

IMPARTIALITY AND NEUTRALITY:

A DEFENCE WITH AN ILLUSTRATION

Subramaniam Garimella

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THESIS ABSTRACT

The idea that the state should be neutral between diverse and conflicting conceptions of the good has occupied centre-stage in liberal political circles during the past two decades. Neutrality is a term of art and therefore not surprisingly it comes in a variety of forms with potentially different interpretations. Two such versions frequently invoked by philosophers are what are called justificatory and consequential neutrality.

On the former view the state is held to be neutral if the justification of its policies is independent of any reference to particular conceptions of the good. Abstracting from conceptions of the good does not however repudiate the advantages that some of them will have over others under one policy rather than another. On the other hand, a state is neutral consistent with consequential neutrality only if it can guarantee equal satisfaction for the protagonists of the various conceptions of the good. Accordingly the measures of the state reflect the prospects for different conceptions of the good.

The first chapter argues the case for neutrality as a constituent virtue of liberalism by addressing one of its main adversaries, perfectionism. In the second chapter I consider the two forms of neutrality more closely and delineate impartiality as the central kernel of the doctrine of political neutrality. The last two chapters consider some of the implications of impartialist neutrality. The chapter on distributive equality concludes that neutrality of an impartialist variety goes far

beyond the conventional view that neutrality could be satisfied by the equal distribution of either welfare or resources. The final chapter draws on the controversy that followed the publication of The Satanic Verses as an example to chart out the implications of an impartialist programme for practical cases. The conclusion drawn from such an exercise is again the perhaps unsettling one that a neutral resolution of conflicts invariably yields at least partially unsavoury outcomes for the conflicting parties, but that its merits lie elsewhere.

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INTRODUCTION

The idea that the state should be neutral between diverse and conflicting conceptions of the good continues to occupy centre-stage in liberal political circles. This conceptual continuity holds, although liberal discourse has, nevertheless, over the years, moved further away from its former utilitarian phase. Thus the idea of neutrality could now be characterised as distinctively non-utilitarian. This study is an attempt to understand the various nuances of this strand of neutrality. But before plunging into a discussion of neutrality however, we would like to briefly state below our reasons for undertaking this exercise.

The Project:

Growing up in a particular political climate in India, one cannot but notice a curious paradox in the currency of a peculiar political language. It consists in the prevalence of a democratic vocabulary, which is however obscured, from its traditional association with liberalism in the west. This is not surprising, considering that, unlike in western Europe, where the growth of democracy in the 19th Century was preceded by the ascendancy of liberal individualism for over two hundred years, the democratic movement in India is not preceded by any comparable liberal phase.

This scenario has a certain historical parallel in the Indian national movement, which was witness to the dawn of a curious transmutation of liberal ideas and institutions. For instance, although the stalwarts of the nationalist struggle were

receptive to the western individualistic idea of freedom, the problem assumed a nationalist cast, and was taken to denote the freedom of the national community, rather than that of the individual, and, similarly, the question of liberty too, denoted simply the sovereignty of the collectivity of the nation.

Thus, as Kaviraj observes, in the main, "the language of democracy in India did not go through a pronounced liberal phase, except in the purely imitative dreams of the western educated middle class. Its democratic language bypassed liberalism."¹ Contemporary India continues to bear evidence to this transcendence of liberal individualism in its democratic language. For example, although the language of rights has come to enjoy wider acclaim during the post-independence years of India's political history, especially since the debates in the constituent assembly, on the question of property rights, the idea is seldom articulated in terms of the abstract rights of the individual. For instance, the values of freedom of expression and religious practice are always at stake when the challenges to the democratic movement, such as the resurgence of communalism are confronted. But seldom do these issues figure with any overt reference to individuals' rights to enjoy these freedoms.

An important problem before the political theorist is therefore, to confront a set of paradoxical questions. could the study of democracy in India be carried out independently from its historical origins in the growth of liberal individualism? It is doubtful that we can. But then, This should not be mistaken for suggesting the counter-assumption that an understanding of democracy in India can be derived solely from the trajectories of western democratic theory, since the concepts are by no means homogeneous.

Any systematic theorising on contemporary Indian democracy must begin with a grasp of these many paradoxes in its historical development. Grappling with the liberal individualistic undercurrent latent in the democratic process is an important, though partial, step in that direction. Since western ideas continue to influence the democratic movement in India one way or the other, it is important to study a concept such as liberalism in its historical specificity, in order to apply the concept, understanding the different meaning it comes to acquire in the social milieu of the non-west.

My interest in studying the idea of neutrality, thus, follows from a certain understanding of liberalism from the standpoint of an outsider. For me, liberalism's appeal as a political doctrine is that it is offered as a recipe for governance in societies characterised by an irreducible diversity of conceptions of the good.

Defining Liberalism:

But where do we begin? This question is extremely complex, since, as we have just observed, any attempt to apply an idea such as liberalism, foreign to a given social milieu, cannot be undertaken uncritically without reference to their relevance and viability locally. But we may find some comfort, though not much, in the fact that liberal institutions of parliamentary democracy have been around in India now for about a century, and this can be taken as a crucial starting point.

The answer to our earlier question, where to begin, lies, we suggest, in the irreducible plurality of diverse and conflicting conceptions of the good. We shall simply assume this fact to be self-evident in India, without having to go into any great

detail to substantiate our claim. But although there is this common ground with western liberalism, in the problem to be addressed, there is no mistaking that the nature of the solutions is bound to be radically different given the cessation of democracy from liberalism.

We may identify two elements within contemporary liberalism which could be of relevance for historically different societies. Firstly, a crucial point to bear in mind is that, any resolution of the problem of the irreducible diversity of conceptions of the good must be premised on offering terms of agreement which no member of a society can reasonably reject. A consensus on this first point suggests the way into the second, namely, a particular interpretation of the idea of neutrality.

Western liberalism's well-known response to the problem of controversial conceptions of the good is that, the state should assume a posture of neutrality towards all of them. But in the three hundred years since Locke's original conception, the idea has now come to mean different things to various exponents, who are of a generally liberal persuasion. To be sure, Locke's idea that the business of laws is not to testify the truth of different opinions, was originally confined to religious conflicts. But today, neutrality is advocated to cover an entire range of issues within the moral landscape.

The differences among the various expositions of liberalism are not trivial. Therefore, since the divergent accounts of neutrality reflect a particular conception of liberalism, it seems appropriate to state here, what we understand by the term liberalism, before setting out to explicate the corresponding conception of neutrality.

The closest approximation of the definition of liberalism for our purpose is the one put forward by Bertrand Russell. According to him, "The essence of liberalism

is an attempt to secure a social order not based on irrational dogma and ensuring stability without involving more restraints than are necessary for the preservation of the community."²

The substance of the above statement is quite straightforward, that a society's institutions should be rationally justifiable to all its members, and that, any restraints that are not required for the maintenance of its stability are unjustifiable. That is to say, the only rational justification for social restrictions are those arising on the grounds of social stability.

Implicit in Russell's formulation is also his endorsement of the characteristically liberal indifference towards the very many ways in which people choose to lead their lives, of course, so long as the preconditions of social stability are satisfied, a concern that has been at the centre of John Rawls's exposition of liberalism in A Theory of Justice. Thus this definition of liberalism militates against any suggestion that one or the other conception of the good should be incorporated into the policies of a given state.

The advantages in Russell's formulation, as we see it, are two-fold. Both stem from the desire to rationally justify a society's institutions to all its members. Firstly, it can potentially transcend all ethnocentric barriers. And therefore it can plausibly be offered universally as an alternative to historically very different societies. That is to say, The idea of the rational justifiability of institutions is a reasonable expectation whether the society in question is individualistic or non-individualistic.

There can be little justification, from the standpoint of liberalism, at any rate, as we have defined the doctrine, to design political principles on the basis of the presumed preeminence of any single value among its members for many

contemporary plural societies. The implications of this formulation are radical even for many supposedly liberal states.

For instance, the idea of personal autonomy, which informs much of liberal theorising, because of its propensity to justify the liberal institutions of freedom of speech and religious worship, itself is a question begging assumption. It requires rational justification, both in societies which are avowedly communitarian, or non-individualistic, as much as in the individualistic societies of western Europe and north America. Indeed, it would seem to be all the more important that the grounds of justification are non-ethnocentric if these liberal institutions are to make any headway at all in the non-west.

The second advantage is that, the political translation of the two principles entailed in Russell's formulation, we may surmise, issue in the notion that the liberal state should be neutral between diverse conceptions of the good. For, the rational justification of institutions could not be argued out, rationally, on the grounds of the superiority of some conceptions of the good over others. Thus, we may take the two premises of Russell's formulation to vindicate the case for neutrality. With these opening remarks in the background, let us return to a discussion of the different versions of the idea of neutrality.

Defining Neutrality:

Two central concerns of this study then are the following: whether the ideal of the neutral state is feasible, and if so, what is the specific content of that ideal. The answer to the second question will supply the affirmative response to the first. But

the problem of defining the content of a concept such as neutrality is especially elusive.

"Neutrality" is a term of art, and therefore, not surprisingly, it comes in a variety of forms, with potentially different interpretations. Two such versions frequently invoked by philosophers are what are called justificatory and consequential neutrality. But we should not lose sight of other versions of the idea that are entailed in justificatory neutrality. These are important, insofar as they could be viewed as contesting our claim that, the only consistent form of neutrality is one that is impartial. Impartiality as neutrality also challenges the notions of equal outcomes and justificatory neutrality as potential interpretations of the doctrine.

The idea of consequential neutrality could be viewed as stemming from one element of utilitarianism, namely, consequentialism. Consequentialism is the idea that actions should be judged solely in terms of the outcomes they generate. And if the desired outcomes are regarded as those which yield equal satisfaction or happiness, then, consequential neutrality seems to be in order.

A state is neutral consistent with consequential neutrality, only if it can guarantee equal satisfaction for the protagonists of diverse conceptions of the good. This may assume one of two forms. It can issue in a claim that the measures of the state must be geared to produce maximum satisfaction for different conceptions of the good. Or, alternatively, an objective criterion of satisfaction may be posited for diverse conceptions of the good, and a state which ensures this index of satisfaction could be construed as neutral among them.

The idea of neutrality of outcomes has never been posed explicitly as a serious alternative. However, its presence is more implicit in arguments for equality of

welfare as the correct interpretation of egalitarianism. Therefore we will meet this idea only in passing in the second and third chapters to bring out the contrast between it and other versions of neutrality.

On the version of justificatory neutrality, the state is regarded as neutral, if the defence of its policies is argued independently of any reference to particular conceptions of the good. Abstracting from conceptions of the good, in this way, is not, as its protagonists rightly argue, however inconsistent with the advantages that some of them will have over others, under one policy rather than another.

Such an idea is entailed in what has now come to be known as constitutional neutrality. It says that, we should ensure a set of fair background conditions in the constitution, within the terms of which, the advocates of different conceptions of the good can compete to influence the policies of the state. Accordingly, it is consistent with constitutional neutrality that one or the other conception of the good will be embodied in a particular act of legislation.

We must however exercise caution in upholding justificatory neutrality as the correct reading of the doctrine. This is because, this category does not tell us anything about the underlying processes at work whenever the idea of neutrality is invoked. Let us explain what we mean here. We have observed that consequential neutrality issues from one variant of utilitarianism. But then, utilitarianism also enters neutrality in a less overt manner, this time from its welfarist component, as a second-order conception of the good.

When the state purports to be neutral among substantive conceptions of the good, in accordance with justificatory neutrality, it could do so by relying upon some second-order conception of the good. Two examples of second-order conceptions of

the good are those of want-satisfaction, issuing from utilitarianism, and the notion of autonomy. The idea of justificatory neutrality does not help us in discerning whether or not a given policy is neutral in the sense of reducing substantive conceptions of the good into some common currency. The utilitarian conception of neutrality issues from a second-order conception of the good as want-satisfaction. Here, the diverse substantive conceptions of the good are all treated as giving rise to wants, and, the state is regarded as neutral, when it promotes want-satisfaction among its citizens.

In addition, those who have inferred neutrality to mean the possibility of justifying the state's policies both to those who stand to gain or lose, consistent with justificatory neutrality, have assumed the validity of the notion of personal autonomy as self-evident in a given society. As we observed earlier, the notion of autonomy is yet another second-order conception of the good. But such an account of liberalism may be ill-equipped to address a wider spectrum of issues confronting modern plural societies, where the validity of the notion of personal autonomy is not at all self-evident. This point relates to our argument in the first section for the need to redefine liberalism to the political landscape of non-western societies.

The need to qualify the account of neutrality defended here as impartial, arises on account of the particular meaning that the term neutrality has come to acquire over the years. While the advocates of equal outcomes for conceptions of the good, and those who insist upon the need for neutrality in the justification of policies rely upon the same terminology, there is much else that falls outside the conceptual scope of these two interpretations of the term.

The emphasis of the post-utilitarian, Rawlsian, phase in the concept of neutrality stems from the need to recognise the importance of the separateness of persons in any formulation of principles of justice. On this reading, the flaw with utilitarianism, although the doctrine is neutral in a certain sense, is its failure to account for this separateness adequately. From a deontological point of view, such an account is fundamentally flawed, since not all conceptions of the good are amenable to reduction into wants. The superiority of the neutrality issuing from justice as impartiality is that it does not require a second-order conception of the good to generate neutrality.

Defining Impartiality:

The title of this study, "Impartiality as Neutrality", may quite legitimately give rise to a misunderstanding that there is a kind of neutrality which is not impartial, i.e. partial. Therefore, it is worth pointing out that the attempt here is, to the contrary, to dispel such misgivings. There is, in fact, an inevitable overlap between neutrality and impartiality as they are traditionally understood.

The term "impartiality" may be deployed to fill in these gaps. As that is the case, then, it follows that as Montefiore says, "whenever a rule of impartiality is designed to have practical application to conflicts of some given general type, it must, out of its very impartiality, enjoin conduct that is strictly neutral; and that, vice versa, a rule of neutrality forbidding differential intervention must ipso facto enjoin impartiality."³

But what is impartiality? Once again, Russell's formulation may be offered as an appropriate example to bring out the essence of impartiality. "The authority of science ... is ... intellectual, not governmental. No penalties fall upon those who reject it; no prudential arguments influence those who accept it. It prevails solely by its intrinsic appeal to reason. It is, moreover, a piecemeal and partial authority; it does not, ... lay down a complete system, covering human morality, human hopes, and the past and future history of the universe. It pronounces only on whatever, at the time, appears to have been scientifically ascertained, which is a small island in an ocean of Nescience."⁴ The successive chapters attempt to reformulate the concept of neutrality in the light of the above formulation.

The first chapter argues the general case for neutrality as a constituent virtue of liberalism by addressing one of its main adversaries, perfectionism. We may define perfectionism as the doctrine which entails the idea that any particular view or views of the good life must be valid for an entire society. Perfectionism and liberalism are incompatible, since a fundamental premise of the latter is to present terms of agreement which no member of a society can reasonably reject. A consistent account of liberalism, by implication, should be one which eschews any reference to controversial conceptions of the good in the policies of the state. For this purpose, we consider two versions of the perfectionist case for liberalism put forward by Joseph Raz and Will Kymlicka. By taking autonomy as the constituent value of contemporary liberal democratic societies, Raz goes on to argue that the liberal state must self-consciously strive to promote autonomous lives among its citizens rather than taking neutrality as its goal. Kymlicka on the contrary has no quarrel with the view that the essence of liberalism lies in the state's neutrality among the diverse

conceptions of the good. But the difficulty with his account stems from his attempt to justify neutrality on the grounds that a neutral state could enable persons to lead autonomous lives more effectively than a non-neutral state.

We discuss the idea of neutrality stemming from different theories such as utilitarianism and the notion of autonomy and argue that the neutrality issuing from justice as impartiality is of a superior form. Hence the central claim of this study that the only consistent form of neutrality is one that is in the end impartialist.

The second chapter sets the stage for the argument that if neutrality is a feasible political proposition, its form is one of impartiality. This is undertaken by first explicating the common sense usage of the notion of neutrality, as entailing, say, indifference, or, abstinence, in a situation of conflict, or with a view to approaching a dispute with the aim of not taking sides.

The deeper political implications of impartialist neutrality do not become explicit until the second part of the study. The third chapter on impartiality and equality challenges the conventional view that equality in welfare or resources can plausibly be put forward as the correct interpretation of egalitarianism.

We argue that equality in welfare, welfare understood as satisfaction or happiness, is anti-egalitarian. This is because, any attempt to cater to people's subjectively defined notion of satisfaction, would place demands upon the common pool of a society's resources without any view about what the claims of others might be. Equality in resources, on the other hand, is at the same time flawed, for a different reason. It presupposes a notion of individual responsibility for one's tastes and preferences. But it fails to deal with innumerable involuntary welfare deficiencies to which any serious egalitarian theory ought to be sensitive. We try to formulate a

conception of well-being consistent with impartiality, and argue that, such an account could justify equality in resources only when there is parity between the conditions which influence people's choices and the actual choices that they make. An appropriate understanding of responsibility for this purpose is one which recognises that, not all of a person's actions are voluntary, and that it is wrong to hold people responsible for their involuntary actions and circumstances.

The final chapter draws upon the controversy that followed the publication of The Satanic Verses, as an example, to chart the implications of an impartialist programme for practical cases. The problem before the impartialist is one of neutrally resolving conflicts among the apparently incompatible values of free speech, on the one hand, and respect for peoples' sensitive religious beliefs, on the other. The right to free expression presupposes that, although the airing of all heterodox views, especially on religious matters, potentially could cause offence to religiously inclined members of a society, precluding any set of beliefs or ideas from scrutiny constitutes a violation of people's right to free speech.

The idea of free speech, conceived in this manner implies that respecting others' beliefs is distinct from endorsing them, it entails, quite consistently, disagreement, while at the same time, admitting that, everybody is entitled to his own opinion on a given subject. Such an interpretation of respecting beliefs does not set out to preclude the possibility that people who hold beliefs with any degree of conviction must run the risk of being offended.

Against this background, we define a principle for the prevention of offence consistent with impartialist neutrality. People feel outraged these days on all sorts of grounds. Hence, offence is to be defined as a notion that is independent of reference

to any conception of the good. Such a principle evidently must include both bodily pain and mental hurt. While the prevention of the former follows straight forwardly on any conception of the good, the avoidance of the latter poses a serious challenge in view of the fact that what is offensive to some people is not offensive to others, and brings the conflict of values to the foreground.

The issues which may give rise to friction in question here are, on the one hand, the right of freedom of speech, and, the spread of libellous expression. These two issues are, quite evidently, closely intertwined. Identifying the circumstances for both the avoidance and the prevention of hurt, and considering any other alternative modes of expression, the principle of offence can be made to work. The outcomes that emerge from such an undertaking are twofold.

Firstly, the implications of the principle of offence are consistent with the recommendation of the Law Commission to revoke the English Blasphemy Laws which currently guarantee protection to the Christian religion alone. For, the discriminatory nature of these laws is quite self-evident. Secondly, it would also be compatible with the principle of offence to uphold the author's right to free expression. The grounds of justification here are that, in the absence of any alternative channel of expression for the transmission of ideas, the written word affords the only feasible medium for an individual to exercise that right.

Thus, the conclusion towards which an impartialist mediation of the conflict tends is again the perhaps unsettling one that a neutral resolution of conflicts invariably yields, at least partially, unsavoury outcomes for each of the conflicting parties. But notwithstanding these differential outcomes, the merits of impartialist

neutrality lie elsewhere, in the sense that it offers by far the most reasonable settlement of the conflict than any other available strategy.

CHAPTER 1: PERFECTIONISM AND LIBERALISM

1.I Introduction

The focus of this chapter is on a critique of contemporary liberalism, supposedly emanating from within, a perfectionist defence of that theory. We say supposedly, because, the exponents of this critique claim that the premises which they invoke, usually those of autonomy, are those which are, or should be, integral to liberalism.

Surely, the traditional liberal policy prescriptions can be justified on the basis of a conception of the good as autonomy. But for those of us who would like to understand liberalism not as a doctrine which is culturally relativist, the justification of liberalism by appealing to a conception of the good such as autonomy is tantamount to invoking ethnocentric, or, more pertinently for the purpose here, perfectionist premises.

In fact, the contention of this chapter, and the entire study in general, is that the defence of liberal principles this critique underpins does not rest upon liberal premises. The attempt therefore is to show that a perfectionist defence of liberalism must entail, on the contrary, definite illiberal implications. Liberalism and perfectionism are, quite plainly, incompatible. We want instead to argue that the defence of liberalism need not rest on appeals to any substantive conception of the good, and that perfectionist presuppositions, because they rely upon some conceptions of the good for their justification, must, precisely for that reason, be inconsistent with liberal premises.

What we are referring to, by the phrase perfectionist presuppositions is the idea that the state should promote only such conceptions of the good which in its opinion are valuable for its citizens to pursue in life. Liberal premises entail the contrary view that the state should not rely upon any conception of the good to justify its policies to its citizens. In section 1.I we shall try to provide a definition of the terms "perfectionism" and "non-perfectionism". In section 1.IV we will introduce the distinction between ideals and wants in order to reinforce, and further clarify, the differences between perfectionism and non-perfectionism. In particular, we shall advance the claim in defence of Rawls's view that a non-perfectionist theory can quite consistently retain ideals-regarding premises. This should help to refute the commonplace reductions of the ideals-regarding principle to perfectionism, and, correspondingly, non-perfectionism to the non-ideals-regarding, that is to say, wants-regarding principle. Section 1.V will bring to focus the rather familiar antithesis between perfectionism and neutrality. We will be presenting Joseph Raz's explicit case for a perfectionist, i.e. non-neutral state. The significance of this discussion will be borne out by Raz's attempt to defend his paradoxical claim that perfectionism is consistent with liberalism. In section 1.V we will turn to Will Kymlicka's contrary plea to advance an argument for liberal neutrality by invoking perfectionist premises. In a nutshell, his thesis is that a liberal state should be neutral among diverse conceptions of the good because such an arrangement would enable citizens to lead autonomous lives. In section 1.VI, we conclude the discussion of the different versions of perfectionism, by pointing out that, its protagonists fail to offer convincing reasons for placing autonomy in the foreground of a liberal argument.

1.II Defining Perfectionism and Non-Perfectionism

At the outset, we must observe that this phraseology is unfortunate, for the terms perfectionism and non-perfectionism do not in themselves signify any specific political doctrine. They merely represent the idea that moral judgements regarding the value of diverse conceptions of the good should or should not figure in the evaluation of the state's policies.

The ambiguity is perhaps increased for example, because, although the term perfectionism, as it is commonly used, denotes the antithesis of neutrality, it itself can be used to justify neutrality. We shall be presenting an example of such a perfectionist neutrality in one of the sections later in this chapter. However, in the absence of a more suitable alternative, we will have to rest content with this terminology. For after all, it can still be put to good use to differentiate conflicting political positions which are of a rather misleading similarity.

Notwithstanding these caveats, perfectionism may be defined as the view that a person's or some persons' conception of the good should be upheld as the correct way of life for everybody else in society. Understood as a certain attitude to life, a strict version of perfectionism cannot, by definition, admit of any major revisions in persons' life-plans even in the light of new experiential evidence to the contrary. In view of the prejudice against other conceptions of the good inherent in this standpoint, it is common place in liberal political circles to equate perfectionism in general with non-neutrality and non-perfectionism with neutrality.

This is the form of state perfectionism which is familiar to us from Aristotle: "the legislator must labour to ensure that his citizens become good men. He must

therefore know what institutions will produce this result, and what is the end or aim to which a good life is directed."¹

Rawls characterises perfectionism as one variant of a teleological and comprehensive doctrine: "it is the sole principle of a teleological theory directing society to arrange institutions and to define the duties and obligations of individuals so as the achievement of human excellence in art, science, and culture."² Perfectionism is teleological, Rawls says, because it arrives at judgements concerning the good without reference to any conception of the right.³

The fact that Aristotle's legislator is concerned with making good citizens out of his men, and Rawls's perfectionist with creating cultured men, does not detract from the main argument that the burden of perfectionism in both instances is vested with the state and its institutions. It is this overt reliance on the state to create good men that justifies labelling such a state perfectionist.

Therefore, for the purpose of the argument, state perfectionism may be understood as the view that the state should zealously promote morally worthwhile and noble ideals of the good life among its citizens. The non-neutrality of this kind of perfectionism between conceptions of the good is quite obvious. For example, a state dedicated to the promotion of poetry will certainly discourage pornography if, in its eyes, doing so seems a necessary step towards that end. A contemporary advocate of this brand of state perfectionism is Joseph Raz.

Raz's theory is perfectionist, and, consistently non-neutral among conceptions of the good. The state's policies must favour autonomous lives over non-autonomous modes of life because autonomy happens to be a fact of modern life. What is more, in the same breath, Raz claims that autonomy itself is valuable only if it is exercised

in the pursuit of valuable forms of life. Thus Raz's perfectionism is premised on the uneasy symmetry between the affirmation of the value of autonomy and its negation.

We need to emphasise that Raz's theory should be categorised as state perfectionism, because, in recent years, the doctrine of state neutrality has itself been justified on perfectionist grounds. Such a formulation rests upon an emphatic denial of state perfectionism. Kymlicka maintains that neutrality may be justified by appealing to a conception of the good as autonomy. The state should be neutral among competing conceptions of the good, he argues, because such neutrality enables persons to lead autonomous lives.

Underlying such a claim is the view that, autonomous lives are intrinsically more valuable than non-autonomous lives, and, the state performs an important role in its promotion by abstaining from invoking conceptions of the good in its policies. Autonomous lives are not encouraged by the state enforcing such an ideal among citizens as Raz would suppose, but on the contrary, by remaining a spectator. Kymlicka's particular brand of the doctrine requiring state neutrality may be termed social perfectionism. We shall be arguing below that neutrality cannot be generated by a conception of the good such as autonomy. Raz and Kymlicka's distinctive and contrary strands may be labelled perfectionist anti-neutrality and perfectionist neutrality respectively, neither of which offers a satisfactory defence of liberalism. But before examining the different versions of perfectionism more closely, it may be helpful to contrast perfectionism with its converse, non-perfectionism.

If we accept Kymlicka's social perfectionism as one candidate proposition for the justification of neutrality, then it will no longer suffice to characterise non-perfectionism merely as a principle that precludes conceptions of the good from

entering into the justification of the state's policies. For that very same claim underpins, at least part of, Kymlicka's conception of neutrality, i.e. that the state should be neutral between competing conceptions of the good.

Although the neutrality of non-perfectionism entails such a claim, namely, the state's abstention, the grounds for such neutrality must also be shown to be non-perfectionist in order to distinguish it from Kymlicka's perfectionist justification for neutrality. So, not only must a state refrain from invoking any conception of the good, the grounds for such an abstention must also be free of any perfectionist overtones. That is, the state should be neutral among conceptions of the good, because, that is what is consistent with non-perfectionism.

Rawls's formulation of non-perfectionism goes along the following lines:

The state can no more act to maximize the fulfilment of citizens' rational preferences, or wants (as in utilitarianism), or to advance human excellence, or the values of perfection (as in perfectionism), than it can act to advance Catholicism or Protestantism, or any other religion (nor for that matter we may add, autonomy). None of these views of the meaning, value, and purpose of human life, as specified by the corresponding comprehensive religious or philosophical conceptions of the good, are affirmed by citizens generally, and so the pursuit of any one of them through basic institutions gives the state a sectarian character. To find a shared idea of citizens' good that is appropriate for political purposes, political liberalism looks for an idea of rational advantage within a political conception that is independent of any particular comprehensive doctrine.⁴

The form of non-perfectionism which Rawls wants to advocate is one that is not comprehensive in itself. It is supposed to apply to the political conception of justice.

But before going into these details, it may be worth emphasising the point that as a doctrine appropriate for politics, non-perfectionism, in both forms, does not require individuals to eschew or pursue perfectionist ideals in their private lives. It merely calls upon their capacity to set aside their personal ideals if any, when dealing with questions of political morality.

Much of the communitarian critique stems from a failure to differentiate between collective social action, governed by non-political institutions, such as the family, religious and cultural associations, where perfectionist ideals may occupy an important place, and the specifically political action, mediated by the machinery of the state, where perfectionist goals are irrelevant.⁵

Implicit in Rawls's formulation of non-perfectionism is its identification with liberalism. Liberal neutrality is anti-perfectionist in the sense that an appeal to it cannot involve a prior commitment to any other doctrine of the good life. Nor does its justification rest upon any such conception. We may identify two distinctive strands of non-perfectionism. These are, the one stemming from comprehensive moral doctrines, such as utilitarianism, and those which flow from non-comprehensive doctrines. An example of the latter is justice as impartiality. We will be elaborating upon these different versions in the next section, where we intend to contrast comprehensive doctrines with non-comprehensive doctrines premised upon an exclusively political focus. In order to bring out this contrast, let us turn to Rawls's distinction between political and comprehensive doctrines.

1.III Comprehensive and Political Doctrines

A doctrine is comprehensive Rawls says:

When it includes conceptions of what is of value in human life, ideals of personal virtue and character, and the like, that inform much of our nonpolitical conduct (in the limit, our life as a whole). Religious and philosophical conceptions tend to be general and fully comprehensive ... A doctrine is fully comprehensive when it covers all recognized values and virtues within one rather precisely articulated scheme of thought; whereas a doctrine is partially comprehensive when it comprises certain, but not all, nonpolitical values and virtues and is rather loosely articulated. By definition, then, for a conception to be even partially comprehensive it must extend beyond the political and include nonpolitical values and virtues.⁶

Rawls's usage of the phraseology of "political liberalism" in recent years is ushered in by this non-perfectionist strain in his theory. That is to say, justice as fairness is political (rather than metaphysical). In particular, political liberalism is meant to distance justice as fairness from the liberalisms of J.S. Mill and Kant, who premise the doctrine on the notions of autonomy and individuality respectively. Kant and Mill's versions of liberalism, Rawls argues, are comprehensive doctrines. Political liberalism, for Rawls, must be both non-perfectionist and non-comprehensive.

Rawls identifies utilitarianism and perfectionism as examples of a comprehensive doctrine: "the principles of perfection and utility are thought to apply to all kinds of subjects ranging from the conduct of individuals and personal relations to the organization of society as a whole, and even to the law of nations. Their content as political doctrines is specified by their application to political institutions and questions of social policy."⁷ To avoid any misunderstanding, we may emphasise the point that utilitarianism is a non-perfectionist, but comprehensive doctrine.

According to Rawls, under perfectionism:

There is but one rational conception of the good, and .. the aim of moral philosophy together with theology and metaphysics, is to determine its nature.

... By contrast, liberalism as a political doctrine supposes that there are many conflicting and incommensurable conceptions of the good, each compatible with the full rationality of human persons, so far as we can ascertain within a workable political conception of justice. As a consequence of this supposition, liberalism assumes that it is a characteristic feature of a free democratic culture that a plurality of conflicting and incommensurable conceptions of the good is affirmed by its citizens.⁸

However we may doubt, with good reason, whether Kymlicka's social perfectionism flows from a comprehensive doctrine. We have good grounds to believe that it is only partially comprehensive since the goal of autonomy is posited as encompassing the non-political space of a society. The political principle of neutrality

is directed towards the promotion of the non-political ideal of autonomy.

Comprehensive doctrines cohere in supposing that as Barry points out:

Justice and morality are cut from the same cloth within these theories, the relation between justice and morality is a simple one we start with a conception of the good that is to be achieved, as far as possible. We then assess potential rules of justice by their conduciveness to the achievement of that good. Principles of justice have a purely derivative status: they function as guides to the selection of appropriate rules.⁹

Let us return to Rawls's distinction between comprehensive and political doctrines. He elaborates how the goals of social unity and stability may be understood as elements of a political doctrine rather than as a comprehensive moral conception:

Social unity and the allegiance of citizens to their common institutions are not founded on their all affirming the same conception of the good, but on their publicly accepting a political conception of justice to regulate the basic structure of society. The concept of justice is independent from and prior to the concept of goodness in the sense that its principles limit the conceptions of the good which are permissible. A just basic structure and its background institutions establish a framework within which permissible conceptions can be advanced.¹⁰

Rawls nowadays (in his Political Liberalism) regards the treatment of justice as fairness in A Theory of Justice as a comprehensive doctrine. However the fact that the conception of justice is a political idea is sufficient to establish the sense in which justice as fairness is not comprehensive.¹¹ Justice as fairness is political in the sense that as Rawls points out,

The aspects of our (comprehensive) view that we assert should not go beyond what is necessary for the political aim of consensus. Thus, for example, we may assert in some form the doctrine of free religious faith that supports equal liberty of conscience; and given the existence of a just constitutional regime, we deny that the concern for salvation requires anything incompatible with that liberty. We do not state more of our comprehensive view than we think would advance the quest for consensus.¹²

Rawls thus acknowledges that the justification of this political conception may draw upon certain of our partially comprehensive doctrines.

Several commentators have however questioned the sense in which justice as fairness is a political doctrine. Stephen Mullhall and Adam Swift argue that Rawls's theory is only partly political, since the appeal to neutrality is justified by appealing to a partially comprehensive commitment to the two highest-order interests persons have. These are that persons should be able to frame, revise and rationally pursue their own conceptions of the good.¹³ Are we to infer then that justice as fairness is in part comprehensive or perfectionist?

No. For not all comprehensive doctrines need be perfectionist, as we shall argue below. Utilitarianism is an example of a comprehensive, but non-perfectionist, doctrine. Swift and Mullhall's argument is that Rawls's theory is not perfectionist since it is this very same semi-comprehensive doctrine that underpins the requirement that non-political conceptions of the good should be excluded from politics, thus affirming political neutrality.

