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Can Human Flourishing Be Liberal?

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Critical Notice:

Human Flourishing, Liberal Theory, and the Arts
by Menachem Mautner*

Once largely ignored by moral philosophers and ethicists, virtue ethics has attracted considerable interest among moral and political philosophers in recent decades.[1] Virtue ethics is distinguished from the other two main approaches to moral theory, namely deontology and consequentialism, by its emphasis on virtues or moral character rather than rules (deontology) or consequences of actions (consequentialism). The touchstone for proponents of virtue ethics is human flourishing, a loose translation of the Greek term *eudaimonia* that is central to Aristotle's *Nicomachean Ethics*.[2] Interest in a flourishing-focused approach to ethics, especially applied ethics, has grown remarkably over the past few decades with philosophers like Martha Nussbaum, Julia Annas, Christine Swanton, and Michael Slote writing influential works.[3]

The renewed interest in virtue ethics raises again a persistent question, namely, the relationship between the virtue ethics theory and liberalism as a political philosophy. Virtue ethicists focus on the good—i.e., human flourishing—and debate what constitutes that good. This focus creates a problem for liberals who are rights-oriented, which is the dominant form of contemporary liberalism.[4] For these liberals, the distinction between the right and the good leads them to insist that if individuals are to be free to choose their own conceptions of the good, the polity must be strictly neutral regarding which ways of life individuals should pursue.[5] The commitment to neutrality seemingly rules out any suggestion that the state ought to get involved in promoting virtues among its citizens. It further creates problems for public commitment to the promotion of human flourishing, particularly if a non-pluralist conception of that good is understood.

The recent and timely book by Menachem Mautner, *Human Flourishing, Liberal Theory, and the Arts*,[6] reminds us, however, that liberalism comes in many stripes. There is no one liberalism. Rather, there are many liberalisms.

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1. See *infra* note 3.
2. Aristotle, *Nicomachean Ethics*, revised ed, edited and translated by Roger Crisp (Cambridge University Press, 2014).
3. See, e.g., Martha Nussbaum, "Non-Relative Virtues: An Aristotelian Approach" in Martha C Nussbaum & Amartya Sen, eds, *The Quality of Life* (Oxford University Press, 1993) 242; Michael Slote, *From Morality to Virtue* (Oxford University Press, 1995); Julia Annas, *Intelligent Virtue* (Oxford University Press, 2011); Christine Swanton, *Virtue Ethics: A Pluralistic View* (Oxford University Press, 2005).
4. See Will Kymlicka, *Liberalism, Community and Culture* (Clarendon Press, 1991) at 21. Kymlicka goes on to provide a trenchant criticism of the commonplace notion that there exists a clean distinction between the right and the good.
5. See, e,g., Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press, 1978).
6. *Menachem Mautner, *Human Flourishing, Liberal Theory, and the Arts* (Routledge, 2018).

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Professor Mautner, who is Professor of Law at Tel Aviv University Buchmann Faculty of Law and the author of many books and monographs on law and culture and other topics, shows us not only how protean a political and ethical theory of liberalism is but also some of its more surprising political requirements. Notably, he argues that a liberal political order, or at least one committed to advancing the flourishing of its citizens, should actively support and promote the arts and art education. In this Review, I will discuss three aspects of Mautner's remarkable and important book: first, his conception of human flourishing and its relationship to liberalism; second, his argument that a liberal political order committed to human flourishing ought to promote the arts; and third, his argument that the liberalism of flourishing is better able than neutralist liberalism to compete with religion in providing what Mautner calls "big meaning."[7]

I. Mautner's Conception of Human Flourishing and Liberal Theory

Mautner introduces what he terms the "liberalism of flourishing," which he distinguishes from autonomy, or rights-oriented, liberalism. He defines autonomy liberalism as the political and moral theory that gives central place to personal autonomy and considers individual choice as the supreme value. Autonomy liberals hold that the state should act in ways to protect and enhance the autonomy of its citizens.[8] Autonomy liberalism, although the dominant version of liberalism, does not have a monopoly on liberal theory. There is another version, the liberalism of flourishing, which, according to Mautner, has two versions: the "intellectual-moralist" version and the "comprehensive" version.[9] The intellectual-moralist liberalism of flourishing claims that "the good life is one in which an individual succeeds in developing her intellectual and moral capabilities, and it is the state's function to create the background conditions that allow individuals to develop these capabilities of theirs."[10] The comprehensive version of the liberalism of flourishing claims that "the good life is one in which an individual succeeds in developing and exercising her varied human capabilities, and that it is the state's function to create the background conditions that allow individuals to develop and exercise their varied capabilities."[11]

