...is moral both in its object and grounds, and so is distinct from a consensus, inevitably fragile, founded solely on self- and group-interests.”⁷³ So it is important for Rawls that the principles of justice be neutral among reasonable citizens, that is, citizens willing to cooperate without malice yet who harbor their own conceptions of the good. By being neutral they would be prima facie legitimate, as no reasonable citizens will see the main tenets of their conceptions of the good as hierarchically inferior to the dominant liberal one, at least as reflected in the principles of justice which regulate ideals of the good.

Moreover, we cannot take Rawls’s claim that we have been living in a tradition of democracy for many centuries, therefore we are inclined to abide by democratic or liberal principles. This cannot be a given when to begin with we assume a plural polity divided multiculturally. As Rawls says, “We are the beneficiaries of three centuries of democratic thought and developing constitutional practice; and we can presume not only some public understanding of, but also some allegiance to, democratic

ideals and values as realized in existing political institutions.”⁷⁴ We suppose that a plural polity will harbor traditions that are other than democratic and liberal, so to assume an overlapping consensus based on a tradition not necessarily shared, or on inherited conceptions of the good that illiberal citizens do not appreciate necessarily, demands an unwarranted leap of faith. At any rate, Rawls himself acknowledges the pluralistic reality of modern states: “Given the fact of pluralism, and given that justification begins from some consensus, no general and comprehensive doctrine can assume the role of a publicly acceptable basis or political justice.”⁷⁵

What Rawls intends by political justice is that “it is not formulated in terms of a general and comprehensive religious, philosophical or moral doctrine but rather in terms of certain fundamental intuitive ideas viewed as latent in the public political culture of a democratic society.”⁷⁶ However, we have seen previously, when examining Rawls’s political liberalism, that political justice, just as justice as fairness, draws significantly on the comprehensive and general philosophies of liberal thinkers such as Locke, Kant or Mill, so that to affirm otherwise seems disingenuous. Moreover, to draw purportedly on ideas that are latent in a democratic society stirs up the same problem we have mentioned earlier:

can we assume that there is one tradition, a liberal one, in a plural society mired by multicultural conflicts? supposing this tradition is the dominant one, can we expect that it rules through an overlapping consensus when it is fundamentally at rift with other cultural currents? wouldn't modus vivendi be the characteristic of the relations between the liberal and the illiberal elements rather than overlapping consensus? To say that we can build our political conception of justice "from fundamental intuitive ideas regarded as latent in the public political culture"⁷⁷ is a sham when we recognize that we are addressing plural polities with different intuitive ideas harbored by citizens for the construction of the principles of justice. Furthermore, how can the liberal pass a moral judgment on other cultures with different dominant traditions that are egregious to liberalism? Rawls's position on political justice succumbs to systematic relativism. It seems, at any rate, that Rawls's liberal polities are sustained less by an overlapping consensus which, as we previously said, "is affirmed by the opposing religious, philosophical and moral doctrines," than by a modus vivendi where the liberal elements constitute the majority. In this regard, Rawls asserts that "an enduring and secure democratic regime, one not divided into contending doctrinal confessions and hostile social classes, must be willingly and freely supported by at least a substantial majority of

its politically active citizens.”⁷⁸ In that case, overlapping consensus would embrace those citizens who harbor liberal ideals or those compatible with these ideals, in which case we will have a social unity among these citizens based on principled grounds, while a modus vivendi or a pragmatic social unity would unite liberal and illiberal citizens of the polity, and the guarantor of liberal democracy would be the “substantial majority” of liberal citizens residing in the polity.

Liberal Perfectionism

We have already shown the communitarian strands of liberalism, as was expressed in the justification of the principles of justice or the liberal right. For some liberal thinkers, communitarianism is a form of perfectionism. As Will Kymlicka puts it:

A communitarian state can and should encourage people to adopt conceptions of the good that conform to the community’s way of life, while discouraging conceptions of the good that conflict with it. A communitarian state is, therefore, a perfectionist state, since it involves a public ranking of the value of different ways of life...communitarianism ranks (ways of life) according to their conformity to existing practices.⁷⁹

If we take the “existing practices” as equivalent to the intuitive democratic or liberal ideals that are latent in a liberal polity and from which political justice is derived, as per Rawls, we can see the affinity between political liberalism and communitarianism. But the reference to

the liberal tradition is also present in justice as fairness, that is to say, the justice which refers to the comprehensive doctrines of liberal thinkers such as Locke, Rousseau, Kant and Mill. In this regard, Rawls asserts,

What justifies a conception of justice is not its being true to an order antecedent to and given to us, but its congruence with our deeper understanding of ourselves and our aspirations, and our realization that, given our history and the traditions embedded in our public life, it is the most reasonable doctrine for us.⁸⁰

This is echoed by the following statement from Rawls: “In addressing the public culture of a democratic society, Kantian constructivism hopes to invoke a conception of the person implicitly affirmed in that culture...”⁸¹

Moreover, the liberal polity, just like the communitarian one, would rank “the value of different ways of life” through the regulatory filter of its principles of justice which, as we have seen, are influenced by the tradition of liberal thought and liberal practices. This regulative filter facilitates the survival of admissible practices and values, of certain conceptions of the good, while discouraging the survival of others. The principles of justice become a perfectionist system for the reproduction of some goods and not others, for the acceptance of some ways of life in the polity and the rejection of others. Without proselytizing about the good, the regulative system of the principles of justice would undermine the

survival chances of ways of life egregious to the liberal ones, and help the survival odds of those compatible with these. For Joseph Raz, the perfectionist stance implies the following: “It is the goal of all political action to enable individuals to pursue valid conceptions of the good and to discourage evil or empty ones.”⁸² The regulative drive of the principles of justice seems to do just that, hence their perfectionist lineage.

Furthermore, perfectionism need not be overly or overtly coercive, that is, incompatible with individual autonomy and liberalism of fear. For Raz,

Not all perfectionist action is a coercive imposition of a style of life. Much of it could be encouraging and facilitating action of the desired kind, or discouraging undesired modes of behavior. Conferring honors on creative and performing artists, giving grants or loans to people who start community centers, taxing one kind of leisure activity, e.g., hunting, more heavily than others, are all cases in which political action in pursuit of conceptions of the good falls far short of the threatening popular image of imprisoning people who follow their religion, express their views in public, grow long hair, or consume harmless drugs.⁸³

This non-coercive view of perfectionism, which respects autonomy and liberalism of fear, is also echoed by Sandel, who writes that “the political economy of citizenship that informed nineteenth-century American life sought to cultivate not only commonality but also the

independence and judgment to deliberate well about the common good. It worked not by coercion but by a complex mix of persuasion and habituation.”⁸⁴ William Galston gives an example of perfectionism in a liberal state, whereby through a mixture of restrictions and encouragement the liberal state in effect acts in a perfectionist way, defending and promoting certain practices it deems good, and restricting practices it deems bad:

Parents may not rightly impede the normal physical, intellectual and emotional development of their children. Nor may they impede the acquisition of civic competence and loyalty. The state may act *in loco parentis* to overcome family-based obstacles to normal development. And it may use public instrumentalities, including the system of education, to promote the attainment by all children of the basic requisites of citizenship. These are legitimate intrusive state powers.⁸⁵

However, perfectionism need not work through direct involvement in citizen’s personal lives. Perfectionism could seep through the basic structure of the polity into the lives of citizens, that is, through the regulative arms of its economic, legal and political institutions, the latter being framed by the principles of justice. As Rawls says, “These principles (of justice) regulate the basic structure of society within which the activities of individuals and associations take place.”⁸⁶ These institutions will be formative of the citizens’ character without having the

government involved in the detailed intricacies of character formation. For Rawls, the institutions established by liberal justice “can have decisive long-term social effects and importantly shape the character and aims of the members of society, the kinds of persons they are and want to be.”⁸⁷ This assessment is shared by Judith Shklar, who affirms that “no system of government, no system of legal procedures, and no system of public education is without psychological effect.”⁸⁸