Vinit Haksar also argues that justice as fairness relies upon substantial perfectionist arguments: "unlike many other critics of such theories, Rawls attempts to put in place of the rejected theories a theory that is also unified and comprehensive, at any rate within the field of justice."¹⁴ What accounts for perfectionism in justice as fairness according to Haksar is the accent Rawls places on the value of autonomy for persons' to choose their own plans of life rather than execute life-plans they already happen to have.

Thus for Haksar, the principle of autonomy constitutes the basis of perfectionism in Rawls's theory. But Haksar's criticism is inaccurate since Rawls does not in the least present an autonomous life as the most valuable for persons as does Kymlicka, or even that the state is the appropriate mechanism for promoting the value of autonomy in persons as does Raz. Rawls merely posits a conception of the person as one who is capable of exercising his rational autonomy, and this is different from an evaluative judgement in favour of autonomous lives.

But in order to make sense of Haksar's claims, we need to spell out his own definition of perfectionism. His account entails the view that the claims we commonly invoke to defend the rights of human beings, such as the one that these beings have greater worth or significance than animals, is itself a perfectionist claim.¹⁵ Even if

we concede that a claim concerning the superiority of human beings over animals entails a perfectionist presupposition, Rawls's case for non-perfectionism can stand independently of any reference to the relative status of humans and animals.

It also does not require us to contest, consistent with Haksar's non-perfectionism, the rights of animals. It does not, for instance, require an affirmation or denial of similar rights to animals to maintain that individuals' rights should not be sacrificed for utilitarian ends, or that the state should refrain from drawing up policies without reference to particular conceptions of the good. These claims are discernible quite independently without reference to any perfectionist argument. Rawls makes the same point in a different context:

If a constitutional regime takes steps to strengthen the virtues of toleration and mutual trust, say by discouraging various kinds of religious and racial discrimination (in ways consistent with liberty of conscience and freedom of speech, it does not thereby become a perfectionist state of the kind found in Plato or Aristotle, nor does it establish a particular religion as in the Catholic and Protestant states of the early modern period. Rather, it is taking reasonable measures to strengthen the forms of thought and feeling that sustain fair social cooperation between its citizens regarded as free and equal. This is very different from the state's advancing a particular comprehensive doctrine in its own name.¹⁶

Religious and racial discrimination, it would appear, make sense only from the standpoint of non-perfectionism. A perfectionist state whose aim is to advance the

cause of a particular religion as a morally worthwhile form of life cannot, consistent with its own postulates, be charged with discouraging life-forms which in its view are reprehensible from a moral point of view any way.

A non-perfectionist aims to establish reasonable terms of social cooperation among free and equal beings pursuing disparate ends precisely by refraining from making such moral judgements. Thus, Rawls's own justification for his theory is the following:

Conditions for justifying a conception of justice hold only when a basis is established for political reasoning and understanding within a public culture. The social role of a conception of justice is to enable all members of society to make mutually acceptable to one another their shared institutions and basic arrangements, by citing what are publicly recognized as sufficient reasons, as identified by that conception. To succeed in doing this, a conception must specify admissible social institutions and their possible arrangements into one system, so that they can be justified to all citizens, whatever their social position or more particular interests. Thus, whenever a sufficient basis for agreement among citizens is not presently known, or recognized, the task of justifying a conception of justice becomes: how can people settle on a conception of justice, to serve this social role, that is (most) reasonable for them in virtue of how they conceive of their persons and construe the general features of social cooperation among persons so regarded?¹⁷

1.IV Non-perfectionist Idealism, the Ideals and Wants Distinction

It is useful to allude to the distinction between ideals-regarding and wants-regarding theories in order to further contrast perfectionism and non-perfectionism. This will be helpful to show that it is a mistake to treat all ideals-regarding theories as synonymous with perfectionism and non-ideals-regarding or wants-regarding theories as the only consistent form of non-perfectionism. To do so would blur the distinction between the two sets of categories, perfectionism and non-perfectionism, on the one hand, and ideals-regarding and wants-regarding, on the other.

We will advance the claim that, while perfectionism must undoubtedly entail one or the other ideals-regarding principle, an ideals-regarding theory need not always have to imply perfectionism. On the other hand, non-perfectionism as we understand the term is itself an ideals-regarding theory, hence the title of this section, although some non-perfectionist theories can well be wants-regarding, that is to say, non-ideals-regarding.

The definition putforward in section 1.II provides sufficient grounds for our supposition that perfectionism must embody certain ideals to be promoted across the board in a society. Indeed, it is such ideals that give substance to what would otherwise be an empty perfectionist principle. For Aristotle, for example, the relevant perfectionist ideal is that of making good citizens out of people.

In the accounts of Raz and Kymlicka, we may recall, it is that of the promotion of the value of autonomy, although their respective routes to reach this end are different. Whereas Raz adopts an explicitly perfectionist course, Kymlicka's path is supposedly non-perfectionist. Thus the association of an ideals-regarding theory with perfectionism is quite straightforward. A perfectionist theory is by definition ideals-regarding. Let us now move on to our next related claim that ideals-regarding

theories may be either perfectionist or non-perfectionist. They can be construed as one or the other, depending upon whether we want to add up a perfectionist or non-perfectionist principle to an otherwise ideals-regarding theory. Thus, for instance, if we drop Raz's perfectionist claim, that a state should be committed to the promotion of autonomous lives among citizens, and Kymlicka's, that it should be neutral to realise the above goal, what we are left with is the value of autonomy whose justification cannot draw upon the machinery of the state for support. Both Raz and Kymlicka's positions could then be counted as ideals-regarding. And since the perfectionist principle is nullified in this way, their accounts could also be construed as non-perfectionist, for we have defined non-perfectionism, as nothing more than the converse of perfectionism.

Our suggestion that a perfectionist theory must necessarily be ideals-regarding, may leave us with some doubts about what precisely is implied by non-perfectionism. It may be thought that because a perfectionist theory is always ideals-regarding, any non-perfectionist theory must therefore necessarily be non-ideals-regarding. The currency of an ideals and wants distinction may seem to lend credence to such a simplistic inference.

For underlying that distinction is the view that, a non-ideals-regarding theory is wants-regarding, and a non-wants-regarding theory must be ideals-regarding. This might be a plausible assumption to hold, but we do not wish to get entangled over whether or not there are intermediary positions within this ideal/want continuum. The divide between the two is sufficient for our purpose, which is one of clarifying the perfectionist and non-perfectionist positions. Towards this end, the connection

between an ideals-regarding theory and non-perfectionism, if there is any, must be established. But prior to that, let us examine the ideals and wants distinction closely.

As Barry formulates the contrast, wants-regarding principles are those which take as "given the wants which people happen to have and concentrate attention entirely on the extent to which a certain policy will alter the overall amount of want satisfaction or on the way in which the policy will affect the distribution among people of opportunities for satisfying wants". On the other hand, Ideals-regarding principles are the ones which are "contradictory of want-regarding principles, the two being jointly exhaustive of the possibilities".¹⁸

Thus Barry gives no independent account of an ideals-regarding theory, except simply as the converse of a wants-regarding one. This view is echoed by Raz: "Any non-want-regarding principle is ideal-regarding."¹⁹ Our distinction between perfectionism and an ideals-regarding principle accords with this position.

Raz distinguishes two kinds of welfarist theories on the basis of the ideal/want contrast. These are, what he calls, political welfarism and moral welfarism. Raz dubs "political welfarism", the view that "holds governments to be required to promote the goals that people have, without discrimination based on their moral merit."²⁰ In addition, it admits "the validity of some ideal-regarding principles but which confine their force to non-political actions."²¹ Since moral welfarism denies the validity of ideals altogether, we can conveniently leave that aside.²²

Rawls's theory of justice as fairness can be likened to political welfarism in the sense that, while it recognises the validity of ideals, but nonetheless admits of their role only outside the political realm. Therefore, justice as fairness aims to prevent the intrusion of ideals into the political sphere. Rawls, for instance, construes

his justice as fairness as an ideals-regarding theory but at the same time insists that it is non-perfectionist.

Rawls argues that justice as fairness is ideals-regarding but not perfectionist. It is ideals-regarding because the two principles of justice are not concerned with the aggregate want-satisfaction of persons. Rawls's two principles of justice are the following: (1) "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." (2) "Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity."²³

His stance commits Rawls to the view that not all ideals-regarding theories are perfectionist; that some ideals-regarding theories, like his own, can at the same time be non-perfectionist. Rawls argues that his theory is ideals-regarding because it does not take want-satisfaction or its distribution as the only relevant criterion:

The contract doctrine is similar to perfectionism in that it takes into account other things than the net balance of satisfaction and how it is shared. In fact, the principles of justice do not even mention the amount or the distribution of welfare but refer only to the distribution of liberties and the other primary goods. ... (It is ideals-regarding in a non-perfectionist sense because) they (the principles of justice that is,) manage to define an ideal of the person without invoking a prior standard of human excellence. The contract view occupies,

therefore, an intermediate position between perfectionism and utilitarianism.²⁴

In the above quotation, Rawls on the one hand, maintains that justice as fairness is similar to perfectionism because it is indifferent on the question of want-satisfaction. On the other hand, he says that his theory is non-perfectionist since it does not invoke any standard of human excellence.

On our reading of perfectionism, on the contrary, the irrelevance of want-satisfaction, leaves Rawls's theory just as an ideals-regarding one, rather than "similar to perfectionism" as he says in the quotation, for it does not contain the additional perfectionist principle. Thus on our account, the demarkation between justice as fairness and perfectionism is provided by the eschewal of standards of excellence by the former.

Any way, to return to our main concern, it is not hard to see how in the face of making an anti-perfectionist case for justice as fairness Rawls can at the same time regard his theory as ideals-regarding. This is because as Haksar points out, "those ideals that would be approved from an impartial, rational, neutral, Archimedean standpoint are admitted by Rawls in the construction of his liberal theory, while those ideals which cannot be justified by an appeal to rational considerations but which depend for their justification upon appeals to considerations of intrinsic worth or other controversial considerations are ruled out."²⁵

Nothing in the foregoing account entails the suggestion that ideals-regarding theories must necessarily be perfectionist. This has the following implications. First, the fact that ideals-regarding theories need not encompass perfectionism, does not contradict the converse claim that, all perfectionist theories are ideals-regarding. This

is not surprising since the principle of perfection is aimed at reinforcing ideals of various kinds through political means.

The second inference is that non-perfectionist theories may be either wants-regarding as in utilitarianism, or ideals-regarding as in Rawls's theory. But why should it be the case that non-perfectionist theories are in general wants-regarding?

An important consideration is that Rawls's theory does not share one particular feature of a wants-regarding theory, namely, the importance the latter attaches to wants and desires. Rawls's theory on the other hand has a Kantian flavour in that he postulates human beings as those who make rational choices rather than beings who persist with given desires and wants. The autonomous acquisition of wants is alien to wants-regarding theories. But would it be fair to characterise Rawls's theory as perfectionist?

The distinction between A wants-regarding conception and Rawls's theory may be correct, but Haksar is clearly wrong, as the emphasis on persons pursuing a rational plan of life does not make Rawls a perfectionist. For as Rawls himself says, the conception of the person embodied in his theory is not "an ideal of the person arrived at on perfectionist or on a priori grounds ... Only the most general assumptions are made about the aims of the parties, namely, that they take an interest in primary social goods ... The idea at any rate is to define a class of goods that are normally wanted as parts of rational plans of life which may include the most varied sorts of ends".²⁶

The ideal they embody is a sense of justice among persons and accordingly they discourage principles which are incompatible with this objective. The two principles are non-perfectionist in the sense that they define such an ideal without

reference to any standard of excellence. It is ideals-regarding but in a non-perfectionist sense. The liberal view entailed in the exclusion of ideals is merely that conceptions of the good are out of bound in politics. Liberalism is non-perfectionist only in this sense. Understood in this way, there is no contradiction between liberalism as non-perfectionism and nevertheless being an ideals-regarding theory.

1.V Raz's Perfectionist Non-neutrality

It must by now be evident that political or state perfectionism issues in non-neutrality among conceptions of the good. This is because the conception or conceptions of the good it seeks to promote over a whole society alone are, from this standpoint, morally worthwhile.

Raz's account of perfectionism is intended in part to answer some of the communitarian objections to liberalism. While the emphasis of this critique is the priority that liberalism allegedly accords to the right over the good, Raz question's the justifiability of separating deontological considerations from judgments about conceptions of the good. Hence, not surprisingly, communitarians and perfectionists like Raz, find common cause in the view that, the state should endeavour to promote valuable ways of the good life, and discourage morally ignoble ones. However, there is an important distinction between Raz's theory and the communitarian critique. It is that, unlike the communitarians, who explicitly disavow the value of autonomy as a positive attribute of modern societies, Raz's account underpins a strong commitment to autonomy since its pervasiveness happens to be a fact of modern life. Consequently, whereas the communitarians would like to see the state promoting the

more traditional forms of life, Raz's account of autonomy is wedded to the promotion of the more individualistic lifestyles of modern societies.

Raz urges that liberals had better abandon neutrality in view of their interest in the maintenance of some of the fundamental values, such as autonomy, which inform liberalism. He accordingly goes on to distinguish between the notions of personal autonomy and moral autonomy. While the former concerns the freedom of persons to choose their own lives, the latter is offered as an account of the nature of morality.²⁷ Raz's perfectionism is essentially an exposition of the notion of personal autonomy.

After all, "The value of personal autonomy is a fact of life. Since we live in a society whose social forms are to a considerable extent based on individual choice, and since our options are limited by what is available in our society, we can prosper in it only if we can be successfully autonomous."²⁸ Thus, on Raz's account, liberalism is contingently tied to autonomy rather than neutrality. As such his perfectionist case is not addressed, unlike the communitarian critique, as a refutation of the excessively individualistic nature of liberalism.

His interest, on the contrary, is in showing that the liberal value of individual freedom as grounded in the value of personal autonomy is in fact compatible with the perfectionist principle, and consequently, is inconsistent with neutrality. But personal autonomy is consistent with perfectionism only because it is itself grounded as the perfectionist principle to be realised.

The exclusion of ideals and neutral political concern that underpins anti-perfectionism is dubious, Raz says, because

Even though deontological and teleological considerations are distinct they derive from a common moral core. Therefore, since the core moral concern should be politically promoted through the enforcement of some deontological constraints it seems plausible to hold that it should also be promoted by advancing the correct conception of the good as well. Since the two parts of morality are separate only at the superficial level, whereas at the fundamental level they both stem from a common source, there is a *prima facie* case for requiring political action to take notice of both.²⁹

As the following discussion will make clear, the notion of autonomy and individual freedom are compatible with perfectionism only because in Raz's account, firstly, their value is determined purely by the value of what they promote, and, additionally, they themselves are to be promoted by the state. Thus, Swift and Mullhall's argument that, what makes Raz's perfectionism liberal is his claim that, at least in modern societies, a good life must be an autonomous one is questionable.³⁰

But is Raz's autonomy really liberal? His plea to enforce autonomy through the state machinery must be worrisome for those liberalism who wish to justify their position to their opponents, for they would recognise that no argument in their defence can be based on the value of autonomy. Thus, there is an inevitable paradox in Raz's claim that autonomy is the correct interpretation of liberalism. Not surprisingly, it presents problems for his perfectionism. Thus, contrary to Swift and Mullhall's inference, the embodiment of autonomy as a goal to be advanced by the state inevitably leads Raz to draw illiberal conclusions.

It may be worth repeating that, an appropriate characterisation of Raz's formulation is one of a variant of state perfectionism. It is distinctively modern, notwithstanding the more regressive aspects of his theory, in the sense that unlike Aristotle, Raz denies that there is a single ideal of the good that legislators should try to promote. In fact, he terms his own doctrine "perfectionist moral pluralism".

It is a "pluralism of many forms of the good which are admitted to be so many valuable expressions of people's nature, but pluralism which allows that certain conceptions of the good are worthless and demeaning, and that political action may and should be taken to eradicate or at least curtail them".³¹ The state should promote valuable forms of life, but part of this promotion also entails categorically discouraging morally reprehensible lifestyles.³²

The general affirmation of pluralism in the opening remarks of the above quotation are misleading. For that pluralism itself is circumscribed by the explicitly paternalistic overtones of his subsequent claim. Since the core of Raz's perfectionism can be shown to derive from this moral pluralism, it calls for further discussion to make vivid some of its more far-reaching implications.³³

Consider the following remark on the prevalence of traditional i.e. non-autonomous lifestyles of minority communities in a predominantly liberal society: even though they may be leading "an adequate and satisfying life," still we can assume that "their culture is inferior to that of the dominant liberal society in the midst of which they live."³⁴

It may be appropriate to observe here that some commonplace views on paternalism are inconsistent with our account of well-being. Let us take the case of safety seat-belts. It is often cited as an example of state paternalism. But the almost

negligible extent of inconvenience caused by a regulation to wear the belt leaves such a characterisation inappropriate. On our account of well-being, they should be regarded as elements that make up the list of substantive goods, in particular, the avoidance of involuntary pain.³⁵

Raz's perfectionist principle lies at the conjunction of three mutually inclusive propositions concerning the value of autonomy: (A), the state has a duty to promote autonomy; (B) autonomy must be promoted only because and insofar as autonomy is valuable; and (C) autonomy is valuable only if an autonomous life is spent in the pursuit of acceptable and valuable projects and relationships.³⁶

The principle of autonomy entails persons' ability to choose their own life-plans, that is to say, to be "authors" of their lives. But the peculiarity in Raz's formulation is in the suggestion that the value of autonomy must depend on the value of the goals persons choose to pursue, whether or not they are in consonance with what the state regards as valuable because "the autonomy principle permits and even requires governments to create morally valuable opportunities, and to eliminate repugnant ones."³⁷

Raz appendices the perfectionist principle with the following clarifications. Curtailing disputed ideals of the good need not be taken to mean that some ideals of the good will be overruled by others. Perfectionism does not entail the imposition of some ways of life over others. Consider the following claim: "the fact that the state considers anything to be valuable or valueless is no reason for anything. Only its being valuable or valueless is a reason. If it is likely that the government will not judge such matters correctly then it has no authority to judge them at all".³⁸

Allowing states to act explicitly on the basis of ideals does not mean that only one way of life will be approved, and that others must be suppressed. The juxtaposition of the above three specifications with Raz's perfectionist stipulations yield contrary implications.

As Waldron argues, insofar as autonomy's "importance is made relative to social circumstances in which no other mode of life is possible, then there is an argument that governments must respect autonomy which has nothing to do with the value of the options that autonomous persons embrace. Given that there is such a case, any argument that governments ought to make their pursuit of autonomy sensitive to its character as a moral ideal begs the perfectionist question."³⁹ Equally questionable is his claim that the machinery of the state should be involved in the promotion of autonomous lives conceived in these terms.

Raz provides an instrumental account of autonomy, according to which it has no independent value of its own, its value being defined solely by the value of what a person chooses. The other point is that autonomy has no value if it is abused. An action is autonomous only if it entails morally virtuous deeds, a misuse of autonomy amounts to its undoing. It is needless to say that Raz is wrong here. If you give alms to a beggar, it is up to him to decide what he is going to do with it.⁴⁰

Raz's interpretation of autonomy is questionable. In the first instance, even if the state has a duty to promote autonomy, the responsibility to promote valuable forms of life does not follow from the autonomy principle. That is an independent notion, stemming from a separate perfectionist intuition.

Thus Raz's perfectionism is grounded on two separate but complementary suppositions: an autonomous life is more worthwhile than one marked by its absence,

and, autonomy itself has value only when its exercise is directed towards the pursuit of a prior and objectively valuable life. It is the contingent value of autonomy on the value of what it promotes which lends Raz's account of autonomy a perfectionist flavour.

As Waldron points out:

The value of autonomy is not to be equated with the overall moral praiseworthiness of the autonomous person, any more than the value of courage is to be equated with the overall praiseworthiness of a courageous person. That an action displays a certain value adverbially, as it were, may make no difference to our overall assessment of whether the act was right or wrong or whether the agent should be praised or blamed.⁴¹

Raz mistakenly assumes that the reason why governments might want to promote autonomy must be identical with the value of autonomy for individuals. The result is that what is a valuable goal for individuals must necessarily be valuable for a political community.

Raz bases his account on certain facts about modern life which make his instrumental account of autonomy an incredibly narrow one for the purpose: "For those who live in an autonomy-supporting environment there is no choice but to be autonomous; there is no other way to prosper in such a society."⁴² Given the absence of non-autonomous modes of life in modern societies then, a government which fails to promote, or interferes with persons' autonomy in such an arrangement makes life unbearable for persons.

As Waldron argues, when the duty to promote autonomy is viewed as relative to the social circumstances in which non-autonomous modes of life are not available, it is inappropriate to conceive of such a duty merely to facilitate the pursuit of "valuable choices". Although the value of autonomy for persons will necessarily be underpinned by the value of what they choose, the latter can hardly constitute a sufficient ground for governments to promote autonomy. As Mullhall and Swift point out, "Raz's liberalism is perfectionist and not exclusionary",⁴³ and we may add, Rawls's theory is exclusionary rather than perfectionist.

Although Raz's perfectionism is modern to the extent that he is disposed to the prevalence of a plurality of conceptions of the good, his doctrine is anti-modernist in one important respect. The feature of his theory that is worrisome from the point of view of liberalism is the disclaimer he issues concerning the demarcation between the political and non-political or the public and private spheres of modern life.

Raz says that:

Any judgment that an activity, way of life, or any aspect of it is either good or bad to any degree is a partial description of a conception of the good. So are statements on various aspects of the value of the organization of society, or any other judgments about the value of any state of society. The goodness of one's life may be enhanced by the fact that one lives in a society of a certain kind (devout, well-educated, prosperous etc.). So conceptions of the good encompass both private ideals (lots of leisure and sport, etc.) and societal conditions which contribute to them (general prosperity, general appreciation of the importance of physical activity, etc.).⁴⁴

Since the good is constituted by both private and societal conditions, the private public distinction is untenable.

Raz's conception of anti-perfectionism is ambiguous. On the one hand, it requires "not doing as much good as one can",⁴⁵ on the other, "it stems from concern for the dignity and integrity of individuals and a revulsion from letting one section of the community impose its favoured way of life on the rest."⁴⁶ He has little to say about what is wrong with any of these two objectives.

According to Raz, a person's well-being does not in the end depend upon his living the life he believes to be of value, but upon his living the life that is valuable for reasons which are independent of his beliefs. Therefore not just any life that is autonomously chosen is for that reason alone, endowed with value. A person's well-being depends solely on the value of his goals, but not on that person's belief in its value. It is quite possible that a person's belief about the value of a given life is mistaken, but we do not respect him if we do not let him know of this fact.

For these reasons, Raz's liberalism is doubly perfectionist. To begin with, the goal of shaping autonomous individuals is a perfectionist principle. Secondly, the further stipulation that autonomy is valuable only if it is exercised in the pursuit of noble ways of life and that the state should be empowered to make such decisions, is a travesty of the principle of autonomy, and an even narrower perfectionist stipulation. Such an account of well-being gives little substance to his claim that a valuable life must first be valued by the person leading that life and autonomously chosen by him.

1.VI Kymlicka's Perfectionist Neutrality

While it is true that both Raz and Kymlicka's perfectionism answer principal communitarian criticisms of liberalism, it is crucial to notice the different grounding of their conclusions. This is significant considering that Raz's perfectionism is explicitly illiberal in many respects, whereas Kymlicka's formulation yields a peculiar form of neutrality with a latent perfectionism as the basis of liberalism.⁴⁷ It is towards a consideration of the latter that we shall now turn.

The distinctive perfectionist character of his theory is the premium attached to the value of autonomy. Accordingly, his account of autonomy can be construed as an example of perfectionist neutrality. Neutrality is not valued for its own sake, but only on account of its conduciveness to the promotion of autonomous lives among citizens.

The reason why the state should be neutral among competing conceptions of the good, Kymlicka says, is because such a state enables persons to exercise their autonomous choices in adopting different conceptions of the good. So how do neutrality and perfectionism coexist in Kymlicka's theory? For example, on the question of state sponsored perfectionism, Kymlicka is emphatic that, "no one may be in a better position than I am to know my own good. Even if I am not always right, I may be more likely to be right than anyone else."⁴⁸ He thus refutes state perfectionism quite unequivocally. Perfectionism enters his argument as a justification of state neutrality, not as a governing principle of its policies. We may accordingly label the doctrine he advances, "social perfectionism". He does not posit any specific perfectionist functions to social institutions, rather, he simply assumes that they undertake such a role.

A good example of Kymlicka's position is his response to Ronald Beiner's argument against liberal neutrality. Kymlicka says:

The best reason for state neutrality is precisely that social life is non-neutral, that people can and do make discriminations among competing ways of life in their social life, affirming some and rejecting others, without using the state apparatus. If individuals are unable to make these judgments in social life, then state perfectionism might be the appropriate way to enable people to discriminate among different conceptions of the good (although it is unclear how moving from the cultural marketplace to the state would remove the disability). So the argument for state neutrality presupposes, rather than denies, social non-neutrality.⁴⁹

So, according to Kymlicka, should people lack in their capacities to make autonomous judgments in life, as in many societies, perfectionism would seem to be in order. The question for him is not therefore one of letting people to decide for themselves whether to lead autonomous or non-autonomous lives. It is instead that of permitting them to exercise such choices because they are in fact perfectly capable of doing so. Therefore he argues, "the dispute should perhaps be seen as a choice, not between perfectionism and neutrality, but between social perfectionism and state perfectionism - for the flip side of state neutrality is support for the role of perfectionist ideals and arguments in civil society."⁵⁰

It is evident from the foregoing account that Kymlicka's justification for the state's neutrality is itself non-neutral between conceptions of the good. "Neutrality

requires a certain faith in the operation of nonstate forums and processes for individual judgment and cultural development, and a distrust of the operation of state forums and processes for evaluating the good."⁵¹ Another example of this position is that "liberal neutrality also hopes to improve the range of options, and the cultural marketplace is valued because it helps good ways of life displace bad."⁵²

Kymlicka's perfectionism on the other hand, is located on a different plateau. That is to say, the argument for the state's neutrality stems from an emphasis on the moral worthiness of persons' ability to form life-plans and make autonomous choices. Therefore, the state must refrain from passing judgement on the quality of various life-forms. It must embrace neutrality in this respect.

It prizes the ability of persons' to arrive at their own judgements on the merits of the different ways of life, rather than itself being concerned with the merits of various ways of life. Thus the justification for neutrality on Kymlicka's account is based solely on the conditions it affords individuals to exercise autonomy in their lives.

Anti-perfectionism is the view that evaluative judgements on conceptions of the good should not underlie the policies of the state. This is because, neutrality is not, unlike in Kymlicka's account, a surrogate for enforcing any conception of the good. the justification for neutrality issues from the commitment to showing equal respect and consideration for individuals. Accordingly the anti-perfectionist state desists ranking the different life-plans of people on the basis of the intrinsic superiority of some over others. The mere fact that they are their own beliefs is sufficient reason for peoples' beliefs about the value of different ways of life to be

worthy of respect. Respect for the moral opinions of people issues in the suggestion to exclude even valid ideals from politics.

Peoples' beliefs have moral status qua their beliefs. In response to the anti-perfectionist, Raz asks: "Is one treating another with respect if one treats him in accordance with sound moral principles, or does respect for persons require ignoring morality (or parts of it) in our relations with others? (His answer is that) There can be little doubt that stated in this way the question admits of only one answer. One would be showing disrespect to another if one ignored moral considerations in treating him."⁵³

Rawls's non-perfectionism, which entails the state's neutrality on judgements regarding the relative value of different forms of life, incidentally produces the conditions for the development of the capacity for individual autonomy. But this should not obscure the fact that such neutrality does not rest upon jeopardising non-autonomous ways of life. An example is the rights embodied in the freedom of various forms of religious practice.

Doubtless, the principle of neutrality will be favourable to some conceptions of the good rather than others, for example, those which place an emphasis on the development of individual autonomy rather than those which do not place a high value on autonomy.

An important perfectionist objection to neutrality is that support for valuable forms of life can be effectively nurtured only through social rather than individual action, and that such nurture requires the enactment of perfectionist legislation by the state. Consider Raz's position here: "supporting valuable ways of life is a social rather than an individual matter ... perfectionist ideals require public action for their

viability. Anti-perfectionism in practice would lead not merely to a political stand-off from support for valuable conceptions of the good. It would undermine the chances of survival of many cherished aspects of our culture."⁵⁴

The above objection can make sense only if what is at stake is legislative as opposed to constitutional neutrality. Anti-perfectionism is consistent with constitutional (rather than legislative) neutrality, I.e., the formulation of constitutional rules providing a neutral framework for the articulation of competing interests.

Raz's and the general perfectionist criticism makes sense only as an objection to legislative neutrality according to which, "a system of laws is neutral when there is no law which cannot itself be justified in terms of neutral values (or: for every law, there is a neutral reason which warrants it)." Anti-perfectionism underpins constitutional neutrality where "a system of laws is neutral if, as a whole, it can be justified solely in terms of neutral values."⁵⁵

Viewed in this light, there is little disagreement about Raz's claim that the preservation of valuable forms of life justifies support from the state, as long as it is elicited through legislation which is congruent with constitutional neutrality. This is also a corrective to the over-optimistic judgements of some liberals like Rawls that valuable forms of life will somehow sustain themselves in the cultural market place.

1.VII Conclusion

Let us say then that a conception of state neutrality premised on autonomy entails that, for example, people should be free to, decide for themselves what constitutes the right religion, or, choose between one particular interpretation of the scriptures

and another. This represents a perfectionist standpoint. The perfectionist element here is the requirement that these questions must necessarily be settled autonomously by persons in accordance with their particular conceptions of the good.

A good or right decision is an autonomously arrived at decision. But the scope of such a principle would be too narrow for underwriting principles of state action as it would inevitably eliminate points of view which are not in consonance with the principle of autonomy. The neutrality of this principle can therefore reasonably be challenged.

On the autonomy based version then, The Satanic Verses cannot justifiably be banned by a neutral state since the author's alleged blasphemy is a matter on which individuals should arrive at their own autonomous subjective judgement. It is not a matter on which the state should impose a decision, one that either reflects the views of the high priests of Islam or some other viewpoint.⁵⁶

Complete abstention alone is what is consistent with neutrality premised on autonomy. It may also lead to an endorsement of the Law Commission's recommendation to abolish the English blasphemy laws since their advocacy is not consistent with autonomy, let alone their being discriminatory to different religions. This response would be satisfactory to a religious sceptic to whom neutrality in the relevant sense is of some value.

An account of neutrality that is impartial must be shown to be reasonable to everybody, to atheists, to those who subscribe to the value of individual autonomy, or those who prefer on the contrary that any decision should be reached on the basis of the correct interpretation of the Holy Koran. In this respect, the recommendation of the Bishop of London's working group to replace the blasphemy laws with a

comprehensive law covering all religions, although reconciliatory in nature, is again non-neutral since it purports to favour theocentric conceptions over secular ones.

On the other hand, a principle of offence, which is to be construed as the neutral basis upon which to settle key issues in the controversy can be shown to be reasonable to these conflicting groups. Its intrinsic merit as an anti-perfectionist formula is that the judgement arrived at on this basis can be justified independently of any reference to conceptions of the good.

To be sure, the vulnerability of persons to offence is indisputable on any conception of the good. The principle is therefore impartial in the sense that it treats the conflicting points of view flowing from the diverse conceptions of the good on an equal footing. In this way the principle can mitigate the charge of containing an inherent bias because it produces differential outcomes for the conflicting parties.

Doubtless persons are not all alike with respect either to the conditions which cause offence, or the intensity of the consequent hurt they suffer. Since they differ considerably from one another in these respects, the mediating principle does not entail a ubiquitous definition of offence. Its purpose is simply to identify the appropriate grounds when the legal machinery might reasonably be employed so as to prevent the occurrence of offence.

Although different conceptions of the good will not have equal prospects under both perfectionism and impartialist neutrality, the justification of differential outcomes in either case will be different. On the former, some conceptions of the good lose out because they must anyway lose out since they are not worthwhile from a moral point of view.

On the latter, some conceptions lose out either because they entail and can thrive only on the basis of unjust claims which are inadmissible from the standpoint of neutrality. Or, even reasonable conceptions of the good may not meet with success because unequal outcomes are a necessary byproduct of an impartialist procedure.

From a utilitarian point of view, whatever your conception of the good, for the purposes of a neutral appraisal, it is one which gives rise to wants and so is on a par with any other conception of the good. From an impartialist standpoint, your susceptibility to offence is an independent fact regardless of the conception of the good you pursue. Any conception of the good is automatically admitted into the impartialist decision framework on a par with other conceptions. The procedure is not hierarchical as in perfectionism. Its validity is judged not by the outcomes it yields, but instead by its intrinsic fairness to everybody.

Autonomy assumes a perfectionist form when it is built in as the right principle that should dictate the actions of the state. But while the perfectionism of the notion of autonomy seems established straight away, it seems inappropriate to characterise the utility principle as perfectionist. This is because the latter does not entail any claim asserting the superiority of one conception of the good over another. It simply reduces different conceptions of the good into wants. Utilitarianism is for this reason non-neutral because of its comprehensive nature but not perfectionist. It would however be a mistake to equate the doctrine of neutrality in general with non-perfectionism alone since neutrality can be derived from second-order conceptions of the good although the two are different in important respects.

Raz distinguishes two forms of non-perfectionism: neutrality between ideals, or neutral political concern and the exclusion of ideals. The two terms refer to no

more than justificatory and consequential neutrality. Raz is however mistaken in supposing that Rawls favours neutrality of consequences. As Kymlicka has argued, his emphasis on civil liberties and freedom of speech and religious worship, besides an equal distribution of primary goods, undoubtedly produces unequal outcomes for different ways of life and therefore he could not be arguing for equal outcomes.⁵⁷

The principle of neutral political concern is indifferent on the question of what entails ideals or conceptions of the good. The good denotes everything encompassing morality with the exception of the principle of neutrality itself. It tells governments to be even-handed in its treatment of all rival moralities.

