A NEUTRAL PRINCIPLE OF NEUTRALITY?

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János Kis
Az állam semlegessége
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János Kis's new book, *Az állam semlegessége*, has a fair amount of intellectual stimulation in store for its readers. Not only does it offer to resolve several widely discussed classical problems of moral philosophy such as abortion, euthanasia, and the limits of the freedom of speech; Kis also ventures on the much more ambitious project of formulating a theory of *normative ethics* which could provide the basis for adequate solutions to these issues. Although his discussion has wide-ranging ramifications, its focus can be established in the form of a specific question: What kind of attitude is the modern state supposed to assume toward the divergent beliefs and moral attitudes of its citizens? How should the modern state conduct itself with respect to mutually contradictory world views of its citizens? Of course, the direction in which the answer should be sought is indicated by the title of the book: On certain issues the state must remain neutral. The particular issues on which such neutrality should be preserved, what such neutrality entails in the first place, and, most importantly, how it can be justified, are the thorny questions that this book purports to answer.

THE RECOGNITION THEORY

János Kis does not operate with any given conception of the neutrality of the state. In other words, he is not trying to demonstrate that his theory provides sufficient explanation for a particular notion of neutrality that is taken for granted. Instead, he sets out to find the reasonable and justifiable answers to the initial problem, and from these answers, which add up to a unified, coherent theory, he wants to derive the content of the concept of neutrality. It is worth following the argument with which he claims to give a sufficient explanation of neutrality.

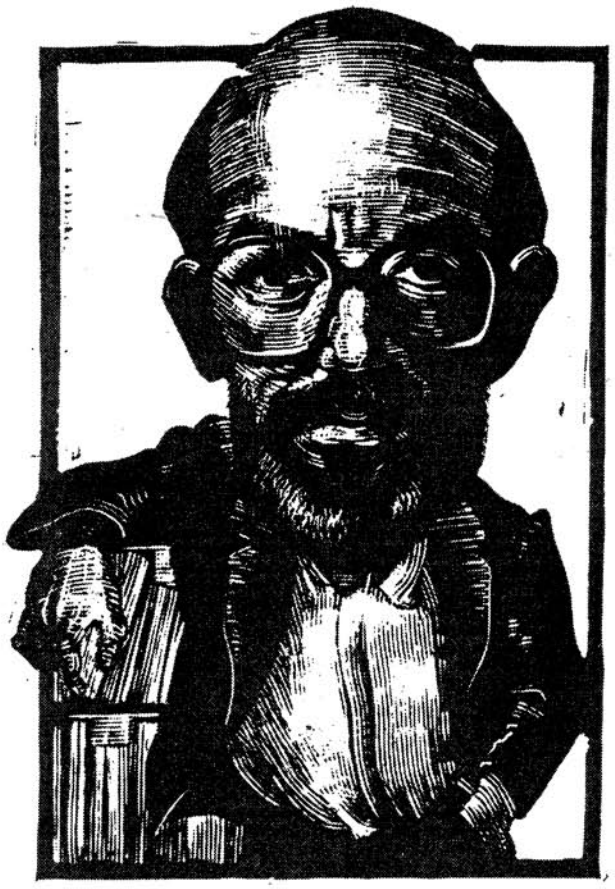
According to Kis, one can choose between two philosophical strategies to answer the question of when the state has to assume a neutral stance. One may deduce the neutrality of the state from another principle which is postulated as given. Alternatively, it is possible to ascribe an independent meaning—perhaps alongside a derived one—to neutralism, a specific meaning which is not automatically entailed by the correct application of other principles. Kis chooses the latter. Thus, neutrality in his view is not just a corollary to other norms, but rather it is supposed to contain the answer to the question of why in a definite class of cases the state must remain neutral.

