
Reactions & Debate

Prophylactic Neutrality, Oppression, and the Reverse Pascal's Wager

Simon Clarke – Independent Scholar

I. INTRODUCTION

Neutralism holds that government should not base its laws or policies on any particular view about how people should live; it should provide a neutral framework of rules within which people may pursue whatever views of the good life they wish, regardless of the plausibility or soundness of those views. Perfectionism rejects this, holding that it is permissible for government to act on the basis of conceptions of the good; government action should be guided by worthwhile conceptions of the good life. The debate between these two views has practical implications. Some criminal prohibitions such as laws against drugs, gambling, prostitution, pornography, and homosexuality are called into question. While it may be possible to give these laws some neutral justification, at least part of their rationale seems to be that the activities themselves are intrinsically worthless or of little value. If so, then neutralism would hold that those laws are illegitimate. State-funding decisions would also be affected. For example, neutralism may rule out state funding of the arts and rule out favouring classics of literature in public libraries, unless some neutral justification can be given for such actions.

Beyond Neutrality by George Sher considers and rejects a number of justifications for neutralism and sets out a perfectionist theory. Of the justifications for neutrality that Sher criticises, one deserves further scrutiny. The fifth chapter of *Beyond Neutrality* examines the idea that neutrality is a protective device against government oppression. Modern states have vast amounts of power, Sher writes: “To keep order, to protect citizens from external threats and from each other, and to provide essential services and public goods, a government must have both a (near-)monopoly on force and access to great wealth” (1997, 106). The fear that states may use this power to oppress people is one that is or has been borne out in many countries. Might perfectionism sanction oppression? One of the most prominent defenders of neutralism, John Rawls, suggested that the shared beliefs required by a perfectionist state “can be maintained only by the oppressive use of state power” (1993, 37). Other writers have raised this possibility (e.g. Quong 2011, 35),

but it is not usually thought a significant justification for neutrality, so Sher’s discussion is pioneering in that respect. Because it limits the reasons for which government may act, neutralism may be a way of containing the state’s power and thereby making oppression less likely. It would not *guarantee* the absence of oppression, for as Sher notes it is still possible that in a neutral state, “a government that does not oppress in the name of virtue or true religion may still do so in the name of prosperity or state security (or, for that matter, under no justificatory cover at all)” (1997, 109). Neutralism would make oppression less likely, however, because it removes one source of motivation for oppressive policies. It is a restriction on reasons for state action; with fewer reasons to act, there would be fewer reasons to act oppressively. The present contribution examines this view, which Sher calls ‘prophylactic neutrality’, in more detail. The first section sets out Sher’s criticisms of the view and responds to them. The second section fleshes out in more detail the worry that abandoning neutralism could result in oppressive government and makes a case for prophylactic neutrality.

II. SHER’S CRITIQUE OF PROPHYLACTIC NEUTRALITY

Sher’s main criticism of prophylactic neutrality is that it is not the only way of reducing the likelihood of oppression. Alternatively, a society could give citizens legal rights against their government, dispersing power, but without being neutralist. If so then “given a suitably potent array of legal rights, citizens have no need for any further protection. Because their rights already block the most dangerous abuses of power, they stand to gain little from the additional security of a neutral state. Thus, as long as governments recognize and enforce a suitable complement of rights, they can try to promote the good without raising the specter of oppression” (Sher 1997, 110). Sher concedes, however, that this criticism is open to the rejoinder that legal rights, rather than being an alternative to neutralism, themselves embody a way of implementing the neutrality constraint. If so, “when rights protect citizens from oppression, they do so precisely by *making* the state neutral” (1997, 110; italics original). Rights exist, so the rejoinder suggests, to prevent government from acting on ideals of the good life. Rights to freedom of thought and expression, for example, prevent the state from censoring material that expresses ideals of the good, ways of life, or religious doctrines that it does not like.

In response to this, Sher tries to show that liberal rights do not bring about neutrality because it is quite possible for a society to be perfectionist even though citizens have legal rights. He points to current arrangements in the US where there is state-funding of the arts, environmental protection laws, and regulation of public obscenity, all in the name of promoting ideals of the good; while at the same time, the US is a society where citizens have legal rights against government. This, says Sher, shows that having legal rights does not implement neutrality; since “nonneutral laws and policies *do* coexist with our current rights, then we obviously can have adequate protection without having a neutral state” (1997, 112; italics original).