The exclusionary principle on the other hand, merely forbids governments to act for certain reasons. It means that "the fact that some conception of the good is true or valid or sound or reasonable, etc., should never serve as a reason for any political action. Nor should the fact that a conception of the good is false, invalid, unsound, unreasonable, etc. be allowed to be a reason for a political action. Notice that the exclusion is of the valid as well as of the invalid."⁵⁸

Rawls says:

While justice as fairness allows that in a well-ordered society the values of excellence are recognized, the human perfections are to be pursued within the limits of the principle of free association. Persons join together to further their cultural and artistic interests in the same way that they form religious communities. They do not use the coercive apparatus of the state to win for themselves a greater liberty or larger distributive shares on the grounds that

their activities are of more intrinsic value. Perfectionism is denied as a political principle. Thus the social resources necessary to support associations dedicated to advancing the arts and sciences and culture generally are to be won as a fair return for services rendered, or from such voluntary contributions as citizens wish to make.⁵⁹

Rawls also points out that a theory can be perfectionist when for example it allows the demands of excellence to override the claims of equality and liberty, may be on the grounds of their greater intrinsic worth over the more ordinary pleasures, no matter how widespread the latter may be in society.

However, Rawls's claim is not that the criteria of excellence lack a rational basis from the standpoint of everyday life:

Clearly there are standards in the arts and sciences for appraising creative efforts, at least within particular styles and traditions of thought. Very often it is beyond question that the work of one person is superior to that of another. Indeed, the freedom and well-being of individuals, when measured by the excellence of their activities and works, is vastly different in value. This is true not only of actual performance but of potential performance as well. Comparisons of intrinsic value can obviously be made; and although the standard of perfection is not a principle of justice, judgments of value have an important place in human affairs. They are not necessarily so vague that they must fail as a workable basis for assigning rights.⁶⁰

Now, the question is, what are the grounds upon which Rawls can reject the principle of perfection, while endorsing the argument from intrinsic value. One reason we can imagine is the different premises from which the principle of perfection and that of intrinsic value emanate. The former, we already know, can be invoked without reference to any objective scale of standards from which judgments of intrinsic value flow. All that is needed for something to be imposed as a principle of perfection is a propitious political climate in favour of the advocate of any given conception of the good. Claims about the intrinsic worth of a conception of the good, on the other hand, derive little credibility merely on the basis of some arbitrary political judgment in its favour.

In any case, comprehensive doctrines need not always entail a perfectionist principle. That is to say, they may be perfectionist or non-perfectionist. Utilitarianism is an example of a comprehensive but at the same time non-perfectionist doctrine, thus its purported neutrality among conceptions of the good.

Neutrality among conceptions of the good may also be achieved on the basis of second-order conceptions of the good such as autonomy and want-satisfaction. Utilitarianism purports to be neutral only in this sense by treating substantive conceptions of the good as giving rise to wants and formulating principles of justice which produce aggregate want-satisfaction. But the grounds of promoting want-satisfaction themselves would have to be argued out by appealing to non-neutral premises.⁶¹

But the essential point here is that utilitarianism is non-perfectionist since it is not concerned with which one of the many forms of human excellence that persons choose to identify themselves with. Thus utilitarianism and the notion of autonomy

are comprehensive views insofar as they tend to influence persons' non-political conduct but the former is non-perfectionist while the latter is perfectionist.

CHAPTER 2: IMPARTIALITY AS NEUTRALITY

According to John Locke, "The business of laws is not to provide for the truth of opinions, but for the safety and security of the commonwealth, and of every particular man's goods and person".

Neutrality presupposes a conflict and presupposes too that the neutral person is not a party to the conflict. Neutrality cannot be conceived, therefore, as a character trait or as an aspect of personal disposition. I can be neutral only in relation to a particular situation of conflict. I am neutral in relation to a conflict when I purposely behave in such a way so as not to influence its outcome.¹

2.I Introduction.

We have shown in the first chapter that perfectionist arguments are inherently unviable as a framework for governance in modern pluralist societies. The conclusion there was that the doctrine of political neutrality was the appropriate principle for a liberal non-perfectionist regime. A word of caution is warranted here by the usage of the kind of terminology. By contrasting perfectionist and liberal regimes we are assuming that a regime is to a lesser or greater extent liberal once we have established that it is non-perfectionist. It is a separate question whether the different forms of non-perfectionist doctrines are mutually compatible, perhaps they will not

be. Examples of such incompatibility are the liberalisms of Kant and Mill with that of Rawls's justice as fairness. Rawls in fact labels the liberalism of Mill as perfectionist and his own theory as non-perfectionist.

It is our task in this chapter to present the notion of neutrality and examine its specific nature and scope. Sections 2.II and 2.III deal with the definition of the idea, contrasting its negative and positive variants. While sections 2.IV and 2.V delineate the notion of political neutrality consistent with political liberalism.

In section 2.VI, we will introduce the notion of impartiality and cast light on the close parallel between impartiality and political neutrality. The proposition advanced here is that the only consistent form of neutrality relevant to liberalism is in the end impartialist in substance. This becomes evident when we regard neutrality itself as the logical next step of the view that in a plural society, no conception of the good can provide a basis for agreement on terms that nobody could reasonably reject. The need to find terms of agreement that nobody can reject reasonably preclude coercive means for generating agreement in a society. Neutrality is a term of art and its meaning derives from the specific context in which it is invoked.

The task of section 2.VII will be to consider the arguments for and against scepticism as a basis of impartialist neutrality and to conclude that those from scepticism provide impartialist neutrality with a better run for its money.

2.II Two Conceptions of Neutrality

A major common theme of liberal thought traditionally is that the state and its institutions must try to adopt a neutral posture towards conceptions of the good. That

is, the state should refrain from invoking any of these in formulating public policy. This is the doctrine of liberal neutrality embodying the claim that "the state should not reward or penalize particular conceptions of the good life but, rather, should provide a neutral framework within which different and potentially conflicting conceptions of the good can be pursued".²

But neutrality formulated in these general terms may give room for distortion. For instance it may raise doubts about its credibility if under a neutral state different ways of life will not fare equally well after all. It may be asked, how does neutrality help when unequal outcomes are what you would get any way? Underlying such a question is a rival conception of neutrality. So let us pause then to examine what these different views are and to tease out what is relevant among them for the doctrine of neutrality appropriate for political liberalism. Such an appraisal is warranted by the interpretation of neutrality by critics as no more than echoing the theory of the good of the expositor.³

A fundamental premise of any notion of neutrality is the view that when someone claims to be neutral he must necessarily not take sides in a conflict one way or the other. Not taking sides itself can be interpreted in two very different ways. Firstly, there is the common sense usage wherein not taking sides implies that the neutral party should neither help nor hinder the conflicting parties. He should simply cease to intervene, or remain indifferent.

This is the neutralism of indifference - or what Peter Jones terms "negative neutrality"⁴, perhaps appropriate in particular contexts, especially in a conflict between two nations. Neutrality of indifference evidently precludes interference. A theory that entails this negative conception of neutrality is the libertarian theory of

first possession. It not only requires the state's abstinence from invoking conceptions of the good in shaping its policies (negative neutrality), it also precludes any regulative, i.e., redistributive principle that would be imperative from within a notion of positive neutrality.

A political theory premised solely on negative neutrality may imply dispensing with the institution of the state. Nozick's claim for example that 'A state or government that claims [the citizen's] allegiance (as other individuals do not) therefore scrupulously must be neutral between its citizens'⁵ may be viewed as an endorsement of negative neutrality.⁶

Not taking sides can also be understood in a second sense. Here the neutral party actively intervenes in the conflict to ensure that the outcome leaves the conflicting parties equally worse off or better off. In doing so, he desists from taking sides. This is the neutrality of outcomes or consequential neutrality, or what Jones terms "positive neutrality".

Richard Arneson distinguishes a narrow and a broad conception of outcome neutrality. On the former view, it is reasonable to expect outcome neutrality only in the areas of state activity, whereas on the latter, outcome neutrality is paramount regardless of whether the issue in question is one where the state pursues a line of action or chooses instead to steer clear of any commitment.⁷

A variant of consequential neutrality may be inferred from the propensity of a government to construe justice as obtaining in the assurance of equal satisfaction for the advocates of diverse conceptions of the good. But then since the conflict and incommensurability of these conceptions inevitably surfaces in all such attempts, the goal of maximal equal satisfaction is trimmed down to that of proportional

satisfaction. Thus it is commonplace in such instances that governments endeavour to satisfy a certain proportion of the preferences of different interest groups, whose fulfilment invariably turns on the blatant violation of the interests of rival groups.

An interesting recent example of such a phenomenon is the Indian government's handling of the supreme court verdict requiring financial compensation for a Muslim woman by her divorced spouse. The government, instead of carrying through with the verdict, which would have set a precedent to a common civic code, succumbed to the demands of the Muslim religious leaders to settle the dispute in accordance with the Islamic law. This is significant given that there is no provision for any financial compensation for the divorced spouse under the Shariat.

While a widespread antipathy to this line was echoed among liberal circles for wooing the Mullahs in this manner, precisely the same policy can be construed to have been adopted⁸ this time favouring a religious majority. The issue was that of a disputed mosque which was brought down by Hindu militants at Ayodhya on the 6th of December 1992. It is evidently far from clear from these examples that consequential neutrality is at all desirable let alone feasible.

It must be emphasised that the above examples do not illustrate an underlying commitment on the part of governments to consequential neutrality. What is important is that similar measures in the past were misconstrued as the secular credentials of the Indian state underpinning a stance of neutrality among diverse religious groups. Thus although the Muslims and Hindus sometimes get what they want in relation to their own specific demands, at other times, the fulfilment of one's internal preferences necessarily depends on thwarting those of the other.

Peter Jones addresses the problem inherent in an equal outcomes interpretation of neutrality. The question is, how feasible is the idea of devising a suitable mechanism for measuring outcomes in order to level them up to the same degree? Jones deploys satisfaction and fulfilment as two plausible candidates for the purpose. but as he points out, what is to count as satisfaction and fulfilment for different conceptions of the good is not a matter that can be decided arbitrarily.

The chances are that we may not be able to arrive at a neutral notion of satisfaction and fulfilment either for different persons pursuing the same conception of the good or for persons pursuing different conceptions of the good. For instance, between two keen contestants in a sporting event, satisfaction for one may be a matter of his own side winning a game whereas the other may find it more in the overall quality of the game even if he were not to discount entirely a result in his favour.

Although many cricket lovers were pleased with the Indian Cricketers amassing large totals in their home series during the early 1980s, the general discontent of the public over test matches not producing results was demonstrated in the substantial drop in attendance in all the major centres. What is to count as satisfaction and fulfilment over a life-time for a given individual is highly contingent upon persons' subjective predilections.

Evaluating persons' lives on the basis of a subjective criterion such as satisfaction is not neutral. Because satisfaction itself can be said to presuppose a conception of the good based on utility. The criterion of equal fulfilment to measure individuals' conceptions assumes, among other things, that conceptions of the good are static such that a standard scale of measuring different persons' levels of fulfilment can be established. On the contrary, as Jones points out, conceptions of

the good shift and change over the course of a life-time.⁹ Thus there is conceivably no neutral measuring scale that can produce equal outcomes for different conceptions of the good. The equalizing principle is bound to remain ever so elusive in each of these cases.

Apart from the difficulties of devising a neutral measuring scale for this purpose, as Rawls says, "it is futile to try to counteract these (unequal) effects and influences, or even to ascertain for political purposes how deep and pervasive they are."¹⁰ This is because as Rawls says elsewhere that Government is neutral "not in the sense that there is an agreed public measure of intrinsic value or satisfaction with respect to which all these conceptions come out equal, but in the sense that they are not evaluated at all from a social standpoint".¹¹ Indeed, it is, if anything, inconsistent with such claims. The state does not justify its actions by reference to some public ranking of the intrinsic value of different ways of life for there is no public ranking to refer to.

It is appropriate now to ask how the state's neutrality between conceptions of the good bears on individuals, for after all such conceptions are pursued by citizens in smaller or larger groups and communities. That is, the state's neutral or non-neutral stance between conceptions of the good will affect individuals in significantly different ways.¹² A state that discriminates between individuals facilitates the promotion of some peoples' conceptions of the good more than others and would be endorsing those conceptions of the good. A neutral state then is non-discriminatory.

A corollary of the state's neutrality towards conceptions of the good is the principle of fairness in the treatment of persons. From this follows the inference that a state that failed to treat its citizens fairly cannot be neutral among the conceptions

of the good that they pursue. Conversely, From the standpoint of political neutrality, a state that failed to abstract from conceptions of the good likewise does not treat its citizens fairly.

Rawls posits fairness to persons as the primary goal of a just society:

when a number of persons engage in a mutually advantageous cooperative venture according to rules, and thus restrict their liberty as necessary to yield advantages for all, those who have submitted to these restrictions have a right to a similar acquiescence on the part of those who have benefited from their submission.¹³

The state can only be fair amongst individuals and not amongst conceptions of the good.¹⁴

Rawls observes again that "we should not speak of fairness to conceptions of the good, but of fairness to moral persons with a capacity for adopting these conceptions. Fairness to persons may be achieved by a well-ordered society even though all (admissible) conceptions of the good do not flourish equally and some hardly at all. This is because it is fairness to persons that is primary and not fairness to conceptions of the good as such."¹⁵

The principle of fairness thus requires the acceptance of restraints on their liberties by all parties engaged in a cooperative venture. The point is that persons are all equal and equally valuable, and on their part persons must be prepared to acknowledge similar liberties for their fellow citizens. Such a predisposition requires

of persons that they consent to restrictions on their liberties. These restrictions in turn impose constraints on the scope of their conceptions of the good.

The premise is that no single individual nor conception of the good may deserve privileged treatment. The principles of fairness to persons and neutrality among conceptions of the good are thus closely intertwined. Both issue from the notion of treating persons with equal respect and concern. But treating all the citizens fairly does not entail that all the conceptions of the good held by them should fare equally. It requires merely that individuals' claims for primary goods as means for the pursuit of their conceptions of the good must be assessed in accordance with the terms of a fair procedure.

Thus fairness to persons and neutrality between notions of the good is a position that can be held consistently. For after all the distinctive element in liberalism is not so much neutrality with respect to persons as neutrality with respect to their conceptions of the good.

The above discussion reinforces our earlier point about ensuring equal prospects for conceptions of the good that such claims cannot admit of a principle of fairness in adjudicating the conflicting claims of diverse notions of the good. To admit of a principle of fairness would be to admit of restraints on individuals' liberties in the pursuit of conceptions of the good.

2.III Does Neutrality Need Justification?

It must now be emphasised that we are principally concerned with the problem of justifying neutrality to liberals. The issue whether non-liberals can be persuaded by

the arguments for neutrality is set aside. The justification of impartiality as neutrality is warranted by the fact that there is no one justification of neutrality that liberals of the different persuasions appeal to, and most of them may be said to be guilty of invoking some idea of the good in the name of neutrality.

Therefore the partisan of neutrality must qualify the specific brand of the idea he advocates. Only then would the question of which one of these several formulations is to be put forward as a credible position to non-liberals can be addressed. Until this question is resolved in a more or less satisfactory manner, we may have good reasons to suspect some dubious proposition of neutrality being affirmed whenever the idea is engaged. This is true not only of the classical liberal formulations, but also of some contemporary formulations of the notion.

The classical liberal strategy for neutrality was two-fold flowing from the dominant utilitarian and deontological versions of the doctrine. What was common to them was the belief that a common denominator among the plurality of ways of life could be identified, and that the promotion of this criterion would serve to terminate deadlock and dispute among them.

In the fashion most customary to their respective traditions, the utilitarians Bentham and Sidgwick located this common category in the idea of satisfaction and happiness. Mill and Kant construed the values of autonomy and individuality as the common core of different conceptions of the good. All of them thus assumed that certain notions of what was valuable in life could be detected for a whole society. State action would be neutral if a government promoted these values alone and eschewed others.

The partisan nature of this outlook becomes self-evident when it is contrasted with conceptions of the good which place a greater premium on values other than happiness, say for instance, a life rooted in self-sacrifice.¹⁶ It is not in the least evident that autonomy and individuality can form the basis of neutrality without breaching the liberal stance against paternalism. The question is simply, why should anyone be forced to be autonomous?

I think it is the paternalistic charge against autonomy and individuality that is a more forceful objection to constitute a basis for neutrality than that founded on their alleged incongruence with tradition. If the romantic tradition reacted sharply to the individualistic project, we in the late twentieth Century, with the benefit of hindsight, can evaluate both these from a more dispassionate perspective. Now we are able to judge that only in their crudest formulations do the concepts of autonomy and individuality appear antithetical to tradition and belonging. It was not long before the fallacy of such formulations was brought to bear when the disputed nature of this form of neutrality was questioned by the romantic movement. The romantics on their part stressed the worth of a life devoted to participation in deep-rooted traditions. In arguing thus they were supposing that traditions are necessarily antithetical to autonomy and individuality. At any rate, not surprisingly, the romantic pleas little served the cause of neutrality. Or if it did serve any positive purpose at all, it was perhaps the indirect one of signalling that the path to neutrality lay somewhere in between these extremes represented by the romantic movement on the one hand and the utilitarian and deontological traditions on the other.

Another problematic justification for neutrality is one that stems from pluralism. Although the prevalence of a plurality of conceptions of the good and their

incommensurability can issue in a reasonable demand for neutrality, a claim that only a neutral state can facilitate the sustenance of a far greater diversity of notions of the good life rather than a non-neutral state relies upon non-neutral, i.e. pluralist premises for its justification.

Pluralism of this nature presupposes some idea of what the good for a society consists in, i.e. that a far greater diversity of life forms enriches human creativity than less. But the grounds that such an argument appeals to for the promotion of diverse notions of the good may not be construed neutral by someone who believed in a single conception of the good for man. Thus neutrality founded on pluralism would, like those other forms considered earlier, reinforce the problem that it sought to remedy, that of finding means of living together for a society constituted by disagreement regarding what the good entails for each person.

My own sympathies are with the pluralist form of reasoning for a society. Yet it is evident that the argument from pluralism cannot constitute the basis of neutrality for neutrality must be premised on a prior commitment to the quality of life forms that may be sustained in a society. One could well conceive of someone, a perfectionist say, reasonably not envisaging plurality as a value for its own sake. He may not value a life of gambling as equally worthwhile as a life spent in the Royal Opera House. But then faced with the impossibility of imposing his own conception of the good on the entire society (getting people to go to the opera, he might well settle for neutrality as standing a guarantee that no other conception is privileged likewise (as a safeguard against having to spend a lifetime gambling). Not only does plurality emerge merely as a compromise solution, such an argument characteristically fails to take into account the claims originating from justice.

This is the form of reasoning which was in currency in the 16th and 17th Centuries in the wake of religious turmoil in western Europe culminating in the enunciation of a principle of religious toleration among the rival Christian sects. Today the principle of toleration has been extended beyond the religious sphere, to cover a far greater domain of morality. But the principle of toleration itself is grounded on a more firm footing than the fortuitous conjunction of forces as its 16th Century antecedent. However the form of neutrality based on self or group interest is no more than a *modus vivendi* and is ill-equipped to ensure the general stability of a society.¹⁷ Neutrality thus derived may at best be strategic, as was the principle of toleration, lacking in moral motivation. it cannot offer a ground for neutrality by which I mean a basis for accommodating diverse interests on reasonable terms.

We want a better defence for neutrality than the one that says, this way we can avoid X being imposed upon us at least until the equilibrium of forces is altered suitably, one that accords due importance to the problem of stability. At the same time, we also need a much more broad based justification of neutrality than that stemming from pluralism in order to persuade the perfectionist in our example.

2.IV The Idea of Political Neutrality

In the preceding section, we merely considered what the notion of the state's abstention from competing conceptions of the good entails. Much of our effort was in fact directed towards establishing the negative claim that the term neutrality as we want to understand it has nothing to do with equal outcomes.

We showed that neutrality is not a simple proposition whereupon the neutral state may be understood either as performing certain night-watchmanly functions, or, that even if it exercises any more influence over the lives of persons, it cannot promise equal prospects for the advocates of diverse conceptions of the good.

In order to be both liberal and democratic, a state must allow a plurality of ways of life to flourish within its boundaries. For as Rawls says:

liberalism as a political doctrine supposes that there are many conflicting and incommensurable conceptions of the good, each compatible with the full rationality of human persons, so far as we can ascertain within a workable political conception of justice. As a consequence of this supposition, liberalism assumes that it is a characteristic feature of a free democratic culture that a plurality of conflicting and incommensurable conceptions of the good are affirmed by its citizens.¹⁸

The broad limits to such a plurality we may assume is that which prevents the erosion of these liberal and democratic values. This is the idea of neutrality as a principle of restraint paramount for the maintenance of stability in a liberal democratic regime. The neutrality of a liberal regime then does not follow instrumentally as a means either to the promotion of diversity in society or autonomy among persons.

The above distinction can be clarified with reference to Peter De Marneffe's distinction between concrete neutrality and neutrality of grounds. "Concrete neutrality is the principle that the state may not limit individual liberty in ways that advance one

particular conception of the good. Neutrality of grounds is the principle that the principles of justice that regulate basic social and political institutions must be justifiable in terms of moral and political values that any reasonable person would accept as the basis of moral claims regardless of his or her particular conception of the good."¹⁹

An important feature of political neutrality then is its non-reducibility to any other consideration or criterion. The substance of political neutrality is in the idea that the state should abstract from invoking conceptions of the good in drawing up public policy. The crucial point to bear in mind is that "Just as the idea of neutrality is not self-evident, so a policy of neutrality is not self-justifying,"²⁰ and "Since we cherish our deep values and our justificatory arguments much more dearly than we cherish any particular posited conception of neutrality, it will be the justification we favour which- determines our interpretation of the concept, rather than the other way round".²¹ For example, the values we invoke in relation to the controversy over The Satanic Verses - individual rights to freedom of expression, equality before the law for different religious faiths and so forth - and the justificatory arguments we invoke in support of these values do not draw upon neutrality for their justification.

Thus "neutrality is a political, not a general social ideal. The liberal state can intervene in an area of social life only if the state has a neutrally (politically) justifiable goal that requires that intervention, and only to the extent required by its pursuit of that goal can it justifiably institutionalize neutrality in that area".²² Moreover, as Ackerman says, "Neutrality (political) is not a way of transcending value; it is a value, (a political value) which can only be defended by locating its relationship to other values".²³

2.V Non-Reducibility

Neither negative nor positive neutrality in itself can be an accurate representation of the essence of political neutrality for that doctrine is based on a fusion of both intervention and indifference. What it shares in common with both of these notions is the idea that a neutral state should not take sides in adjudicating conflict.

Recall the two meanings of not taking sides distinctive to negative and positive neutrality. In relation to the former it implies indifference and with regard to the latter it means intervention in order to level up the outcomes for different conceptions of the good. But neither of these senses is of use as a basis for political neutrality.

Political neutrality draws on the negative notion only partially in the sense that the state is indifferent merely to conceptions of the good. It does not purport to remain indifferent to, say, the arbitrariness of persons' natural and genetic endowments which it tries to mitigate. In fact, the state's interventionist policies may be justified on these grounds alone.

Rawls, Ackerman and Dworkin's theories may be said to be neutral both in the negative and positive senses. In so far as their theories seek to be indifferent with respect to the conceptions of the good that individuals wish to pursue they are negatively neutral. The positive dimension enters their theory with the proviso which seeks to neutralise the effects of persons genetic, racial and gender-related factors in decisions regarding what individuals may be allocated in the form of resources by the state.

Even the notion of positive neutrality is adopted in these theories with a marked difference, that is that intervention is designed to neutralise the arbitrariness

of factors extraneous to persons rather than equalising the outcomes for the conflicting parties. This neutralising element is absent in the design of equal outcomes. These redistributive policies are neutral in the sense that their justification does not depend upon any conception of the good.

An important distinction between political neutrality and neutrality of outcomes is that the former can be shown to follow as a natural implication of a policy of religious toleration. That is to say, a state committed to religious toleration is not obligated to ensure equal prospects for the advocates of conflicting religious doctrines.

A good illustration of political neutrality is the role of the ideal judge²⁴ or that of a neutral umpire in a sporting event. However this doctrine is by no means "necessarily the judicial or quasi-judicial image of the 'triad' - plaintiff, defendant, judge".²⁵

Remaining indifferent in the conflict between two nations is the only way in which a third nation not vested with the charges of a neutral arbiter can be neutral between them. But it would be hard to conceive of an indifferent neutral party who can perform the mediatory role. Neutrality consistent with the execution of judicial functions can only be accomplished by interpreting the law in the relevant manner and ensuring its full implementation.

Political neutrality may thus be construed as the suitable balancing of negative and positive neutrality in accordance with the context in which it is required. This is, in Will Kymlicka's terminology "justificatory neutrality".²⁶ That is, "If I can't explain to others why it is right for me to have the power that I have, I shouldn't have it. The limits of our dialogue should mark the limits of my power".²⁷

On the version of justificatory neutrality, the only interest a state may legitimately have with regard to conceptions of the good is in terms of defining the neutrality constraint. Accordingly the state refrains from drawing up policy that makes reference to notions about the good. It ceases actions that rely, either overtly or covertly on conceptions of the good for their justification.

This is because justificatory neutrality affirms that "government action may have the effect of helping some ways of life more than others but denies that government should act in order to help some ways of life over others. The state does not take a stand on which ways of life are most worth living, and the desire to help one way of life over another is precluded as a justification of government action".²⁸

The implication of neutrality conceived thus is that differential prospects for conceptions of the good becomes an inevitable component of state policy. This conclusion in itself does not evidently suggest anything novel in the derivation of neutrality for traditionally equal outcomes for the diversity of notions of the good is not associated with liberal institutions.

An example from John Locke may be useful to contrast justificatory neutrality with its converse:

If any people congregated upon account of religion should be desirous to sacrifice a calf, I deny that that ought to be prohibited by a law. Meliboeus, whose calf it is, may lawfully kill his calf at home, and burn any part of it that he thinks fit. For no injury is thereby done to any one, no prejudice to another man's goods. And for the same reason he may kill his calf also in a religious meeting. Whether the doing so be well-pleasing to God or no, it is

their part to consider that do it. But if peradventure such were the state of things that the interest of the commonwealth required all slaughter of beasts should be forborne for some while, in order to the increasing of the stock of cattle that had been destroyed by some extraordinary murrain, who sees not that the magistrate, in such a case, may forbid all his subjects to kill any calves for any use whatsoever? Only 'tis to be observed, that in this case the law is not made about a religious, but a political matter; nor is the sacrifice, but the slaughter of calves, thereby prohibited.²⁹

The point of the above example is to differentiate the nature of the justifications that may be counted as neutral from those that are non-neutral between conceptions of the good. The ban on Cow slaughter, on account of a general scarcity in food, can be justifiably upheld in spite of the unintended consequence that it might hold, that of prohibiting animal sacrifice for religious purposes.

This is because the grounds invoked in support of the prohibition do not rely upon the protection that such an action may extend to any conception of the good. What characterises the state's action as neutral is the prohibition on Cow slaughter, and not animal sacrifice, although the former effectively rules out the latter.

The same idea is entailed in Dworkin's conception of equal treatment according to which "legislators (and other state officials) must be neutral on what might be called the question of the good life, or of what gives value to life. Since the citizens of a society differ in their conceptions (of what makes life worth living) the government does not treat them as equals if it prefers one conception to another,

either because the officials believe that one is intrinsically superior, or because one is held by the more numerous or powerful group".³⁰

Dworkin adds further that "Liberalism based on neutrality takes as fundamental the idea that government must not take sides on moral issues, and it supports only such egalitarian measures as can be shown to be the result of that principle. Liberalism based on equality takes as fundamental that government treat its citizens as equals, and insists on moral neutrality only to the degree that equality requires it."³¹

There is thus no denying the fact that state action will have the consequence of helping some conceptions of the good more than others; what is denied is that its action must be explicitly geared to help some conceptions more than others for that would violate neutrality. This distinction is crucial.

The first part is a mere statement and admission so to speak of the fact of the incidental effects of state policy. Liberal neutrality will have the effect of favouring some ways of life over others. But then, the liberal state is not to ensure that all conceptions of the good do equally well.

On the contrary, it is based on the Rawlsian premise that "it is surely impossible for the basic structure of a just constitutional regime not to have important effects and influences on which comprehensive doctrines endure and gain adherents over time".³² Therefore a liberal is not one, as Robert Frost put it, "who cannot take his own side in an argument".

The neutralist has little doubt that a fundamentalist or a Nazi would have better prospects for his conception of the good under a regime where the relevant doctrine might have been embodied into legislation. The second part of the

proposition is an emphatic denial that government must act in order to favour some conceptions more than others. In fact, any inclination to help one way of life over another is denied any legitimacy for state action.

Unequal outcomes for conceptions of the good are also implicit in the notions of toleration and freedom of the press. These values nonetheless entail inherent limits in the sense that a commitment to these institutions does not presuppose a wholesale absence of censorship, or, toleration of the militantly intolerant.

Fostering these institutions presupposes limits to specific practices which yield unequal outcomes for conceptions of the good. For instance, if my religious beliefs entail converting others, by whatever means, to what I believe to be the true faith, the pursuit of a policy of religious toleration by a state will be only partially conducive to this end since such a course would inevitably fall short of the desired result.

The idea is that state action should not be premised on value-judgements regarding the worth of different notions of the good life. Rewarding or penalizing conceptions of the good is regarded as a matter best left to individuals and communities embracing them. The principal justification of neutrality on this account is the impartial grounding of the policies emanating from its advocacy. Charles Larmore, Richard Arneson and William Galston dub this version as neutrality of procedure, as distinct from neutrality of outcomes.³³

The deployment of the term proceduralism to differentiate justificatory neutrality from its converse has given rise to some misunderstanding, implying that the notion eschews any substantive values. Therefore the problem seems to deserve closer scrutiny.

Rawls is emphatic that neutrality is premised on equality at the procedural level for all conceptions of the good life; "a procedure that can be legitimated, or justified, without appeal to any moral values at all. Or if this seems impossible, since showing something justified appears to involve an appeal to some values, a neutral procedure may be said to be one justified by an appeal to neutral values, that is, values such as impartiality, consistency in application of general principles to all reasonably related cases".³⁴

The substantive values that underpin the notion of impartiality should become evident through the course of the present discussion. Rawls qualifies the sense in which justice as fairness is procedural as the principles chosen by the parties in the original position are deduced from the circumstances and perspective of the parties composing the original position and thus are substantial in nature (what he terms pure procedural justice in contrast to perfect procedural justice³⁵).

In this qualified sense, "Justice as fairness is not, without important qualifications, procedurally neutral. Clearly its principles of justice are substantive and express far more than procedural values, and so do its political conceptions of person and society. If we do apply to it the idea of procedural neutrality, we must do so in virtue of its being a political conception that aims to be the focus of an overlapping consensus."³⁶

The point is brought out succinctly by Barry: "at the point where the basic principles and rules are being drawn up, no conception of the good should be given a privileged position".³⁷ Accordingly, "The outcome of a rule is simply the outcome. People may evaluate it, each from the point of view of their own conception of the good, - The fairness of the rule (in this case that of neutrality) is a property of the

rule itself, and can be established without any need to predict what the outcome of it will be at any particular time and place".³⁸

The outcomes of a policy of neutrality thus justified are a result of the kind of justification invoked. The terminology of proceduralism obscures the substantial values that political neutrality underpins. Larmore surely could not regard the notion of rational dialogue and equal respect for citizens and likewise Galston the conception of rational humanism as merely procedural.

For according to Larmore, "political neutrality consists in a constraint on what factors can be invoked to justify a political decision. Such 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. So long as a government conforms its decisions to this constraint, therefore, it will be acting neutrally. There is no independently describable condition of society to be called "neutral" that the ideal of political neutrality requires a government promote or maintain."³⁹

Since the core of political neutrality is more substantial than procedural, it is inappropriate to ascribe to it the value of proceduralism. The claim concerning the substantive nature of neutrality becomes evident when its implications are contrasted with the communitarian charge that liberal neutrality presupposes an atomist sociology of human nature and that accordingly its policies embody merely procedural norms. From now onwards the terms political neutrality and justificatory neutrality will be used interchangeably.

2.VI Neutrality and Impartiality

The principal argument of this study is that the only consistent form of neutrality obtains when the state is impartial among conceptions of the good. That is to say that when a policy is said to be impartial, it does not presuppose the correctness or superiority of any conception of the good over the others. Plainly, a neutral policy is impartial.

But nothing has been said so far about the underlying connection between the idea of neutrality and impartiality that the above claim presumes. In fact, until now, we have been assuming that an account of neutrality which makes no reference to impartiality is neutral enough, so long as it does not entail the assumption of equal outcomes. It is towards providing this missing link that we now turn our attention.

The idea of impartiality as expounded by Scanlon is premised upon a "system of rules for the general regulation of behaviour which no one could reasonably reject as a basis for informed, unforced general agreement"⁴⁰. The clause of "reasonableness" is introduced in order to exclude all unreasonable rejections of the principles given that persons are all equally motivated by the desire to find agreement with each other. This means that principles which can be reasonably rejected by anyone do not qualify to form the basis of agreement.

