

Neutrality as a Constraint on Political Reasoning

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George Sher's book *Beyond Neutrality: Perfectionism and Politics* has, he says, two main purposes. The first is to "defuse the main reasons to deny that the state may seek to promote the good", the other is to "develop a conception of the good that is worth promoting" (1). In this article, I will not be concerned with either of these aims. Instead, I will focus on Sher's preliminary discussion of the "scope and meaning" of neutralism (20). I consider Sher's careful analysis of the structure of neutralism one of the book's virtues, alongside his original theory of the good and his comprehensive and convincing arguments against neutralism. This careful analysis inspires me to attempt some critique and development.

I will defend an account of neutralism according to which this doctrine puts a constraint on what reasons should enter into political reasoning. What I defend is not neutralism *per se*, but only this account of neutralism relative to competing accounts. I believe this account is an improvement over Sher's, in terms of conceptual precision and normative plausibility, both in general and from the perspective of the doctrine's proponents in particular.

I will present the account I favour as a development of Sher's and will reach it via several steps. Like Sher's account, my development builds on common ideas in the neutralism debate. If it is original at all, it is so only by being more precise than existing accounts in some respects, thereby avoiding common ambiguities. Like Sher, I will focus on the "first-order" neutrality of politics, rather than on the "second-order" neutrality of fundamental political principles like first-order neutralism.¹ For ease of presentation, I will throughout speak of 'policies' with the understanding that this can include any sort of government activity or any result of such activity.

SHER'S SUBJECTIVIST ACCOUNT OF JUSTIFICATION

The neutrality of policies can be determined either by their consequences or by their rationales (Kymlicka 1989). Sher's account is focused on rationales rather than consequences and more specifically on justification rather than motives. This is the dominant interpretation of neutralism, though the distinction between justification and

¹ This distinction is emphasized by Peter de Marneffe 1990.

motives is often blurred by speaking loosely of making decision “on the basis of” nonneutral reasons, or similar expressions (e.g. Caney 1991).

In rejecting motivational neutralism, Sher notes that this approach requires that a set of reasons be identified (namely those which motivated the relevant people in the relevant way) which are then to be checked for neutrality. As an alternative approach, Sher proposes to search more widely for whatever justification qualifies as neutral in the right way and then treating that justification as the relevant one (24). He calls such a justification a “possible argument”. This is an interesting strategy with clear advantages over motive-focused accounts. However, Sher’s account shares with motive-focused accounts the assumption that a rationale must be identified. To anticipate, I will later argue that this assumption should be rejected.

In chapter 2 of his book, Sher considers three alternative formulations of neutralism. Here is the first one:

(N) A law, institution, or other political arrangement is neutrally justifiable if and only if some possible argument for it has only neutral normative premises (25).

The problem with this formulation, Sher argues, is that it is too weak – for any policy there is a possible argument with neutral premises. Simply to identify a neutral argument is insufficient for neutrality, since this argument may be insubstantial or even based on mistake. Sher therefore considers this strengthened formulation:

(N’) A law, institution, or other political arrangement is neutrally justifiable if and only if at least one possible argument for it (1) has only neutral normative premises, and (2) contains no falsehoods or inferential mistakes, and (3) provides a reason for adopting the law, etc., that is stronger than the reasons provided by any arguments for any alternative arrangement (25).

The problem with this formulation, Sher argues, is that it is too strong – it is too demanding to require that neutral policies be optimal policies. This leads Sher to settle for the following formulation, stronger than the first but weaker than the second:

(N'') A law, institution, or other political arrangement is neutrally justifiable if and only if at least one possible argument for it (1) has only neutral normative premises, and (2) contains no implausible premises or obvious fallacies, and (3) provides a justification of reasonable strength (26).

