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The Morality of Freedom¹ has been widely, and deservedly, acclaimed as one of the most important contributions to liberal political and legal philosophy in recent decades. Although much of its contents had been published before, as articles and chapters in books, when put together it constitutes an admirable theoretical construction, which will no doubt give a very important stimulus to further reflection on fundamental liberal values.

"Admirable", but not uncontroversial. Indeed, The Morality of Freedom should (and certainly will) cause vigorous controversies, not least among the liberals themselves. For a liberal, this book comes as a certain provocation: while the author identifies himself with basic liberal precepts, he simultaneously challenges some fundamental conventional wisdoms of contemporary liberalism. At times he seems to go so far that he undermines the very foundations of liberal values. Whether this demolition job can still leave intact the basic liberal intuitions and convictions which Raz himself shares, remains to be debated.

The aim of this Article is to contribute to this debate. I want to question Raz's questioning, and challenge his challenges, on two issues which are central to the liberal philosophy of law and to political philosophy. Conventional contemporary liberalism, best identified perhaps with the works of John Rawls, Ronald Dworkin, Joel Feinberg and David Richards, proclaims, at the very least, these two fundamental precepts: (1) the state and law should be neutral between the competing conceptions of the moral good espoused and pursued by members of the community; (2) the limits of the permissible use of state coercion should be determined by the harm principle, understood as a non-perfectionistic political principle. Non-perfectionism of the Harm Principle, within this interpretation, means that its use is not conditional on the moral worth of individual actions, but only on the test of discernible harm to other

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¹ J Raz, The Morality of Freedom (Oxford: Clarendon Press, 1986).

people. Coercive restraint must be independent of considerations of moral worth displayed by the action, or of moral virtue exhibited by the agent.

Raz challenges both these precepts. To the former one, he replies that "neutrality" is a "chimerical" ideal which cannot be even approximated. It is not that the state should not be neutral; it cannot be so. To the latter, Raz suggests that the harm principle is itself a perfectionist ideal which presupposes specific moral conceptions which are not indifferent towards criteria of moral worth or moral virtue. And, while he endorses (with some qualifications) the harm principle as a general guiding principle of political restraint, he denies that it commits him to the non-perfectionist position. I will discuss, in this order, these two theoretical challenges to more conventional accounts of liberalism.

1 The Impossibility of Political Neutrality?

1.1. Two Principles of Neutrality

Joseph Raz offers two principal arguments aimed at showing that political neutrality is impossible. However, before we consider these two arguments, it is important to note that Raz precedes them by drawing a distinction between two principles of political neutrality, which differ from each other in scope:

A: Neutrality concerning each person's chances of implementing the ideal of the good he happens to have.

B: Neutrality as in A, but also regarding the likelihood that a person will adopt one conception of the good rather than another.²

Clearly, Principle B goes much further than Principle A. It is therefore important to note that Raz announces: "[I]n the absence of any special reason to prefer A, and given that writers supporting neutrality say little that bears on the issue, I will assume that the doctrine of neutrality advocates neutrality as in B".³

This move, however, imposes a special burden of argument upon the liberal supporters of the ideal of

² Id. at 112, see also pp 114-15

³ Id. at 112.

neutrality, a burden which they do not wish,⁴ or need, to carry. The doctrine of the neutrality between the competing conceptions of a morally good life need not require that the state creates conditions in which the likelihood of adoption of particular lifestyles is roughly equal. As a matter of fact, it seems natural that the policy of strict neutrality will increase the likelihood that some conceptions of the good will become more popular (or more popular than they would have been under an alternative governmental policy) than others. This is for a number of reasons. The very adoption of a policy of liberal neutrality is, after all, based on substantive moral and political values which make a difference for the ways people perceive themselves, and themselves towards others in a community. The value of the equal moral agency of individuals, which supports the principle of neutrality, when endorsed by the law and governmental policies, will exert a gravitational pull upon the values adopted and endorsed by the individuals. It is likely that people will feel reluctant to adopt the individual conceptions of the good founded on the theories of domination, fanaticism, intolerance and paternalism, especially if those people know that they stand no chance of transforming these private moralities into legally enforced policies. For one thing, people's choices are affected by available legal opportunities, and in a liberal society there will be no opportunities to coercively implement these conceptions of the good which proclaim the inequality of moral agency. For another thing, it is an inherent feature of such conceptions that they require a forceful imposition of one's values upon other people (one cannot be fanatical about religion only to oneself, without trying to impose those views upon the others, and the same applies to intolerance, domination etc). If people would realize that the ground-rules of their legal system preclude the conversion of some of the conceptions of the good into legal rules, then it will most probably constitute (in the long run) a powerful disincentive against adopting these conceptions, or an incentive to modify and ultimately abandon them.