But both Scanlon, and Barry who develops the argument from the impartialist point of view, assume that there is such a desire among persons to reach an agreement. "The only relevant pressure for agreement comes from the desire to find and agree on principles which no one who had this desire could reasonably reject. ... moral argument concerns the possibility of agreement among persons who are all moved by this desire, and moved by it to the same degree."⁴¹

In fact, Barry is quite explicit that:

We have to accept that there is no way of arguing people into having this motive. If someone is totally unmoved by concern for his ability to justify his actions to others on terms that they could not reasonably reject, moral argument comes to a standstill. We can only hope that there will not be too many such people and that social institutions can be designed so as to prevent them from doing too much damage.⁴²

This means that the argument cannot also be one premised on a pragmatic stance, because agreement can also be enforced by coercion. The point is that since there is general agreement that controversies over what is the most desirable form of life are reasonable and legitimate, and coercion is foreclosed as the right means to generate agreement, the best proposition on hand is to settle for a state that is neutral towards diverse notions of the good life. This is impartiality.

The need to bring in an argument about impartiality to back up neutrality implies that Even if the state's neutrality is not explicitly posited in terms of guarantees of equal outcomes for the different conceptions of the good, it can still be partial to one or the other conception of the good in some other way.

One or the other conception of the good might enter into the justification of neutrality in a different way. As we observed in the previous chapter, it is possible to argue a case for neutrality even for the promotion of perfectionist goals without recognising that such an account is not in fact really neutral among diverse conceptions of the good. The conception of impartiality will have to rectify these inadequacies within the account of neutrality.

There are two versions of justificatory neutrality which can be shown to fail the test of impartiality. These are the versions stemming from utilitarianism and the notion of autonomy. On the face of it, neutrality in both these instances can be justified on the ground that it does not rely upon the superiority of one conception of the good over others.

But the presumed superiority of some conceptions over others can be deduced from the conception of good as autonomy. In any case, save the requirement that a conception of the good is arrived at autonomously or should be amenable to a reduction into wants, both of them do not rest their claim to neutrality on the promise of equal outcomes for conceptions of the good. But the form of neutrality in neither of these cases is impartial among conceptions of the good because they assume autonomy or want-satisfaction as the starting point. Let us consider each of them in turn.

Kymlicka we saw, was seeking to justify neutrality so that persons may be able to lead autonomous lives: "liberals say that state neutrality is required to respect people's self-determination."⁴³ Although this autonomy-based neutrality does not purport to guarantee equal outcomes for the multiplicity of conceptions of the good, nor explicitly relies upon any substantive conception of the good, in that it does not homosexuals should be repressed under the state. But such an account is nevertheless not impartial among all conceptions of the good because only autonomously arrived at conceptions will be successful under this form of neutrality. This is evidently not being neutral among all substantive conceptions of the good. It is partial, say, to conceptions of the good which can thrive in a plural society compared with those which can flourish only through special efforts to nurture persons into them. It can

accomplish this non-neutrality by relying upon a second-order conception of the good as autonomy.⁴⁴

Autonomy is a second-order conception in that "it does not specify what the good actually consists in. (The notion of autonomy entails simply that each person should be free to choose and rationally revise his conception of the good allowing a similar liberty for everybody else.) Anything could be regarded as good (in a second-order way) so long as the person who conceived it as good (in a first-order way) had arrived at this conception in a way that satisfied the requirements of autonomy."⁴⁵

Neutrality premised upon a second-order conception of the good as autonomy cannot provide a convincing answer to the charge that, beneath its umbrella, non-autonomous conceptions of the good cannot flourish as well as autonomously arrived at conceptions. Thus the response to the fundamentalist Muslims who demand that The Satanic Verses should be banned because it challenges the deeply held religious beliefs of the Muslims will be non-neutral.

We would have to ascertain first that these persons did in fact arrive at their conception of the good autonomously for their claim to receive any consideration. If (and when) it is established that at least some of them did not arrive at, let us say, the Islamic conception of the good autonomously, then the response will be along the following lines. Under this regime, the state encourages persons to form and revise their own beliefs. It is tough luck on those persons who were indoctrinated into the correct faith.

The neutrality generated by utilitarianism is of another kind. Here, all the substantive conceptions of the good are placed on an equal footing. You can do this by saying that after all, each of them gives rise to wants for basic goods. So the

manner in which utilitarianism treats various substantive conceptions of the good equally is by reducing them all to a least common denominator, i.e. that of want-satisfaction. Want-satisfaction is a second-order conception of the good which can accommodate all substantive conceptions of the good. The just principles are those which can aggregate want-satisfaction.

The view has gained currency in recent years that the idea that no conception of the good that is in dispute among reasonable people should form the basis of public policy is too restrictive. This is perhaps the most direct challenge to justice as impartiality. Arneson claims that neutrality among substantive conceptions of the good is adequate enough. In other words, he endorses neutrality based on a second-order conception of the good as want-satisfaction and refutes impartialist neutrality. The impartialist stipulation that the state should not enact policies which can be reasonably rejected is too restrictive because "the set of controversial - that is, actually controverted - claims is wider than the set of claims that would still be controversial among rational persons ... Not everything that is controversial should be controversial."⁴⁶

The conjecture that no conception of the good can provide the basis for agreement among rational persons should not, pending its actual verification, be held against someone who believed that he knew what the right conception was and also against anyone who held that only substantive conceptions of the good should be excluded by neutrality. Moreover, if it is reasonable to enforce a controversial theory of justice, what is the justification for excluding a disputed conception of the good from public policy?

The nature of the argument from impartiality is that "since political power is the coercive power of free and equal citizens as a corporate body, this power should be exercised, when constitutional essentials are at stake, only in ways that all citizens can reasonably be expected to endorse publicly in the light of their own common, human reason."⁴⁷

As Barry argues, "the neutrality inherent in justice as impartiality leads to an insistence on the point that the decision-making rules should not give any special advantages to certain conceptions of the good over others. Subject to that, however, the process must be one in which the partisans of different positions defend them on the basis of their conception of the good and seek to win converts to it or to persuade holders of other conceptions of the good that their own conception, rightly understood, supports the same position."⁴⁸ Second-order conceptions of the good as autonomy and want-satisfaction are both not impartial and therefore according to our definition of impartialist neutrality, non-neutral.

2.VII The Need for Scepticism

In this section, the attempt will be to show that an account of impartialist neutrality must presuppose that the advocates of various conceptions of the good regard their beliefs with a degree of scepticism. Recall that from the standpoint of impartiality, the reason why the state should remain neutral among conceptions of the good is because no conception can be written into public policy with adequate justifying reasons for everybody other than its advocates. In order to arrive at this conception

of neutrality, people must come round to the understanding that their beliefs cannot be asserted with any degree of certainty. This is scepticism.

Most of the contemporary defences of neutrality are premised on an emphatic repudiation of scepticism. The essence of the arguments of Rawls, Nagel and Larmore is that the fact that people reasonably disagree about the good life does not warrant scepticism regarding one's own beliefs about what the good entails. It is enough that we accept disagreement on such matters as a fact of modern life and strive to establish political principles on the basis of the matters on which we already have some agreement. Their reasons for the repudiation of this conception are again distinctive.

Barry's objection to all of them is that for disagreement in the public sphere to be reasonable, persons must adopt an attitude of scepticism towards their private ideals. In the case of Rawls, what he is challenging in the name of scepticism is something else. He also shows that it is inaccurate to think that scepticism in the way Larmore understands the term underwrites neutrality. He advances his own conception of scepticism which leads to neutrality.

Barry's third claim, this time targeted at Nagel, is that his conception of "epistemological restraint" cannot successfully achieve the split between ideals which maybe held with certitude in persons' private lives on the one hand, and, on the other hand, these very same ideals having to be construed as mere beliefs in the public sphere. But before trying to grapple with Barry's criticisms of these different positions, it is necessary to say something about the different objections against scepticism.

On Larmore's mistaken understanding, scepticism entails that "when ideals clash, ... there is no reason to prefer any of them, and so no government should seek to institutionalize them."⁴⁹ His related claim is that scepticism defined in this way underwrites neutrality: "The state should not seek to promote any particular conception of the good life because of its presumed intrinsic superiority - that is, because it is supposedly a truer conception."⁵⁰

What Larmore is suggesting in his definition is that, from the point of view of scepticism, it does not make a difference what conceptions of the good people choose to pursue. Barry's contention is that if this is what is entailed in the notion of scepticism, the state is not obliged to be neutral among conceptions of the good. Instead, since it does not matter which of the many conceptions persons want to pursue, the state may decide to enforce any one of them on a whole society. Therefore scepticism must mean something else if neutrality is to follow as a next step.

Larmore's strategy of a rational dialogue among persons to arrive at neutrality must likewise require scepticism about one's beliefs if that dialogue is to get anywhere at all. "When two people disagree about some specific point, but wish to continue talking about the more general problem they wish to solve, each should prescind from the beliefs that the other rejects, (A) in order to construct an argument on the basis of his other beliefs that will convince the other of the truth of the disputed belief, or (B) in order to shift another aspect of the problem, where the possibilities of agreement seem greater. In the face of disagreement, those who wish to continue the conversation should retreat to neutral ground with the hope either of resolving the dispute or of bypassing it."⁵¹

Barry provides an example of how this process may work. The context might be one where two people who generally shared a belief, say in Christianity nevertheless disagreed over the historical evidence or textual interpretation of some specific doctrine. They may return to the neutral ground as the basis upon which to resolve this disagreement.⁵²

But the neutral framework provided by Christianity cannot itself suffice to resolve the dispute over the specific doctrinal aspect. The only way out of that deadlock could only be through scepticism on the part of both the disputants about their respective positions on the controversial subject. Scepticism then would ask of each of them to concede to the other that he might well be mistaken about holding his belief with such certitude.

Rawls rejects scepticism because according to him an "overlapping consensus appears far more stable than one founded on views that express skepticism and indifference to religious, philosophical and moral values, or that regard the acceptance of the principles of justice simply as a prudent *modus vivendi* given the existing balance of social forces."⁵³ But is this rejection of scepticism really tenable?

In the above quotation, he is juxtaposing his overlapping consensus and scepticism as antithetical to each other. The consensus on the political conception of justice is worked out for the socio economic and political institutions of a plural society. This is to be achieved from within the opposing comprehensive religious and philosophical doctrines. This must, it seems, rest upon scepticism rather than its denial.

The political conception of justice that underpins political liberalism Rawls says draws on the support of the range of general and comprehensive doctrines

prevalent in a democratic society. As Barry reformulates the idea, The overlapping consensus emerges "from the inside of a number of conceptions of the good. The conception of justice should be capable of being shown as an implication of the conceptions of the good themselves."⁵⁴ Observe the following claim of Rawls: "The aim of justice as fairness as a political conception is practical, and not metaphysical or epistemological. That is, it presents itself not as a conception of justice that is true, but one that can serve as a basis of informed and willing political agreement between citizens viewed as free and equal persons".⁵⁵

Nagel argues that scepticism about one's own conception of the good is not necessary because it is, for example, quite consistent to believe in the truth of a particular religion, and at the same time to insist that a society's institutions should not be justified on that basis:

the demand for agreement, and its priority ... over a direct appeal to the truth, must be grounded in something more basic. Though it has to do with epistemology, it is not scepticism but a kind of epistemological restraint: the distinction between what is needed to justify belief and what is needed to justify the employment of political power depends on a higher standard of objectivity, which is ethically based.⁵⁶

This is also Larmore's claim: "abstracting from a controversial belief does not imply that one believes it any the less, that one has had reason to become skeptical toward it. One can remain as convinced of its truth as before, but for the purposes of the conversation one sets it aside."⁵⁷

Barry's conception of scepticism is noticeably different from what is understood by Nagel, Larmore and Rawls. It entails the view that certitude about belief is ill-founded as opposed to the ancient notion that belief itself is ill-founded. The only logical move from the motive among persons to reach an agreement that none of them can reasonably reject, to that of neutrality, must be through scepticism about the good that each of them pursues in their lives: "skepticism is quite compatible with adhering to some religious belief or other conception of the good. What is denied by skepticism ... is holding the conception to be so certain as to warrant justify imposing it on others who reject."⁵⁸ Thus it is an argument against certitude rather than against belief. It is premised upon doubt rather than upon denial. But "doubt" is carried all the way down.

We are not talking here about questioning the conceptions of the good held by someone else. Nor are we questioning the proposition that what is good for me may or may not be good for someone else. Barry's point is that if I am really certain about the truth of my beliefs, I should be able to convince others about its certainty. But one must exercise doubt over one's own firmly held beliefs if one really wants to advance the proposition that others can reasonably question what one believes to be the truth.

This is because certitude about one's own beliefs cannot be consistently held with the position that these conceptions can be reasonably rejected by others. Either you hold your belief with certainty and say that the others who disagree with you are wrong to do so, or, if you maintain that the others are being after all reasonable when they reject your beliefs, you had better simply come out and say that you yourself have doubts about what you sometimes believe is the truth.

This is in sharp contrast to Nagel's position where, "We accept a kind of epistemological division between the private and the public domains: in certain contexts I am constrained to consider my beliefs merely as beliefs rather than as truths, however convinced I may be that they are true, and that I know it."⁵⁹

The distinction between Barry's scepticism and Nagel's epistemological restraint is vital. Scepticism insists that one cannot maintain the certitude of one's beliefs even privately if one is not to impose his beliefs on others who may reasonably reject them. The idea of reasonableness is doing a lot of work here, for when one accepts the rejection of his views as nevertheless being grounded in reasonable terms, he is in fact conceding that things may legitimately appear different from the standpoint of the other person.

On Nagel's account, the requirement that one should not impose his beliefs on others in the public sphere does not mean that one cannot maintain these beliefs with certitude privately. The epistemological restraint enables the split between what may be held as a matter of belief in the private and public domains. Barry's point is that my inability to prove the certitude of my belief to others must make a dent in my own mind regarding the certainty about that belief.

Arneson challenges Nagel's notion of epistemological restraint on the ground that to circumscribe personal considerations into the private domain is in effect to impugn their status as reasons altogether. If one believes in the truth of say, a religious doctrine, that can inform the judgements of both his private life and public activities regardless of the beliefs of others.

The constraint on the validity of the beliefs in both instances however is imposed by the criterion of whether or not they are reasonable beliefs to begin with.

Thus if the beliefs are reasonable, they are a guide to both persons' private lives and public activities. But if they are not reasonable, they cannot be a guide to either.⁶⁰

Neutrality construed as impartiality in this way can be viewed as an ideal rather than as a means with its concomitant implications favouring a policy of toleration. This is because political liberalism precludes all comprehensive religious and philosophical doctrines and their corresponding conceptions of the good.

2.VIII Conclusion

We have considered in this chapter the various meanings that the term neutrality might suggest. Its relevance as a concept presupposes a context of conflict, one which the opposing parties are interested in ensuring that it is resolved amicably. This means also that the arbiter is committed to taking the side of none of the disputants. The two inferences which the clause of not taking sides can *prima facie* give rise to are, indifference between the conflicting parties or active intervention. But the scope of neutrality understood in this way is too restricted for crediting the idea with any intellectual respectability.

A more sophisticated formulation of the concept is the one which stipulates that the state should not rely upon any conception of the good to justify its policies to its citizens. That formulation precludes straight away any notion that neutrality must guarantee equal outcomes for the advocates of diverse conceptions of the good.

Although neutrality at the realm of justification might appear to be self-evident as the only feasible form of the doctrine for political institutions, several critics have managed to justify liberal institutions by appealing to ideas which in themselves

constitute conceptions of the good, or, which can be shown to be reductions from a substantive conception of the good. The ideas that are most commonly associated with neutrality in this manner are the second-order conceptions of the good as autonomy and want-satisfaction.

The desire to provide the broadest terms of agreement requires that neutrality is freed of reference even to second-order conceptions of the good. This means that the state should be neutral among conceptions of the good because that is what is consistent with the requirements of justice.

In the chapters that follow, we will attempt an examination of the implications of impartialist neutrality. This will be undertaken by contrasting where appropriate the different directions in which other forms of neutrality, those issuing from want-satisfaction and autonomy, will proceed. The problem of chapter three is the dispute over the distribution of resources and welfare as the appropriate egalitarian liberal proposal for distributive justice.

CHAPTER 3: IMPARTIALITY AND EQUALITY

3.I Introduction

In this chapter, we will examine the implications of impartialist neutrality for questions of distributive justice. We will enquire how far the egalitarian strategies of redistribution that are now in currency are really impartial, and, even if they are, whether in themselves they exhaust the scope of impartiality.¹ The two main equalisanda in currency in the literature are resources and welfare. There are other variants which flow from these two desiderata.

As it will become clear from the following discussion, the resource egalitarian position may be viewed in general as representing justificatory neutrality and the welfare variant can be understood as embodying consequential neutrality or neutrality of outcomes. From the standpoint of impartiality however, equality in welfare is precluded as an egalitarian principle since it detracts from the basic tenets of impartialist neutrality.

However, a discussion of well-being is justified here since an egalitarian theory such as impartiality must take account of the welfare of people. We will ask how far the idea of equality of resources can fulfil the requirements of impartiality.² We will be suggesting that equality in resources goes only halfway towards meeting the requirements of impartiality. The demands of a full-blown theory of impartiality for distributive justice are more far-reaching.

The problem of identifying the correct equalisandum must be preceded by some definition of the different equalisanda. Therefore in section 3.II we will attempt to provide a definition of the notions of resources and welfare. We will consider whether resources should include, besides material resources, persons' bodily and mental faculties. On the other hand, we shall ask if persons' welfare should be understood as including, apart from the satisfaction they derive from the pursuit of conceptions of the good, people's disposition to exercise their capabilities, and, additionally, the avoidance of involuntarily induced pain.

In section 3.III we will outline the connections between the notion of equality in welfare and that of consequential neutrality. This is important since it is a commonplace among resource egalitarians that all considerations of people's welfare should be excluded by egalitarianism. We will try to show that, on the contrary, considerations of welfare are inappropriate for egalitarianism only insofar as welfare is understood as pleasure or satisfaction, without regard to the choices that people make. Such a view would follow from consequential neutrality, which is not an egalitarian theory, which mandates equal satisfaction for the advocates of diverse conceptions of the good.

We will then consider two versions of the egalitarian conception of welfare, the subjective and objective notions. Both of them arrive at the idea of equality of outcomes as a distributive goal in different ways. The subjective notion aims at equal outcomes by seeking to maximise people's individually conceived preferences. On the objective notion, the goal of equal outcomes is realised when the well-being of every member of a society is brought to a generally defined conception of well-being.

In section 3.IV we will try to outline a conception of well-being which is consistent with the account of impartiality. This is one that posits certain substantive goods as generally essential to persons' well-being, transcending any of the particular conceptions of the good that they pursue in life. Such a notion precludes all views about the levels of satisfaction that people set out to achieve. Instead, its concern will be with the avoidance of involuntary disadvantages which account for meagre amounts of well-being among people.

Section 3.V will outline the idea of equality of resources, mainly to dispel misgivings by opponants that such an idea entails a fetishism for resources rather than treats them simply as means for the advancement of people's good. We sresourcismhall offer arguments from the exponents of resourcism to refute such criticisms.

Section 3.VI will enquire how far resourcism as an egalitarian design of distribution complies with the stipulations of impartiality. Resourcism is consistent with impartiality to the extent that it requires people to take responsibility for their voluntary actions. Its flaw however, we shall argue, is in supposing that people's preferences and tastes are always outcomes of their conscious choices. As a consequence, it is unable to permit departures from equality in resources.

One obvious area where a departure from an equal distribution of resources seems justifiable is the problem of hard-cases involving the disabled where the absence of choice is obvious enough. But an equally strong candidate would also seem to be social deprivations such as the lack of basic education and skills, where the deficiency is not an outcome of people's own volition. Deviations from an equality

of resources formula in either of these instances is not however inconsistent with impartiality.

The status of equal opportunity for welfare and equal access to advantage as candidates of impartiality take up the discussion of section 3.VII. These ideas have been put forward as departures from equality of welfare by Richard Arneson and G.A. Cohen respectively. What distinguishes Cohen's approach, is the disposition to allow departures from equality of welfare, where such moves reflect persons' voluntary actions, and the subsequent claim, that deviations from equal welfare do not vindicate equality in resources. The justification underlying these departures flow from a certain conception of moral responsibility which may or may not apply in specific circumstances. Can either equal opportunity for welfare, or equal access to advantage, be justified from the standpoint of impartiality?

Section 3.VIII explores the strengths of yet another candidate for impartiality. The claim this time is that equality must obtain in persons' capabilities. Amartya Sen's contention is that neither utilities nor primary goods can provide a satisfactory account of equality since both eschew a good deal of non-utility information relevant for arriving at moral judgements on questions of human well-being. One vital area of such neglect he points out is in the domain of persons' capabilities.

The conclusion advanced in section 3.IX is that while the welfarist method is precluded as a viable option from the standpoint of impartialist neutrality, The stronger contender for the job, the resourceist formula, can only partially fulfil its stipulations. This is because, in order to equalise persons' capabilities and to eradicate involuntary welfare deficiencies, impartiality warrants departures from an equal allocation of resources apart from hard cases.

Prima facie there seems to be nothing inconsistent with impartiality in the suggestion that, if what matters in the end is that persons are treated equally, the fundamental solution to inequalities that are both naturally and socially arbitrary must be found in the realm of persons' capabilities rather than in goods or utilities. This is because if anything can be construed as an advantage for persons, it must in the end essentially be located in their own capabilities.

3.II Conceptualising Welfare and Resources

Before addressing the problem of deciding upon the correct egalitarian proposal to be adopted, it is necessary to spell out precisely what we take the two main equalisandums to denote. For the decision in favour of one or the other definition of welfare, for instance, as satisfaction, or, the avoidance of pain, will determine the conclusions on behalf of impartiality. It is customary in the welfare egalitarian discussions to think of a person's welfare as obtaining in the degree of satisfaction or fulfilment he derives from the pursuit of his conception of the good.

Landesman adopts a broader conception than that, by distinguishing two elements of a conception of well-being. These are obscured by equating it with satisfaction alone. Satisfaction, of course, represents one of these elements, namely, contentment. But an equally important constituent of well-being, Landesman argues, is also people's ability to exercise their capacities, the pleasures and frustrations they experience while undertaking human challenges.

Their importance is not undermined by the fact that someone who tried his hand at something failed to achieve his goal. It simply means that others find

contentment with their lot whilst these people do not.³ Well-being for the latter obtains in taking up human challenges. These two aspects can be captured, Landesman argues further, only by giving due weight to both the requisite amount of goods and satisfaction, rather than one or the other, as essential components of well-being. But, a conception of well-being in accordance with impartiality, in our view, is one which should focus on the removal of involuntary pain and frustration, leaving it to individuals to choose what the appropriate form of satisfaction for them should be. We shall employ the terms welfare and well-being interchangeably.⁴

The notion of resources may be thought of as denoting no more than the material goods that persons need in their day-to-day living. But the idea is not entirely straight forward since people's endowments can also reasonably be counted as resources. Dworkin's theory of equality of resources, for example, is principally concerned with the problems that may arise in the distribution of material goods. It addresses the problem of the distribution of non-transferrable resources such as persons' labour, talents and skills. Evidently one cannot physically divide up talents, although one can divide property-rights in them. Obvious obstacles to this proposal concern ways of offsetting in-born differences in talent, or even ascertaining how much compensation those poorly talented are due.

But besides these reasons, Dworkin objects to the idea of including people's labour in the common stock of resources. Because, to do so would give people the right to control other people's labour. And this would result in the slavery of the talented since the labour of the more talented would be in far greater demand than that of others. This could lead to some enjoying an unfair advantage over the efforts of others.

The reason for barring this proposal is not that people own their bodies and minds, and therefore also own their talents, so they should be entitled to the fruits of their talents. While people should not be penalised for their talent, at the same time, the idea that people should have the right to the benefits of their superior talent should also be resisted.

We might infer something about Rawls's views on including human capacities in the common pool of resources, from his remarks on effort and desert. Rawls says, "The effort a person is willing to make is influenced by his natural abilities and skills and the alternatives open to him. The better endowed are more likely, other things equal, to strive conscientiously, and there seems to be no way to discount for their greater good fortune. The idea of rewarding desert is impracticable."⁵

Like Dworkin, Rawls is in no doubt that people's extra effort should be rewarded and that their natural talents do not deserve reward.⁶ His main worry is only that while rewarding effort, there is no way in which we can discount for people's natural abilities which contribute to their greater striving. Thus his objection to rewarding desert is a practical one.⁷ Therefore, while Rawls favours not rewarding desert at all, he cannot at the same time argue for people's labour to be added into the common stock of the community's resources, since that would place the more talented at a disadvantage compared with the not so talented.

But the inclusion of non-human resources is not the only conceivable definition of resources. Rawls for example, in his theory of primary goods lists both material and non-material, or more appropriately tangible and intangible, goods as resources. These are:

the basic liberties ... freedom of thought and liberty of conscience; freedom of association; and the freedom defined by the liberty and integrity of the person, as well as by the rule of law; and finally the political liberties; (b) Second, freedom of movement and choice of occupation against a background of diverse opportunities; (c) Third, powers and prerogatives of offices and positions of responsibility, particularly those in the main political and economic institutions; (d) Fourth, income and wealth; and (e) Finally, the social bases of self-respect.⁸

Observe that Rawls's account, although it includes human resources such as self-respect and liberties and rights, characteristically leaves out persons' capacities, both physical and mental for redistribution. But crucially, the enjoyment of the goods in his list of primary goods presupposes the ability of people to exercise their capacities.

Although they are, beyond doubt, essential elements in the general package of resources, we shall nevertheless treat human capacities as a distinctive category from material, i.e. divisible resources. This is because, human capacities are, characteristically, non-distributable. This fact however, in no way undermines the other fact that the two categories of resources are mutually inclusive.

The enjoyment or exercise of human capacities presupposes the possession of diverse material goods. Thus it is evident that the category of resources should include both divisible and non-divisible goods, and an egalitarian theory should address both for the purpose of redistribution.

3.III Equality of Welfare

There is evidently an immediate appeal in the idea that in so far as equality is an important political goal, the equalisandum should be that of persons' welfare. Here, the idea is that everybody should enjoy an equal level of welfare, and "the only fundamental moral facts are facts about individual well-being".⁹ We will examine the credentials of these two claims in this section.

An underlying connection can be established between consequential neutrality and the welfare egalitarian position that the state should strive to promote the welfare of citizens to an equal degree rather than distribute equal amounts of resources among them. In fact, the idea of equality of welfare may be construed as an eclectic notion, combining the different components of utilitarianism, namely, consequentialism, welfarism and sum-ranking.

The notion of consequential neutrality may be understood as embodying the claim that a state which purports to be neutral amongst competing conceptions of the good must ensure equal outcomes for each of them in the overall social calculus. Equality in welfare implies neutrality of outcomes because a person's welfare is usually associated with the pleasure or satisfaction he derives from pursuing his conception of the good.

The stipulation of equal outcomes itself may be interpreted in two different ways. Firstly, it can be taken to mean whatever level of satisfaction or fulfilment persons aim to achieve from the pursuit of their respective conceptions of the good. The second is one where a common denominator of fulfilment or satisfaction is

stipulated as the goal to be targeted for all the different conceptions. Thus the term equal outcomes is ambiguous unless appropriately qualified.

The above formulations of consequential neutrality may be viewed as variants of the subjective and objective conceptions of well-being. Scanlon defines the subjective criterion of well-being in the following manner: "the level of well-being enjoyed by a person in given material circumstances or the importance for that person of a given benefit or sacrifice is to be estimated by evaluating those material circumstances or that benefit or sacrifice solely from the point of view of that person's tastes and interests".¹⁰

The subjective principle of well-being accords with welfarism, construed as a variant of utilitarianism. Welfarism entails the view that "the goodness of a state of affairs depends ultimately on the set of individual utilities in that state."¹¹ Harsanyi's preference utilitarianism is yet another example of the subjective notion. The principle of preference autonomy underpinning this view entails that "in deciding what is good and what is bad for a given individual, the ultimate criterion can only be his own wants and his own preferences'.¹²

Dworkin's formulation of the idea of equality in welfare again draws upon the subjective criterion: "a distributional scheme treats people as equals when it distributes or transfers resources among them until no further transfer would leave them more equal in welfare."¹³ This formulation of welfare aims at maximum equal satisfaction.

On the basis of this principle of welfare, he goes on to discuss three groups of theories of welfare; (A) success theories, (B) conscious state theories and (C) objective theories. Under the first group, persons's welfare is a matter of the degree

to which they succeed in realising their preferences and goals. Cohen's distinction between the hedonistic and preference-based conceptions of welfare may be likened to this first group.¹⁴

Under Dworkin's second category of welfare theories, equalising the particular conscious states of different persons is significant. Equality of welfare on this version depends upon the category of conscious state identified as the relevant equalisandum criterion. Different versions of equality of welfare may be deduced from each group of these theories with respect to the varying preferences and buoyant conscious states of persons.

Neither of these variants of equality in welfare could be realised by a redistribution of resources without concomitant assumptions regarding the requisite inputs from persons to achieve welfare in the relevant sense. Therefore, Dworkin discards each of them as ill-suited as an egalitarian device. To this, we may also add that the underlying assumption that equality in welfare could ultimately be achieved by a redistribution of resources alone seems far-fetched.

The fact that some people end up indiscriminately expending all their resources, and hence do not reach an adequate level of satisfaction, while others invest them in pursuits which they identify their lives with, bringing them the utmost satisfaction, indicates that redistribution can go only some way towards augmenting persons' welfare. A notion of responsibility for one's preferences appears to play an important part in the degree to which persons are able to promote their own welfare.

Thus on the welfare egalitarian model, the value to a person of the goods in his possession is defined solely by the extent to which they facilitate the pursuit of his interests and tastes. Accordingly the subjective notion of well-being is non-neutral

with respect to the claims that issue from persons' own preferences. Moreover, the accent on persons' tastes and interests here conflicts with any notion of responsibility for the costs they might impose on others. This means that its advocacy could well lead to decisions which may justify some peoples' expensive tastes being subsidised by others.

The other variant of consequential neutrality is one which is echoed in the objective conception of well-being. An objective criterion of well-being is one that "provides a basis for appraisal of a person's level of well-being which is independent of that person's tastes and interests, thus allowing for the possibility that such an appraisal could be correct even though it conflicted with the preferences of the individual".¹⁵

The egalitarian principle postulated by Bruce Landesman entails the idea of maximum equal satisfaction which is derived from the objective conception of well-being. "people's actual or informed desires are open to assessment, so that the satisfaction of such desires may not be good for a person. A person's good may be independent, at least to some extent, of what he happens to want, and he may come to want some things only because they are, independent of his actual or informed wants, good."¹⁶

On his more recent reading, Scanlon prefers to dispense with the term "objective", in view of the reason that it seems to presuppose that, the same things must be valuable for everyone, or that there are certain interests which are, objectively speaking, more urgent than others, regardless of what persons feel about them.

Therefore, he deploys the phrase "substantive goods", to denote well-being, which underlies our concern to eliminate physical pain and bodily harm: "an assessment of a person's wellbeing involves a substantive judgement about what things make life better, a judgement which may conflict with that of the person whose well-being is in question".¹⁷

Thus, suppose for example that the homeless are offered state sponsored sheltered accommodation. Let us stipulate that the justification for the offer, the plain fact that they are homeless, stems from the objective, now substantive, criterion of welfare. Such a criterion, let us say, mandates their "thermal well-being". But if the would-be recipients turn down such an offer, on the basis of their own so-called subjective preferences, such persons are only to be construed as pathological cases. It would be inappropriate to credit their so called preferences with any inherent moral appeal. Arguments for guarantees of basic income are also best viewed as issuing from the substantive principle of well-being. We shall be arguing in a later section that the notion of well-being flowing from impartiality draws upon Scanlon's substantive conception.

There is another type of impartiality issuing from utilitarianism which deserves to be mentioned here. Utilitarianism, as we have observed earlier, places different conceptions of the good on an equal footing by reducing them all to a common currency of wants and tries to secure greater rather than lesser want-satisfaction. This strategy can however have the effect of distorting peoples' views about what should constitute the correct public policy on a given matter. A utilitarian justification for implementing the majority's preference would be that it yields greater want-satisfaction. The minority's wants for a particular outcome lose out against the latter

because they cannot produce the same amount of want-satisfaction. Barry illustrates the precise manner in which this occurs in the case of some of the standard methods of eliciting public opinion, voting procedures, public opinion surveys and cost-benefit analysis.¹⁸

3.IV Equality of Resources

In this section, we will provide an exposition of the egalitarian idea of equality of resources to show the contrast with equality of welfare. The proposal that an egalitarian state should distribute resources equally among its citizens has been current in the literature now for two decades. This view can be viewed as a corollary of the idea that the state should abstract from invoking particular conceptions of the good in designing its policies.

This is because, it is clear that the two notions of neutrality, namely, those of abstracting from conceptions of the good, and, ensuring equal outcomes, are mutually inconsistent. They cannot therefore form the basis of the same theory of neutrality. That is to say, if the notion of abstraction is to play any useful role, then the idea of equal outcomes must give way to it.

If you are an egalitarian, and above all, you believe that impartialist neutrality requires the state to refrain from invoking any conception of the good, then the only obvious redistributive strategy available would seem to be an equal distribution of resources among its citizens. Such a view presumes that persons will take responsibility for their lives. That is, that people must pay the true costs of the lives that they lead.

But the deduction of such a conclusion as one that issues from impartiality may be too hasty. For as it was mentioned in the previous section, impartiality also requires the state to help people out of their involuntary welfare deficits. Such a postulate exposes the resource egalitarian position to a serious challenge. But we shall return to this problem a little later. For now, let us dwell upon the idea of equality of resources more closely.

The absurdity of construing resources as an equalisandum claim is intuitively evident, for on the face of it, that idea may seem to mistake what are mere means for ends. In fact, critics such as Bruce Landesman have characterised the resourcist, in particular the Rawlsian position as denoting the substitution of "the primacy of satisfactions with the primacy of goods".¹⁹

Whatever the shortfalls in the formulation of equality of resources as an egalitarian idea, it is not the one that resources should be divided equally, because they are of ultimate importance to people. The problem is instead with the inadequacy of the resourcist model to contend with people's involuntary disadvantages. It may therefore be appropriate to emphasize here that on the contrary, the resource egalitarian abjures any confusion of means with ends.