But this is a mistaken conclusion. It is true that in the US individuals have legal rights against government while at the same time also having some perfectionist policies (and the same could be said about other countries in Europe and in Canada, Australia, and New Zealand), but this does not prove the point. For it could be the case that these legal rights embody a sphere of neutrality while leaving room for perfectionist policies outside that sphere. The view I have in mind here is the kind defended by John Rawls and Brian Barry, where neutrality is a requirement for some central core of government decisions, but government may permissibly act on perfectionist reasons for decisions outside this core. Rawls' view is that neutrality is required with respect to "constitutional essentials and matters of basic justice" but does not apply to "many economic and social issues that legislative bodies must regularly consider" (1994, 230; see also 214-215). Similarly, Barry's view is that neutrality applies only to some but not all political decisions (although he thinks a different type of neutrality applies to the others), advocating constitutional as opposed to legislative neutrality (1995, 161). According to this view, for example, government must not favour one religion over others, say by making it the state religion that all government ministers must adhere to and that is taught in public schools; but it would be permissible, however, for government to permit nativity scenes to be displayed in town squares (provided such decisions are arrived at by democratic decision-making). What precisely is meant by "constitutional essentials and matters of basic justice" is not clear. One way of making the distinction (though it is not Rawls' or Barry's) is in terms of coercive versus non-coercive government actions. The insistence could be on the state being neutral in its coercive measures but not in its non-coercive policies; it could have state-funding of the arts but not be permitted to force anyone into art-appreciation.¹

Let us assume that there is some way of making the distinction and use the expression 'core neutrality' to refer to the idea that the state must be neutral with regard to some core of its arrangements (such as its constitutional essentials or its coercive measures), but that permits perfectionism in periphery decisions. Contrary to Sher's argument, countries whose governments have perfectionist policies but also protect legal rights do not defeat prophylactic neutrality because those countries may be perfectionist but only at the periphery, while being neutral at their core. Sher's idea is that societies that are perfectionist, but also have legal rights, demonstrate that it is possible to do without neutrality and still avoid oppression. Nevertheless, it might be the case that the neutrality constraint is working in the background as the rationale for legal rights while government acts on perfectionist considerations in ways that do not violate legal rights. Perhaps neutralism is providing the framework of rights that protect people from oppression and that within this framework there is room for perfectionist policies.

A similar point applies to another argument that Sher makes. He considers neutralism as a *modus vivendi* among people with competing conceptions of the good; without it, so this justification for neutralism goes, there would be conflict, animosity, and bitterness. Against this, Sher argues that the effects of perfectionism are not that severe because there are stabilizing forces such as the liberalism of a tolerant mind-set. But then Sher considers the response: might this mind-set itself be rooted in neutrality? Sher argues that those attitudes have flourished in non-neutral societies (1997, 119-20).

Nonetheless, our response should be as before; the fact that liberal toleration occurs in non-neutral societies does not mean that it is not itself derived from a belief in neutrality, since societies are a mixture of neutrality and nonneutrality.

Is this reply a problem for perfectionists like Sher? Perhaps not, if all they want from a perfectionist theory is perfectionist policies outside the core. But they would have failed to refute prophylactic neutrality. The core of government in this view is neutral and neutrality is what provides protection against oppression. The worry remains that a more thorough-going perfectionism may be oppressive; if perfectionist reasons were permitted to guide core decisions the result could be oppression.

