

Liberal Neutrality: A Reinterpretation and Defense*

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I. INTRODUCTION

AFTER a brief ascendancy in the 1970s and 1980s, the idea of liberal neutrality has fallen out of favor in recent years. A growing chorus of liberal writers has joined anti-liberal critics in arguing that there is something confused and misguided about the insistence that the state be neutral between rival conceptions of the good. Assuming we can even make sense of the idea of neutrality, these writers contend, it is a mistake to think that there is anything in liberal principles that commits the liberal state to neutrality.¹ With a number of former neutralists softening their support for the idea, the rejection of neutrality is quickly becoming a consensus position, even amongst liberal political philosophers.² According to one writer, all that remains to be done is an “autopsy” on the idea of state neutrality.³

Much of the critique of neutrality has proceeded on the basis of four assumptions. The *first* contrasts neutrality with perfectionism. To defend state neutrality is to deny that the state can legitimately use its power to encourage ways of life that it supposes to be valuable or to discourage ones that it regards

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¹Leading critics of liberal neutrality include: Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986); George Sher, *Beyond Neutrality* (Cambridge: Cambridge University Press, 1997); Richard Arneson, “Liberal neutrality on the good: an autopsy,” *Perfectionism and Neutrality*, ed. S. Wall and G. Klosko (Oxford: Rowman & Littlefield, 2003), pp. 191–208.

²John Rawls and Ronald Dworkin are two prominent neutralists who play down the concept in their later work. See Rawls’ reluctant remarks in his *Political Liberalism*, paperback edition (New York: Columbia University Press, 1996), p. 191; and his restriction of neutrality to “constitutional essentials” at p. 234. On the latter point, see also John Rawls, *Justice as Fairness* (Cambridge, MA: Harvard University Press, 2001), p. 152. Dworkin still affirms a version of neutrality in *Sovereign Virtue* (Cambridge, MA: Harvard University Press, 2000), pp. 239, 281–82, but it is less prominent in his thought than it was in his “Liberalism,” *Public and Private Morality*, ed. S. Hampshire (Oxford: Oxford University Press, 1978), pp. 60–79.

³Arneson, “Liberal neutrality on the good.”

as worthless.⁴ The *second* standard assumption is that neutrality has the status of a “prohibition.”⁵ Neutrality is not just one consideration that the state should bring into an appropriate balance with judgments it makes about the good of its citizens. It is a principle that forbids the state from relying on such judgments. The *third* assumption is that the concept of neutrality can assume one or other of two basic forms: neutrality can be thought of either in terms of the effects of the state’s policies or in terms of the intentions of the legislators and policy-makers who put those policies in place. Although considerable variation in formulation is possible within these basic forms, most philosophers writing about neutrality—whether pro or contra—assume that the concept is best rendered by one or other of them.⁶ And, finally, the *fourth* assumption is that the liberal value of personal autonomy offers a leading reason for thinking that the state should be neutral in the relevant sense.⁷

For reasons that will be touched upon below, the critics have not had too much difficulty challenging neutrality when these various assumptions are in place. The thesis that the state has a strict, autonomy-based obligation to embrace anti-perfectionism is difficult to accept. A key claim of the present article, however, is that none of the four standard framing assumptions are essential to the idea of neutrality. The article develops a reinterpretation of neutrality that drops each of the standard framing assumptions, and ends up with a view that is more coherent and powerful than the one that is pictured by critics. If the article’s central argument is correct, then it is plausible to think of neutrality as imposing a significant constraint on the policies of the liberal state.

Thus, first, rather than contrasting neutrality exclusively with perfectionism, the article opposes it to a broader range of uses of political power. Departures from neutrality occur not only with state perfectionism, but also when the state pursues legitimate, non-perfectionist public goals in a manner that is unequally accommodating of rival conceptions of the good, and indeed, when, with *no* particularly strong rationale, the state’s policies are unequally accommodating of different conceptions of the good. Second, rather than treat neutrality as a strict prohibition, the article characterizes it as a significant *pro tanto* constraint. It is a constraint that has genuine weight and reflects significant liberal values but it sometimes appropriately gives way to other considerations. When the state has

⁴The identification of neutrality with anti-perfectionism is extremely common in the literature. For example, see: Dworkin, “Liberalism”; Raz, *The Morality of Freedom*, pp. 110–1; Sher, *Beyond Neutrality*.

⁵Sher, *Beyond Neutrality*, p. 29. This framing of the neutrality debate is quite prominent in Sher’s book. Sher sets himself against the view that perfectionist reasons are “in principle inadmissible in politics” (p. 4). See also pp. 72–3, 246.

⁶Influential discussions of different conceptions of neutrality include: Raz, *Morality of Freedom*, pp. 114–5; Charles Larmore, *Patterns of Moral Complexity* (Cambridge: Cambridge University Press, 1987), pp. 43ff; Will Kymlicka, “Liberal individualism and liberal neutrality,” *Ethics*, 99 (1989), 883–905; Jeremy Waldron, “Legislation and moral neutrality,” *Liberal Neutrality*, ed. R. Goodin and A. Reeve (London: Routledge, 1989), pp. 61–83.

⁷Raz, *Morality of Freedom*, p. 108; Sher, *Beyond Neutrality*, chs. 2–3.

disfavored some particular conception of the good on the basis of considerations that fail to adequately and appropriately grapple with the reasons it has to be neutral, it does an injustice to the bearers of that conception. Third, rather than picking between neutrality of effects and intentions, the article develops a distinct, third conception of neutrality, which it calls *neutrality of treatment*. According to this third conception, the state is neutral between rival conceptions of the good when its institutions and policies are equally accommodating of those conceptions. And, fourth, while the justification of neutrality to be sketched in the latter parts of the article does refer to a dimension of autonomy, which is labeled “self-determination,” the argument also emphasizes a fairness consideration. The guiding normative idea is that persons should have a fair opportunity to be self-determining. The importance of fairness in grounding neutrality was recognized in some of the original discussions of the idea but largely dropped out of view in subsequent critical assessments. By reinserting fairness into the justification, it becomes apparent why neutrality imposes a significant constraint on state action.

To be sure, one danger in dropping the various assumptions that have framed the critical literature on neutrality is that a disagreement with that literature can no longer be presumed. Since the article does not directly confront the standard critique of neutrality, it might reasonably be wondered whether it is advocating something that anyone has been concerned to deny. For instance, the claim that the state has a *pro tanto* reason to be neutral is perfectly compatible with the claim that the state ought sometimes to pursue perfectionist aims and, indeed, with the claim that the state also has a *pro tanto* reason to favor the particular conceptions of the good that it regards as valuable. It is not clear that the opponents of neutrality have ever wanted to argue anything stronger than the latter two claims. And the suggestion that neutrality ought to be opposed, not just to perfectionism, but to a broader range of state policies, is again not necessarily venturing into contested terrain. The key point, for many critics of neutrality, is simply that it is permissible, in some contexts, for the state to pursue perfectionist policies.