The following formulation of the idea by Dworkin may help to clarify the resourcist position. A mechanism divides resources equally among persons when it "distributes or transfers so that no further transfer would leave their shares of the total resources more equal".²⁰ Nothing in Dworkin's statement entails any view that resources are ends rather than means. Indeed, if his views on resources elaborated in section 3.II are any evidence, they give credence to the suggestion that resources are merely means for the advancement of people's conceptions of the good.

Rawls's view is likewise that people's "particular conceptions of the good, ... 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."²¹ From the above claims, we may surmise that it is in the end the means to welfare in the form of primary goods rather than welfare itself that must be distributed equally.

Dworkin's theory, in addition, entails The clause that the equal division of resources should pass the envy test. The envy test in his example is that none of the members who were washed up on a desert island wished that they had someone else's bundle rather than their own. This kind of envy is different from the one when people might grudge someone's increased stock of resources, caused by the latter's own initiative and effort, after the initial equal allocation of goods. This is unjustified, since the increase could only have resulted from the investment of labour and effort.

Thus envy is justified only if it occurs when the distribution of resources is considered over the entire lives of persons, rather than at some arbitrary point in people's lives.²² To reiterate the point once again, resource egalitarians do not confuse means with ends. Landesman is merely attacking a straw man since resourcism anyway is concerned only with means rather than with ends, with the distribution of goods than with satisfaction.

It is obvious that an equal allocation of resources, thus conceived, cannot fit the welfare egalitarian bill since the equal satisfaction of persons' conceptions of the good normally requires unequal amounts of resources. That in turn would impose unfair burdens on those whose welfare can be satisfied with meagre amounts of resources by asking them to subsidise those with materially expensive tastes by

shouldering some of the burden. However, as we shall argue below, equality of resources also fails to satisfy an impartialist conception of well-being.

The welfare and resource egalitarian principles differ in a fundamental respect. They may be distinguished by the extent to which each one of them relies on a notion of responsibility. The resourcist strategy is an upshot of certain substantive judgements reached regarding what are essential, as opposed to valuable, goods for persons to lead normal lives. Non-welfarists recognise that any redistributive approach has to contend with the competition of other values in a society and that equalising persons' welfare levels conflicts with other non-egalitarian values. The absence of any reference to such a notion is evident in the claim that persons should all enjoy an equal maximum level of welfare. As Kymlicka aptly sums up the two positions: "In a welfare-based scheme, just distributions are adjusted to the pre-existing pattern of ambitions and desires. On a resource-based scheme, people's ambitions and aims are adjusted in the light of the pre-existing pattern of distributive justice."²³

3.V Impartiality and Well-being, a Preview

We have observed above that the welfare egalitarians believe that equalising people's welfare levels is the correct strategy. A person's welfare obtains to the degree to which he is able to realise his conception of the good. People with greater overall satisfaction have greater welfare and those with only meagre satisfaction have correspondingly low levels of welfare. Thus the conception of people's welfare levels is inextricably tied to the satisfaction of preferences.

It is important to remind ourselves that these views flow from the subjective conception of welfare as postulated in section 3.III and that which, as we observed in section 3.IV, Rawls and Dworkin set out to refute. Both their formulations on equal resources are a response to a hypothetical welfare equalising principle of this kind.

But what Rawls and Dworkin accomplish in effect, is to replace the subjective conception of well-being with a version of the substantive conception of well-being. That is to say, equality of resources emanates from the view that certain all-purpose means are necessary for people, whatever their particular conceptions of the good. But equality of resources eschews several other considerations of people's welfare, not just, as it purports to do, merely the satisfaction accruing from the pursuit of different conceptions of the good.

As we observed above, resource egalitarians simply say that the state should divide up the common resources equally among people, and the welfare they derive thereafter is their own responsibility. The justification behind such an argument is that, it is inconsistent with liberal neutrality to try to promote people's satisfaction. Such a defence is perfectly credible in what it sets out to achieve, but its shortcoming is in what it fails to grapple with.

The theory of impartiality, however, is not obliged to respond to welfare understood as equal satisfaction alone. Correspondingly, it also needs not assume egalitarianism to imply a simplistic equal division of the common resources, for the account of well-being issuing from impartiality entails a complex set of claims. Since it begins with the premise that such a notion is misconceived, it proceeds with an

independent account of well-being as a distributive goal. In this section then, we will try to outline an impartialist account of well-being.

It may be useful to recall here that the notion of impartiality is designed to test the legal and moral rules of a society. It does not stipulate a priori what the prescriptions of neutrality would be in each particular instance; the chances are that they will vary in individual cases. Thus there is good reason to doubt that any formulation consistent with impartiality always, or merely, requires an equal distribution of either resources or welfare for "Justice is not to be defined in terms of the distribution of one fungible quantity",²⁴ in this case either welfare or resources.

As a general rule however, we may postulate that impartiality requires of a state that considerations such as the expensiveness of some peoples' tastes do not bias the distribution of resources, which should be divided equally among citizens, whereas expensive medical care must be met with extra resources no matter what its impact on the average well-being of a society.²⁵ Such a claim assumes that people's expensive tastes are always voluntarily acquired, and conversely, that they cannot be responsible for an ailment whose remedy requires expensive medicine.

The underlying assumption here is that while the former as artifacts of individuals' preferences are amenable to revision if required, whereas the latter condition falls outside the domain of persons' voluntary choice, and hence legitimately warrants compensation. We may therefore infer that impartiality entails a corresponding notion of equality at the procedural level. Of course, the assumptions about expensive tastes are subject to serious doubt, and we shall return to a discussion of it later in the chapter. Although impartiality is not committed to equalising

persons' welfare understood as preference satisfaction, and indeed, it is deemed a wrong objective, by no means can it be unconcerned with the welfare of persons. For instance, the elimination of people's involuntarily induced welfare deficits is an important arena for an impartialist public policy. In this sense, such a decision procedure will result in greater overall welfare among persons than any other alternative.

On the basis of the discussion in the preceeding section, we can say that any account of well-being is incomplete without taking note of the various forms of, for want of a better terminology, ill-fare or shall we say disadvantage, which affect people's overall well-being. Thus, people's well-being is determined by, besides the degree of preference-satisfaction, which can account for voluntary advantages and disadvantages, also by innumerable involuntary disadvantages. The former fall outside the scope of impartiality.

The egalitarian conception of well-being embodied in impartiality is one which underpins a concern to "eliminate involuntary disadvantage, ... disadvantage for which the sufferer cannot be held responsible, since it does not appropriately reflect choices that he has made or is making or would make."²⁶ From the standpoint of impartiality therefore, to address the problem of distributive justice in terms of a dichotomy between the subjective and objective conceptions of well-being is a wrong way of getting round the issue.

This is because, firstly, the former eschews any account of individual responsibility for the preferences and tastes that people choose to develop over a lifetime. The objective principle of well-being, on the other hand, suggests a degree of

rigidity as if the same things must be valuable for everyone in the same way. It thus fails to recognise the separateness of persons.

The distributive principle which flows from impartiality may be viewed as a conglomerate of elements of both the subjective, and now, substantive criteria of well-being. This means that while it is necessary and even fair on the one hand that a person's well-being, as it is asserted by the subjective notion, is dependent on the satisfaction of his own individual tastes and preferences, it is equally hard to hypothesise a distributive norm for a society where the interests and preferences of some people do not accord with those of others.

The relative weighting of individuals' preferences need not entail additional claims, such as the principle of maximum equal satisfaction of preferences. Thus while the egalitarian prescriptions of impartiality are unequivocally not welfarist in this way, they are more than objectivist or resourcist. From these claims then, we may draw the conclusion that the impartialist's conception of well-being must be one that takes the substantive notion of well-being as a baseline. Recall our discussion of Scanlon's formulation of this idea.

The superiority of an impartialist conception of well-being may be illustrated with an example. For this purpose, let us return to Dworkin's envy test. Equality of resources is achieved in accordance with the envy test, we saw, when nobody envies another's bundle of resources. Everybody would be happy with such an arrangement, Dworkin himself concedes, only when the goods at their disposal enables all of them to pursue their conception of the good.

But the point relevant to the present context is Dworkin's response to instances where there is no parity between the equal division of goods and individuals' tastes.

That is, the case of someone who is dissatisfied even after the envy test is met. Dworkin says, the man is simply unlucky to have tastes which are incompatible with the goods at his disposal.²⁷ Therefore, he should revise such preferences to something which can be satisfied with what he owns.

From the point of view of impartiality, the envy test will be met not merely when two people hold equal shares of resources, that is Dworkin's envy test. Impartiality would require in addition that neither envies the other's bundle, not because the bundles are unequal, but because the same bundles that both possess are conducive to the pursuit of the tastes of one of them and not the other. There is no real equality between A and B, even when both hold an equal share of the available goods. It is important also that neither envies the other's bundle in the relevant sense. This is because we do not merely value identical bundles of goods as such, unless they are conducive to the pursuit of our interests.

As Arneson observes, it is not that "each good is useful for every person, just that each good is useful for someone".²⁸ Therefore, presenting identical bundles of goods in itself is far from satisfactory as a way of treating persons equally. But such a view is unavailable on Dworkin's account of the envy test. What the impartialist's response brings home is that the idea of equality does not presuppose an identity, either in goods or numbers. Equality here seems to require not only that two persons have an equal amount of resources, but equally that the goods in their possession do not discriminate between the pursuit of their respective tastes.

But supposing that the bundle of goods were non-partisan to the pursuit of either's tastes in this way, it would be an unreasonable demand from the standpoint of impartiality to require that the satisfaction both derive from their respective

pastimes be equal. For underlying that claim is the view that the one achieving greater satisfaction presumably on account of the effort he invested in his leisure be denied that extra amount of reward simply to level him down on par with his less prudent colleague for the sake of equalising their satisfaction.

The implications of impartiality would be radically different with respect to effort and desert in another context where the resources at issue are owned commonly in society. While a reward in the form of satisfaction is an intrinsic good, stemming from effort, and hence legitimately inalienable from persons, rewards in the form of extra resources from society over and above the satisfaction accruing from effort are tantamount to a claim for an unfair double advantage.

3.VI Responsibility for Preferences, the Impartialist Critique

An underlying reference to responsibility is evident in the resource egalitarian claim that persons must adjust their life-plans according to the share of resources they can legitimately expect from the state. Since the superiority of equality of resources over equality of welfare, and objections to equality in resources from the protagonists of impartiality turn on the account of responsibility, this seems a good place to dwell upon this notion closely.

The notion of taking responsibility for preferences admits of three interpretations. Let us term these, the strict version, the relative and the identity versions. The view we wish to defend here is that people must be held responsible for the outcomes of their actions. But then, human actions can be both voluntary and

involuntary. the notion of responsibility itself must therefore be understood against the interplay of both chance and choice in peoples' lives.

This means that while the significance of any account of responsibility is tied to peoples' deliberate choices, a consistent notion of responsibility must also be one that recognises a principle of compensation so as to mitigate the ill-effects of chance in persons' lives. Since the identity version of responsibility discards the role of choice altogether in shaping people's preferences, we shall reserve our comments until the next section.

In its simplest formulation, the idea is that once goods have been distributed equally, persons have a responsibility for cultivating and revising their preferences in accordance with their share of the common cake. According to this strict version, an individual's preferences have developed to their present state due to factors entirely within his control. That is to say, people's preferences are always created by whim and therefore can be modified as soon as they come to know about their precise share of the common resources. Therefore, Rawls and Dworkin argue that with respect to their tastes and preferences, persons could as well have chosen otherwise. The implausibility of this position is evident not only in the case of ordinary tastes for food and drink, but more crucially, in the case of people's fundamental beliefs.

Rawls's scheme of primary goods, for example, purports to operate as a palliative against the unfair burdens of the welfare egalitarian model.²⁹ His argument is the following:

As moral persons citizens have some part in forming and cultivating their final ends and preferences. It is not by itself an objection to the use of primary

goods that it does not accommodate those with expensive tastes. One must argue in addition that it is unreasonable, if not unjust, to hold such persons responsible for their preferences and to require them to make out as best they can. But to argue this seems to presuppose that citizens' preferences are beyond their control as propensities or cravings which simply happen. Citizens seem to be regarded as passive carriers of desires. The use of primary goods relies on a capacity to assume responsibility for our ends. ... those with less expensive tastes have presumably adjusted their likes and dislikes over the course of their lives to the income and wealth they could reasonably expect; and it is regarded as unfair that they now should have less in order to spare others from the consequences of their lack of foresight or self-discipline.³⁰

What Rawls is suggesting in effect in the foregoing quotation is that people with inexpensive tastes behave responsibly, and those with expensive tastes are irresponsible. This is an untenable position, since it could well be the case that people's tastes reflect their income levels. Rawls's view is echoed by Dworkin:

Under equality of welfare, people are meant to decide what sorts of lives they want independently of information relevant to determining how much their choices will reduce or enhance the ability of others to have what they want...

Under equality of resources, however, people decide what sorts of lives to pursue against a background of information about the actual cost their choices impose on other people and hence on the total stock of resources that may fairly be used by them.³¹

Both these criticisms entail powerful objections against the welfare egalitarian claim that some people's expensive tastes should be subsidised by others in order to realise the goal of maximum equal satisfaction for everybody. Observe that the criticism is addressed only to demands for compensation for expensive tastes as though they were afflictions or in some way on a par with hard-cases. It is not an objection to the deliberate cultivation of expensive tastes per se, so long as people can take responsibility for them.

Rawls and Dworkin's accounts entail certain counter-intuitive notions about the acquisition of tastes by persons. To begin with, the idea that all tastes and preferences are deliberately cultivated by people is plainly false, and therefore, the position that persons with expensive tastes could have chosen otherwise is questionable. To be sure, not all of people's tastes, whether they are expensive or not, are chosen.

Such a view is clearly too simplistic, for individuals' tastes are not always an artifact of their choice, some tastes may be involuntary. A consistent account of responsibility must therefore be able to distinguish between tastes which are deliberately chosen and those that are not. A recognition of this point issues in the counter-argument to Rawls and Dworkin that persons cannot always be held wholly responsible (blamed) for having certain tastes simply because they turn out to be expensive at a later date. Their denial of compensation for expensive tastes results from their failure to recognise the choice-independency of tastes which are acquired at an early stage in life.

Underlying Rawls and Dworkin's conception of responsibility is what Scanlon terms the forfeiture view of choice. According to the forfeiture view, "it matters

crucially that an outcome actually resulted from an agent's conscious choice, the agent having intentionally passed up specific alternatives."³² Because agents are in this way supposed to be able prudentially to avoid certain preferences while cultivating others, they cannot therefore complain of the harm they may suffer on that account.

Persons whose preferences prove unaffordable have, on this account of responsibility, themselves to blame. Thus for the forfeiture view to have any force, it is important to show that persons' preferences and tastes are always an outcome of their autonomous choices. Thus, on this view, overall preference-satisfaction becomes a matter of individuals' own responsibility rather than a social problem. This absolute notion of responsibility may be viewed as a converse of the principle of maximal equal satisfaction in that the latter eschews a notion of responsibility altogether.

The flaw in the forfeiture view of choice is thus that it fails to get behind persons' choices to their chosen and unchosen preferences which influence their particular choices. By failing to account for these background conditions, the forfeiture view exaggerates the degree to which people can exercise control over their preferences. As Barry points out, one limitation of the principle of responsibility is that it relates only to voluntary actions; but choices may fail to be voluntary under duress, e.g. under coercion.³³

All this means that this account of choice and responsibility attaches no weight whatsoever to the role of chance in determining one's preferences and choices. But what about the reasons why one may or may not be able to make certain choices, or the reasons why people are sometimes forced into making certain choices?

These questions cannot be captured on this account, for as with the strict version of responsibility, the forfeiture view is concerned merely with the bare fact that persons' make choices. Both abstract from the background conditions which determine the extent to which persons can exercise control over their preferences and modify their choices. But if the object of any egalitarian principle is to nullify as well as possible the arbitrariness of chance, it could only do so by recognising its force. From this standpoint, the version of responsibility issuing from the forfeiture view is a poor candidate indeed.

Let us turn now to the objection relating to the problem of expensive tastes to illustrate the inadequacies of the forfeiture view. Rawls's interpretation of expensive tastes is the following: "Imagine two persons, one satisfied with a diet of milk, bread and beans, while the other is distraught without expensive wines and exotic dishes. In short one has expensive tastes, the other does not."³⁴ Rawls's ideas concerning what are expensive tastes is itself subject to serious objections.

A methodological objection is that Rawls formulation is too narrow to cover a range of other aptitudes and goods. For example, on the one hand, it fails to capture whether an aptitude for more esoteric disciplines of learning is to be categorised as an expensive taste and accordingly should be discouraged. On the other hand, we may wonder whether only those activities with a greater applied value, and therefore less expensive and at the same time far more worthwhile, should be promoted.

An argument could be made that, because the funding of expensive research, unlike tastes for, say, Champagne, is financed through the tax payer's money, and hence a society could well do without advanced research in obscure fields (since their

fruits are not, even cannot, be equally enjoyed by everybody in society). Just as people's nutritional level could be well maintained without exotic dishes, so we could all do without expensive research into, for example, space.

At any rate, a distinction it seems must be made on two levels, on the one hand between basic (milk and beans) and supplementary (Champagne) tastes, and, on the other hand, cheap and expensive ones. The latter distinction will of course vary according to the general material standards of any given society. In any case, no sound argument seems to be on offer for the claim that persons should restrict themselves to basic tastes alone.

Similarly the distinction is also ambiguous regarding whether unusually enormous needs say, for warm clothing or heating, which require a large quantity of resources for achieving an average level of well being constitute expensive tastes rather than "basic needs" which are costly either in themselves, or costly on account of the volume of need, i.e. large amounts of heating. All these questions must be addressed by any egalitarian theory of distribution, but which the forfeiture view is ill-suited to capture.

It is clear from the above discussion that Rawls and Dworkin's views on responsibility presuppose the "forfeiture view". Assuming responsibility for one's tastes in accordance with this view would mean having to choose a diet from among a set of alternatives on the basis of one's ability to afford the price, rather than the taste informing the choice. But then, as Scanlon points out, "situations of choice have to be evaluated not only for what they make "available" but for what they make it likely that one will choose. It is not unreasonable to want to have some protection against the consequences of one's own mistakes".³⁵

If we go along with Scanlon, then the availability of an inexpensive option does not necessarily place us in a situation of choosing it if one's more natural taste is for the more expensive alternative. People might still be able to work out, one way or the other, a balance between these conflicting factors, with respect to one's choice of food and/or restaurants in day-to-day life. It could be one's taste today, and cost, on yet another day, which determine the choice of the restaurant in which to dine.

However the suggestion of taking responsibility in accordance with the forfeiture view is highly counter-intuitive with respect to taste formations which occur during childhood. People are not, so early on in life, in any position to differentiate between the preconditions for their choices, such as the conditioning of climate, metabolism, body size, the availability of different goods and so forth, which shape and crucially impose limits upon one's choices, and the sheer fact of choice. Tastes for food and clothing, preferences for colours and flavours are all part of this package.

Tastes that are acquired during one's formative years are choice-independent because these choices are made for them by others. since persons are hardly in a position to assess their choices in the above terms. Likewise one does not weigh the benefits and burdens which given aptitudes or tastes might impose.³⁶ Some may already be deeply rooted, others barely begin to take shape and a very few rarely attain a level of refinement. Our grasp of these developments, vital as they are, to scrutinise and revise them rationally, is not something we are able to do from early on in life.

At any rate, tastes which are inexpensive now may become expensive over time, and it would be unfair to blame persons for fluctuations in the market prices of

different goods. much as they might in retrospect wish that they had never acquired tastes which have now become expensive. None of this is to say that the retrospective innocence of the agent absolves him from assuming responsibility for the future, which entails his present reevaluation and revision of his life plans in the light of current circumstances.

Undoubtedly, some tastes originate in persons' upbringing and may prove unaffordable now. But it is only fair that people should assume responsibility for them now rather than never revising those of them which in their opinion they are better rid of, if that seems appropriate considering their current cost.

On the other hand, it is also likely that people may not wish to approach the issue of preferences merely as advantageous or disadvantageous simply because of the costs they impose on them. If they choose to persist with them in spite of their burdensome costs, or give them up for that reason, it is a measure of the value they attach to their pursuit. Preferences acquired during one's formative years may properly be viewed in this sense of responsibility. While the welfarist principle places too little emphasis on individual responsibility, the resourcist principle exaggerates the extent to which individuals can exercise responsibility in acquiring their preferences.

A less stringent reading of responsibility (the relative notion) recognises the play of external factors in the formation of peoples' preferences. Preferences are at least partially, influenced by social factors such as one's religious upbringing. insofar as we are accountable only for what lies within our control then, we are only partially responsible for our preferences. But even though external factors may have exercised, or still continue to exercise, lesser or greater influence in shaping our preferences,

they are now within our control in the sense that we are in a position to rationally revise them.

This reading of responsibility is consistent with impartiality because it approximates closely to common sense by recognising the role of chance in the formation of persons' existing preferences. Therefore, in the event that they now turn out to be burdensome, it permits compensation for modifying them. But the possibility of the revisability of our presently burdensome preferences precludes compensation in any form except in the form of support for overcoming them.

This notion of responsibility says that it is reasonable to expect people to take responsibility for the preferences which arise out of their deliberate choices. If it is the ambition of someone without any talent for singing to become a professional musician, he should take responsibility for the consequent outcomes of carrying through such a decision.³⁷ He must be prepared for the possibility that he might do worse as a singer than he would have as an Engineer.

Citing the example of the prospective opera singer, Arneson argues that an equal distribution of resources is not necessarily the best egalitarian response. The reason is that social and Biological factors influence peoples' preference formations, and insofar as people can be held responsible for what lies within their control, they are only partially responsible for their preferences. But then, it is hard to see the influence of social and biological factors behind this person's decision which was any way under his control, and thus a claim for compensation seems unjustifiable. Such a move was contemplated, presumably on account of discontentment with his past occupation, and he conceived a career in music as a means for increasing his overall satisfaction. It seems quite consistent with the notion of responsibility to hold people

responsible for affecting career switches of this kind, since the levels of satisfaction that persons attain, which usually dictate such moves, cannot be a matter for public policy.

Arneson's account flows from his notion of responsibility according to which persons simply identify themselves with a given set of preferences. That in itself justifies compensation in the form of the requisite resources for their satisfaction. Evidently, nothing in what he says entails an idea of responsibility whereby people recognise the competing claims of others while putting forward legitimate demands upon the state. I am not assuming responsibility for my preferences if I expect someone else to pay the cost of the satisfaction accruing from the pursuit of my conception of the good.

Consider now the example of someone who decides to turn a vegetarian. Let us grant that he is forced to effect a change in his diet because of some biological reasons. It seems consistent with impartiality to say that he should be supported in this transition were he to find it difficult to implement the decision. But why should this be seen as contradicting equality of resources under normal circumstances? The impartialist's response would be different if the man's decision to turn vegetarian was motivated by say the cause of animal welfare.

This can be contrasted with the case of one's unchosen preferences, and the justifiability of compensation for getting rid of elements which are a piece of bad luck. According to this notion of responsibility, it is unreasonable to hold people responsible for some of their unchosen preferences. A good example is people's beliefs stemming from their particular religious upbringing. Surely, one's socialisation from early on affects one's overall preference satisfaction.

But then, the important question from the standpoint of distributive justice is not the amount of overall preference-satisfaction that persons' must enjoy. It mandates only that the relevant goods, in this case, religious liberty is distributed equally among persons. This means that different religions should enjoy equal status under the law for tax purposes, under the blasphemy laws and so forth.

Claims for compensation for being raised as a fundamentalist rather than as an agnostic or an atheist, because the latter produce greater overall satisfaction than the former, are not justifiable. The question of compensation arises and is appropriate only for someone who wants to overcome what he now perceives as irrational beliefs from his past socialisation. The reasoning justifying compensation stems from the fact that these irrational feelings are a carry over from the preferences which one no longer believes any more. This is the semi-choicist position which Barry endorses as the appropriate distributive norm.³⁸

So far, we have been considering actions which flow from peoples' deliberate and accidental preferences. We have argued that people should be held wholly responsible for the outcomes of the former, while they may legitimately seek compensation to rectify what is left over from their involuntary preferences which they no longer identify themselves with. In the case of the aspiring musician, the problem of preference-satisfaction which caused the move enjoins upon him the responsibility for his action. In the religious example case, compensation is justified not because someone now laments the meagre satisfaction he hitherto enjoyed, but only to redeem him of his irrational beliefs which get in the way of leading his present way of life. It is not that a person without the use of his legs should develop preferences which do not require the use of legs. Such a person should be responsible

for his preference in the sense that he should cultivate such a preference with the knowledge that others with the same preference are likely to attain greater satisfaction with less pain than himself.

On the other hand, there are also choices, call them second-order choices, that flow directly from both chosen and unchosen preferences. persons' choices, that is their voluntary actions reflect their tastes and preferences. If your idea of sport is the exercise of mental and physical faculties, then you are likely to prefer Tennis or cricket.

3.VII Departures from Welfare

The suggestion that persons should be held responsible only for tastes arising from their choices seems reasonable. Does citizens' partial responsibility for their tastes then justify a claim for compensation? That is, should all of one's unchosen preferences be compensated? This is the main topic for discussion in the present section. Since the claims for equality of welfare do not entail any notion of individual responsibility for preferences, discussions of the notion of responsibility usually proceed as departures from equality of welfare.

The claims for departures from welfare equality proceed in two different directions. The one route suggested by Arneson is in the direction of equal opportunity for welfare. As he defines the idea, "an opportunity is a chance of getting a good if one seeks it",³⁹ In order for equal opportunity for welfare to obtain among persons, each person must have a set of options for preference-satisfaction equal to those of every other person.

The preferences involved in this calculation are ideally regarded as second-best preferences as different from first-best preferences. The opportunities persons encounter are ranked by the prospects for welfare they afford. For Arneson however, a person's welfare obtains to the degree to which he can maximise the satisfaction of his preferences. Although such a view is reasonable from individuals' own standpoint, it is of little significance from the perspective of impartiality since considerations of individuals' preference satisfaction fall outside its scope.

More interestingly from the point of view of impartiality, Cohen has put forward an account of what he calls, "equal access to advantage", as the correct reading of egalitarianism. On his account, advantage is conceived as wider than welfare, although inclusive of it. "Anything which enhances my welfare is pro tanto to my advantage, ... And disadvantage is correspondingly broader than welfare deficiency".⁴⁰ Mark that he does not also infer the converse view that what is to one's advantage also enhances his welfare.

Cohen is unclear as to what precisely constitutes advantage. But he draws attention to the heterogeneity of its components, and that perhaps renders pinning down the idea to any single component especially arduous. However, because he invokes a distinction between persons' choice and luck as influencing their lives, he is on that basis, able to construe disadvantage as obtaining in the burdens which arise from people's involuntary actions. Thus both welfare and resource deficiencies are forms of disadvantage insofar as they can be shown to result not from people's voluntary choices, but from brute luck.

That is to say, deficiencies not only in people's resource holdings, but equally in their welfare, can result from their voluntary and involuntary actions. Voluntary

deficiencies in welfare are those which arise on account of people's decisions to forego one welfare loss and to seek another welfare gain.⁴¹ An involuntary welfare loss is that which results from bodily pain. An example of an involuntary resource deficiency is that which arises from a handicap. Let us, for the moment, set aside the consideration that the consequence of the latter also is a welfare deficiency.⁴²

His objections to equality of welfare are, in the main, the same as those which trouble the resource egalitarians. That is, the outcomes of actions should reflect people's voluntary choices, and equality in welfare is not the correct egalitarian aim, since it does not reflect such outcomes. But agreement between him and the resource egalitarians terminates here, for while the latter are indifferent to the problem of any form of welfare deficiencies, Cohen wants to argue that welfare deficiencies that arise from people's involuntary actions should be the proper concern of an egalitarian theory, and therefore, must be compensated.

Resource egalitarians exclude welfare deficiencies, both voluntary and involuntary, as the subject of egalitarian consideration. The exclusion of voluntary deficiencies is consistent with egalitarianism. The eschewal of involuntary deficiencies by the resource egalitarians can be ascribed to their rather circumscribed conception of well-being. For the reasons listed in the foregoing paragraph, Cohen justifies voluntary departures from welfare equality as such, and justifies compensation for both involuntary welfare and resource deficiencies alike.

Accordingly, people's involuntarily acquired tastes may justly be compensated since they are also one form of deficiency. Thus, on his scheme, equality in welfare, resources and opportunity for welfare are all treated as the adversaries of equal access to advantage which entails the avoidance of pain and all forms of involuntary burdens.

In particular, his criticism of Dworkin's expensive tastes counter-example against the welfare egalitarian is especially persuasive.

His contention against equality of resources is precisely that it defines people's fair shares of the common resources in welfare-independent terms and without foregrounding the absence of responsibility as a good reason for compensation. Recall that for the resource egalitarians such as Rawls and Dworkin, all of one's preferences are deliberately cultivated, and therefore can be revised without difficulty, and hence do not justify compensation.

The above two challenges by Cohen against the resource egalitarians, namely, those relating to the absence of responsibility in people's preferences, and the treatment of fair shares of resources on welfare-independent grounds, are fundamental, and therefore deserve careful scrutiny. For after all, from the point of view of impartiality, although the suggestion to equalise people's welfare is undoubtedly inegalitarian, since such an account fails to take note of people's choices, egalitarianism, on this reading, does not have to be regarded wholly in welfare independent terms. To do so would amount to paying little regard to the absence of choice in many of people's preferences and actions.

It is consistent, as we observed in the last section, with impartiality to recognise the interplay of chance and choice in the case of expensive tastes, and in general, to people's unchosen preferences. So let us take up Cohen's responses to the resource egalitarian treatment of tastes and handicaps.

We have observed that the resourcist account is oblivious to some of people's involuntary, because unchosen, preferences. In a nut-shell, Dworkin's view is that, people must adjust their preferences according to their fair shares of the common

resources, and therefore, they have no claim to extra resources to satisfy their expensive tastes. He says, "we cannot say that the person whose tastes are expensive, for whatever reason, therefore has fewer resources at his command. For we cannot state (without falling back on some version of equality of welfare) what equality in the distribution of tastes and preferences would be."⁴³ We may have no quarrel with this argument, since equality in tastes and preferences is undesirable. For it would pay no heed to people's choices.

Dworkin is however prepared to treat some expensive tastes or cravings as handicaps, and assimilates them to a resource deficiency for redistributive purposes. These handicap tastes are those which the bearer wished that he did not have, because they interfere with what he wants to do in life, and cause him pain and frustration. What is more, he says, "These are, ... handicaps, and are therefore suitable for the regime proposed for handicaps generally."⁴⁴

Dworkin's treatment of the problem is of interest, since it enables us to contrast the resourcist and the impartialist's positions. Helpfully for this purpose, Cohen distinguishes between the two features of Dworkin's handicap taste, namely, the fact that the bearer wished that he did not have the taste in question, and secondly, the reason why he wished that he did not have it, this is, the fact that it causes him pain and frustration.

Cohen's point is that Dworkin is not clear as to which of these two features of the taste makes it a handicap and thereby justifies compensation. But we can surmise that Dworkin cannot offer compensation on the basis of the second feature, since pain and frustration are not forms of resource deficiencies, and welfare deficiencies in themselves do not justify compensation under Dworkin's scheme.⁴⁵

This leaves us with the first feature as the ground for compensation under equality of resources.

To begin with, it is not obvious that, from the fact that the person wishes that he did not have the taste, we can move to the conclusion that it is a handicap. For, as the response from the relative notion of responsibility suggests, why should this man be compensated for a craving which he wished he did not have? How can we subsidise an Alcoholic who now wished that he had not become a slave to the addiction? To do so would amount to asking him to continue to be a victim. In the case of handicaps, compensation mitigates the resource deficiency, whereas in the case of cravings which the person wants to get rid of, it only perpetuates them. Thus Dworkin's suggestion to treat cravings, as handicap tastes, on a par with handicaps is mistaken.⁴⁶

An alternative interpretation of the problem of expensive tastes is to argue, along the lines of the relative reading of responsibility, that an appropriate form of distribution should compensate persons' hard-to-satisfy preferences until such a point that with appropriate measures their intensity may be checked. But in order to arrive at the above conclusion, we need to view unchosen preferences under two different heads. There are some which people wish to get rid of because they no longer identify with them. There are others which they want to extinguish because they are hard to satisfy and too burdensome. Dworkin's "handicap tastes" belong to the second category.

Cohen recognises that large sets of people's preferences are unchosen, and therefore justifies deviations from equality of resources if people's expensive tastes are acquired involuntarily. This conclusion follows from the more general point that

all of one's involuntary burdens must be compensated. Accordingly, his criticism of Dworkin's response to expensive tastes is not that they constitute either a welfare or a resource deficiency, they might well constitute deficiencies in both. It is rather that compensation is in order if their involuntariness, whether welfarist or resourcist, can be established. Since Cohen's theory recommends compensation for involuntary welfare deficiencies, the dissatisfaction of involuntarily acquired expensive tastes, which would be one form of welfare deficiency under equality of resources, must be compensated.

But Cohen's position may give rise to misunderstanding. His claim that expensive tastes must be compensated may lead to the inference that they should be treated as afflictions beyond individuals' control, thus foreclosing the possibility that, unlike disabilities, they can be rationally revised. The specific kind of compensation Cohen recommends is in the form of community-based subsidies for individually unaffordable pursuits.⁴⁷

Egalitarians will be disposed to compensate disabilities as such, on the grounds that the handicapped need to be adequately resourced, irrespective of the varying welfare levels to which different disabilities reduce persons. In this respect, their welfare levels in aspects of life other than their disability any way do not come into the picture. Thus compensating a disability may constitute both at one and the same time separate resource and welfare egalitarian propositions independent of one another.