III. PERFECTIONISM AND OPPRESSION

To fully decide the matter we need to look at whether a perfectionist state can avoid oppression or will instead sanction it. Why is it thought that the result of state action guided by perfectionist reasons could be oppression? First let me start with a seemingly innocuous point: leading a life that is good is important. We want our lives to be good; it would be a bad thing if we were living our lives spent in trivial, pointless, worthless activities. This, however, has significant consequences because it is possible that leading a life that is good might be so important that it outweighs other considerations, such as letting people choose for themselves. Some examples will illustrate this general point. Imagine that it turns out to be true that God exists and that God requires a certain type of worship. From a perfectionist point of view it would seem fairly important that people lead their lives according to this fact; that any life that does not comply with it is an impaired one, bad for the person who lives it. If people are not attending religious services as they ought, then a perfectionist government should force them. Consider next ideals of sexuality. In some views, the most worthwhile form of sex, the one that is most intrinsically valuable, is that which is aimed at reproduction. Perhaps this should be accompanied by loving respect for one's sexual partner and a commitment to that person (and to raise any offspring that may result), but loving respect and commitment in sexual activity alone are not worthwhile; they are valuable, according to the view being considered, only when they accompany reproductive sexual activity. This would mean that non-reproductive sex is of lesser value, and is perhaps of very little or even of no value. People who enjoy engaging in non-reproductive sex would be making a mistake about the nature of the good life. Moreover, it may well be a fairly significant mistake if valuable sexual activity is a weighty component of a good life. It may be so significant that a perfectionist state could be justified in interfering in the lives of those who are making the mistake.

These examples illustrate how it is possible that a perfectionist state could sanction oppression. Perfectionists may respond that these are crude characterisations of what a perfectionist state would be like. There are many other considerations to take into account, they would argue, which result in it being less likely that a perfectionist state would be oppressive. Here, for example, is what Sher says about the worry of religious oppression:

If someone believes the price of wickedness is an eternity in hell, he will quite properly take worldly harmony to be of little moment. By his lights, saving souls – his own and those of others – will indeed be the only thing worth doing. But not all religious doctrines do have such extreme implications, and many conceptions of the good are not religious at all. Thus, very few in our (or any other Western) society have this sort of reason to pull out all the stops [...] [Usually] even the most passionate adherent of a particular conception of the good is well able to moderate his demands (1997, 121-122).

Elsewhere in *Beyond Neutrality*, Sher also sets forth what a perfectionist theory on his view should say about sexuality. In his view, sexual activity should be private because it involves the ability to bestow personal information selectively. This would count against promiscuous impersonal sex, but not against non-reproductive sex. Moreover, non-reproductive sex would not be condemned based on his view that only near-unavoidable goals are valuable. Many people, Sher notes, have “no interest in reproducing at all. When someone lacks such interest, it is hard to see how his using his sexual organs to reproduce would make the world a better place or him better off” (1997, 218).

Reasoning of this type may demonstrate that perfectionism need not be oppressive (although Sher’s view would seem to sanction intervention against sexual promiscuity). There are other considerations that perfectionists would claim have to be taken into account:

- i. With regard to religion there is the Lockean argument that religious devotion requires inner persuasion of the mind, and since external compulsion cannot bring about inner states, there is no point in coercing people into religion (Locke 2005).
- ii. Perhaps the good is pluralistic; perhaps, that is, there are many forms of the good and they are equally valuable or incommensurable in the sense that they are not worth more or less than each other, but nor are they equally valuable; they are simply valuable in their own way (Raz 1986). If so there would be no reason for intervention guiding people away from lifestyles.
- iii. Perhaps the good life must be an autonomous one or one that expresses individuality or that in some other way depends on personal choice.

Sher holds that the good is fragmented and plural and that autonomy, desire-satisfaction, and happiness are important goods (1997, 120). If so, and if the reasons for personal choice are important enough to outweigh whatever value there may be in forcing people into valuable activities, then the nature of the good will be less in favour of oppressive government intervention of the kind that I have suggested. These claims about the good will not be assessed here (but see Clarke 2006). They may turn out to be true and weighty. If so, then perfectionism would not lead to oppression. For ease of reference, I will refer henceforth to the possibility of the good turning out to be such that it motivates oppression as ‘the good is oppressive’ while that it does not as ‘the good is non-oppressive’.

We can now see the reasoning behind prophylactic neutrality. Perfectionist considerations may be incompatible with individual rights due to the nature of the good. Depending on how the nature of the good turns out – whether the good is oppressive or

not – then perfectionism may or may not be oppressive. If the nature of the good is non-oppressive, then Sher is right to hold that neutrality is not necessary in order to avoid oppression. But if instead the good is oppressive then perfectionism would be oppressive and – insofar as oppression is something we want to avoid – the prophylactic case for neutralism would stand.

