

Chapter 3: The Liberalism of Flourishing and Autonomy Liberalism: Some Comparisons

In this chapter, I compare autonomy liberalism and the liberalism of flourishing along several key traits: the view of the good life; ontology; the distinction between the right and the good; equality; respect; the view of the state, government, politics, and civil society; the attitude towards ideals, and the attitude towards religion.

The good life

There are two conceptions of personal autonomy in liberal thought. The first, whose roots lie in Immanuel Kant and John Stuart Mill, views autonomy as a central element of the good life, i.e., it claims that any decision an individual makes about her life should be made freely while drawing on the individual's intellectual resources, rather than obeying some authority external to the individual. According to this conception, the source of value in human life, and thus the supreme value, is individual choice. "He who lets the world ... choose his plan of life for him has no need of any other faculty than the ape-like one of imitation," Mill famously declared. In contrast, "[h]e who chooses his plan for himself employs all his faculties."¹ This conception of autonomy is sometimes referred to as "first-order autonomy." Under the second conception, an individual may subordinate her life to the imperatives of a religious or traditionalist culture that does not regard autonomy as a core human value. However, the life of such an individual may still be said to be autonomous, though in a more restricted sense, if her decision to endorse such a way of life is made autonomously, and, additionally, if she retains the power to continuously evaluate her ongoing commitments. This conception is sometimes referred to as "second-order autonomy."²

¹ John Stuart Mill, *On Liberty* (Indianapolis: Hackett Publishing Co., Elizabeth Rapaport ed., 1978) 56.

² Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986); Steven Wall, *Liberalism, Perfectionism and Restraint* (Cambridge: Cambridge University Press, 1998); Charles Larmore, *The Morals of Modernity* (Cambridge: Cambridge University Press, 1996) 128; Richard H. Fallon Jr., 'Two Senses of Autonomy,' (1994) 46 *Stan. Law Rev.* 875; Stephen

In this chapter, I shall have in mind autonomy in the sense of first-order autonomy.

The liberalism of flourishing offers an alternative liberal view of the good life. For intellectualist-moralist liberalism of flourishing, the good life consists in the ability of an individual to develop her intellectual and moral capabilities. For comprehensive liberalism of flourishing, the good life consists in the development and employment of a rich repertoire of human capabilities in varied personal and social contexts. However, the liberalism of flourishing does not expect the state to compel individuals to live by its normative imperatives. All it expects of the state is to create the background conditions for capabilities development, leaving it to each individual to determine whether and in what ways she wishes to reap the benefits of these background conditions. This is the strong liberal element in the liberalism of flourishing.

Mill conflates the ideals of autonomy and flourishing. A person whose “plan of life” is chosen for him by society lacks “character,” he maintains. In contrast, he whose intellectual and moral capabilities are appropriately developed has the self-confidence to stand against the pressures of society and to generate his life decisions from within. Thus, developed intellectual and moral capabilities are a precondition for autonomy.³ In a similar vein, Martha Nussbaum claims that for genuine autonomy to exist, an individual needs to live a certain “form of life” supported by certain “material conditions.”⁴ These conditions are the ones that are prerequisite for a life of comprehensive flourishing; not only intellectual and moral capabilities, as Mill claims, but also the conditions necessary for the realization of the comprehensive version of the liberalism of flourishing, are a precondition for the existence of meaningful autonomy.⁵

It is not only the case that the ideals of autonomy and flourishing may be viewed as supportive of each other. It is sometimes claimed that the whole intellectual apparatus of liberalism (e.g., individual rights, autonomy, Rawls’s “primary goods,” the rule of law) assumes

Gardbaum, ‘Liberalism, Autonomy, and Moral Conflict,’ (1996) 48 *Stan. Law Rev.* 385, 394–395; Thomas Scanlon, ‘A Theory of Freedom of Expression,’ (1972) 1(2) *Phil. Pub. Aff.* 204, 219.

³ Mill, note 1, at 56–57. See also Chapter 1, *supra*. According to James Laidlaw, the reverse is true, as well: by exercising their autonomy, individuals form their own character. James Laidlaw, *The Subject of Virtue* (Cambridge: Cambridge University Press, 2014) 148. For a similar argument, see: Wall, *id.*, at 130, 159, 203.

⁴ Martha C. Nussbaum, ‘Human Functioning and Social Justice – In Defense of Aristotelian Essentialism,’ (1992) 20 *Pol. Theory* 202, 228. See also Chapter 2, *supra*.

⁵ See also: Gardbaum, note 2, at 402 (the barriers to autonomy in the modern setting relate to economic, educational, and informational resources; the liberal state has not been sufficiently successful in ensuring its citizens access to the practical resources that make autonomy possible.)

a thick and distinct conception of what it is for humans to flourish and is animated by an ideal of human flourishing.⁶

Ontologies

Charles Taylor divides liberal thinkers according to their ontologies. Some liberals are atomists (or methodological individualists), while others are holists (mainly communitarians).⁷

The roots of autonomy liberalism lie in Hobbes, the founder of modern, secular political theory.⁸ Hobbes's ontology is atomistic. It views the individual as self-interested and self-sufficient; "as essentially complete independently of civil society";⁹ as not embedded in any particular cultural context or in any defined social locus; as a legal subject, not an ethical subject;¹⁰ and as establishing relations with other individuals only in order to further his own predetermined interests and values.¹¹

Since Hobbes, liberal thinkers (Bentham, Spencer, and many others) have recurrently relied on an atomistic ontology. But the closing decades of the twentieth century witnessed the rise of a communitarian current of thought that challenged liberalism's alleged atomism.¹²

⁶ Wall, note 2, at 12, 13.

⁷ Charles Taylor, 'Cross-Purposes: The Liberal-Communitarian Debate,' in *Philosophical Arguments* (New York: Routledge, 1995) 181.

⁸ Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953, 1965) 181–182; Mark Lilla, *The Stillborn God* (New York: Vintage Books, 2007) 87.

⁹ Strauss, id., at 183.

¹⁰ Michel Foucault, 'The Ethic of Care for the Self as a Practice of Freedom (Interview),' in *The Final Foucault* (Cambridge: The MIT Press, J. R. Rasmussen and David Bernauer eds., 1988) 1, 14.

¹¹ Stephen A. Gardbaum, 'Law, Politics, and the Claims of Community,' (1992) 90 *Mich. Law Rev.* 685, 692.

Alasdair MacIntyre has portrayed this ontology in strong terms when, in a famous passage, he claimed that for liberals of this strain living in society is "as though we had been shipwrecked on an uninhabited island with a group of other individuals, each of whom is a stranger to me and to all the others. What have to be worked out are rules which will safeguard each one of us maximally in such a situation." Alasdair MacIntyre, 'Justice as Virtue: Changing Conceptions,' in *Communitarianism and Individualism* (Oxford: Oxford University Press, Shlomo Avineri and Avner De-Shalit eds., 1992) 50, 59. (See also: Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (London: Duckworth, 1985) 244–255.) This is not too remote from Martha Nussbaum's depiction of the Cyclopes in Homer's *Odyssey* as "beings who have a human form but who live in isolation from one another and lack all sensitivity to the needs of others, all sense of community and affiliation." Nussbaum, note 4, at 216. In the same vein, Mark Tushnet argues that according to this tradition in liberalism, "people exist as isolated islands of individuality who choose to enter into relations that can metaphorically be characterized as foreign affairs." Mark Tushnet, 'Following the Rules Laid Down: A Critique of Interpretivism and Neutral Principles,' (1983) 96 *Harv. Law Rev.* 781, 783.