Mautner observes that both autonomy liberalism and the liberalism of flourishing are perfectionist ethical theories. A perfectionist ethical theory is one that is based on an objective account of the good rather than a preference-satisfaction or hedonic account.[12] The liberalism of flourishing is a broad, or objective goods, form of perfectionism, as opposed to a narrower, or human nature form. The broad form of perfectionism holds that what is right is whatever most promotes certain objective human goods such as knowledge, achievement, and deep

7. *Ibid* at 10.
8. See *ibid* at 1-3.
9. See *ibid* at 1.
10. *Ibid*.
11. *Ibid*.
12. See David Copp, "Introduction: Metaethics and Normative Ethics" in David Copp, ed, *The Oxford Handbook of Ethical Theory* (Oxford University Press, 2006) 3 at 22.

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personal relations.[13] Human nature perfectionism holds that the good consists in developing those aspects of human nature that are essential to human beings, such as rationality (per Aristotle) or labor (per Marx).[14] Because his is a broader version of perfectionism, Mautner need not, and he does not, offer an ontology, of human nature.

Of the two versions of the liberalism of flourishing, probably the more familiar to North American legal scholars is the comprehensive liberalism of flourishing. This is the account of human flourishing that includes the capabilities approach of Martha Nussbaum[15] and Amartya Sen[16] and the one that I have developed in my book, *Property and Human Flourishing*.[17] Mautner argues that intellectual-moralist liberalism, which he traces from Aristotle to John Stuart Mill,[18] suffers from elitism and incompleteness. By contrast, comprehensive liberalism of flourishing, which he also traces to Aristotle,[19] is based on a thicker anthropology.[20] Nussbaum's human flourishing theory, for example, lists a number of human capabilities that are essential for human beings to flourish in an objective sense. Nevertheless, he contends even that approach is incomplete because it fails to deal with the negative aspects of the human personality—greed, cruelty, violence, manipulation, and so on. This observation paves the way for a major thesis of the book, namely, that "engagement with art is a primary means of developing the intellectual and moral capabilities of individuals, and that a state that practices the liberalism of flourishing should therefore take it upon itself to create the conditions allowing its citizens to meaningfully engage with art."[21]

II. Mautner's Theory of the Role of Art and the State

Mautner's theory of liberalism assigns a major role to art, art education, and the state in the promotion of art. He argues that "given that the liberalism of flourishing aims at creating the conditions that will allow individuals to develop their intellectual and moral capabilities, then engagement with art is a primary means for doing that."[22] By "engagement with art," he means "the experience of internalizing the contents of artworks as readers, viewers, listeners, etc., and not the experience of creating art."[23] Mautner attributes to art four positive effects on intellectual and moral development: (1) art as a source of wisdom; (2) art as a source of insight; (3) art's ability to arouse political awareness; and (4) art as a means of moral education.[24]

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13. See Thomas Hurka, *Perfectionism* (Oxford University Press, 1996).
14. *Ibid*.
15. See, e.g., Martha C Nussbaum, *Creating Capabilities: The Human Development Approach* (Belknap Press, 2011).
16. See, e.g., Amartya Sen, *Commodities and Capabilities* (Oxford University Press, 1999).
17. Gregory S Alexander, *Property and Human Flourishing* (Oxford University Press, 2018).
18. See Mautner, *supra* note 6 at 17-25.
19. See *ibid* at 40-41.
20. See *ibid* at 61.
21. *Ibid*.
22. *Ibid* at 87.
23. *Ibid*.
24. *Ibid* at 91.

