Government Neutrality toward
Conceptions of a Good Life:
It’s Possible and Desirable, But Perhaps Not so Important

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I. The Possibility and Desirability of Neutrality

In his seminal essay “Liberalism,” Ronald Dworkin identified liberalism with the principle that the government should remain as neutral as possible toward different conceptions of a good life. Since then it has been natural for critics of liberalism to criticize neutrality as impossible or undesirable. Some so-called “perfectionist liberals,” such as Joseph Raz and George Sher, have agreed with them. My first aim in this talk is to defend the principle of neutrality against these two common objections. The defense I offer, however, leads one to desire an account of the distinction between neutral and non-neutral justifications, and, for reasons I will explain, a satisfactory account is difficult to find. This raises doubt about whether neutrality is a theoretically illuminating principle, and even about whether it is a morally important goal. So after defending the possibility and desirability of neutrality, I will suggest that we nonetheless put this principle aside when engaged in the theoretical project of trying to understand or justify our rights.
Government neutrality toward conceptions of the good life can seem to be impossible because any system of laws will make some conceptions of a good life easier to pursue than others. However, none of the most influential advocates of neutrality have argued for this kind of neutrality of effect. Rather they have held that it is wrong for the government to adopt coercive policies for non-neutral reasons, or reasons that violate some principle of neutrality. Since it is possible for the government to adopt policies for neutral reasons alone, neutrality in their sense is therefore possible.

One may still wonder, of course, why neutrality is desirable. Why is it a bad thing for the government to adopt coercive policies for non-neutral reasons? My own answer is this: non-neutral reasons are insufficient to justify the government in limiting our liberty. Notice, then, a puzzle that this answer creates. Many reasons are insufficient, neutral and non-neutral. The reasons of safety to prohibit driving over ten miles per hour on I-10 are insufficient, for example, even though reasons of safety are perfectly neutral. So if what makes violations of neutrality wrong is simply that non-neutral reasons are insufficient, then it seems there is nothing especially wrong with violations of neutrality. It seems, in other words, that the moral fault involved in the government adopting a non-neutral policy is just an instance of the more general fault of acting for insufficient reason. This, in fact, is what I believe, and it is why I think that neutrality, though possible and desirable, is not an especially important political goal.

II. The Insufficiency of Non-Neutral Reasons

The principle of neutrality, as I interpret it, states that it is wrong for the government to adopt policies for non-neutral reasons. So before going on I should note an ambiguity in the idea of the government acting for a reason. To say that the government acts for a reason might
mean that it acts in this way only because some government official counts this reason in favor of this policy. Or it might mean that this policy cannot be justified unless this reason is counted in its favor. I think neither of these analyses of acting for a reason is entirely satisfactory as an interpretation of the requirements of neutrality, but I will put this issue aside, and assume that if one can explain in a general way what is wrong with non-neutral reasons, one can then explain what is wrong with the government acting for these reasons.

What is wrong with non-neutral reasons, in my view, is that they are insufficient to justify the government in limiting our liberty. They are insufficient because they fail to satisfy an individualistic principle of sufficient reason that I now state. This principle is that a reason is sufficient to justify the government in enacting and enforcing a law that limits a person’s liberty only if (a) there is sufficient epistemic reason for government officials to believe the proposition that constitutes this reason; (b) this reason is a personal reason, or a good reason for someone to prefer her own situation when individual liberty is legally limited in this way; and (c) this reason has at least as much moral weight as any personal reason someone has to prefer her own situation when individual liberty is not legally limited in this way. No non-neutral reason satisfies this principle, I maintain. So non-neutral reasons are morally insufficient to justify the government in limiting our liberty.

To see why non-neutral reasons seem insufficient as judged by the individualistic principle of sufficient reason, consider some of the non-neutral reasons this principle seems to rule out. Consider, for example, the reason for the government to prohibit worship within a particular church that those who worship within this church will suffer eternal torment in Hell. There is insufficient epistemic reason for any government official to believe this. So this non-
neutral reason for limiting freedom of worship violates the individualistic principle of sufficient reason on this ground.