We can see, hence, that Rawls and other liberal thinkers do not take actually the liberal principles of justice to be neutral after all, and lend them strong perfectionist characteristics. Rawls affirms such a perfectionist drive elsewhere: “It has always been recognized that the social system shapes the desires and aspirations of its members; it determines in large part the kind of persons they want to be.”⁸⁹ He recognizes that the formative responsibility would fall on the principles of justice which would regulate the social system, as he asks: “By what principles are we to regulate a scheme of institutions that has such fundamental consequences for our view of ourselves and for our interest and aims?” He is, indeed, giving these fundamental principles, which we take to be of justice, a perfectionist slant. Anyway, the political and social institutions which are framed by the principles of justice can,

according to Rawls, shape the nature of our virtues: “these virtues (tolerance, reasonableness, fairness) are built up slowly over time and depend not only on existing political and social institutions...but also on citizens’ experience as a whole...”⁹⁰ This formative or perfectionist characteristic of justice and of the basic structure influenced by it, which shape the character and virtues of citizens, is affirmed elsewhere by Rawls: “the sense of justice of citizens, in view of their traits of character and interests as formed by living under a just basic structure, is strong enough to resist the normal tendencies to injustice.”⁹¹

There are, thus, enough indications which show that Rawls does recognize the perfectionist drive of his principles of justice and of the basic structure regulated and framed by these principles. Such perfectionism will naturally be compatible with individual autonomy, since it is individual autonomy, as we have explained earlier, that inspires the construction of such principles of justice, while the primary goods, which these principles address, reflect autonomous concerns as we have seen earlier. Furthermore, given that these principles of justice safeguard the basic rights, as per the first principle of justice,⁹² implies that the concerns of the liberalism of fear are addressed adequately. As Shklar puts it,

Enforceable rights are the legal powers that individual citizens in a liberal society can bring to bear individually and collectively in

order to defend themselves against threats backed by force. This is not the liberalism of natural rights, but it underwrites rights as the politically indispensable dispersion of power, which alone can check the reign of fear and cruelty.⁹³

For Shklar, the liberalism of fear sees rights as “licenses and empowerment that citizens must have in order to preserve their freedom and to protect themselves against abuses.”⁹⁴ At any rate, liberalism has been recognized to harbor institutional practices, be they legal, political, or social, inspired by the principles of justice, whether we take these to be perfectionist or not, which shield the individual from the fear of arbitrary power. In this regard, Sher asserts,

As liberals have long realized, we need protection both from the depredations of dominant groups and from the conflicts that arise when no group can achieve dominance. To shield us from these dangers, liberals advocate a fixed constitution, a system of divided government, and various procedural and substantive rights...A (nonneutral) state is obviously compatible with a fixed constitutional framework, a settled procedure for amending the constitution, and the separation of different branches of government. It is no less compatible with the full range of procedural civil rights.⁹⁵

While perfectionism may be seen as unduly coercive, thus incompatible with individual autonomy and the liberalism of fear, this is not necessarily so, as every system of government is accompanied by some degree of coerciveness, and the rule of law cannot be implemented

without coercion on those who disobey the law. If these laws are ones we have autonomously elected, then obeying them is not being coerced into following them, but rather is an act of self-government, which is an exercise of individual autonomy. I have discussed this point in my analysis of legitimacy in the first chapter, whereby the basic laws of the polity are legitimate when they reflect our choices and consent, and obeying them will not be an act of outside coercion but one of self-government and autonomy. As Benjamin Barber puts it,

The liberal democrat prizes justice but believes justice without consent is a form of heteronomy incompatible with the moral responsibility of the individual. Consent becomes the crucial link (between the state and the individual)...By consenting to the substantive rules to which he will subordinate his will, the liberal individual obeys without compromising his freedom.⁹⁶

So coercion or fear cannot be ruled out from the legal framework, especially that one may be tempted to disobey the law, even if he has consented to it, just like he may be tempted to disobey a moral rule he might have elected or agreed to. So one cannot eliminate entirely the element of fear and coercion from the public exercise of law. This element of coercion is not the sole prerogative of a perfectionist government, but of every form of government if it needs to safeguard public order and a modicum of social stability. As Shklar writes,

A minimal level of fear is implied in any system of law, and the liberalism of fear does not dream of an end of public, coercive government. The fear it does want to prevent is that which is created by arbitrary, unexpected, unnecessary, and unlicensed acts of forces and by habitual and pervasive acts of cruelty and torture performed by military, paramilitary, and police agents in any regime.⁹⁷

Furthermore, in order to succeed within the framework of the liberal practices as regulated by the principles of justice, one will have to acquire and cultivate liberal virtues that are adapted to such practices. This implies that these practices encourage the cultivation of the virtues that are appropriate to the liberal ethos, hence their perfectionist nature. What is meant by practice, following Alasdair MacIntyre, is the following:

any coherent and complex form of socially established cooperative human activity through which goods internal to that form of activity are realized in the course of trying to achieve those standards of excellence which are appropriate to, and partially definitive of, that form of activity...⁹⁸

Furthermore, virtues are described in terms of practice, that is, as “those dispositions which will...sustain practices and enable us to achieve the good internal to practices.”⁹⁹ Thus, if we take the liberal practices as those characterizing the economic, political, legal and social institutions of a liberal democracy, we need the specific virtues adapted to these institutions in order to succeed within their given framework. The liberal

virtues which we need to acquire will be the means to access the goods internal to these practices, which makes the latter formative and perfectionist rather than neutral, that is, asserting the superiority of certain practices and their preservation through the acquisition of virtues that sustain them. As MacIntyre says, "A virtue is an acquired human quality the possession and exercise of which tends to enable us to achieve those goods which are internal to practices and the lack of which effectively prevents us from achieving any such good."¹⁰⁰ In other words, if we need to succeed in the liberal polity and share in the liberal good, we need to acquire the liberal virtues that are necessary for obtaining such good. That means that living within the liberal polity would be an exercise of perfectionist education leading to the acquisition of the adequate liberal virtues. We are far from the neutrality of the liberal ethos. As Shklar puts it,

It cannot be denied that the experience of politics according to fair procedures and the rule of law do indirectly educate citizens... The habit of patience, self-restraint, respect for the claims of others, and caution constitute forms of social discipline that are not only wholly compatible with personal freedom, but encourage socially and personally valuable characteristics... liberalism has no reason at all to apologize for the inclinations and habits that procedural fairness and responsible government are likely to encourage.¹⁰¹

Some of the virtues which liberalism encourages are the following, “broad sympathies, self-critical reflectiveness, a willingness to experiment, to try and to accept new things, self-control and active, autonomous self-development...”¹⁰² For Steven Macedo, confirming what we have already stated earlier, “the practice of liberal politics amplifies the liberal virtues: the rule of law teaches self-restraint, an appreciation for procedures and forms, and equality of respect.”¹⁰³ He adds that liberal citizens “learn...about due process, fairness, and respect for those who are different; they develop judicial, legislative, and executive virtues. All of this takes place without political control, though it is all importantly influenced by our political practices.”¹⁰⁴ He explains the judicial, legislative, and executive virtues in the following way:

The judicial virtues are those that allow people to stand back from their personal commitments and projects, and judge them from an impersonal point of view. Impartiality is the basic judicial virtue, which stands for a capacity to respect the rights of others and act justly...The legislative virtues...include the ability to sympathetically survey different ideals in personal deliberations and the willingness to engage in dialogue with those who disagree. The executive virtues empower one, having judged and reflected, to resolve, act, and persevere...to perform rather than reflect endlessly, to exercise an independence of thought rather than be swayed by the prejudices and pressures to conformity, exerted by others.¹⁰⁵

Some of our liberal practices, as reflected in our laws, are also more intrusively or directly perfectionist, for instance, asserting some standards of decency rather than others. According to Sher, "When federal regulators prohibit the use of obscene language on television and radio, and when the state criminalizes public nudity, public sexual activity, and public defecation, their usual rationale is just that these modes of behavior are indecent...many familiar laws and policies have a clear perfectionist rationale."¹⁰⁶ Thus, we can see that liberalism can influence character in different ways, without being necessarily incompatible with the principles of justice or the constitutional essentials which these principles inspire. For Galston, this influence works through direct (education and training) or indirect (tacit norms) means.¹⁰⁷ Furthermore, according to Galston, liberal values seeps into society through different ways, affecting in the process the character and dispositions of the citizens. For instance, constitutional law extends public values throughout society: ie, non-discrimination, due process, rights. Also, liberal culture implies rational criticism of all forms of authority. Liberalism encourages free choice and contractual relations, which enhance autonomy and deliberation. Furthermore, liberalism discourages some ways of life and prevents them from thriving, as it is not equally

hospitable to all ways of life.¹⁰⁸ For Galston, there are goods which liberalism affirms and protects: social peace, rule of law, recognition of diversity, rationality, standards of decency, affluence, justice, openness to truth, respect for privacy.¹⁰⁹

