

William & Mary Law Review

Volume 40 (1998-1999)
Issue 3 *Institute of Bill of Rights Symposium:
Reconstructing Liberalism*

Article 7

March 1999

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Repository Citation

Thomas E. Hill Jr., *Autonomy and Agency*, 40 Wm. & Mary L. Rev. 847 (1999),
<https://scholarship.law.wm.edu/wmlr/vol40/iss3/7>

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RESPONSES

AUTONOMY AND AGENCY

THOMAS E. HILL, JR.*

Many feminists and communitarians have raised significant objections to the way that liberal theorists conceive human agents and their capacities. In particular, they object to any assumption that, regardless of circumstance, human beings are, can be, or ought to be autonomous.¹ The criticism often is accepted as sufficient grounds for rejecting liberalism, but Professor Abrams, wisely I think, explores the possibility that the important points the critics make can be taken up in a reconstructed liberalism—or at least acknowledged and used within a legal framework that retains liberal features. Abrams is well aware, however, that there are many different ideas of autonomy floating about in contemporary philosophy, just as there are many

* Kenan Professor, Philosophy Department, University of North Carolina, Chapel Hill. I am grateful to Kathryn Abrams for her stimulating paper, to the other participants at the "Reconstructing Liberalism" conference for their comments, and to the editors of the *William and Mary Law Review* for their help.

1. For variations on this theme, see CAROL GILLIGAN, *IN A DIFFERENT VOICE* (1982); MICHAEL J. SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* (2d ed. 1998) [hereinafter SANDEL, *LIBERALISM*]; *WOMEN AND MORAL THEORY* (Eva Feder Kittay & Diana T. Meyers eds., 1987); Jean Bethke Eshtain, *The Communitarian Individual*, in *NEW COMMUNITARIAN THINKING: PERSONS VIRTUES, INSTITUTIONS, AND COMMUNITIES* 99 (Amitai Etzioni ed., 1995) [hereinafter *NEW COMMUNITARIAN THINKING*]; Michael J. Sandel, *Moral Argument and Liberal Toleration: Abortion and Homosexuality*, in *NEW COMMUNITARIAN THINKING*, *supra*. For communitarian objections, see Neera K. Badhwar, *Moral Agency, Commitment, and Impartiality*, 13 *SOC. PHIL. & POL'Y* 1 (1996); Amy Gutmann, *Communitarian Critics of Liberalism*, 14 *PHIL. & PUB. AFF.* 309 (1985); Michael Walzer, *The Communitarian Critique of Liberalism*, in *NEW COMMUNITARIAN THINKING*, *supra*. For feminist objections, see ALISON M. JAGGAR, *FEMINIST POLITICS AND HUMAN NATURE* (1983).

different feminist and communitarian perspectives.² To focus discussion, therefore, she concentrates on explicit discussions of autonomy by Joel Feinberg³ and Gerald Dworkin⁴ and a selected mix of feminist conceptions of how women express their agency under conditions of oppression.⁵ Her ultimate aim is to "highlight" and "foster" women's agency through the law, which I assume means promoting, in various legal contexts, a proper recognition that women in oppressive conditions can be self-directing in special ways that do not fit the liberal models of autonomous agency.⁶ By calling attention to social realities that abstract liberal theory may overlook,⁷ her discussion challenges liberals to consider seriously whether, and how, liberal theory should be modified in the light of a more sensitive awareness of social conditions that fall far short of their ideals.

This is a worthy project. Though questions may be raised about the details of the argument so far, it seems more consistent with the admirable spirit of Abrams's exploratory paper for a commentator to try to add something constructive, even if only briefly. What I want to do is make some suggestions about the different ways in which ideas of agency *are used* in liberal theory, for that is important background for thinking about what conceptions of agency are appropriate for each purpose. Although there are many liberal theories, the distinctions that I will mention are drawn mostly from reflecting on the work of John Rawls.⁸ Feinberg and Dworkin offer explicit descriptions of au-

2. See, e.g., *THE INNER CITADEL: ESSAYS ON INDIVIDUAL AUTONOMY* (John Christman ed., 1989) [hereinafter *THE INNER CITADEL*] (presenting various conceptions of autonomy). This work also contains a good bibliography. See *id.* at 259-64.