Is the nature of the good oppressive or not? Much work still remains to be done to answer this question. Before we can respond we need to know, among other things, the truth about religion, about sexuality, about value pluralism, and about the importance of autonomy and individuality in the good life. In our present state of uncertainty about these questions, there is a case for neutralism. Either government could be perfectionist – which may or may not result in oppression depending on the nature of the good – or it could be neutral, in which case it has less reason to be oppressive. Given the dangers of oppression we should err on the side of caution and embrace neutralism because otherwise, if government is perfectionist, the nature of the good may turn out to be oppressive. True, the good may turn out not to be oppressive, but we should not take the risk.

This precautionary reasoning is similar to Pascal's wager, according to which the consequences of not believing in God if God turns out to exist are much worse than the consequences of believing in God. If you choose the former, you will receive eternity in hell, but if you opt for the latter you will be granted eternity in heaven (and if it turns out that God does not exist then all you have wasted is some time and effort in worshipping). You will not lose much if you turn out to be wrong but you will gain a lot if you turn out to be correct. As Pascal wrote: "Let us compare the two cases; if you win, you win everything; if you lose, you lose nothing. Don't hesitate then. Take a bet that he exists" (Pascal 2009, 536).

The case for prophylactic neutrality applies a similar kind of reasoning to the question of whether government should be neutral. The nature of the good could be oppressive or it could not be. Either the state could be perfectionist; if the good is oppressive then the result could be oppression; if the good is non-oppressive then oppression is less likely. Or the state could be neutral; if the good is oppressive then it will not matter since the state will not be guided by it and the result is that government is less likely to be oppressive; if the good is non-oppressive then the result is still the same. The rational wager is towards neutrality. If we accept perfectionism, the result could be terrible if the good turned out to be oppressive. But if we accept neutralism and the good turns out to be non-oppressive then we have lost something – the gains of perfectionist policies – but these surely are a sacrifice worth making in order to avoid the dangers of oppression. By accepting neutralism we gain the huge advantage of avoiding oppression. The alternative would not gain us much.

This is in a sense a reversal of Pascal's wager, because the latter was *for* religion while the reverse is *against* the use of religion in politics (or conceptions of the good life generally). It is not actually a wager against being religious – that might still be a good bet on a personal level – but it is a wager against permitting religion (and conceptions of the good) to have influence in politics.

Even though it has the same structure as Pascal's wager, the reverse wager avoids the main difficulty usually thought to apply to Pascal's. Pascal's wager assumes that belief is a matter of choice; that you can just decide to believe in God or not. But this is probably false; belief is determined by how the evidence and arguments appear to you and is not subject to direct control (Taliaferro 1998, 381; Zagzebski 2007, 64). While this is a problem for Pascal's wager, it does not apply here, for accepting neutralism is a matter of choice unlike a belief in God. Society can just decide that government should be neutral rather than perfectionist and implement that decision by adopting political arrangements that rule out perfectionist policies. The neutralism-perfectionism issue is a matter of choice to *decide upon*, unlike a personal belief in God.

It is important to be clear about what kind of argument is being made here. Sometimes perfectionism is objected to on pragmatic grounds; the worry is that the state could implement misguided or false conceptions of the good. Religious fanatics, for example, could implement their false views through the state. (Raz 1986, 428-429; Quong 2011, 35). That is not the argument being made here. The argument here is that even if the ideals of the good are truly ideals, even if they are worthwhile conceptions of the good, perfectionism could sanction their imposition, oppressively if necessary.

One possible objection to this case for prophylactic neutrality is that it rests on a claim about uncertainty about the good: that we are uncertain whether the good is oppressive or not. Many defenders of neutralism have appealed to uncertainty or scepticism about the good as a way of ruling out state action based on conceptions of the good, but this strategy faces the criticism that other political claims – for example about justice and rights – are no more certain as claims about ideals of life (Clarke 1999; Quong 2011). As Sher puts it, there is no more reason to be sceptical about the good than there is to be sceptical about matters that neutralism holds that it is legitimate for government to act on the basis of (1997, 142). Since the reverse Pascal's wager appeals to uncertainty about whether the good is oppressive or not, it seems open to this criticism of using scepticism about the good as a justification for neutralism.