The inevitability of perfectionism in the political realm, whether under its liberal guise or otherwise, is recognized by Galston, for whom “no form of political life can be justified without some view of what is good for individuals.”¹¹⁰ He deplores liberal neutralism for its disingenuousness, as hiding a perfectionist lineage: “In practice, liberal theorists covertly employ theories of the good. But their insistence that they do not reduces the rigor of their theories.”¹¹¹ If we define perfectionism as “the philosophic attempt to identify superior aspects of human existence or traits of character and, once having identified them, to use them as goals of political life,”¹¹² then we cannot say that the liberal search for the principles of justice and the fundamental role these principles have in shaping the basic structure of the polity; the reliance on conceptions of the good deemed superior and which inspire these principles; the political, legal, economic and social implementation of these principles which influence and shape the characters of those who need to thrive within the liberal polity; and the direct legal norms to

impose public standards of decency, that all that does not add up to an intrinsically perfectionist doctrine.

Conclusion

We have seen in this chapter how liberalism is intrinsically communitarian and perfectionist yet does not betray the concerns which justified the call for liberal neutrality, those of liberalism of fear and individual autonomy. While neutrality was also justified as a means for social unity and stability based on principled reasons in a pluralistic society, given the multicultural conflicts that would arise in such a society, my analysis, if it is correct, has shown that the notion of neutrality, as defended by liberal thinkers, and as purportedly reflected in the principles of toleration and justice, cannot be adequately defended.

I have shown this indefensibility by examining what has been taken as the two pillars of neutrality, the principles of toleration and of justice. It was shown earlier that toleration is steeped in liberal conceptions of the good that make it controversial or nonneutral to those harboring illiberal ideals of the good, while in this chapter I have shown that the principles of justice are also steeped in liberal conceptions of the good, thus becoming nonneutral to illiberal elements, and actually eliciting

perfectionist consequences. In other words, the overlapping consensus which was drummed up by liberal neutralists, such as Rawls, the consensus to be “affirmed by the opposing religious, philosophical and moral doctrines,”¹¹³ cannot be realized among citizens harboring incompatible conceptions of the good. This consensus can be had among liberal elements and those who may not be too removed from the liberal ideals. And social stability or unity with the illiberal elements will remain a modus vivendi one, based on the coercive ability of the liberal elements to impose law and order. We are far from what Rawls affirms: “But the point of the idea of an overlapping consensus on a political conception is to show how, despite a diversity of doctrines, convergence on a political conception of justice may be achieved and social unity sustained in long-run equilibrium, that is, over time from one generation to the next.”¹¹⁴ I believe I have shown that such principled convergence, which was to be uncoerced as per the appeal to toleration and a broad-based pluralistic conviction regarding the worth of the principles of justice, fails in these two regards: toleration was shown to harbor liberally inspired restrictions on other ways of life, not to mention licenses for ways of life deemed unworthy of pursuit by non-liberal citizens; and the principles of justice, being inspired by liberal conceptions of the good, could not prima facie

win the approval of those who oppose the liberal ideals. Hence, neutrality fails in these two accounts.

It was also shown that liberal perfectionism could very well fulfill the function that liberal thinkers have given to neutrality, respect for the liberalism of fear and individual autonomy, and has a better chance of widening the overlapping consensus or the principled convergence on the principles of justice through its indirect and direct formative ability. By contrast, liberal neutrality seems to be a misbegotten doctrine that cannot be adequately defended, not only because it cannot be perceived as such by the illiberal elements, but also because it cannot by definition have a formative potential that could widen the overlapping consensus and strengthen social unity and stability, for otherwise it would be a form of perfectionism. Neutrality seems simply to be an indefensible doctrine for the purposes it aims to achieve, greater overlapping consensus and thus stronger social stability based on such a consensus, and because it affirms inevitably the superiority of some conception of the good. All in all, liberalism has been shown to be simply a partisan doctrine that need not feel confounded by its partisanship.

Notes to the 5th Chapter

1. Charles Larmore, *The Morals of Modernity* (Cambridge: Cambridge University Press, 1996), p. 21.
2. Michael J. Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982), p. 164.
3. George Sher, *Beyond Neutrality: Perfectionism and Politics* (Cambridge: Cambridge University Press, 1997), p. 38.
4. Sandel, "The Procedural Republic and the Unencumbered Self," in Robert E. Goodin et al. (eds.), *Contemporary Political Philosophy: An Anthology* (Cambridge: Blackwell Publishers Ltd., 1997), p. 250.
5. John Rawls, "Justice as Fairness: Political Not Metaphysical," *Philosophy and Public Affairs* 14, 3 (Summer 1985), p. 223.
6. Rawls, "The Idea of an Overlapping Consensus," in C. Johnson (ed.), *Philosophy of Law* (NY: MacMillan Publishing Co., 1993), p. 182.
7. Sandel, *Liberalism and the Limits of Justice*, op. cit., p. 1.
8. Ibid., p. 2.
9. Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), p. 449.
10. Rawls, "Social unity and primary goods," in *Utilitarianism and beyond* (Cambridge: Cambridge University Press, 1982), p. 172.
11. Rawls, *A Theory of Justice*, op. cit., p. 31.
12. Rawls, *Political Liberalism* (NY: Columbia University Press, 1996), n. 8, pp. 180-81: "we suppose that all citizens have a rational plan of life that requires for its fulfillment roughly the same kind of primary goods."
13. Sandel, *Democracy's Discontent* (Cambridge: Harvard University Press, 1996), pp. 10-11.
14. Ibid., p. 322.
15. Larmore, op. cit., pp. 21-22.
16. Rawls, *A Theory of Justice*, op. cit., p. 18.
17. Ibid., "The Idea of an Overlapping Consensus," op. cit., p. 184.
18. Ibid.
19. Ibid.
20. Ibid., *Political Liberalism*, op. cit., p. xliii.
21. Ibid., p. xlv.
22. Ibid., "The Idea of an Overlapping Consensus," op. cit., p. 184.
23. Ibid.
24. Ibid., p. 185.

25. Ibid., p.184 Rawls says: “(Justice as fairness) can be seen as starting with the fundamental idea of a political society as a fair system of social cooperation between citizens regarded as free and equal persons...”
26. Jean Hampton, “The Moral Commitments of Liberalism,” in *The Idea of Democracy*, p. 299.
27. Ibid.
28. Ibid.
29. Ibid., p. 300.
30. Ibid., p. 294.
31. Ibid., p. 306.
32. Ibid., p. 310.
33. Sher, op. cit., p. 18.
34. Sandel, “The Procedural Republic and the Unencumbered Self,” op. cit. p. 250: “Only if the self is prior to its ends can the right be prior to the good.”
35. Will Kymlicka, *Liberalism, Community, and Culture* (Oxford: Oxford University Press, 1989), p. 23.
36. Rawls, *A Theory of Justice*, op. cit., p. 31.
37. Hampton, op. cit., p. 312.
38. Rawls, op. cit., p. 449.
39. Idem.
40. Idem, p. 396.
41. Idem.
42. Sandel, *Liberalism and the Limits of Justice*, op. cit., p. 164.
43. Idem, p. 170.
44. Idem, p. 175.
45. Rawls, op. cit., p. 560.
46. Rawls, “Kantian Constructivism in Moral Theory.” in Stephen Darwall et al (eds), *Moral Discourse & Practice* (NY: Oxford University Press, 1997), p. 249.
47. Idem.
48. Idem, pp. 249-250.
49. Idem, p. 247.
50. Idem, p. 248.
51. Idem.
52. Idem, p. 250.
53. Idem.
54. Idem.
55. Idem.