(N'') stands out among these three formulations by relying heavily on subjective judgment. Sher correctly notes that “implausible”, “obvious” and “reasonable” are all both vague and “relative to certain background beliefs” (26). He quite consciously makes neutralism a subjective doctrine in this sense. The judgments or beliefs in question, Sher proposes, are those of whoever is considering the argument in practical deliberation. Possible arguments, similarly, are arguments that are recognized as possible by the deliberator. In other words, as far as any policymaker is concerned, a policy is neutral if she can think of a neutral argument which, by her own lights, contains no implausible premises or obvious fallacies and provides a justification of reasonable strength.²

AGAINST SUBJECTIVE NEUTRALISM

The subjective (N'') is too relativist. On this account of neutralism, we cannot criticise a policymaker for being insufficiently neutral by pointing out to her that her supposedly neutral argument, which she finds convincing, is in fact invalid, leaving only nonneutral arguments to support her policy. What we can do, of course, is to criticise her for being mistaken about the validity of her argument. However, such mistakes do not by themselves conflict with neutrality. I suppose that a policy may be nonneutral to us if we consider it in our practical deliberation and find it lacking a neutral justification. This does not mean, however, that the policy is nonneutral to the policymaker, nor that she has any reason to change her mind.

I believe it most typical and most reasonable to be concerned with what arguments are in fact valid, regardless of how things seem to any particular person. For example, it is reasonable to be concerned when a policy is neutral, or nonneutral, according to (N''), only because of a mistake of practical deliberation. It may seem that we could introduce further terminology to deal with this, using terms like ‘objectively neutral’ and ‘objectively nonneutral’ to capture what policies would be

² Attaching the subjective condition “seems to” first in condition (2) and (3) in (N'') would produce a formulation which would be as subjective as (N'') but stronger and more precise.

neutral or nonneutral if there were no mistakes. However, what we are after, or should be after, is a single definition of neutralism that accommodates reasonable liberal concerns regarding political neutrality. This definition, I believe, cannot be Sher's subjective formulation.

Sher probably ascribes this subjective character to neutralism because he finds it reasonable, even though he is, ultimately, aiming to refute neutralism. That Sher is generous in this sense is indicated by the fact that the principle (M), which Sher later proposes as a superior alternative to neutralism, also requires only that policies *seem* justified to the deliberator, as opposed to actually being supported by valid reasons:

(M) Do not support any law or policy on the basis of any conception of the good that you have not scrutinized and found to satisfy your usual standards of justification (131).³

While (M) is importantly different from (N'') in not attempting to define what policies are neutrally justifiable, but rather just issues a requirement, (M) shares with (N'') the subjective approach: The standards of justification are those of whoever is considering supporting or otherwise taking action in regard to a policy.

Interestingly, Sher at times seems quite aware of the inherent problems with this form of subjectivism. In chapter 2, he presents two arguments against motivational neutralism which both have to do with its subjective nature. First, because most laws and policies are implemented by many people acting together and because each of these people typically have mixed motives for their actions, it is very difficult or impossible to determine when a policy is motivationally neutral:

[M]ost laws and policies are implemented not by single individuals but by many people acting in concert, and most agents have a variety of reasons for what they do. Thus, on the current [motivational] proposal, the legitimacy of most political arrangements will be very difficult if not impossible to ascertain. (24)

Second, a neutralism of motives would entail that nonneutral laws can be made neutral by being repealed and then passed again with different motives. (24) The first

³ Sher seems to confirm his commitment to this principle in a 2003 article.

argument shows that motivational neutralism is useless in practice, though not necessarily unreasonable; while the second argument shows that motivational neutralism is normatively arbitrary, which is difficult to accept.

These two arguments in chapter 2 lead Sher to favour his own justificatory neutralism as the most plausible version of neutralism. From chapter 3 and on, the book aims to undermine this the supposedly most plausible version of neutralism. In pursuing this aim, however, Sher later presents this argument against neutralism:

Because policy makers and legislators are not always candid, because individuals often lack insight into their own reasons, and because different persons can support the same laws or policies on very different grounds, there is often no way to discover whether, or to what degree, a proscribed sort of justification has been operative. (117)

This is essentially the same argument as the first argument levied against motivational neutralism earlier in the book. The second argument against motivational neutralism can also be applied to Sher's account of justificatory neutralism: Justificatory neutralism entails that nonneutral laws or policies can be made neutral by being repealed and then passed again after a practical deliberation based on different reasons. Admittedly, his justification must seem sufficiently strong and correct if the policy is to be made neutral. However, this requirement is analogous to the way the alternative motives used to make laws neutral on the motivational account must be able to motivate lawmakers. In both cases, the prospects for neutrality hinges on the psychological flexibility of the relevant agent(s). Since this is a serious flaw in motivational neutralism, as Sher recognizes, it should not be built into our best account of neutralism.