He presents a handicaps counter-example which challenges both equality of welfare and equal opportunity for welfare. This is because, as he observes, an egalitarian response to handicaps is independent of the varying welfare levels or

opportunity costs for welfare to which different disabilities reduce persons. The egalitarians will be disposed to compensate disabilities, independently of these considerations, merely as a resource deficiency.

Cohen's related claim is that although the handicaps example endorses equality of resources in one sense, it also highlights its limitation in the sense that resource egalitarians will be disposed to compensating only resource deficiencies independently, but not other welfare deficiencies which may be connected to it. Suppose that someone suffers from severe pain after moving his arms. Cohen also assumes that this man can nevertheless move his arms as ably as anyone else. Because of that assumption, the egalitarian response to finance the expensive medicine to suppress the pain follows from equal opportunity for welfare or equal access to advantage, the man's pain being construed as a disadvantage. Cohen's point is that, the justification to provide him with the expensive pain reliever could not be presented as a resourcist argument since the pain does not diminish, as opposed to making it difficult, his capacity to move his arm.

Equal access to advantage bears close resemblance to the semi-choicist or the partial responsibility view we defended in the preceeding section. Cohen says, "There is no moral difference, from an egalitarian point of view, between a person who irresponsibly acquires (or blamelessly chooses to develop) an expensive taste and a person who irresponsibly loses (or blamelessly chooses to consume) a valuable resource. The right cut is between responsibility and bad luck, not between preferences and resources."⁴⁸

But Tiny Tim in Cohen's example is too robust to match any real life situation; his buoyancy is depicted as though he were immune to the deleterious

effects of his disability. That the extra resources flowing in Tim's way would also mitigate to whatever degree his disability-specific welfare deficit does little to weaken this proposition.

3.VIII Equality of Capabilities: the Case from Impartiality

The underlying assumption in this section is that although impartiality may allow departures from equality of resources, its most consistent application would issue in a principle favouring equality in persons' capabilities. The above claim may be defended by the suggestion that unequal capabilities in persons should be treated on a par with hard-cases.

Sen criticises resourcism and in particular Rawls's theory of primary goods as entailing an element of fetishism in that they are construed as embodiments of advantage rather than advantage being regarded as a relation between persons and goods. The list "is concerned with good things rather than with what these good things do to human beings".⁴⁹ The account of capabilities on the contrary is concerned with what persons do with the goods appropriately distributed, and how persons' capabilities, with the aid of diverse material and social goods, enhance their functioning or well-being.

The question as to what goods can do to persons depends, at least to some extent, upon what persons choose to do with them. For A book-seller, a book on his shelf is merely a product for sale, but in the possession of a reader, it is a source of gaining knowledge in a given field. The good in question brings different benefits to the two individuals. As Cohen observes, "What goods do to or for people is not

identical with what people are able to do with them, nor even with what they actually do with them."⁵⁰

An important presupposition of resourcism is that what persons choose to do with the goods at their disposal is their own business. Therefore the point that a liberal state does not tell its citizens how to use the goods it distributes among them cannot be counted as an objection to resourcism. The flaw in resourcism is rather, in supposing that the distribution of goods will automatically enable persons to realise their subjectively defined notion of the good.

Unlike utilities though, the equal allocation of primary goods is consistent with the stipulations of impartiality as far as it goes, but it does not go very far indeed; for it presupposes equality in goods to be an adequate index of treating persons equally. In addition to resources, people also need the requisite capabilities to realise their conceptions of the good. These capabilities are more than and sometimes other than material resources.

In somewhat similar fashion, John Roemer urges the point that distributive concerns should extend beyond economic environments to the more specific issue of the names of the goods at issue for distribution.⁵¹ Information of this nature is vital for a theory committed to minimising the random influence of chance in persons' lives. Equality in basic capabilities can reflect the outcomes of persons' voluntary choices to a far greater degree than an equality of resources scheme in that it can enable people to make more informed choices in their lives. My decision to pursue a higher qualification is well-grounded not if it is simply arrived at on the consideration that I have the requisite finances to afford the cost, but equally on my knowledge that I possess the necessary skills to undertake the course.

To be sure, the division of resources necessary to achieve equality in persons' capabilities will be unequal among persons, for persons are not all equally capable in the extent to which they can make use of the resources available to them. Some people need double the amount of resources to attain the same level of capability in a given area as others.

Under impartiality, the justification for such an unequal allocation will not be to equalise the levels of well-being for different persons. Equality in capabilities is distinct from equality of welfare since a person's capabilities has nothing to do with the level of satisfaction he attains from exercising them. What you do with the capabilities you have, or to what degree you can realise your potential is not the issue. The important question is whether you have been able to develop certain basic skills to lead a normal life to enable you to enhance your abilities if you wish.

A focus on persons' capabilities may help overcome forms of illfare as in one's inability to realise ambitions and goals to which the allocation of primary goods is at best a half measure. Throwing sums of money at people is clearly a poor solution to a problem of this nature. At the same time, since redistribution in the sense associated with wealth or income is impractical in the case of capabilities, a more effective and lasting remedy would be in the form of ensuring the quality of education to persons.⁵² Thus the approach grapples with the problem of equality more directly.

Sen's objection to treating persons' shares of primary goods as the benchmark is that persons vary from one another in the rates at which they are able to transform their resources into capabilities to be able to function. His argument for equalising capabilities supposes that unequal endowments should be treated on a par with hard-

cases warranting extra resources. As Sen defines the notion, "a capability is a feature of a person in relation to goods".⁵³

Arneson's point is that a distributive agency cannot ensure the same talents to everyone. However equality in capabilities need not entail either the same talents for everyone and consequently not even equal amounts of varying talents since everyone need not possess every conceivable talent and different talents are of unequal worth any way.

Two different issues are involved here; what persons do with goods and what goods do to persons. We may term these as subjective and objective questions. The former reflect, so to speak, people's preferences or conceptions of the good. Persons deploy goods towards satisfactions which stem from their subjective preferences and thus the answer to the former question varies from person to person. Goods in general cater to objective needs such as relief from hunger and pain and so forth which are all common to persons.

Over and above these common functions, goods also enable persons to develop and exercise their innate capabilities. I believe that Sen's thesis holds some appeal from the point of view of impartiality if the above two questions are disentangled. That is to say, the issue of what goods do to persons is a separate one from that of what outcomes the pursuit of conceptions of the good bring to different persons. While the notion of capabilities may be viewed as entailing an idea of empowering persons, the question of outcomes is best treated as pertaining to the realm of actualising such powers. Thus empowering persons equally could well be the appropriate arena of impartiality.

3.IX Concluding Remarks

We have tried in this chapter to assess the implications of justice as impartiality in the domain of distributive justice. In establishing the case of impartiality, we have reckoned with the two main contenders in the field, namely, equality of welfare, and equality of resources. According to impartiality, it is a questionable assumption that an egalitarian theory should be concerned solely with equalising either resources or welfare.

The flaw in the former is two-fold. The first, definitional one, is that, people's welfare should not be understood merely in terms of the satisfaction of preferences. It also means the mitigation of many forms of involuntary disadvantages which account for the varying levels of satisfaction. Alongside this conceptual lacuna, equality of welfare is unappealing since its enforcement would violate justice as impartiality.

Such a principle would have to be designed so as to mitigate such welfare deficits as commonly arise from brute luck, leaving out those flowing from individuals' deliberate choices, in other words, the argument from impartiality must be able to permit compensation for welfare deficits arising from extraneous factors beyond individuals' control. It also suggests that the impartialist principle should get beyond the resource egalitarian principle to take account of the differential sources of welfare deficits. A serious lacuna in the resource egalitarian view is its failure to take account of involuntarily generated welfare deficiencies. The reason that to account for welfare inequalities would commit an egalitarian to equality of welfare is clearly false. For it is one thing to divest choices from outcomes, as would be the

case with an equality of outcomes proposal, and entirely another not to hold people responsible for their unchosen preferences.

While equality in welfare is a wholly implausible proposition from the start, it is not evident that equality in resources can provide all the answers to the problems of distributive justice. As we observed in sections 3.IV and 3.V, there are an innumerable number of intermediate circumstances where equality warrants departures from a simple equal division of resources prompted by the concern to eliminate involuntary disadvantage. This is because, as we argued in section 3.VIII, people's abilities determine at least in part, what they seek and get. On the other hand, the objection to Dworkin's equality in resources is that it allows compensation for deficiencies in resource holdings only, and not for pain and other forms of ill-fare. The limitations of an impartialist decision procedure will be especially severe so far as ascertaining the sincerity of people's motives for revising their preferences.

CHAPTER 4: THE IMPLICATIONS OF IMPARTIALITY FOR PRACTICAL CASES: THE SATANIC VERSES EPISODE

This chapter attempts to probe with an example into the theory of neutrality defended in chapter two. The argument in favour of justificatory neutrality provided the grounds for the claim that neutrality with regard to the diversity of conceptions of the good cannot be conceived in terms of guarantees of equal outcomes for each of them in the overall social calculus.

Such a formulation lends credence to the view that a state's policies can be deemed neutral notwithstanding the unequal outcomes they produce for various conceptions of the good. Or more candidly, it is the view that if equal outcomes were the only basis upon which to judge the neutrality of a policy, one may conclude that there is no neutrality to be had in political matters. It is the endeavour of this chapter to explore the implications of these conclusions for concrete practical cases. The example taken up for this purpose is that of the controversy that ensued the publication of The Satanic Verses.¹

4.I The Problem.

On February 14th 1989 the Ayatollah Khomeini pronounced his fatwa, which was in effect a death threat against the British author Salman Rushdie and his publishers for the alleged blasphemy of the novel The Satanic Verses. Since its publication, the novel has probably occasioned more comment in newspapers and journals than any

book ever published. As such it might well seem that everything that can be said about The Satanic Verses affair has been said.

I believe however, that some of the underlying issues have scarcely been dealt with at all, and that there are a number of fundamental questions which still need to be both asked and answered. In particular, we have yet to come across an assessment of the problem from the standpoint of impartiality and the implications it may have within a liberal polity.

In order to avoid any misunderstanding, it should be made clear that there is little doubt that the Ayatollah Khomeini's reaction to The Satanic Verses was to say the least undemocratic, and that one of its main purposes was to shore up the narrow and repressive regime which he had established in Iran. Armed censorship of this kind is totally unacceptable. For the sake of Salman Rushdie himself and for the sake of his publishers, no effort should be spared to bring about the lifting of the death threat. For now let me just signpost this destination and return to some other issues that will eventually lead to this conclusion.

During the pre-Fatwah phase of the publication of the novel, British Muslims initiated a campaign to prosecute the author and to have the book suppressed under the English blasphemy laws. However these attempts came to no avail since the blasphemy laws in their current form lend protection only to the Christian religion. The Muslim rage exacerbated by this blatant inequity in the eyes of the law, and the resultant inaccessibility, or lack of alternative legal means, translated itself into public protests marred by sporadic violence, which sometimes deteriorated into racial backlash.

The reaction to the Muslim protests was ostensibly libertarian in essence. On this account the novel was viewed as representing an author's exercise of his freedom of expression. The Muslim demands were hence interpreted as at best an attack upon the author's and in general the liberal value of free speech and at worst as the Muslims inability to "integrate" in to the mainstream of the British society. The libertarian point of view tended to focus on the consequent civil disturbances in isolation, rather than making any serious attempt to grapple with the underlying cause of the Muslim rage, and the unrest merely as its manifestation.

The more discerning and conciliatory approach to the problem was one that was essentially liberal in character. On this view, the opposition to the book was regarded as reflecting a deeper conflict between the values and practices that inform the native and immigrant members of a modern plural society. Accordingly, an urgent need was felt, either to amend the current blasphemy laws, in order to bring all the different religions under its fold, or, to abolish the laws altogether, in both instances with a view to according equal status to all religions in a plural society.

The episode can be properly assessed in accordance with neutrality only by duly acknowledging these rival standpoints. Therefore the following suppositions with regard to the controversy may help clarify the conflicting positions. First, that The Satanic Verses, both in terms of its form and substance², is an affront to the deeply held beliefs of the religiously-minded members of our society, both Muslims and non-Muslims³. As a consequence, they are naturally offended. The subsequent protests it may be argued from this point of view, stem from the notion that the state has a duty to protect doctrines that are ascribed sacral status⁴.

A second supposition is that there are also a substantial number of persons in this society who do not happen to share any religious beliefs with the former and who therefore would simply treat the book as an individual's right to exercise his freedom of expression⁵. From the point of view of this latter group, claims for the protection of certain beliefs by the state, regarded as sacred by sections of the society, quite explicitly conflicts with the liberal principle that the state should not proscribe some doctrines in the name of what it regards as the good life for its citizens.

Another aspect of this argument is that such a partisan stance while constituting a departure from one of the fundamental tenets of liberalism, amounts to a discrimination between religious and secular beliefs. From the point of view of impartiality, both the believers and non-believers are perfectly justified, consistent with their own standpoints, in holding the views they do on the book. What calls for mediation is the conflict stemming from the incommensurable beliefs stemming from the sacral argument concerning the religious beliefs, and the secular claim for the equal treatment of all beliefs.

4.II The Perspective.

The row over The Satanic Verses has been viewed by philosophers in very many different ways, not all of which exhaust the range of issues that the controversy has occasioned. For instance, the Muslim protests and the consequent reaction have been interpreted as reflecting a conflict between the contending values of rationality, individual choice and autonomy on the one hand and those of tradition, sanctity of

beliefs and group identity on the other⁶, of acceptable enquiry and unacceptable attack⁷.

Although these perspectives may be useful to appreciate the different facets of the problem, the claims stemming from rationality, autonomy and choice are however amenable to multifarious interpretations, and on that account they are tendentious. They are therefore unlikely to cut much ice with proponents of contrary versions of these conceptions. It would also seem equally difficult to talk through a settlement of the conflict with those unrelenting guardians of the "*known truth*".

Our concern here is to examine the implications of the present controversy for a liberal society marked by a plurality of conceptions of the good from a neutralist standpoint, or if you wish from the perspective of impartiality. The aforementioned approaches, it is needless to mention, cannot address the problem from this perspective.

A more fruitful approach, and one issuing from neutrality, therefore would be to locate the conflict over the book not from the partisan claims advanced on behalf of the protagonists and opponents of the book. Instead, the strategy is to address the problem against the backdrop of the relevant norms that inform a multi-cultural liberal polity⁸, those of respecting persons' beliefs and freedom of expression⁹. The relevance of the notions such as respecting persons and respecting beliefs is self-evident in a plural society given the conflictual nature of the beliefs that people uphold, and the requirements of social peace and public order in such a society.

At another level, the question is, how far and to what extent can liberal institutions, supposedly neutral between competing conceptions of the good life, reconcile the conflicting claims of cultural identities in accordance with liberal policy

prescriptions¹⁰. These questions become crucial as the protests over The Satanic Verses has set a dangerous precedent in the sense that people have expressed opinions echoing a tendency to place their religious loyalties above their obligations of citizenship¹¹.

To be more explicit, the distinctive nature of persons' religious duties, from the secular duties of citizenship, have been confused as for instance in Pir Mahroof Hussain's claim that "the laws of this country [Britain] were made before the Muslim peoples arrived. Now they must adapt to us. Others must respect our faith"¹². In this light, it is unquestionable that no legitimate system of constitutional government can permit its citizens or others under its protection to be subject to death threats or other penalties from alien authorities.

I propose to introduce a principle of offence as a mediatory tool between conflicting claims and counterclaims surrounding the controversy. Such a principle is to be viewed as a variant of impartiality. the principle of offence and the idea of impartiality together may be regarded in general as extensions of the notion of liberal toleration.

If an appropriate conception of neutrality is one which cannot guarantee equal outcomes for different conceptions of the good, but none the less can be offered as defensible, such a defense ought to be one that none of the parties can reasonably reject. For clearly not every policy resulting in unequal outcomes can be justified as reasonable. In relation to the issue under examination, it is beyond doubt that the unequal treatment of the different religions under the current blasphemy laws which favour Christianity over others cannot be justified by the principle of impartiality since they will clearly fail the Scanlon test of reasonable rejection.

Whether or not the abolition of these laws will appease the Muslims or anger the Christians is therefore not the issue. The move suggested by impartiality will not be welcome from the standpoint of their respective conceptions of the good. But that does not invalidate the claim that an impartial adjudication of the conflict warrants the abolition of the blasphemy laws.

It is important to observe here that the existing blasphemy laws were, at the time of their inception, designed for the sole purpose of protecting the Anglican church from blasphemous libel. Subsequently the scope of the laws was extended to cover Christianity as a whole. Therefore an argument pointing to the inequity among different religions cannot be construed as a serious criticism of the current blasphemy laws since they were never meant to guarantee protection for the different religions to begin with. The question then is, what can be offered as reasonably nonrejectable grounds for the acceptance of unequal outcomes likely to arise for the contending parties in the Rushdie affair. This leads us to the next step in the argument.

The justification is inherent in the principle of offence itself, and it issues in a fair procedure that gives an equal locus standi to the divergent beliefs of the members of a society. On the basis of that procedure, the principle of offence seeks acquiescence in the differential outcomes it produces to the various claimants. It is this intrinsic fairness of the procedure that is to be regarded as a justification for the outcomes to emerge from its application. The justification is not to be sought in the nature of the outcomes themselves. The principle of offence cannot be explicated in abstraction from the larger issues of the controversy. Therefore we shall return to an exposition of the principle after a discussion of two notions which must form the basis of a heterogeneous society, those of respect for beliefs and freedom of expression.

4.III Freedom of Speech and Freedom of Religion: Convergence and Conflict

Freedom of expression and freedom of religion have been, at least till recently barring few exceptions, securely embedded in modern Western societies. However as it happens on such rare occasions, one person's freedom of expression comes to be seen as encroaching upon another's freedom of religion, or more accurately, One person's dissent becomes another's blasphemy.

This is in part on account of the fact that freedom of expression lies at the confluence of a wide variety of principles and interests. That is to say, it is a value not only to liberal humanists but equally to those with a more devout turn of mind¹³. This point can be expressed by saying that while the domain of the sacred is of value only to the believer, the realm of free speech is of paramount interest equally to the religiously-minded and others. This is testified by the fact that scrutiny of all beliefs, including religious beliefs, has, as in this case, for long been integral to freedom of speech.

The prevalence of different religious denominations is, at least partly, a consequence of the fact that religious dogmas too have constituted the subject matter of critical scrutiny. It should not thus come as a surprise that the author in question, given his Islamic antecedents should subject that religion to the kind of scrutiny that it receives in his novel. The emphasis on freedom of speech and religious worship should not however obscure attention to important restrictions on their practice. Let us first consider some of the more obvious restrictions on free expression. On the one hand, we are willing to permit the legal regulation of certain categories of expression,

such as forms of commercial advertising or the health warning on cigarette packets, even where different categories of expression do not necessarily conflict.

On the contrary, we also express strong disapproval, regardless of the category of expression, of legal and state intervention on matters of health, sex education or more generally about the good life for citizens on the grounds of preventing the dissemination of false or misleading views. Thus we freely choose between the permission and disapproval of state regulation of free expression.

There is therefore no justifiable ground for the supposition that every attempt to bridle the way in which people choose to express themselves is necessarily injurious to freedom of expression. That is to say, assertions of both religious freedom and free speech in general cannot presuppose the absence of restrictions in specific instances. The point is merely that such restrictions, when enforced, say for reasons of national security, ought to be narrowly conceived.

In the wake of such inherent restrictions on free speech, the absoluteness of the claim embodied in the contention that speech unlike action does not injure others, injury construed merely in terms of physical injury, and that therefore its unrestricted pursuit should be upheld is very dubious. The libertarian defence of the novel echoes such a position and it is evidently oblivious to the grounds under which a freedom may legitimately be restricted.

The Rushdie affair has however highlighted the absurdity of an equally contentious claim, this time on behalf of the offensiveness of blasphemy: "the purpose of blasphemy is to wound and hurt other people in areas of the mind which are, to them, sacred. This is violence, likely to prove more painful to many than physical violence. Therefore, while violence remains a crime, so should blasphemy".

Conflicts of interests between them are not surprising given the relative weighting of religious and secular forms of expression among the members of a plural society. Therefore the issue is not whether free speech should be restricted at all. The question is the specific one about the reasonableness of the grounds that may be adduced in favour of such restrictions, whether they can be shown to be reasonable to those who are likely to reject any such restrictions.

Crucial from our point of view is also the question whether such restrictions should be enforced by the legal machinery. It may now be worth considering the plausibility of some of them below. But before undertaking that task it would seem necessary to ascertain that the present conflict is principally one about freedom of expression. Just as any form of religious expression is constituted by particular forms of worship and the performance of religious rituals and rites, the unconstrained expression of ideas and opinions is facilitated only through the written word and forums of debate and discussion. The closure of these channels unalterably and irreplaceably brings their expression to a halt.

Although The Satanic Verses raises questions pertaining to the status of religious beliefs in the eyes of nonbelievers, it should be plain enough that in no way does the novel hinder the religious practices of Muslims. This point may suffice to argue further that the controversy over The Satanic Verses pertains rather to freedom of speech than to freedom of religion as it is often misconstrued¹⁴.

Indeed the Muslim reaction to the book is, at least partially, a consequence of such misconstrual. It may be relevant here to refer to some of the safeguards guaranteed by the law to the different religious communities. In Britain the religious

practices of the Muslims are safeguarded by for example, The Slaughter of Poultry Act 1967 and Slaughterhouses Act 1979 and similar laws for other religions.

These legislation are rightly justified on the grounds that equality before the law sometimes warrants departures from a uniformity of policy in view of the plurality of beliefs held by the members of a society¹⁵. Now the present episode has provided the battle ground for the claim that similar safeguards should be extended by law in like manner to religious beliefs, proscribing what may be said or written about them. The demand to prosecute the author and withdraw the novel from circulation are evidently based on the notion that religious beliefs should not be subject to any form of scurrilous attack.

The Rushdie affair vividly illustrates the difficulty of determining precisely where critical scrutiny terminates and assaults on religious beliefs begin. Therefore, it should not come as a surprise that people who take offense when their beliefs are subject to scrutiny do so because they construe such scrutiny itself to be disrespectful to their beliefs. In fact the Rushdie episode bears evidence for this supposition.

Syed Shahabuddin's letter to Rushdie in justification of the ban is a case in point: "You are aggrieved that some of us have condemned you without a hearing and asked for the ban without reading the book. Yes, I have not read it, nor do I intend to. I do not have to wade through a filthy drain to know what filth is. My first inadvertent step would tell me what I have stepped into"¹⁶.

It is obvious that a response such as the above can only be understood in terms of a person's indisposition to question religious authority. It is therefore appropriate to ask how, as members of a plural society, deeply religious-minded people can be expected to react to books of this nature and the kind of restraints that may be

imposed on persons exercising their freedom of speech. To what extent these conflicting interests can be safeguarded will depend upon the viability of the procedure adopted.

Having established the sense in which the controversy is one about free speech rather than religious freedom, we may examine the issues that surround this facet of the episode. The major bones of contention here are, (A) what is the particular form that any restriction on free speech should assume, and, (B) on what grounds could such restrictions be justified. The answers are not easy to find. However, the principle of respecting beliefs, the truth claims of certain authoritative doctrines and the potential for offence to persons have been considered here as plausible candidates for the purpose. Let me discuss each of them in turn in order to examine their plausibility.

4.IV Two Notions of Respecting Beliefs

A theme that has recurrently engaged philosophers during the episode has been that of respecting beliefs. It has been asked whether respecting persons generally, and respecting beliefs in particular, entail deference to beliefs one does not share¹⁷. In relation to free speech its implications are, whether the opinions voiced by persons can be restricted when they are couched in a language that is disrespectful of beliefs, and hence of those persons who happen to hold these beliefs.

Peter Jones postulates two versions of the principle of respecting beliefs. A stronger version of the principle is intended to censure substantive criticism of beliefs. The weaker version of this principle seeks to ground such restrictions by drawing

upon the distinction between the form and substance of the criticism. The examination of the weaker version of respecting beliefs will have to await the discussion of the offence principle.

According to the stronger principle, "to subject beliefs to attack, ridicule or contempt is simultaneously to subject the people who hold those beliefs to attack, ridicule or contempt, and to do so is to accord them less than the respect to which they are entitled"¹⁸. Bhiku Parekh's censure of the novel can be cited as a good illustration of the indeterminacy of the strong principle of respecting beliefs. He says:

When a prophet is treated in a supercilious, dismissive or crude manner, what is at stake is not honour - for he is dead and too big a person to be affected by insults. What is really at stake is the sense of self-respect and integrity of those living men and women who define their identity in terms of their allegiance to the prophet. Their pride, good opinion of themselves, dignity and self-esteem deserve to be protected and nurtured, especially when these are subjected to daily assaults by a hostile society'¹⁹.

Parekh's contention that the prophet's honour is unaffected and what is at stake is really the selfrespect of the believers is at odds with the general fundamentalist position where it is seen as the solemn duty of the believer to protect God. Shabbir Akhtar for example claims that "It is true, of course, that God can defend himself, but a believer must vindicate the reputation of God and his spokesmen against the militant calumnies of evil."²⁰ While the fundamentalist claims are characteristically on behalf of the divine, of ensuring its protection against

defamation, the offence principle is concerned with relieving the offence of the believers. Thus the preoccupation of the law is clearly different from that of the person it is supposed to protect.

What is at stake then in works such as The Satanic Verses for believers in a particular faith, Parekh points out is their self-respect, sense of dignity and identity. For we are told that "An individual is not a free-floating atom but a member of a specific community and his identity is at once both personal and social. His self-respect is therefore necessarily tied up with, and partly grounded in, the general respect for his community"²¹.

In the above statements, Parekh is raising the crucial distinction differentiating liberal from non-liberal societies. That is, societies in which the individual is sovereign, and societies or cultures which give greater emphasis to group identity. In the latter case, such an identity is often conceived in terms of an identity of beliefs. And respecting the individual and the community is necessarily tied to respecting the main tenets of the doctrines they profess.

Thus the preservation of the selfrespect of Muslims necessarily becomes that of the defence of Islam's dignity. Shabbir Akhtar is ambiguous on this question, for although he is explicit that it is individuals rather than doctrines that are susceptible to offence and thus need to be protected, he nonetheless views the protection of a community against assault as necessarily relying on a defense of the doctrines its members profess. See his "Is Freedom Holy to Liberals? Some Remarks on the Pose of Law".

Mashuq Ibn Ally claims that the Islamic ethical system provides protection for both the living as well as the dead. The living should abjure recounting even the

criminality of the dead for it ceases at the time of their death²². Contrast this with the liberal position articulated by Michael Ignatief during the Rushdie affair; "In theocratic states like Iran, the law guarantees the inviolability of certain sacred doctrines. In free societies, the law does not protect doctrines as such: it protects individuals through the law of libel, or the law against incitement to racial hatred".²³

A major flaw in the Moslem response is the anomalous treatment of religious beliefs under the rubric of identity. It is not as though the question of identity is any less relevant to a secular, plural and liberal society but only that to single out religious beliefs to determine the nature of identity of a plural society is inappropriate. A much more constructive way of grappling with the problem of social identity would be to attempt to define it in terms of the plurality of beliefs that members of a society uphold.

For any recourse to some form of monism merely produces a fragile identity and more damagingly distorts and dilutes the more broader sociopolitical identity. In fact, the problem of multiple identities follows from the heterogeneous nature of a society. In the present context however, the identity argument, at least in the way that it is addressed in relation to the Rushdie affair, is wholly unpersuasive.

The inconsistency of the stronger principle with freedom of expression is evident from Parekh's formulation. Although the personal and social identities of persons may be uncontestable, it does not follow that the beliefs that persons hold cannot be regarded as having an independent entity. But by construing the attack upon beliefs as an attack upon persons, Parekh's formulation presupposes the person-centredness of beliefs entailing the idea that beliefs are the sole property of

believers²⁴. Moreover, the stronger principle also places a protective cordon on religious beliefs by according them a privileged status vis a vis other beliefs.

4.V Special Treatment to Religious Beliefs?

Now the question whether a principle of respecting beliefs can justifiably accord special treatment to religious beliefs alone assumes independent significance. Perhaps a strong case can be made in its favour in view of the sacral element that is attached to religious beliefs. This is because the sacral element can potentially render the religiously-minded persons vulnerable to offence when they are exposed to unrestrained freedom of expression, although that may not impinge upon their freedom to engage in their religious practices²⁵.

The fact that Muslims' religious practices have been unobstructed by the circulation of The Satanic Verses has nothing to do with the intensity of the offence that those that have read the novel feel over Rushdie's treatment of the prophet and his disciples. Rushdie's reaction to the ban of the novel in India exhibits a distinctive lack of sensitivity to this point.

The point however is that the recognition of the sacral element in religious beliefs need not issue in ascribing reverential treatment to them. This is because, as Jones argues, the considerations of equal respect and the need for preference ranking among beliefs rule out claims to uniqueness on the part of some beliefs. they would merit special status only if the prevention of offence at all costs were our sole concern²⁶.

But this issue is separate from that of meeting out differential treatment to religious beliefs which follows from the need to get beyond formal equality in order to promote social harmony. Departures from the normal processes of law to facilitate certain religious practices is the only means of expressing the state's concern to respect specific religious beliefs from which these practices originate.

Liberals who attach sanctity to their religious beliefs can quite consistently value freedom of speech no less, but without professing to its sanctity. It would be ludicrous however to suggest that the degree of offence is comparable in the case of attack on an atheist's beliefs; if anything, the category would appear to be irrelevant here since secular beliefs thrive only in dispute and disagreement.

Michael Ignatieff is quite right when he observes disdainfully that the liberals' claim to hold freedom sacred is a misuse of the word sacred. As he points out, "If the word means anything it means something which is inviolate to criticism or to rational scrutiny. Freedom is not a holy belief, nor even a supreme value. It is a contestable concept. How a free society marks the limits of freedom will change with time. The Muslims are entirely correct to say this society does not believe freedom is unlimited. That is another way of saying that it is not sacred"²⁷.

One may reasonably doubt however that any special treatment of religious beliefs should issue in legal prohibitions on what may be expressed about them. Not only would these measures restrict the scope of free speech, but in a plural society constituted by persons, some of whom are intensely religious minded, others who are agnostics, and yet others non-believers and atheists, an argument to privilege some of the beliefs, be they religious or otherwise, more than others is tantamount to discrimination among beliefs.

Such an inequity would be all the more unacceptable in the wake of fervent appeals to institutionalise the Islamic code. I shall be suggesting that any restraints upon free speech can be conceived only in terms of appeals to certain moral limits. The fact that all forms of beliefs are subject to scrutiny may not be welcome to some (the Muslims in this case) does not imply disrespect to those beliefs or disrespect to persons who hold those beliefs. Of course one can understand that some people are not quite used to treating their beliefs in this way. But that hardly stands up to a case against freedom of expression.

What then are the grounds that may be offered for imposing limits on the scrutiny of beliefs? As Peter Jones argues, "whatever reasons there might be for limiting freedom of expression out of concern for people's beliefs, it cannot be a reason that presupposes the truth of those beliefs, for that would disqualify it as a reason for all except those who already hold those beliefs"²⁸. Thus the grounds for the need to disentangle truthclaims about beliefs as a sufficient reason for restricting free speech appear to be straight forward. But in an odd manner, the protest over the novel has reinforced the view that beliefs, like his person and his property, are an inviolable part of a man's being²⁹. We can make sense of any claim that freedom of speech is an intrusion upon the beliefs of persons only in this way. A good illustration of this claim is the following statement:

The right to freedom of thought, opinion and expression should not be practised at the expense of the rights of others. Islam should not be degraded under the banner of freedom of thought. Cursing any divine religion (Islam, Christianity and Judaism) could not be excused on the basis of freedom of

thought, expression and opinion; it is a low act which deserves to be condemned by the whole world.³⁰

Therefore the need to formulate principles of respecting beliefs and free speech which are consistent with each other is paramount. Such a principle may be defined as one requiring that persons should be able to profess and practise their beliefs without hindrance ensuring a similar liberty to others. Likewise the exercise of free speech must entail a similar guarantee to those who choose to exercise this freedom. Any additional stipulation would necessarily mitigate against our interest in safeguarding the two values.

Persons' susceptibility to deep offence on account of subjecting their religious beliefs to attack seems a much more plausible ground for restricting free speech than on the grounds of showing reverence to certain beliefs or their claims to the ultimate truth. but the crucial issue is one of how such restrictions ought to be conceived. In fact, it would appear that as Jones argues, restrictions on speech ought to be based on the grounds of preventing gratuitous offence.

4.VI The Mediation of the Offence Principle

It was mentioned in the introduction that a principle of offence is to be construed as a variant of neutrality for examining the present controversy. The important task now though is to formulate its specific content to testify as an acceptable neutral principle. To be sure, as a device for arriving at neutral conclusions, the principle of offence cannot purport to produce equal outcomes for the conflicting parties in the

controversy since neutrality does not in any way entail the guarantees of equal outcomes for the champions of the different positions in the Rushdie episode. Any such commitment would contravene the stipulations of impartiality.

The suggestion that the principle of offence should be construed as a neutral principle implies that the category of offence itself must be defined neutrally. Just as the justifiability of an impartial decision procedure is independent of both any conception of the good and also the possible outcomes to follow from its implementation, the application of the offence principle would have to be justified without reference to any system of beliefs. This is important because when an offence occurs in specific instances, its explanation is usually belief-dependent, and therefore the nature of offence varies according to the diverse belief-systems which define different groups in a society.

