Liberalism, Autonomy, and Moral Conflict

Stephen Gardbaum*

In this article, Professor Gardbaum presents an account of liberalism in which a particular conception of the ideal of autonomy is an essential and constitutive value. This account, which distinguishes between the liberal state’s relative indifference as to which substantial ways of life its citizens choose to adopt and its promotion of choice as the basis on which they are adopted, provides the basis for Professor Gardbaum’s distinctively liberal critique of political liberalism and its requirement of state impartiality toward its citizens’ conflicting ideals, including the ideal of autonomy. He argues that by taking the central task of political theory to be that of accommodating the “problem” of moral conflict in society, political liberalism misconceives the essential nature of the liberal enterprise. Such dissensus should be understood less as the problem to which liberalism is the solution than as the characteristic product of the liberal commitment to the ideal of autonomy. Accordingly, he contends, political liberalism’s attempt to justify liberal political principles without relying on controversial ideals fails. Professor Gardbaum claims that freeing the liberal state from the false constraint of impartiality permits it to take its duty to enhance choice seriously, which means that autonomy should be promoted as a substantive rather than only as a formal value.

INTRODUCTION

For much of the last fifteen years, a leading group of political and legal thinkers has conceived of the central task of liberal political theory as accommodating the moral conflict typically found in modern western societies. Although there are certainly important differences among the members of this group, they share the position that the best and only justifiable conception of liberalism—which has come to be known as “political liberalism”—is one that both takes the lack of consensus on moral ideals to be the fundamental problem of political theory and offers a particular solution to this problem. This solution is to ensure that the actions of the state do not privilege or presuppose the

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* Associate Professor, Northwestern University School of Law. B.A., Oxford University, 1980; M.Sc., University of London, 1985; Ph.D., (political theory), Columbia University, 1989; J.D., Yale Law School, 1990.

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superiority of any of the competing moral ideals affirmed by its citizens;¹ in this specific sense, it practices genuine, or strong, neutrality among them.²

Political liberalism explicitly defines itself in contrast to a second, and more traditional, conception of liberal political theory. This conception, which has recently come to be labeled “comprehensive,” “perfectionist,” or “ethical liberalism,”³ takes its central task to be that of specifying how the state may fulfill its general duty of enhancing the moral lives of its citizens, while respecting certain values that are constitutive of liberal political practice, such as tolerance, individual freedom, and equality. Many proponents of comprehensive liberalism solve this problem by holding that individual autonomy is the distinctively liberal moral ideal that the state has a duty to promote, and that privileging this ideal necessarily implies a significant measure of tolerance and constraint toward particular substantial ways of life.⁴

The debate between proponents of these two conceptions of liberalism has held center stage in political theory over the last few years. At this point in its

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¹ See John Rawls, Political Liberalism xix (1993) (“[P]olitical liberalism . . . has to be impartial . . . between the points of view of reasonable comprehensive doctrines.”); see also Charles E. Larmore, Patterns of Moral Complexity 43 (1987) (“The ideal of neutrality can best be understood as a response to the variety of conceptions of the good life.”).

² In addition to Rawls and Larmore, on whom I mainly focus in this article, other prominent political liberals include Bruce Ackerman, Brian Barry, and Thomas Nagel. See, e.g., Bruce A. Ackerman, Social Justice in the Liberal State (1980) [hereinafter Social Justice] (arguing for the constraint of “neutral dialogue”); Brian Barry, Justice as Impartiality (1995); Bruce Ackerman, Political Liberalisms, 41 J. Phil. 364, 385 (1994) (reviewing Rawls’ Political Liberalism as “a dispute within the family”); Brian Barry, In Defense of Political Liberalism, 7 Ratio Juris 325, 328 (1994) (describing a principle of “constitutional neutrality” that does not favor any one conception of the good); Thomas Nagel, Moral Conflict and Political Legitimacy, 16 Phil. & Pub. Aff. 215, 237-40 (1987) (arguing that the institutional framework within which citizens pursue political and social ends must be constructed of “impartially justifiable” values).

³ Ronald Dworkin appears to have left the political liberal camp in the last few years. Compare Ronald Dworkin, Liberalism, in Liberalism and Its Critics 60, 64-65 (Michael J. Sandel ed., 1984) (defining liberalism by a commitment to political decisionmaking independent of competing conceptions of the good life) with Ronald Dworkin, Foundations of Liberal Equality, in 11 The Tanner Lectures on Human Values 1, 3-7, 90, 110-18 (Grethe B. Peterson ed., 1990) (developing philosophical foundations for liberal political principles from a general and comprehensive account of what it means to live well).

⁴ Liberal opponents of political liberalism have been labeled “comprehensive” or “ethical” liberals because they believe that liberalism incorporates a conception of the good whose scope is not limited to the political sphere. The “perfectionist” label stems from its adherents’ belief—the denial of which is constitutive of political liberalism—that the state has a duty to promote the good life.

Although I most frequently use the term “comprehensive liberalism” to express the second conception of liberalism, I do so more to follow the developing custom than out of preference. I actually think “perfectionist liberalism” better reflects the difference between the two conceptions of liberalism.

⁴ For examples of recent work that can be said to fall within the camp of comprehensive liberalism, see William A. Galston, Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State (1991) (arguing that liberalism is committed to a distinctive conception of the human good); Michael J. Perry, Love and Power: The Role of Religion and Morality in American Politics (1991) (arguing for an “ecumenical” rather than a neutral political dialogue); Joseph Raz, The Morality of Freedom (1986) (presenting a perfectionist account of political morality); see also Stephen A. Gardbaum, Why the Liberal State Can Promote Moral Ideals After All, 104 Harv. L. Rev. 1350, 1353 (1991) (defending comprehensive liberalism by showing the gaps in the case for neutrality).

Among those comprehensive liberals who have urged the promotion of autonomy are Gerald Dworkin and Joseph Raz. See Gerald Dworkin, The Theory and Practice of Autonomy 29-33 (1988) (presenting and defending as normatively valid a particular conception of autonomy); Raz, supra, at 133, 424-29 (arguing for the perfectionist promotion of personal autonomy).
development, an informed observer of the debate might well conclude that two of its features stand out in particular. First, it is unclear what (if anything) of practical consequence hangs on its outcome. A predictable pattern of attempting to add synthesis to thesis and antithesis has unfolded, blurring the once seemingly straightforward differences between the two conceptions. In particular, the debate increasingly seems to be about the justification of liberalism rather than its content. Many comprehensive liberals claim that in order for the state to privilege and promote the ideal of autonomy, it must remain neutral among competing substantial ways of life. And, as already mentioned, political liberalism requires state neutrality among competing moral ideals because it prohibits the state from privileging any of them. Thus, the distinction between merely instrumental and genuine neutrality that divides the two camps appears to concern only the proper type of justification that must be provided for state neutrality—partisan or impartial—and not what each conception permits or requires a liberal state to do.\(^5\)

Moreover, the observer might continue, it is not entirely clear if the two conceptions of liberalism differ as to whether the state may promote the ideal of autonomy.\(^6\) But even if they do, and even if this affects the actions that each permits a state to take, this difference still has few practical consequences. Political liberalism simply privatizes the pursuit of autonomy: It does not allow autonomy (or any other controversial ideal) to become the "established church" of the liberal state. But since the state cannot (logically) force individuals to live autonomously in the first place, no loss of autonomy is caused by its political banishment.

The second prominent feature of the debate that might strike our hypothetical observer is the extent to which comprehensive liberals have refrained from engaging the arguments of their opponents in the distinctive terms of their own substantive conception of liberalism. Although they have certainly not been slow in presenting critiques of political liberalism, comprehensive liberals have tended to frame these critiques in terms that could be (and have been) advanced by nonliberals.\(^7\) The apparent strategy has been first to debate the abstract

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5. Statements by political liberals that the task of political liberalism is to provide the appropriate justification of state neutrality confirm this impression. See, e.g., Charles Larmore, Political Liberalism, 18 Pol. Theory 339, 346 (1990) ("The task of liberal theory today is to see how the principle of state neutrality can be justified without having to take sides in the dispute about individualism and tradition."); see also Larmore, supra note 1, at 53 ("If liberals are to follow fully the spirit of liberalism, they must also devise a neutral justification of political neutrality.").

6. It might be argued that political and comprehensive liberalism need not differ even as to whether state promotion of the ideal of autonomy itself is permissible, but again only as to the proper justification of such promotion: that is, whether autonomy is to be understood and justified as a limited, purely political, value or as part of a comprehensive moral conception with scope over the whole of life. For my response to this argument, see text accompanying notes 23-24 infra.

7. This point applies to my own earlier critique of political liberalism. According to Lawrence Solum:

Gardbaum’s criticism is voiced from the perspective of a comprehensive liberal. That is, Gardbaum advances liberalism as a conception of the good life and not only as a political conception of justice. However, Gardbaum’s points could be advanced by a nonliberal critic of Rawls, e.g., a communitarian or an advocate of a religious state.

Lawrence Solum, Pluralism and Modernity, 66 Chi.-Kent L. Rev. 93, 95 n.21 (1990).
claims of the strongly neutral versus the perfectionist state in general, with the aim of showing the former to be impossible or misguided in principle, and only then to specify—independently of, and without reference to, the prior critique—the particular version of the liberal perfectionist state that should fill the newly cleared theoretical space.  

One result of this failure to engage political liberalism in more positive terms has been to effectively form a common front with, and provide a free ride to, nonliberal critics, whose very point is to show that liberalism—and the constraints that typify a liberal state—should be rejected. A second, and more important, result has been the failure of comprehensive liberals to present the most telling and useful type of critique of political liberalism. Such a critique is not merely negative in content and indeterminate in political consequences, but is embedded in, and thus provides support for, a properly conceived comprehensive liberalism.

In this article, I first dispel the notion that the debate between the two conceptions of liberalism concerns only two different justifications of the same political outcome, and then offer a distinctively liberal critique of political liberalism. In Part I, I set out the basic argument for political liberalism, which is an essential prerequisite for understanding its content. In Part II, I explain the fundamental differences in content between the two conceptions. Although each involves some type of state neutrality, it is not the same type. What each requires state neutrality with respect to differs greatly and so, consequently, do political outcomes based upon them. Whereas political liberalism mandates state neutrality both with respect to the substantial ways of life affirmed by its citizens and the second-order issue of how or why citizens come to affirm them, the best version of comprehensive liberalism specifically privileges choice at the second-order level over such alternative bases for affirming ways of life as tradition, custom, and authority.

Moreover, I demonstrate in Part II.C that the two conceptions are not only importantly different in content, but are also incompatible in practice. Contrary to the implicit view that the privatization of autonomy makes no practical difference, political liberalism significantly inhibits the realization of individual autonomy. This is because genuine commitment to this ideal entails certain affirmative duties on the part of the state to counter societal barriers limiting the most widespread exercise of autonomy.