While insisting on subjectivity for neutralism and for his own favoured principle (M), Sher is far from a thoroughgoing subjectivist. On his stated view of practical deliberation, an agent's reasons are "provided by his situation" and in that sense objective, independent of the agent's state of mind (48). Values, too, are objective in the sense that they are "outside the subjectivity of the person". (219) Yet when Sher formulates the doctrine that purports to restrict the reach of these objective reasons, he opts for apparent validity only. I propose that a superior alternative, and

one not alien to Sher's own overall approach, is to place these restrictions outside the subjectivity of the person, together with reasons and values.

NEUTRALISM, JUSTIFICATION AND REASONING

I have argued against the subjective elements of Sher's favoured formulation (N''). I now turn to another problem, which is shared by all three formulations that Sher considers, including the objective (N'). The problem stems from the fact that all three formulations purport to say when a policy is or could be justified, which means they include their own theory of justification. According to (N'), justification has to do with recognizing as possible an argument that one believes to have certain qualities. According to (N''), it has to do with recognizing as possible an argument that in fact has certain qualities. In both cases, neutralism is wedded to a particular theory of justification, or to bits of such a theory. This is problematic because it is a matter of great controversy what exactly justification is. If neutralism presupposes some particular theory of justification, it stands or falls with that theory.

Making neutralism dependent on a theory of justification may not be a great problem if one is operating within a larger framework which includes such a theory, such as, arguably, John Rawls' (e.g. 1997) idea of public reason, though conclusions concerning neutralism are then valid only within that framework. If, however, like Sher, we are trying to assess the doctrine of neutralism rather independently of other commitments, then this dependence on a theory of justification is clearly unfortunate. One of the controversies concerning justification is to what extent it is subjective and to what extent objective, as shown by my critique of Sher's subjective approach. This controversy is not at the heart of interpreting neutrality as such. To see this, assume that for some policy, only reasons that all agree are neutral are invoked or relevant. This does not preclude disagreement on whether the policy can be justified (or justifiable) for one person and not for another. Another controversy surrounding justification, and a largely unsolved problem, concerns how exactly a number of different reasons can lead to a normative conclusion. Yet another concerns whether the proper process of reasoning is different for different sorts of justification-like normative conclusions (such as permissibility and requirement) (see e.g. Gert 2007).

The dependence on some theory of justification can be avoided by understanding neutralism as a constraint on reasoning that filters out nonneutral reasons, or facts that would otherwise be or provide nonneutral reasons. Any theory of

justification must include a role for reasons as input. Neutralism as a constraint on reasoning can be applied to filter this input, independently of the process that, based on the remaining input, yields an output in the form of a justification. Not only is neutralism on this account independent of the nature of justification, it is also independent of whether the reasoning process is one of justification at all, or perhaps instead a process of forming motivations, or one of public deliberation that may or may not yield a justification. The constraint can apply to any process that takes reasons as input.

Defining neutralism in terms of reasoning may seem a step towards subjectivity, since justification can be mind-independent, while reasoning only goes on in our minds. Whether justification can be mind-independent is controversial, as is whether the justification of political arrangements is a special sort of justification, *political justification*, different in kind from (other forms of) moral justification. In fact, it is not obvious how we should individuate reasons more generally: Is the fact that some policy will benefit some people one reason, which can be invoked in different sorts of justificatory reasoning, such as prudential and moral, or is it rather that this fact provides or constitutes several different reasons, one for each sort of reasoning? These are questions the practically oriented neutralist need not answer before she formulates her doctrine. That the neutralist constraint applies to reasoning means that it applies to the way we deal with reasons, whatever they are exactly and whether or not they can exist independently of our dealing with them.