This does not compromise the principle of political neutrality in the sense A, as defined by Raz. The individuals can still adopt any conception of the good for themselves: they can adopt a religion, or a lifestyle, or a set of beliefs, of their choice. But they cannot expect that any such conception will be equally supported by the legal system: in this aspect in which some of these conceptions will involve the imposition of certain values or behaviour upon others, they will be constrained by the legal system. Political neutrality cannot be neutral between those sets of values which are consistent with the fundamental ideals which provide the initial justification

⁴ See J. Rawls, "The Priority of Right and Ideas of the Good", Philosophy & Public Affairs 17 (1988) 251, 262 and 264-68

for neutrality (such as tolerance and equal moral agency) and those which are not.

As a result, people may find it increasingly useless, or frustrating, to adopt some conceptions of the good. What is the point of persisting in a religious belief which requires the imposition of your beliefs upon "non-believers" and calls for the use of the state apparatus for this goal, if your state is totally non-responsive to this aim? Or how long can you keep calling for the state censorship of "immoral" books if the constitutional principles of your state preclude the imposition of moral censorship? Some conceptions of the good are likely to become marginalized and to fade away in a liberal state committed to political neutrality. This may result in some cultural loss but it is the price a liberal society pays for an overall gain in terms of promoting individual liberties.⁵

This is the most important reason why liberals need not go as far as to endorse Raz's "Principle B" of political neutrality. It would be defeating the reasons for which neutrality was adopted in the first place. It would drive the principle of neutrality into absurdity for other reasons as well. To proclaim, as Principle B does, that "[n]o political action may be undertaken if it makes a difference to the likelihood that a person will endorse one conception of the good or another..."⁶ is to impose a condition which simply can never be met, nor even approximated, because there is a virtually unlimited number of conceivable "conceptions of the good". A liberal committed to the Principle B would face the impossible task of ensuring that any conception of the good, announced by its proponents, would have to have an equal likelihood of being adopted by the others. Would it have to include the lifestyle of a mediaeval monk? Of a Japanese samurai? Of an Aboriginal tribe member? The shape of every society imposes some constraints upon the lifestyles and the conceptions of the good which are viable and realizable. While some individuals may overcome some of these constraints by extraordinary zeal and force of will, to require an official action aimed at cancelling the differential effects of the society upon the likelihood of individual choices of lifestyles is to demand the impossible. No further argument about the impossibility of political neutrality would then be required.

Against this, it could be perhaps said that only those conceptions of the good should display an equal likelihood of being adopted (under the requirements of Principle B) which are already favoured by a significant number of people in a given community, so that the

⁵ See *id.* at 265-7.

⁶ Raz, *supra* note 1 at 114-15

conditions of "equal likelihood of adoption" would have to be tested against the number of conceptions restricted by what is realistic and viable. As a result, a modern liberal state would not have to be concerned about how likely it is that the lifestyles of a medieval monk and a Japanese samurai will be adopted. But such a rejoinder would always be vulnerable to the objection that limiting the spectrum of the lifestyles (to which Principle B of political neutrality applies) only to those which already have some following is arbitrary and gives special preference to the dominant, majoritarian conceptions, thus defeating the purpose of the principle of liberal neutrality which is, among other things, to protect individuals against the pressure of "moral majorities".