Finally, Part III presents a distinctly liberal critique of political liberalism, a critique which is embedded in, derives from, and ultimately vindicates, the substantive conception of liberalism developed in the previous part of the article.

8. For example, both Galston and Raz present their critiques of political liberalism and positive conceptions of liberalism in separate parts of their books. Galston, supra note 4; Raz, supra note 4.

9. See Gardbaum, supra note 4, at 1352-53 (arguing that the neutral characterization of liberalism "cedes vast and unnecessary rhetorical ground to antiliberals by allowing them to attack liberalism for moral emptiness").

10. This, of course, is not to deny that two different justifications are involved. Once the two conceptions of liberalism are shown to have different contents, the task remains of providing a justification for one rather than the other. The point here is whether the debate is only about justification.
This critique suggests that the very task of accommodating the problem of moral conflict, which political liberalism identifies as central to liberal political theory (and by which it defines itself), and not merely the solution that it proposes, is fundamentally misguided and betrays a profound failure to capture the distinctive spirit of the liberal project. While it is true that liberalism and moral conflict typically go hand in hand, political liberalism has the theoretically important connection between the two exactly the wrong way round. Liberalism should be understood less as the response to moral pluralism than as its sponsor, protector, and cause. Accordingly, rather than exclusively and vainly seeking to accommodate, constrain, and overcome the fact of reasonable pluralism and the political problem that it is taken to pose, liberal political theory should acknowledge, embrace, and celebrate the extent to which its constitutive commitment to the ideal of autonomy contributes creatively to the achievement of moral diversity and value pluralism.

I. The Basic Argument for Political Liberalism

Normally, one would expect to be able to understand the content of a political theory independently of the arguments for it. In the case of political liberalism, this is not really so: Its content is best understood by appreciating the distinctive and elegantly simple chain of reasoning of which it is the conclusion. Accordingly, before starting my analysis of the contents of the two conceptions of liberalism in Part II, I first present this chain of reasoning.

Although never explicitly expressed in this form in the writings of its proponents, the following syllogism states the basic argument for political liberalism:

(1) *The liberal principle of legitimacy.* Only principles of political association that all citizens may reasonably be expected to endorse are justified;

(2) *The fact of reasonable pluralism.* Our society is permanently characterized by the fact that citizens affirm a diversity of reasonable yet incompatible comprehensive religious, moral, or philosophical doctrines and ideals,

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11. This syllogism reconstructs the arguments for political liberalism contained in the writings of its major proponents. See, e.g., Rawls, *supra* note 1, at 3, 10, 134-40; Larmore, *supra* note 5, at 340-42; see also Barry, *In Defense of Political Liberalism, supra* note 2, at 325-29. According to Barry:

The argument in favor of "constitutional neutrality"... starts from the premise that there is no conception of the good that cannot reasonably be rejected... It is then posited that we should seek to find principles governing constitutional essentials that could not reasonably be rejected. The conclusion to be derived is that only the principle of neutrality has the ability to general "constitutional essentials" that could not reasonably be rejected.

*Id.* at 328.

12. This is the term that Rawls uses to describe the major premise. Rawls, *supra* note 1, at 137.

13. This is how Rawls expresses the major premise of the argument. See *id.* at 137. Other political liberals do so slightly differently. Thus, Larmore argues that "the political principles to be established must be ones which are justifiable to everyone whom they are to bind." See Larmore, *supra* note 5, at 351. Brian Barry states "that we should seek to find principles governing constitutional essentials that could not reasonably be rejected" by anyone. Brian Barry, *In Defense of Political Liberalism, supra* note 2, at 328.
which means that no particular one of them satisfies this stated criterion of legitimacy; therefore:

(3) Political liberalism. In place of political principles based on such controversial doctrines and ideals, a more limited conception of justice must be constructed on principles that do not privilege any of them, the scope of which encompasses not the whole of life but only the basic institutions of society. Only this "political not metaphysical" conception of justice can command the reasonable assent of all citizens.

In order to avoid ambiguity and to clarify the essential content of political liberalism at the outset, it is important to distinguish two different claims that the term "the fact of reasonable pluralism" might be taken to express. The first is a moral claim that can usefully be referred to as the truth of pluralism: It is a moral fact that a variety of valid and incompatible moral ends and values exist, which do not ultimately form a coherent whole. This sense of "pluralism" is, among contemporary political thinkers, particularly associated with Isaiah Berlin, and from it he derives a particular argument for liberalism. The truth of pluralism is what makes individual freedom to choose ends both necessary and valuable; if there were either a single valid end or an ultimate harmony of ends, freedom of choice would be unnecessary and might result in choosing falsehood. Freedom of choice, in turn, presupposes a minimum amount of "negative liberty," an area in which individuals exercise choice free of social accountability.

This moral claim forms no part of political liberalism, for it is itself an example of a controversial comprehensive doctrine that not all reasonable people are obliged to accept. Political liberalism makes a quite different claim when it refers to "the fact of reasonable pluralism"; namely, an empirical or sociological claim about the comprehensive doctrines actually held by the citizens of a particular society or particular type of society, rather than a claim about the truth or validity of those doctrines. Accordingly these two claims are entirely independent of each other.

The fact of reasonable pluralism (understood in the empirical sense) forms the minor premise in the basic argument for political liberalism and constitutes the problem that political liberalism is specifically designed to solve. Indeed,

14. See Rawls, supra note 1, at xvi-xvii (1993) (describing "the fact of reasonable pluralism"—citizens' incapacity to affirm compatible comprehensive doctrines—as the "serious problem" liberal political theory must accommodate).
15. See id. at 4-11.
17. See Rawls, supra note 1, at xix-xx ("[Political liberalism] does not criticize, much less reject, any particular theory of the truth of moral judgments."); Larmore, supra note 5, at 340. According to Larmore's conception of pluralism:

[There are many valid forms of human self-realization. [Pluralism] is itself an affirmation about the nature of the good life. More relevant is the fact that whether the different forms of the good can be ranked, and if so how, is one of the items about which reasonable disagreement tends to thrive.

Id.
18. See, e.g., id. at 353 ("[Political liberalism is ] an appropriate response to the problem of reasonable disagreement about the good life.") (emphasis added); see also note 14 supra.
the putative justification and *raison d'être* of political liberalism is its *unique* ability to solve this problem. Unlike all other political theories and conceptions of liberalism (based as they are on particular comprehensive ideals), political liberalism claims that it alone provides principles that should be reasonably acceptable to all citizens, regardless of their comprehensive views. It alone is specifically designed to accommodate and regulate the fact of reasonable pluralism.

II. TWO CONCEPTIONS OF LIBERALISM

In this Part, I address the first of the two conclusions that our hypothetical observer of the debate between political and comprehensive might easily reach. By analyzing the two conceptions of liberalism, I seek to dispel the notion that the debate concerns merely two different justifications (impartial and partial) for the same political outcome—namely, state neutrality among competing moral ideals—rather than different outcomes stemming from two accounts of the content of liberalism. This notion, though understandable given how the debate has developed, is nonetheless wrong. Although both political and comprehensive liberalism involve some form of state neutrality, the *type* and *scope* (rather than merely the justification) of state neutrality that each involves is significantly different. Moreover, properly conceived, the ideal of autonomy cannot be an official value for political liberalism; it cannot form one of the limited, purely political values that constitute political liberalism's conception of justice. In the final section of this Part, I show that the two conceptions of liberalism are not only different in content but are also incompatible in practice.

A. Looking Behind the Fact of Reasonable Pluralism

We have seen that the basic argument for political liberalism takes the fact of reasonable pluralism as a *given* and how, in combination with its stated criterion of political legitimacy, this creates the problem to which political liberalism is the only reasonable solution. In taking the fact of reasonable pluralism as a "given," political liberalism focuses exclusively on the fact that individual citizens affirm diverse conceptions of the good, and not on *how or why* citizens came to affirm them.

It is important to appreciate that political liberalism's failure to focus on this second issue is not an oversight on its part but is quite deliberate. Its refusal to look beyond what citizens affirm to how or why they affirm what they do is an essential part of political liberalism's neutrality. Indeed, its neu-

19. I address the second conclusion in Part III.
20. See text accompanying notes 11-15 supra.
21. For example, Rawls states that "[a] reasonable doctrine is one that can be affirmed in a reasonable way," so that whether they are in fact so affirmed appears to be irrelevant. See RAWLS, supra note 1, at 60 n.14. This is actually the first of two distinct senses in which political liberalism takes the fact of reasonable pluralism as given. The second sense is that political liberalism ignores the social and political context that gives rise to a situation in which individual citizens affirm radically diverse conceptions of the good. See text accompanying note 71 infra.
Neutrality on this issue is the distinguishing feature of political liberalism: It rejects the privileged position that liberal theories typically attach to individual choice as a basis for affirming a particular way of life. Political liberalism views the conflict between individual choice and various alternative bases as a central fact in the fact of reasonable pluralism and accordingly requires state neutrality on the issue.22

Immediately we can see why it is mistaken to believe that political and comprehensive liberalism differ only over the justification and scope (rather than the value) of autonomy. Political liberalism cannot endorse the value of autonomy at all. It cannot be one of the "purely political" values justified by an overlapping consensus of controversial conceptions of the good. The whole point of political liberalism is that the ideal of autonomy is reasonably rejected by many and thus cannot form part of any overlapping consensus: If it were reasonably endorsed by everyone, it would not fail the test of "the liberal principle of legitimacy" in the first place.23 By contrast, what could be part of an overlapping consensus is the quite distinct idea of political (or negative) liberty—the right to be free from state interference in certain spheres, including the right to reject and remain free from the political promotion of autonomy as a moral ideal.24

In characterizing individual choice of ends as simply one among a number of partisan ideals that the state is not justified in privileging, political liberalism betrays the radical nature of its attempt to capture the essence of liberal political theory. To understand the significance of this point, it is important not to lose sight of the very general but real way in which liberalism traditionally has been taken to differ from its major theoretical and historical rivals: conservatism, which liberalism replaced in the West, and socialism, which emerged as a reaction to the triumph of liberalism in the nineteenth century.25

In extremely crude and skeletal terms, the triumph of liberalism in the West represented the historical rejection of the principle of "my station and its duties"26 that characterized virtually all prior traditions of political thought and practice. More or less self-consciously and explicitly, these traditions concep-

22. Larmore characterizes this central conflict as one between individualism and romanticism. Larmore, supra note 5, at 342-46. He also claims that the romantic conception, which prioritizes custom and tradition, "has become as permanent and influential a part of Western culture as the contrary ideals of autonomy and individuality to which Kant and Mill appealed." Id. at 345.