3. See Kathryn Abrams, *From Autonomy to Agency: Feminist Perspectives in Self-Direction*, 40 *WM. & MARY L. REV.* 805, 808-10 (1999). For Feinberg's original discussion, see Joel Feinberg, *Autonomy*, in *THE INNER CITADEL*, *supra* note 2, at 27.

4. See Abrams, *supra* note 3, at 810-12. For Dworkin's original discussion, see Gerald Dworkin, *The Concept of Autonomy*, in *THE INNER CITADEL*, *supra* note 2, at 54.

5. See Abrams, *supra* note 3, at 813-17. In particular, Abrams offers an extensive discussion of the work of Diana Meyers. See, e.g., Diana T. Meyers, *Personal Autonomy and the Paradox of Feminine Socialization*, 84 *J. PHIL.* 619 (1987).

6. See Abrams, *supra* note 3, at 805.

7. See *id.* at 824-29.

8. See JOHN RAWLS, *A THEORY OF JUSTICE* (1971) [hereinafter *RAWLS, JUSTICE*]; JOHN RAWLS, *POLITICAL LIBERALISM* (1993) [hereinafter *RAWLS, LIBERALISM*].

onomous agents,⁹ but neither proposes a systematic liberal political theory comparable to Rawls's. The questions are, then, where and how such a systematic liberal theory employs a special conception of an agent. We need to determine these roles for agency in liberal theory before we can decide reasonably whether to replace the liberal conception with an alternative or modified conception drawn from feminist observations of women under oppression.

(1) *Agents conceived as part of an idealized perspective for reasoning about principles of justice.* One prominent place in which Rawls uses a special idea of an agent is in what he calls "the original position."¹⁰ He does so in the context of a thought experiment designed to lend support to two principles concerning the justice of basic social institutions. Rawls describes agents as rational, mutually disinterested, and unbelievably knowledgeable regarding general facts, but as operating behind a "veil of ignorance" that prevents them from knowing their gender, race, class, personal relationships, culture, history, and even the century in which they live.¹¹ They all are moved by exactly the same thing, a concern to maximize their share of "social primary goods,"¹² which are supposed to be goods that any rational person is expected to want.¹³ Rawls does not call these hypothetical members of the original position *autonomous*, but he argues that real persons can be seen as expressing their own nature as rational autonomous persons when they act from respect for the principles of justice that the imagined members would adopt.¹⁴

We can critique Rawls's use of this thought experiment, as many already have, but it seems clear that it would be no improvement to replace the "members" (as Rawls defines them) with agents described in Abrams's feminist account of women's

9. See Feinberg, *supra* note 3; Dworkin, *supra* note 4.

10. RAWLS, JUSTICE, *supra* note 8, at 17-22; RAWLS, LIBERALISM, *supra* note 8, at 22-28.

11. See RAWLS, JUSTICE, *supra* note 8, at 136-42; RAWLS, LIBERALISM, *supra* note 8, at 305.

12. RAWLS, JUSTICE, *supra* note 8, at 90-95; RAWLS, LIBERALISM, *supra* note 8, at 307-09.

13. See RAWLS, LIBERALISM, *supra* note 8, at 307-09.

14. See RAWLS, JUSTICE, *supra* note 8, at 513-20.

agency. This is no criticism of that account when used for other purposes, but Rawls's aim requires extreme stipulations of rationality, knowledge, and abstraction from particular conditions of our social world. Otherwise, he has no hope of ensuring the agreement of the members, the fairness of the resulting principles, or the universal implications that he claims for the theory.