Kis believes that the most abstract principle is the moral equality of all human beings. He regards this principle as given and (in this context, at least) not requiring separate justification.[1] What, then, follows from the principle of equal moral dignity? Well, what certainly follows from it is that people must be equal members of the political community to which they belong. Respect for their equal dignity before the state is an unconditional requirement that the state can only fulfill by treating its citizens as equal persons. Hence, the state is usually not supposed to take up any position on issues of controversy among its citizens, and it may not disapprove of their actions. The only exceptions to this rule are those cases in which one of the contested positions is obviously false. In other words, a state which means to treat its citizens as equal can only commit itself to true statements. Kis does not explain in further detail what he means by the "truth" of a statement in this context. Presumably, what he has in mind is a kind of formal conception of truth, which is applied by the legal system of a state. In other words, the requirement of equal treatment is not violated when the state (or its court) resolves the (legal) controversies of its citizens on the basis of previously accepted norms and procedural rules (for in such cases the state can appeal to the law,

■ Taken from *Budapesti Könyvszemle—BUKSZ*, Summer, 1998. pp. 132–139.

1 ■ "The most abstract principle which a liberal state must respect is the principle of the moral equality of all persons under its sovereignty: each of them deserves to be treated by the state as a moral person who is equal to every other one" (p. 86)
2 ■ Thomas Nagel, "Moral Conflict and Political Legitimacy," in: *Authority* (ed. Joseph Raz), Oxford: Basil Blackwell, 1990.
3 ■ Indeed, this criterion seems to me too rigorous because it defines the class of accessible reasons extremely narrowly. To my mind, the boundary is not clear between arguments which are based merely on personal choices of values and those which are not. Nor is it readily apparent who should decide about this distinction in controversial cases.
4 ■ An obvious problem arises if a certain world view rejects the most fundamental presuppositions of theoretical physics and instead chooses to accept only, say, the position of stars as an "objective" point of reference.

for instance, in declaring a statement to be true). The problem is that most of the controversial issues are of a different nature: in controversies concerning world view, lifestyle or taste, argues Kis, there is no rationale which could legitimize the intervention of the state, for the rival positions are usually based on subjective commitments to values. Thus, the state could only support one or the other position by attributing positive and negative values to the contesting views—which, however, it could not do in the absence of objective standards without appealing to the same kinds of subjective commitments as the parties themselves. For this reason, Kis concludes that the state must refrain from any public disapproval of controversial world views and the attitudes and lifestyles corresponding to them. This is the meaning, then, of *the principle of the neutrality of the state.*



Kis adds two supplementary rules which are meant to define the limits of neutrality more precisely. Within the context of the relevant debates, the state must refrain from endorsing any view that entails disapproval of the other rival positions. Further, the state cannot enact any regulations whose "best justification" entails commitments which are even indirectly based on the rejection of other world views and the corresponding attitudes.

These tenets provide, then, the foundations for the *recognition theory*. What the theory suggests is that once a state recognizes the moral equality of its citizens, it has no justifiable reason to deviate from neutrality when it comes to various convictions concerning what is *good.*

Judging from this train of thought, it seems as though neutrality follows from the equal moral dignity of individuals and from its corollaries. If this is the case, the principle of neutrality is a derived one, without specific consequences and independent content.

There are, however, controversial cases in which the state must necessarily commit itself to a position. Whenever at least one of the rival positions entails the necessity of state intervention or action, it is impossible for the state to maintain a neutral attitude. An obvious example discussed by Kis is abortion. Whether the state licenses or prohibits abortion, it seems that it cannot remain neutral, even though the issue at hand concerns mutually contradictory personal beliefs and moral convictions. For such cases, Kis suggests two ways in which the state may justifiably commit itself to a particular position, and these solutions presumably reflect the specific normative meaning of neutrality. The first proposal is basically a development of Thomas Nagel's well-known theory of publicly accessible and non-public reasons. According to Nagel, those arguments which are at least partially based on personal beliefs and subjective convictions do not count as publicly accessible, since such arguments bear no persuasive force with respect to an individual who does not share the beliefs or convictions underlying them.[2] Kis thinks he can preempt the issue of demarcating publicly accessible reasons from non-accessible ones by defining the former as follows: "declarations of state authority must be bound to a community of knowledge which encompasses or coincides with the entire body of citizens" (p. 116). This formula does seem to narrow down the class of relevant reasons in that it excludes those reasons which spring from the convictions of a group that is smaller than the entire political community.[3] Thus, a religious community which anticipates the end of the world could hardly expect the state to adjust its policy to such an anticipation—not, at least, if it is based solely on the religious beliefs of that community.[4] Yet this specification still does not suffice. That controversies of a moral nature can be unequivocally decided does not follow from the exclusion of arguments based on subjective choices of values. In such cases, the only remaining option is to compare the moral disadvantages that each of the debating parties would suffer if its position were rejected. Kis calls this procedure "comparative moral burden test": the state must favor that position whose endorsement and actualiza-