Consider next the reason to prohibit homosexual sodomy that it is degrading, in the sense that it normally expresses contempt toward persons or impedes the development and exercise of the higher human capacities. This reason violates the individualistic principle of sufficient reason because constituted by a false proposition. While some forms of sexual conduct may be degrading in these ways, and there may therefore be good reason for individuals to prefer their situations when prohibited from engaging in them, homosexual sodomy as such is not one of them, since many gay relationships express deep concern and respect and develop the human capacity for love and friendship as well as other kinds of intimate adult relationships do.

Consider now the reason to prohibit homosexual sodomy that some people disapprove of it. This is no doubt true and there is sufficient reason for government officials to believe it. The mere fact, however, that a person disapproves of a form of conduct fails to identify any way in which he is better off when this conduct is legally prohibited. If a form of behavior upsets someone, this may be a good reason for him to prefer his situation when others are legally prohibited from engaging in it in his presence without his consent provided this feeling is not itself open to criticism. The mere fact, however, that a person disapproves of a form of conduct, or believes it is open to some kind of criticism, does not identify any way in which he is better off when this conduct is legally prohibited. Nor does it identify any way in which a person who may be tempted to engage in this conduct is better off when legally prohibited from doing so. This is because the mere fact that someone believes an activity is bad does not make it bad for anyone. The non-neutral reason for the government to prohibit homosexual sodomy that some people disapprove of it thus fails to identify a reason of any moral weight for someone to
prefer his situation when the government prohibits homosexual sodomy and so violates the individualistic principle of sufficient reason on this ground.\(^4\)

Some non-neutral reasons are given by propositions that there is sufficient epistemic reason to accept and that do succeed in identifying ways in which a person would be better off if liberty were limited in some way. Consider the reason for the government to regulate the teaching of Christianity in private religious schools that unregulated this teaching will lead some children to believe that Mary was a virgin when Jesus was born. This belief is highly improbable and there is sufficient reason to believe that teaching it in school will lead some children to accept it. Other things equal there is good reason for children to prefer their situations when they are not led by their schoolteachers to accept highly improbable beliefs. This reason is insufficient, though, because a child’s reasons to want to be shielded from expression that inclines her to believe the story of the virgin birth are relatively weak—it is not so bad to be led to believe this--and there are weighty reasons for adults to prefer their situations when they have the freedom to express religious beliefs they sincerely believe true and that seem to them important that others hear. There is also good reason for persons generally to prefer their situations when they have the freedom to hear religious beliefs the government disagrees with so as to have the opportunity to assess independently whether or not these beliefs are justified. These reasons decisively outweigh the reasons there are for a child to prefer her situation when she is shielded from influences that might lead her to believe the story of the virgin birth. So this reason violates the individualistic principle of sufficient reason on this ground.

Other non-neutral reasons that might be thought sufficient for the government to limit a person’s liberty are ruled out because they are impersonal reasons: they are reasons to prefer the world, as opposed to one’s own situation in it, when the government limits individual liberty
in some way. Consider, for example, the reason to prohibit abortion that a world in which every healthy human fetus grows to adulthood is intrinsically better than a world in which some do not. A person is justified in believing this if her contemplative preference for such a world withstands her critical scrutiny while vividly assuming that no one has an interest in the survival of every healthy fetus. If this contemplative preference withstands the critical scrutiny of government officials, and a world in which every healthy human fetus fully matures is intrinsically better, this constitutes an impersonal reason for the government to prohibit abortion, and one there is sufficient epistemic reason for these government officials to accept. The individualistic principle of sufficient reason, however, counts only personal reasons as sufficient, and so identifies this reason to prohibit abortion as insufficient.

Obviously these examples alone fail to prove that the principle of neutrality is valid. For one thing I have not proved that these reasons fail to satisfy the individualistic principle of sufficient reason; I have explained only why I think they do. For another thing, even I proved this, I would still have to prove that the individualistic principle of sufficient reason is valid. Then I would have to prove that no non-neutral reason satisfies this principle when taken alone. Then I would have to prove that no set of non-neutral reasons satisfies this principle when taken together. And then I would have to prove that no set of neutral and non-neutral reasons satisfies this principle when the neutral reasons taken alone do not. I do not see how any of these things could be proved.