Even granting these points, however, I think that the article’s argument is of genuine theoretical interest. Although proponents of perfectionism have allowed that their preferred policies ought to be limited by various pragmatic and context-specific countervailing considerations, they have not acknowledged anything approaching a general, standing reason for the state to remain neutral.⁸ If the argument of this article is correct, there is such a constraint. The insistence on opposing neutrality to non-perfectionist policies, as well as perfectionist ones,

⁸For instance, Sher (*Beyond Neutrality*, p. 4) moves from the weak claim that no reasons (including perfectionist ones) are “in principle inadmissible in politics” to the stronger one that “it is no less legitimate for governments than for private individuals to try to promote the good.” Although I do not dispute the weak claim, I contend that governments do have a general fairness-based reason to be neutral, a reason that does not apply in the same way to individuals.

is important for a different reason. Neutrality is sometimes invoked in non-perfectionist contexts, for instance in debates about religious accommodations and about the justification of minority cultural rights. Some theorists claim that neutrality militates against religious and cultural accommodations, and others maintain that claims of neutrality are incoherent and unwarranted in these contexts because there is simply no neutral position to be had.⁹ I think that both of these claims about neutrality rest on confusion, and one of the aims of the article is to present a fairly general account of neutrality that can be of use in adjudicating these and other disputes.

II. NEUTRALITY AS A DOWNSTREAM VALUE

One dimension along which views of neutrality vary concerns how far neutrality lies upstream or downstream from other values. In some accounts, neutrality assumes the role of a master principle, which acts as a constraint on all other justifications. Rawls' device of the original position is sometimes interpreted as an attempt to formulate a neutral standpoint from which principles of justice can be derived.¹⁰ And his distinction between comprehensive and political conceptions, and the insistence that the former should play no essential role in public justification, is associated with a similar motivation. Critics of neutrality often assume this "upstream" version of the idea, and proceed to argue that the supposedly neutral standpoint or values are not as neutral as they appear. Thomas Nagel's early critique of the original position is exemplary of this reasoning. "The original position," according to Nagel, "seems to presuppose not just a neutral theory of the good, but a liberal, individualistic conception according to which the best that can be wished for is the unimpeded pursuit of his own path, provided that it does not interfere with the rights of others."¹¹

It is equally possible, however, to assign to neutrality a more modest, downstream place in the domain of values. A decision to be neutral in some conflict or contest is sometimes based on non-neutral reasons. The United States might decide to remain neutral in a dispute between Denmark and Norway because of a desire to preserve its friendship with Sweden, which (for its own particular reasons) has decided to remain neutral in the dispute. Or constitution-makers might endorse a content-neutral right to free expression for substantive Millian reasons of revealing the truth and maximizing

⁹For the first sort of claim about neutrality, see Brian Barry, *Culture and Equality* (Cambridge, MA: Harvard University Press, 2001), ch. 2. On the incoherence of state neutrality towards culture, see Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995), pp. 108–115; Joseph Carens, *Culture, Citizenship, and Community* (Oxford: Oxford University Press, 2000), pp. 77–8; Samuel Scheffler, "Immigration and the significance of culture," *Philosophy & Public Affairs*, 35 (2007), 93–125 at p. 114.

¹⁰Sher, *Beyond Neutrality*, p. 31.

¹¹Nagel, "Rawls on Justice," *Philosophical Review*, 82 (1973), 220–234 at pp. 228–29. For criticism of Nagel on this point, see Kymlicka, "Liberal individualism and liberal neutrality"; Waldron, "Legislation and moral neutrality."

utility—reasons which are not themselves neutral in any deep sense. Neutrality for non-neutral reasons is a familiar phenomenon.¹²

In general, the “downstream” approach assumes that there is some justifiable set of fundamental values, which make no claim to neutrality. It then argues that these values commit the state, in certain contexts, to being neutral amongst different conceptions of the good. It is *because* certain non-neutral values hold sway that the state ought, in some limited domain, to adopt a stance of neutrality. The account of neutrality that I defend is downstream in this sense. It is in virtue of being guided by a particular, justifiable, liberal value—what I call “fair opportunity for self-determination”—that the state has a weighty, if defeasible, reason to be neutral between conceptions of the good.¹³ Because neutrality is a downstream value, certain general challenges to its coherence, exemplified by Nagel’s objection to Rawls, can easily be deflected. The account has no ambition to occupy an Archimedean point outside, or at the apex of, the domain of value, and thus is not embarrassed by the observation that its guiding value is in fact quite particular and non-neutral.

The downstream character of neutrality also helps to explain certain restrictions on neutrality’s “domain” and “strength.” By the “domain” of neutrality I mean the range of conceptions of the good with respect to which the state has a *pro tanto* reason to be neutral. On the view to be defended here, the state has no reason at all to extend neutrality towards certain conceptions. Some conceptions of the good reject the value of self-determination on which neutrality is based, or reject other values of comparable or greater importance. The exclusion of such conceptions from the domain of neutrality is not ad hoc, but is a natural implication of neutrality’s downstream character. Extending neutral treatment to conceptions of the good that are hostile to the self-determination of others would not leave those others with a fair opportunity for self-determination. Someone who held such a conception, and tried to insist that his conception was owed neutral treatment, would find himself tangled in a contradiction. He would be in the position of saying *both* that the state is wrong not to respect his fair opportunity to be self-determining *and* that it should show such respect by adopting policies that deny that very same opportunity to others.¹⁴

¹²See the valuable discussion in Waldron, “Legislation and moral neutrality,” pp. 164–7. See also Sher, *Beyond Neutrality*, p. 14.

¹³The value of self-determination does have an anti-perfectionist character. It consists in the pursuit of one’s actual conception of the good, not the pursuit of a valuable conception. Self-determination is discussed and defended further in Sections V and VI below. I doubt it adds anything useful to call it a “neutral” value.

¹⁴Suppose, for the sake of argument, that there are conceptions of the good that are so lacking in value that their bearers are better off when those conceptions are not fulfilled, even if the bearers are unable to substitute a more worthwhile conception. An account which bases neutrality on the value of self-determination can also exclude these “worthless” conceptions of the good—for which self-determination has no value—from the domain of neutrality.

Even for conceptions of the good that fall within neutrality's domain, the state does not have a general, conclusory, reason to be neutral. Rather, the claim is that the state has a defeasible, or *pro tanto*, reason to be neutral—one that is often quite weighty. Again the point is related to the downstream character of neutrality as a value. Fair opportunity for self-determination is not the only important value, and its claims will have to be balanced against those of other comparably important values.

Whether the state has a conclusory reason in a given case depends on several factors. As we shall see in Section V, these include the degree to which a possible departure from neutrality would in fact impact negatively on the fair opportunity for self-determination; and the degree to which the countervailing considerations, be they perfectionist considerations or considerations of the public good, are themselves weighty and can be advanced through, and only through, neutrality-curtailling measures. The relevant factors also include, as I explain in Section VI, the degree to which self-determination has a heightened importance for persons who are affected by a non-neutral policy because of the special nature of the commitment or attachment that is adversely impacted. Policies that deny a person the fair opportunity to fulfill their religious commitments are especially harmful, for instance, and should be adopted only in those situations where they are the least burdensome means of advancing some compelling countervailing consideration.