23. See, e.g., id. at 356 (noting that an overlapping consensus would "exclude Kantian and Millian ideals of autonomy and individuality, which remain controversial").

24. See, e.g., id. at 346 (noting that in the political liberal state "there will be no appeal to individualism as a general value, extending to all areas of social life").

25. It is usually not very fruitful to engage in essentialist discourse about liberalism's "real" meaning and what is or is not consistent with liberal principles as distinct from more substantive discourse concerning the merits of various alternatives. Nonetheless, this brief detour is justified by the hegemonic position of liberal political philosophy and the consequent difficulty of thinking seriously about alternatives to it. This is especially the case in the United States, because it was largely born into (and helped give birth to) the new liberal age, thus bypassing centuries of conservative dominance in the West, and because it has virtually no socialist tradition.

tualized individuals as having been assigned (typically through the groups and classes into which they were born) their ends and roles within an organic, harmonious, and naturally hierarchical political society. The liberal rejection of this worldview relied upon four closely connected points. First, political society is conventional or artificial rather than natural, and thus requires explanation and justification. Second, political society is premised on natural equality rather than natural hierarchy. Third, individuals do not have a "station" or set of ends and duties assigned to them by the social and political structure, but have a measure of control over their aims and roles. Fourth, as the expected product of the first three, diversity and conflict replace unity and harmony as the bases on which social order is premised and constructed. Thus, a commitment to the ideal of autonomy represents a significant aspect of the modern rejection of the traditional worldview in its various guises and forms. It expresses the rival, and to us generally attractive, ideal that individuals are conceived of as part-authors of their own lives rather than as texts already fully written by others.

In seeking to carve out theoretical space for their distinctive conception of liberalism, political liberals routinely invoke the ideals of autonomy and individualism advanced by Immanuel Kant and John Stuart Mill as paradigmatic examples of controversial comprehensive conceptions of the good that in the context of the fact of reasonable pluralism the state may not justifiably promote. Although the political promotion of these ideals may require state neutrality toward particular ways of life, the problem for political liberalism is that they provide a partisan rather than the necessary impartial justification of state neutrality. This standard invocation of Kant and Mill as illustrating comprehensive liberalism's fatal flaw is, however, itself somewhat flawed. This is because the conception of autonomy prescribed by Mill at least is not the same

27. Plato's political philosophy is simply the most explicit version of this conceptualization. Plato's ideal republic assigned each citizen his or her station according to ability; the assignments were justified and legitimized by the "noble lie"—that each assignment corresponded to the presence of bronze, silver, or gold in the individual's soul. The Republic of Plato, Book III, 414c-415c (Allan Bloom trans., Basic Books Inc. 1968) (n.d.).

28. For a similar account of the general paradigm shift from a pre-liberal to a liberal political order, in this case from "monarchical" to "liberal-republican" America in the late eighteenth century (from a political order that required harmony and consensus to one that embraced conflict and value pluralism), see Richard H. Pildes, Avoiding Balancing: The Role of Exclusionary Reasons in Constitutional Law, 45 Hastings L.J. 711, 715-22 (1994).

29. With respect to this ideal, an important strand within socialist thought may be a form of super-liberalism in that it accuses liberalism of limited ambitions, and of being capable of realizing only formal or legal, rather than substantive autonomy. For a recent critique along these lines, see RONALD BEINER, WHAT'S THE MATTER WITH LIBERALISM? 78 (1992) ("[L]iberal individuality and pluralism are too often a phony individuality and phony pluralism.").

conception that is an essential part of comprehensive liberalism in its most plausible version. Indeed, political liberals have not been alone in sometimes presenting exaggerated, misconceived, or just hopelessly vague conceptions of autonomy for evaluation. Accordingly, it becomes necessary to specify with some precision (a) the nature of the conception of autonomy that is essentially and properly at stake in the debate between political and comprehensive liberalism and (b) the relationship between this conception and state neutrality.

B. The Nature of the Liberal Ideal of Autonomy

First, as a normative conception, the ideal of autonomy asserts not the fact, but the value, of autonomy. Valuing autonomy neither presupposes the existence of atomistic individuals—preformed, self-sufficient actors who interact only instrumentally with society—nor ingenuously overlooks or denies the powerful effects of socialization. Indeed, a commitment to the value of autonomy may itself be best understood as a response to the profound reality of the "social construction of individuality." Only if individuals were "so" socially constituted that exercising part-authorship of their lives is an impossibility would the normative claim and the state's efforts to promote it fail to make sense.

The second point is of critical importance: The conception of autonomy at stake in the debate between political and comprehensive liberalism is a second-order, not a first-order, conception of the good. First-order conceptions are the particular substantive ways of life that individuals affirm or pursue. Second-order conceptions are the means by which individuals adopt first-order conceptions. Well-known examples of first-order conceptions of autonomy include the experimental life prescribed by Mill, in which the individual dares to cultivate eccentricity and spurn conventional norms and mores, and the classical republican ideal of the rugged, self-sufficient and isolated yeoman farmer admired by both Rousseau and Thomas Jefferson. By contrast, second-order autonomy prescribes individual choice as the basis on which a way of life should be adopted—as opposed to such alternative bases as tradition, custom, authority, and coercion. This ideal requires not that individuals adopt substantively autonomous ways of life, but that they adopt whichever ways of life they live by on the basis of autonomous choice.

31. See Mill, supra note 30, at 62-82. In this famous chapter, Mill in fact conflates the two conceptions of autonomy that I am trying to distinguish. At times, he appeals to a particular substantial way of life as the one that ought to be chosen, which I am following Larmore in terming "experimentalist." At other times, he appeals to the second-order conception in which choosing how to live is central, regardless of what you choose.


33. In his excellent book, THE THEORY AND PRACTICE OF AUTONOMY, Gerald Dworkin defends a broadly similar conception of autonomy:

[Autonomy is conceived of as a second-order capacity of persons to reflect critically upon their first-order preferences, desires, wishes, and so forth and the capacity to accept or attempt to change these in light of higher-order preferences and values. By exercising such a capacity,
So long as there is meaningful exercise of choice, liberalism based on second-order autonomy is essentially indifferent to what one chooses (i.e., the object of choice): whether to enter politics, a monastery, or a commune. Thus, this account of liberalism is not at all hostile to traditional, customary, or authorized ways of life; it is hostile only to such ways of life (or any others) being adopted on the basis of tradition, custom, or authority rather than choice. When a person acts on the basis of tradition or authority, the reason for acting is the determination of the tradition or authority that this is how the person should act. By contrast, when a person chooses to act in the way that a tradition or authority has determined, that person exercises independent judgment, and the reason for acting is either the merit of the action or of following tradition or authority, as that person perceives it. Thus, there is an important difference between choosing a traditional or authorized way of life and adopting a way of life on the basis of tradition or authority. This is the difference, for example, between the highly-educated woman who chooses to live the “traditional” life of wife and mother and the woman who does so because she so inhabits this tradition that she effectively has no alternative. It is also the difference between the person who chooses to live the religious life and the one who does so because it is God’s will, or between the Muslim woman who chooses to wear a veil and the one who wears one because her tradition mandates it.

The third feature of the most plausible conception of autonomy is that it does not equate choosing a way of life with a stringent process of rational, critical self-examination. It requires only that individuals have real, meaningful, and valuable options in life and that they enjoy the capacity to choose among them; it does not demand that they engage in a subjective process of self-critical reflection on these options. They need not choose to live “the examined life” in the Millian or Socratic sense, which is an example of a substantively autonomous life. There is a difference between (a) the person who (for any number of possible reasons) has few options in life and is effectively born into a “station,” (b) the person who has meaningful options and chooses for fairly mundane and unself-reflective reasons to become, say, a doctor rather than an artist, and never really revisits that choice, and (c) the person who critically reflects upon and self-consciously revises and re-examines her options on a regular basis. Second-order autonomy turns on the distinction between (a) and (b); however laudable the examined life, what the ideal requires is part-authorship of one’s life versus “my station and its duties.” A conception persons define their nature, give meaning and coherence to their lives, and take responsibility for the kind of persons they are.

To anticipate my own conception of the ideal of autonomy, Dworkin’s conception is arguably too weak in that it could be interpreted to permit first-order preferences to be affirmed otherwise than through choice: For example, one’s higher-order preferences may be based purely on tradition or authority.

34. It should be emphasized that where a person affirms a way of life on the basis of, for example, tradition, that person does so for a reason. Thus, the difference between autonomy and tradition is not between acting for a reason and not doing so.

35. For an account of the complex and varied meaning of the veil for the Moslem women who wear it, see Leila Ahmed, Women and Gender in Islam (1992).
of autonomy requiring (c) is both a different ideal and one which, for theoretical and practical reasons, is an implausible candidate for political promotion.36

Fourth, it is sometimes claimed that valuing autonomy presupposes that only autonomously chosen activities can have value.37 This contention is mistaken. The ideal of autonomy concerns the value of lives, not activities. It is not (nor does it depend on) a general meta-ethical position about the nature and status of moral value; it is a substantive claim about human fulfillment. The weaker version of this moral claim is that individuals are more likely to flourish if they lead relatively more autonomous lives; the stronger version is that such autonomy is a necessary condition of human flourishing. Neither version claims that activities can only be valuable if they are autonomously chosen. If, as seems clear, a life is morally better when the choices made are independently good ones rather than bad,38 this is because autonomy is not a sufficient condition—the whole story—of human flourishing.

The conception of liberalism presented here is one in which autonomy, as defined by these four features, is an essential value: It does not seek to promote any particular way or ways of life, including substantively autonomous ones, but rather a society in which individuals choose which ways of life to adopt. As we have seen, historically speaking, this is a radical political theory, although its radicalism has yet to be exhausted. It is undoubtedly true that a state promoting this ideal is not impartial, because a constitutive preference for second-order autonomy cannot itself be justified on noncontroversial grounds. In this respect, the liberal state is unashamedly a player and not an umpire. But far more important than this issue of the (neutral versus partisan) justification of neutrality is the content and scope of neutrality required by each of the two conceptions of liberalism. Whereas political liberalism requires state impartiality with respect both to first-order ways of life and to the second-order issue of how we come to affirm them, the account of liberalism presented here (a) specifically privileges choice at the second-order level and (b) requires only that measure of first-order neutrality necessary to promote choice. Before briefly considering what this proper measure of neutrality is, three points need to be mentioned concerning the controversial nature of the specified ideal of autonomy.