1.2 Is Political Neutrality Possible?

Now we may turn to a discussion of the two arguments which Raz uses in order to demonstrate the impossibility of political neutrality. We should keep in mind that a liberal is committed only to "Principle A", as defined by Raz, and need not worry about the likelihood of the adoption of particular conceptions of the good. It is very important to note that Raz views his two arguments as showing not merely that complete political neutrality is impossible, but that even approximation to complete neutrality is "chimerical". For he correctly notes that "if political neutrality is a coherent and desirable ideal then the impossibility of complete adherence to it need not undermine its force as a political doctrine".⁷ So his arguments must be stronger, and show that the very notion of political neutrality is fundamentally incoherent.

His first argument refers to the distinction between not helping and hindering. Neutrality, Raz observes, is usually attributed to actions which either help or hinder the parties to the conflict to an equal degree. And yet, one can be non-neutral by taking a conduct consisting in non-action. The crux of Raz's argument is illustrated by the following example:

Consider a country that has no commercial or other relations with either of two warring parties. This was true of Uruguay in relation to the war between Somalia and Ethiopia. It may nevertheless be true that such a country may have been able to establish links with either party. Would we say that Uruguay was not neutral unless the help that it could have and did not give Ethiopia was equal to the help that it could have and did not give Somalia? This will not be the case if, for example, Uruguay could have supplied the parties with a commodity that,

⁷ Id. at 120.

though useful to both, was in short supply in one country but not in the other. Should we then say that Uruguay is not neutral unless it starts providing the country suffering from the shortage in that commodity? If by not helping it Uruguay is hindering it, then this conclusion is forced on us. But according to the common understanding of neutrality, Uruguay would have been breaking its neutrality if in the circumstances described it would have started supplying one of the parties with militarily useful materials after the outbreak of hostilities.⁸

A general structure of the argument is that the described situation lends itself to two opposite types of conduct, both of which may be described as neutral (or as non-neutral); hence the notion of neutrality is incoherent. Against this suggestion, I believe that "the common understanding of neutrality", referred to by the end of the quoted passage, deserves to be defended against the "conclusion forced on us", according to Raz, about the alleged non-neutrality of Uruguay exhibited by its non-aid to the country suffering from the shortage of the commodity which is plentiful in Uruguay.

The morally relevant distinction between the two alternative courses of action, suggested in the description quoted above, lies not in the fact that in one scenario we take into account only positive actions which hinder or help, while in another, we are sensitive also to non-action, if it affects the position of two warring parties. Surely there may be situations in which the failure to act is clearly non-neutral: an umpire who pretends that he does not see foul play and fails to give a free kick to one of the teams, and who persists in "non-acting" in this way throughout the match to the detriment of one and the same team, provides a paradigmatic example of non-neutrality. So even in our "common understanding of neutrality", we do not confine our attention to positive actions, but also test the neutrality (or non-neutrality) of non-actions.

Raz presents us with two scenarios. In the first one (call it scenario A), Uruguay starts supplying the militarily useful materials to one of the parties (say, for the sake of argument, Somalia), which needs it more than Ethiopia in order to achieve victory. In the scenario B, Uruguay fails to do so, though it possesses the materials. Raz is correct in saying that scenario A offends "the common understanding of neutrality", and yet at the same time he claims that the conclusion about non-neutrality of the scenario B "is forced on us". Why?

⁸ Id. at 120-21.