¹² Will Kymlicka, 'Community,' in *A Companion to Contemporary Political Philosophy* (Oxford: Blackwell Publishers, 1993) 366.

Starting with Sandel's famous criticism of Rawls,¹³ a number of liberal thinkers claimed that the fault with liberalism is its conception of the individual as an abstract autonomous chooser detached from any attachments, as well as from social and cultural identities. Michael Walzer claimed that the individualist assumptions of liberalism are flawed; human existence is "persons-in-societies, not persons-by-themselves."¹⁴ Charles Taylor argued that for autonomy to be a viable ideal, "an entire civilization" composed of a specific "art, philosophy, theology, science [and] politics" is required, together with a host of social and political institutions, such as museums, symphony orchestras, universities, laboratories, newspapers, publishing houses, television stations, political parties, law courts, and representative assemblies, as well as certain infrastructures (buildings, railroads, sewage plants, power grids, etc.).¹⁵ Likewise, Taylor argued that the regime of rights necessary for personal autonomy requires certain capacities that can only develop and be sustained "in a society of a certain kind."¹⁶ In the same spirit, Joseph Raz claimed that the ideal of personal autonomy is incompatible with moral individualism. "The provision of many collective goods is constitutive of the very possibility of autonomy."¹⁷ And Alasdair MacIntyre claimed that the concepts of social contract and individual rights are intelligible only when placed in a context where there is a common understanding of the meaning of these concepts. "Without such a context we can have no adequate concept of contract or of rights, but only pseudo-concepts."¹⁸ Feminist thinkers have criticized the liberal presentation of the autonomous individual as essentially independent and self-sufficient, a vision that denies the inescapable connectedness of individuals and the unchosen familial, social, and national attachments that constrain the decisions individuals make about their lives.¹⁹

¹³ Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982).

¹⁴ Michael Walzer, 'Liberalism and the Art of Separation,' (1984) 12 *Pol. Theory* 315, 325–326.

¹⁵ Charles Taylor, 'Atomism,' in *Communitarianism and Individualism* (Oxford: Oxford University Press, Shlomo Avineri and Avner De-Shalit eds., 1992) 29, 44–47. See also: Stephen Mulhall and Adam Swift, *Liberals and Communitarians* (Oxford: Blackwell Publishers, 1992) chapter 3.

¹⁶ Taylor, id., at 35. See also: Stephen Macedo, *Liberal Virtues* (Oxford: Oxford University Press, 1990) 226 (claiming that for autonomy to exist, it is necessary to have "[t]he culture of reflectively, self-critical, liberal community, its poetry, history, literature, and moral philosophy, as well as its more popular media").

¹⁷ Raz, note 2, at 207. See also: Jeremy Waldron, 'Autonomy and Perfectionism in Raz's *Morality of Freedom*,' (1989) 62 *S. Cal. Law Rev.* 1097, 1120–1125.

¹⁸ Alasdair MacIntyre, 'On Democratic Liberty: Essays in Retrieval by C.B. Macpherson,' (1976) 6(2) *Can. J. Phil.* 177, 189.

¹⁹ Linda Barclay, 'Autonomy and the Social Self,' in *Relational Autonomy* (Oxford: Oxford University Press, Catriona Mackenzie and Natalie Stoljar eds., 2000) 52. This last claim is shared by John Rawls who wrote that "the form of society ... limits people's ambitions and hopes in different ways, for they with reason view themselves in part according to their place in it

In contrast to the common association of liberalism with atomism, however, prominent thinkers can be found in the liberal tradition who viewed individuals as embedded in communities, and as owing fraternal duties of solidarity and virtuous conduct to other members of these communities.²⁰ Also, in response to the communitarian and feminist critiques of liberalism's ontology of past decades, various liberal thinkers sought to show that liberalism may advocate a view of the individual that combines her being an autonomous chooser with her being a member of a religious group or a cultural tradition, as well as having unchosen constitutive attachments.²¹ But even these internalizations of communitarian and feminist critiques by liberal theorists cannot overcome the view of individuals that lies at the core of autonomy liberalism, namely of individuals living in "sheltered islands" created by liberalism's matrix of negative rights (freedom of religion, freedom from religion, freedom of speech, freedom of movement, privacy, the right to private property, etc.), and leading their lives immune from external interference.

The liberalism of flourishing of both strains assumes a holist ontology and rejects the atomistic ontology usually ascribed to autonomy liberalism. In that, the liberalism of flourishing of the second half of the nineteenth century and the first decades of the twentieth century foreruns the communitarian and feminist critiques of liberalism.²² Intellectualist-moralist liberalism of flourishing understands that the intellectual and moral development of individuals cannot take place but through contacts with other individuals, and that the development of the intellectual and moral capabilities of each individual is substantially affected by the level of the development of the intellectual and moral capabilities of other individuals. And comprehensive

and take account of the means and opportunities they can realistically expect." John Rawls, 'The Basic Structure as Subject,' (1977) 14 *Am. Phil. Q.* 159, 160.

²⁰ Thomas A. Spragens, Jr., 'Communitarian Liberalism,' in *New Communitarian Thinking* (Charlottesville: University Press of Virginia, Amitai Etzioni ed., 1995) 37.

²¹ Kymlicka, note 12; Catriona Mackenzie and Natalie Stoljar, 'Introduction,' in *Relational Autonomy* (Oxford: Oxford University Press, Catriona Mackenzie and Natalie Stoljar eds., 2000) 3.

²² On the connection between the liberalism of flourishing and communitarianism, see: Avital Simhony and David Weinstein, 'Introduction: The New Liberalism and the Liberal-Communitarian Debate,' in *The New Liberalism – Reconciling Liberty and Community* (Cambridge: Cambridge University Press, Avital Simhony and David Weinstein eds., 2001) 1; Douglas B. Rasmussen and Douglas J. Den Uyl, *Norms of Liberty* (2005) 81, 82.

liberalism of flourishing understands that the well-being of individuals is radically dependent on the conduct of other individuals.²³

The good and the right

For Aristotle, there is a continuum between ethics and political theory: the primary task of ethics is to elucidate human flourishing, and the role of the “statesman” is to create conditions for flourishing.²⁴ No such continuum exists under autonomy liberalism, which is premised, rather, on a sharp distinction between the private sphere and the political sphere. This distinction is captured in the distinction between the good and the right.

The *good* is *private* and *subjective*. “[L]iberalism does not have any particular positive doctrines about how people are to conduct their lives or what personal choices they are to make.”²⁵ This is why it is often claimed that liberalism rejects “the wholeness of man,” i.e., it is a theory of the *citoyen*, not a theory of *homme*.²⁶ The good is also *plural*. Liberals assume that there are many conflicting and incommensurable conceptions of the good, each compatible with full rationality.

The *right* is *public* and *one*. As for liberalism, liberty is “a negative idea” prescribing “a maximum of empty space to be preserved against all trespassers,”²⁷ the liberal right is composed of a matrix of negative rights. This matrix is supposed to enable the greatest number of individuals to pursue their subjective conceptions of the good, immune from adverse interference

²³ See also: David L. Norton, *Democracy and Moral Development* (Berkeley: University of California Press, 1991) 7–8 (arguing that theories of human flourishing cannot but perceive human beings as inherently social beings.)