III. EXISTING CONCEPTIONS OF NEUTRALITY

Let us move directly now to the article's crucial conceptual proposal, which is that there is a distinct third conception of neutrality that has been neglected in the literature. To get a first glimpse of this distinct third conception, consider a schematic representation of state policy-making:

With intentions *I*, the state adopts policy *P*, which can be expected to have effects *E*.

Roughly speaking, proponents of neutrality of intentions are interested in *I*. The state maintains neutrality when and only when its policies are adopted with an appropriate kind of intention. Advocates of neutrality of effects, on the other hand, concentrate on *E*. A policy is neutral when and only when, relative to an appropriate baseline, it is not expected to produce unequal effects on different conceptions of the good.

In contrast with the two traditional approaches, neutrality of treatment focuses its attention on *P*. *P* represents either a form of assistance to one or more conceptions of the good (if it can be expected to promote those conceptions) or a form of hindrance (if its effects are expected to be negative). According to neutrality of treatment, the state maintains neutrality only when it extends equivalent levels of assistance/hindrance to rival conceptions of the good.

The development of a third conception of neutrality is motivated by certain weaknesses in the first two. Consider, first, neutrality of intentions. The intention behind a policy can be equated with the *aim* of the policy, which is the state of affairs that the policy seeks to bring about. Or it could be thought of as the *justification* for the policy, the fundamental reason why the policy is adopted, which may or may not refer to the intrinsic desirability of the state of affairs to be brought about.¹⁵ Conceptions of neutrality featuring these terms would be the following:

Neutrality of aim. The state violates this requirement when it adopts any policy with the aim of making some particular conception of the good more or less successful.

Neutrality of justification. The state violates this requirement when its fundamental reason for adopting some policy involves a judgment about the value of a particular conception of the good.

In general, the state maintains neutrality when it restrains itself to pursuing only those policies that are, or could be, supported by appropriate reasons. These reasons must be sufficiently plausible and weighty, and they must not invoke an aim of promoting a particular conception of the good or otherwise rest on a judgment about the value of particular conceptions of the good.

Much of the critical literature on neutrality of intentions focuses on its plausibility as a normative principle. In motivating the introduction of neutrality of treatment, however, I want to highlight a different limitation of the intentions-based view. Neutrality of intentions sweeps too widely, counting as neutral policies that seem, intuitively, to be non-neutral. Consider, for instance, cases of religious establishment in which the state confers some special advantage on a particular religion that it does not confer on others. In many ways, the establishment of a particular religion or church seems like the paradigmatic example of a departure from neutrality.¹⁶ It is revealing, therefore, that neutrality of intentions does not regard all cases of state establishment as departures from neutrality.¹⁷ It has no difficulty declaring an establishment to be non-neutral in cases where the rationale for the policy lies in the fact that legislators regard the religion in question as true or intrinsically valuable. Suppose, however, that the establishment policy has a different justification. Legislators do not know whether the established religion is true or intrinsically valuable. But they do judge that its establishment will bring desirable social consequences. For instance, they might think that, by associating the state with the majority religion, they will enhance the authority and perceived legitimacy of the state in the eyes of many

¹⁵Arneson's distinction between "procedure" (roughly what I mean by "justification") and "aim" marks the difference I have in mind here. See Richard Arneson, "Neutrality and utility," *Canadian Journal of Philosophy*, 20 (1990), 215–40 at pp. 218–9.

¹⁶*Ibid.*, p. 216.

¹⁷*Ibid.*, p. 219.

citizens, thereby making it more effective at pursuing its other objectives. Now it seems that the intention is a neutral one. The aim is to bring about the relevant social consequences, and the justification is the desirability of those consequences. But the policy still involves an official state preference for one particular religion and would strike many people as plainly non-neutral in character.¹⁸

The over-reach associated with neutrality of intentions provides a reason for considering neutrality of effects. A plausible diagnosis of the non-neutral character of establishment points to the fact that establishment policies can be expected to promote the success of the established religion at the expense of other religions and outlooks. However, neutrality of effects leads into a difficulty of its own.

There are varying ways of formulating neutrality of effects, but all of them share the following core principle:

Neutrality of effects. The state violates this requirement if it adopts a policy that, relative to an appropriate baseline, has the effect of making some particular conception of the good more or less successful without also adopting offsetting policies that have the effect of making rival conceptions of the good more or less successful to the same degree.

As this statement makes clear, the effects that matter for the view are the success or failure of particular conceptions of the good. If a policy leads a conception of the good to be more successful than one or more of its rivals (against the backdrop of an appropriate baseline) then a departure from neutrality has occurred.

Different variations on this principle can be, and have been, proposed. For our purposes, the important variation relates to two different ways of measuring success. One dimension of success might be called “popularity.” All else being equal, a conception of the good is more successful the more adherents it has. A second dimension is “realizability.” All else being equal, a conception of the good is more successful the easier it is for people to pursue and realize that conception of the good.¹⁹ The distinction between these two dimensions will be relevant in the next section, when we assess the distinctiveness of neutrality of treatment.

If the problem with neutrality of intentions is over-reach, the turn to neutrality of effects produces the opposite problem of under-reach. Neutrality of effects might help to explain why establishment policies represent a departure from neutrality. But this is mainly because it regards virtually *all* policies as non-neutral, and thus almost *no* policies as neutral. Indeed, even the least controversial liberal principles, if enacted, would bring about non-neutral

¹⁸For a related criticism of neutrality of intentions, see Raz, *Morality of Freedom*, p. 116.

¹⁹This dual-component conception of success is adapted from Raz, *Morality of Freedom*, pp. 112, 114–5.

effects.²⁰ Legal protections of the basic liberties make it relatively more difficult for boring and unpopular ways of life to flourish than would be the case in a legal system where people are locked into particular ways of life. Policies that seek to establish a fair distribution of material resources make it relatively harder for people with expensive tastes to realize the ways of life that they value. And so on. Since liberals are not embarrassed by these implications of their principles, and do not think that any special compensation is due to those who are adversely impacted, it seems clear that they do not recognize a general duty to be neutral with respect to effects.

An examination of the two usual conceptions of neutrality reinforces the sense of neutrality as a deeply flawed idea. If neutrality is interpreted as neutrality of intentions, then it is too sweeping to account for some of the most obvious and paradigmatic cases of non-neutrality. If it is understood as neutrality of effects, then it might just account for such cases, but only because it is unable to count any policies as neutral, including core liberal ones. Defenders of neutrality thus face a dilemma.

IV. NEUTRALITY OF TREATMENT

If the basic idea of neutrality of effects is to equalize across outputs of the policy process, the idea of neutrality of treatment is to equalize across the state's inputs. The idea can be formulated as follows:

Neutrality of treatment. The state violates this requirement when its policies are more accommodating, or less accommodating, of some conceptions of the good than they are of others.

If the state adopts some policy that can be expected, in conjunction with other necessary inputs, to make a particular conception of the good more successful, then, in my terminology, its policy is "accommodating" towards that conception. To maintain neutrality, when the state pursues a policy that is accommodating (or unaccommodating) of some particular conception of the good, it must adopt an equivalent policy for rival conceptions of the good. Neutrality of treatment means the state's policies must be equally accommodating of rival conceptions of the good.