Raz's apparent answer is that in the scenario B, Uruguay is hindering Somalia by not helping it. An agent which hinders one of the parties to the conflict (or hinders the party more than the other) is clearly non-neutral with respect to this conflict. But is it really the case that by not supplying Somalia with the material necessary to achieve military victory over Ethiopia, Uruguay "hinders" Somalia, and so really there is no neutral course available to Uruguay in this conflict? I do not think so. Both Ethiopia and Somalia engage in their military conflict with a set of rational expectations about their military resources, and these expectations include, among other things, information about their foreign allies and suppliers. At the start of the conflict, they both know where they stand vis-à-vis countries such as Uruguay with respect to military supplies. If Uruguay had not been a traditional supplier of military materials, and hasn't promised to become one, then this information is part of the strategic thinking of both parties. Their comparative situation towards each other would change if, already after the outbreak of hostilities, Uruguay would begin supplying one of the parties (for the sake of argument, the one which needs these particular materials more than the other) with the militarily useful materials. This would shift the balance of military power between Somalia and Ethiopia, as compared to the starting point characterized by the initial information. It would still perhaps be a right thing for Uruguay to do, but it would not be neutral. But then neutrality is not always a right course of action. To a possible complaint by Somalia that Uruguay breaks its neutrality by adopting scenario B, Uruguay can always have a convincing reply: "But on what basis do you expect that I would start supplying you with these materials?"

The situation would of course have been different if Somalia indeed had some strong grounds for believing that Uruguay would start supplying it with military materials in its conflict with Ethiopia (even more so, if Uruguay had been a traditional supplier of such materials and broke off these supplies after the beginning of the conflict). This information, if reliable (based, say on treaties or public promises) would then form a part of Somalia's information about its resources at the point of outbreak of the conflict: a refusal to honour its obligations by Uruguay would be equivalent to diminish those resources. This would indeed be non-neutral. But this would be so because the position of Somalia would be weakened vis-à-vis Ethiopia by Uruguay's broken promise. The argument, therefore, boils down to the bases of rational expectations of both warring parties about whether or not a third party will help either of them with the necessary supplies.

This argument does not suggest that the course of neutrality is always possible: this is not crucial to our reasoning. Nor does it imply that in a real-life situation it is always easy to establish what the course of

neutrality requires: in our example, there may be a good deal of disagreement and uncertainty about what constitutes a reasonable basis of expectations by each of the party to the conflict about the behaviour of the third party. But the point of this reasoning is to show that Raz's first argument does not establish that acts "which neither help nor hinder" may sometimes be non-neutral and neutral at the same time, and so that "the distinction between helping and hindering is crucial to an understanding of neutrality, as is the distinction between hindering and not helping".⁹ This latter distinction is not crucial to our understanding of neutrality, if only we presuppose that we can establish reasonable bases of expectations about whether we will be helped by a third party or not. Again, one has to remember that these expectations do not support a judgment about the fairness or propriety of the third party's action. In international relations, just as in other areas, neutrality is not even prima facie right. But the only question we need to ask is whether, in the action of the third party, we may discern the bases for expectations about the future behaviour of this third party.

Now consider Raz's second argument "designed to show that neutrality is chimerical".¹⁰ Its initial formulation is that "whether or not a person acts neutrally depends on the base line relative to which his behaviour is judged, and ... there are always different base lines leading to conflicting judgments and no rational grounds to prefer one to the others".¹¹ The first two parts of this statement are undoubtedly correct: it is a conceptual ingredient of the notion of neutrality that it may be asserted only with regard to a baseline, and different baselines result in different judgments of neutrality about one and the same course of conduct. But this is just the beginning of the argument; its weight depends crucially on the last proposition, that there are no rational grounds for preferring one baseline to another. In an example just considered, we suggested that the reasonable expectations about whether Uruguay committed itself to the deliveries of military materials to Somalia constitutes an intuitively strong "baseline" for assessing Uruguay's neutrality towards this conflict. There is, however, a further argument needed, because one may say that by offering (before the conflict) military supplies to Somalia, Uruguay has already compromised its neutrality anyway, so by fulfilling its promises it acts according to its obligations, but non-neutrally nevertheless. It would be bizarre to call "neutral" a party who sells military materials to one of the warring states, whether in accordance with its earlier commitments or not. On the

⁹ Id. at 121, emphasis added.

¹⁰ Id. at 121

¹¹ Id. at 121.

other hand, we have just suggested that, for Uruguay to promise the military supplies for Somalia and then to dishonour this promise once the war started (or to discontinue the military supplies already initiated) would also be non-neutral because it would hinder Somalia (relative to the baseline established by its reasonable expectations).