The point of the discussion so far is not to prove that the principle of neutrality is valid. It is simply to prepare the ground for the following explanation of why it is reasonable to believe that it is. The principle of neutrality, as I interpret it, states that it is wrong for the government to limit individual liberty for non-neutral reasons. Ignoring some important details about what it is
for the government to act for a non-neutral reason, I interpret this to mean that it is wrong for the
government to adopt any policy for which there is insufficient neutral reason. This principle is
valid if there is morally insufficient reason for any policy for which there is insufficient neutral
reason. To understand why I think this is true, consider whether there is morally sufficient
reason for drug and prostitution laws, which some have suggested violate the principle of
neutrality. Given the burdens these policies impose on those who wish to use drugs or engage in
prostitution, it is reasonable to believe that there is sufficient reason for these policies, as judged
by the individualistic principle of sufficient reason, only if they reduce the risk to someone of
substantial and empirically identifiable harms that might result from heavy drug use or
prostitution, such as lasting mental or emotional damage of certain kinds. Preventing lasting
mental or emotional damage, however, is arguably a neutral reason. There are no doubt also
non-neutral reasons for these policies, such as that drug use or prostitution are inherently wrong
in mistreating our mental or procreative capacities--but either these are impersonal reasons or
they are personal reasons of too little weight to justify the burdens that prostitution and drug laws
impose. So, arguably, either there is sufficient neutral reason for drug and prostitution laws, as
judged by the individualistic principle of sufficient reason, or these policies are unjustifiable. I
believe the same is true of every coercive government policy. If so, the principle of neutrality is
valid and neutrality is therefore desirable.

III. The Difficulty of Analysis

This argument, such as it is, is based on the claim that there is morally sufficient reason
only for policies for which there is sufficient neutral reason. There are a number of ways in
which this might be challenged. One might challenge the validity of the individualistic
principle of sufficient reason or one might challenge my claim that only neutral reasons satisfy this principle. I am inclined to think that liberal perfectionist critics of neutrality like Raz and Sher both accept the individualistic principle of sufficient reason and that they also believe that all the specific non-neutral reasons that I just considered are in fact insufficient as judged by this principle. The reason they question the desirability of neutrality is that they think that there are some morally justifiable policies, like drug laws, for which there is insufficient neutral reason. My response is that while some of the reasons for these policies may be sufficient, any reason that is sufficient is also neutral. This answer depends, however, upon a particular conception of what reasons are neutral and non-neutral. Suppose, then, that the liberal perfectionist believes that neutrality is invalid because he thinks that some reason that I would count as both sufficient and neutral is actually non-neutral? How would I proceed, then, to show that the liberal perfectionists are wrong, and that all the reasons they count as sufficient are actually neutral?

A natural strategy here is to offer a philosophical account of the intuitive distinction between neutral and non-neutral reasons. If, then, it were plausible to claim that there is morally insufficient reason, as judged by the individualistic principle, for any policy for which there is insufficient neutral reason, as judged by this account of the distinction, then this would warrant the conclusion that the principle of neutrality is valid. When we survey the most promising accounts, however, it seems that none of them captures the intuitive distinction between neutral and non-neutral reasons. It seems that they all count some intuitively non-neutral reason as neutral or some intuitively neutral reason as non-neutral. So while these accounts may identify some other morally relevant distinction between reasons, they do not seem actually to capture the distinction between neutral and non-neutral reasons. And if they do not, they cannot provide an authoritative basis for determining whether a reason is neutral or non-neutral.
To appreciate the nature of the difficulty more fully, consider the range of reasons for the government to limit a person’s liberty that strike us intuitively as being non-neutral. This range includes among others the reason

(1) that a person’s conception of a good life is false;

(2) that by expressing some belief or attitude a person makes it more likely that someone else will form a false belief, about politics, religion, or about how best to live;