First, and to repeat, the inescapable flip side of relying on the fact that there are those who reasonably reject this ideal of autonomy is that it cannot be part of the overlapping consensus of reasonable comprehensive conceptions that

36. For example, David Johnston employs something like this "strong" version of autonomy in order to reject it as not necessary for a good society in favor of his own "humanistic liberalism" which promotes the notion of individuals as agents with projects. DAVID JOHNSTON, THE IDEA OF A LIBERAL THEORY: A CRITIQUE AND RECONSTRUCTION 75-77, 91-99, 137 (1994). For a project to be one's own, however, one must be at least part-author of it. Id. at 75.

37. See, e.g., George Sher, Liberal Neutrality and the Value of Autonomy, 12 Soc. Phil. & Pol'y 136, 145-49 (1995) (seeking to refute the argument that some form of weak neutrality on the part of the state towards particular ways of life is necessary for promoting autonomy, a position he claims presupposes the false view that only autonomously chosen activities can have value).

38. Joseph Raz, in The Morality of Freedom, makes this point forcefully. He argues that, although autonomy makes possible individual selection among many greatly differing valuable pursuits, "[a]utonomy is valuable only if exercised in pursuit of the good." Raz, supra note 4, at 381.
make up political liberalism's freestanding political conception of justice. Political liberalism cannot have it both ways. Second, although second-order autonomy is a controversial ideal, in that it is rejected by certain individuals and groups in contemporary society, it is not as controversial as political liberals typically assume, once it is distinguished from the less plausible conceptions of autonomy just identified. Obviously, we must distinguish between the fact of pluralism at the first- and second-order levels. The natural consequence of even a fully consensual societal commitment to the ideal of second-order autonomy would be significant diversity of chosen ways of life. This first-order diversity resulting from the exercise of autonomy is not problematic on political liberalism's premises and so should not be "counted"; what is problematic is pluralism at the second-order level.

Third, state promotion of the ideal of autonomy cannot simply and straightforwardly be characterized as a "perfectionist" claim, in the sense in which the debate between political and comprehensive liberalism is often characterized. Second-order autonomy is complex in this regard. If "perfectionism" is defined as the general claim that the state is "duty-bound to promote the good life," then because second-order autonomy is an important (and maybe necessary) condition of living the good life, state promotion of this ideal is perfectionist. But if, on the other hand, "perfectionism" is defined as requiring either the promotion of particular ways of life or the public ranking of the value of different ways of life, state promotion of autonomy is much less clearly perfectionist: As we have seen, its second-order nature renders it relatively indifferent to particular substantial ways of life.

This latter point leads us back to our unanswered question: What measure of first-order neutrality does comprehensive liberalism require of the state? Must a state that seeks to promote second-order autonomy be completely indifferent to the particular ways of life that its citizens choose freely? If not, what considerations counsel partiality? We value autonomy because it expresses the attractive ideal that each of us should be part-author of his own life. Autonomy is valuable in particular cases when individuals exercise it to be part-authors of worthwhile lives; other things being equal, authoring a worthless life does not add to, and indeed affirmatively detracts from, the moral value of that life. Does it follow that the state should actively promote and encourage particular valuable ways of life and/or discourage worthless or harmful ones?

The most important point to keep in mind here is that this inquiry concerns only the pragmatic or instrumental issue of whether and when state activism promotes or hinders the general attainment of autonomy, and not any issue of absolute principle. On balance, the following considerations suggest caution in

39. See note 3 supra and accompanying text (describing "perfectionist liberalism").
40. Raz, supra note 4, at 426.
41. Will Kymlicka, Contemporary Political Philosophy: An Introduction 207 (1990) (asserting that perfectionism involves a public ranking of the value of different ways of life).
42. See note 38 supra.
43. As, for example, Joseph Raz has argued. Raz, supra note 4, at 420-24 (arguing that the state should encourage valuable pursuits and discourage harmful ones without resorting to coercion or manipulation).
granting the state a broad interventionist mandate, and overall probably create a
general presumption in favor of first-order neutrality, that is rebuttable in par-
ticular cases.

The major consideration concerns the general character of state power. Clearly, promoting particular ways of life through the coercive power of the
law raises very serious questions about the autonomy of any subsequent affirmations.44 But while the state's monopoly of the legitimate use of violence is
its distinctive attribute,45 it also possesses a number of noncoercive means to
promote favored ways of life,46 such as simple exhortation and the use of finan-
cial and other incentives. These noncoercive means are explicitly acknowl-
edged in the Supreme Court's Establishment Clause47 jurisprudence, which
forbids state promotion of religion. The Court not only prohibits coercive
means of promotion, such as compulsory school prayer, but also such clearly
symbolic and noncoercive means of promotion as the exhibition of a creche in
a state courthouse and the display of the Ten Commandments on the walls of a
public school classroom.48

Given, then, that the state clearly possesses noncoercive means of promot-
ing substantive ends, would its use of these means to encourage valuable ways
of life still be inconsistent with the general pursuit of autonomy? The Establish-
ment Clause examples, I think, suggest an answer. The dichotomy of "co-
ercion or choice" is not an exhaustive one: Authority, tradition, and custom are
alternative bases for acting which, without being coercive, may nonetheless
replace meaningful choice. With respect specifically to authority, the state is
special because it cannot purport to act nonauthoritatively. A way of life that
the state endorses and promotes, even through symbolic or persuasive means, is
an "authorized" way of life.49 The concern is that individuals may defer to the
state's authority, just as we normally wish them to do in the case of general
obedience to the law.50 Yet, adopting a valuable way of life out of deference to
authority is counterproductive from the perspective of autonomy.

44. There is obviously a critical difference between using state power to promote a particular way
of life and using it to promote the general goal of enhancing autonomy.
46. See Antonio Gramsci, State and Civil Society, in Selections from the Prison Notebooks
206, 257-64 (Quintin Hoare & Geoffrey Nowell Smith eds. & trans., 1971) (arguing that coercion is an
ineffective instrument of political power as compared to the state's general "cultural hegemony").
47. "Congress shall make no law respecting an establishment of religion . . . ." U. S. Const.
amend. I.
48. See County of Allegheny v. ACLU, 492 U.S. 573, 601 (1989) (holding that displaying a
creche in a public courthouse lends "support to the communication of a religious organization's religious
Commandments on schoolroom walls is plainly religious in nature" and therefore violates the Establish-
ment Clause); see also Lee v. Weisman, 112 S. Ct. 2649, 2667 (1992) ("[O]ur cases have prohibited
government endorsement of religion . . . whether or not citizens were coerced to conform.") (emphasis
(holding that the Establishment Clause's neutrality prevents a public university from withholding fund-
ning for a religious magazine merely because it promotes religion).
49. See Olmstead v. United States, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting) (noting that
"Government is the potent, the omnipresent teacher").
50. See Robert Paul Wolff, In Defense of Anarchism 18-19 (1970) (arguing that there is a
necessary conflict between individual autonomy and the "putative" authority of the state). For recent
Jeremy Waldron has made a similar point in response to Raz’s claim that such intervention on the part of the state is necessary. He argues that when it makes judgments on the moral value of various ways of life, the state distorts individuals’ understanding of the underlying merits of competing positions and “insults its citizens by doing their moral calculations for them.” Raz responds that if this argument were accepted, it would paralyze the state since all state action has such a distorting effect; indeed, the normal justification of its authority rests on the claimed benefits of deferring to its judgment. Raz adds that a narrower argument is needed showing that certain issues only are better left to individuals. But such an argument seems readily available in the distinction between fundamental choices such as which ends to pursue, in which the individual’s perspective should remain as undistorted as possible, and everyday political matters where attaining the ideal of autonomy is not generally at stake.

State action to discourage or limit the availability of worthless or harmful ways of life could in principle benefit individuals since it influences them against pursuing lives that could not possibly lead to human flourishing, although the concerns just mentioned apply equally here. However, while it is morally better to choose a valuable end than a harmful or worthless one, it is presumably better still to choose a valuable end where there are harmful or worthless ends available for choice than where there are not. Overall, these considerations suggest a presumption against widespread state action of this sort—a presumption that may be rebutted when freely chosen ways of life undermine individuals’ ongoing and continuing capacity for autonomy, such as addictive drugtaking.

Finally, what does state promotion of second-order autonomy look like in practice? An example is provided by the well-known case of Wisconsin v. Yoder, in which the Supreme Court upheld the right of Amish parents not to send their children to high school after they had completed eighth grade. According to the Court, forcing them to do so would violate their constitutional right to freely exercise their religion by undermining the only community in which they could live their particular way of life. Thus, in Yoder, we have an example of the liberal state protecting, though not promoting, a first-order religious and communal way of life. But the Court was only prepared to reach this conclusion because it found sufficient evidence on the crucial second-order is-
sue that the students had chosen to remain part of the community and were not merely adopting this way of life on the basis of the authority of their elders. Of course, one may or may not agree with the majority’s view of the adequacy of this evidence given the sociological and psychological context inhabited by the students, but it is the question that was asked, rather than the particular answer reached, that is critical here. According to political liberalism, presumably, the Court’s inquiry and concern represented an unjustified reliance on a controversial moral ideal.

C. Beyond Weak Neutrality

Thus far, I have argued that the issue dividing political and comprehensive liberalism is not simply whether a neutral or a partisan justification of state neutrality is required, but also the type and scope of neutrality that each entails. Unlike political liberalism’s neutrality, the scope of neutrality presumptively required by comprehensive liberalism is limited to first-order ways of life and not to the means by which they are adopted. Accordingly, these two accounts of state neutrality may be thought of as “strong” and “weak” respectively along both dimensions of justification and content. Having shown that these two conceptions of liberalism are different in content, I now consider whether they are compatible in practice. Specifically, is it true (as political liberalism implies) that controversial but reasonable comprehensive ideals do not require state promotion for adherents to live by them successfully, so that by limiting their scope or jurisdiction to the nonpolitical sphere, no moral harm is done to individuals?

If, as I have claimed, some limited form of state neutrality among competing substantive ways of life is a necessary condition of promoting second-order autonomy, is it also sufficient? Not if the ideal is taken seriously. Merely remaining presumptively neutral among competing ways of life will not ensure the widespread attainment of individual autonomy. Accordingly, banishing the pursuit of this ideal from the political sphere, as political liberalism requires, is to ensure that the ideal will not become a reality.

55. Two of the four opinions in the case made reference to the state’s duty to protect the autonomy interests of the children. In his concurring opinion, Justice White stated

A State has a legitimate interest not only in seeking to develop the latent talents of its children but also in seeking to prepare them for the life style that they may later choose, or at least to provide them with an option other than the life they have led in the past.

Id. at 240 (White, J., concurring).