tion encumbers the opposing party with the smaller moral burden. Whenever a choice is necessary between two mutually exclusive moral positions, the moral disadvantage of at least one side cannot be avoided. It is obviously impossible to provide full amendment for such moral burdens (that would require the acceptance of the rejected view). However, at least some sort of partial compensation is necessary. Moral burden can be minimized if the debate is not brought to a definite closure, if, in other words, proponents of the "defeated" moral conviction continue to have a chance to persuade the majority of the population to support their position.

In this form, the theory is finally complete and consistent, for—according to Kis—it provides neutral criteria for deciding cases in which the state is compelled to favour one of the competing positions.

OBJECTIONS

The extent to which a theory can ward off possible counter arguments is an obvious measure of its success. János Kis examines five objections, all of which are directed against the neutrality of the state in general, regardless of whether liberal neutralism is criticized from a liberal or an anti-liberal angle, and whether it is rejected or differently interpreted.

The incoherence objection claims that the principle of neutrality is not neutral with respect to its own position: While in moral debates the principle demands unconditional neutrality from the state, it abandons its neutrality in the debate concerning the requirement of neutrality itself. Proponents of neutralism apply a principle to justify particular commitments, which stands in need of justification itself. While in his preceding writings Kis placed great emphasis on the refutation of this particular objection,[5] on this occasion he contents himself with stating that the incoherence objection does not invalidate his theory, for "a proposition cannot remain neutral with regard to itself and its negation". By saying this, however, Kis does not so much neutralize as simply accept the incoherence objection. After all, even if an argument claims something self-evident, it may nonetheless remain true.

The same cannot be said about the impossibility objection. This objection points out that it is impossible to maintain a neutral position with respect to mutually exclusive convictions. To this argument Kis replies that the choice between such alternative positions can be justified if the choice is based on morally neutral principles. Similarly, the objection that neutralism trivializes moral issues (the triviality objection) is not difficult to counter. Far from relegating moral convictions to the private sphere, the possibility of continuous public discussion required by the minimization of moral burdens actually facilitates the public expression of moral convictions. Communitarian and perfectionist objections point out that neutralism undermines the principle of the common good that lends cohesion to political communities and that it prevents the state from setting meaningful goals for itself. In the face of these challenges, it must be said that the equal recognition theory of neutrality does not entail that the state must remain neutral in every moral debate. The latter is only required in cases in which a commitment on the state's part "would make it possible to doubt that all citizens are equal members of the political community".

While Kis really cannot be accused of deliberately overlooking or simplifying possible objections, I do not think that all of the arguments that must be taken seriously are treated in his book. Moreover, not all the replies to the problems that Kis does raise are sufficiently convincing.

To mention only one of the well-known objections, Kis does not consider the objection of injustice, which claims that under certain circumstances pure neutrality can lead to unjust consequences and is therefore unacceptable. For instance, if the U.S. Supreme Court had remained neutral with respect to the equal rights of citizens, it would not have been able to declare segregation laws invalid.[6] This would cast doubt on Kis's basic claim that the principle of neutrality can only be reasonably construed if it is meant to entail the neutrality of the justification,

5 ■ János Kis, "Lehetséges-e a semleges állam? (Is a Neutral State Possible?), *Századvég* 13 "Az állam semlegessége" (The Neutrality of the State), *Politikatudományi szemle*, 1992. 2.