However, this suggests (at this stage) only that in some circumstances neutrality is a course of conduct impossible to pursue. Once Uruguay committed itself to sell weapons to Somalia (even though Somalia need them more than Ethiopia), and once the war between Somalia and Ethiopia broke out, Uruguay has no non-neutral course of conduct available: it has, so to say, lost its innocence with regard to neutrality towards this particular conflict. To honour its obligations is non-neutral, and so is to dishonour them. But to say that sometimes neutrality is not possible is not equivalent to saying that it is an incoherent notion, nor does Raz suggest such an equivalence. Rather, his second argument depends on a distinction between "comprehensive" and "narrow" neutrality. The criterion of this distinction is the substance of the help (or hindrance) as compared to the nature of the conflict. Some resources (which parties to the conflict may seek from the third parties, whose neutrality is at stake) are sought only because of the conflict. Other resources are helpful to the victory, but they present the value independently of the conflict as well. Hence:

Comprehensive neutrality consists in helping or hindering the parties in equal degree in all matters relevant to the conflict between them. Narrow neutrality consists in helping or hindering them to an equal degree in those activities and regarding those resources that they would wish neither to engage in nor to acquire but for the conflict.¹²

The example given by Raz to illustrate this distinction is again about the war: to supply one of the parties with weapons compromises narrow neutrality, but to keep continuing supplies of food to one of the parties is consistent with narrow neutrality although it offends comprehensive neutrality.

The relevance of this distinction to Raz's thesis about the impossibility of political neutrality lies in the proposition that the conflict in a society, towards which the liberal state is supposed to be neutral, is a comprehensive conflict; and yet all that the state can do is to adopt the stance of "narrow" neutrality. Though Raz does not explicitly make this last point (about the "narrow" neutrality as the only one available to the

¹² Id. at 122.

state), it is implied by his question: "Can one be narrowly neutral in a comprehensive conflict?"¹³

Two unclear issues are raised by this question. The first one, on which I will not base my main criticism of Raz's "second argument", is Raz's implicit presupposition that state neutrality towards conceptions of the good can only be of a "narrow" kind, or perhaps, less strongly, that the circumstances of the state's approach towards conceptions of the good lend themselves much more easily to adopting the "narrow neutrality" stance rather than the comprehensive one. In other words, in adopting a position towards the "warring parties" in a society, it is more likely that the state will provide them "neutrally" with the equivalent of arms supplies rather than with the equivalent of arms and food, to use the analogy of a state vis-à-vis an armed conflict of two other nations. It may well be the case, but it calls for an argument, which I fail to find in Raz's reasoning. In the absence of such an argument, the question "Can one be narrowly neutral in a comprehensive conflict?" does not lead to an obvious answer in the context of liberal neutrality because we do not know why the liberal states are incapable of being "comprehensively neutral".

Another doubt is raised by the second limb of the dilemma described by Raz, namely the proposition that the conflicts towards which the liberal state would have to take a neutral attitude, are "comprehensive", that is, such that only "comprehensive" neutrality would be an adequate response. This Raz explicates in the following way:

The conflict in which the state is supposed to be neutral is about the ability of people to choose and successfully pursue conceptions of the good (and these include ideals of the good society or world). It is therefore a comprehensive conflict. There is nothing outside it which can be useful for it but is not specifically necessary for it. The whole of life, so to speak, is involved in the pursuit of the good life.¹⁴

I am not sure how these propositions support the conclusion about the inadequacy of "narrow neutrality" to handle the conflicts between the conceptions of the good. While these conceptions are indeed "comprehensive", in the sense that they affect "the whole life", it does not follow that all the resources, the distribution of which is controlled by the state, affect the opportunities to choose and pursue all the conceptions of the good which have their followers in the community. Conceptions of the

¹³ Id. at 124.