Obviously, for this view to get off the ground, there must be some metric of inputs that does not simply reduce back to outputs. If the only way of deciding whether two policies are equally accommodating were to look at whether they had equal effects, then neutrality of treatment would collapse back into neutrality of effects. Indeed, since accommodation, as I just defined it, is identified by a

²⁰The argument of the remainder of the paragraph follows Kymlicka, "Liberal individualism and liberal neutrality," pp. 884–5; Arneson, "Liberal neutrality on the good," pp. 193–4.

disposition to produce certain kinds of effects, it might seem, at first glance, that neutrality of effects and of treatment are not relevantly distinct.

But, in some cases at least, we do not have trouble identifying a metric of inputs that is distinct from, and independent of, outputs. Consider the case of a philanthropist, who is faced with a decision about how to allocate money between two worthy projects. One possibility would be for the philanthropist to give each project the amount that is calculated to bring the projects as close as possible to equal levels of success. A second would simply be to give each project equal amounts of money. One decision rule equalizes across outputs; the other across inputs. Since, in general, two such rules do not produce equivalent allocations, in this case at least there is an intuitive measure of policy inputs that is both well-defined and independent of policy outputs. And this continues to be true even if it is pointed out that what makes the money allocated by the philanthropist an “input” is its disposition (when spent in certain ways and combined with other necessary inputs) to produce the relevant sorts of “outputs.” Still we can construct distinct and independent measures of input and output, and equalize one or the other.

The basic idea behind neutrality of treatment is to generalize from cases like that of the philanthropist. In a wide range of different situations, it is possible to identify a sense in which the state might adopt policies towards rival conceptions of the good that are equally accommodating even though they can be expected to have different impacts on the success of those conceptions. I will briefly canvas some models of equal accommodation in a moment. First, though, consider a couple of illustrations that demonstrate the distinctiveness of neutrality of treatment as a view of neutrality.

A straightforward example of unequal accommodation involves state taxation of goods and services. Suppose that the state taxes the goods that are used in one conception of the good (COG1) at a rate of 15%, but slaps a 25% rate of tax on goods used in a rival conception (COG2). It seems natural to say that the state’s taxation policy is less accommodating towards COG2 than it is towards COG1. This is true even if the state’s aim in adopting the policy makes no reference to the desirability of promoting COG1 and even if it makes no judgment that COG1 is superior to COG2. And it is also true even if the tax differential makes no difference at all on the popularity of the rival conceptions. To this extent, neutrality of treatment is both well-defined and distinct from neutrality of intentions and neutrality of effects.

Neutrality of treatment is also distinct from neutrality of effects when the latter is measured by realizability rather than popularity. This is especially apparent in a second example. Suppose now that the state policy we are concerned with is not a tax but the legal permission to use some particular piece of land. Imagine that a field belongs to a local public authority, which, up to now, has prohibited its use for team sports. The local authority now decides to relax that policy, and to allow any group of people to sign up to use the field for the team-sport of their

choosing. The local community contains people who would like to play softball on the field and people who would like to play cricket. As described, the policy is equally accommodating of these different preferences, and is therefore consistent with neutrality of treatment. This is true because the policy extends exactly the same rights to bearers of each sporting preference, and not because of any conjectures about the impact of the policy on the popularity or realizability of the two sports.

To make the point about realizability explicit, imagine that the distribution of preferences for softball and cricket is heavily tilted towards softball. Large numbers of people want to play softball, and only a tiny handful want cricket. With these preferences in the background, the policy can be predicted to have a very unequal impact on softball and cricket lovers. It is now much easier (we might suppose) to play softball: finally there is a suitable place to play. But for the few would-be cricket players it is not much easier to play their preferred game, at least not a proper game. It is true that they now have access to one of the inputs (a field) that they need in order to realize their preference. But so few people want to play cricket that there is no realistic prospect of ever getting a game together. Neutrality of treatment clearly diverges, then, from neutrality of effects, even when the latter is measured in terms of realizability.

These examples are suggestive of both the intuitive and distinctive character of neutrality of treatment. A more systematic exploration of how judgments about equality or inequality of accommodation might be rendered in different contexts reinforces the suggestion that neutrality of treatment has a distinctive shape, which is less problematic than its two traditional competitors. Although space does not permit a full, systematic exploration here, it is worth pointing out how neutrality of treatment connects up with some standard liberal policies and commitments.

There are three general strategies that a state might adopt if it is committed to neutrality of treatment, which I call “privatization,” “generic entanglement,” and “evenhandedness.”²¹ The basic idea of the privatization strategy is to disentangle the state as far as possible from the regulation or provision of the goods and activities that figure in the pursuit of conceptions of the good. Under this approach, the state is equally accommodating of all conceptions of the good because it restricts itself to making a set of general rules that apply evenhandedly to all conceptions of the good, and otherwise extends no assistance to, and imposes no hindrance on, any goods or activities that might be involved in such conceptions. Some important examples of this privatization strategy include the

²¹There are interesting points to be raised about the choice between these strategies, which I do not have space to pursue here. The privatization strategy is the purest approach to realizing neutrality, but a liberal state will sometimes have good reason to opt for the second or even the third strategy instead. As several readers have observed to me, it is conceivable that neutrality of intentions or neutrality of effects, suitably understood, might enter in at this subsidiary level to help decide among the three strategies.

protection of a set of basic liberties, the observance of a separation between church and state, and the reliance on the market to allocate varying bundles of goods to different people.

In each of these examples, state institutions refrain from singling out particular goods or activities for differential treatment. Instead, they define and apply a general set of rules and mechanisms that apply uniformly to all goods and activities. Needless to say, the equally accommodating character of such rules and mechanisms does not guarantee the equal success of different conceptions of the good. Unpopular conceptions of the good will predictably fare worse under the basic liberties than they would in a more coercive regime. Those with expensive tastes, including unusual or minority tastes, may find it relatively difficult to satisfy their preferences in the market, even if they start from a fair share of initial spending power. Again these are reminders that neutrality of treatment is not equivalent to neutrality of effects. What it means to say that the basic liberties, or the market, are equally accommodating is that the rules and mechanisms that constitute them show no preference for the goods and activities valued by some conceptions of the good and not others.

The point of departure for the generic entanglement strategy, by contrast, is the recognition that some forms of state intervention are directed at goods and activities that play a role in all, or at least almost all, conceptions of the good. The entanglement of the state in the regulation or provision of these goods and activities is compatible with equal accommodation since no special form of assistance or hindrance is being extended to or imposed on some conceptions of the good but not others. Consider, for instance, the state's provision of police, fire, and school-bus services. These services are extended to different facilities associated with a range of different conceptions of the good. By providing fire department services to a local synagogue, a city government extends a form of assistance. But since it provides the same service to facilities associated with all other conceptions of the good, and they are all presumed to value it, there is no departure from neutral treatment. The state's provision of schools and health-care services are somewhat less pure examples of the same logic. The idea is that there is a core of what is offered in both schools and medical facilities that is useful to, and valued by, persons embracing an extremely broad range of different conceptions of the good. The common school, for instance, need not instruct children in the virtues or truth of any particular conception of the good but instead can seek to equip them with general knowledge and skills that they will need for citizenship and for a variety of different conceptions of the good.