NEUTRALITY AS CONSTRAINT

The rather simple idea that neutralism filters out reasons is neither new nor uncommon. It is, for example, how neutralism is understood by the important critics Steven Wall (e.g. 1998, chapter 2) and Peter de Marneffe (2010, chapter 5, especially at 134). In fact, this idea is stated very clearly by Charles Larmore in a sentence quoted by Sher (23): “Political neutrality consists in a constraint on what factors can be invoked to justify a political decision.” (1987, 44) De Marneffe and Larmore focus on justification only, but these are all filtering approaches.

It is one thing to recognize that neutralism functions as a constraint and another to limit one’s understanding of neutrality to this constraint. In the two sentences following the one just quoted, Larmore goes on to provide part characterizations of both neutral political decision and neutral political action. This

may just be meant to illustrate the constraint approach, but the focus on the neutrality of decisions, actions, laws and governments is very common. On the constraint of reasoning approach, however, neutralism is not a criterion for neutral decisions, actions, justifications, or anything else. It is merely a constraint.

In practice, of course, there will be breaches of neutrality. However, such breaches need not be normatively relevant. In a subjective justification process, for example, reasons that should be filtered out may not be, but this need not affect the output, if there are sufficient neutral reasons for the policy. This shows that it is not obvious how a neutralist should respond to breaches of neutrality. It seems very plausible that this will vary with context. Over all contexts, however, the neutralist requirement is clear – only neutral reasons are to enter the reasoning process.

Interestingly, Sher himself captures the essence of neutralism as a constraint on reasoning when he refers to neutralism later in the book and gives it this abbreviated (“roughly speaking”) wording:

(*N*) Do not support any law or policy on the basis of any particular conception of the good life. (131)

(*N*) does not mention possible arguments, nor subjective notions such as ‘plausible’, ‘obvious’ or ‘reasonable’, and it does not purport to determine which policies are neutral, or neutrally justifiable. These are important advantages over (*N'*). The notion of supporting a policy on a certain basis raises questions. For example, do I support a policy on the basis of a particular conception of the good life if I support it for two reasons which I both consider independently sufficient, one of which is that the policy furthers a particular conception of the good life? Also, can I support a policy on the basis of a particular conception of the good life without believing that this is what I am doing? These sorts of questions can be avoided by a slight reformulation:

(*N'*) Exclude reasons based on any particular conception of the good life from reasoning about any law or policy.⁴

⁴ This exclusion could be understood as based on an exclusionary reason, in the terminology of Joseph Raz’ (1990 [1975]), in the sense that it is a good thing if excluded reasons are conformed with, though they should not be complied with (e.g. 185). This could explain the ambivalence some feel about the exclusion (e.g. 41).

The phrase “particular conception of the good life” here serves to identify what sort of reasons should be filtered out by neutralism. The use of “life” is traditional but actually misleading, since both Sher and typical neutralists mean neutralism to filter out some reasons that do not concern the good (human) life. Sher, though frequently using the ‘life’ qualification, mentions one example – the US Environmental Protection Agency treating “the continued existence of species and habitat as intrinsic goods” (112). Therefore, “life” should be dropped.

Sher apparently uses the term “particular” instead of “controversial”, perhaps because the latter is more controversial, though Sher seems to think that controversy is in fact at the heart of the meaning of ‘conception of the good’ (see 41). Any more substantial version of the neutralist doctrine must specify exactly what reasons are filtered out, whether by identifying a type of reason or rather a list of such types (see De Marneffe 2006 for an argument to the effect that nonneutral reasons lack a common denominator). Since there is much controversy here and since Sher’s formulation does not seem to capture his own views very well, it is perhaps best to give this more general characterization of neutralism:

(N’’) Exclude nonneutral reasons from reasoning about any law or policy.

THE WHO AND WHEN OF NEUTRALITY

Having argued for (N’’) over (N) and (N’), Sher goes on to discuss the application of neutralism along four dimensions – which agents are bound by the doctrine, at which political levels does it apply, for which methods of influence, and what is a conception of the good anyway?⁵ (28) I agree with Sher that the specification along the three latter dimensions must depend on the exact normative basis for neutrality (33-34, 37, 44). However, I disagree with Sher’s specification along the first dimension.