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This argument raises several questions. First, what does Mautner mean by art? Art is a capacious category, and not everything that one might consider art would seem to perform the functions that Mautner assigns to it. Mautner fully recognizes this, acknowledging that art is a term of "uncertainty."[25] He refuses to take a categorical approach to defining the domain of art, suggesting that one might find enrichment not only in art but also in forms of popular entertainment. At the same time, he is no subjectivist. He is clear that critical judgments about art can be made using the internal criteria of their field of production.[26]

Another question that Mautner's theory of art and human flourishing raises is more imposing: Why art? Why is art, among other field of human endeavor, equipped to contribute to intellectual and moral development to the significant extent that Mautner claims? Mautner points out that art, broadly defined to include literature, theatre, poetry, and film, portrays "moral dilemmas, crises, conflicts, rivalries, human wisdom and human follies, human virtues and human vices, and it does this in an enticing and moving way."[27] This places art in a special position, he suggests. It enables art to serve as a catalyst for reflection on the decisions one makes throughout life, imparting wisdom where rashness might have prevailed. Art also is a source of insight, Mautner suggests. Works of art "present reality in original and unconventional ways, so that they may provide us with new ways of understanding our human condition."[28] Moreover, art can improve our political and moral education, according to Mautner. It can powerfully depict the crises of our time (Picasso's *Guernica* is an obvious example) and move us to action.

What Mautner has in mind in all this is a special type of education captured by the German term *Bildung*. The *Bildung* ideal, commonly associated with the Prussian philosopher Wilhelm von Humboldt, is self-cultivation of abilities that leads to personal and cultural maturation.[29] This type of education is a lifelong process, and it requires commitment. There is nothing casual about *Bildung*-type education in the way that there is, say, in flipping on the television or computer to watch a sports event or an escapist movie. *Bildung* experiences can be entertaining, as Mautner points out,[30] but they must always be edifying.

Such a high-minded role that Mautner assigns to art opens his argument to the obvious charge that the theory is starkly elitist. The accusation of elitism becomes even louder when Mautner argues that "engagement with art requires cultural capital, namely, a certain competence that allows for an adequate perception of the artwork."[31] A person gains such competence, Mautner contends, only through education. Mautner recognizes the classism that hovers over his

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25. *Ibid* at 93, citing Vera L Zolberg, *Constructing A Sociology of the Arts* (Cambridge University Press, 1990) at 24.
26. See *ibid* at 94.
27. *Ibid* at 102.
28. *Ibid* at 103.
29. See WH Bruford, *The German Tradition of Self-Cultivation: 'Bildung' from Humboldt to Thomas Mann* (Cambridge University Press, 1975).
30. See Mautner, *supra* note 6 at 94-96.
31. *Ibid* at 112.

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argument. He acknowledges that only those who are fortunate enough to have been raised in middle- (really upper-middle) and upper-class families have the cultural capital necessary for full appreciation of art.[32] His antidote for such discrimination is a robust role for the state in art education.

In Chapter Five, Mautner discusses the role of the state in the promotion of art, including art education. He argues that both neutralist liberalism and the liberalism of flourishing justify an active role for the state in funding the arts. This is possible because the state's role, although active, is not robust. It is limited to creation and dissemination of art and does not include defining or valuing art.[33] Additionally, the state should provide an extensive system of adult education for appreciation of the gamut of arts from literature to painting. The guiding principle should be the best should be available to the most.[34]

Such a role for the state should present no problem for neutralist liberals, Mautner believes, because the foundational norm for liberalism is reason. He contends that when the state sustains that norm, it takes no side among competing conceptions of the good life. The development of intellectual capabilities, a primary function that Mautner assigns to art, is, in his view, consistent with that neutral stance and indeed advances it.[35] Hence, Titian over football: "In funding the experience of looking at Titian over that of watching a football game, the liberal state does not declare the superiority of one experience over the other, i.e., it remains neutral between rival conceptions of the good life; the liberal state simply works for the enhancement of human reason… It operates at the level of *structure*, not at the level of contents."[36]

There is a problem here. How is one to know whether one form of human activity over another promotes human reason without investigating its contents? Consider games. Advocates of chess likely assert its superiority over video games precisely along the lines of Mautner's reasoning. Chess teaches important intellectual skills such as analysis and strategy in a way that video gaming does not. Should the state fund the teaching of chess but not video gaming? The distinction between support that merely operates at the level of what Mautner calls "structure," i.e., promoting activity that enhances human reason, and support that involves discrimination on the basis of content cannot be sustained.

Neutralist liberals are unlikely to be persuaded by Mautner's argument. Better for him forthrightly to assert that its ability to support state funding for the arts and art education is a mark of the superiority of the liberalism of flourishing over its neutralist rival. Even in the United States, where state activism does not enjoy a favored position, state funding for the arts, although much reduced in recent decades, does exist and enjoys wide public support. The basis for this support likely follows arguments very much along Mautner's lines.