The objective of a mediatory procedure, from the standpoint of offence is undoubtedly one that attaches equal importance to the notion of respecting persons' beliefs, some of which at least some people regard to be sacred, and protecting the persons' rights to exercise their freedom of speech. Ensuring protection for the latter is an important step towards the realisation of the former objective. This is because an essential part of respect for one's views, opinions and doctrines is that critical and counter-opinions by others, including one's own opponents, are voiced freely. Legal restrictions on speech for the protection of beliefs would therefore only result in the protected beliefs not being taken seriously³¹.

It may be recalled here that respecting beliefs need not finish up with any guarantees of protection for beliefs beyond the legal facilitation of certain practices that are synchronic with upholding particular beliefs. All this means that an

appropriate mediation from offence is one that can disentangle the prevention of offence from restrictions on free speech. Any conceivable restrictions on free speech must include some forms of restraint aimed at the avoidance of gratuitous offence.

The mediatory procedure must therefore entail a requirement to protect citizens from such offensive conduct as might entail potentially harmful consequences. The prevention of harm may be construed as impartial because harm is deleterious to the furtherance of virtually any conception of the good. In other words, the justification for the prevention of harm does not have to rely upon any conception of the good, whether persons value their freedom of speech or their freedom of religious practice. As far as the offence principle is concerned, that is an individual judgement that persons make for themselves.³² All these are truisms and the real issue here is one about how such restrictions are to be conceived, and whether we should resort to the law for a settlement of disputes of this nature. The liberal position on this question is familiar: the state should not legislate on matters of morality or what the good life for its citizens could be.

In view of the susceptibility of public officials to push through with their own conceptions of the good, legal intervention in such matters is abjured. But the unjustifiability of legal intervention cannot be assumed a priori. For while emphasising its unjustifiability, the legal control of offensive conduct is never the less upheld by liberals such as Hart and Feinberg³³. Underlying the foregoing claims is a distinction between different forms of offensive conduct, some of which warrant legal intervention and others which do not.

Let us return now to the question of the neutrality of the offence principle. For the sake of simplicity, the notion of offence may be defined in the following way. it

may be suggested in the most general terms that the disagreeable character of any experience may constitute offence³⁴. The disagreeable experience usually comprises a set of nonuniform mental states that are unpleasant to varying degrees. Naturally what is disagreeable to some need not be so for others and certainly not for the same reason or intensity. Disagreements of this nature cannot discount the fact of the offence that persons may feel.

Evidently such a definition of offence brings a host of difficulties in its train, for it leaves questions about why and how an experience is disagreeable open-ended, to be subjectively interpreted by the persons in question. For these reasons, instances of offence do not allow for interpersonal comparisons of their extent and intensity since what offends some people does not offend others and some people seem generally more easily vulnerable to offence than others.

The potential for offence in both the spoken and written word is undeniable, although not quite self-evident, as the potency of physical injury to inflict pain and harm besides in itself constituting an offence. However to equate physical harm and violence with mental offence would be to blur the distinction between the different categories of offence.

The distinction between physical injury and mental hurt lies in the fact that the former entails an attendant or consequent physical harm, making the case for the prevention of bodily hurt straightforward whereas a consequent harm does not always necessarily accompany the category of mental hurt. Thus the pursuit of a policy of preventive coercion of mental offence in view of its indeterminacy, may involve major costs if unmediated by an appropriately justified procedure.

In the absence of one, it could lend credibility to the view that the greater one's susceptibility to offence the greater will be the restriction on free speech. The supposed susceptibility of the Muslim minorities to offense of this nature was an important factor that led to the banning of the novel in India. Part of the difficulty also stems from the fact that the peculiarity of the offense felt in instances of hurt or distress is often that their offensiveness is belief-dependent. The prevention of belief-dependent offence however, as we shall observe below, need not presuppose the truth of the belief in question.

Moreover, there is always the question whether the fault sometimes does not lie with those who take offense rather than with those who give it. This last point is crucial while examining The Satanic Verses episode. In the following paragraphs, we shall consider several conditions which may for legislative purposes be appropriately interpreted as hurtful, and spell out their implications for some of the issues which emerged during The Satanic Verses episode.

What is of relevance for the purpose of preventive legislation is the distress, hurt and insult that people might suffer for whatever reason. Establishing the genuineness and intensity of the distress and hurt is certainly not an easy task. The category of hurts may include not only physical pain but also forms of mental distress. The question however is, on what grounds could we justify the preventive coercion of hurt.

Joel Feinberg provides a helpful account of the conditions under which an action or its outcome may be construed as hurtful. As he suggests, "the hurt is serious enough if and only if it is either a symptom of a prior or concurrent harm of another

order (as a pain in an arm may be the result and sign of a broken bone), or is in itself the cause of a consequential harm (e.g., mental breakdown) of another order"³⁵.

Arguably the hurt occasioned both by the reading of The Satanic Verses and the mere knowledge of its prevalence, are potentially distressing for many Muslims. But it is hard to establish that such distress in itself can generate further harm to mind or body. The point is that the violence that erupted during the protests is not an example of either a concurrent or a consequent harm in the sense that Feinberg defines both these conditions. The violence is a separate although ostensibly related fact, something that people indulged in wilfully, because they could very well have done otherwise.

The indeterminacy of offence indicates the futility of all attempts to delimit the offensive for the purpose of legislation. What should be of relevance to a law concerning the prevention of offence must therefore be the fact of the offence caused rather than the rightness or wrongness of either the causal action or the offense felt. That is to say, an offence is an offence regardless of whether it is taken on account of the truth or falsehood of the beliefs held by the offender or the offended. All these factors rule out applying the criterion of reasonableness in determining the offensive.

Therefore we may, with Feinberg, discard the criterion of reasonableness for the purposes of determining (A) the seriousness of an offense and (B) whether it warrants legal intervention. The chances are greater that the offence would in most cases fail the test of reasonableness given the vagaries of human mental and psychological make up. The preclusion of the criterion of reasonableness would have the advantage of denying legislators the right to pass judgements on peoples' emotional reactions³⁶.

Cases of unreasonable offenses are those in which, notwithstanding their unreasonableness, very real and intense offense is taken by everyone warranting preventive coercion from the state. The important criteria to be weighed on the opposite side of the scales against unreasonable offense are those of the reasonableness of the offending conduct it would forbid. That is, its status and value as a form of expression, its intimate personal value to the actor in question, its social utility notwithstanding its offensiveness to many, its avoidability to those whom it is offensive, and the unavailability of alternative forms of expression.

On no grounds can it be alleged for example that The Satanic Verses was a work of sheer abuse, solely intended to offend, insult or incite; bereft of any form of expressiveness, or lacking the redeeming social importance of genuine communication of opinion. Jones's weaker version of the principle of respecting beliefs appears to be a good startingpoint for this discussion³⁷.

Remember that unlike the stronger version of the principle which restricts all substantive scrutiny of beliefs, under this version, an attempt is made to distinguish between the form and content, or manner and matter of the criticism of beliefs as a basis for determining its offensiveness and from there casting light on how far such a principle can go towards restricting speech.

Thus on this version, attack on beliefs acquires a more specific meaning; the expression of whatever opinions in obscene, wounding and ribald language rather than the expression of conflicting views as in the case of the stronger principle. The rationale for discounting offensive opinions from this principle is arrived at by a recognition that the offensiveness of opinions unlike offensive expressions are by and

large belief-dependent; to suppress these opinions would amount to suppressing the beliefs which occasion them.

The airing of contrary opinions does not have to assume the form of offensive expressions. Since its emphasis is only on the manner of expression, it is evident that the weaker version of the principle compromises freedom of speech to a far lesser extent than the stronger version of the principle. That is it allows a wider arena for the expression of conflicting opinions so long as they are not conveyed in offensive language.

The weaker version parallels Joel Feinberg's postulate of the justifiability of the inoffensive expression of offensive opinions³⁸. As Feinberg argues, "A non-offensive utterance of an opinion, even of an offensive opinion, is a kind of trump card in the application of the offense principle. The standards of personal importance (to the author) and social utility confer on it an absolute immunity"³⁹.

The English law of blasphemy, in its current form, may be said to rely on the matter manner distinction. Today what is construed as blasphemous under these laws is the publication of scurrilous and obscene remarks against Christ rather than the advocacy of doctrines questioning the very foundations of the Christian religion⁴⁰. Thus we may with good reason surmise that if the blasphemy laws covered the Islamic religion Rushdie would have been prosecuted in view of the ribald language in which he has portrayed Muhamad.

However drawing the matter manner distinction in practical cases is not always very straight forward as illustrated by The Satanic Verses. For instance, it represents, at least for the majority of Muslims, offense in terms of both matter and manner as they take exception both to the characterisation of Islam as well as the scurrilous

language in which Muhammad is described. To them the novel constitutes in Feinberg's terminology an offensive expression of an offensive opinion, rendering the matter manner distinction inadmissible.

That is to say, the argument from the belief-dependency of conflicting opinions is treated as an inadequate ground for attack on their beliefs. Thus the matter manner distinction might at best call upon authors to exercise restraint on the form of expression they choose to pursue without any cost to their freedom of opinion. But it can do little in the direction of persuading persons that the expression of divergent opinion in itself cannot be construed as disrespect for beliefs. Despite its greater moral appeal the weaker principle, like its stronger counterpart, is too indeterminate as a basis for setting legal limits on freedom of expression.

A non-partisan reader may discount the Moslem riposte on the following grounds. He could defend free speech by pointing to the acceptability of an allegedly offensive opinion given the avoidability of such an offence by not reading the novel. But he may not be disposed to condoning gratuitous offense.

The foregoing discussion on offence has proceeded on the assumption that the burden of an alleged offense always lies on the alleged offender and that on that account speech should be legally restricted. Such an account rests the blame foursquare upon the offender. In other words it is impervious to the question whether the fault does not some times lie with the offended rather than the offender. If reasonableness is introduced as a valid criterion for taking offence, the problem assumes a different perspective.

Therefore granting that The Satanic Verses typifies a case of offensive expression, we may pause to consider the reasonableness of its offensiveness. The

criterion of reasonableness must be addressed from the standpoints of both the offender and the offended because the question whether it is reasonable under certain circumstances to take offense is equally valid as is whether it is reasonable under any circumstances to offend.

Again Feinberg provides a helpful account of what may be construed reasonable offense. The test of reasonableness is "the degree to which nonoffensive alternatives that are equally satisfactory to the actor are available"⁴¹. Certainly any form of expression whose sole purpose is to gratuitously offend is thus inadmissible under this account of reasonableness. In relation to the novel, a non-offensive alternative may be presented in the form of an audience of like-minded persons to whom scrutiny of certain given dogmas might seem a worthwhile and inoffensive enterprise.

Yet this is in spite of its non-offensive character needless to say a very poor alternative since the whole point about any such exercise is to expose the fallacious premises of a given doctrine with the objective of changing the attitudes of those subject to its dogmas (of course it presumes that the audience will receive the new ideas with an open mind rather than take offense).

Thus in the absence of a censor-free press, a writer is left with no reasonable alternative to expressing his opinions to a vast audience. From this account it is evident that the supposed offensive conduct of the author passes the test of the reasonableness of offending conduct. It also means that the protests over the novel fail to meet the requirements of reasonable offense on the part of the offended.

We may now introduce the next criterion, namely, the "reasonable avoidability of offense". According to the maxim of the standard of reasonable avoidability of

offence "The easier it is to avoid a particular offense, or to terminate it once it occurs, without inconvenience to oneself, the less serious the offense is"⁴².

It is obvious that the offense of the novel in question could easily be avoided by not reading it. But the offense caused on reading it once, it seems, cannot, unlike what Feinberg seems to suppose, be so easily terminated or erased merely by turning a blind eye to The Satanic Verses. Far from it, mere knowledge, obtained from second-hand reports, about the offensive contents of the book is what led to weeks of rioting, public burning of its copies, and even the imposition of a ban by the government in India. This series of events were initiated by the people involved most of whom had never read the book themselves.

The offence felt by mere knowledge of its substance by the large number of non-readers is to be discounted under the category of abnormal susceptibilities⁴³. Likewise the offense principle decrees that, for anybody with knowledge of its offensive content to nevertheless go ahead and read the book would be tantamount to consenting to voluntarily suffer the offense. Offenses that belong to this category do not count for compensation under the maxim of "Volenti non fit injuria"⁴⁴.

For the vast majority of Moslem minorities in India are barely literate, and therefore, The Satanic Verses is in any case beyond their reach, and any claim that The Satanic Verses caused offence to them may seem unfathomable. But such a presumption rests on the maxim that "what a person doesn't know can't harm him"⁴⁵.

The demand calling for a ban on the novel in countries like India orchestrated by Moslem leaders who had never read the book is a further vindication of the fallacy of this maxim. I doubt if any offense can really ever be erased once it has occurred.

Although what is possible in the case of certain kinds of offence is perhaps the prevention of its recurrence, say by a decision by the person offended once not to visit a sex parlour again⁴⁶.

It is likely however that the quantum of offense occasioned by the book could still be minimised by advising the more easily vulnerable not to read it. The point which needs to be emphasised is that none of this implies that the novel should not have been written at all. This point can be clarified in the following manner: whereas requiring people not to engage in sexual acts in public is not tantamount to requiring them not to engage in sexual acts at all.

But the issue in question is one of those instances where asking that a book like The Satanic Verses not be written at all because it is public or rather that it is not private enough, is to require unfairly that such literary endeavours be dispensed with entirely. It is one of those cases where the public private distinction is irrelevant⁴⁷.

Predictably the hardliners on the issue would repudiate claims about the reasonableness of The Satanic Verses given its deep offense to their sensibilities. However the maxim of the reasonable avoidability of offence and the inoffensive expression of opinion are consistent with the principle of respecting beliefs. This however requires certain preventive steps to be taken on the part of persons susceptible to particular offences to their beliefs and some degree of restraint on the part of those who wield the power of the pen. Even the offense against their sensibilities can easily be avoided by the option not to read the novel.

Historically the case for the legal protection of religious beliefs has rested upon the offensiveness of blasphemy and blasphemous libel⁴⁸. The term blasphemy has had dual connotations. In its ordinary usage, such things as scurrilous and

obscene remarks against a deity were sufficient to be stamped as blasphemous. In its second sense - as an offense against common law - it tended to remain largely synonymous with unorthodox religious opinions and the law's concern with blasphemy was thus more than religious⁴⁹.

It is important to remember that the law in its current form, is viewed not so much as a device to assert the truth of Christianity as a mechanism to safeguard Christians from offensive treatment of their beliefs. However the counter view is widespread today that the legal suppression of blasphemy as such is indefensible, not only because of fear of the sever incursions on free speech that its legal enforcement might entail but the even greater likelihood of its abuse by the law which may follow as a consequence.

The law on blasphemy, since its revival after some 50 years in 1977, has been applied rather inconsistently in a wide variety of cases. In 1977 in his verdict against Gaynews, describing the publication of a poem as constituting an offence detrimental to the internal tranquillity of the Kingdom, Lord Scarman declared that "there is a case for legislation extending it to protect the religious beliefs and feelings of non-Christians In an increasingly plural society such as that of modern Britain it is necessary not only to respect the differing religious beliefs, feelings and practices of all but also to protect them from scurrility, vilification, ridicule and contempt"⁵⁰.

In relation to the controversy over The Satanic Verses, the Law Commission recommended the abolition of the blasphemy law; the Bishop of London's working group suggested that the existing common law offences should be abolished and replaced by a new statutory offence protecting all religions⁵¹; it even argued for the

extension of the respect for religious beliefs and sensibilities so as to cover other beliefs as well⁵².

Such a reasoning has not been extended to the Rushdie case, and the Muslims are rightly aggrieved over such a discrepancy in interpreting the law. Their argument that in a multi-cultural society such as Britain, the existing law is discriminatory to religions other than Christianity has not impressed the British government which has responded by saying that so long as the law of blasphemy applies only to the Anglican church, it cannot be said to discriminate against other religions.

But at the same time, emphasising Rushdie's alleged apostasy, as some commentators have said carries little weight unless they care to explain how it can be invoked against a non-believer and the reasons why a believer is not at liberty to give up his religion⁵³. The suggestion by some Muslim groups that Rushdie should have been prosecuted under the public order and race relations act cannot carry much weight unless adequate justification could be provided for the torrent of riots as a sequel to an offence of this nature. If anyone should be tried under these laws it is the miscreants responsible for racial clashes who would have been the appropriate targets. Moreover, it would have been in the Muslims' own interest to ensure that the issues did not get mixed up in this way.

I would treat the verdict against Gay News as a case of an unfortunate bad precedent which had better not be emulated, rather than citing it as an example in the Rushdie affair as several commentators have done. This being the current status of the law, the options before the law givers are quite straightforward. Considerations of social peace dictate that either the law of blasphemy be extended to cover all the

divergent religious faiths composing this plural society. Or, alternatively, there is sufficient justification to propose a wholesale withdrawal of the blasphemy laws.

Having cast our attention in two possible directions in which to proceed in the matter, we may pause to consider the plausibility of each of these options. With regard to the first option, the question immediately arises as to the precise nature of the protection to be ensured for different religious denominations. A useful starting point in this connection would be to fall back upon the protection presently guaranteed to Christians against offenses to their beliefs.

The protests following the publication of The Satanic Verses indicate a reluctance on the part of Muslims to abstract from their deeply held religious convictions⁵⁴. This is plainly because they refuse to come to terms with the fact that a non-moslem has no reason to respect the prophet just as a non-believer has no reason to respect God. By pushing their case in the wrong direction, the fundamentalists have, it seems, failed to make good of what would be a perfectly legitimate claim to advance on a heterogeneous society.

This is that the non-moslem and any non-believer should respect the sentiments of those persons who are practising Muslims and in general religiously minded. For the non-believer, this in no way requires them to have any truck with any form of religious worship. It simply means that they be aware that there are people who do not think like them on matters of religion and that they, as anybody else, are entitled to their views. We are forced to the conclusion that being prevented from prohibiting what you believe to be wrong is a more severe restriction than being prevented from promoting what you believe to be good"⁵⁵. I do not believe that the conclusions that follow from the application of such a principle will persuade partisans on the side of

the ban otherwise. It is a case where as Barry argues, "religiously based condemnation of harmless acts is inadequate to ground their legal suppression"⁵⁶.

The mediating principle posited here operates within the context of a certain prior knowledge about the values that inform a plural society. It recognises for instance that a large number of people in that society place a high premium on freedom of expression exercised by self and others. Let me postulate this first principle as the "secular principle". Secondly, it acknowledges the existence of a substantial number in that society who acquiesce in the authority of the truth of certain religious dogmas. Let me term this the "religious principle". Thirdly, it recognises the potential for conflict arising from the exercise of these values, that is, the susceptibility of the religiously-minded to offence on account of what, at least in their eyes, is an abuse of the freedom of expression when authoritative religious texts become the object of scrutiny in the name of this freedom, and conversely, that others regard drawing a protective cordon on the domain of beliefs by the latter as a restraint on their cherished liberty of expression.

The mediating principle need not also rule out the possibility that certain members in this society simultaneously subscribe to both the religious and the secular principle not regarding them as necessarily antithetical, altering the balance between the two as they choose at any given moment.

A recognition of these background factors will have concrete implications in the application of the mediatory procedure. What must be emphasised here is that such a procedure does not assume a priori the validity of specific instances of the exercise of free speech. That is to say, it refrains from taking a stand on either the justifiability of publications such as The Satanic Verses or the unjustifiability of the

offence felt as a consequence. Such a principle merely incorporates a fair procedure in evaluating conflicting claims arising from the practice of such freedoms.

As it happens, the outcomes of such a procedure turn out to be not entirely favourable either for the supposed victims of The Satanic Verses or for its protagonists. That is to say that although the embitterment that the Muslims feel over the book is genuine, from the viewpoint of this neutral procedure it is something that is unfortunate. A suitably formulated offence principle can thus do little towards assuaging their feelings and bring about the outcomes that would appease them.

The application of the offence principle as an upshot of neutrality, to begin with, issues in the wholesale abolition of the current law against blasphemy rather than its extension across the board covering all religions. Nor does the procedure accord with the suggestion recommending its replacement by an adequately modified law. The reasoning adduced here is that the law in its present form quite patently discriminates against religions other than Christianity by protecting that religion alone against blasphemous libel.

A modified law, by extending such protection to all religions would quite predictably echo the essentials of the present law on a larger scale. That, would have the implication of sanctioning potentially illiberal prescriptions. On the other hand, the wholesale dismantlement of the blasphemy laws, it may be argued, would ensure the only viable form of neutral treatment - hitherto denied - for various religious beliefs by guaranteeing such protection to none. All this is to suggest that a neutral resolution of the contending claims advanced for and against The Satanic Verses logically imply dispensing with the law of blasphemy.

The implications of such a move for free speech and respect for persons' beliefs are quite significant. Applying the offence principle would require that the two are defined in a way that they are mutually consistent. A principle of respecting beliefs consistent with freedom of speech may thus be formulated as one requiring that persons should be able to profess and practice their beliefs without hindrance, while ensuring a similar liberty to others.

With regards to free speech, the following observations seem pertinent. Conditions for free expression presuppose a framework of equality for everybody under the law. This framework is only a necessary rather than a sufficient condition, for the exercise of free speech. That is to say, the equality principle in itself may not and need not ensure that this freedom is actually exercised. For the freedom to exercise or not to exercise free speech must be an integral element of any theory of freedom. The absence of such an equality under the law, needless to say, places certain groups under a disadvantage when legal intervention becomes mandatory. Given the existence of precedents of prosecution of authors for the supposed offensiveness of their writings it is but natural that the Muslims were anxious to invoke the blasphemy laws for protection.

The demands for the suppression of the book on the grounds of its supposed violation of religious freedom are inadmissible. So long as different communities can profess and practice their religious beliefs freely in the wake of contrary beliefs and opinions voiced by others their religious freedom is on a secure footing. That the controversy is an issue about free speech is a self-evident truism. The repudiation of the demand for the suppression of the book issues from the supposition that

underlying such a demand is a plea for securing protection for religious beliefs and the inherent inconsistency of such pleas with liberal policies.

CONCLUSIONS

Our concern throughout this study has been to establish the sense in which impartiality constitutes the correct interpretation of neutrality. In fact, as the phrase "impartiality as neutrality" suggests, we have been driven to the conclusion that, in an important respect, liberalism can be identified with impartiality. For, we have argued that, a consistent theory of liberalism, must necessarily be one which is non-perfectionist, and, an account of non-perfectionism suitable for political purposes must be impartial between competing conceptions of the good. But the journey towards this destination first required us to clear the deep and muddied waters along the way in successive chapters.

The opening chapter was devoted to explaining what liberalism is not, that is to say, to suggest, how not to defend liberal institutions. We therefore tried to contend with the major obstacle in this direction, the emergence in recent years, of two quite distinctive perfectionist challenges to liberalism. This was necessary in view of the fact that, these accounts set out to provide a defence of liberalism on the basis of perfectionist premises. The seriousness of this challenge is especially ominous in view of the fact that it is couched in a seemingly liberal garb.

As we saw, Joseph Raz, quite emphatically argues in favour of a particular brand of perfectionism as the appropriate interpretation of liberalism. Taking the value of personal autonomy as the fundamental norm of modern industrial societies, Raz sets out, quite unproblematically, to embody it as the perfectionist principle, and, subsequently, to offer it as a defensible liberal position.

The perfectionist presupposition in Raz's account of liberalism is the claim that the state should promote autonomous modes of living among citizens because autonomy happens to be a fact of modern life. His account assumes people, all of whom are autonomous agents, to be endowed with the capacity for personal autonomy, and to exercise choices from a given set of options in order to direct the course of their lives.

The second argument, put forward by Kymlicka, attempts to provide perfectionist justifications without actually questioning liberalism's pre-existing premise of neutrality. Neutral institutions of the liberal state, he says, are defensible, because, they enable people to lead autonomously chosen lives. We contested such an idea, as it begs the question whether neutrality would become redundant if people in a given society did not set a premium on the value of autonomy.

Indeed, Kymlicka goes on to say that if individuals are not capable of exercising their autonomy, the state might be the appropriate instrument to promote this value among its citizens. What his formulation suggests therefore is that, a liberal argument, such as that of neutrality, cannot be defended on the basis of independent premises. In the absence of such premises, Kymlicka's case could be shown to be on offer to defend illiberal conclusions.

Evidently, this is embarking upon a slippery slope, since our account of liberalism is inconsistent with employing the machinery of the state for the promotion of a notion such as autonomy among its citizens. This is because, the value of autonomy, we have argued, is a second-order conception of the good. We argued that it does not take much ingenuity to pin down the perfectionist element in Raz and Kymlicka's formulations in order to expose its illiberal implications.

The incompatibility of anything like perfectionism with liberalism, either at the realm of foundation, or of justification, becomes quite evident when we contrast and closely examine the definitions of the two doctrines. In the introduction to this study, we argued that, by definition, liberal institutions are those which can be made amenable to rational justification for all members within their fold. It follows then that, those institutions which fail this test are illiberal.

As we may recall, in the first chapter, we defined perfectionism as the view that the state should be vested with the responsibility for promoting one or more conceptions of the good life as valid and meaningful for an entire society. But then, the plurality of conflicting conceptions of the good, which characterises modern societies suggests that, a perfectionist principle must necessarily be incompatible with liberalism in the way it has been defined above.

For, in an open society, what could be offered as a rational argument by someone who wanted one of two advocates of mutually incompatible conceptions of the good should give up his own for the sake of the other, or, alternatively, that, the state should enact laws to suppress heterodox views?

A note of caution was issued to clarify the point that, perfectionism, as we have defined it, has many common features with other forms of perfectionism which may thrive in a society. The significant distinction between them being that, state perfectionism requires the arbitrary imposition of a given value to be adopted for an entire society.

However, liberalism, and the specific version of non-perfectionism upon which it is premised, has no dispute with the many perfectionist ideals that individuals and smaller associational groups might pursue as a common goal. Hence, we labelled the

doctrine under attack in this study, as "state perfectionism". The other forms of perfectionism are consistent with liberalism in view of the voluntary nature of the association, which justifies its members embracing the particular perfectionist principle of the collectivity.

Liberalism, understood in terms of perfectionism, obscures the important distinction between the public and private spheres of contemporary societies. For, in both Raz and Kymlicka's accounts, the value of autonomy is posited as a comprehensive goal valid across the political and non-political spheres.

Since personal autonomy happens to be a fact of modern life, it should be promoted quite explicitly by the enactment of laws which would facilitate autonomy-based lives, as with Raz, or, by the state simply remaining neutral among diverse conceptions of the good, as with Kymlicka. Neither of them is prepared to confront the question as to whether any single value can be held as universally applicable in modern societies.

Undoubtedly, there is a long-standing association of liberalism with a certain view about how people should lead their lives. Since our account of liberalism is premised upon the inappropriateness of comprehensive views in general, the unacceptability of autonomy as a constituent element of liberalism is only to be expected. This account entails principally the conventional understanding of liberalism as consisting in leading an autonomous life.

Although traditionally, the association of liberalism with the value of personal autonomy was accepted unproblematically, the more contemporary formulation of liberalism with its emphasis on the idea of neutrality challenges views which tie the

doctrine to any single moral value. Rawls's criticism of Kant and Mill's doctrines as comprehensive views, as we have observed, echoes such a standpoint.

Accordingly we considered different versions of neutrality and also different justifications of that doctrine. This was the reason for arguing in the first chapter that perfectionist arguments cannot provide a justification of liberal institutions. In particular, it was the contention against Kymlicka that the justification for neutrality cannot be that it promotes autonomous lives. The reason why the state should be neutral between the diverse conceptions of the good is that, that is the only way of ensuring that the advocates of diverse conceptions of the good are not treated partially.

We dwelled upon the two leading expositions of perfectionism, principally to illustrate its incompatibility with liberalism. We concluded that liberalism is a non-perfectionist doctrine and as a consequence, it should entail an account of the state's neutrality among conflicting conceptions of the good.

These claims were sufficient to set the stage for an argument in favour of anti-perfectionism as the appropriate foundation of liberalism. We defined anti-perfectionism, broadly, as the view that, the state should not attempt to impose upon its citizens any particular conception of the good. It is quite easy to equate this kind of non-perfectionism with one interpretation of the idea of neutrality, namely, that of justificatory neutrality. But we have shown how the latter is not the relevant interpretation of neutrality.

We need, in addition, to specify whether non-perfectionism is to be construed as a political idea, or as a more universal and all-encompassing conception. Rawls's distinction between comprehensive and political doctrines demarcates two forms of

non-perfectionism. Comprehensive doctrines are those which embody the same rules of conduct as valid for both the political and non-political spheres of a society, whereas, non-comprehensive views are restricted in their scope to the political domain.

Thus, there is not just one version of non-perfectionism, or for that matter, of neutrality. Accordingly, we may distinguish between comprehensive and non-comprehensive non-perfectionism. These different versions of non-perfectionism issue in different versions of neutrality. For example, the definition of non-perfectionism set out above in broad terms, does not necessarily issue in the version of impartialist neutrality.

The distinction between wants and ideals was introduced in order to clarify the contrast between the two strands of non-perfectionism. We dubbed them ideals-based non-perfectionism and wants-based non-perfectionism. For example, the doctrine of utilitarianism is generally speaking, non-perfectionist, because it does not explicitly seek to promote any single conception of the good. It is wants-based since that is the only form in which utilitarianism can purport to be neutral among conceptions of the good. We have argued that it is nevertheless non-neutral among substantive conceptions of the good, since it reduces all of them to a single common denominator of wants. For any version of non-perfectionism to qualify at the same time as neutral, it cannot treat conceptions of the good in the guise of wants. So utilitarianism is a wants-based non-perfectionist doctrine. Ideals-based non-perfectionism produces a more acceptable version of neutrality since it does not take recourse to a common currency such as wants while remaining neutral among different ideals of the good.

The non-perfectionist argument is reinforced through the second part of the study in relation to questions of distributive justice and the controversy concerning the publication of The Satanic Verses. Impartiality contrasts with these other forms of neutrality in that it does not require any lowest common denominator to buttress its neutrality.

But the non-neutrality of autonomy as the perfectionist principle stems from the fact that autonomy is a second-order conception of the good which treats other substantive conceptions of the good as giving rise to wants. An important component of our argument is also that not all forms of non-perfectionism are consistent with liberalism. Although utilitarianism, for example, does not rest upon any perfectionist claim, it entails the difficulty of having to reduce all the diverse conceptions of the good as giving rise to wants. This has the distorting effect of explaining why some conceptions of the good may lose out in decision procedures such as voting or a referendum. The usual answer in such instances is that the loser's conception of the good was not supported by a majority whose wants were in favour of a different conception of the good.

The account of non-perfectionism upon which our doctrine of liberalism rests may conflict with traditional liberal views on certain forms of social legislation directed at the prevention of crime or loss of life. Well-known examples in this area are those pertaining to drug related crime and seat-belts in motorcars. Liberal opposition to these pieces of legislation usually relies upon arguments of unwelcome state paternalism.

However, the conception of impartialist well-being put forward in the third chapter clearly differs from this traditional liberal view. Impartiality rests upon an

implicit account of paternalism according to which only intrusions into people's conceptions of the good could justifiably be construed as paternalism and that steps to prevent injury to the body do not conflict with the basic interest of persons to realise their conception of the good.

We have defined well-being, as entailing the provision of certain objectively defined sets of primary goods and basic capabilities, called substantive goods, for people to be able to promote their subjectively shaped preferences and satisfactions. Additionally, we suggested that those individuals who abnegate these substantive goods should be construed as pathological cases, and that, their grounds for doing so cannot be regarded as holding any inherent moral appeal.

The burden of the argument stemming from the impartialist conception of well-being can only be sustained if we recognise that the preceding responses can be traced back to people's unfortunate parental and social circumstances. Under a regime of impartiality, there would be provision for remedy on grounds of the involuntary nature of these circumstances.

Implications for the project

In our introduction to this study, we suggested that the relevant conception of democracy for the non-individualistic societies of the non-west must firstly contend with the liberal individualistic roots of the concept of western democracy. The absence of any pronounced liberal discourse and argumentation in India, for example, lays bare the pitfalls in applying western theoretical concepts in a straight jacketed manner in historically different societies.

We need to show, in particular, the extent to which, an idea such as neutrality, removed from its original foundations in liberalism, could be held to stand the test elsewhere. But, one of the implications of this study is that, the scope of neutrality need not necessarily be constrained by individualism. If anything, we have suggested that a limitation to the pursuit of neutrality stems from the desire to pursue conceptions of the good without regard to the bounds of justice. This problem is in a sense universal to any society. Therefore, we may dispose off the view that neutrality is, or should be, always tied to individualism.

We may pursue a more meaningful line of enquiry in relation to one important limitation of impartiality, that of addressing people or communities, which may not be favourably disposed to the idea of seeking agreement with different communities on reasonable terms of cooperation. We may wonder, if impartiality has any resources at its disposal to engage in the task of persuading people to cooperate on reasonable terms with one another.

Exponents of the idea of impartiality are generally wary about such a possibility. Brian Barry, for instance, says that fortunately most people are prepared to go to great lengths to ensure that their arguments are accepted by others, and all we can do is to hope that, those who are not disposed to the idea now, will be so one day. But there may be a concrete basis for optimism in this regard, rather than giving hostages to fortune. This source of strength may be tapped from one of the implications of impartiality analysed in chapter three, namely, a particular conception of well-being specific to impartiality.

We observed there that the best case for impartiality is one which could be made out by appealing to a conception of equality in capabilities. By capabilities, we

meant, basic skills which, appropriately endowed, can potentially enable persons to enhance their well-being in a variety of ways. While a basic minimum education is an essential primary prerequisite of persons, suitable employment also constitutes an important element of well-being, in most societies which are still far from securing full employment for their members, it could even be construed as the goal of the abstract idea of well-being.