Rawls's critics often object that, because his original position must abstract from current social realities, the resulting principles of justice must be inappropriate for our world where values are diverse, individuals have their own particular identities, and rationality often is stunted and expressed in ways that liberal theory does not discuss or perhaps even recognize.¹⁵ Whether the objection is apt is not easy to determine because Rawls's theory (as initially presented) is (largely) an exercise in "ideal theory," *directly* applicable only in the unreal conditions of a "well-ordered" society with a shared commitment to common principles of justice.¹⁶ Even Rawls's later *Political Liberalism*, which takes into account "the fact of pluralism," does not discuss whether and how liberal institutions need to adjust to the forms of women's agency that Abrams describes.¹⁷ The proper place for addressing such questions, according to *A Theory of Justice*, would be at a "legislative stage."¹⁸ In *Political Liberalism*, Rawls sug-

15. See, e.g., SUSAN MOLLER OKIN, *JUSTICE, GENDER AND THE FAMILY* (1989); ONORA O'NEILL, *TOWARDS JUSTICE AND VIRTUE* (1996); SANDEL, *LIBERALISM*, *supra* note 1, at 161-64.

16. See RAWLS, *JUSTICE*, *supra* note 8, at 8-10, 243-51, 453-62. Ideal theory attempts to work out the principles of justice for specified conditions that do not perfectly match conditions in the real world. See *id.* at 8-10. For example, it asks what the principles of justice would be for a world in which everyone shares a common comprehensive conception of justice and there is "strict compliance" with the laws by everyone. See *id.* at 8. Rawls holds that the project of ideal theory is a fundamental part of the theory of justice, but it is not the only part. See *id.* at 9. To apply the theory to real world conditions, for example, we need to address the special problems of partial compliance and diversity of reasonable opinions about justice. See *id.* at 8-10. But see Richard W. Miller, *Rawls and Marxism*, in *READING RAWLS* 206 (Norman Daniels ed., 1989) (offering a Marxist criticism of Rawls's theory); Thomas Nagel, *Rawls on Justice*, in *READING RAWLS*, *supra*, at 1 (offering a generally admiring review of Rawls, offers a critique of Rawls's abstracting from individual "conceptions of the good").

17. See RAWLS, *LIBERALISM*, *supra* note 8, at 141.

18. RAWLS, *JUSTICE*, *supra* note 8, at 195-201.

gests that the problem should be addressed through public discussion within a society, according to procedures compatible with political principles of justice towards which, it is hoped, an overlapping consensus of reasonable persons with quite different moral perspectives will develop gradually.¹⁹ Whether these recommendations are adequate, though, remains an open question.

(2) *Agents conceived as having rights of self-determination.*

Another role for a conception of agency in liberal theory is to characterize a set of rights that agents, so conceived, are presumed to have. As Feinberg noted, one idea of "autonomous agents" is that of agents entitled to make certain decisions for themselves without undue interference from others.²⁰ Here *autonomous* agents are defined not by their capacities or their active powers, but by their rights—the responsibility of others to allow them to choose regarding matters significantly affecting their lives, assuming their choices are appropriately respectful of the similar rights of others.²¹ In Rawls's theory, the rights in question are not explicitly attributed to "autonomy," but correspond to the general rights of citizens under the first principle of liberty.²²

Again, doubts can be raised about any particular philosophical attempt to define the rights of autonomous persons, but it does not seem a promising way of improving the lot of oppressed women simply to *replace* the broad, inclusive conceptions of the rights of autonomy characteristic of liberal theorists with more specific, contextually defined conceptions of women's agency under oppression.²³ Granted, the latter should be acknowledged in

19. Here, again, Rawls does not discuss the issue directly, but for the relevant ideas of "rational autonomy," "overlapping consensus," and "public reason." See RAWLS, *LIBERALISM*, *supra* note 8, at 77-81, 134-72, 212-54.