(3) that what a person wishes to do is intrinsically wrong or bad, or wrong or bad independent of its negative effects on anyone;

(4) that the goals a person wishes to pursue or the activities she wishes to engage in are worthless;

(5) that by pursuing a goal or by engaging in an activity a person becomes less admirable;

(6) that others disapprove of the goals a person wishes to pursue or the activities she wishes to engage in;

(7) that the activities a person wishes to engage in are degrading to her or others;

(8) that what a person wishes to do, or be, or become, or have, or create is ugly or otherwise aesthetically objectionable;

(9) that by doing something a person fails to treat with due care or respect something precious, such as the capacity for sexual intimacy, or sacred, such as potential human life.

These reasons differ in content and it seems a government would fail to be neutral in very different ways if it were to limit liberty for each of these reasons. What property, if any, then, do these reasons have in common that makes them all non-neutral--apart, that is, from the simple, unanalyzable property of non-neutrality?

I suspect the answer to this question is “none,” and that there is no satisfactory
theoretical account of the intuitive distinction between neutral and non-neutral reasons.

Obviously I cannot consider every possibility here. So I will simply consider three accounts that have been influential, and explain why I think each fails.

The first account of neutrality I want to consider here is the one suggested by Ronald Dworkin’s distinction between personal and external preferences. As originally defined, a personal preference is a person’s desire that she have or not have some opportunity or resource herself; an external preference is a person’s desire that someone else have or not have some opportunity or resource. This suggests the following account of the distinction between neutral and non-neutral reasons. The fact that a government policy satisfies a personal preference is a neutral reason for it. The fact that a government policy satisfies an external preference is a non-neutral reason for it.

An initial objection is that the notion of an external preference fails to capture the notion of a non-neutral reason. To see why, consider the reason to prohibit sodomy that it is “unnatural,” in the specific sense that it is not the kind of sex that can lead to procreation by persons with fully functioning reproductive organs. Suppose a sodomy law is adopted for this reason and that it cannot be fully justified by neutral reasons alone. This policy would violate the principle of neutrality as intuitively understood, but not on the external preference interpretation, since this reason simply states a natural fact about the procreative potential of sodomy, one that makes no reference to the goal of satisfying preferences, external or otherwise.

This objection alone, however, does not doom the personal preference interpretation of neutrality, since one might still identify neutral reasons with personal preferences and then characterize as non-neutral every other reason. The reason to prohibit sodomy that it is “unnatural” would then be a non-neutral reason, not because it is an external
preference, but rather because it is not a personal preference.

A deeper objection to the personal preference account of neutrality is that the satisfaction of some personal preferences would seem to provide a non-neutral reason for government coercion. Imagine someone who wants not to hear a certain religious belief publicly professed because he believes that it is false and that hearing it will make it more likely that he will accept it, with bad consequences, he fears, for him. Since having the opportunity to hear this belief expressed will make it more likely that he will hear it, he does not want this opportunity, which, by definition, is a personal preference.\textsuperscript{10} Intuitively, though, the satisfaction of this personal preference provides a non-neutral reason for the government to restrict freedom of expression.

Perhaps my claim seems puzzling that a person’s desire to have less freedom to hear certain religious beliefs expressed is a personal preference, since the satisfaction of this personal preference requires the satisfaction of an external preference as well: the external preference that others not have the opportunity to speak or hear a certain religious belief expressed. The satisfaction, however, of any personal preference likewise requires the satisfaction of some external preference. Thus the satisfaction of our personal preference for personal safety and security will be satisfied only if our external preference is satisfied that others do not have the freedom to assault us. We must therefore understand the notion of a personal preference in the following way. We must say that a preference for a particular distribution of goods is personal if and only if this preference is based on the belief that one will be intrinsically better off in some way with this distribution of goods than one will be without it. Since, then, the person in my example wants not to have the liberty to hear certain religious beliefs expressed because he believes that he will be intrinsically better off in some way without this liberty, this preference is personal in the relevant sense. The notion of a personal preference thus fails to capture the
notion of a neutral reason because this personal preference constitutes a non-neutral reason.