²⁴ Sarah Broadie, ‘Aristotle’s Elusive *Summum Bonum*,’ in *Human Flourishing* (Cambridge: Cambridge University Press, Ellen Frankel Paul, Fred D. Miller, Jr., and Jeffrey Paul eds., 1999) 233, 233, 242.

²⁵ Judith N. Shklar, ‘The Liberalism of Fear,’ in *Liberalism and the Moral Life* (Cambridge: Harvard University Press, Nancy L. Rosenblum ed., 1989) 21, 21.

²⁶ Charles Larmore, ‘Political Liberalism,’ (1990) 18 *Pol. Theory* 339, 351; Charles E. Larmore, *Patterns of Moral Complexity* (Cambridge: Cambridge University Press, 1987) 105–106, 118, 123–124, 128; Amy Gutmann, ‘Communitarian Critiques of Liberalism,’ in *Communitarianism and Individualism* (Oxford: Oxford University Press, Shlomo Avineri and Avner De-Shalit eds., 1992) 120, 126. This claim is formulated most clearly in John Rawls’s *Political Liberalism* (Cambridge: Harvard University Press, 1993): citizens are expected to act in the political realm in accordance with the liberal political doctrine, but in civil society and in their private spheres, they are supposed to act in accordance with their particularistic comprehensive doctrines. As Rawls puts it, “a liberal society with a constitutional regime does not, *as a liberal society*, have a *comprehensive* conception of the good. Only the citizens and associations within the civic society in the domestic case have such conceptions.” John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1999) 34. (Emphasis in the original text).

²⁷ Bernard Bosanquet, *The Philosophical Theory of the State* (London: Macmillan, 1899, 1958) 116.

on the part of the state or other individuals. Put differently, liberalism views the projects chosen by individuals in the course of their lives as supreme, and freedom as a precondition for making these choices and pursuing them.²⁸ This is why it is often claimed that in liberalism the right enjoys priority over the good,²⁹ or as Rawls put it, “justice is the first virtue of social institutions.”³⁰ And this is why liberalism is often presented as “an art of separation”³¹ and of “differentiation of realms.”³²

Autonomy liberalism’s negative rights create “sheltered islands” in which citizens of the liberal state can lead their lives immune from external interference. Liberalism is premised on the assumption that usually the government is allowed to act for the promotion of the citizens’ general good only in the spaces “in between” these islands. This is another implication of the priority of the right over the good in liberalism: when the right sets boundaries so as to protect individuals against interference in their pursuit of their subjective good, it also sets boundaries to the promotion of the general good by the government.³³ At times, the government *is* allowed to intervene in the citizens’ sheltered islands and restrict citizens’ liberties for the promotion of the general good (obvious examples are the restriction of freedom of speech for national security purposes, and the doctrine of eminent domain). The question of the extent to which such interferences may rightfully take place is one question in dispute among liberal theorists, as well as among constitutional courts. But such interferences are the exception, and they always require deliberation and justification.

The liberalism of flourishing accepts autonomy liberalism’s matrix of negative rights, but rewrites it. The liberalism of flourishing focuses on the good of individuals in developing their capabilities. It therefore expects the state to take active measures to create the conditions

²⁸ Will Kymlicka, *Liberalism, Community and Culture* (Oxford: Oxford University Press, 1989) 48.

²⁹ Sandel, note 13; Michael J. Sandel, *Democracy’s Discontent* (Cambridge: Harvard University Press, 1996) at 294 (claiming that by the 1970s, the version of liberalism that asserts the priority of the right over the good had become the reigning American public philosophy.)

³⁰ John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971) 3. See also at 31 (“The principles of ... justice ... impose restrictions on what are reasonable conceptions of one’s good. In drawing up plans and in deciding on aspirations men are to take these constraints into account.”).

³¹ Walzer, note 14, at 325–326.

³² Larmore, note 2, at 75.

³³ Sandel, note 13, at 18 (claiming that the priority of the right over the good means that “principles of right invariably outweigh considerations of welfare”).

allowing individuals adequate development of their capabilities. Put differently, the liberalism of flourishing rewrites the “right” matrix of negative rights maintained by the liberal state under autonomy liberalism by supplementing it with a list of *positive* rights in areas such as education, health care, housing, material welfare, and work conditions. (The only exception to that in liberalism of flourishing thought is the libertarian liberalism of flourishing of Douglas B. Rasmussen and Douglas J. Den Uyl. See Chapter 2, *supra*.) As manifest in the writings of the English New Liberals of the late nineteenth century and the first decades of the twentieth century (Chapter 1), the liberalism of flourishing’s promotion of these positive rights inevitably involves demotion of some of autonomy liberalism’s negative rights, such as freedom of property and freedom of contract. (The same result is reached by Raz in his perfectionist autonomy liberalism.)³⁴

Equality

The liberal principle of equality

A core principle of autonomy liberalism is that all human beings have equal moral worth. Discrimination, treating individuals differently without good reason, implies that some individuals have less moral worth than others. Two things follow from this. First, all citizens of the liberal state must enjoy the same treatment on the part of the state, i.e., no citizen may be preferred over other citizens or discriminated against by the state. Second, the state should take active measures to eliminate discrimination against groups and individuals taking place in the realm of civil society. (Because of the weight that autonomy liberalism ascribes to the choices of individuals, a liberal state must tolerate inequalities effected in the *private* realm as a result of the choices made by individuals. If a person resists leasing her apartment to a person belonging to a national, religious, racial, or sexual minority, a liberal state cannot compel her to do what she does not want to do. But if a corporation that is in the business of leasing apartments adopts a similar stance, the state must enforce the norm of equality on the corporation: the corporation does not act in the private realm, but in civil society where the norm of equality should be strictly enforced; the choices of corporations do not deserve the same respect as the choices of

³⁴ Raz, note 2, at 417.

individuals.) Needless to say, the liberalism of flourishing fully endorses the liberal principle of equality. But as the following discussion shows, it sheds some new light on it as well.

Liberal equality, the politics of identity, and the politics of multiculturalism

The second half of the twentieth century witnessed the rise of the politics of identity and the politics of multiculturalism.³⁵

The *politics of identity* is an egalitarian politics in the realm of cultural representations. It is premised on the assumption that when demeaning cultural stereotypes are internalized by members of both majority and minority groups, these stereotypes affect the conduct of members of the two groups in ways that preclude members of the minority group from fully realizing their human potential: members of the majority group consciously and unconsciously discriminate against members of the minority group; members of the minority group, having internalized demeaning stereotypes of themselves, consciously and unconsciously avoid life options that would allow them to realize their capabilities.

The *politics of multiculturalism* has been conducted by minority groups claiming that state and civil society institutions dealing with the preservation, presentation, and dissemination of cultural products (universities, museums, etc.) fail to give adequate representation to the cultural products of various minority groups. Much like the politics of identity, the politics of multiculturalism is premised on the assumption that without adequate representation, members of both the majority and minority groups internalize a demeaning perception of members of the minority groups, and this, in turn, precludes the latter from fully utilizing their capabilities.