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32. See *ibid* at 112-13.
33. See *ibid* at 116.
34. See *ibid* at 117.
35. See *ibid* at 125.
36. *Ibid* at 126 [emphasis in original].

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Two other problems remain. The first picks up on the neutralists' concern about state involvement with promotion of the arts. Public resources are scarce, and the state's ability to fund the arts is limited. Even in Western European countries, where state support for the arts is relatively high, choices have to be made. There is a risk that the state may use its power of the purse to discriminate on the basis of content, making budgetary decisions affecting agencies that provide grants for art projects. Agencies that have made grants to artists whose works offend some people's religious sensibilities or take politically unpopular positions may find themselves on the short end of the stick in the next budgetary cycle.

There is a history of such censorship in the United States. A notorious example involves a 1989 amendment of the statute that created the National Endowment of the Arts. As amended, the statute barred the use of NEA funds "to promote, disseminate, or produce materials which in the judgment of the NEA may be considered obscene, including but not limited to, depictions of sadomasochism, homoeroticism, the sexual exploitation of children, or individuals engaged in sex acts and which, when taken as a whole, do not have serious literary, artistic, political, or scientific value." The NEA required all grant recipients to certify in advance that none of the funds would be used "to promote, disseminate, or produce materials which in the judgment of the NEA… may be considered obscene."[37] Additionally, Congress cut NEA's budget.

These changes were reactions to two controversial works of art that had received public funding. One was "Piss Christ," a photograph of a crucifix immersed in urine, by Andres Serrano. The second was an exhibit of photographs by Robert Mapplethorpe. The exhibit included homoerotic photographs, images of sadomasochism and, according to critics, child pornography.[38] Mautner is aware of these incidents,[39] but he discusses them only in relation to freedom of speech considerations rather than as examples of how funding makes problematic the distinction between structure and content.

The second issue that Mautner does not fully address is why the market is not an adequate source of support for art and art education. According to one survey, private arts funders have substantially increased their commitment to operating support over the past few decades as federal funding for the arts has shrunk.[40] Thirty-five percent of private funders' grants went to operating support in 2009, up from just 13 percent in 1989.[41] Arguably, the shift indicates that as state support for the arts dries up, private funding moves into the vacuum. The ideal, of course, is a mix of public and private support, but the important role played by the market in supporting the arts ought not to be overlooked.

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37. See Bill Kenworthy, "Public Funding of Controversial Art" (June 2006), *Freedom Forum Institute*, online: https://www.freedomforuminstitute.org/first-amendment-center/topics/freedom-of-speech-2/arts-first-amendment-overview/public-funding-of-controversial-art/.

38. See *ibid*.

39. See Mautner, *supra* note 6 at 127-32.

40. See Alexis Frasz & Holly Sidford, "How Are Private Funders Responding to Cuts in Public Funding?" (2011) 22:3 Grantmakers in the Arts Reader 4, online: https://www.giarts.org/article/how-are-private-funders-responding-cuts-public-funding.

41. See *ibid*.

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III. Does the Liberalism of Flourishing Justify the Right to Destroy Art?

Mautner's concern about the relationship between art and the liberalism of flourishing raises an issue that has received scant attention in the legal literature. Do private owners of art, particularly great works of art, have the moral right to destroy the art they own? Art owners may wish to destroy their art for any number of reasons. In one infamous incident the Rockefeller family decided to destroy a fresco (titled "Man at the Crossroads") that they had commissioned Diego Rivera to paint for them in the lobby of the RCA Building (as is was then called) in New York City. They reached this decision when, after discovering the image of V.I. Lenin in the painting, Rivera refused demands to remove it.[42] The reason for the destruction here was political; it would have been highly embarrassing for the Rockefellers, staunch Republicans, associated in any way with the leader of the Bolshevik Revolution.

Sometimes the motive for owner destruction is purely personal. Another well-known case illustrates this incentive. After Sir Winston Churchill's retirement, Parliament commissioned a famous English portraitist to paint Sir Winston's portrait.[43] The plan was to make a personal gift of the portrait to Churchill for him to hang at his home, Chartwell. Both Sir Winston and his wife, Lady Churchill, loathed the painting, thinking that it made him look like a tired old man. Lady Churchill arranged to have the painting burned. There was no political motive for the destruction; it was strictly personal. The painting accurately rendered Churchill as he had become, and he did not wish to be remembered that way.