20. See Feinberg, *supra* note 3, at 46-49; see also THOMAS E. HILL, JR., *Autonomy and Benevolent Lies*, in *AUTONOMY AND SELF-RESPECT* 31-34 (1991) (discussing autonomy as a right); David A. J. Richards, *Rights and Autonomy*, in *THE INNER CITIZEN*, *supra* note 2, at 207 (discussing Rousseau and Kant on autonomy).

21. See Feinberg, *supra* note 3, at 46-49.

22. See RAWLS, *JUSTICE*, *supra* note 8, at 60-65, 195-257.

23. For suggestions about the possible roles of autonomy compatible with feminist theory, see Sharon Hill, *Self-Determination and Autonomy*, in *TODAY'S MORAL PROBLEMS* 171-86 (Richard Wasserstrom ed., 1975); Thomas E. Hill, Jr., *The Importance of Autonomy*, in *WOMEN AND MORAL THEORY* 129-38 (Eva Feder Kittay & Diana T.

ways that help to overcome oppressive conditions while not further disadvantaging women, but it would not serve these interests to impose *more limits* on the freedom of women to choose their own lives without coercion and manipulation from others.

Typically, liberals assume quite minimal standards of "competence" to qualify for the rights associated with autonomy, standards that exclude young children and extreme cases of mental incapacity but include all those that Abrams describes as having agency limited by oppression.²⁴ Certainly the ideals of functioning in a fully autonomous way described by Dworkin and Feinberg²⁵ are not meant to be prerequisites of civil liberties or of the right not to be unduly coerced or manipulated by others (i.e., the right of "autonomy"). The problem for liberals is not so much that they define the individual rights in a broad way without reference to our particular identities and oppression-bred limitations; rather, if there is a problem, it may be that some liberal theories or institutions have taken for granted unreasonably restrictive standards of "competence" to qualify for the rights of autonomous choice. This concerns a different use of ideas of agency, to which I turn next.

(3) *Agents conceived as those competent to have rights.* Any full theory of rights, liberal or otherwise, must take a stand on what it takes to qualify for rights. Inanimate objects, everyone agrees, do not qualify; trees are sometimes, but only rarely, said to have rights;²⁶ whether some nonhuman animals qualify is controversial.²⁷ What human beings must be like to qualify for various rights also may be a contested issue, for it is relevant to

Meyers eds., 1987); Jane Kneller, *The Aesthetic Dimension of Kantian Autonomy*, in *FEMINIST INTERPRETATIONS OF IMMANUEL KANT*, 173-89 (Robin May Schott ed., 1997).

24. See Abrams, *supra* note 3, at 825-29.

25. See Feinberg, *supra* note 3; Dworkin, *supra* note 4.

26. See Christopher D. Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450 (1972).

27. See, e.g., Tibor R. Machan, *Do Animals Have Rights?*, 5 PUB. AFF. Q. 163 (1991); P. Singer, *Not for Humans Only: The Place of Nonhumans in Environmental Issues*, in *ETHICS AND THE PROBLEMS OF THE 21ST CENTURY* 191 (K.E. Goodpaster & K.M. Sayre eds., 1979).

legal issues regarding wills,²⁸ contracts,²⁹ voting,³⁰ criminal trials,³¹ and no doubt other matters. Anyone who claimed that only those who satisfy Dworkin and Feinberg's ideals of autonomy have rights in these contexts would be dangerously elitist, but, to my knowledge, no liberal theorist has made such a claim.

Rawls does not take up this issue. His stipulations in *Political Liberalism* on what counts as being "reasonable," it should be noted, concern the sort of consensus that he thinks liberals should hope for; they are not a precondition of full legal rights.³² A problem may still exist, however, if liberals do not appreciate the phenomena of women's agency to which Abrams calls attention. In practice, liberal institutions may overlook subtle evidence of competent, self-directed activity in oppressed persons, especially women, who otherwise might seem unqualified to speak for themselves in legal matters. This problem is not necessarily a deep one in liberal theory, but it may be an important practical problem that Abrams's work can help to identify and correct.