In its concern with the full realization of capabilities, the liberalism of flourishing is close in spirit to both the politics of identity and the politics of multiculturalism. Put differently, the politics of identity and the politics of multiculturalism are concerned with human flourishing in the same sense that the liberalism of flourishing is concerned with it. But there are three

³⁵ Charles Taylor, *Multiculturalism and 'The Politics of Recognition'* (Princeton: Princeton University Press, 1992); Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990); *The Identity Question* (New York: Routledge, John Rajchman ed., 1995); *Theorizing Multiculturalism* (Oxford: Blackwell Publishers, Cynthia Willett ed., 1998); Allan Bloom, *The Closing of the American Mind* (New York: Simon & Shuster Inc., 1987); Brian Barry, *Culture and Equality – An Egalitarian Critique of Multiculturalism* (Cambridge: Harvard University Press, 2001).

important differences between these two types of politics, on the one hand, and the liberalism of flourishing, on the other. First, the politics of identity and the politics of multiculturalism focus on *culture*. The liberalism of flourishing acknowledges the important role played by culture in constituting individuals and determining their life courses, but it goes well beyond that; it is also concerned with the material and social conditions in which individuals live. Second, the politics of identity and the politics of multiculturalism are *reactive*; they aim at the elimination of demeaning cultural stereotypes. In contrast, the liberalism of flourishing is *proactive*; it aims at the planned, initiated creation of the conditions conducive to the development and realization of human capabilities. Third, even though the politics of identity and the politics of multiculturalism do acknowledge the importance of state action for the elimination of demeaning cultural stereotypes, they expect such action to be taken first and foremost by civil society actors. In contrast, the liberalism of flourishing expects the state to be the prime actor for the creation of the conditions conducive to human flourishing.

Exclusion

The law refers to discrimination as the opposite of equality. But when we talk about the opposite of equality, it is helpful to distinguish between “discrimination” and “exclusion.” *Discrimination* takes place where resources are unequally distributed between groups or individuals without justification. *Exclusion* is a subcategory of discrimination. It takes place when a certain individual or group is precluded from acting in a certain social sphere that is open to others, without justification. (Exclusion is not only the opposite of inclusion; in a way, it is also the opposite of solidarity.)³⁶

The problem with exclusion is not only that it treats some people as having lesser moral worth. Rather, when certain individuals are precluded from engaging in an activity, they are precluded from fully realizing their intellectual and other capabilities, and from realizing their subjective conception of the good. We may formulate an almost formalistic principle: as exclusion inhibits full realization of human capabilities, whenever a certain activity takes place in a certain social group, no matter what the merit of the activity, all those belonging to the group

³⁶ Richard Rorty, ‘Solidarity,’ in *Contingency, Irony, and Solidarity* (Cambridge: Cambridge University Press, 1989) 189.

are *prima facie* entitled to take part in it, and any attempt to exclude some from doing so necessitates justification.

The experience of exclusion is more injurious to the psyche of an individual than that of discrimination. That is so because in the case of exclusion an individual sees others taking part in a certain activity that she finds attractive, yet is barred from participating in. In instances of exclusion, a particular individual is being singled out and “pointed at.” Indeed, in *The Double*,³⁷ Fyodor Dostoyevsky depicts an experience of exclusion – a person who is not allowed into a party – as leading to madness. Historian Jacob Talmon writes that nationalist movements arise when the intelligentsia of a minority national group tries to assimilate into the majority society, but experiences rejection. In such situations, writes Talmon, the minority intelligentsia performs a “U-turn,” focuses on cultivating its own people’s culture, and works for the attainment of full national sovereignty.³⁸ Indeed, the history of nationalist movements, such as the Quebecois nationalist movement or Zionism, confirms Talmon’s suggestion. Exclusion is indeed a powerful force in the lives of both individuals and groups.

Inequality in non-liberal cultural groups

Due to the centrality of the principle of equality to liberalism, intricate questions arise in cases in which non-liberal communities living in the liberal state discriminate against certain subgroups living in them. The recurring case is, of course, that of discrimination against women. In many religious groups, there is a bias against learning by women; women are not supposed to have much education. Their social roles, e.g., rearing children, cleaning, and cooking, it is claimed, are such that they don’t need much formal knowledge. Jewish ultra-Orthodox women are a case in point. In the Jewish ultra-Orthodox group, women are almost completely excluded from Torah study. Torah study is perceived as the heart of Jewish religious life. A Torah scholar experiences an encounter with God through the might of God’s Torah and makes himself “a partner” in the cultural and spiritual heritage of Judaism. Yet this exhilarating religious and

³⁷ Fyodor Dostoyevsky, *The Double: A Poem of St. Petersburg* (London: Harvill, George Bird, trans., 1957).

³⁸ Jacob Leib Talmon, ‘National Revival,’ in *The Riddle of the Present and the Cunning of History* (Jerusalem: Bialik Institute, D. Ohana ed., 2000) 68, 69 (Hebrew). See also: Hannah Arendt, ‘We Refugees,’ in *The Jewish Writings* (New York: Schocken Books, J. Kohn and Ron H. Feldman eds., 2007) 264.

intellectual experience is systematically denied to women living in the ultra-Orthodox community. Clearly, therefore, ultra-Orthodox women are severely restricted in making use of and realizing their intellectual, moral, and emotional capabilities compared to ultra-Orthodox men. Moreover, as Torah study is a precondition for political leadership and for playing judicial roles in the ultra-Orthodox community, the exclusion of ultra-Orthodox women from Torah study means that these women are excluded from decision-making processes that profoundly affect their lives.³⁹

Susan Moller Okin maintains that the exclusion of ultra-Orthodox women from Torah study raises a question regarding how ultra-Orthodox girls are to develop “a sense of equal worth or self-respect.”⁴⁰ But Okin does not take into account cultural mechanisms extant in the ultra-Orthodox group that compensate women for their exclusion from Torah study and that make it possible for them to develop a sense of self-worth and self-respect. (First, by creating the conditions enabling their husbands to study Torah, ultra-Orthodox women do take part in Torah study, though by proxy. Second, there are two fundamental values in the ultra-Orthodox group: studying Torah and rearing children. Males are in charge of the first fundamental value, women of the second.) So it is the flourishing-based argument against exclusion, and not the self-worth and self-respect argument, that correctly explicates the implications of the exclusion of ultra-Orthodox women from Torah study: ultra-Orthodox women are barred from fully realizing their human capabilities, i.e., their flourishing as human beings is diminished. However, this may be phrased in terms of autonomy liberalism, as well: the repertoire of options available to ultra-Orthodox women for exercising their autonomy is restricted, and their autonomy is thereby restricted.

Liberal states widely tolerate practices of exclusion, first and foremost of women, taking place in religious communities living in their territories. One justification for that, often provided by liberal thinkers, is the famous “exit” argument. But obviously this argument is flawed. It doesn’t take into consideration the distinction between membership in associations (where exit is possible, albeit at times painful) and belonging to cultural groups (where, as persuasively shown

³⁹ Menachem Mautner, ‘A Dialogue between a Liberal and an Ultra-Orthodox on the Exclusion of Women from Torah Study,’ in *Mapping the Legal Boundaries of Belonging* (Oxford: Oxford University Press, Rene Provost ed., 2014) 155.