¹⁴ Id. at 123-24

good can be "disaggregated" in the sense that they usually require some specific resources and protections, while other resources and protections are more or less irrelevant to the competition of this particular conception of the good with others ("more or less" suggests that the line between "narrow" and "comprehensive" conflict, just as between "narrow" and "comprehensive" neutrality is not sharp - the point acknowledged by Raz himself).¹⁵ For example, in the conflicts stemming from different approaches to legal prohibitions of obscene literature, state neutrality requires a specific state action in this specific domain. We may disagree about what particular action is necessitated by the principle of neutrality in these given fields, but this controversy does not result from the "comprehensiveness" of the conflict at stake; rather, the conflict can be fairly narrowly localized by all people who disagree about the specific content of a "neutral" policy. Paraphrasing one of Raz's sentences in the passage quoted above, "There is a lot outside it which can be useful for it but is not specifically necessary for it". To use his armed-conflict analogy, in such conflicts as those about religions or obscenity, the state can be neutral merely by (non-)providing "weapons" to an equal degree to the parties concerned, while the provision of "food" is not specifically necessary for the outcome of the conflict.

Conflicts between the conceptions of the good are "comprehensive" in a sense which does not negate the adequacy of "narrow" neutrality. They are comprehensive because, when people are frustrated in the pursuit of their conceptions of the good, it affects the whole of their life in a way which usually makes compensatory rewards in other spheres of their lives insufficient and inadequate. A person who cannot satisfy his desire to become a priest (due to the militantly atheistic policies of the state) will hardly be satisfied by extra opportunities created for him in the area of sport, or access to education, or opportunities for foreign travel. But this does not mean that it is impossible for the state to confine its conduct to the resources required by this person's desire in such a way as to be neutral between this person's and others' favourite lifestyles.

2 Perfectionism and the Harm Principle

The major point of convergence between Raz's book and the "conventional" liberal theory is the acceptance of the harm principle as a basis for restraining the coercive powers by the state. But, having rejected the idea of neutrality, Raz interprets the harm principle in a way which, as he himself admits, is quite different from a

¹⁵ Id. at 122.

traditional liberal argument.¹⁶ The harm principle is supported, in Raz's theory, by the principle of autonomy which he interprets in a perfectionist, rather than a neutralist, manner. And although practical consequences of his perfectionist, autonomy-based harm principle seem to be very similar to the neutralist analysis (with the single major exception: Raz allows some degree of paternalism), some attention must be given to this surprising mix of divergence (in the attitude to perfectionism) and convergence (in the endorsement of the harm principle) of these two theoretical positions.

The main positive reason for Raz's claim that the harm principle, in his interpretation, represents a perfectionist ideal (the negative reason being related to his rejection of the ideal of neutrality, discussed above) is that the principle of autonomy, from which he derives the harm principle,¹⁷ is interpreted in The Morality of Freedom in a perfectionistic fashion. This is reflected in Raz's proposition that autonomy is not valuable per se, but only insofar as it is used in the pursuit of the moral good. "Autonomous life is valuable only if it is spent in the pursuit of acceptable and valuable projects and relationships".¹⁸

There are two essential steps leading to Raz's conclusion about perfectionism of the harm principle, each of which is questionable: (1) the rejection of an intrinsic value of autonomy; (2) the connection between the perfectionist account of autonomy and the harm principle. I will devote my attention here to the latter point. The problem seems to be this: the harm principle prohibits coercive interference with individual actions on any other grounds than the harm to others, hence, no interference on the grounds that an agent's behaviour is immoral or unwise is authorized. But if the harm principle is derived from a perfectionist ideal of autonomy, where autonomy is valuable only if geared to morally good actions, then it is hard to find any protection for morally bad (though harmless to others) actions in such a constellation of the harm principle and the perfectionist autonomy. But then, if only morally good actions are protected against coercive interference, the harm principle would of course lose all its meaning.

Here is how Raz handles this manifest dilemma:

¹⁶ Id. at 412-20.