(4) *Agents conceived as the kind of persons we should strive to be.* Beyond all of the above, some moral and political philosophers—liberal and conservative alike—put forward an ideal of individual character in which being an autonomous person is central.³³ Whether this is a good idea is debatable within virtue theory, but liberal political theory has no commitment to it as such, apart from the concern that citizens be competent to take up their responsibilities in a (liberal) democratic political system.³⁴ The ideal has been prominent in philosophy of education,³⁵ but Rawls and other liberals should be very reluctant to

28. See 79 AM. JUR. 2D *Wills* §§ 54-64 (1975).

29. See 17A AM. JUR. 2D *Contracts* §§ 23-24 (1991).

30. See 25 AM. JUR. 2D *Elections* §§ 103-78 (1996).

31. See 21 AM. JUR. 2D *Criminal Law* §§ 37-128 (1981).

32. See RAWLS, *LIBERALISM*, *supra* note 8, at 48-66.

33. See, e.g., GERALD DWORKIN, *THE THEORY AND PRACTICE OF AUTONOMY* (1988); LAWRENCE HAWORTH, *AUTONOMY: AN ESSAY IN PHILOSOPHICAL PSYCHOLOGY AND ETHICS* (1986); HILL, *supra* note 20, at 35-37; Feinberg, *supra* note 3, at 43-45.

34. See Feinberg, *supra* note 3, at 28-30.

35. See, e.g., R. F. Dearden, *Autonomy and Education*, in *EDUCATION AND THE DEVELOPMENT OF REASON* 448, 451-52 (R.F. Dearden et al. eds., 1972); R.F. Dearden, *Autonomy as an Educational Ideal I*, in *PHILOSOPHERS DISCUSS EDUCATION* 3 (S.C.

give theoretical (as opposed to personal) endorsement to any specific ideal of character (beyond some minimal virtues of citizenship). Particular ideals propose a conception of the good for individuals about which reasonable persons in a pluralistic world can disagree. Although Rawls may personally believe in a "comprehensive moral theory" that endorses the ideal, his liberalism commits him not to insist on it in a political or legal arena.³⁶

Would this ideal of autonomy be better replaced, at least for women, by a more realistically attainable ideal of women's agency as characterized by Abrams? If oppressive social conditions really make the former unattainable or undesirable, the proposal might well be warranted. Given *that* assumption, however, it is not clear that the proposal would be incompatible with liberal theory. In any case, the major concern of liberals and feminists should be to eliminate the oppressive conditions that restrict the possibilities for women's self-directed activities, rather than merely to adjust to them.

(5) *Agents taken to be the real persons to whom theories must apply.* In various ways, explicitly or implicitly, political and legal theories make use of conceptions of what people are actually like. For example, they may consider the sort of capacity for autonomy that people have, how often and in what ways people realize that capacity, and so on.³⁷ Moral and political philosophers often have made sweeping claims about human nature,³⁸ but, of course, for most practical purposes, the important thing is whether the theories' conceptions adequately reflect impor-

Brown ed., 1975); Amy Gutmann, *Children, Paternalism, and Education: A Liberal Argument*, 9 PHIL. & PUB. AFF. 338 (1980).

36. See RAWLS, *LIBERALISM*, *supra* note 8, at 201-06.

37. See generally HAWORTH, *supra* note 33, at 12 (discussing the applications of autonomy to classical Greek political thought).