6 ■ See Herbert Wechsler, "Toward Neutral Principles of Constitutional Law" *Harvard Law Review*, 73 (1959) Nr. 1. Wechsler criticizes the famous 1954 anti-segregation resolution of the Supreme Court in the Brown v. Board of Education case on the grounds that the justification of the resolution was not neutral. Another form of this argument is what is called the liberal paradox in the context of Eastern and Central European democracies. This paradox lies in the fact that the principles of justice which obtain in liberal legal systems foster injustice in some cases. The liberal protection of personal rights and properties can perpetuate already existent and unjustifiable inequalities in the distribution of rights and properties. See Stephen T. Holmes, "Back to the Drawing Board", *East European Constitutional Review*, Winter 1993.

7 ■ The neutrality of justification means that the laws and resolutions of the state can only be justified in terms of principles which are neutral with respect to various beliefs and moral convictions. In other words, the justification of state resolutions may not presuppose the truth or falsity of a given position. By contrast, the neutrality of consequences would mean that the actions of the state cannot entail different consequences for people of different conviction. One of the most important classes of theories of neutrality consists of theories of procedural neutrality, which have similar implications to Kis's theory of justificatory neutrality. Procedural neutrality in its turn can either mean that the justification may not appeal to choices of moral value or that it can only appeal to neutral moral values. The other basic class of theories of neutrality is usually designated by the term "substantive neutrality". These theories posit requirements which define the principles which the institutions of the state must observe in their activities. See Deborah Fitzmaurice, "Liberal Neutrality, Traditional Minorities and Education," *Liberalism, Multiculturalism and Toleration* (ed. John Horton). New York: St. Martin's Press, 1993. pp. 52–53. John Rawls, *Political Liberalism*. New York: Columbia University Press, 1993. pp. 192–194. For a comprehensive and detailed summary of liberal theories of neutrality see Richard Bellamy, *Liberalism and Modern Society: A Historical Argument*. University Park, Pennsylvania: The Pennsylvania State University Press, 1992. pp. 217–251.

rather than that of the consequences[7]. In my view, a political community would only accept the application of the principle of neutrality if it did not lead to unjust results. If, however, the neutralism of the state involves the conservation and protection of an unjust distribution of *primary goods* (such as basic rights and liberties) and thus enters into conflict with the community's fundamental tenets of justice, the requirement of neutrality can hardly be maintained any longer. It seems, then, that in this respect we are compelled to make a basic moral choice: either we accept that neutrality is an absolute and universal value, regardless of whether its consequences are just or unjust, or the neutrality of the state has a normative ethical meaning such that it is only in the protection of certain ethical value systems (any fundamental moral principle, that is) that neutrality is legitimately maintained. Yet Kis insists only on the *neutrality of justification*. Let us examine, then, what he means by such neutrality. If I understand him correctly, his requirement is that the state's resolutions be justified purely on the basis of morally neutral principles, that is, principles which do not imply the affirmation or rejection of any particular belief, world view, or moral conviction. But, it seems to me, the so-called recognition theory of neutrality does not fulfill this requirement on at least two counts. The first problem arises in the context of Kis's basic principle. He takes the moral equality of human beings for granted, even though it presupposes an intuitively grounded moral choice. By definition, this presupposition excludes from public discussion those who reject equal moral dignity on any grounds whatsoever, and instead want to observe other normative values (such as tradition, office, merits, culture, birth or fortune) in the distribution of goods. I agree with Kis in believing that the acceptance of equal moral dignity is an indispensable underpinning of neutralism but I do not think that equal moral dignity is a morally neutral value that adherents of every world view, belief, and moral conviction must necessarily respect (although it would be certainly a desirable state of affairs if they did so). The second problem has to do with the so-called comparative moral burden test. Once we have ruled out the possibility of appeals to considerations based on specific moral systems of value, how are we to decide which of the rival parties would incur the greater moral burden through one of the possible resolutions? Such a decision must be based on moral judgment, and it could only be neutral if we had access to some higher-level, objective standard for the comparison of moral burdens.