56. *Idem*, p. 251.
57. Rawls, *A Theory of Justice*, *op. cit.*, p. 303.
58. *Idem*, p. 302.
59. *Idem*, p. 12.
60. Brian Barry, *Justice as Impartiality* (Oxford: Oxford University Press, 1995), p. 55.
61. *Idem*.
62. *Idem*, p. 122.
63. Rawls, "Social unity and primary goods." *op. cit.*, p. 159.
64. *Idem*.
65. *Idem*, p. 172.
66. *Idem*, p. 161.
67. *Idem*.
68. *Idem*, p. 165.
69. *Idem*, pp. 165-166.
70. *Idem*, p. 160.
71. Rawls, "The Idea of an Overlapping Consensus," *op. cit.*, p. 180.
72. *Idem*.
73. *Idem*.
74. *Idem*.
75. *Idem*, p. 183.
76. *Idem*, p. 184.
77. *Idem*, p. 185.
78. Rawls, *Political Liberalism*, *op. cit.*, p. 38.
79. Will Kymlicka, *Contemporary Political Philosophy: An Introduction* (Oxford: Oxford University Press, 1991), pp. 206-207.
80. Rawls, "Kantian Constructivism in Moral Theory," *op. cit.*, p. 248.
81. *Idem*.
82. Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), p. 133.
83. *Idem*, p. 161.
84. Sandel, *Democracy's Discontent*, *op. cit.*, p. 320.
85. William Galston, "Civic Education in the Liberal State," in N. Rosenblum (ed.), *Liberalism and the Moral Life* (Cambridge, MA: Harvard University Press, 1989), p. 100.
86. Rawls, "Kantian Constructivism in Moral Theory," *op. cit.*, p. 263.
87. Rawls, "Kantian Constructivism in Moral Theory," *Journal of Philosophy*, 77 (1980), p. 538.
88. Judith Shklar, "The Liberalism of Fear," in N. Rosenblum (ed.), *op. cit.*, p. 33.

89. Rawls, "A Kantian Conception of Equality," in R. Stewart (ed.), *Readings in Social and Political Philosophy* (NY: Oxford University Press, 1986), p. 189.
90. Rawls, "The Idea of an Overlapping Consensus," op. cit., p. 192, n. 26.
91. Rawls, "Domain of the political and overlapping consensus," in D. Copp et al. (eds), *The Idea of Democracy*, p. 256.
92. Rawls, *A Theory of Justice*, op. cit., p. 302: "Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all." See also "The Idea of an Overlapping Consensus," op. cit., p. 192: "the most reasonable political conception of justice for a democratic regime will be, broadly speaking, liberal. But this means... that it protects the familiar basic rights and assigns them a special priority."
93. Shklar, *Ordinary Vices* (Cambridge, MA: Harvard University Press, 1984), pp. 237-38.
94. Idem, "The Liberalism of Fear," op. cit., p. 37.
95. Sher, *Beyond Neutrality*, op. cit., p. 6.
96. Benjamin Barber, "Liberal Democracy and the Costs of Consent," in N. Rosenblum, op. cit., p. 57.
97. Shklar, "The Liberalism of Fear," op. cit., p. 29.
98. Alasdair MacIntyre, *After Virtue* (Notre Dame, Ind.: University of Notre Dame Press, 1984), p. 187.
99. Idem, p. 219.
100. Idem, p. 191.
101. Shklar, "The Liberalism of Fear," op. cit., p. 33.
102. Steven Macedo, *Liberal Virtues: Citizenship, Virtue and Community in Liberal Constitutionalism* (Oxford: Clarendon Press, 1990), pp. 271-72.
103. Idem, p. 272.
104. Idem, pp. 273-274.
105. Idem, p. 275.
106. Sher, *Beyond Neutrality*, op. cit., p. 112.
107. Galston, *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State* (Cambridge University Press, 1991), p. 277.
108. Idem, pp. 292-294.
109. Idem, pp. 301-304.
110. Idem, p. 79.
111. Idem.
112. Idem.

113. Rawls, "The Idea of an Overlapping Consensus," *op. cit.*, p. 180.
114. *Idem*, p. 183.

Appendix

Objections and Replies

Following the close of my dissertation, I would like to address four objections that have been raised with regard to various issues I have discussed. These objections and the replies will be divided into the following four sub-sections.

1. According to the first objection, while we may grant that neutrality or impartiality is illusory, nevertheless one might argue that there are degrees of neutrality, and that some positions are more neutral than others, so that neutrality becomes an ideal to reach, even if it is not entirely attainable. Furthermore, it claims that liberalism strives to reach a most neutral position or justification, or that it should.

Before delving into the neutral ideal that liberalism strives to achieve, and how such ideal, as embodied in basic normative principles, could be controversial and quite partial, depending on one's conceptions of the good, it must be noted that the degree of neutrality or impartiality that one perceives in the fundamental liberal principles, such as those of liberal tolerance and justice, is relative to one's ideals of the good. Thus, for a Brahmin, whose metaphysical and religious outlook yields a fundamentally inegalitarian social stratification, liberal egalitarianism,

which follows from the liberal principles of justice, may look extremely controversial. Furthermore, the comprehensive philosophical doctrines which underlie these principles, such as the philosophies of Kant and Mill, or the Christian ideal of human equality, given their antithetical position to the Brahmin and other inegalitarian visions of the good, will seem also very controversial, that is to say, non-neutral in a most extreme way. So the degree of impartiality or neutrality is simply a relativistic matter, depending on one's position in the religious, philosophical and moral totem vis-à-vis the liberal one. Thus an inegalitarian, antiliberal society would seem more neutral to a Brahmin than a liberal one, at least viewed from the dimension of equality and inequality among the members of such society. It follows that the degree of liberal neutrality with regard to other conceptions of the good is a priori dependent on how closely similar the liberal conception of the good is to the other ones.

Putting aside the question of degree of liberal neutrality, which we have found to depend on the similarity or dissimilarity of the different conceptions of the good relative to the liberal ones, it is evident that neutrality or impartiality is an ideal worth pursuing for practical and moral reasons. The reason is that a broad-based principled consensus in the state, or an overlapping consensus on the basic principles and laws, would

purportedly be more stable and morally legitimate, given that the basic principles of the polity would have been freely accepted by the different parties. In practical terms, such consensus is preferable to one that is based on *modus vivendi*, or the current bargaining powers of the different parties, since these bargaining powers could shift and destabilize the polity to favor the group that has gained sufficient superiority over the others.

However, that does not mean that the liberal claim that liberalism is neutral or more neutral than other conceptions of the good is true. The fact that neutrality is an ideal that is practically and morally justified, and the fact that liberalism can achieve more neutrality than other conceptions of the good, are two different claims. While I agree with the first claim, I disagree with the second one for the reasons I have stated regarding the relativistic dimension that creeps up from behind the second claim. In other terms, some illiberal conceptions of the good may be more compatible with each other, thus more neutral *vis-à-vis* each other, than with regard to liberalism.

While my argument in the dissertation has tried to show that the liberal claim of neutrality or impartiality is hollow, one can easily infer, on purely conceptual grounds, as has been shown before, that its positions

can be more controversial or non-neutral to other conceptions of the good than other illiberal ones. I shall revisit some of the liberal claims to neutrality to illustrate more elaborately this claim.

It will be recalled that state neutrality is a liberal ideal according to which

the state must not only not coerce citizens to make them better, it must never aim, coercively or otherwise, to promote one set of values over others. It must be neutral about the good, never having as its justification for acting that some ways of life are intrinsically preferable to others.¹

This is echoed by Charles Larmore, for whom

"political neutrality," as the cardinal liberal principle, is in my view a moral conception, claiming that legitimate political principles are those that can be justified without any appeal to controversial views of the good life.²

My position, throughout the dissertation, while discussing the principles of toleration and of justice, which were supposed to usher an ideal of impartiality or neutrality, has been to argue why such neutral claims are fundamentally bogus. I have shown, while discussing Rawls's justice as fairness and political justice, how liberal comprehensive doctrines, that is, the Kantian and Millian philosophies of autonomy, equal respect, and tolerance, and implicitly the Christian ethos of charity,

benevolence and equality, have entered into the construction of the rawlsian principles of justice. Rawls has later on asserted that justice as fairness relies on the controversial liberal doctrines of Kant and Mill, basically autonomy, equality and individuality. As Thomas Nagel puts it, "Rawls has said in a recent article ['Justice as Fairness: Political not Metaphysical'] that if liberalism had to depend on a commitment to comprehensive moral ideas of autonomy and individuality, it would become just 'another sectarian doctrine.'"³ Rawls, furthermore, claimed in his later philosophical phase, that political justice is a free-standing justice and does not depend on a pedigree of liberal comprehensive doctrines.⁴ However, I have shown in my dissertation how such comprehensive doctrines are actually implicit in the lineage of political justice, which makes it as "sectarian" or non-neutral as justice as fairness. Basically, I have shown how the derivation of the principles of justice, whether in justice as fairness or political justice, depends crucially on liberal conceptions of the good. This makes these principles non-neutral, given that they rely on an "appeal to controversial views of the good life," as per Larmore's definition of non-neutrality, at least to the illiberal elements of a pluralistic polity, or implicitly asserting, as per Hurkas's definition of non-neutrality, "that some ways of life are intrinsically

preferable to others," since the principles of justice broadly outline which ways of life are permissible and which are not.