⁴⁰ Susan Moller Okin, ‘Feminism and Multiculturalism: Some Tensions,’ (1998) 108 *Ethics* 661, 673.

by Okin, exit inevitably involves a far-reaching, painful identity change).⁴¹ Another justification, discussed by the United States Supreme Court in the *Hosanna-Tabor* case,⁴² is based on the liberal principle of freedom of religion: the discrimination against women in religious communities is often entrenched in religious imperatives (the exclusion of ultra-Orthodox women from Torah study draws on a ruling of Maimonides). Enforcement of the principle of sexual equality by the liberal state on religious communities would therefore amount to a collision with religious imperatives.

The right stance on these issues is clear enough: the flourishing rationale mandates that the liberal state enforce the norm of equality even on non-liberal groups. But there are pragmatic considerations as to the best way to do that. The most effective way seems to be by encouraging bottom-up, civil society action in non-liberal groups for the elimination of the exclusion of women. Indeed, since the 1970s, we have been witnessing the rise of religious feminism in Judaism, Christianity, and Islam, and these important intellectual and social movements have made significant progress in reducing the discrimination against women in religious communities and their exclusion from communal activities.⁴³ Other possible measures may be the denial of legal recognition of acts taken within the groups and the denial of funding for activities taking place in the groups so as to encourage them to adopt the norm of equality. The most extreme measure, and probably the least effective, is invoking criminal sanctions against members of the group.

Respect

Respect, autonomy, and flourishing

Respect is another core value of autonomy liberalism. Autonomy liberalism's notion of respect draws on Kant's moral theory. According to Kant, what warrants respect for human beings is the distinct rationality with which they are endowed and which sets them apart from all

⁴¹ Susan Moller Okin, "'Mistresses of Their Own Destiny': Group Rights, Gender, and Realistic Rights of Exit,' (2002) 112(2) *Ethics* 205.

⁴² *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*, (Supreme Court of the United States, 132 S. Ct. 694, 2012).

⁴³ Merav Shmueli, *The Power to Define Tradition: Feminist Challenges to Religion and the Israel Supreme Court*, J.S.D. Dissertation, University of Toronto, Faculty of Law, 2005.

other species. (Kant calls the worth of human beings resulting from their rationality “dignity.”) A major aspect of human rationality, according to Kant, is the capacity to act autonomously, i.e., the capacity to legislate moral laws by recognizing what counts as moral obligations, and the capacity then to freely resolve to act in accordance with moral laws. For autonomy liberalism, to treat an individual according to the norm of respect means to accept her particular subjective conception of the good.

Respect is a mode of behavior based on a certain ground, i.e., a characteristic of the respected object that warrants respect. For autonomy liberalism, the characteristic of human beings that warrants respect for them is their distinct rationality, and the mode of behavior to be expected of a liberal state towards its citizens is noninterference, in accordance with autonomy liberalism’s matrix of negative rights. But it is possible to introduce another ground for respect for human beings, one borrowed from the liberalism of flourishing. What emerges from the writings of thinkers of the liberalism of flourishing is that within the liberal tradition there is a recurring line of thought, starting with Mill, that views the distinctive trait of human beings, next to their human reason, as their being endowed with varied human capabilities (first and foremost intellectual and moral capabilities), and that holds that it is the function of the state to create the background conditions for the development of these capabilities. In line with that, it may be claimed that one possible ground for respect on the part of the state towards its citizens is the existence in them of human capabilities, and that the mode of conduct required of the state in manifesting its respect for its citizens is the creation of the background conditions enabling them to develop their distinct human capabilities.

Self-respect and flourishing

There is an additional way in which the liberalism of flourishing can address the issue of respect, premised on the notion of *self-respect*. Stephen Darwell has offered a distinction between two kinds of respect, and, correspondingly, between two kinds of self-respect.⁴⁴ The first kind of respect is termed by Darwell “recognition respect.” It centers on the worth that derives from one’s being a person, and is owed to all persons equally. Recognition *self-respect*

⁴⁴ Stephen Darwell, ‘Two Kinds of Respect,’ (1977) 88 *Ethics* 36.

therefore involves living in light of an understanding and appreciation of oneself as having dignity and moral status merely by virtue of being a person. The second kind of respect suggested by Darwell is “appraisal respect.” It is an attitude of positive appraisal of a person either as a person having some unique positive character traits or as engaged in some particular pursuit worthy of appreciation. Appraisal respect therefore is not owed to everyone. Correspondingly, appraisal *self*-respect has to do with a person’s acknowledgement of the worth of her virtues and achievements. As Robin S. Dillon put it, individuals with appraisal self-respect

judge that they measure up to some standards of excellence, believe they are successfully pursuing a worthwhile plan of life, regard their accomplishments as admirable, and have confidence that they will continue to do and to be what they think it is appropriate and good to do and to be.⁴⁵

Why do some individuals succeed in leading a life of accomplishment that rewards them with appraisal respect and appraisal self-respect, while others fail? There seem to be four major factors playing a role here: natural talent, the material conditions in which an individual is raised, the amount of cultural capital invested in an individual in the course of her upbringing, and one’s character. Libertarians such as Robert Nozick, as well as classical liberals,⁴⁶ focus on the first factor, natural talent, and disregard the other three, while Rawls recognizes the importance of at least two of the four, namely material conditions and cultural capital.⁴⁷ I would argue that the relevance of all four factors cannot be disputed, though disagreement may arise as to the relative weight of each. It may safely be claimed that autonomy liberalism disregards the (important) issue of appraisal respect and appraisal self-respect. In contrast, for the liberalism of flourishing, accomplishment, i.e., the realization of capabilities and potentialities, is a central concern. The liberalism of flourishing cannot, of course, address the factor of natural talent. But it expects the state to provide individuals with a certain amount of material and cultural capital for the

⁴⁵ Robin S. Dillon, ‘Toward a Feminist Conception of Self-Respect,’ (1992) 7(1) *Hypatia* 52. In *A Theory of Justice*, Rawls offers a somewhat different understanding of the notion of self-respect (which Rawls sees as a “primary good” of the utmost importance). First, self-respect includes “a person’s sense of his own value, his secure conviction that his conception of his good, his plan of life, is worth carrying out.” Second, self-respect implies “a confidence in one’s ability ... to fulfill one’s intentions.” Rawls, note 30, at 440.

⁴⁶ Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, Inc., 1974); Crawford Brough Macpherson, *The Political Theory of Possessive Individualism* (Oxford: Oxford University Press, 1962).

⁴⁷ Rawls, note 30.

development of their capabilities. It also expects the state to create the background conditions that will allow individuals to engage in the appropriate development of their character. In that, the liberalism of flourishing pays heed to three of the four factors that are essential for accomplishment, and thus for appraisal respect and appraisal self-respect. In a way, it can therefore be said that the liberalism of flourishing stands for the expansion of the amount of appraisal respect and appraisal self-respect of individuals in society.