Finally, a third possible strategy for realizing neutrality is the evenhandedness strategy. The main idea here is for the state to remain actively involved in providing and/or regulating particular goods and activities that are of special importance to some conceptions of the good and not others, but to do so in a pluralistic fashion such that a roughly equivalent form of regulation or provision is applied to various rival conceptions of the good. The government makes a

series of different interventions, each directed at one of several rival conceptions of the good. If a local government provides one form of recreational facility (for example, a skateboard park) valued by some people, for instance, then it does its best to provide a range of different kinds of comparable facilities (skating rinks, swimming pools, squash courts, and so on) that are valued by others. The state equally accommodates different conceptions of the good, in this way, not by relegating decisions about their provision to the market, nor by providing some generic benefit that is equally useful for them all (for example, a voucher valid at any private recreational club), but by positively accommodating all of them in an equal fashion, each in their own way. Although I will not try to develop the point here, it is in exploring this third strategy for achieving neutrality that one finds a positive link between neutrality and minority religious and cultural rights.²²

V. THE FAIRNESS JUSTIFICATION OF NEUTRALITY

The justification of neutrality draws, in part, on some neglected passages in Rawls, which discuss the “benefit criterion” of just taxation.²³ According to this traditional criterion, “taxes are to be levied according to benefits received.”²⁴ Rawls argues that, in general, the benefit criterion of tax policy should play no fundamental role in guiding the tax and expenditure policies of the government. Instead, these policies ought to be guided by the two principles of justice.

However, Rawls does assign the benefit criterion a significant subordinate role. Suppose we imagine a situation in which the demanding strictures of the two principles of justice have been satisfied, so that “the distribution of income and wealth that results is just whatever it is.”²⁵ To establish these background conditions, the government is presumably quite active, but Rawls observes that some citizens may want to see the government provide even more in the way of public goods. By assumption, these goods are discretionary, in that they are not necessary to establish just background institutions. They are simply goods that at least some citizens value and that, for one reason or another, are not made easily available on the market. In this special context, Rawls thinks that the benefit criterion *does* apply. Citizens ought to be given the chance to devise schemes of tax and expenditure through an “exchange branch” of government that can provide discretionary public goods. The tax paid by each citizen should be proportionate to the benefits she receives. If taxes to support such expenditures were to run contrary to the benefit criterion, then, in effect, the tax system would be recruiting some citizens to subsidize the provision of benefits for others. In a

²²For related discussion, see my “Liberal neutrality and language policy,” *Philosophy & Public Affairs*, 31 (2003), 356–86.

²³John Rawls, *A Theory of Justice*, revised edition (Cambridge MA: Harvard University Press, 1999), pp. 247, 250.

²⁴*Ibid.*, p. 247.

²⁵*Ibid.*, p. 249.

context where the antecedent distribution of income and wealth is just, this is unfair. As Rawls puts it, “there is no more justification for using the state apparatus to compel some citizens to pay for unwanted benefits that others desire than there is to force them to reimburse others for their private expenses.”²⁶

When Rawls turns to perfectionism a little later in *A Theory of Justice*, he alludes to this framework.²⁷ A government policy in support of the arts, sciences, universities, and so on may well be legitimate, he argues, if it could be shown to promote directly or indirectly the social conditions underlying justice. But, if it is just a matter of providing discretionary public goods that some citizens value, but not others, then the exchange branch, with its governing benefit criterion, is the appropriate forum in which to pursue government action. To fund such goods out of general compulsory taxation would be to risk imposing significant burdens on some without any compensating benefits.

With these scattered remarks, Rawls offers a simple but powerful framework to explain what is wrong with some of the most obvious departures from neutrality of treatment. As an illustration, imagine a group of citizens who wish to see their local public authority provide an expensive lacrosse facility out of public funds. The authority does not currently provide major facilities for other conceptions of the good, and no plans to provide other facilities are in the works. It seems clear that the policy departs from neutrality of treatment. A significant benefit is being extended to lacrosse fans and players, without analogous benefits for other conceptions of the good. If proponents of the facility do not plan to reimburse tax-payers, for example through funds raised from user-fees or ticket sales, there is no sense in which the scheme represents a roundabout use of a Rawlsian exchange branch: in the long run, the facility is funded out of general tax revenues. Given a just background distribution of resources, it seems evident that the proposed scheme is unfair to citizens who dislike lacrosse or simply are indifferent to it. The scheme consists of some people using the coercive power of the state to force others to subsidize their personal sporting preferences. Indeed, it is possible to go further and to say that, even if the background circumstances were unjust, the scheme would still be unfair. It is hard to imagine a set of circumstances in which public provision of the lacrosse facility would represent a reasonable strategy for bringing about justice.

Applied to discretionary public goods, the benefit criterion has a great deal of intuitive force. We might go one step further, however, and ask why exactly it is that violations of the criterion are objectionable. One clue to this explanation is found in imagining a possible response to lacrosse-haters who complain about the policy. Suppose opponents of the policy are told that they have nothing to complain about, because the lacrosse facility is meant for everyone to use and

²⁶*Ibid.*, p. 250.

²⁷*Ibid.*, pp. 291–92.

enjoy. It is not just the present lacrosse enthusiasts who can benefit from it, but anybody who develops and pursues an interest in the game.

This response draws attention to an account of the benefit criterion that will *not* work. The problem with policies violating the criterion is not that they apply different rules to different people (lacrosse-enthusiasts vs. everyone else) and, in this way, violate the basic rule-of-law principle that the law should be the same for everyone. Formally, at least, it is not particular persons who are given a special benefit by the provision of the facility, but a particular activity. Since any given citizen can enjoy the benefit simply by pursuing an interest in lacrosse, the policy does not single out any class of persons for differential treatment.

A better explanation of the unfairness produced by violations of the benefit criterion is that they conflict with the interest that non-beneficiaries have in what I call “self-determination.” This is their interest in being able to pursue and fulfill the conception of the good that they, in fact, happen to hold. In our example, it is true that any citizen could come to value, and be benefitted by, the lacrosse facility. In actual fact, at least some citizens do not value such a facility but, instead, have other aims and goals the pursuit and enjoyment of which depends on their having access to resources. When, against a background of justice, the state taxes away some of their resources to spend on advancing somebody else’s conception of the good, it denies them a fair opportunity to advance their own conception of the good. It denies them a fair opportunity for self-determination.

Rawls’ discussion of the benefit criterion is a useful place to start in building a case for neutrality of treatment, but it needs to be supplemented by other theoretical resources. To see this, consider a variation on the lacrosse example in which, instead of offering a special facility to lacrosse enthusiasts, the local authority imposes a special tax on the sport (for example, a special user-fee on private facilities or a surcharge on ticket sales). The rationale for the tax, let us suppose, is purely fiscal: lacrosse players and fans are particularly intense in their enthusiasm for the game, and are unlikely to diminish appreciably their demand for the game when faced with the tax.