The question is: Who should be neutral? And possibly: When or in what capacity? The standard answer is: Government agents, in their role as such. Observing an obvious complication with this focus on governments, Sher notes:

⁵ Strictly speaking, since (N’’) concerns the neutral justifiability of policy, these dimensions do not specify the application of (N’’) but rather when we should be concerned with neutral justifiability. I will disregard this in the following.

Individuals can influence governments in many ways. They can do so, *inter alia*, by voting for persons to represent them as legislators or in the executive branch, by representing others in turn, by acting in various administrative and bureaucratic capacities, by trying to amend the Constitution, and by advising or lobbying persons in each of the other roles. (29)

Sher proposes that this complication can be overcome by assuming that anyone who influences the government directly is bound by neutralism (presumably because she is part of the government), and that anyone who influences the government more indirectly is instead “obligated to minimize the likelihood that his government will act for nonneutral reasons” (30). This manoeuvre leads to two problems, which Sher does not address. First, the new principle is distinct from neutralism proper and so a line must be drawn between directly and indirectly affecting, in order to determine who is governed by which principle. Second, an obligation to minimize nonneutrality is overdemanding, as all other concerns will be subordinated to this obligation. Both these problems could probably be avoided by appropriate reformulation. Leaving them to one side, therefore, there is a greater and more general problem with the focus on governments.

If neutralism proper only applies to government agents, nothing prevents non-government agents from intentionally bringing about nonneutral effects by political means. For example, voters do not violate neutrality if they vote for representatives which they believe will promote a pious or experimental lifestyle for what the representatives believe are neutral reasons.⁶ In general, political reasoning need not be neutral in the least; it must only consider the constraint on the reasoning of government agents (or, on Sher’s account, on their subjective justification).

Consider also this extreme, hypothetical example: A group of powerful people manage to install (by democratic or nondemocratic means) a government which will promote a pious or experimental lifestyle. The group does so for what they see as the good of all. While the government agents will promote the controversial lifestyle, they will mistakenly believe that they are only promoting neutral values. Perhaps the powerful group has managed to instil this belief, or perhaps they have chosen people

⁶ Jeremy Waldron (1989) both reinforces the focus on government agents and indicates the possible problems when he states that neutralism applies to a person “in her capacity as legislator (and presumably as voter)” (70).

for their scheme who had the suitable beliefs beforehand. By their actions, the powerful group has minimized the likelihood that their government will act for nonneutral reasons and so they conform to Sher's demand on indirect influencers. Furthermore, the government itself implements only neutrally justifiable policies, according to (N''). More generally, no neutralist restrictions on government action or public political discourse have been breached. The whole process, however, seems far from neutral.

All of these problems can be avoided by letting neutralism apply to anyone at any time. Sher insists that neutralism should not be confused with the requirements of certain political roles, such as that of police officer (30). I propose that the role of government agent is also a political role in this sense and that neutralism applies independently of such roles.⁷ There must be some restriction of course. I propose the restriction should come in terms of the *content* of reasoning, rather than in terms of who is doing the reasoning. (N'') applies to reasoning about any law or policy. Since taken literally this would apply to theoretical reasoning about laws and policies, (N'') should be modified to apply to reasoning about what any law or policy should be, or perhaps more generally what any government institution should or should not do.⁸ This is a comprehensive form of neutralism. The content of reasoning could be restricted further, though the problems entailed by a narrow scope may then resurface. For example, John Rawls (e.g. 1993; 1997), at least primarily and for the most part, applies neutralism only to a sort of public reasoning about constitutional matters. Unless complemented by other political principles, this form of neutralism does not apply to voting or installing governments.

The modified (N'') is comprehensive in another way – it applies to all sorts of normative reasoning about the government. The neutralist may want to restrict her doctrine to *political* reasoning, marking a distinction to, for example, prudential reasoning. Perhaps it is not a breach of neutrality for me to consider what some policy should be like in order to benefit my interests. Perhaps, even if political rather than prudential reasoning is sometimes required, this requirement is not one of neutrality.