The state

Though classical liberals such as Adam Smith and Jeremy Bentham thought of the state as an instrument for bettering the conditions of the poor, liberalism has traditionally been cautious regarding the state. It is often claimed that for liberalism the state is first and foremost a source of violence, and therefore liberalism's central concern is with "the need to defend individuals and groups against the oppressive demands and intrusions of authority."⁴⁸ In that, liberalism follows the path of a long Western tradition that identifies the state with unjustified, arbitrary violence, even if clothed with the constraining procedures of the law. This goes back to Antigone, to the trial of Socrates, to the trial of Jesus Christ, and to the case of Michael Kohlhaas.⁴⁹ Likewise, it is often claimed that liberalism is a political theory of limited government whose concern is with providing individuals with institutional guarantees of personal liberty.⁵⁰

This attitude towards the state is also manifest in Isaiah Berlin's well-known insistence that any aspiration to remake society through the mechanisms of the state is bound to end in terror.⁵¹ It is also manifest in Karl Popper's advocacy of the method of the "the piecemeal

⁴⁸ Nancy L. Rosenblum, 'Introduction,' in *Liberalism and the Moral Life* (Cambridge: Harvard University Press, Nancy L. Rosenblum ed., 1989) 1, 5.

⁴⁹ And yet, it is important to note that what emerges from all these cases is that in Western civilization, a pattern has been institutionalized according to which those who are in control of the state's mechanisms of violence are *not* allowed to operate these mechanisms freely at their own choice and discretion. Rather, a precondition for their making use of state violence against a citizen of the state is the conduct of a legal proceeding – albeit, at times, a distorted and evil one. Put differently, what is unique about the invocation of state violence against a citizen in the West is that it is supposed to be legalized violence, even if at times legalized in a formal way only (sham trial). Joseph Weiler, 'The Trial of Jesus,' (2010) 204 *First Things* 39.

⁵⁰ Rosenblum, note 48, at 5; John Gray, 'From Post-Liberalism to Pluralism,' in *Enlightenment's Wake* (London and New York: Routledge, 2007) 196, 196.

⁵¹ See: Introduction, *supra*, note 8.

engineer,” i.e., trial and error, and small adjustments and improvements,⁵² and in historian Jacob Talmon’s similar claim that the good state is one that acts modestly and incrementally, i.e., “by the method of trial and error.”⁵³

This is not the view of the state endorsed by the liberalism of flourishing. It views the state as a positive moral actor that can play an important role in the creation of the conditions for human flourishing. It aims at redressing a shortcoming that lies at the core of autonomy liberalism. Autonomy liberalism views the individual as the author of reason-based decisions about her life, yet when thinkers of autonomy liberalism discuss the “conditions of autonomy,” they usually mention the decision-maker’s mental capabilities and the availability for her of an adequate repertoire of possible choices, to the neglect of the material, social, and cultural conditions in which the decision-maker is embedded. Raz’s *The Morality of Freedom* is a case in point. Though Raz strongly objects to the doctrine of limited government,⁵⁴ his discussion of the conditions for autonomy contains only scant references to the material, social, and cultural conditions requisite for autonomy. For him, the major function of government in enhancing autonomy should be the creation of a morally valuable repertoire of options, and not providing decision-makers with adequate education, health care, minimum wage, etc. This is not the case with the liberalism of flourishing. It believes that for an individual to flourish she should live in certain material, social, and cultural conditions conducive to flourishing, and that it is the function of the state to make sure that such conditions exist.

In fact, in some countries, autonomy liberalism is already on the road to transforming itself by way of internalizing some of the core principles of the liberalism of flourishing. The rise of the doctrine of human rights, with its thick conception of the individual, and with its view of the individual as the bearer of rights that go beyond the negative rights of autonomy liberalism, may transform autonomy liberalism from a theory of negative rights to a theory containing thick

⁵² Karl R. Popper, *The Open Society and Its Enemies* (Princeton: Princeton University Press, 1950) chapter 9.

⁵³ Jacob Leib Talmon, *The Origins of Totalitarian Democracy* (Harmondsworth: Penguin Books, 1952, 1986) 253, 254–255.

⁵⁴ “The doctrine of limited government regards governments as a threat to liberty. ... [However] there is another conception which regards them also as a possible source of liberty. They can create conditions which enable their subjects to enjoy greater liberty than they otherwise would.” Raz, note 2, at 18–19.

welfare rights. This process is already in the making in the constitutional jurisprudence of some countries.⁵⁵

Politics

Liberalism's diminished theory of politics

Liberalism is a theory not only of limited government but also of limited politics.⁵⁶ Michael Walzer writes that the goal of liberalism has always been “to decrease the importance of politics.”⁵⁷ Samuel Black writes that the theories of justice that currently enjoy influence in the West “adopt the fiction of a mutually disinterested polity.”⁵⁸ And in the same vein, Bonnie Honig writes about “the displacement of politics” in contemporary political theory.⁵⁹

In contrast, politics plays an important role in the liberalism of flourishing. Politics is supposed to be the arena in which citizens deliberate over the extent to which they wish to finance and maintain state administrations enhancing human flourishing in areas such as education, health care, housing, and art (see Chapter 3, *supra*, and Chapters 4, 5, *infra*).

⁵⁵ See the cases of the Supreme Courts of South Africa and India: Dennis M. Davis, ‘Socio-Economic Rights: The Promise and Limitation – The South African Experience,’ in *Exploring Social Rights – Between Theory and Practice* (Oxford: Hart, Daphne Barak-Erez and Aeyal M. Gross eds., 2007) 193; Jayna Kothari, ‘Social Rights Litigation in India: Developments of the Last Decade,’ *id.*, at 172.

⁵⁶ Gray, note 50, at 196.

⁵⁷ Michael Walzer, ‘Dissatisfaction in the Welfare State,’ in *Radical Principles* (New York: Basic Books, 1980) 23, 28.

⁵⁸ Samuel Black, ‘Revisionist Liberalism and the Decline of Culture,’ (1992) 102 *Ethics* 244, 266.

⁵⁹ Bonnie Honig, *Political Theory and the Displacement of Politics* (Ithaca: Cornell University Press, 1993) 2.

Rawls’s *Political Liberalism* is a case in point. A central concept in Rawls’s book is “public reason.” A series of writers have read Rawls to mean that public reason refers to the contents to be utilized by the citizens of a liberal state in their political *deliberations*. Other writers, however, have interpreted Rawls’s concept of public reason as having to do with the contents serving for the *justification* of the exercise of coercive power by the state. There is much in *Political Liberalism* to support both readings. I join Charles Larmore in holding that Rawls’s “public reason” is a concept of justification, rather than deliberation. Charles Larmore, ‘Public Reason,’ in *The Cambridge Companion to Rawls* (Cambridge: Harvard University Press, Samuel Freeman ed., 2003) 368, 382; Menachem Mautner, ‘Religion in Politics: Rawls and Habermas on Deliberation and Justification,’ in *Religion and the Discourse of Human Rights* (Jerusalem: Israel Democracy Institute, Hanoch Dagan, Shahaar Lifshitz, and Yedidia Z. Stern eds., 2014) 68. According to this reading, Rawls’s concept of public reason clearly has nothing to do with what the government needs to *positively* do; it is as if the only way the government of a liberal state can function is through the exercise of coercive power over its citizens.