The second proposal I want to consider is that the distinction between neutral and non-neutral reasons can be understood in terms of Rawls’s distinction between public and non-public reasons. According to Rawls, citizens of a democracy have a “duty of civility” to each other that permits us to support coercive government policies only if we sincerely believe there is sufficient public reason for them. Public reasons, as Rawls specifies the idea, are those identified as sufficient reasons by some conception of justice that is both liberal and political in nature, when its principles are applied in accordance with widely accepted standards of factual inquiry. A conception of justice is liberal if and only if (1) it requires the government to recognize and protect an equal right of citizens to certain basic liberties; (2) it gives the recognition and protection of these basic liberties priority over other goals, particularly maximizing the general welfare and promoting human excellence or perfection; and (3) it requires the government to secure to each citizen the material means necessary to make effective use of these basic liberties. A conception of justice is political if and only if (1) it is framed to apply only to the basic political, economic and social institutions of a society; (2) its validity does not rest upon or presuppose the validity of any particular religious or philosophical doctrine about life’s meaning, value, or ultimate purpose; and (3) it is arrived at by interpreting political ideas implicit in the public political culture of a democratic society. Neutral reasons, one might say, are public reasons in this sense; non-neutral reasons are non-public.

The problem is that the six criteria just identified for counting a conception of justice as both liberal and political are too loose to exclude every conception of justice that identifies some non-neutral reason as sufficient to justify the government in limiting our liberty. To illustrate, consider an imaginary conception of justice that I will label “moderate moral
majoritarianism.” This imaginary conception of justice includes two fundamental principles: Rawls’s principle of equal basic liberty and a principle of basic need that requires the government to ensure when feasible that the basic material needs of its citizens are met. This conception of justice also assigns these two principles “lexical priority” over the other principles it includes. Among these other principles, however, is a principle of moral majoritarianism, which directs the government to adopt policies that encourage activities that most people approve of as fine, noble, uplifting, intrinsically worthy, or most fitting for human beings, and to discourage activities that most people disapprove of as base, degrading, ignoble, intrinsically worthless, or otherwise unfitting, when these policies do not conflict with either of the two lexically prior principles already mentioned.

This conception of justice is a liberal, political conception, as Rawls defines this idea. This conception, however, would identify the fact that most people disapprove of an activity as base or degrading as a sufficient reason for the government to adopt a coercive policy that discourages it, and this seems to be a non-neutral reason. So suppose that streetwalking is not protected by any basic liberty, and that most people think that it is base or degrading. Moderate moral majoritarianism then identifies this reason as sufficient to justify the government in prohibiting streetwalking, although this reason seems non-neutral. Some intuitively non-neutral reasons therefore seem also to be public reasons, as Rawls theorizes this idea.

Perhaps I should make it clear that this is not intended as an objection to Rawls’s idea of public reason. Rawls does not present this idea as a theory of neutrality. Rather he presents it as part of a theory of legitimacy, according to which a coercive policy is legitimate in a democracy only if it could be enacted through a political process in which no one supports this policy unless he sincerely believes there is sufficient public reason for it. Perhaps this test of legitimacy
is sound. The limited point here is simply that the distinction between public and non-public reasons, as Rawls spells it out theoretically, fails to correspond to the intuitive distinction between neutral and non-neutral reasons, and thus fails to provide an adequate theoretical account of this distinction.

Perhaps it has seemed to some of you that I have been working much too hard to explain the distinction between neutral and non-neutral reasons. A non-neutral reason, you may think, is simply a reason that is partial in some way toward a particular conception of the good life whereas neutral reasons are not partial in this way. The difficulty is to explain the precise way in which all and only non-neutral reasons are partial.