38. See, e.g., THOMAS HOBBS, *LEVIATHAN* (Richard E. Flathman & David Johnston eds., W.W. Norton & Co. 1997) (1651); IMMANUEL KANT, *CRITIQUE OF PURE REASON* (J.M.D. Meiklejohn trans., Dent 1984) (1781); JOHN LOCKE, *THE SECOND TREATISE OF GOVERNMENT* (Thomas P. Peardon, ed., Bobbs-Merrill 1952) (1690); JOHN STUART MILL, *ON LIBERTY AND OTHER WRITINGS* (Stefan Collini ed., Cambridge Univ. Press 1989) (1859); JEAN JACQUES ROUSSEAU, *THE SOCIAL CONTRACT* (Henry J. Tozer trans., George Allen & Unwin Ltd., 1895); see also RAWLS, *JUSTICE*, *supra* note 8, at 453-512 (offering a contemporary example of this practice with respect to developmental psychology).

tant, stable features of the persons to whom the theories are applied, and whether these features are historically conditioned. Thus, there are further questions that we must ask, such as: (1) Do the liberal theories always presuppose a *mistaken, unrealistic* conception of what we, as those to whom the theories must apply, are actually like?; (2) if liberal theories misconceive what real persons are like, rather than merely simplifying and abstracting as general theories must, how exactly do their misconceptions lead to unwarranted practical conclusions?; and (3) what significant improvements would be made if, as Abrams proposes, liberal conceptions of real agents (as those to whom theories must apply) were replaced, or modified, by a more realistic conception, including a better understanding of the agency of women in oppressive conditions?³⁹ The answers to the first two questions are far from obvious, even though confusion about the role of conceptions of agency in liberal theory might lead one to think otherwise.⁴⁰ Once we are clear about these matters, we can turn to the third question, which seems to be Abrams's main concern.

All of these questions undeniably are difficult and controversial. What I want to stress, in conclusion, is just that we can make better progress on them if we keep them clear and distinct from the special conceptions of agency that liberals sometimes employ, not as factual descriptions but as ideals and idealizations for various theoretical purposes. Liberal political theories employ different conceptions of agency, with various kinds and degrees of abstraction and idealization for different purposes; and it would be a mistake to take all these as attempts to give full, realistic descriptions of human psychology, in general or in historical context. Abstraction and idealization in theory, even

39. See Abrams, *supra* note 3, at 822.

40. If one did not separate the various roles that conceptions of agency play in liberal theory (as I have tried to do), then one might think that the answer to the first question is an easy affirmative, i.e., liberal theories always presuppose a mistaken, unrealistic view of what real human beings are actually like. This, in turn, might make the second question seem easy to answer: for example, that liberal theories (such as Rawls's) urge us to try to make all our important political decisions from behind the impartial "veil of ignorance," thereby turning a blind eye to the social realities of prejudice, capacities diminished by oppressive circumstances, etc.

when well intentioned, carry risks that the resulting principles may be inappropriate to our situation; if the *goal* is to try to articulate *ideals* and how best to reach them, however, philosophy must move beyond mere description of how things actually are.⁴¹ A liberal theory, such as Rawls's, does not claim that we are in fact just like members of the original position, that despite oppressive conditions all persons are equally able to exercise meaningfully their rights of autonomy, or that the only good life for us is a maximally self-directed life. If he and other liberals failed to appreciate fully the ways in which oppressive conditions limit and shape women's agency, it still remains to be worked out what liberal theory must change when a better understanding is achieved. This is the main project that Abrams pursues. My aim in these comments merely has been to suggest *where* in liberal theory attention can be most productively focused.

41. See O'NEILL, *supra* note 15, at 39-44 (distinguishing between idealization and abstraction in moral and political theory). O'Neill argues that abstraction is necessary, but idealization is dangerous. See *id.* at 40-41. Like Rawls, I think that for certain purposes, and if used with deliberate caution, idealizations can, and should, serve an important role in moral and political theory. See, e.g., Thomas E. Hill, Jr., *A Kantian Perspective on Moral Rules*, in *PHILOSOPHICAL PERSPECTIVES* 285 (1992) (Ethics Series No. 6, 1992); Thomas E. Hill, Jr., *A Kantian Perspective on Political Violence*, 1 *J. ETHICS* 105 (1997).