Legalization of politics

William E. Connolly writes about liberalism's tendency

to condense most issues of politics into juridical categories of rights, justice, obligation, and responsibility and to treat the remainder instrumentally as contests by which individuals and aggregations compete within juridical rules to advance their 'interests' and/or 'principles' by rational means.⁶⁰

Indeed, with its focus on the right, autonomy liberalism is legal liberalism.⁶¹ As a political theory, autonomy liberalism often reads like constitutional theory writ large. Of all branches of government, it focuses on the Supreme Court to the neglect of the legislative and executive branches. In line with Connolly's depiction of the legalistic tendencies of liberalism, one of its practical consequences in the United States is claimed to have been the colonization of political discourse by legalist rights discourse.⁶² (It is no coincidence that two central proponents of contemporary liberalism in the United States are lawyers, Ronald Dworkin and Bruce Ackerman.) This, in turn, is claimed to have had a series of undesirable consequences, such as the undermining of dialogue, reasoned discussion, and compromise; the prioritization of mere assertion over reason-giving; the prioritization of the short run over the long term; the prioritization of sporadic crisis intervention over systemic preventive measures; the prioritization of particular interests over the common good; the neglect of social responsibilities; and concentration on the individual and the state at the expense of the intermediate groups of civil society.⁶³ Paradoxically, what follows from all of this is that in conditions of excessive

⁶⁰ William E. Connolly, 'Identity and Difference in Liberalism,' in *Liberalism and the Good* (New York: Routledge, R. Bruce Douglass, Gerald M. Mara and Henry S. Richardson, 1990) 59, 67.

Here, again, Rawls's *Political Liberalism* is a case in point. His concept of public reason is highly legalistic: the paradigmatic issues to which it applies are "constitutional essentials" and "matters of basic justice," and the institution that epitomizes it is the Supreme Court. The title of Rawls's book is almost misleading. Herbert Lionel Adolphus Hart, 'Rawls on Liberty and Its Priority,' (1973) 40 *Univ. Chic. Law Rev.* 534, 537, claims that there is legalization in Rawls even earlier, namely in *A Theory of Justice*. Honig reads Rawls somewhat differently. She writes about Rawls's "displacement of politics with administration." Honig, note 59 at 157.

⁶¹ John Gray, 'Against the New Liberalism,' in *Enlightenment's Wake* (London and New York: Routledge, 2007) 1, 8, 9; John Gray, 'Agonistic Liberalism,' id., at 96; Ronald Beiner, *What's the Matter with Liberalism?* (Berkeley: University of California Press, 1992) 82–84; Sandel, note 29, at 290.

⁶² Gray, *Against the New Liberalism*, id., at 9; John Gray, 'Toleration: A Post-Liberal Perspective,' in *Enlightenment's Wake* (London and New York: Routledge, 2007) 27, 34; Beiner, id., at 81.

⁶³ Mary Ann Glendon, *Rights Talk – The Impoverishment of Political Discourse* (New York: The Free Press, 1991) 15. See also: Michael Paris, 'The Politics of Rights: Then and Now,' (2006) 31 *Law Soc. Inq.* 999.

legalization, liberalism's rights matrix, otherwise thought of as the means for peaceful coexistence and resolution of disputes, instead intensifies conflict, antagonism, confrontation, and rivalry.

The liberalism of flourishing is a legalized liberalism, as well, but in a different sense than autonomy liberalism. The liberalism of flourishing preserves autonomy liberalism's matrix of negative rights, of course, as well as the role played by constitutional law and by the constitutional courts in preserving this matrix. But as it stands for maintaining a series of state administrations, in areas such as education, health care, housing, material welfare, and support of the arts (Chapters 4, 5, *infra*), it substantially elevates the status of administrative law, making it as important as constitutional law.

Civil society

It is sometimes said that Marx had a thick theory of civil society, but no theory of the state.⁶⁴ When it comes to autonomy liberalism, we may say that it is not only the case that it has an underdeveloped theory of the state and of government; it also has a simplistic theory of civil society.

Liberalism has traditionally viewed society as “an agglomeration of self-interested individuals and groups.”⁶⁵ But as Michael Walzer has argued, liberals who succumb to this view make for “a bad sociology”: “The individual who stands wholly outside institutions and relationships and enters into them only when he or she chooses and as he or she chooses: This individual does not exist and cannot exist in any conceivable social world.”⁶⁶

As is well known, the sharpest critique of liberalism for its neglect of civil society was leveled by Karl Marx. In *On the Jewish Question*, Marx claimed that while under liberal law the *droits d'citoyen* are premised on the principle of equality, in civil society, where the *droits*

⁶⁴ Walzer, note 57, at 45–46.

⁶⁵ William A. Galston, *Liberal Purposes* (Cambridge: Cambridge University Press, 1991) 213.

⁶⁶ Walzer, note 14, at 324. See also: Richard Ashcraft, ‘Class Conflict and Constitutionalism in J.S. Mill’s Thought,’ in *Liberalism and the Moral Life* (Cambridge: Harvard University Press, Nancy L. Rosenblum ed., 1989) 105, 105 (asserting that “the notion of class conflict can claim no conceptual legitimacy” within the theoretical framework of liberalism).

d'homme prevail, inequalities in property rights, education, and occupation are tolerated. Marx's conclusion is therefore that "*political emancipation* itself is not *human* emancipation."⁶⁷

Indeed, it may be claimed that autonomy liberalism usually disregards the inequalities in terms of capital – economic, cultural, social, and symbolic⁶⁸ – that are pervasive in civil society, and the extent to which the social location of individuals substantially affects the fate of their lives. Moreover, autonomy liberalism idealizes civil society. It is based on a middle-class view of civil society as the site of a rich array of associations of individuals joining together for the promotion of common interests and concerns. But such joining together necessitates a certain amount of economic, cultural, and social capital, which many citizens living below the ranks of the middle class lack. For them, it is the state that needs to take active measures to enable them to realize their human capabilities – intellectual, moral, and otherwise.

The liberalism of flourishing acknowledges that the state may be a source of unjustified, arbitrary violence. But it does not see the state as the only threat to vital human interests. It understands that people may suffer not only when they encounter physical violence and denial of their freedom on the part of coercive state apparatuses but also when miserable material conditions and extreme dependence on employers severely curtail the flourishing and autonomy of individuals. The liberalism of flourishing therefore expects the democratic, reason-based institutions of the state to act for the elimination, or at least reduction, of such non-state threats to vital human interests.

The role of ideals in politics

The liberalism of flourishing is not apprehensive with regard to setting collective ideals.⁶⁹ It is aware of the fact that such ideals often serve as camouflage for the promotion of particularistic interests. (In *The German Ideology*, Marx and Engels famously argue that

⁶⁷ Karl Marx, 'On the Jewish Question,' in *The Marx-Engels Reader* (New York: W. W. Norton & Co., Robert C. Tucker ed., 1978).

⁶⁸ Pierre Bourdieu, *In Other Words: Essays towards a Reflexive Sociology* (Stanford: Stanford University Press, Matthew Adamson trans., 1990) 87–93; Pierre Bourdieu, 'The Forms of Capital,' in *Handbook of Theory and Research for the Sociology of Education* (New York: Greenwood Press, John G. Richardson ed., 1986) 241, 242–243; Pierre Bourdieu, 'What Makes a Social Class? On the Theoretical and Practical Existence of Groups,' (1987) 32 *Berkeley J. Soc.* 1, 9–14.

⁶⁹ Joseph Raz ties together perfectionism with the view that it is the function of the state to set up and implement ideals. Raz, note 2, at 134.

particularistic social interests tend to present themselves in politics as general interests, and there is abundant empirical data to support this claim.)⁷⁰ Furthermore, the liberalism of flourishing acknowledges the existence of an unavoidable gap between ideals and their realization in the real world. “Where the virtues are required, the vices also may flourish,” writes Alasdair Macintyre.⁷¹ It is also aware of the unavoidable hypocrisy that accompanies ideals whenever they are proclaimed.