To bring this difficulty out further, I will consider the account of the distinction between neutral and non-neutral reasons that is suggested by Ackerman’s model of a “neutral dialogue.” A reason is non-neutral, this model suggests, if and only if giving it as a reason “requires the power holder to assert (a) that his conception of the good is better than that asserted by any of his fellow citizens, or (b) that . . . he is intrinsically superior to one or more of his fellow citizens.” To say a legislator is “required” to assert something is presumably a logical, and not a legal or a moral claim. To assert that one conception of the good is “better than” another is presumably to assert that it is more correct or sound than the other. If so, then we may say that a legislator is “required” to assert the superiority of his own conception of the good in giving a reason for a policy when this reason is sufficient to justify this policy only if his particular conception of the good is correct and (some) others are therefore incorrect.

What, then, is a “conception of the good”? It might be a conception of what is intrinsically good for a person: a conception of individual welfare or well-being, or of what makes a person’s life go well for her. Or it might be a conception of what is intrinsically
valuable more generally, of what is worth desiring for its own sake. Since the phrase “conception of the good” is commonly used interchangeably with the phrase “conception of the good life,”¹⁹ the relevant notion would seem to be a conception of individual welfare or well-being. Some non-neutral reasons, however, are impersonal reasons, and impersonal reasons are not identified as good reasons by any conception of individual welfare, because a conception of individual welfare or well-being is, by its very nature, a conception of what personal reasons there are and of their relative weight. So giving a non-neutral impersonal reason cannot express partiality toward any conception of individual welfare. If the idea of partiality toward a conception of the good is to explain the partiality of all non-neutral reasons, a conception of the good must therefore be understood as a (relatively complete) conception of what is intrinsically valuable.

This interpretation of the neutral dialogue account of neutrality suggests that a reason is non-neutral if and only if the following is true of it: it is insufficient to justify the government in limiting a person’s liberty unless a particular (relatively complete) conception of what is intrinsically valuable is correct. The problem, then, is that the sufficiency of a non-neutral reason need not depend in this way upon the correctness of any particular conception of what is intrinsically valuable. This is because the judgment that it is sufficient might be endorsed or be consistent with more than one conception. Consider, for example, the reason to prohibit nude dancing that it is degrading. The judgment that this reason is sufficient is consistent with many different (relatively complete) conceptions of what has intrinsic value. So giving this reason does not (logically) require a legislator to assert that his conception of the good is better than others since this reason might be sufficient even if his conception is incorrect.²⁰

Some may respond that a government is justified in prohibiting nude dancing by
the proposition that it is degrading only if some claim of intrinsic value is correct. So giving this reason may “require” a legislator to make some claim of intrinsic value, or some claim about what is good for its own sake. This, however, is equally true of every neutral reason. Consider, for example, the reason for laws against theft that they function to make our possessions more secure. Taking this neutral reason as sufficient presupposes the correctness of some claim of intrinsic value: that it is intrinsically bad for us to lose through theft things that we value and expect to remain in our possession; or that it is intrinsically bad for us to lose other things that we would lose as a result of losing these things; or that it is intrinsically bad for us to be more fearful of theft; or that we are intrinsically worse off in some other way when the general risk of theft is higher.21 The fact that a reason is sufficient only if some claim of intrinsic value is correct does not therefore suffice to make this reason objectionably partial toward any particular conception of the good, since this is equally true of every neutral reason.

IV. The Theoretical Insignificance of Neutrality

More might be said in defense of these three accounts of the distinction between neutral and non-neutral reasons, and there are other ways in which this distinction might be understood. All I hope to have shown is that it is not obvious how this distinction is to be understood. I hope to have shown this in order to suggest that there may in fact be no satisfactory account of this distinction. Suppose, then, that there is not. Where would this leave us with respect to the possibility and desirability of neutrality?

As is well-known, the mere fact that it is not possible to provide a satisfactory analysis of some property or distinction does not imply that the property or distinction is illusory or fundamentally subjective. Neutrality and non-neutrality may therefore be genuine properties
of reasons, which we recognize through a kind of mental intuition, even if it is not possible to analyze this distinction in terms of anything else. And if they are genuine properties, then neutrality is possible and may be desirable. It is possible since it is possible for the government to adopt policies only for reasons that are neutral. It is desirable if there is morally sufficient reason only for policies for which there is sufficient neutral reason.