As with the provision of a special lacrosse facility, something seems unfair about the imposition of a special lacrosse tax. In some situations, the benefit criterion helps to identify the source of this unfairness. Suppose that the public authority is using the revenues it raises from the special tax to pay for discretionary public goods the demand for which does not coincide with enthusiasm for lacrosse. The tax then conflicts with the benefit criterion: lacrosse enthusiasts are subsidizing discretionary goods for other people. But imagine, instead, that the public authority is spending the tax revenues on goods that are essential for maintaining just background conditions (for example, public education) rather than on discretionary goods. Even in this case, the lacrosse tax seems unfair. Why should lacrosse enthusiasts be singled out to carry the burden of providing these essential public goods? However, the benefit criterion cannot

explain why there is unfairness here, since, on a Rawlsian view at least, it applies only to expenditures on discretionary goods.

Rawls himself has relatively little to say about just taxation in support of essential or non-discretionary public goods. He registers a mild preference for a proportional expenditure (or consumption) tax over a traditional income tax, both of which would arguably be consistent with neutrality of treatment, since they do not single out particular conceptions of the good for unfavorable treatment. But he does not consider taxes on particular goods or activities (such as lacrosse) or explain whether or why he thinks they are unjust.

Assuming that we do think the lacrosse tax is unjust, we need an alternative to the benefit criterion to explain why this is so. Again I think it would be a mistake to diagnose the unfairness in terms of a violation of the rule of law. The peculiar tax schedule that includes the lacrosse tax does not apply different tax rates to different persons, but to different activities. Since any given lacrosse fan or player can avoid the tax simply by opting for a different pursuit, the persons who do pursue lacrosse are not being singled out as persons for differential treatment.

A better explanation of the unfairness produced by the tax is that the tax directly conflicts with the interest that persons have in self-determination. The lacrosse tax is unfair, on this account, because, by attaching special burdens to those who want to enjoy lacrosse, it denies lacrosse enthusiasts a fair opportunity for self-determination. To be sure, since there is no violation of the benefit criterion in the present case, some extra work is needed in order to show that the limits on the self-determination of lacrosse enthusiasts do, in fact, deny them a *fair* opportunity to realize their preferences. If the limits were somehow essential to the establishment of background conditions of justice, then they might not be unfair at all. Any kind of tax diminishes a person's self-determination to some extent, by reducing the resources they have at their disposal to advance their ends, but not all taxes are an affront to the fair opportunity for self-determination. The key feature of the lacrosse tax, however, is that it singles out a particular activity (valued by some conceptions of the good and not others) that stands in no essential relation to justice and imposes the burden only on those people who pursue that activity. By contrast, other kinds of tax, such as an expenditure or an income tax, are evenhanded in the way that they reduce the resources that people have to pursue the various conceptions of the good that they hold, and thus do not *unfairly* diminish anybody's opportunity for self-determination.

The lacrosse examples, and the remarks about the benefit criterion and fair opportunity for self-determination, are suggestive of a general argument in favor of neutrality of treatment. The basic hypothesis of such an argument is that departures from neutrality of treatment involve denying holders of disfavored conceptions of the good a fair opportunity for self-determination. In general, the state's *pro tanto* reason to be neutral derives from the *pro tanto* reason it has to opt for policies consistent with fair opportunity for self-determination.

A full defense of this hypothesis would require an investigation of at least two important matters. First, it would be necessary to offer some account of why self-determination matters, which would explain why people who are denied a fair opportunity for self-determination are being denied something valuable. Second, the case for neutrality of treatment rests on an assumption about fairness that stands in need of defense. Why assume that neutrality of treatment is needed for fair opportunity for self-determination? Perhaps, instead, fairness in this area means contriving to equalize the success of the conceptions of the good that people happen to hold, which would often imply a departure from neutrality of treatment. I shall return to these complicated issues in the next section.

For now, I want instead to turn my attention to perfectionist alternatives to neutrality. Even with the limited theoretical resources that we have already assembled, it should be possible to illuminate why there is a neutralist constraint on perfectionism. As I noted at the start of the article, a desire to vindicate certain forms of perfectionism lies at the heart of most recent criticisms of neutrality. From the perspective of perfectionists, the two lacrosse examples we have been considering may seem beside the point. Since there is nothing especially worthwhile, or worthless, about lacrosse as an end, the critics can remain unfazed by the suggestion that the two examples contain objectionable departures from neutrality. I shall argue, however, that the examples, and the idea of fair opportunity for self-determination that explains our intuitions about them, already give us the tools we need to see why there is a neutralist constraint on perfectionism.

By perfectionism, I mean not merely the view that there are objectively better or worse ways of living, but also the claim that the state should sometimes adopt policies that favor relatively worthwhile conceptions of the good, and disfavor relatively worthless ones, in order to encourage people to lead better lives. One general reason why some neutralists have rejected perfectionism stems from skepticism about whether any actual state would adopt policies that reliably track the good. In many cases that one could envision, there is likely to be a gap between the conceptions of the good that are deemed to be worthwhile/worthless and the ones that are, in fact, so. In actual fact, the conceptions being promoted will not be relatively valuable at all, or there will at least be reasonable disagreement as to their value. Since, unlike other of its activities, the state can refrain from pursuing perfectionist policies, this seems like a valid concern to me. I will set it to one side, however, and grant for the sake of argument that the state's claims about value are well-justified. Even on this improbable assumption, there is still an important neutrality-based limit on perfectionism.

At first glance it might seem that the logic of perfectionism protects it against the kind of fairness objection that was pursued in the lacrosse examples. A key feature of those cases was the allocation of benefits and burdens to different people. This is exactly what the benefit criterion tells the state not to do, and what it does do in the case of the lacrosse facility. The lacrosse tax involved a similar

problem. Rather than be guided by the relevant criteria of just taxation, the burden of providing essential public goods was disproportionately placed on the shoulders of citizens who happened to pursue an interest in lacrosse. With perfectionist policies, by contrast, this misalignment of benefit and burden is supposed to disappear. If all goes well, the burden is self-effacing. Insofar as people shift away from the discouraged lifestyle and into the encouraged one, there is no cost to them. They simply enjoy the perks and the status associated with the encouraged way of life.²⁸

However, the disanalogy between perfectionist policies and the earlier cases is not as stark as this argument suggests. In the case of the lacrosse facility, for instance, it is also true that the burden would be self-effacing if non-enthusiasts could be encouraged by the construction of the new facility to become excited about the game. If their preferences change in the right way, then the taxes would become proportionate to the benefit and there would be no objectionable burden. This possibility is unlikely to change anyone's judgment about the lacrosse facility, however, since it is extremely unlikely that everyone's preferences would change in the direction required to make any legitimate complaint disappear. Things might be a little better with well-judged perfectionist policies, the main purpose of which is to bring about a change in values and preferences. But here too, given the general stickiness of preferences in response to government interventions, it would take a small miracle for a perfectionist policy to have a one-hundred percent success rate. There are bound to be at least some people who are unresponsive to the set of incentives and disincentives, and the supportive social environment, which are designed to get them to improve their conception of the good. In many cases, the success rate is likely to be disappointingly low.²⁹

By assumption, the unresponsive members of the target group are already badly off in virtue of having an inferior conception of the good. The perfectionist policy, however, makes them even worse off. For one thing, they still have to pay the costs associated with the policy, whether it is the costs associated with providing a facility or giving a tax break to the encouraged conception of the good, or the penalties which are imposed on the discouraged conception that they stubbornly continue to hold.