This is not the only problem with the comparative moral burden test, however. While the author seems to believe that this strategy is merely an important supplement to his theory, to me it seems that, in the absence of an adequate definition of its limits, it can bring about problems of internal inconsistency. Kis tells us that the state is obliged to remain neutral with regard to the world views, beliefs, and moral convictions of its citizens and the value judgments and actions resulting from them—except for certain cases. Kis does not define the class of these exceptional cases, nor justify their exceptional status. He merely states that moral burdens must be assessed and compared whenever the state has no choice but to take a stance and neither of the parties can marshall compelling arguments. Yet in the absence of a more precise definition of the domain of exceptional cases, the allowance for such exceptions only weakens the principle of neutrality. Not only is it unclear how the moral burdens incurred by mutually exclusive moral positions should be compared, but it also appears hard to tell when this should be done.

THE ETHNICALLY NEUTRAL STATE AND LIBERAL MULTINATIONALISM

The question of how the state deals with the national and ethnic commitments of its citizens can be seen as a touchstone of the neutrality principle. Kis, however, chooses to discuss this issue within the framework of the theoretical chapters, which suggests that he views nationality and ethnicity not so much as practical problems generated by the application of his theory but rather as supplementary parts of that theory. Kis convincingly argues that the nationality question cannot be resolved by traditional means (such as nationalism or its liberal version). The protection of freedom and equality, if it is to be extended to all citizens of the state, cannot be reconciled with the social hegemony of any one nation or ethnic group. What is especially interesting is Kis's argument about the effort to dispense with liberal nationalism. Certainly, 19th-century liberalism has managed to overcome several problems generated by "classical" nationalism. That said, it is impossible to defend an understanding of the equality of rights according to which the state must be "color blind" with regard to national or ethnic minorities. The state cannot remain ethno-culturally neutral because members of minorities, by virtue of the difference of their identity from that of the majority, always have a significant disadvantage compared to members of the majority. In a multinational plural society political advantages and resources are never distributed equally. Those belonging to the dominant nation are in an advantageous situation simply by virtue of being in the majority. By treating its citizens equally regardless of their national identities, the state sustains and occasionally even increases inequality. If the state is really to treat its citizens as equals, it must first bring its disadvantaged citizens into a position corresponding to that of the rest. It follows that the state cannot be neutral with regard to the identities of national or ethnic minority members.

If I understand Kis correctly, in this context he rejects the equal treatment of genuinely unequal individuals and advocates an unequal treatment which is

ultimately supposed to bring about a situation of greater equality. The state can best promote this by guaranteeing so-called collective rights. By virtue of these collective (or group) rights, minority members can enjoy certain special privileges on account of their belonging to a minority. Such special rights are supposed to compensate for the initial handicaps resulting from minority identity. Rather than treating the national identities of its citizens neutrally, the state must acknowledge every national and ethnic community and make a commitment to its maintenance by recognizing the collective right of its members to sustain their community if they wish to do so.[8] This then would be Kis's proposal for a multinational state.

Kis marshalls impressive arguments which cannot be dismissed out of hand, and his statements are precise. My reservations are based on the suspicion that his proposal generates more problems than it promises to solve. In what follows I shall discuss some of these difficulties.