Justice Douglas dissented in part, however, because unlike the majority he was not convinced that the children’s views had been sufficiently canvassed. Douglas wrote:

It is the future of the student, not the future of the parents, that is imperiled by today’s decision. . . . It is the student’s judgment, not his parents’, that is essential if we are to give full meaning to what we have said about the Bill of Rights and of the right of students to be masters of their own destiny. If he is harnessed to the Amish way of life by those in authority over him . . . his entire life may be stunted and deformed. The child, therefore, should be given an opportunity to be heard before the State gives the exemption which we honor today.

Id. at 245-46 (Douglas, J., dissenting).
An important and radical consequence follows from the realization that coercion is not the only factor that can undermine autonomy.\textsuperscript{56} This is that the liberal goal cannot be merely to protect autonomy from the dangers posed to it by the state. Once we move beyond coercion (and the state's monopoly of the legitimate use of force), the state can no longer be regarded as the only practical barrier to the achievement of this ideal and thus be required to promote autonomy only against itself. It should be recalled that, in addition to being entirely valid objects of choice, authority and tradition (in which the state certainly has no monopoly) can also replace choice as the means of affirming an ideal.\textsuperscript{57} Thus, the state is not the only actor with the capacity to hinder autonomy. But just as the state has a unique ability and duty to protect our life, liberty, and property against dangers posed by other individuals and institutions, so too it may sometimes be the only actor capable of countering constraints on autonomy generated in and by society.\textsuperscript{58}

Because autonomy is exercised through choice, a liberal state that promotes autonomy has ultimate responsibility for ensuring the prerequisites of meaningful choice. In very general terms, these are (a) an adequate range of genuine options,\textsuperscript{59} and (b) the means or capacity to choose among them. There are typically two principal barriers to individuals having an adequate range of options in society. The first may loosely be termed cultural, in the sense of insufficient exposure or access to different ways of life for a meaningful choice to exist. The second is economic in the obvious sense that genuine (as distinct from merely formal) options tend to increase with resources. In terms of the means or capacity to choose among available options, lack of information and education are probably the critical impediments in contemporary society.

Of these practical barriers to autonomy, the economic, educational and informational ones are generally the more appropriate concern of the liberal state. First, if the state attempts to solve the problem of cultural barriers by enhancing individuals' exposure to other ways of life, its actions may be mistaken for promotion of those particular ends (which then become "authorized" ones), rather than as promotion of second-order autonomy. Even here, however, there are situations where the state might be authorized to expand the available choices.\textsuperscript{60} For example, antitrust law seeks to ensure that consumers have an

\textsuperscript{56} See text accompanying notes 31-35 supra (describing how authority and tradition as bases for affirming a way of life undermine autonomy).

\textsuperscript{57} I do not intend to suggest that tradition or authority, as means for affirming a way of life, are necessarily (or actually) coercive. More precisely, the reason that liberalism affirms choice over custom and tradition is not because these bases may be, or actually are, coercive.

\textsuperscript{58} For another discussion of the necessary role of the state in making people more autonomous, see Jennifer Nedelsky, Reconceiving Autonomy: Sources, Thoughts and Possibilities, in LAW AND THE COMMUNITY 219 (Allan C. Hutchinson & Leslie J.M. Green eds., 1989).

\textsuperscript{59} See RAZ, supra note 4, at 378-90 (discussing the importance of choice and arguing that "[a]utonomy requires that many morally acceptable options be available to a person").

\textsuperscript{60} It might be argued that, on this basis, the state would in certain circumstances be required to expose children to religion in order to create the option of choosing a religious way of life. Although this point raises a host of interesting and complex issues, I think it is misguided. The ideal in question is practical, not perfect or absolute autonomy. In order to be an autonomous person in this sense, no particular option or type of option must be included in the package from which one chooses: What is required is a sufficient number and diversity of options for a meaningful choice to take place. Thus, it is
adequate range of competing brands and suppliers to choose from and authorizes the state to enhance that range when necessary. When the state acts in this field, it is understood to be promoting the general goals of consumer choice, competition, and efficiency rather than the particular goods or alternative sources of supply in question. Perhaps the state could have a similarly limited mandate to increase the available range of options regarding substantial ways of life where necessary. Arguably it is not simply a few traditional and isolated ways of life that may achieve too monopolistic a hold over their members from the perspective of autonomy, but more broadly, the cultures of commercialism and drugs. In this regard, public radio and television can be thought of as state action to challenge the monopoly of commercialism in broadcasting.

Second, the far more urgent and direct barriers to autonomy in the modern setting relate to economic, educational, and informational resources and their current distribution. The liberal state has historically been highly successful in two areas that are critical to the exercise of autonomy: creating and maintaining a sphere free from legal and political accountability, in which to develop the capacity to choose, and a social and political climate of tolerance towards different choices. It has, however, been less successful in this third area of ensuring access to the practical resources that make autonomy possible, in part because of a widely held belief that confronting these barriers would be incompatible with its actions in the first two areas. But in a world of limited resources, it is only formal autonomy that can be promoted where, for many, the exercise of choice is in practice constrained by inadequate economic, educational, and informational resources in absolute terms. Probably the most extreme example of such obvious practical constraints on the exercise of autonomy is the case of the urban underclass, "the truly disadvantaged." The social, economic, and educational isolation in which members of this underclass live means that they lack the basic prerequisites of meaningful choice. By contrast, promoting autonomy as a substantive goal requires a commitment to increasing the aggregate amount of autonomy in society, a goal which almost certainly would involve some redistribution of the means of autonomy, based on a familiar diminishing marginal utility rationale.

Apart from the uncontroversially critical field of education, another area in which positive state action may be required to promote autonomy is that of

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61. This is the title of what is widely regarded as the leading study of urban poverty. William Julius Wilson, The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy (1987).

62. Amartya Sen, Inequality Reexamined 81 (1992) (discussing the primary goods, including income, choice of occupation, position of responsibility, and the social base of self-respect, that are "useful for the pursuit of different ideas of the good that the individuals may have").

63. At some future point, it may become necessary to choose between increasing the aggregate amount of autonomy and increasing the number of people exercising autonomy. In the foreseeable future, however, any conflict between these goals is unlikely, so that for practical purposes they are interchangeable.

64. Many liberals, starting with Adam Smith, have discussed the necessary role of state-supported education in enhancing individual autonomy. For a recent discussion tracing the history of such views,
public speech generally and the broadcast media in particular. Traditionally within free speech doctrine, the value of autonomy has been equated with the autonomy of speakers and has accordingly been thought to present a conclusive argument against most forms of regulation. However, since an individual's capacity for autonomy is as much affected by the range of options to which that individual is exposed as by what he or she says or expresses, more concern than either the traditional “neutral” doctrine or the unregulated market allows should be focused on the autonomy of hearers as distinct from that of speakers. In this way, state action to promote a greater diversity of viewpoints in the public sphere, including access regulation in broadcasting, may be justified by the goal of promoting autonomy. More generally, individuals develop the capacity to make and revise meaningful and informed choices in part through exposure to reasoned argument. As Paul Stern writes:

[W]e can freely and intelligently exercise our freedom of choice on fundamental matters having to do with our own individual ideals and conceptions of the good only if we have access to an unconstrained discussion in which the merits of competing moral, religious, aesthetic, and philosophical values are given a fair opportunity for hearing.

Promoting such unconstrained discussion is thus a valid goal of a liberal state committed to autonomy. Moreover, by artificially constraining such discussion in the political sphere on the basis of the norms of “public reason” or “neutral dialogue,” political liberalism creates an significant barrier to autonomy in this respect.

In this and in other similar ways, political liberalism denies the state its necessary role in enhancing and maintaining the required “autonomy-sustaining common culture.” Since, to this extent, it is not possible for the state to pursue both strong neutrality and second-order autonomy, the two conceptions of liberalism are not merely different but incompatible. Accordingly, political liberalism’s implicit assumption that controversial doctrines and ideals can be adequately and fully pursued outside the political arena is false in the case of second-order autonomy.


67. “Public reason” and “neutral dialogue” are the terms that Rawls and Ackerman use to describe the constraint on appealing to controversial moral ideals in the political sphere. John Rawls describes “public reason” as follows:

The point of the ideal of public reason is that citizens are to conduct their fundamental discussions within the framework of what each regards as a political conception of justice based on values that the others can reasonably be expected to endorse and each is, in good faith, prepared to defend that conception so understood.

Rawls, supra note 1, at 226; see Ackerman, Social Justice, supra note 2, at 8-10.

68. See Joseph Raz, Liberalism, Skepticism, and Democracy, 74 Iowa L. Rev. 761, 783 (1989) (noting that the conditions of autonomy “require an appropriate public culture, for it is the public culture which to a considerable degree determines the nature and quality of the opportunities available in a society”).
I have now completed the first task of this article: to show what of practical importance is at stake in the debate between political and comprehensive liberalism. The debate matters because it is (a) fundamentally about different political outcomes rather than different justifications for the same outcome and (b) about incompatible outcomes in that a genuine commitment to the widespread attainment of autonomy requires a type and degree of state promotion of the ideal that is contrary to political liberalism’s constitutive prohibition. I now turn to the second task of this article. Given that the debate matters, I seek to present a critique of political liberalism that is generated by the version of comprehensive liberalism that I have developed.

III. A Liberal Critique of Political Liberalism

According to its advocates, political liberalism is justified as the only reasonable solution to the problem contained in the two premises of the basic argument that I set out in Part I: the liberal principle of legitimacy and the fact of reasonable pluralism. It is the combination of these two premises—and not either alone—that explains why for political liberalism the central task of political theory is to accommodate the moral conflict typical of modern western societies: Accommodation is the only morally acceptable response to the fact of reasonable pluralism given the constraint of reasonable assent. Moreover, as the conclusion of the argument, political liberalism is justified regardless of the substantive merits of any of the conflicting comprehensive conceptions.

In this Part, I present a critique of political liberalism that attacks each premise of the basic argument in turn and thereby (if successful) undermines its justification as the conclusion of this argument. This critique is based exclusively on the conception of autonomy presented in Part II. As I indicated in the Introduction, existing critiques of political liberalism have not been made in such distinctively liberal terms. In the following section, I consider the premise that takes the fact of reasonable pluralism as a given, and in Part III.B, the premise of the liberal principle of legitimacy. Since the basic argument for political liberalism fails if either of these premises cannot do the work assigned to it, each of the two following sections contains a self-sufficient and complete critique.

A. Is Moral Conflict the Cause or Result of Liberalism?

In making the accommodation and regulation of moral conflict its central task, political liberalism parallels the structure of the earliest liberal political thought, according to which the state was brought into being as a conscious solution to the problem of physical and material conflict between free and equal individuals in the state of nature.69 Political liberalism expands the traditional...