A second point goes beyond the narrow concern with fiscal fairness that I have emphasized up to this point. (I go even further beyond this concern in the next section.) A perfectionist policy that is neither fully successful nor fully unsuccessful may have a further negative consequence for those for whom it is unsuccessful. In virtue of its partial success, some of the people who had

²⁸Sher, *Beyond Neutrality*, p. 74, makes an argument along these lines in a slightly different context.

²⁹Sher (*ibid.*, p. 66), evinces more optimism that judicious use of incentives and inducements by the state might in fact produce a high level of success. I do not see any reason to share Sher's confidence on this point.

embraced the inferior conception of the good will be induced to abandon it in favor of the more valuable conception. Because of economies of scale, this shift may in turn raise the costs associated with the inferior conception for those who continue to hold it, and such a shift may also weaken the institutions and practices that are associated with that conception. As a result of these changes, for people who are “stuck” with it, the inferior conception becomes harder to realize and perhaps even less rich and valuable than it was before.

The upshot is that perfectionist policies more closely resemble the earlier lacrosse examples than some might think. Assuming that the state’s judgments about relative value are justified, such a policy does produce benefits for some. But it also, predictably, leaves others with a net burden: they do not get the benefit, but they do have to absorb the costs of the policy, and they are left with a conception of the good that is now harder to realize and even less rewarding. For situations that are governed by the benefit criterion, there would seem to be a clear objection based on this misalignment of benefit and burden. Even for cases that are not governed by that criterion, such as “sin taxes” to finance government expenditures on essential public goods, there would seem to be an objection based on the idea of a fair opportunity for self-determination.

In general, then, I think that there is a fairness objection to perfectionist policies. As I emphasized earlier in the article, this objection is merely a *pro tanto* reason not to adopt such policies, and it does not carry any force at all with respect to certain limited categories of conceptions of the good.³⁰ The state’s reason to endorse anti-perfectionism is not always conclusory because, in addition to their interest in self-determination (fulfilling the conception of the good that they happen to have), people can also be expected to have an interest in holding a maximally worthwhile conception of the good. It is conceivable that, under some conditions, the prospects for a well-designed perfectionist policy to advance the latter interest, without doing too much damage to the former, will be great enough that, on balance, the perfectionist policy is permissible. Neutrality’s critics are fond of pointing to cases in which the perfectionist considerations seem very powerful, and the unfairness involved in the perfectionist policy seems relatively slight. Richard Arneson imagines a case in which the state comes by a windfall that allows it to subsidize opera at no cost to taxpayers.³¹ Even setting aside this unlikely scenario, it might be argued that the per-taxpayer cost of a modest state subsidy for opera would be so small, and the impact on the success of other conceptions of the good so slight, as to render complaints of unfairness otiose. If the subsidy really would save a valuable option such as opera from

³⁰The latter includes “worthless” conceptions, as defined in note 14. This is obviously a concession to perfectionism, albeit a small one given the definition of such conceptions.

³¹Arneson, “Liberal neutrality on the good,” p. 198. Even here, there might be an objectionable impact on opera’s near rivals, such as contemporary musicals. If the state is successful at drawing some fans of musicals into an appreciation of opera, ticket prices for musicals might go up and quality might go down. This is a burden to the ardent fans of musicals who are not tempted by the state-backed opera alternative.

vanishing altogether, then, on balance, the policy seems defensible. The important point, however, is that there is some unfairness involved in such a policy, however slight, and thus the state's *pro tanto* reason to be neutral does not disappear. Moreover, with many perfectionist policies, the balance of considerations between the promotion of the good and the avoidance of unfairness is likely to tilt in the other direction. Just because the state's reason to be neutral is *pro tanto*, then, it does not follow that it is easily overridden.

VI. FOUNDATIONAL QUESTIONS

In laying out the fairness justification of neutrality, I made no attempt to explain why, in general, self-determination is an interest that it is plausible to attribute to persons. Nor did I justify the suggestion that the state leaves everyone a *fair* opportunity for self-determination by extending neutrality of treatment. I conclude the article with some brief remarks about each of these difficult issues.

A. THE VALUE OF SELF-DETERMINATION

Given that people sometimes have unworthy or mistaken conceptions of the good, why should it matter if they enjoy the opportunity to fulfill the conception of the good that they happen to hold? In answering this question, it is worth distinguishing the general reasons that account for self-determination's value from some special considerations. The special considerations apply to certain kinds of commitments that may form part of a person's conception of the good. They augment the value of self-determination with respect to those commitments.

The first general consideration is based on the relationship between self-determination and well-being. As a general matter, valuable goods and activities do not make a person's life go better unless those goods and activities figure in some positive way in the person's conception of the good. A standard way to promote well-being, accordingly, is to give persons the opportunity (the liberty, resources, and so on) that they need in order to pursue and enjoy the conception of the good that they happen to have. And a standard way of thwarting well-being is to deny them this opportunity, and thus to force them into living a life that does not accord with their conception of the good.

I say "standard," and not "necessary," because it is possible, in principle, to promote a person's well-being by helping her to acquire a more valuable conception of the good through means that act, in the short run, against her actual conception. This is the possibility that opens the door a crack to perfectionism. But, once the considerations of fairness introduced in the previous section are given their due, the constraints on perfectionism are apparent again. At least some of the policies favored by perfectionists will be disqualified by the indiscriminate character of the costs they entail. If the antecedent situation is just, it seems unfair that those policies will impose costs on people who, predictably,

will not benefit. To re-state the relationship between well-being and self-determination more exactly, then, we might say that a state seeking to promote well-being, *and* concerned to treat its citizens fairly, will normally regard self-determination as the value to promote.

The second way in which someone might contend that self-determination matters in general is by arguing that it is intrinsically valuable. Roughly speaking, the claim is that, even setting aside the connection with well-being, it is valuable for people to be autonomous. And an aspect of autonomy is shaping and directing one's own life according to one's own actual values and commitments. In parallel with the previous discussion of well-being, it would be a mistake to reduce autonomy to self-determination. As Raz argues, there are several distinct conditions of autonomy, including the availability of an adequate range of valuable options. Raz's own embrace of perfectionism in *The Morality of Freedom* rests on the claim that an autonomy-regarding state will sometimes act to ensure the availability of adequate options. Since *everyone's* autonomy is presumed to benefit from the presence of an adequate range of options, an advantage of Raz's argument is that it sidesteps the fairness objection that I have been pressing.

There is less to this autonomy-based defense of perfectionism than meets the eye, however. Complex liberal societies are home to thousands of different kinds of options, covering every aspect of life. Normally, one might expect such societies to be well over the threshold of adequacy, even without special state support for particularly valuable options. In a later essay, Raz himself seems to agree: "But while it is reasonable to surmise that just about all societies have an adequate range of acceptable options available in them, many of them bar sections of their populations—foreigners, the poor, people of colour, people with a disapproved-of sexual orientation—from access to an adequate range of valuable options."³² The second half of this remark does express doubts about whether certain sections of society enjoy access to an adequate range of options. But the sorts of social reforms that are needed to remedy the problem of blocked access do *not* involve departures from neutrality. They call for inclusiveness, redistribution, non-discrimination, and the redefinition of certain goods (for example, marriage) so that the benefits they involve (and that are provided, in part, by the state) are available to all. To qualify the earlier claim about self-determination and autonomy, then, we might say that, where the background conditions (including adequacy of options) are secure, the usual way of promoting autonomy is by giving citizens the opportunity to be self-determining.