Let us return to our earlier point about the connection between well-being as the basis upon which to force reasonable terms of agreement. The suggestion here is that, enhancing the well-being of people in relevant respects would place the worst-off in a better bargaining position than they would be otherwise. This would force those people in power to put forward more reasonable terms of agreement for everybody, and considerations of internal stability would be a crucial motivating factor. This is clearly the substance of much of the human rights activist movements in developing societies.

Quite evidently, the circumstances of impartialist well-being are far from being realised under present conditions, and consequently, the socio-political scenario is conflict-ridden in a way that even the most die-hard of optimists can find little basis for hoping that reasonable terms of cooperation are in sight in the foreseeable future. But a way out of this rather bleak scenario cannot most certainly be one, that stems from the view that, all we can do, is to articulate the shared beliefs of the members of a society, and secure stability on that basis.

The perils of such a response are all too visible to anyone who is prepared to take the trouble to dig below the surface of many minority movements around the world.

Shame, one of Rushdie's novels, surveying the nature of Islamic fundamentalism, was given an award in the Islamic state of Iran. Salman Rushdie made a reference to this in a recent interview with the BBC. Recall also that India, and not any Islamic state, was the first to ban The Satanic Verses. These examples, and the protest against the novel, witnessed predominantly in countries with a substantial Muslim minority, indicate something which is perhaps not captured by viewing the protests in one country in isolation. They furnish adequate reasons, and, this is, demonstrably, not the only instance, for us to surmise that a range of grievances among minority populations often find expression in a disguised manner at the slightest provocation. It is not uncommon among minority communities to react to racism in the West in a knee-jerk fashion, leading to their affinity with reactionary forces in their countries of origin.

What we are suggesting is that the wrong issues get identified as a medium to voice grievances for real and valid causes. Surely, there are more important issues which require urgent attention from the powers that be, and conversely, more deep-seated conflicts awaiting resolution, than the publication of an allegedly blasphemous novel. Evidently, it requires more systematic argument to substantiate the rather tentative nature of the claims advanced in the preceding paragraphs. For now, however, we will have to rest content with these loosely articulated ideas and try to build upon them on a later occasion.

Notes:

1. For a lucid account of this development, see, Sudipta Kaviraj, "Democracy and development in India"
2. Bertrand Russell, The History of Western Philosophy. p. 22.
3. Alan Montefiore, Neutrality and Impartiality. p. 217.
4. Bertrand Russell. The History of Western Philosophy. p. 480.

NOTES TO CHAPTER ONE

1. See Aristotle, The Politics, 317 (E. Barker trans. 1958), cited in Jeremy Waldron, "Autonomy and Perfectionism in Raz's Morality of Freedom", p.1102.
2. John Rawls, A Theory of Justice, p.325. Although we have compared perfectionism as defined by both Aristotle and Rawls in this way, we must bear in mind that Rawls's theory of justice as fairness overtly relies upon what he calls the "aristotelian principle" for the rejection of perfectionism.
3. Kymlicka argues that perfectionism need not necessarily be teleological as it can be defined either without including the maximising element, or, by ensuring that maximisation is achieved across the board rather than arbitrarily in some persons at the cost of others, as Marx might have argued. Will Kymlicka, Liberalism, Community and Culture, pp.35-36.
4. John Rawls, "The Priority of the Right and Ideas of the Good", p.256.
5. For a lucid discussion of the above distinction see Kymlicka, "Liberal Individualism and Liberal Neutrality" pp.896-8. Kymlicka of course employs this distinction in order to defend his skewed notion that state neutrality is warranted because social life is non-neutral.
6. John Rawls, "The Domain of the Political and Overlapping Consensus", p.240.
7. John Rawls, "The Idea of an Overlapping Consensus", pp.3-4.
8. See John Rawls, "Justice as Fairness: Political Not Metaphysical", p.248.

9. Brian Barry, Justice as Impartiality, Chapter 3, Section 12. The two comprehensive doctrines compared here are utilitarianism and Thomism.
10. Ibid, pp.249-250.
11. For an extensive argument of this point see Brian Barry, "Rawls's Search for Stability", manuscript.
12. John Rawls, "The Idea of an Overlapping Consensus", p.14.
13. Stephen Mulhall and Adam Swift, Liberals and Communitarians, pp.168-205.
14. See his Equality, Liberalism and Perfectionism, p.165.
15. See Ibid, pp.65-80.
16. John Rawls, "The Priority of Right and Ideas of the Good", pp.263-264.
17. John Rawls, "Kantian Constructivism in Moral Theory", p.517.
18. Brian Barry, Political Argument, p.38. Barry gives three reasons for preferring want-satisfaction rather than pleasure or happiness to characterise the dichotomy. The reason for preferring a want-regarding theory is not because ideals cannot be promoted by the state. It is rather that ideals must not concern the state unless they are publicly-oriented ideals which translate into wants for the purposes of the political calculus. Ibid, pp. 69-71.
19. Joseph Raz, The Morality of Freedom, p.138.
20. Joseph Raz, The Morality of Freedom, p. 136.
21. Ibid, p. 139.
22. Ibid, p.138.
23. John Rawls, A Theory of Justice, p. 302.
24. John Rawls, A Theory of Justice, p.327.
25. Vinit Haksar, Equality, Liberalism and Perfectionism, p.167.
26. John Rawls, A Theory of Justice, p.260.
27. Joseph Raz, The Morality of Freedom, p. 370.

28. Joseph Raz, The Morality of Freedom, p.394.
29. Ibid, p.137.
30. Stephen Mulhall and Adam Swift, Liberals and Communitarians, p.249.
31. Joseph Raz, The Morality of Freedom, p.133.
32. He does not go on to elaborate what makes a choice or conception of the good base from a moral point of view. This is because he believes that decisions about the repugnancy of ways of life should be based on the same moral grounds as any other political decisions. For a useful discussion of this point, see Waldron, "Autonomy and Perfectionism in Raz's Morality of Freedom", p.1130.
33. A theory which likewise entails a strong paternalist claim and yet purporting to be liberal is Arneson's particular brand of "subjectivist" or weak neutrality of procedure: a state may consider it necessary to impose a "restriction of an agent's liberty against her will for her own good, when she herself rejects as a goal the good that is being imposed on her. See his "Neutrality and Utility", p.236.
34. Joseph Raz, The Morality of Freedom, p.423.
35. For a discussion of what is meant by well-being referred to here, see chapter 3 of this study, especially section 3.V.
36. Thus the state's duty to promote autonomy is a contingent matter.
37. Joseph Raz, The Morality of Freedom, p.380.
38. Ibid, p.412.
39. Joseph Waldron, "Autonomy and Perfectionism in Raz's Morality of Freedom", pp.1129-1130.
40. I thank Zoeh for this example.
41. Jeremy Waldron, "Autonomy and Perfectionism in Raz's Morality of Freedom", p.1127.
42. Joseph Raz, The Morality of Freedom, p.391.

43. Stephen Mulhall and Adam Swift, Liberals and Communitarians, p.251.
44. Ibid, p.135.
45. Ibid, p.111.
46. Ibid, p.162.
47. This distinction characterises Margaret Moore's assessment of Raz and Kymlicka's perfectionism. See her Foundations of Liberalism, pp.144-159.
48. See Will Kymlicka, Contemporary Political Philosophy, p. 203.
49. Will Kymlicka, "Liberal Individualism and Liberal Neutrality", p.895.
50. Ibid, p.895.
51. Ibid, p.899.
52. Ibid, p.895.
53. Joseph Raz, The Morality of Freedom, p.158.
54. Ibid, p.162.
55. Peter De Marneffe, "Liberalism, Liberty, and Neutrality," p.259. Raz himself differentiates these two notions of neutrality under the labels strict and less strict neutrality in The Morality of Freedom, p.112. However he mistakenly assumes the stricter version for the purpose of his discussion.
56. But any measures the state undertakes to maintain civil order does not contradict autonomy. The decision to ban the novel in India on the grounds of the maintenance of civil order is merely a pragmatic step.
57. Will Kymlicka, "Liberal Individualism and Liberal Neutrality", in Ethics Vol. 99 no.4 (1989).
58. Joseph Raz, The Morality of Freedom, p.136.
59. John Rawls, A Theory of Justice, pp.328-329.
60. Ibid, p.328.

61. This is one of the central claims of Brian Barry's Justice as Impartiality, (forthcoming) intended to show the superiority of the brand of neutrality derived from justice as impartiality over that issuing from utilitarianism.

NOTES TO CHAPTER 2

1. Leszek Kolakowski, "Neutrality and Academic Values", p.72.
2. Will Kymlicka, "Liberal Individualism and Liberal Neutrality", p.883.
3. See Richard Bellamy, "Defining Liberalism: Neutralist, Ethical or Political".
4. Peter Jones, "The Ideal of the Neutral State".
5. Robert Nozick, Anarchy, State and Utopia, p.33.
6. For a critique of Nozick's theory as non-neutral, see Joseph Raz, The Morality of Freedom, and "Liberalism, Autonomy and the Politics of Neutral Concern".
7. See his "Neutrality and Utility", pp.217-218. It is not at all obvious that a state's non-interventionist stance can yield outcome neutrality although it is arguable that its interventionist policies can be tinkered with to produce equal outcomes.
8. In so far as the government pleaded plain innocence to these developments.
9. Peter Jones, "The Ideal of the Neutral State" pp.14-17. More over, as Rawls points out, to assume a determinate notion of conceptions of the good would seem to vitiate the power of moral persons to exercise "the capacity to decide upon, to revise and rationally to pursue a conception of the good." John Rawls, "Social Unity and Primary Goods", p.165.
10. John Rawls, "The Priority of the Right and Ideas of the Good", p.262.
11. John Rawls, "Social Unity and Primary Goods", p.172.
12. I do not want at this juncture to get entangled with the communitarian objection

that to view the question in terms of a disjunction between persons on the one hand and conceptions of the good on the other is a fallacy of liberal theory. My response to such criticism is simply the following: although conceptions of the good form intricate parts of citizens' lives defining their particular identities, in a multi-cultural society persons have a responsibility to formulate general principles for the functioning of a well-ordered democratic society. It would seem that such principles were of paramount importance for particular identities to find expression in plural societies. If a person's identity is many-sided entailing his role as a member of a family, trade union, socio-cultural group etc., as Michael Sandel is apt to observe, there is no reason why citizenship cannot be included as one more such identity requiring persons to transcend from their other identities when perceiving themselves as citizens of a democratic society.

13. John Rawls, A Theory of Justice, p.112. The veil of ignorance concealing people's knowledge of their own conceptions of the good (besides other aspects of their lives) in the original position provides the necessary background for persons to choose principles of fair cooperation. The assumption is that principles chosen in complete ignorance of one's own conception of the good will be neutral principles.

14. Peter Jones examines the relation between neutrality and persons in his "The Ideal of the Neutral State", pp.10-11.

15. John Rawls, "Fairness to Goodness", p.544.

16. Charles Larmore, Patterns of Moral Complexity, pp.47-49. Barry cites the Rawlsian overlapping consensus as a more recent example of this kind. See his Justice as Impartiality, chapter 8.

17. John Rawls deploys the term *modus vivendi* in "The Idea of an Overlapping Consensus"; see especially pp.9-12.
18. John Rawls, "Justice as Fairness: Political not Metaphysical", p.248. This, according to Rawls, is an important distinguishing feature of liberalism as a political conception of justice from those that affirm the one single good to be recognised by the citizenry as a whole.
19. Peter de Marneffe. "Liberalism, Liberty, and Neutrality", p.253.
20. Jeremy Waldron, "Legislation and Moral Neutrality", p.63.
21. Ibid, pp.67-68.
22. Charles Larmore, Patterns of Moral Complexity, p.45.
23. Bruce Ackerman, "Neutralities", p.29.
24. See Brian Barry, Justice as Impartiality, Vol.2 section 2.
25. Jeremy Waldron, "Legislation and Moral Neutrality", p.62.
26. The term "justificatory neutrality" was introduced by Will Kymlicka suggesting that the state's neutrality towards competing conceptions of the good obtains at the level of the justification of government policies rather than at the outcomes-end of state policy. Such neutrality will necessarily result in unequal consequences for each of them. See his "Liberal Individualism and Liberal Neutrality", p.884.
27. Bruce Ackerman, "Neutralities", p.36.
28. Ibid, pp.883-84.
29. See John Locke, A Letter Concerning Toleration, quoted in Waldron, "Autonomy and Perfectionism in Raz's Morality of Freedom", p.1134.
30. Ronald Dworkin, "Liberalism", p.127. Neutrality for Dworkin is a derivative requirement issuing from the more fundamental principle that the state should treat its citizens with equal concern and respect.

31. Ronald Dworkin, A Matter of Principle, p.206.
32. John Rawls, "The Priority of Right and Ideas of the Good", p.263.
33. Charles Larmore, Patterns of Moral Complexity, p.43 and "Political Liberalism"; Galston, Liberal Purposes, pp.100-103 and Richard Arneson, "Neutrality and Utility".
34. John Rawls, "The Priority of the Right and Ideas of the Good", p.261.
35. Rawls contrasts the latter with perfect procedural justice, one that is characterised by a given criterion of what is just and a procedure is adopted to ensure a said outcome. See his "Kantian Constructivism in Moral Theory", pp.523-524.
36. John Rawls, "The Priority of the Right and Ideas of the Good", p.261.
37. Barry, Justice as Impartiality, chapter 7.
38. Ibid chapter 4.
39. Charles Larmore, Patterns of Moral Complexity, p.44.
40. See Thomas Scanlon, "Contractualism and Utilitarianism", p.110.
41. Ibid, p.111.
42. Brian Barry, Justice as Impartiality, chapter 8.
43. Will Kymlicka, Contemporary Political Philosophy, p.207.
44. Kymlicka and Ackerman assume that autonomy as a conception of the good leads to neutrality. For a refutation of their claims, see Brian Barry, Justice as Impartiality, chapter 5 sec 20. Barry is able to show that autonomy does not lead to neutrality by characterising it as a second-order conception of the good.
45. Brian Barry, Justice as Impartiality, chapter 5 sec 20.
46. Richard Arneson, "Neutrality and Utility", p.228.
47. John Rawls, "The Domain of the Political and Overlapping Consensus", p.244.
48. Brian Barry, Justice as Impartiality, chapter 6.

49. Charles Larmore, Patterns of Moral Complexity, p.51. (The above definition ties in well with the notion of indifference in our negative conception of neutrality.) Larmore claims that his definition of scepticism is non-neutral among conceptions of the good. Barry's point is that scepticism in the way Larmore and himself construe the notion is neutral. It is instead an epistemological doctrine about the different conceptions of the good. He says, "It is, .. a controversial view in that some people would deny it. But there is no way of avoiding the affirmation of a position that is not universally accepted if one is to get anywhere at all." He contests however that Larmore's notion of scepticism underwrites neutrality. See Brian Barry, Justice as Impartiality, chapter 8.
50. Ibid, p.43.
51. Charles Larmore, Patterns of Moral Complexity, p.52. Rational dialogue, he says, is an important constituent of modern western democracies. However he by no means regards that dialogue is always undertaken with the best of intentions or for the realisation of the most constructive of goals.
52. Brian Barry, Justice as Impartiality, Chapter 8.
53. John Rawls, "Justice as Fairness, Political not Metaphysical", p.250.
54. Brian Barry, Justice as Impartiality, chapter 8.
55. John Rawls, "Justice as Fairness, Political not Metaphysical", p.230.
56. See Thomas Nagel, "Moral Conflict and Political Legitimacy", p.229.
57. Charles Larmore, Patterns of Moral Complexity, p.53.
58. Brian Barry, Justice as Impartiality, chapter 8.
59. Thomas Nagel, "Moral Conflict and Political Legitimacy", p.230.
60. Richard Arneson, "Neutrality and Utility", pp.234-235.

NOTES TO CHAPTER 3

1. The question which impartialist neutrality raises is in some respects similar to that addressed by Sen and Williams with respect to utilitarianism. Their question is, does distributive equality require us to rely upon a single criterion for action? See the introduction to A.K. Sen and B. Williams (Eds). Utilitarianism and Beyond.
2. We may, as Cohen suggests, construe the two equalisandum criteria discussed here as weak equalisandums, that is, as cognitive of the competing claims of other non-egalitarian values. Cohen, "On the Currency of Egalitarian Justice", pp. 908-9. Dworkin however assumes throughout his discussion the priority of equality of resources over every other desiderata. See his "Equality of What? Part II. Equality of Resources".
3. See Bruce Landesman's "Egalitarianism".
4. For a discussion of the difficulties involved in construing well-being simply as utility see Amartya Sen, "Agency and Well-being". The difficulty arises from the different meanings that the term utility denotes, namely, happiness, desire-fulfilment and choice.
5. John Rawls, A Theory of Justice, p.312.
6. Indeed, we may go as far as supposing Rawls to be implying that while their extra effort is itself partly influenced by their natural abilities, why should the latter be rewarded?
7. For helpful reflections on these, see G.A. Cohen, "On the Currency of Egalitarian Justice", pp. 914-915.

8. John Rawls, "Social Unity and Primary Goods", p.162. Richard Arneson lists the same goods in the three categories of resources. See his "Equality", p. 491.
9. Thomas Scanlon, "Contractualism and Utilitarianism", p.108.
10. Thomas Scanlon, "Preference and Urgency", p.656. Scanlon identifies three criteria that an adequate account of well-being must satisfy. Such an account must be agreed upon by those to whom it is addressed, it should allow ample room for variations in individual tastes and interests, and it should be able to specify the varying effects on persons possessing divergent goods. Ibid pp. 655-656. Only the latter two stipulations are of immediate relevance to the present discussion. He cites hedonistic utilitarianism as an example of the subjective notion of well-being.
11. Amartya Sen, "Utilitarianism and Welfarism", p.464.
12. John Harsanyi, "Morality and the Theory of Rational Behaviour", In A.K. Sen and B. Williams (Eds.) Utilitarianism and Beyond, P. 55.
13. Ronald Dworkin, "What is Equality? Part 1: Equality of Welfare", p.186.
14. See G.A. Cohen, "The Currency of Egalitarian Justice", pp.909-910.
15. Thomas Scanlon, "Preference and Urgency", p.658.
16. Bruce Landesman, "Egalitarianism", p.31.
17. See his "Value, Desire and the Quality of Life" in Martha Nussbaum and Amartya Sen (eds.) The Quality of Life, pp.188-189 quotation from p.188. He characterises Rawls's primary goods as deriving from a substantive conception of well-being.
18. Brian Barry, Justice as Impartiality, Chapter 6.
19. See his "Egalitarianism". But Landesman's objection is merely to Rawls's silence in A Theory of Justice to the problem of hard-cases on distributive justice. But once

this problem is addressed by the egalitarian, Landesman's own proposal is for an equality of resources scheme.

20. Ronald Dworkin, "What is Equality? Part I: Equality of Welfare", p.186.

21. John Rawls, "Social Unity and Primary Goods", in A > K. Sen and B. Williams Eds. *Utilitarianism and beyond*.

22. Ronald Dworkin, "What is Equality? Part II: Equality of Resources", pp.304-305.

23. Will Kymlicka, Liberalism, Community and Culture, p.37.

24. Brian Barry, Justice as Impartiality, Chapter 6.

25. On what may reasonably be construed egalitarian and non-egalitarian objections to equality, see G. A. Cohen, "On the Currency of Egalitarian Justice".

26. Ibid p.916.

27. Ronald Dworkin, "What Is Equality? Part 2: Equality of Resources" p. 288.

28. Richard Arneson, "Equality and Equality of Opportunity for Welfare", p.77.

29. Rawls's offensive and expensive tastes criticisms are addressed to two versions of welfarism. The former is addressed in Rawls's critique of utilitarianism where, as Amartya Sen points out, welfarism constitutes its body. The offensive tastes criticism is that the satisfaction accruing to persons by discriminating against others should not count equally with other satisfactions in the calculus of justice. The expensive tastes criticism which is directed at the welfare egalitarian is of immediate concern to us.

30. John Rawls, "Social Unity and Primary Goods", pp. 168-69.

31. Ronald Dworkin, "What is Equality? Part 2: Equality of Resources", p.288.

32. Thomas Scanlon, "The Significance of Choice", p.192.

33. See his "Chance, Choice and Justice", p.144.

34. John Rawls, "Social Unity and Primary Goods", p.168.

35. Thomas Scanlon, "The Significance of Choice", p.195.

36. To be sure, such knowledge will detract persons from indulgence only in the case of tastes for certain kinds of goods, say extrinsic goods, and not for others, intrinsic goods. However the point that considerations of cost might be of little relevance from the point of view of the conceptions of the good from which persons' tastes flow is inadmissible from the standpoint of impartiality.

37. Richard Arneson, "Equality and equal opportunity for welfare", p. 79.

38. Barry defines a choicist as one who recognises the role of both choice and chance in persons' lives, but tries to minimise the effect of chance. He presents an anti-choicist as the converse of a choicist, someone who admits the importance of both, but nevertheless tries to show that ultimately chance trumps choice almost entirely. The middle ground is taken up by the semi-choicist who is disposed to get behind peoples' choices, to their beliefs and desires, and at the same time abandons the anti-choicist position that everything in the end is a matter of chance. See his "Chance, Choice and Justice", pp.156-8.

39. Richard Arneson, "Equality and Equal Opportunity for Welfare", p.85.

40. G.A. Cohen, "On the Currency of Egalitarian Justice", p. 916.

41. Ibid p. 916.

42. Egalitarians agree on that point, but they have little doubt that their response to disabilities is induced independently of the welfare deficiency to compensate for the shortfall in resources.

43. Ronald Dworkin, "What is Equality? Part 2: Equality Of Resources", p. 302.

44. Ibid, p.303.

45. Cohen's objection is persuasive, but it stems from his concern to treat pain and frustrations as forms of ill-fare, which themselves justify compensation.

46. For views underlying the notion of responsibility presented here, see Brian Barry, "Chance, Choice and Justice", and G.A. Cohen, "On the Currency of Egalitarian Justice", p. 927.
47. See his discussion of the example where Paul loves photography and Fred loves Fishing, for this point, in his "On the Currency of Egalitarian Justice", pp. 923-924.
48. Ibid, p. 922.
49. Amartya Sen, Choice, Welfare and Measurement, p.365, quotation from p.368.
50. G.A. Cohen, "On the Currency of Egalitarian Justice", p. 944.
51. John Roemer, "The Mismatch of Bargaining Theory and Distributive Justice".
52. Landesman includes lack of basic education as an important social deprivation which may justify compensation. See his "Egalitarianism".
53. Amartya Sen, Resources, Values and Development, pp.315-316.

NOTES TO CHAPTER 4

1. One may anticipate immediate hurdles to such an endeavour. For instance, one could ask if the controversy really reflects a conflict amongst conceptions of the good. The answer is that the range of views that have been espoused on the central questions concerning the controversy may be seen as stemming from conceptions of the good that are incompatible with one another. The view that complies with the recommendations of impartiality, and in that sense independent of all conceptions of the good is the law commission's recommendation to abolish the current English Blasphemy laws. The suggestion by the Bishop of London's report to replace the Blasphemy laws with a new statutory offence protecting all religions, and the Muslims

demand calling for extending these laws may be viewed as a claim to provide special status for theocentric conceptions of the good.

2. The relevance of this distinction between the form and substance of the novel will become important when we discuss the offence principle.

3. Important figures from other (non-Muslim) religions who expressed sympathy with the Muslim cause included the Archbishops of Canterbury and York, spokesmen for the Vatican, the American evangelist, Billy Graham, and leading rabbis in Britain and Israel.

4. Albert Weale, "Freedom of Speech vs Freedom of Religion?", pp.49-58.

5. An argument from this standpoint is presented in Preston King, "Rushdie and Revelation".

6. From an anti-foundationalist perspective, Susan Mendus has argued that "defences of free speech in terms of rationality and choice are defective because the moral beliefs which we hold, and which define what we are, are not primarily objects of choice; nor are they the deliverances of an abstract rationality". See her "The Tigers of Wrath and the Horses of Instruction", p.15.

7. Even more remotely, the controversy has been portrayed as echoing the hostilities of recent decades between western civilization and orientalist Islam. Shabbir Akhtar who has emerged as one of the leading spokesman of the Moslem cause views the controversy not the least as an issue about the legal limits to freedom of expression but as a global conflict between western secularism and Islamic fundamentalism. Shabbir Akhtar, Be Careful with Muhammad!, The Salman Rushdie Affair. There are however western commentators such as Richard Webster who see the dispute as not between freedom and religious fundamentalism, but essentially as one between two

kinds of rigidity, two forms of fundamentalism. See his A Brief History of Blasphemy: Liberalism, Censorship and "The Satanic Verses".

8. Bhikhu Parekh objects to the use of apparently synonymous terms such as "multi-cultural", "multi-racial" and "multi-ethnic" to refer to modern-day British society. He provides a persuasive defence for his preference for the term multi-communal or plural. See his "Britain and the Social Logic of Pluralism" in Bhikhu Parekh (ed.) Britain: a Plural Society.

9. Peter Jones addresses the Rushdie affair in terms of some of these issues in his "Respecting Beliefs and Rebuking Rushdie". Charles Larmore contrasts respecting beliefs from respecting persons in his Patterns of Moral Complexity, pp. 60-63.

10. The term "liberal policy prescriptions" is Barry's coinage. See his "How Not to Defend Liberal Institutions".

11. Bhikhu Parekh addresses the Rushdie affair in relation to the question of citizenship in a plural society in his "The Rushdie affair: an agenda for political philosophy".

12. Pir Mahroof Hussain, quoted in New Statesman and Society, p.14.

13. Albert Weale, "Freedom of Speech vs Freedom of Religion".

14. Albert Weale, *Ibid.*, pp.56-57.

15. Parekh highlights significant departures from the principle of formal equality and uniformity of procedure in the English law in relation to the religious practices of different religions. See his "Britain and the social logic of pluralism", p.73.

16. Syed Shahabuddin, "Letter", in The Rushdie File, p.47.

17. the idea of respecting beliefs may be viewed as an extension of the notion of respecting persons. The idea of the equal respect due to persons has received a good

deal of attention in recent years. It is a rights-based notion and is familiar in the writings of John Rawls, Ronald Dworkin and Bruce Ackerman. The idea is that we respect persons as such, whatever their personal predilections because they are sentient beings. It thus implies a recognition on the part of each citizen of the other's status as a human being. This we ought to do in spite of our sharing no more common beliefs than those basic to this fact. John Rawls, A Theory of Justice; "Kantian Constructivism in Moral Theory"; Ronald Dworkin, Taking Rights Seriously and A Matter of Principle; Bruce A. Ackerman, Social Justice in the Liberal State.

18. Peter Jones, "Respecting Beliefs and Rebuking Rushdie", p.423.

19. Bhikhu Parekh, in New Statesman and Society, 24 March 1989, p.33.

20. Shabbir Akhtar, in The Rushdie File, p.240. Similarly, in challenging Gay News for blasphemous libel in 1977, Mrs Mary Whitehouse said, "I simply had to protect our lord" in New Statesman, 15 July 1977, p.74.

21. Bhikhu Parekh, "The Rushdie Affair: Research Agenda for Political Philosophy", p.705.

22. See his second introductory to Law, Blasphemy and the Multi-Faith Society - Report of a seminar organized by the commission for Racial Equality and Inter Faith Network Of the United Kingdom. September (1989), p.27.

23. See The Rushdie File, p.251.

24. Peter Jones considers the implausibility of an argument along these lines for a defense of the principle of respecting beliefs in his "Respecting Beliefs and Rebuking Rushdie", pp.427-429. The point is that beliefs, unlike persons, have an independent autonomous entity of their own and as such an attack on beliefs cannot be construed

as an attack on persons who subscribe to them. For a discussion on the autonomy of beliefs, see his "Liberalism, Belief and Doubt", p.52.

23. Peter Jones, "Respecting Beliefs", p.420 and "Blasphemy, Offensiveness and the Law", p.138.

26. Peter Jones, "Respecting Beliefs and Rebuking Rushdie", p.426.

27. Michael Ignatieff, "Defenders of Rushdie tied up in knots", p. 13. Susan Mendus echoes the same view in her "The Tigers of Wrath and the Horses of Instruction", pp.3-17.

28. Peter Jones, "Respecting Beliefs and Rebuking Rushdie", p.418.

29. Ibid, pp.427-429.

30. Declaration of the Islamic Conference Organization, The Times, 18 March 1989.

Peter Desousa views the publication of the book itself as a violation of peoples' rights in view of the consequent riots resulting in the loss of property and even lives of innocent persons. He has thus defended the ban on the Satanic Verses by invoking Mill's harm principle in his "Liberty and the Banning of a Novel in India". Paper presented at the Research Committee on Political Philosophy's colloquium on Political Theory, Citizenship and Multi-Culturalism at the London School of Economics and Political Science, London, (29 - 30 May, 1992).

31. Peter Jones, "Respecting Beliefs and Rebuking Rushdie", pp.429-430.

32. See Barry, Justice as Impartiality, Chapter 6 for a discussion of the implications of neutrality for the freedoms of sexual expression and religious practice.

33. See H.L.A. Hart, Law, Liberty and Morality.

34. Peter Jones, "Respecting Beliefs and Rebuking Rushdie", p.423.

35. Joel Feinberg, Social Philosophy p.28.

36. Joel Feinberg, The Moral Limits of the Criminal Law, vol.2, Offence to Others, p.35. Peter Jones echoes a similar view in his "Blasphemy, Offensiveness and the Law", p.139. This is not altogether to deny the prevalence of a host of reasonable offenses, Feinberg p.36, but merely to point out some of the resulting dangers of applying the category of reasonableness for legislative purposes.

37. Peter Jones, "Respecting Beliefs and Rebuking Rushdie", pp.433-435; and "Blasphemy, Offensiveness and the Law", pp.141-143, and Albert Weale, "Freedom of Speech vs. Freedom of Religion", p.56.

38. Joel Feinberg. The Moral Limits of the Criminal Law, Vol.II, Offense to Others, pp.40-44.

39. Ibid p.39.

40. For examples of the use of this distinction in the English law of blasphemy, see Peter Jones, "Respecting Beliefs and Rebuking Rushdie" p.433 and notes there below and also his "Blasphemy, Offensiveness and the Law", pp.141-144. In the latter, Jones discusses a trial which parallels the Rushdie affair in terms of the difficulty of drawing the matter manner distinction. The way the matter/manner distinction has been applied hitherto suggests that what constitute a violation of faith is the irreverence to the deity rather than merely questioning a particular doctrine.

41. Joel Feinberg, Social Philosophy, p.40.

42. See Joel Feinberg, The Moral Limits of the Criminal Law, vol.2 Offence to Others, p.32. These easily and effectively avoidable offenses and some culturally determined reactions such as the sight of nude bodies, public defecation and disgusting food which constitute cases of nonreasonable offense, not discounting their unpleasantness, do not reasonably warrant protection from the state. Ibid p.32.

Culturally determined reactions are discussed under the head of harmless but disliked mental states in Feinberg, Social Philosophy, p.29. For examples of instances of offenses, both avoidable and unavoidable without inconvenience see the catalogue of offended conditions in Offence to others, pp.10-13 and p.32. Scanlon too appeals to the idea of reasonable avoidability as precluding the prevention of certain harms. See his second lecture in the Tanner Lectures on Human Values, p.194.

43. Ibid pp.33-34. But Feinberg also observes that even such abnormal sensibilities can claim protection against harassment if the sole purpose of the conduct in question is to cause offence, Ibid pp. 41-42.

44. Joel Feinberg, Social Philosophy, pp. 32-33.

45. Joel Feinberg, Social Philosophy, p.27.

46. Scanlon brings out this point in relation to the potential to deeply and irredeemably influence persons by various forms of expression. See his "Freedom of Expression and Categories of Expression", pp.144-145.

47. On the hazards of applying the public private distinction see Peter Jones, "Blasphemy, Offensiveness and the Law", p.141, and Feinberg, Offence to Others, p.40.

48. According to the Law Commission working papers No.79 "Publication may be oral or written; if the former, the offence is blasphemy, if the latter, blasphemous libel".

49. However the two connotations have overlapped in several instances as for example in the conviction of John Taylor in 1676 when the latter's calling Jesus Christ a bastard and a whore-master was not only interpreted as an offence against God and religion, but equally as a crime against the law and the government of the

land. Taylor's conviction is discussed in Simon Lee's first introduction to Law, Blasphemy and the Multi-Faith Society" - Report of a seminar organized by the Commission for Racial Equality and Inter Faith Network Of the United Kingdom. September (1989) p.6.

50. Taken from "Law, Blasphemy and the Multi-Faith Society" - Report of a seminar organized by the Commission for Racial Equality and Inter Faith Network Of the United Kingdom. September (1989) p.8.

51. Albert Weale advances a similar argument in his "Freedom of Speech vs Freedom of Religious", p.58.

52. Keith Ward, a Minister in the church of England, expressed deep ambiguity over the legal prohibition of the offense duly recognising the inequity in its present form. He attributes his reservation to the conflicting perceptions of the relation between religion, morality and law in different religions and different sects within the same religion. For examples see his third introductory to Law, Blasphemy and the Multi-Faith Society" - Report of a seminar organized by the Commission for Racial Equality and Inter Faith Network Of the United Kingdom. September (1989), pp.30-39, especially pp.31-33.

53. See Yaqub Zaki, The Times (28 February 1989).

54. The term fundamentalism has been defined by Shabir Akhtar in the following words: "the scriptural canon contains a basic source of wholly correct guidance'.

Shabir Akhtar Be Careful with Muhammad!, The Salman Rushdie Affair, p.97.

55. Brian Barry, "How Not to Defend Liberal Institutions", p.55.

56. Ibid, p.46.

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