Of course some may believe that there is sufficient moral reason, as judged by the individualistic principle of sufficient reason, for policies for which there is insufficient neutral reason, as they understand the range of neutral reasons, and so may think that the principle of neutrality is invalid on this ground. It remains open, however, to a defender of neutrality to argue that these allegedly non-neutral reasons are in fact neutral. In the absence of a satisfactory analysis of the distinction this will be difficult to prove. On the other hand, in the absence of a satisfactory analysis, there is also no way to prove that there is insufficient neutral reason for some policy for which there is sufficient moral reason. I do not think, then, that the difficulty of analyzing the notion of neutrality provides any compelling reason to think that neutrality is either impossible or undesirable. I do, however, think this raises serious doubt about the moral and theoretical significance of neutrality.

At the outset I pointed out that if violations of neutrality are wrong only because non-neutral reasons are insufficient, then it seems there is nothing especially wrong with policies that violate the principle of neutrality, because many kinds of reason for government policy are insufficient, neutral as well as non-neutral. The reasons of safety for a ten mile per hour speed limit on I-10 is insufficient, for example, even though it is perfectly neutral. To explain the special moral importance of neutrality as political goal, it therefore seems necessary to hold that non-neutral reasons are not only insufficient, but also that they are especially illegitimate in
some way. But if it is not possible to identify a satisfactory analysis of the distinction between neutral and non-neutral reasons, then, I believe, it is not possible to identify any morally significant quality that all and only non-neutral reasons have that could explain their special illegitimacy.

The difficulty of analysis raises doubt not only about the moral importance of neutrality as a political goal, but also about the theoretical importance of the principle of neutrality as part of a theory of rights. When Dworkin first identified liberalism with the principle of neutrality, he suggested this principle could be used as a theoretical basis for identifying certain specific rights individuals have against the majority, rights to religious and sexual freedom, for example. If, however, the validity of the principle of neutrality is itself grounded on the individualistic principle of sufficient reason in the way I suggest, then its validity depends on the independent validity of this principle of sufficient reason along with the soundness of certain judgments about which reasons satisfy it. Consequently the principle of neutrality has no independent theoretical role to play in our reasoning about rights.

What, then, is the connection between neutrality and liberalism? In my view, the rights to liberty that liberals generally maintain we have are grounded on the individualistic principle of sufficient reason together with certain judgments about what reasons satisfy this principle. This is also the basis for the principle of neutrality. The principle of neutrality therefore does not offer any independent basis for liberalism. Rather it is simply a way of summarizing some of the claims about rights to which liberalism is committed and that are in fact warranted on independent normative grounds, grounds that can be fully stated without once mentioning the distinction between neutral and non-neutral reasons.
To sum up the position on neutrality I have taken here, I should say that I both agree and disagree with liberal perfectionist critics of neutrality, like Raz and Sher. On one hand, I think they are wrong to suggest that neutrality is undesirable because I think that there is morally insufficient reason for any policy for which there is insufficient neutral reason. Furthermore, I think they conclude that neutrality is undesirable only because they count as non-neutral reasons that should really be counted as neutral. On the other hand, in the absence of a satisfactory account of the distinction between neutral and non-neutral justifications, I fully agree with Sher that we ought to move “beyond neutrality.” This is because in the absence of a satisfactory account of this distinction the principle of neutrality is unable to illuminate our theoretical reasoning about rights and government policy, and the goal of neutrality fails to identify anything of moral importance beyond the general moral goal that the government adopt only policies for which there is sufficient reason.
Endnotes