¹⁷ Id. at 415: "I would suggest that the [harm] principle is derivable from a morality which regards personal autonomy as an essential ingredient of the good life ..".

¹⁸ Id. at 417

[T]he harm principle is defensible in the light of the principle of autonomy for one simple reason. The means used, coercive interference, violates the autonomy of its victim. First, it violates the condition of independence and expresses a relation of domination and an attitude of disrespect for the coerced individual. Second, coercion by criminal penalties is a global and indiscriminate invasion of autonomy. Imprisoning a person prevents him from almost all autonomous pursuits. Other forms of coercion may be less severe, but they all invade autonomy, and they all, at least in this world, do it in a fairly indiscriminate way. That is, there is no practical way of ensuring that the coercion will restrict the victims' choice of repugnant options but will not interfere with their other choices.¹⁹

Raz offers two reasons for his surprising conclusion that autonomy, which is valuable only if used in the pursuit of the moral good, should be protected even if spent in the pursuit of the morally repugnant. The first argument is that the interference with autonomous, though morally repugnant, choices violates the independence of, and expresses disrespect for, the coerced. As for the disrespect, it is hard to find convincing grounds for the respect for an action which is morally repugnant. And a disrespect for such an action need not imply a disrespect for a person. To the contrary, more radical perfectionists than Raz argue that it is precisely the respect for a person which should trigger our coercive interference with morally repugnant actions.²⁰ As for the "condition of independence", violated by the interference with the morally repugnant action, this is true by definition. Unless Raz is willing to introduce a separate value of independence, which would be intrinsically valuable, and which would outweigh the value of perfectionistically interpreted autonomy,²¹ it is hard to see how such a violation of "independence" could justify a protection for the morally repugnant though autonomous actions. And this raises the suspicion that Raz smuggles into his argument a

¹⁹ Id. at 417-18.

²⁰ See J.M. Finnis, "Legal Enforcement of 'Duties to Oneself': Kant v. Neo-Kantians", Columbia Law Review 87 (1987) 433-57.

²¹ Elsewhere in his book he describes "independence", understood as the absence of coercion and manipulation, as "a separate dimension of the conditions of personal autonomy", Raz, supra note 1 at 378. This does not help to answer the question about the moral value of independence in the case of morally repugnant, autonomous actions.

non-perfectionist notion of autonomy (which is valuable irrespective of the moral value of autonomous actions) under the guise of "independence".

The second argument is about the indiscriminate effects of a coercive restraint which leads, as Raz claims, to restrictions not only of the victims' repugnant choices, but also of their other options, including the morally commendable ones. This argument is surprisingly inadequate to the burden it is supposed to carry, namely the defence of the harm principle. For we may well cite a number of narrowly tailored, precise coercive means which focus sharply on the prohibition of the "morally repugnant" options, and where the spill-over effect will be minimal. After all, the primary concern of Mill's harm principle was not only with the punishment (which provides the grounds of Raz's argument) but also with prohibition. Moral censorship is an example which comes immediately to one's mind: the laws which prohibit "obscene" publications, but where the only sanction for the production, distribution and possession of such materials would be their confiscation, certainly do not affect the agents' capacities for all options other than to produce, distribute and possess obscene publications. Even fines (to bring the example more closely to real life) imposed upon the publisher do not affect his other options, or affect them only trivially. The law which prohibits the sale of contraceptives, similar to the one invalidated by the United States Supreme Court in Griswold v. Connecticut,²² assuming that the only sanction supporting it would be confiscation (or even a fine, but not as severe as to seriously affect the options available to the punished person) is hardly defensible on the grounds of the harm principle, and yet it does not affect persons' liberty to act in the areas other than their sexual life. Raz's argument is, at best, an autonomy-based argument against the penalty of imprisonment for morally repugnant actions, but is not sufficient to reject all coercive prohibitions of immoral (though harmless) behaviour. In conclusion: the perfectionist account of autonomy is inadequate to support the harm principle; the one cannot be reconciled with the other.

²² 381 U.S. 479 (1965).