69. See THOMAS HOBBES, LEVIATHAN 185 (C.B. Macpherson ed., Penguin, 1985) (1651) (“So that in the nature of man, we find three principall causes of quarrell. First, Competition; Secondly, Difference; Thirdly, Glory.”); JOHN LOCKE, TWO TREATISES OF GOVERNMENT 330-31 (Peter Laslett ed., student ed. 1988) (3d ed. 1698) (“The only way whereby any one devests himself of his Natural Liberty, and puts on the bonds of Civil Society is by agreeing with other Men to joyn and unite into a Commu-
argument, rendering the liberal state the distinctive solution to the general problem of conflict, whether material or ideal. According to this view, the state acts as an umpire not a player, setting and enforcing the rules by which conflicts are to be contained and regulated in a reasonable manner. Just as under the early social contract view, individuals are to pursue their conflicting material interests within a neutral framework of rules provided and enforced by the liberal state, so too are modern citizens to pursue their conflicting conceptions of the good.70

Persuasive (if incomplete) though this functional view of the state may be with respect to material conflict (at least once the social contract justification for it is jettisoned), there is something deeply problematic about the implied symmetry of applying it to moral conflict. The problem is that while the characterization of material conflict among individuals in a context of scarce physical resources as an independent variable in need of regulation has substantial intuitive plausibility, the situation with regard to moral conflict is significantly more complex. By viewing liberalism as the result of, and only reasonable solution to, the problem of preexisting moral dissensus, political liberals assume that such dissensus is similarly an independent (or exogenous) variable, unaffected by the political context in which it arises. This assumption, which constitutes a second sense in which political liberalism takes the fact of reasonable pluralism as a “given,”71 is sociologically and theoretically naive. It ignores the social and political conditions that give rise to a situation in which citizens affirm radically diverse (or, conversely, more uniform) conceptions of the good in the first place. Such a situation is by no means so common (historically or geographically) that the impact of social, political, and cultural context can be ignored without cost. By thus taking as given much that is crucial to our understanding of political society and therefore in need of explanation and justification, political liberalism presents as a premise of the argument something that looks rather more like a conclusion.

Political liberalism in effect provides one account of the relationship between liberalism and moral conflict, an account that I suggest is gravely imbalanced and incomplete. Rather than being simply the extraneous cause of liberalism, as political liberalism sees it, moral pluralism is at least as much the result and characteristic achievement of liberal social and political culture and

70. It is interesting to note that, despite Rawls’ claim (standardly affirmed by other political liberals) that “the historical origin of political liberalism... is the Reformation and its aftermath, with the long controversies over religious toleration in the sixteenth and seventeenth centuries,” none of the founders of liberal political thought seems to have made such a claim. See Rawls, supra note 1, at xxiv. Their theories were overwhelmingly expressed as responses to specifically material conflict. Moreover, as a historical matter, in continental Europe, where religious conflict was at its greatest, liberalism was not established as the dominant political theory until well into the 19th century. Accordingly, it is difficult to support the standard claim that liberalism was (or should be understood as) the solution to religious conflict.

71. The first sense is that political liberalism focuses exclusively on the fact that citizens affirm a diversity of conceptions of the good and not on how or why they affirm them. See text accompanying notes 20-21 supra.
institutions. In a significant sense, the fact of reasonable pluralism is the natural and intended consequence of liberalism. The liberal commitment to autonomy results in citizens affirming competing and conflicting conceptions of the good. In other words, conflict within liberal political society about how best to live (both individually and collectively) is typically the result of members’ freely choosing their ways of life, whereas consensus on such issues typically arises from the dominating role of tradition or authority—or even, in some cases, coercion. In short, the scale and persistence of moral conflict reflects the value that liberalism places on the ideal of autonomy.

From a purely descriptive or historical perspective, the proposition that liberalism creates dissensus at least as much as it responds to it seems highly plausible. This is particularly so if one takes into account the exceptional nature of the United States, where the artificial and unique act of state creation following the first successful colonial revolution took place in the context of a society of religious refugees—a society characterized by extraordinary religious pluralism. Even in the United States, however, the profound commitment to the ideal of autonomy is surely responsible for a good deal of the pluralism. In continental Europe, where liberalism did not become the reigning political philosophy until well into the nineteenth century (and so cannot plausibly be understood as the solution to the religious conflicts of the sixteenth and seventeenth centuries), a quite common historical pattern has been liberalism followed by dissensus. In fact, part of the standard explanation for the virtually ubiquitous fascism of the 1920s and 1930s is that it was a reaction to the apparent moral chaos caused by the breakdown of traditional values that followed the recent triumph of liberalism. Indeed, precisely this view of the causal relationship between liberalism and moral dissensus constitutes Alasdair MacIntyre’s indictment of modernity and forms the basis of the antimodern strand of communitarian thought of which he is a leading member. It is also the standard view of conservative and socialist political thought, which tend to see harmony as the natural condition of society and conflict as a historical, artificial, and ultimately transcendable product of liberalism.

Moreover, not all contemporary liberal states exhibit the radical moral diversity associated with the fact of reasonable pluralism. This immediately raises an important question about the adequacy of political liberalism as a general account of liberalism. If one thinks, for example, of Germany, Sweden, Britain, or Ireland, it does not seem wildly implausible to suggest that one

72. For historical support for this claim, see Robert Wiebe, Self-Rule: A Cultural History of American Democracy 185-87 (1995) (arguing that a commitment to self-determination in work and political life, which emerged during the decade between 1914 and 1924, was responsible for much of the social and moral pluralism in American life).

73. See, e.g., Michael J. Sandel, Introduction to Liberalism and Its Critics supra note 2, at 1, 7 (suggesting that the “totalitarian impulse” is a response to the loss of tradition and community in individualistic societies).

reason (among many) why such states are more morally homogeneous is that they do not share the commitment to autonomy of more pluralistic (and, one is tempted to say, more liberal) states. Indeed, where political societies (including liberal ones) are characterized by less social and moral pluralism than someone like Rawls envisions, it is not entirely clear on political liberalism's account why such states should accept liberalism, a political theory which provides the only normatively valid response to a problem that does not exist for them.

The notion that commitment to autonomy typically manifests itself in dissensus contrasts not only with the "given" nature of the fact of pluralism in the minor premise of the argument for political liberalism, but also with a highly influential view within the history of political thought, which holds that consensus is the necessary condition of autonomy. The modern source of the latter view is Rousseau's claim that autonomy in political society can be achieved only through citizens' acting harmoniously and uniformly on the basis of the single general will, rather than on the basis of their necessarily conflicting private interests. It is, I think, instructive to compare briefly these two views of autonomy and its political context.

Rousseau defines autonomy as obeying oneself, and he argues that autonomy can be achieved systemically in political society only if everyone wills the same thing. If they do not, individuals in the minority will be forced to obey the majority and not themselves. Hence Rousseau's fundamental political question is how to devise a mechanism which ensures the convergence of individual wills. From the perspective of the liberal tradition, the assumptions built into this political question appear even more alien than the answer the question generates. In particular, it assumes that political power is unlimited, and as a result, draws no qualitative distinctions between the types of things willed and their relative importance in promoting or preventing autonomy. To the liberal mind, autonomy is protected and promoted precisely by drawing such distinctions, so that the scope of political power and the majoritarian principle are limited (whether by higher law as in the United States or by political convention as in Britain) to ensure that in areas critical to the exercise of personal autonomy citizens can act as they choose.

From the liberal perspective, it is expected that autonomous citizens will affirm different and incompatible (rather than converging) conceptions of the public and private good. Such divergence should be viewed as the desired and characteristic result of a vibrant democratic society in which people pursue

75. See JEAN-JACQUES ROUSSEAU, THE SOCIAL CONTRACT 54-56 (Christopher Betts trans., Oxford Univ. Press 1994) (1762). Rousseau's entire political theory is hostage to his unlimited conception of the scope of political power. In this regard, his work should be seen less as the precursor of 20th century totalitarianism than (like the Bolshevik regime in Russia) the offspring of a historically absolutist state and political culture.

76. See id.

77. This is not simply an appeal to the famous distinction drawn by Isaiah Berlin between negative and positive liberty. See Berlin, supra note 16, at 23. The issue is how to promote positive liberty in the (nonsinister) sense of individual self-determination. This is the sense in which Berlin himself acknowledges that conceptually (if not historically), negative and positive liberty are "concepts at no great logical distance from each other." Id.
their own ideas and ways of life. Accordingly, the fact of reasonable pluralism is not so much a "problem" in need of accommodation or regulation (as both political liberalism and the antimodern strand of communitarianism hold) as it is the characteristic symptom and result of a genuinely free society. To be sure, such first-order conflict must be contained and prevented from destroying or destabilizing the political order, but liberal political institutions and values should be understood less as reactions to, or political consequences of, (a pre-existing) pluralism, than as its cause. In short, liberalism does not merely accommodate or tolerate difference, but embraces and celebrates it.

For present purposes, whether pluralism should be understood as a result or only the cause of liberalism is important because the latter account is critical to the validity of the basic argument for political liberalism. In Political Liberalism, Rawls appears for the first time to acknowledge some of the force of this point when he states that the fact of reasonable pluralism should not be understood as an unfortunate and second-best state of affairs, as his work previously suggested, but rather as the result of "the free exercise of free human reason under conditions of liberty." As this is all Rawls states, however, one is left with the impression that he does not quite appreciate the severity of the problem that this acknowledgment (or, more precisely, the state of affairs that it belatedly acknowledges) poses to his theory.

For this point is not one that Rawls can simply tack onto the theory of political liberalism that he presented in the previously published series of articles that are collected and reproduced in modified form in Political Liberalism. Rawls' acknowledgment is not an amendment that leaves everything else as it stood before. The problem that it creates goes well beyond Bruce Ackerman's well-taken anticonventionalist point that it renders liberal theory "parasitic upon liberal practice," instead of a freestanding ideal applicable universally and not merely contingently where the political culture is characterized by moral dissensus. The problem is as follows: to the extent that pluralism is the result of liberal political institutions and culture, the claim of political liberalism in effect becomes that it alone accommodates the dissensus that liberalism itself creates. This is a question-begging claim that (at the very least) complicates its own justification as the only reasonable solution to the fact of pluralism.

I made reference above to a well-documented strain of antiliberalism in contemporary moral and political thought. This reference puts into perspective exactly what is at stake: The issue of whether liberalism is better under-

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78. RAWLS, supra note 1, at 144. Rawls repeats this formula a number of times in his book. See, e.g., id. at 4, 135.
80. Ackerman, Political Liberalisms, supra note 2, at 375.
81. See text accompanying note 74 supra; see also STEPHEN HOLMES, THE ANATOMY OF AN-TILIBERALISM (1993).
stood as the result or the cause of moral conflict is important not only in itself, but also because its resolution directly affects the fundamental issue of the type of justification that must be provided for liberal political principles.