But the liberalism of flourishing is insistent that a world in which collective ideals are set, yet only partly realized, is always superior to a world in which no ideals are set to begin with. One of the greatest early twentieth-century insights about law was the existence of a “gap” between “law in the books” and “law in action,”⁷² but nobody ever thought that was a good reason to give up the idea of law. Likewise, there is always a gap between liberal ideals themselves and the extent to which they are realized in the real world,⁷³ yet nobody ever drew from that the conclusion that it would be a good idea to give up liberalism as a political regime. And in the same vein, authors of some of the most inspiring and moving texts often fail to meet in their personal lives the high standards they preach in their texts. Does this gap make us wish that these authors’ texts did not exist, or repudiate them as a source of inspiration?

Rather, the liberalism of flourishing abides by the famous parable about the *arciere prudenti* (wise archers) put forward by one of the first Italian humanists: when an archer shoots an arrow, he does not aim straight at the target, but always at a higher point, for experience tells him that an arrow shot straight at the target hits a lower point than the one intended. (This approach guided the Italian humanists when they set up Greek and Roman culture as an ideal, knowing that this ideal would never be fully realized in their lifetimes.) Mill shares this insight when he advises that “in this, as in many things, we must aim at too much, to be assured of doing enough.”⁷⁴ In the same spirit, Joseph Raz claims that anti-perfectionism “would lead not merely

⁷⁰ Karl Marx and Frederick Engels, *The German Ideology (Part One)* (London: Lawrence & Wishart, Christopher John Arthur ed., 1970).

⁷¹ Macintyre, *After Virtue*, note 11, at 193.

⁷² Roscoe Pound, ‘Law in Books and Law in Action,’ (1910) 44 *Am. Law Rev.* 15.

⁷³ Nancy L. Rosenblum, *Another Liberalism* (Cambridge: Harvard University Press, 1987) 13.

⁷⁴ John Stuart Mill, ‘Bentham,’ in John Stuart Mill and Jeremy Bentham, *Utilitarianism and Other Essays* (London: Penguin Books, Alan Ryan ed., 1987) 132, 174.

to a political stand-off from support for valuable conceptions of the good. It would undermine the chances of survival of many cherished aspects of our culture.”⁷⁵ And Charles Taylor similarly argues that “[p]rudence constantly advises us to scale down our hopes and circumscribe our vision. But we deceive ourselves if we pretend that nothing is denied thereby of our humanity.”⁷⁶

And finally, it should be noted that the market, the great alternative to state action, never comes close to approximating the economists’ ideal of “a perfect market,” and is as much a sphere of constantly failing ideals as the state. The number of market corporations that every year fail to meet their ideal – making money – due to the stupidity, corruption, hubris, *ulterior motives*, etc. of those who run them is enormous.

Religion

The relations between religion and the state were tense already in the biblical era of the ancient Israelites and remained so over many centuries in Christian Europe. But as part of the process of secularization, in Europe, the state substantially increased its power vis-à-vis the Church. Many people in the West remained adherents of religion, however. (As is well known, the demographic trends in this context are highly controversial, and there are many definitional disputes as to who should be counted as religious.) Also, for many decades, there have been Christian religious parties in dozens of countries in the West (and Muslim religious parties in many Muslim countries), and Jose Casanova claims that in the last decades of the twentieth century, we witnessed in many countries the reentry of religion to the political and public arenas (Casanova calls this “the de-privatization of religion”).⁷⁷ Religion and the state are still two giants maintaining highly complex relations.

If the autonomy we have in mind when we talk about autonomy liberalism is first-order autonomy (see *supra*), then an inevitable tension arises between autonomy liberalism and many religions. Following Kant and Mill, first-order autonomy liberalism maintains that the good life

⁷⁵ Raz, note 2, at 162.

⁷⁶ Charles Taylor, *Sources of the Self* (Cambridge: Harvard University Press, 1989) 520.

⁷⁷ Jose Casanova, *Public Religions in the Modern World* (Chicago: University of Chicago Press, 1994).

is one chosen by an individual drawing on her reason in conditions of freedom from external authority. These are not the conditions of living in many religions, according to which the good life consists in abiding by God's imperatives as interpreted by the religion's sages throughout the generations. This is not the case, however, if the autonomy we have in mind is second-order autonomy. According to this notion of autonomy, an individual who lives in a religious group may still be viewed as autonomous if she retains the power to continuously evaluate her ongoing commitments. A state adhering to first-order autonomy will find it implausible to fund religious communities. For a state adhering to second-order autonomy, such funding may be a possibility.

The liberalism of flourishing believes that the good life consists of the development of the moral capabilities of individuals. It should therefore favorably view the influence of religious institutions on the lives of individuals. As none other than John Locke himself admitted, it is the business of "true religion" to regulate men's lives "according to the rules of virtue and piety."⁷⁸ And even Jurgen Habermas lately acknowledged that "[r]eligious traditions have a special power to articulate moral intuitions."⁷⁹ This means that if the liberalism of flourishing is interested in creating the background conditions for enabling individuals to develop their moral capabilities, it may fund religious institutions.

This, however, raises some problems from which autonomy liberalism is exempt. Traditionally, since Locke, liberalism has viewed the *state* as a menace to its religious citizens. Therefore, freedom of religion is a fundamental liberal right. (It is a question whether freedom of religion should enjoy independent status, or be viewed as part of freedom of consciousness or the right to culture.) But a *religion* can be a menace to the liberal state, or, more precisely, to the citizens of the state who adhere to other religions or who are secular. This was well understood by Rawls who insisted that the discourse of political justification be composed only of the widely agreed-upon "public reason." (This position of Rawls was fully endorsed by Habermas.)⁸⁰ Thus, religious institutions whose doctrines or practices undermine liberal essentials such as toleration and pluralism should not enjoy funding by a state that practices the liberalism of flourishing. More specifically, Rawls's criterion of reasonableness is helpful here. A religion that does not

⁷⁸ John Locke, *A Letter Concerning Toleration* (1689).

⁷⁹ Jurgen Habermas, 'Religion in the Public Sphere,' (2006) 14 *Eur. J. Phil.* 1, 10.

⁸⁰ Rawls, *Political Liberalism*, note 26; Habermas, *id.*

respect the plurality of conceptions of the good extant among the citizens of a liberal state, i.e., a religion that aims at imposing its particularistic doctrine on citizens adhering to alternative moral, philosophical, or religious comprehensive doctrines, should not enjoy any state support. Additionally, in Chapter 4, I shall argue that a state that practices the liberalism of flourishing should support the creation and dissemination of art. In Chapter 6, I shall argue that this may provide the citizens of the liberal state with meaning that can compete with the meaning propagated by religion.

Also, many religions discriminate against women by curtailing their education and by restricting their involvement in spheres such as civil society, politics, and the law, or even by wholly excluding them from such spheres. As I claimed in my discussion of the relationship between the liberalism of flourishing and the politics of identity (see *supra*), such discrimination is intolerable from the perspective of the liberalism of flourishing. Therefore, when a state that practices the liberalism of flourishing considers funding the activities and institutions of a religious group, it needs to make sure that the flourishing of women living in the group is not curbed by the practices prevalent in the group.