The Rawlsian principles of justice are not simply abstract principles that have no concrete bearing on the basic structure of society and its basic laws. They do shape the legal, social and political institutions of the polity, frame the overall conduct of citizenry, and determine which values to adopt and which to reject in order to succeed in the justice-driven polity, making its effects practically less neutral than perfectionist. As Stephen Macedo asserts:

Liberalism rules out certain conceptions of the good life altogether: any that entail the violation of liberal rights. And liberalism positively requires that everyone's scheme of values include certain features: respect for the equal rights of others, a willingness to persuade rather than coerce, and the subordination of personal plans, projects, and desires to impersonal rules of law. The coloring of liberal values splashes pervasively over the vast canvas of a pluralistic liberal society. Some things are excluded completely, and everything is limited and conditioned.⁵

Given the perfectionist or formative effect of the liberal polity on its citizens, it would follow that the liberal ethos would steadily overtake the illiberal one and would erode its influence. It follows that liberalism will become eventually more neutral in a polity whose majority has become liberally inclined, embracing conceptions of the good that are

purely liberal or that are more compatible with the liberal ethos than with the illiberal one. In a paradoxical way, the original liberal non-neutrality and perfectionism could lead eventually to a greater degree of neutrality in the liberal pluralistic polity, as people who were originally illiberal may start to see liberalism less as a controversial vision of the good than a reasonable one worth joining forces with and believing in.

2. The brief discussion of perfectionism above leads us to the second objection that has been raised with regard to liberal perfectionism that I have discussed in the dissertation. I had argued that liberal neutralism is actually a form of perfectionism that does not state its name and hides its pedigree. Referring to the statements of various liberal philosophers, such as Rawls, I have shown how such philosophers, while affirming the neutral or universal justifications of their principles, do admit that their principles, if adopted, would help shape the polity and the citizenry in essential ways, and would have a formative effect on its characters and dispositions, in other words, would encourage the formation of liberal virtues at the expense of others. The objection addresses the difference between various brands of perfectionism, some purportedly “thin” and others “thick,” the first promoting liberally acceptable goods such as

tolerance, diversity, autonomy, and the other promoting rigid lifestyles, as per the ethos of different fundamentalists.

Again, there is a question of relativism here. What may be thin for some could be thick for others. Liberal tolerance, individuality and autonomy are not goods that may be universally shared. Some cultures may see in liberal tolerance, individuality and autonomy too much of a libertine ethos that would undermine the stability of their society and culture. They may have standards of sexual decency, civility and virtues for which liberal tolerance would seem antithetical, or even a vice, and would insist on the virtues and merits of their rigid lifestyles. Such cultures could have their own view of tolerance, based on justifications that are not necessarily of the Lockean or Millian variety, which were shown in the dissertation to be non-neutral or controversial, based for one philosopher on bogus criteria of rationality and on skepticism, and for the other in part on a harm principle that may seem too materialistic for spiritually- or religiously-oriented cultures. In other words, non-liberal cultures could have their own brand of tolerance, and its justification may simply be different than the liberal one. Liberalism does not have a monopoly on tolerance. The same goes for individuality and autonomy. Just like liberalism allows some degrees of individuality and of autonomy,

according to its own criteria of justice, decency and virtues, similarly other cultures or conceptions of the good allow some levels of individuality and autonomy, based on their own criteria of justice, decency and virtues.

One may, of course, argue that liberalism allows more individuality and autonomy than illiberal conceptions of the good. However, just as for tolerance, individuality and autonomy are not universally shared goods. They may be ideals for liberalism, but do not deserve such a distinction for other ideals of the good. They may be much more substantively defined in other cultures. In other words, it is not the abstract ideals of autonomy and individuality that are praised, but what we do with these. Do we use individuality and autonomy to be disloyal, dishonest, cowardly, alcoholics, addicts, debauchees, basically vicious human beings, or do we use these for more cooperative and socially constructive and acceptable endeavors? The illiberal may accuse the liberal of having too much of a formal view of individuality and autonomy, claiming that their value must transpire from what we do with them rather than just having them in the abstract. So for some cultures or ideals of the good, just to claim, as per liberalism, that autonomy and individuality are to be promoted, may not mean much if not accompanied

by the responsibilities and obligations that autonomy and individuality must harbor. That is why they are not universally shared goods, and may seem on their face controversial to other ideals of the good which are not necessarily more coercive than liberalism, or not unjustifiably coercive, at least in their own light. As Vinit Haksar claims, with regard to basic liberty or autonomy as a primary good, and thus as universally desirable:

There have been certain societies, such as certain tribal societies, where a large number of its ordinary members...were not well-equipped to make use of basic liberties: where, if you gave them basic liberties, you would destroy their happiness and the whole fabric of their traditional society.⁶

He asserts elsewhere how autonomy is not necessarily a universally shared good:

Let us grant that if I were an autonomous being, then I would be miserable in a non-autonomous society, and that I would be better off in a liberal set-up. But this does not show why I would be worse off if I was brought up since birth in a hierarchical, conditioned society, so that I had no desire for autonomous life when I grew up.⁷

Thus rigid lifestyles, as may be found in “hierarchical, conditioned” or “tribal societies,” may not seem so coercive for those who have been raised within such societies. On the contrary, the imposition of the liberal tolerance, individuality and autonomy, as per the

liberal principles of tolerance and justice, may seem like a type of “thick” perfectionism whose social consequences may be too traumatic and unsettling for those living within such communities and habituated to its communal customs.

But assuming that autonomy and individuality are universal goods that all people have to benefit from, it is not certain that such goods could be given unconditionally in any society. There will always be conditions, duties and obligations attached to the practice of autonomy and individuality, whether in liberal or illiberal polities. In other words, as in illiberal societies, liberal ones will have to impose, and do impose, coercive measures for the exercise of autonomy that does not square with the principles of justice and tolerance, and with other laws and regulations that spin off these basic principles. For someone who comes from a hierarchical society, the reasons for these coercive measures may smack of thick perfectionism, because he may not agree with their liberal justifications. On the other hand, the coercive measures exercised in his community and that are justified according to the community’s ethos, would seem as a form of thin perfectionism.

At any rate, the autonomy that liberalism promotes and protects is one that is ultimately a substantive one, that is, it is coercively limited,

depending on what the autonomous subject chooses to do with this autonomy. In other words, such autonomy is not unequivocally given, but is conditionally granted according to rights, duties and obligations determined by the liberal ethos. But does this differ from the autonomy granted to someone in a hierarchical or illiberal society? The latter will have also rights, duties and obligations attached to its exercise. If we claim that the degree of autonomy that liberalism grants is greater than that of the illiberal one, that is to say, its duties are less restrictive than the illiberal ones, or the rights protected are more extensive, we will be faced with Haksar's objection. For if we hew to what Haksar said before, it is much more probable that a tribesman or any other non-liberal raised in a "just" society, one that does not exercise its rules and regulations arbitrarily, one that abides to a publicly known set of customs and laws, would rather exercise his conditional autonomy, with its more limited rights and extensive duties, than the liberal one. Such a non-liberal society would not necessarily seem plagued by a coercive thick perfectionism for those who inhabit it, because the outlines of this perfectionism would seem well justified from within, that is to say, for those who have been well conditioned to it.