The basic argument for political liberalism (and hence its justification) depends on the causal account it provides. Only if the fact of reasonable pluralism can play the role of an independent and self-contained factual premise does political liberalism follow smoothly as the conclusion of the argument. If, on the other hand, the full premise should be expanded to (something like), “given a liberal political culture in which freedom to choose one’s ends is an essential value, the fact of reasonable pluralism will ensue,” the conclusion affirming political liberalism (even if still valid) is much less important. For, in this case, what needs to be justified is contained in the premise. If the fact of reasonable pluralism is to a significant extent a liberal social and political product, the central issue is not what political principles are necessary to accommodate it, but: (a) whether we want a society that is committed to the ideal of autonomy and as a result is characterized by the fact of reasonable pluralism (MacIntyre, for one, seems to say no), and (b) if so, how to attain and sustain it. Accordingly, in this scenario, political liberalism does not justify the political structure but rather represents an attempt to work out some of the practical problems that result from the prior and fundamental commitment to autonomy.

The beauty (and point) of political liberalism is that it is the conclusion of an argument that does not require a substantive justification of liberalism: It depends only on the truth of the liberal principle of legitimacy and the fact of reasonable pluralism. By contrast, where the argument is “given the value of autonomy and the political conditions for its promotion, the fact of reasonable pluralism is sure to follow,” a substantive justification for liberalism is needed: A limited defense will no longer suffice. The central question then becomes: Why should we opt for such a society in the first place?

B. Justifying the Liberal Principle of Legitimacy

The previous section develops a distinctively liberal critique of the basic argument for political liberalism by arguing that the fact of reasonable pluralism does not exist in a political vacuum, but is itself engendered by liberal political culture and institutions. Moreover, this argument constitutes a self-sufficient critique: If valid, the basic argument for political liberalism fails. In this section, I present an additional critique that focuses on the major premise of the argument, the liberal principle of legitimacy.

The liberal principle of legitimacy states political liberalism’s criterion of justification for political principles: Only those principles of political association that all citizens may reasonably be expected to endorse are justified. This criterion, however, expresses a particular conception of political justification and one that is not self-evidently superior to its major competitors. Moreover, the liberal principle of legitimacy ultimately represents an interpretation of the principle of equal respect that political liberalism takes to be fundamental and
axiomatic. Indeed, it is not simply an interpretation, but is claimed to be the only interpretation consistent with this principle. However, this again is a contestable proposition, and I shall present a case for understanding a commitment to the ideal of autonomy as the best (or, at least, a better) interpretation of our fundamental principle of equal respect.

1. Conceptions of political justification.

Like many other concepts in political theory, the concept of justification is "essentially contested"; what counts as a valid justification of political principles is typically a subject of no less disagreement than that of whether the criteria provided by any given conception of justification have in fact been fulfilled. Seen in this light, it should be clear that political liberalism employs a particular conception of justification in the major premise of its basic argument: Political principles are justified if and only if all reasonable citizens assent to them. Although Rawls calls this conception "the liberal principle of legitimacy," in reality his formula (which, in substance if not in name, is shared by other political liberals) represents one view of what counts as a valid justification within the broader liberal principle that "the social order must be one that can be justified to the people who have to live under it." This formula is broader precisely because, unlike Rawls', it does not specify what constitutes a justification of political principles, merely that the social order must be justified and to whom.

There are two standard alternatives to political liberalism's conception of justification as reasonable assent. The first, which may be thought of as the traditional conception, holds that what justifies a moral or political principle is its truth. Political liberalism rejects this conception as unsuitable for the political sphere because it asserts the reasonableness of pluralism even in the face of truth: Others will reasonably dispute such claims on the basis of their

82. See, e.g., LARMORE, supra note 1, at 67 ("A commitment to treating others with equal respect forms the ultimate reason why in the face of disagreement we should keep the conversation going, and to do that, of course, we must retreat to neutral ground.").

83. See Dworkin, Liberalism, supra note 2, at 64 ("Since the citizens of a society differ in their conceptions [of the good], the government does not treat them as equals if it prefers one conception to another . . . .").

For Rawls, a conception of democratic citizens as free and equal is the ultimate norm. For my analysis of this derivation, see text accompanying notes 97-104 infra.


own conceptions. The second alternative conception is the (broadly-speaking) conventionalist view that moral or political principles are justified when they constitute the best interpretation of the values embedded in the social practices of a society. At times, Rawls appears to justify political liberalism directly on this basis, noting that the political conception of justice reflects the shared public culture of western democracies. The important point here is that the answer to the question of which political principles are justified will likely depend upon (rather than be independent of) the particular conception of justification that is adopted.

The task for political liberalism is to explain, in a noncircular fashion, why the absence of reasonable assent renders it unreasonable, from a moral point of view, to base political society either on true principles or on the best interpretation of its social practices. Why, for example, is the conception of truth as justification not "suitable"? Within political theory generally, the standard responses to this question by those who reject this conception are: (a) to affirm some version of moral skepticism, thereby denying the existence, or at least the possible knowledge, of moral truth, or (b) to affirm what I have called "the truth of pluralism," the inherent and inescapable plurality of such truths. If truth is inherently plural, all one can reasonably do is make one's choice. Valuing second-order autonomy appears to be a reasonable consequence of the truth of pluralism. What is novel and distinctive about political liberalism is that it rejects both of these standard responses: It explicitly and repeatedly denies that it relies on moral skepticism, and it takes no position on the truth of plural-

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87. Rawls states that, "[given the fact of reasonable pluralism], the idea of the reasonable is more suitable as part of the basis of public justification for a constitutional regime than the idea of moral truth." RAWLS, supra note 1, at 129. According to Larmore:

"We may still believe that we have sound reasons for certain views about what makes life worth living. So we may be entitled to claim that people who reject them are in error. The point is that, all the same, we would be foolish not to expect our views to meet with some disagreement in a calm and careful discussion.

Larmore, supra note 5, at 340.

88. See MICHAEL WALZER, SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY 313 (1983) ("A given society is just if its substantive life is lived in a certain way—that is, in a way faithful to the shared understandings of the members"); see also Gardbaum, supra note 74, at 693-705 (identifying this metaethical claim as a distinct "communitarian" claim). These two conceptions of justification may alternatively both be thought of as different versions of the first conception (truth as justification), employing differing accounts of what constitutes "truth": namely, an objectivist and a conventionalist account of truth respectively.

89. RAWLS, supra note 1, at 8 ("We start, then, by looking to the public culture itself as the shared fund of implicitly recognized basic ideas and principles. We hope to formulate these ideas and principles clearly enough to be combined into a political conception of justice congenial to our most firmly held convictions.").

90. See note 87 supra.

91. At least one political liberal acknowledges that he can "see no alternative to the line of argument that . . . invokes a certain moderate skepticism. The claim that has to be made is that there is no conception of the good so certainly correct that it can fairly or legitimately be imposed on others." Barry, In Defense of Political Liberalism, supra note 2, at 329.

92. See Gardbaum, supra note 4, at 1355-57.

93. See text accompanying note 16 supra

94. See Berlin, supra note 16, at 30-33 (describing the aspects of pluralism that support individual choice).

95. According to Larmore:
Rather, political liberals claim that reasonable agreement is a more reasonable basis of justification than truth. This is obviously highly controversial as a moral claim, but one that political liberals do not systematically defend.

2. Interpreting the fundamental principle of equal respect.

Political liberalism implicitly defends its conception of justification on the ground that only the liberal principle of legitimacy is consistent with the fundamental political principle of equal respect. This defense, however, immediately raises an additional question: On what basis is the liberal principle of legitimacy claimed to be fundamental? It cannot be fundamental because it is itself the object of reasonable agreement, as this would simply beg the question at issue: Is reasonable agreement the appropriate criterion of justification? Conversely, the reason for its fundamental status cannot be that the principle of equal respect is "true," as this would lead to the seemingly paradoxical result that the principle itself, which is valid despite possible reasonable disagreement, requires a conception of justification that privileges reasonable agreement over truth. The third option is that the fundamental status of the principle of equal respect derives from the best interpretation of our political culture as a whole; it presents us with the best picture of how we should strive to see and understand ourselves as citizens. This third option seems to be the one on which political liberalism must rely.

This reliance raises two further preliminary questions. First, is our political culture in fact best interpreted as containing equal respect as its highest principle? Perhaps equal respect derives from other higher principles—such as autonomy or equality. Second, even if equal respect is interpreted as our political culture's highest principle, does the liberal principle of legitimacy follow from it? Is it alone consistent with the fundamental principle of equal respect, as political liberalism implies? Crucially, the answer to this question will depend on how the principle of equal respect is itself best interpreted. If, contrary to political liberalism, the best interpretation of the principle of equal respect is not only consistent with, but also favors, the proposition that the government should promote second-order autonomy, then it follows that the liberal principle of legitimacy is actually inconsistent with the principle of equal respect. Accordingly, I now turn to this interpretive task.

[The project of basing political principles on neutral ground need not be motivated by skepticism. Some liberals have indeed been skeptics. But skepticism is not the only way of understanding liberal neutrality. Nor is it the best way, since skepticism about the nature of the good life is itself one of the items of reasonable disagreement. The reason for prescinding from controversial views of the good life is not that we cannot rightfully believe that our own views are better supported by experience and reflection than those of other people. . . . The familiar fact is that nonetheless our views can continue to meet with reasonable disagreement. Larmore, supra note 5, at 341-42; see also Rawls, supra note 1, at 63 ("Political liberalism does not question that many political and moral judgments of certain specified kinds are correct . . . . Nor does it question the possible truth of affirmations of faith."].]

96. See note 17 supra and accompanying text.

97. Again, certain political liberals use different terms to express this same principle. See note 82 supra.
As Ronald Dworkin has noted, "there is broad agreement within modern politics that government must treat all its citizens with equal concern and respect. . . . Different people hold, however, . . . very different conceptions of what that abstract principle requires in particular cases."98 Political and comprehensive liberalism effectively posit two different conceptions of how one treats persons with equal respect or (put another way) what must be equally respected. According to the former, what must be equally respected are all reasonable conceptions of the good that individuals affirm,99 regardless of their truth or of how they came to be affirmed. Consequently, only political principles that all should reasonably accept are justified. According to comprehensive liberalism based on the ideal of autonomy, by contrast, what must be equally respected is each individual's capacity for choice regarding conceptions of the good and (at least presumptively) the choices that result from it.