⁷ Raz (1986), in his discussion of neutralism, typically speaks mostly of governments and their actions, but, introducing this discussion, he observes “the deep-felt conviction that it is not within the rights of any person to use the machinery of state in order to force his conception of the good life on other adult persons.” (111)

⁸ Steven Lecce (2008) proposes that “the neutrality constraint must exclude sectarian values *whenever* citizens’ interactions with one another are mediated through state agencies, at every level” (233).

To keep this option open, this is my final formulation of neutralism, understanding political reasoning as *impartial* reasoning about what the government and its institutions should or should not do:

(N'') Exclude nonneutral reasons from political reasoning.

Neutralism as excluding reasons from political reasoning may seem, together with Sher's (N), a more demanding doctrine than Rawls' neutralism based in public reason. Rawls (1997) allows that we "introduce into political discussion at any time our comprehensive doctrines", as long as sufficient neutral reasons are forthcoming (776). On the other hand, such introduction is an act of "declaration" and not "a form of public reasoning" (786). It is also aimed at expressing support for fundamental principles rather than for particular policies (784-5). If considering politics from within a comprehensive doctrine is not reasoning about what the government should do, then the public role Rawls sees for comprehensive doctrines is consistent with (N'').

CONCLUSION

One of the virtues of *Beyond Neutralism* is that it opens with an ambitious and much needed discussion of the structure of neutralism. However, Sher's favoured formulation of neutralism has several weaknesses. It is too subjective, implying that implementing sectarian policies can be consistent with neutrality if only policymakers see a neutral justification that they mistakenly find sufficient. It is also restricted to government agents, implying that successful manipulation of the government into promoting controversial lifestyles can be consistent with neutrality. It is furthermore dependent on a specific theory of justification. The constraint on reasoning account of neutralism avoids all these problems. It is also in the spirit of Sher's general approach and later arguments, as well as in the spirit of other important interpretations of liberal neutrality. Adopting this approach should make for a more plausible doctrine of state neutrality. Whether or not that doctrine should be accepted is another and more difficult matter.

REFERENCES

Caney, Simon. "Consequentialist defences of liberal neutrality". *The Philosophical Quarterly* 41 no 165 (1991): 457-477.

Preprint. Published in *Ethical Perspectives* 19(3): 547-557 (2012).

De Marneffe, Peter. "Liberalism, Liberty, and Neutrality". *Philosophy & Public Affairs* 19 no 3 (1990): 253-274.

De Marneffe, Peter. "The Slipperiness of Neutrality". *Social Theory and Practice* 32 no 1 (2006): 17-34.

De Marneffe, Peter. 2010. *Liberalism and Prostitution*. Oxford: Oxford University Press.

Gert, Joshua. "Normative Strength and the Balance of Reasons". *Philosophical Review* 116 no 4 (2007): 533-562.

Kymlicka, Will. "Liberal individualism and liberal neutrality". *Ethics* 99 no 4 (1989): 883-905.

Larmore, Charles. *Patterns of moral complexity*. Cambridge: Cambridge University Press, 1987.

Lecce, Steven. *Against Perfectionism: Defending Liberal Neutrality*. Toronto: University of Toronto Press, 2008.

Rawls, John. *Political Liberalism*. (Paperback edition). New York: Columbia University Press, 1996 (1993).

Rawls, John. "The Idea of Public Reason Revisited". *The University of Chicago Law Review* 64 no 3 (1997): 765-807.

Raz, Joseph. *The Morality of Freedom*. Oxford: Oxford University Press, 1986.

Raz, Joseph. *Practical Reason and Norms*. (2d edition). Princeton: Princeton University Press, 1990 (1975).

Sher, George. *Beyond Neutralism: Perfectionism and Politics*. Cambridge: Cambridge University Press, 1997.

Sher, George. "Freedom of Expression in the Non-Neutral State". In S Wall and G Klasko, *Perfectionism and Neutrality: Essays in Liberal Theory*. Lenham, MA: Rowman & Littlefield, 2003.

Waldron, Jeremy. "Legislation and moral neutrality". In R. Goodin and A Reeve (Eds.) *Liberal Neutrality*. London: Routledge, 1989.

Wall, Steven. *Liberalism, perfectionism and restraint*. Cambridge: Cambridge University Press, 1998.