At any rate, it is through the coercive legal, political and social institutions, that liberalism exercises its perfectionism or formative ambition. While liberalism purportedly does not invade coercively the private sphere, yet much of our private realm is shaped by the public liberal ethos. If we take virtues to be dispositions that are adapted to public practices in order to succeed in the domain of such practices, then we see that we try to learn and be habituated in the virtues that would allow us to succeed within the liberal practices. In other words, liberal practices shape our liberal virtues, whether directly, through the coercive arm of the law, or indirectly, through our desire to acquire the character traits that allow us to succeed in a liberal society. As Alasdair MacIntyre says:

A virtue is an acquired human quality, the quality and exercise of which tends to enable us to achieve those goods which are internal to practices...⁸

Furthermore, he defines practices as follows:

By a 'practice' I am going to mean any coherent and complex form of socially established cooperative human activity through which goods internal to that form of activity are realized in the course of trying to achieve those standards of excellence which are appropriate to, and partially definitive of, that form of activity...⁹

If we hew to these definitions, we can see how our success in a liberal polity depends on our adopting liberal virtues which would allow us “to achieve those goods which are internal to (the liberal) practices.” In other words, our rational self-interest will guide us to seek and ply those dispositions that should ensure our success in the liberal polity. For instance, liberal institutions, such as the free market, encourage such virtues as work ethic, individual ambition and dedication, cooperation and friendliness (emphasis on teamwork in most companies), civility in the work place, which translates outside too, loyalty, honesty, so forth. As Macedo puts it:

Urbanization, industrialization, and open mass markets all serve to bring together large numbers of people from disparate backgrounds and throw them into a multiplicity of relations.¹⁰

The influence of the public or the political on the private domain can be pervasive. As Macedo claims:

Liberal politics is pervasive because public reasons, liberal norms of respect for the rights of others, override competing commitments and claim authority in every sphere of our lives...Liberal politics does not insulate the private sphere from the public sphere; even in the absence of litigation, public values penetrate and partly constitute private relations.¹¹

More significantly, liberalism discourages other conceptions of the good from flourishing, and asserts its own values, or those values that allow it to flourish:

Even in its limited forms liberalism cannot really be neutral among public values. It stands for the supreme worth of certain values: individual liberty and responsibility, tolerance of change and diversity, and respect for the rights of those who respect liberal values. Liberalism rules out certain conceptions of the good altogether: any that entail the violation of liberal rights...¹²

Hence, just as illiberal polities can shape, non-coercively and coercively, the characters and dispositions of their citizens, likewise liberalism provides a coercive and a non-coercive forum where it exerts its authority. However, liberalism may claim that the nature of its coerciveness differs qualitatively in one crucial respect from those of illiberal polities. Liberalism, in principle, disallows imposing mental or physical cruelty to educate or punish its citizens, following the concerns of the liberalism of fear, which are reflected in the principles of tolerance and justice. Its coercive perfectionism can thus be distinguished from other types of perfectionism which might not shy away from imposing physical and mental cruelty on recalcitrant citizens or individuals. In that sense, one may say it is more humanely perfectionist than others. If

humane perfectionism is thin perfectionism, then liberalism may be qualified as thin perfectionism.

However, this characterization is not for the reasons of liberal tolerance, individuality, or autonomy, which can be controversial goods, as we have seen before, depending how they are justified and what duties and obligations attend to each, but mainly for reasons of humanism. Such humanistic turn could, however, be shared by illiberal polities or societies that do not share the liberal views on tolerance and autonomy, or that may have different criteria of tolerance and autonomy than the liberal one, yet share its humanistic outlook. Even a theocratic polity, such as a Christian one, could share such a humanitarian slant, since the principles of Christian charity, beneficence, and universal selfless love, are not dissimilar from the principles of tolerance and equal respect, which Kant adopted in his ethics and Rawls adapted to his principles of justice. While such a theocratic polity may be illiberal, its perfectionism could be as thin as that of liberalism. And the thinness of such perfectionism does not depend directly on the principles of tolerance, individuality and autonomy. So while I agree that liberal perfectionism can be described as a thin perfectionism, it will have to share this designation with illiberal ideals of the good that see humanism as an essential element of these ideals.

3. A third objection states that I distinguish between liberal neutralism and liberal perfectionism, which prompts the question if there would be a policy decision on which the liberal neutralist disagrees with the liberal perfectionist, or if these distinctions are simply abstract ones, yielding the same practical consequences.

Actually, I do not distinguish in my dissertation between liberal neutralism and liberal perfectionism. On the contrary, I argue that what some liberal philosophers designate as liberal neutralism, be it liberal tolerance and the Rawlsian principles of justice, are not only non-neutral, but yield formative or perfectionist effects, especially with regard to the principles of justice. My argument shows that the justifications of the liberal principles of tolerance and of justice are not neutral, since they are steeped in liberal conceptions of the good, be it the Christian ethos, or the particular philosophies of Locke, Kant and Mill, which are not universally shared given their individualistic slant and their skepticism with regard to metaphysical, or religiously-revealed truths, among other things. Furthermore, I state that what has been taken to be impartial or neutral hides also perfectionist sympathies, as regards for instance the Millian principle of maturity which I have discussed, or is implicitly perfectionist,

as regards the Rawlsian principles of justice which shape the public and eventually the private sphere of the polity. What has been taken to be a thin theory of the good for the construction of the principles of justice, that is to say, the primary goods that are supposed to be universally shared, was shown to hide a thick theory of the good, one that depends crucially on the liberal conceptions of the good, that is, the philosophical, religious, or secular for that matter, and moral ideals of the liberal ethos.

Therefore, if we conflate the liberal neutralist with a liberal perfectionist, we can only say that any policy decision will be adopted by the same liberal individual, notwithstanding the labels we affix to that liberal. However, it may be that labels could make a difference, and someone who thinks of himself or herself as a liberal perfectionist may be more readily prepared to adopt moral, character- or virtue-formative and educational plans than someone who wants to hide behind the veil of neutrality. In other words, if liberalism acknowledges more readily its perfectionist lineage or effect, it may not, in the name of internal consistency, condemn blindly any types of overt perfectionism.

At any rate, the Millian maturity principle, for instance, with regard to tolerance, does not preclude strictly paternalistic interventions with regard to educating morally and intellectually children, while

dismissing other types of education liberalism might find incompatible with its secular humanism. For instance, the education in autonomy can be acquired through school curriculums, giving the child a different view of things than the ones taught mainly by his family or his community, allowing him to develop "the self-conscious, self-critical, reflective capacities that allow one to formulate, evaluate, and revise ideals of life and character."¹³ Of course, the liberal practices, the rules of justice, of law, of individual rights, the ethic of the free-market workplace, help channel this autonomy into acceptable and legitimate ways of expression, helping in the process the acquisition of liberal virtues, as we have discussed earlier about the relationship of practices and virtues.

4. The fourth and last objection addresses mainly my Rawlsian argument, whereby I characterize it as circular or empty, given that the parties in the original position are stripped of some aspects of their identity and social status, via the veil of ignorance, which may tip the balance of their choices to illiberal choices, either of the religious, economic, or social kind. Furthermore, the choice of the thin theory of the goods, or the primary goods, it was argued, was shown to favor liberal goods, be they equality, autonomy, or individuality. Given the above, no claim to

neutrality or universality by the liberal could be well-founded. It is alleged, however, against my analysis, that the Rawlsian argument can be shored up by a transpersonal conception of justification, defended purportedly by Thomas Nagel, which in effect holds that certain goods and harms are more local or personal than others, while others may have more of a universal appeal. While salvation, for instance, as a designated good, may require an appeal to highly complex beliefs that not everyone will share, this is not the case for a harm such as physical injury. In other words, there would be a genuine epistemological difference between the two, and it is alleged that the liberal seeks to assert goods and principles that different citizens with plural and incompatible ideals of the good can similarly assert or adopt, given the greater universality of those, or given that they are rooted in more, rather than less, transpersonal features.

Although the objection affirms that no neutrality is or needs to be claimed in this counter-argument, I see it, however, as the genuine expression of the neutral ambition of liberalism. We may quibble about labels, but one can easily equate a neutral ambition with a universal or impartial ambition, as neutrality can be identified as a quest for impartiality or universality, following our aforementioned definitions.