Kis declares the function of collective rights to be the compensation for disadvantages entailed by being in a minority, that is, for unjust burdens incurred by those who belong to minorities independently of their free choice.[9] However, this situation is not specific to members of national and ethnic minorities. Theoretically speaking, there may be any number of minority groups whose members are disadvantaged or handicapped through no fault of their own. Consequently, the scope of collective rights cannot be defined precisely, and every minority group, no matter by what principle of cohesion it defines its identity, is entitled to collective rights if it fulfills the conditions described above. But isn't it the cultural specificity of national minorities which is at stake here? For instance, physically impaired people do not form a cultural community because in their case belonging to a handicapped community is simply a given and is unlikely to have an independent value. But I doubt that this is the crux of the issue. For Kis is not out to defend traditional multiculturalism, and his argument does not aim at demonstrating the value of ethno-cultural pluralism in itself. National and ethnic communities are by no means the only embodiments of cultural pluralism. Kis's primary concern is actually the elimination of unjust disadvantages, and this kind of compensation cannot be limited to any particular group without the risk of arbitrariness. Clearly, it is impossible to pose consistently demands for collective rights for national and ethnic minorities without demanding similar rights for other unjustly disadvantaged minorities, such as the social class of the poor. I am not convinced that this requirement can be fulfilled. In any event, if we insist that the theoretical justification of minority rights is a meaningful objective, we must give an account of the specific features of minority rights. In the case of collective rights we must appeal to completely different justificatory grounds than in the case of individual rights. While individual rights usually have their origin at the moment of birth, and individuals should enjoy them without having to fulfil any other particular requirement, collective rights are conditional: they are only accorded to individuals belonging to a specific minority whose eligibility/entitlement is recognized by the state. Since these rights are granted by the state, they have a different moral value from those natural rights which cannot depend on state recognition. Hence the circle of the eligible is not unequivocal either. How many individuals are needed for a group legitimately to lay claim to special treatment? What happens if a group is one person short of the quota? Nor is it possible to define the specific content of the rights in advance; indeed, they are likely to vary with the burdens to be compensated for. Finally, the immediate objective of collective rights is also different, for they are not so much aimed at the protection of the autonomy and free agency of individuals, as they are meant to compensate for already existent, unjust disadvantages. The difference between individual and collective rights is thus not limited to the ways in which they are implemented. Probably the most severe objection to the recognition of collective rights derives from the suspicion that the specificity of collective rights could loosen the traditional definition of human rights to the point where the meaningful application of the very category might appear questionable. Of course, one may still use the category of collective rights, especially if they are not compared to individual rights.

As for the notion of the ethnically neutral multinational state, different kinds of difficulties arise. We recall that the neutrality of the state, as formulated by Kis, demands that the state cannot take a stance on controversial issues concerning world views, beliefs, and lifestyles. If the state is not relegated to a neutral position, this prohibition does not obtain. The state may publicly approve or disapprove of a particular mode of conduct, activity, or world view, and take the steps consistent with such approval or disapproval. In compensating for disadvantages entailed

8 ■ A distinction between positive and negative neutrality recurs in the literature about neutrality. Negative neutrality demands that the state refrains from intervention under every condition. According to the strong version of negative neutrality, the state must even refrain from doing anything to increase the chances of a particular moral view being observed by its citizens. By contrast, positive neutrality makes it incumbent on the state to secure the possibility of free choice among competing world views and lifestyles without any moral preference, if necessary by equalising chances through positive intervention. This is precisely what Kis has in mind. See: Jonathan Chaplin, "How Much Cultural and Religious Pluralism Can Liberalism Tolerate?", Horton (ed.), *op. cit.* p. 42. In his book *Liberalism, Community and Culture* (Oxford: Clarendon Press, 1989), Will Kymlicka marshalls arguments along similar lines, even though his discussion focuses on multiculturalism and stresses the power of culture to define individual identity.

9 ■ Indeed, even if one belongs to a minority by one's own choice, the consequent disadvantages are still unjust. For if the free choice of identity can entail such burdens, it can no longer be called free.

by belonging to a minority, for instance by granting collective rights, the state does something else. In doing so, the state does not admit that any particular national community is superior or inferior to any other. The practice of positive discrimination does not violate the requirement of equal treatment; indeed, its objective is precisely to promote the equality of chances. Consequently, by making minority language instruction in schools possible, the state does not ascribe a positive value to a particular national or linguistic community over other ones. Rather, it pursues neutral objectives, since the mere fact of positive discrimination does not even indirectly imply a value judgment about the privileged group. Here we encounter a different concept of neutrality, with a stronger interpretation of neutralism according to which neutrality demands refraining from intervention. This is important because if we adhere to the original notion of neutrality—however we choose to interpret it—minority rights will need another source of justification.