The reverse wager for neutralism does indeed make a claim about uncertainty of the good: that we are uncertain whether the good is oppressive or not. But that is not the same as a claim of uncertainty about the good in general: that we do not hold any beliefs about the good with certainty. The latter does invite the response that our beliefs about justice and rights may similarly lack certainty. But although the more limited claim of uncertainty about whether the good is oppressive may similarly invite a response that we are uncertain whether a neutral state would be oppressive, that response is less convincing. For the reverse wager argument goes through provided *it is more likely that perfectionism would be oppressive than it is that a neutral state would be oppressive*. And that claim, as far as I can see, cannot help but be true. As has already been noted, a neutral state may well be oppressive, but a perfectionist state is more likely to be for the simple reason that the latter makes more reasons available for government to act on. The difference between neutralism and perfectionism is just that under the latter there are more reasons for state action than under the former. Hence, whatever sources of oppression there are

under neutralism are also present under perfectionism, and the latter has further sources, namely the motivation to promote conceptions of the good. So, we may be uncertain whether neutral reasons for state action would result in oppression, but a perfectionist state adds further reasons to these: nonneutral reasons for state action, and so we must be even more uncertain whether a perfectionist state would be oppressive.

The only way around this that I can see would be for perfectionists to show that the nature of the good is not only non-oppressive, but is even more oppression-minimising than a neutral state would be. For instance, they could argue that autonomy is so important as an element of the good life that its relevance in a perfectionist state would counteract any tendency towards oppression that would be present in a neutral state, as well as counteracting any tendency towards oppression in the nature of the good. Perhaps (so the argument would go) a neutral state would be oppressive, and perfectionism avoids this by emphasising the liberty-supporting elements of the good life. However we have already seen two reasons that when combined should make us doubt this strategy: (i) there are elements of the good that tend towards oppression, and (ii) we are uncertain whether the good will turn out to be oppressive or non-oppressive overall. Even taking into account the possibility that the nature of the good may push society away from oppression, the possibility of the opposite tendency should make us accept neutrality as the best bet.

IV. CONCLUSION

Perfectionism may lead to oppression or it may not, depending on the nature of the good. The alternative, neutralism, may also result in oppression, but is less likely to since one set of motivations for oppression would be removed. To reduce the possibility of oppression, we should have a neutral state.

More work has to be done on comparing neutralism and perfectionism in terms of their likelihood of leading to oppression, but I hope to have supplied some reason to think that neutralism has an advantage in this respect. One assumption that has not been explored is why oppression is bad; a possible response to the view defended here is that even if perfectionism leads to oppression we should just accept it. Perhaps oppression in the name of furthering the good is justified. That, however, would be a bold move for defenders of perfectionism such as Sher to make.

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NOTES

1. This position would have to reply to the standard objection that in its supposedly non-coercive realm such as funding decisions, it actually is coercive since the taxes used to raise funds are coercively imposed.

Neutrality, Perfectionism and Respect for Persons

Michael Schefczyk – Leuphana Universität, Lüneburg, Germany

I. INTRODUCTION

Neutrality, which is roughly speaking the doctrine that the state should not implement or promote ideals of the good life (Barry 1965/1970, 69ff.; Raz 1986, 110ff.; Sher 1997, 34), is a broad church. It ranges from a purist commitment to full self-ownership as *the* fundamental moral right, which we find in libertarianism (Nozick 1974/1999; van Parijs 1995; for a critical discussion Wall 2009), to more nuanced views prevailing in liberal egalitarianism (Rawls 1993; Larmore 1996; Rawls 2001), libertarian paternalism (Thaler and Sunstein 2008) or in John Stuart Mill's version of utilitarian liberalism (Mill 1863/1969).

In contrast to Sher's declaration that "neutrality *is* false" (1997, 3), I shall argue that neutral states can do a lot in order to promote the good life of the residents. A plausible form of neutrality does not exclude perfectionist reasons *tout court* from political