This is what Nagel means when he talks about the "impartiality that liberalism professes,"¹⁴ explaining impartiality thus:

The requirement of impartiality can take many forms, but it usually involves treating or counting everyone equally in some respect - according them all the same rights, or counting their good or their welfare or some aspect of it the same in determining what would be a desirable result or a permissible course of action.¹⁵

We can notice the similarity between this definition of impartiality and that of neutrality given above, where, in the case of impartiality, we are "counting (everyone's) good or ... welfare or some aspect of it the same....," and in the case of neutrality, no "ways of life are intrinsically preferable to others." There is an element of equality shared by both, making purportedly their appeal more universal. The question remains: does Rawls accomplish such universality in deriving his principles of justice? Does Nagel's appeal to transpersonal features of our identity help bring back universality to those principles and their justification? Does the appeal to the transpersonal, which after all seems to be another word for universal, differ much from the purportedly universal appeal to the primary goods, those "things that every rational man is presumed to want?"¹⁶

If, by transpersonal, we mean something more basic than the primary goods, which have been shown in the dissertation to have a distinctly liberal slant, such as in the "rights and liberties"¹⁷ they affirm, something as basic as physical injury or pain, does this necessarily bring a sufficiently universal appeal to a conception of the good? Can the emphasis on physical injury be sufficient to erect the whole gamut of basic laws that should rule our society? We may agree that physical injury is a necessary criterion for choosing humane principles of justice, but certainly they cannot be sufficient. I have discussed previously how a liberal and an illiberal or theocratic society can have an essentially humanistic slant that forecloses unjustified mental and physical cruelty, or any extreme practices of such cruelty. Yet, they would differ on a lot of other issues, such as the degree of individuality and autonomy to allow each person, the extent of every citizen's rights and obligations, which virtues to encourage and which vices to discourage, how much sexual freedom and public indecency to allow, what standards of sexual freedom and public indecency to adopt, what kind of school teaching and discipline to have, whether to gear state policies to secular happiness or to eternal salvation, so on and so forth. As one can see, there will be a lot of reasons for disagreement between citizens harboring these different views, or

between states for that matter, beyond the universal appeal of physical injury. The transpersonal emphasis on physical injury will simply not be sufficient to construct the basic principles of justice that should guide and regulate each society. If there is some universal appeal to physical injury and pain, and to the need to prevent reasonably these, such appeal could not extend to the comprehensive aspects of justice, the ones that depend on specific philosophies, moralities, or religions that may be mutually incompatible, and hence resistant to reconciliation or universality.

As Nagel asserts:

Rawls's model in the original position, and the principles it is used to support are controversial... Rawls's substantive doctrine is a rather pure form of egalitarian liberalism, whose controversial elements are its egalitarianism, its antiperfectionism and antimeritocracy, the primacy it gives to liberty...¹⁸

He, furthermore, has this to say about the original position, the veil of ignorance, and the primary goods:

The suppression of knowledge required to achieve unanimity is not equally fair to all the parties because the primary goods are not equally valuable in pursuit of all conceptions of the good...The original position seems to presuppose not just a neutral theory of the good, but a liberal, individualistic conception... But given that many conceptions of the good do not fit into the individualistic pattern, how can this be described as a fair choice situation for principles of justice?¹⁹

Obviously, Nagel does not see the primary goods as universally appealing when it comes to incompatible conceptions of the good, nor does he see Rawls's position as a neutral, non-controversial one, nor does he see the Rawlsian principles of justice as necessarily fair for people who do not share the liberal presuppositions or conceptions of the good.

As for the transpersonal or universal appeal of physical harm, Nagel does not see such "transpersonal" focus as ushering ecumenical conciliation and preventing most sources of conflict among incompatible ideals of the good. As he puts it:

In politics, where we are all competing to get the coercive power of the state behind the institutions we favor...it is not only our personal interests, attachments, and commitments that bring us into conflict, but our different moral conceptions.²⁰

One can clearly see that the transpersonal claim of physical injury does not have much bearing on "our personal interests (and) attachments" nor on "our different moral conceptions," which have their own, independent, sources of conflict. Furthermore, Nagel shows how an illiberal individual may be skeptical about the motives of the original position:

An antiliberal critic of Rawls could (ask) why he should agree to be governed by principles that he would choose if he did not know his own religious beliefs, or his conception of the good. Isn't that...giving too much authority to those whose values conflict with yours - betraying your own values, in fact? If I believe something, I believe it to be *true*, yet here I am asked to refrain from acting on that belief in deference to beliefs I think are false.²¹

As I have discussed in my dissertation, the derivation of the principles of justice, the emphasis on the primary goods as opposed to other goods, the presuppositions that went into what to hide behind the veil of ignorance and what to reveal, seemed to be grounded in purely liberal conceptions of the good, conceptions that have no claim on universality as their proponents and defenders might assume. As per the example of Nagel, matters of eternal salvation might be as important to a religious believer as physical injury, if not more important. After all, many religions had their martyrs who suffered torture and death, and accepted willingly such suffering, in the name of their beliefs. In such instances, and in many others that perhaps do not rise to the level of martyrdom, eternal salvation and faith seemed to override the focus on physical harm and injury, and thus give the lie to the transpersonal claim. The religious believer may justifiably request that salvation issues be integrated in the principles of justice, so that the moral climate that the

laws would regulate become conducive to one's salvation rather than to one's damnation. The emphasis on harm and injury may still be there, as per the reality of damnation, but the consequences of the focus on such a metaphysical reality of pain would be different than those deriving from the focus on the physical or secular elements that liberalism defends. At any rate, the ecumenical reconciliation that the transpersonal dimension, and more generally the neutral one, might have envisioned, would still be as elusive as ever. But that should not be surprising, given how philosophically and morally loaded the liberal neutral stance can be. As Nagel puts it:

Liberal impartiality claims for itself an authority that will not in fact be universally accepted, and therefore the justification it offers for resisting the imposition of more particular values in certain cases will not secure actual universal agreement. But since it is a substantive moral position, that is not surprising.²²

In other words, what has been claimed to be liberal neutrality is a particular moral and philosophical conception through and through, and will thus be controversial to conceptions of the good incompatible with liberalism. As for the transpersonal dimension, it has been shown that it is not sufficient to avoid conflicts that have their origin in philosophical, moral or religious sources that are mutually incompatible. That does not

a priori rule out any reconciliation between liberalism and incompatible ideals of the good. Depending on the degree of incompatibility, common ground could be found to reconcile these. That means that, in a liberal polity, those aspects of the illiberal ideals that are most compatible with liberalism will be allowed to flourish.

Notes to Appendix

1. Thomas Hurka, *Perfectionism* (New York: Oxford University Press, 1993), pp. 158-59.
2. Charles Larmore, "The Limits of Aristotelian Ethics," in *Virtue* (New York: New York University Press, 1992), p. 192.
3. Thomas Nagel, "Moral Conflict and Political Legitimacy," *Philosophy and Public Affairs*, Vol. 16, No. 3, Summer 1987, p.222.
4. John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).
5. Stephen Macedo, "Charting Liberal Virtues," in *Virtue* (New York: New York University Press, 1992), p. 208.
6. Vinit Haksar, *Equality, Liberty and Perfectionism* (New York: Oxford University Press, 1979), p. 184.
7. *Ibid.*, p. 180.
8. Alasdair MacIntyre, *After Virtue* (Notre Dame: University of Notre Dame Press, 1984), p. 191.
9. *Idem.*, p. 187.
10. Macedo, *op. cit.*, p. 205.
11. *Idem.*, p. 212.
12. *Idem.*, pp. 207-208.
13. *Idem.*, p. 217.
14. Thomas Nagel, "Moral Conflict and Political Legitimacy," *Philosophy and Public Affairs*, Vol. 16, No. 3, Summer 1987, p. 215.
15. *Idem.*
16. John Rawls, *Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 62.
17. *Idem.*
18. Nagel, "Rawls on Justice," *Other Minds* (New York: Oxford University Press, 1995), p. 124.
19. *Idem.*, p. 130.
20. Nagel, "Moral Conflict and Political Legitimacy," *op. cit.*, pp. 215-216.
21. *Idem.*, p. 222.
22. *Idem.*, p. 240.