4 On this ground I believe the Supreme Court was right to argue in Lawrence v. Texas (decided June 26, 2003) that the mere fact that a majority disapproves of homosexual sodomy fails to provide a “rational basis” for state laws that prohibit it, on the assumption that there is a “rational basis” for a law only if there is a good reason for it.
5 In using the terms “personal” and “impersonal” in this way I follow T. M. Scanlon, What We Owe to Each Other (Cambridge, MA: Harvard University Press, 1998), p. 219. For a very different use of the terms “personal” and “impersonal”, see Thomas Nagel, “Moral Conflict and Political Legitimacy,” Philosophy & Public Affairs 16 (Summer 1987): 215-40.
6 This is not to say that every policy that might be defended by impersonal reasons violates the individualistic principle of sufficient reason. Some may defend whaling laws, for example, by reference to the intrinsic value of a world in which whales thrive. It does not follow that these laws violate the individualistic principle of sufficient reason since they might also be defended by the personal reasons that individuals have to observe whales, or to interact with them, or to be related to them in certain ways—-not to be members of a species that has a predatory relationship with theirs, for example—and also, perhaps, by the personal reasons that whales themselves have to want not to be hunted and killed.
7 See Dworkin, Taking Rights Seriously (Cambridge, MA: Harvard University Press, 1977), pp. 234, 275. In subsequent work (e.g., A Matter of Principle, p. 196), Dworkin broadens the notion of an external preference to include preferences about how someone else should act or lead her life. This does not affect the substance of my argument here.
8 One might identify non-neutral reasons, not with every external preference, but only with those that are moralistic in some way. But it is no less difficult to state what the peculiarly moralistic character of non-neutral reasons consists in, and without an analysis of what makes a preference “moralistic,” the notion of a moralistic external preference fails to provide a clear analysis of a non-neutral reason. Hence, for simplicity, I here consider the cruder proposal that the satisfaction of any external preference constitutes a non-neutral reason. This does not weaken the objection I make to the personal preference interpretation of neutrality below.
Observe that it does not follow from the fact that a policy satisfies a legislator’s external preference that she adopts it for this reason. Virtually any law that a morally decent legislator adopts or supports will satisfy one of her external preferences. A murder law, for example, will satisfy her external preference that decent people have the opportunity to live their lives in safety, and that bad people not have the legal opportunity to kill them. If the external preference constraint were violated whenever the government adopts a policy that satisfies an external preference, it would rule out virtually every law, including those we think morally justifiable. For this reason the external preference constraint must be understood to prohibit a legislator from supporting coercive policies solely for the reason that it satisfies an external preference—whether one of her own or of one of her constituents— but to permit her to support policies for other reasons. The objection in the text is that since one of these other reasons might be non-neutral, the external preference constraint fails as an interpretation of neutrality.

This personal preference makes sense in the way it makes sense for me to want not to have the opportunity to watch cigarette advertising on television given my belief that I will see these ads if I have the opportunity to do so and they will tempt me to smoke.

See Rawls, Political Liberalism, p. 217. Here Rawls cautiously proposes the duty of civility as applying only to government policies that bear on “constitutional essentials” and “matters of basic justice” (pp. 227-230). So understood this duty cannot explain the validity of the principle of neutrality, since the government might violate the principle of neutrality in limiting liberties that are not properly regarded as “constitutional essentials” or “matters of basic justice,” like the freedom to buy and sell drugs. In order to explain the validity of the principle of neutrality, the duty of civility must therefore be understood to prohibit us from supporting any coercive government policy unless we sincerely believe that there is sufficient public reason for it, which is why I state the duty this way in the text.

For the notion of lexical priority, see Rawls, A Theory of Justice, p. 244.


Ackerman, Social Justice in the Liberal State, p. 11. Larmore writes in a similar spirit that a political decision “can count as neutral only if it can be justified without appealing to the presumed intrinsic superiority of any particular conception of the good life,” Patterns of Moral Complexity, p. 44.

See, for example, the quote from Larmore in the previous note.

The same point can be made if a conception of the good is understood as a conception of individual welfare.

Note here that even those who hold that something is good for a person if and only if he desires it are committed to some claim of intrinsic value in taking any reason as sufficient to justify the government in limiting our liberty: that the satisfaction of a person’s desires is intrinsically good for that person. To claim that something is intrinsically valuable, as I am using the term here, is to claim that it is good for its own sake, or non-instrumentally good. It is not to claim that is “objectively good”, or that its goodness is wholly independent of anyone’s beliefs, desires, or other mental states.