There is, then, an ambiguity as to whether neutrality should be limited to procedures or should also be applied to consequences. While previously Kis rejected neutralism with regard to consequences, in this matter it seems as though state intervention is a means justified by the end: an ideal situation of neutrality in which all individuals enjoy equal chances.

APPLICATIONS

The structure of Kis's book is lucid and straightforward; he first presents the elements of the theory of neutrality and its justification, and then proceeds to demonstrate its potential for application by confronting some particularly thorny moral issues. Kis tests the effectiveness of his theory on classical controversies: what does the neutrality of the state imply when it comes to abortion, euthanasia, suicide, homosexuality, and racist opinion. One can only hope that this confident, bold approach can set a trend in philosophical discussion in Hungary.

Although the brevity of this review prevents me from analysing specific cases in detail, I can venture a few general remarks. Abortion is an eminently good example of irreconcilable moral controversy. One would think that in this case, if in any, the state surely cannot remain neutral. Whichever stance it takes, at least one of the opposing parties will condemn the intervention as unacceptable, at least if its judgment about abortion constitutes an integral part of its moral world view. It is just impossible for the state not to do anything—this is a typical case of the state's being compelled to take action (implement regulations, provide medical care). Whether abortion is permitted depends on whether human life and the moral dignity of the foetus is defined as beginning with conception or at a later point in its development. Since neither of the opposing sides can present universally binding and evidently compelling arguments—such as medical or biological considerations—the resolution of the issue depends on our preferences and convictions, as in the case of other moral controversies in which appeals are made to ultimate, non-deducible moral values. It is in such cases that the comparative moral burden test can come into play to establish which party would incur the lesser moral loss by having its position rejected. Kis reasons that anti-abortionists would incur a merely indirect violation of their conviction through the legalization of abortion, whereas its prohibition would more directly affect pro-choice women who do not want to give birth to a child because it would constrain their right to determine what happens to their own bodies. While this argument is convincing enough (to me, for instance, it is sufficiently compelling), it does raise some problems. For one thing, it is not obvious that moral burdens of a different nature are commensurable. The measurement of "direct" against "indirect" moral losses can hardly be a compelling justification in the eyes of someone who finds it utterly intolerable to have to live in a society in which—according to his belief, at least—almost as many babies are legally murdered each year as are being born. Let us consider a controversy about, say, whether murder is punishable if the motivation was blood revenge. According to one of the rival views, manslaughter is always a very serious crime, whose persecution and punishment society (the state) can never forsake. On the opposing side of the debate blood revenge, in its "pure" form, is considered morally appropriate and its punishment unacceptable. In resolving this debate, we could hardly accept the standard suggested by Kis—it would be absurd to suggest that blood revenge should not be punished because its prohibition would be a far greater, direct violation of interest for its proponents (the perpetrators to be punished) than its legalization would be for its opponents.

Much the same obtains for euthanasia. In this case, too, it is impossible for the state to refrain from intervention, even though the controversy about euthanasia concerns world view, belief, and ultimate moral principles. The comparative interest strategy seems to function here: the prohibition of euthanasia is a far greater violation of interest for a terminally ill patient who is forced against his will to endure prolonged torment than for someone who is "only" violated in his deepest conviction when euthanasia is granted to other human beings. However, to accept this argument, we must subscribe to the principle that a person's right to self-determination takes precedence over the unconditional sanctity of human life.

The problems of suicide and homosexuality, and the requirement of neutralism in the context of these problems, are not discussed by Kis in the same detail as those mentioned above. He examines only a few concrete cases in attempting to show that state intervention violates neutrality. This is not the

only deviation from the other chapters, however. I have been wondering why Kis's argumentation in the chapters titled "The Sword of the Law" and "That Which Divides" strikes me as flawless—as opposed to the chapters on abortion and euthanasia. While I more or less agree with Kis's position on every issue, it seems to me that he is not employing the same argumentative strategy throughout his book. In discussing a special case of assisted suicide and discrimination against homosexual associations, Kis succeeds in finding the common ground between the debating parties. Granted, he does so by accepting the opposing arguments, and then proceeding to unmask their internal inconsistencies. But he does this without appealing to other, supposedly intuitively compelling values, while in the cases of abortion and euthanasia his argument is based on presuppositions which are not entirely independent of his personal convictions.[10]