In addition to these general considerations, the presence of certain special commitments in a person's conception of the good makes self-determination an even more important interest with respect to those commitments. It would be an

³²Raz, "Duties of well-being," *Ethics in the Public Domain* (Oxford: Oxford University Press, 1994), pp. 3–28 at p. 24.

especially serious setback for an individual to be denied a fair opportunity to fulfill these commitments. As a result, when treating a particular conception of the good neutrally means treating these special commitments neutrally, the state's reason to be neutral is even weightier than it is for more generic elements of conceptions of the good.

There is no space here to develop a full account of what makes a commitment special in this sense. Intuitively, however, there are some areas of life where it seems especially important that a person be enabled to conduct her life on the basis of her own values and purposes. A key part of directing one's own life is developing and pursuing one's own religious and moral outlook, for instance, as well as one's own views about art and beauty. Intimacy, sexuality, friendship, and basic relationships of community with others also seem like areas in which it is especially important for the individual's own values and commitments to enjoy a certain sovereignty. A variety of factors contribute to the special character of commitments in these areas. In some cases, it is the central and pivotal position that a particular commitment occupies in a whole set of a person's ends that lends it special significance. To be frustrated in one's attempt to realize such a commitment would have knock-on consequences for other ends and goals. In other cases, a commitment has what Rawls calls a "non-negotiable" character for the person who holds it. In failing to honor it, the individual feels as if she would break an obligation, or betray an important relationship.³³ In yet other cases, commitments are special in virtue of being implicated in the basic relationships of respect and recognition that a person enjoys with other members of society. A decision by the state not to extend a person a fair opportunity to realize such a commitment would be regarded as an indicator of that person's less-than-full membership in the community. To my mind, the denial of marriage rights to same-sex couples (even while they are extended to opposite-sex couples) is a good example of a self-determination-diminishing, non-neutral policy that sends an unjustifiably disparaging and exclusionary message to gays and lesbians. Restrictions on self-determination are a bad, in this kind of case, not just because they leave some persons less able to follow their values and preferences, but because their imposition involves serious expressive harms.³⁴

Obviously these special reasons for caring about neutrality are going to be relevant with respect to some policy choices facing the state and not others. This variation is an important part of my account. Neutrality has a generic importance grounded in the general value of self-determination. But the state's reasons to observe neutrality are even stronger for policies that touch on religion, sexuality, art, family, culture, and other commitments that arguably are special in one or

³³Rawls emphasizes the non-negotiable character of a person's commitments of conscience at: *A Theory of Justice*, p. 182; *Political Liberalism*, pp. 311–2; *Justice as Fairness*, p. 105.

³⁴For a helpful discussion of the relationship between neutrality and expressive harms, see Steven Wall, "Neutrality for perfectionists: the case of restricted state neutrality," *Ethics*, 120 (2010), pp. 232–56, at pp. 246–55.

more of the senses mentioned above. Again, the obligation to be neutral even in these areas is not absolute. But it takes a particularly compelling reason to override the substantial *pro tanto* reason that the state has to be neutral with respect to these commitments.

B. FAIRNESS AND NEUTRAL TREATMENT

Suppose it is granted on the basis of the preceding arguments that the opportunity for self-determination is often something of considerable value for individuals. The key problem then becomes how to interpret the suggestion that the state should leave its citizens with a fair opportunity for self-determination. I have suggested that a correct understanding of fairness in this context requires the state to extend neutral treatment to different conceptions of the good. By adopting policies that are equally accommodating of rival conceptions of the good, the state can reasonably claim that it is not “taking sides” between those conceptions. If one conception is ultimately unsuccessful (in one or other of the senses mentioned earlier) it would be natural to deflect a complaint about that outcome by pointing to the fairness of the background conditions established by the state’s observance of neutral treatment.³⁵ By contrast, if the state was less accommodating towards a conception that is ultimately unsuccessful, then this response is unavailable and a complaint would have at least some *prima facie* force.

A quite different view, however, holds that the state can avoid taking sides only by adopting measures designed to promote the equal success of different conceptions of the good. If self-determination matters, it presumably is valuable for people actually to be self-determining, and not just to have an equal opportunity to be self-determining. If the state’s obligations of fairness in this area are exhausted by equal accommodation, then it may find itself accused of “ratifying” through its equanimity the unequal outcomes that arise from the unequal popularity and viability of different conceptions. Doing nothing while a bully beats up a weakling is an odd way of “not taking sides.”

The existence of this second possible view of fairness (and its cognates) suggests that a gap in the argument remains in the move from fair opportunity for self-determination to neutrality of treatment. Perhaps a state committed to the former ought sometimes to abandon neutral treatment if doing so is calculated to bring about more equal success of different conceptions of the good. Against this possibility, however, the proponent of neutrality can point to certain deeply counter-intuitive implications of an equal success view. For instance, such a view would seem to imply that, in the earlier softball-cricket example, the state would be “taking sides,” and thereby failing to discharge its obligations of fairness, unless it were to adopt corrective measures designed to bring cricket up to the

³⁵Rawls, *Political Liberalism*, pp. 198–99.

same level of success as softball (or perhaps to level the latter down to the former). This runs counter to the intuition that I think most people would share, which is that a local authority that makes a field open for any team sport, without any special restrictions or regulations, is not taking sides between sports, even if the existing distribution of tastes in the community make it predictable that one sport will in fact be more successful than another. More generally, equal success has trouble with the idea that citizens who otherwise enjoy their fair share of resources and accommodation ought to be held responsible for the contents of their conceptions of the good.³⁶ There is nothing wrong with adopting a conception of the good that is unpopular or difficult to fulfill (for example, because it uses a lot of scarce resources), but citizens should not complain of an unfairness when, under conditions of equal treatment, that conception is less successful than others.

The issues are complicated, however, and they are not likely to be settled through a quick example or a brief reference to responsibility for preferences. The conflicting views of fairness here are obviously related to the broader debate between “resourcist” and “welfarist” conceptions of equality. This relation suggests a more solid, if less satisfying, point on which to conclude. Ultimately, neutrality of treatment is an aspect of a broader, resourcist conception of justice, and stands or falls with such a conception. If resourcism is the right way to think about the state’s obligations of fairness to its citizens, then neutrality of treatment is a natural corollary. This conditional argument falls well short of a decisive proof of neutrality, since some readers will reject resourcism in favor of a view that leaves at least some room for equal success. Still, I think that the argument is a genuine advance. At the very least, it connects neutrality up to a widely held, even if controversial, picture of distributive fairness, and it helps us to map out the terrain on which the debate should now be conducted.

³⁶Compare Steven Wall, “Neutrality and responsibility,” *Journal of Philosophy*, 98 (2001), 389–410.