On the interpretation offered here, for the government to treat its citizens with equal respect requires that it treat each citizen's interest in autonomy as equal, and that it respect and enhance the capacity of each citizen to choose her own ends and not have them determined or unduly influenced by others. Recall that "others" includes not only the state or the political majority, but also tradition (those who went before you), authority (those who claim the right to decide for you), as well as the general social and economic structure. A presumption that the government should remain indifferent among particular ends exists not because of the absence of reasonable agreement on those ends, but because unduly influencing individuals' ends necessarily deprives them of something crucial: the possibility of living a more valuable life, and the respect and dignity that is their due as full and equal members of society. This loss does not occur, however, only when the government unduly influences individuals' ends; it is the fact of having one's ends unduly influenced, rather than who does the influencing, that undermines autonomy.

Accordingly, on this interpretation, a political society that takes the principle of equal respect seriously cannot freely permit nongovernment "others" to determine an individual's ends. Not only must each individual be treated with equal respect in determining her ends by the state, but the state also has an obligation to ensure that, as far as possible, each individual is treated this way generally. In other words, contrary to the very essence of political liberalism, the principle of equal respect should not be understood as a purely political value: one whose scope is limited to the political sphere. Taking it seriously means that each individual's autonomy regarding ways of life must be protected generally. This does not imply the obviously implausible claim that each

98. Dworkin, Liberalism, supra note 2, at 63. Like Rawls and Larmore, Dworkin's conception of equal concern and respect requires neutrality on the part of the state in the particular context of the fact of pluralism. See id. at 63-65. However, Dworkin does not specify whether the scope of state neutrality required by his conception covers both first- and second-order issues (political liberalism) or only first-order freedoms (autonomy).

99. This conception does not necessarily imply equal respect for other subjects of reasonable disagreement. I have elsewhere raised the objection that political liberalism has not as yet adequately justified this special status that it affords to conceptions of the good versus other matters over which citizens reasonably, and often vociferously, disagree. Gardbaum, supra note 4, at 1361-62.
individual is required to treat every other with the same respect in all matters, or to take everyone else's interests and concerns equally into account in determining how to act. It means rather that the government has a duty to protect the autonomy of each citizen in determining her way of life, as exemplified by Wisconsin v. Yoder. 100

We have here two competing interpretations of what the fundamental principle of equal respect requires of a government: (a) treating citizens' reasonable conceptions equally (regardless of how they came to be held), or (b) promoting second-order autonomy. Is there any way of determining which of these interpretations is the better one? Here again, Dworkin has provided a helpful framework. In Law's Empire, he distinguishes generally between concepts and conceptions, and specifically between our concept of law and three competing conceptions of law (conventionalism, pragmatism, and integrity) that attempt to interpret, refine, and give substance to the more abstract concept. 101 He then offers a test for determining which of these conceptions provides the best interpretation of our legal culture as a whole. A conception must satisfy both parts of what Dworkin terms the "two dimensions" of interpretation. The first dimension asks which conception best fits and explains our legal practices as a whole; the second asks which conception best justifies those practices, in the sense of whether people deciding on a clean slate would have reason to adopt those practices or would find them attractive. 102

Although not entirely analogous, Dworkin's test provides an instructive framework for considering which of the two conceptions provides the better interpretation of our fundamental principle of equal respect: a conception that treats equally all reasonable ways of life affirmed by citizens, or one that privileges affirmation that results from choice. First, let us consider fit: Which conception better interprets and explains our political practices as a whole? As we have seen, political liberalism does not venture behind the "moral veil": It does not ask how or why individuals came to the particular way of life they affirm, but simply takes the fact that individuals affirm competing and conflicting conceptions as the starting point of its analysis. In what is an instructive example of this aspect of political liberalism, Dworkin himself indicates that it is simply a given for relevant purposes that one citizen, a scholar, thinks the contemplative life is best and another citizen affirms a life of beer and television; nothing more can be said and no further analysis of this fact is required or permissible. 103 Let us be clear: The relevant issue here is neither metaethical subjectivism nor whether one is relying on an elitist, overly self-conscious, or rationalistic understanding of what constitutes an autonomous life. It is rather whether more can and needs to be said than political liberalism permits.

100. 406 U.S. 205 (1972).
101. RONALD DWORKIN, LAW'S EMPIRE 70-72, 94-96 (1986).
102. Id. at 230-31.
103. See Dworkin, Liberalism, supra note 2, at 64.
104. That is, whether the proposition that a particular way of life is true or better than another is capable of objective validation.
Political liberalism does not concern itself at all with whether or to what extent individuals adopt ways of life as the result of genuine choice, rather than because of authority, tradition, cultural isolation, or impoverishment. As long as the way of life affirmed is a reasonable one, how or why it is affirmed is irrelevant. Yet, as an interpretive matter, this lack of interest seems to conflict with a strong intuitive concern we have for such issues. If this second-order issue is irrelevant to our concept of equal respect, as political liberalism implies, why as a society would we be suspicious, for example, of potential brainwashing on the part of cult groups? Do our considered convictions and practices lead us to think that affirmation of the group’s way of life by a brainwashed member is as valid for liberalism’s purposes as that of Dworkin’s scholar? Is society’s concern triggered only if the way of life affirmed is an unreasonable one? Surely, our concern is that the cult member’s affirmation is not really his, that it is not reached as the result of free choice even it cannot be considered coerced, and that this situation raises a legitimate concern on the part of political society independently of the reasonableness of the way of life itself. Indeed, this concern is analogous to the inquiry that the Supreme Court recognized as not merely valid, but obligatory, in *Yoder*. If this is so, the same concern seems to be present with other means that prevent an affirmation from being the individual’s own.

Turning from fit to Dworkin’s second dimension: Which conception of equal respect best justifies our political practices in the sense of providing the more attractive picture for us, or the better reason for adopting it if we were deciding on a clean slate? A conception that gives equal standing to choice, authority and tradition (let alone other less tangible, but in practice undeniable, factors such as poverty and ignorance), or one that promotes free choice as the means by which a way of life comes to be adopted? Dworkin’s conclusion that the legal conception of integrity is attractive because it permits us to conceive of our political community as comprised of “free and independent people who disagree about political morality and wisdom,” applies equally to the conception of liberalism defended here. Moreover, unlike political liberalism, this conception focuses on the “free and independent” rather than the “disagreement,” holding that the former, and not the latter, is of central political importance—both normatively and causally.

In considering this issue, it is important to recall a central point from Part II, that contrary to much antiliberal rhetoric, liberalism is not destructive, but supportive, of traditional, customary, or communal ways of life that are the objects of choice. Although many adherents of such ways of life currently consider themselves threatened and marginalized by the “secular” and “imperial” worldview of liberalism, those that rely on choice would be strengthened and ener-

105. See text accompanying notes 21-29 supra.
106. See text accompanying notes 59-63 supra.
108. These terms come from Robert Cover’s classic expression of this critique of liberalism. See Robert Cover, The Supreme Court 1982 Term—Foreword: Nomos and Narrative, 97 Harv. L. Rev. 4 (1983).
gized as exemplifying the ideal of second-order autonomy. Of course, some ways of life may die out because they are not chosen, but if we are deciding on a clean slate, this is not clearly a bad outcome. We should not view such "unchosen" ways of life in the same terms as animal species threatened with extinction by our actions, whose survival is generally thought to be an intrinsic good. The difference is precisely that only in the case of the species would we collectively be responsible for the dying out.

This concludes the case for the ideal of autonomy as the best interpretation of our fundamental political principle of equal respect. This principle must be understood in the context of a system of social practices that locates the individual within a cultural, normative, and economic structure that privileges choice. In this communally constituted system, we are often required to choose but we do not necessarily choose to choose.\textsuperscript{109} To the extent that this is paradoxical, it explains why individuals are entitled, as part of their rights of citizenship, to help and support in enhancing both their capacity to choose and their range of choices. This structure and the way of life that it incorporates are, of course, open to substantive critique and change—whether because it does not in practice live up to the promise of its theory, or because its theory is viewed as not worthy of being lived up to.\textsuperscript{110} If this interpretive justification of second-order autonomy is correct, then it is obviously not the case that only the liberal principle of legitimacy is consistent with equal respect. Moreover, in this case, the moral ideal of second-order autonomy could still in principle be justified as independently true.

**CONCLUSION: BEYOND AUTONOMY**

This article has argued that a particular conception of the ideal of autonomy is an essential and constitutive value of liberal political morality. This ideal firmly distinguishes the two conceptions of liberalism that are currently disputing the inheritance rights to the liberal tradition, and forms the basis of a distinctively liberal critique of political liberalism. This critique suggests that the project of specifying and defending liberal political principles on a lowest common denominator basis fails: Not simply because moral pluralism may be too endemic to permit consensus on principles of political justice, but more radically because this project misconceives such pluralism as the starting point, rather than a valuable achievement, of liberal political theory.

This article does not, however, claim that autonomy is the only essential and constitutive value of liberalism—though it is perhaps the distinctive one.

\textsuperscript{109} As Raz puts it, "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." Raz, supra note 4, at 391.

\textsuperscript{110} For a critique of liberalism based not on its alleged moral emptiness, but on the shortcomings of the distinctive and substantive way of life that liberalism purportedly structures, see Beiner, supra note 29. Beiner states that "liberalism itself instantiates one particular vision of the good, namely that choice in itself is the highest good," id. at 25, and argues that "[t]he problem with the liberal commitment to individuality, diversity, pluralism, and toleration is certainly not that these are bad things... but that liberal individuality and pluralism are too often a phony individuality and phony pluralism," id. at 78.
It is not, in other words, presenting a full account of liberalism. As we have seen, the ideal of autonomy does not rest on the subjectivist metaethical view that an object of choice is valuable because it is chosen. Moreover, the ideal of autonomy itself does not depend on being chosen, and may be objectively (or intersubjectively) knowable. Autonomy is not, however, the only thing of value.

This observation suggests an approach to solving the traditional "problems" or "paradoxes" of using autonomy to make bad choices (for example, to choose evil or to enslave oneself to another person or to drugs) and exercising one's autonomy in a way that denies autonomy to another person or group. It is not necessary to attempt to dissolve the problem of evil choices semantically by denying that such choices are "really" autonomous or that they are autonomous but lack value. More straightforwardly, choosing slavery or drugs, for example, may conflict with (and be trumped by) other essential liberal values such as human dignity or equality. The same holds for the denial of autonomy to other groups. Such other values are also constituent parts of an overall liberal account of a valuable human life and a good political society.

The number and frequency of such conflicts of value should not be exaggerated, however, for some limitations on the exercise of autonomy are internal to the ideal itself. This is not only, for example, because of the potential gap between short-term and long-term autonomy, but also because the goal of increasing total autonomy itself almost certainly requires some redistribution of its means, at least for the foreseeable future. In our world, the genuine pursuit of autonomy and of more equal autonomy cannot in practice be separated.