It is probably in his essay on "Freedom of Speech and Nazi Discourse" that Kis departs most conspicuously from the requirement of neutrality. Kis regards freedom of expression as a "liberal" value whose protection is one of the primary obligations of the state. Consequently, though freedom of speech must be granted to Nazis, "public officials, and especially policemen, attorneys and judges must not be allowed to indulge in ambiguity with respect to neo-Nazi ideas and ideas akin to them" (pp. 404–405). In other words, when it comes to this issue (and which other issues?), the state must not remain neutral. But what justifies this exception from the requirement of neutralism? If the content of certain opinions justifies departures of the state from its neutral attitude, what kind of guarantees are contained in the notion of neutrality? It seems to me that there is only one justifiable answer to this question.

THE LIBERAL ILLUSION OF NEUTRALITY AND THE REALITY OF LIBERAL NEUTRALITY

Those who criticize the notion of neutrality from the anti-liberal camp often argue that there is something suspicious about the frequency with which the application of neutrality results in the protection of liberal values. Indeed, the very principle of neutrality is based on some fundamental liberal tenets. Thus, for instance, it presupposes as well as creates a high degree of personal autonomy, limited or indeed minimal state power, freedom of persuasion and religion, speech and the press. According to the self-understanding of liberalism, it is this ideology which leaves the most elbow room for the coexistence of different world views. The liberal state is neutral and permissive with regard to the wide range of views concerning what constitutes the good life, so that no cultural or religious community can complain about negative discrimination.[11] I propose to call "liberal illusion" liberalism's understanding of itself as treating all world views, religions and moral convictions equally in a neutral fashion.

In my view, the requirement of the state's neutrality with regard to different world views and convictions is a liberal principle which mainly protects liberal values, such as the equal dignity and autonomy of every person and the state's obligation to justify its policies. However, I think it is not just impossible but also unnecessary to provide a neutral justification of neutralism. Instead, the espousal of neutralism should be understood by its proponents as what it actually is, namely, a commitment to a value which logically follows from a specific system of moral values. Arguments should be aimed at demonstrating why we should accept this system of values as well as demonstrating why we think it is better than the competing ones. The absolutization of the neutral state appears hopeless to me. I do not think, in other words, that it is possible to extend the principle of neutralism through its neutral justification to every form of state action. Almost every institution of almost every state could be shown not to be neutral with respect to the demands of some world views and convictions. Not that a political institution should necessarily be neutral. A political community cannot but establish a basic system of rules by which to organize its life, and such rules necessarily presuppose a score of choices of moral value. Though these rules are not likely to be equally acceptable to everyone, if their codification in the constitution leaves sufficient elbow room for personal convictions, thus being more inclusive than exclusive, it can safely be considered legitimate in my view. I want to suggest that it is such a legitimate system of rules that should establish the framework for state neutrality. The state must, indeed, be neutral—but only within the framework determined by its constitution and the corresponding moral system of values. No state can remain neutral with respect to the moral value system embodied in its own constitution. Only on this ground is it justifiable to concede that the state cannot remain neutral on a whole range of issues having to do with world views, beliefs, moral convictions, and the forms of conduct and judgment entailed by them. And this is why institutions of the state can legitimately condemn Nazi views, even if they allow their expression.

Az állam semlegessége is an important book, perhaps embodying the most significant achievement of liberal thought in Hungary in recent times. It can justifiably lay claim to addressing and articulating an important segment of public opinion in the marketplace of ideas and competing values. It will elicit approval and discussion because the theory it propounds is sufficiently inclusive and consistent—and thoroughly committed to liberalism. ❑

10 ■ In both cases, Kis accepts the premise that the right of self-determination is or can be stronger than the sanctity of life.
11 ■ Chaplin, *op. cit.* p. 33.