BIBLIOGRAPHY

- Ackerman, B. (1980) *Social Justice in the Liberal State* (Yale University Press).
- _____ "Why Dialogue?" *Journal of Philosophy* 86, 1 (January 1989).
- Aristotle, *Ethics* (NY: Penguin Books, 1976).
- Barber, Benjamin (1989) "Liberal Democracy and the Costs of Consent," in N. Rosenblum (ed.).
- Barry, Brian. (1995) *Justice as Impartiality* (Oxford: Oxford University Press).
- Benhabib, Seyla (1989) "Liberal Dialogue Versus a Critical Theory of Discursive Legitimation," in N. Rosenblum (ed.), *Liberalism and the Moral Life* (Cambridge: Harvard University Press).
- Chapman, J. and Galston, W. (eds), *Virtue* (NY: New York University Press, 1992).
- Copp, David et al. (eds.) *The Idea of Democracy*:
- Cranston, M. (1987) "John Locke and the Case for Toleration", in Mendus et al (eds).
- Darwall, Stephen et al (eds.) (1997) *Moral Discourse and Practice* (NY: Oxford University Press).
- Esman, Milton (1988) *Ethnicity, Pluralism, and the State in the Middle East* (Ithaca: Cornell University Press).
- Galston, William (1991) *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State* (Cambridge: Cambridge University Press).
- _____ (1989) "Civic Education in the Liberal State," in N. Rosenblum (ed.).
- _____ "Two Concepts of Liberalism," *Ethics* 105 (April 1995).

- Goodin, Robert and Philip Pettit (eds.) (1997) *Contemporary Political Theory: An Anthology* (Cambridge, MA: Blackwell Publishers Ltd.)
- Graham, Gordon (1996) "Tolerance, Pluralism, and Relativism," in D. Heyd (ed.).
- Gutman, Amy (ed.) (1994) *Multiculturalism: Examining the Politics of Recognition* (Princeton, NJ: Princeton University Press).
- Habermas, Jurgen (1994) "Struggles for Recognition in the Democratic Constitutional State," in Amy Gutman (ed.).
- Haksar, Vinit *Equality, Liberty and Perfectionism* (New York: Oxford University Press, 1979).
- Hampton, J. (1993) "The Moral Commitments of Liberalism", in D. Copp et al (eds).
 _____ (1997) *Political Philosophy* (Boulder, CO: Westview Press).
- Heyd, D. (1996) (ed.) *Toleration: An Elusive Virtue* (Princeton, NJ: Princeton University Press).
- Hobbes, Thomas (1958) *Leviathan* (NY: The Bobbs-Merrill Company, Inc.).
- Horton, J. (1985) "Toleration, Morality and Harm" in Horton and Mendus (eds).
 _____ (1996) "Toleration as a Virtue," in D. Heyd (ed.)
 _____ and Mendus, S. (eds) (1985) *Aspects of Toleration* (Methuen, London).
- Hume, David *An Inquiry Concerning the Principles of Morals* (The Library of Liberal Arts) (1957).
- Hurka, Thomas *Perfectionism* (New York: Oxford University Press, 1993).

- Jansen, G.H. (1979) *Militant Islam* (NY: Harper & Row).
- Kant, I. *Groundwork of the Metaphysic of Morals* (NY: Harper Torchbooks, 1964.).
- Kekes, J. (1994) "Pluralism and the Value of Life" in E. Paul et al (eds)
- Kymlicka, W. (1989) *Liberalism, Community, and Culture* (Oxford: Oxford University Press).
 _____ (1991) *Contemporary Political Philosophy: An Introduction* (Oxford: Oxford University Press).
 _____ (1996) "Two Models of Pluralism and Tolerance", in Heyd (ed.).
- Larmore, C. (1987) *Patterns of Moral Complexity* (Cambridge University Press).
 _____ (1994) "Pluralism and Reasonable Disagreement" in E. Paul et al (eds).
 _____ (1996) *The Morals of Modernity* (New York: Cambridge University Press).
 _____ "The Limits of Aristotelian Ethics," in J. Chapman and W. Galston (eds), *Virtue* (New York: New York University Press, 1992).
- Locke, J. *A Letter Concerning Toleration*, Tully, J. (ed.) (Hackett Publishing Company, 1983).
 _____ (1980) *Second Treatise of Government* (Indianapolis, Ind.: Hackett Publishing Company, Inc.).
- Macedo, Stephen (1990) *Liberal Virtues: Citizenship, Virtue and Community in Liberal Constitutionalism* (Oxford: Clarendon Press).
 _____ "Charting Liberal Virtues," in J. Chapman and W. Galston (eds), *Virtue* (New York: New York University Press, 1992)
- MacIntyre, A. (1981) *After Virtue* (Duckworth: London).

- Mendus, S. (1989) *Toleration and the Limits of Liberalism* (Humanities Press International).
 _____ (ed.) (1988) *Justifying Toleration: Conceptual and Historical Perspectives* (Cambridge University Press).
- Mill, J. S. *Mill: Utilitarianism - with Critical Essays*, S. Gorovitz (ed.) (NY: The Bobbs-Merrill Company, 1971).
 _____ (1978) *On Liberty* (Hackett Publishing Company).
- Nagel, Thomas "Moral Conflict and Political Legitimacy," *Philosophy and Public Affairs* 16, 3 (Summer 1987).
 _____ "Rawls on Justice," *Other Minds* (New York: Oxford University Press, 1995).
- Nietzsche, F. *Beyond Good and Evil* (NY: Vintage Books, 1989).
 _____ *On the Genealogy of Morals* (NY: Vintage Books, 1989).
 _____ *The Will to Power* (NY: Vintage Books, 1968).
- Paul, E., Miller, F., and Paul, J. (eds.) (1994) *Cultural Pluralism and Moral Knowledge* (Cambridge University Press).
- Plato, *The Republic* (NY: Penguin Books, 1987).
- Raphael, D. D. "The Intolerable", in S. Mendus (ed.) (1988).
- Rawls, J. (1971) *A Theory of Justice* (Harvard University Press).
 _____ (1975) "A Kantian Conception of Equality," in Robert M. Stewart (ed.), *Readings in Social and Political Philosophy* (Oxford: Oxford University Press, 1986).
 _____ "Kantian Constructivism in Moral Theory", in Stephen Darwall et al. (eds.) *Moral Discourse and Practice*.
 _____ (1982) "Social Unity and Primary Goods", in *Utilitarianism and Beyond*, ed. A. K. Sen and B. Williams (Cambridge University Press).
 _____ "Justice as Fairness: Political not Metaphysical", *Philosophy and Public Affairs* 14, 3 (Summer 1985).
 _____ (1987) "The Idea of an Overlapping Consensus", in Conrad Johnson (ed.), *Philosophy of Law* (NY: MacMillan, 1993).
 _____ (1989) "The Domain of the Political and Overlapping Consensus", in D. Copp et al (1993).

_____ (1993) *Political Liberalism* (Columbia University Press).

Raz, J. (1986) *The Morality of Freedom* (Oxford: Oxford University Press).

_____ "Autonomy, Toleration and the Harm Principle", in S. Mendus (ed.) (1988).

Rosenblum, N. (ed.) (1989) *Liberalism and the Moral Life* (Cambridge: Harvard University Press).

Sandel, M. (1982) *Liberalism and the Limits of Justice* (Cambridge University Press).

_____ "The Procedural Republic and the Unencumbered Self," in Robert E. Goodin et al. (ed.) *Contemporary Political Philosophy: An Anthology*:

_____ (1996) *Democracy's Discontent* (Cambridge: Harvard University Press).

Scanlon, T. M. (1996) "The Difficulty of Tolerance", in Heyd (ed.).

Sher, George (1997) *Beyond Neutrality: Perfectionism and Politics* (Cambridge: Cambridge University Press).

Shklar, Judith (1984) *Ordinary Vices* (Cambridge, MA: Harvard University Press).

_____ (1989) "The Liberalism of Fear," in N. Rosenblum (ed.).

Stewart R. (ed.) (1986) *Readings in Social and Political Philosophy* (Oxford: Oxford University Press).

Taylor, Charles (1994) "The Politics of Recognition," in A. Gutman (ed.).

Waldron, J. (1988) "Locke, Toleration and the Rationality of Persecution" in S. Mendus (ed.), *Justifying Toleration*.

Walzer, Michael (1994) *Thick and Thin: Moral Arguments at Home and Abroad* (University of Notre Dame Press).

Williams, Bernard. (1996) "Toleration: An Impossible Virtue", in Heyd (ed.).