From the perspective of the liberalism of flourishing, with its emphasis on art as an important stimulus of intellectual and moral development, what should we think about these two situations? Should art always be protected from destruction, assuming as a practical matter that destruction can be prevented? "Yes" was the answer given by the distinguished late legal scholar Joseph Sax in his book *Playing Darts with a Rembrandt*[44] for reasons not unlike those given by Professor Mautner. However, I do not think this blanket rejection of the art owner's right to destroy is in fact consistent with human flourishing. Cases involving an asserted right to destroy artwork are not all of a piece, and the salient differences among them should lead us to see how the capability needs at stake in the cases differ from each other.

Each of us owes an obligation to our communities to support the institutions, associations, and infrastructure that in turn support the special sort of culture in which we live, the type of culture within which each person is able to experience life-defining freedom and to create their own personal identities. The obligation to support this culture enables the development, both for members of our

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42. See Daniel Okrent, *Great Fortune: The Epic of Rockefeller Center* (Viking Press, 2003) at 310-13.

43. See Hannah Furness, "Secret of Winston Churchill's Unpopular Sutherland Portrait Revealed", *The Telegraph* (10 July 2015).

44. See Joseph L Sax, *Playing Darts with a Rembrandt: Public and Private Rights in Cultural Treasures* (University of Michigan Press, 2001).

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communities and for ourselves, of those human capabilities that make human flourishing possible. Great art contributes to a rich and robust liberal cultural life, the very kind of cultural life that is a necessary background condition for a well-lived life, one of self-definition and participation in a humane social environment. But the obligations with respect to art must be nuanced and carefully limited to circumstances where necessary capabilities are genuinely at stake. Decisions about what those circumstances are will, of course, be contestable and require identifying relevant differences to discern whose capabilities are at stake and to what extent. The Rockefeller/Rivera and Churchill cases, for example, are different in respects that bear upon the capabilities involved. The most apparent factual difference is the publicness of Diego Rivera's mural compared with a very private and personal portrait of Sir Winston. That difference bears directly upon the relative contributions of the two works to the cultural life of the two communities most intimately affected. Rivera's mural was to be publicly displayed in the RCA building in Rockefeller Center in New York City. Public art has become an important source of enrichment of the cultural fund of communities throughout the United States over the past several decades. Are there compelling capability-related reasons favoring the artist's or the patron's right to compel the piece's indefinite public display? Other than an abstract autonomy right of the patron, no capabilities, at least none that are essential to human flourishing, appear to be at stake here.

The artist perhaps has greater flourishing-related concerns that are worthy of attention, notably one's reputation. If the piece is removed in response to an objection by the owner/patron or a strongly negative public reaction, the artist may worry that removal will seriously jeopardize one's reputation as a successful artist both within the artistic community and the broader community. That seems to be a legitimate concern, but it misses the mark. Whether or not the piece is removed, the damage to reputation has already occurred, so that removal will have only a marginal effect. The only possible response that the artist may make is that if the public reaction does change over time, à la the Chicago Picasso, the artist's reputation will be restored. So, the calculus of capabilities is fraught with uncertainty as to both the artist and the public. Perhaps in the face of this uncertainty, which results from the effect of time, one prudent solution might be to leave the work in place for a set period of time at the end of which the relevant public body might hold a public hearing to decide whether the piece should remain or be removed.

What, then, about Lady Churchill's right to destroy the portrait of her late husband? Is there a significant public stake involved? Stated differently, does the community—here most immediately, the British public—have any essential capabilities at stake in the preservation or destruction of Sir Winston's portrait? Sax argued that the public did have an important interest at stake.[45] In his view, destruction diminishes the public record of an important historical figure: "Posterity is denied an opportunity to see one version of a leading figure on

45. See *ibid* at 36-42.

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the world stage as he really was, or at least as he was seen by a major portrait painter."[46]

The harm to the public that Sax sees is that it undermines the public's "strong interest in knowing as much as possible about one who played as large a role on the world stage as Churchill did."[47] The public has, to be sure, a capability interest in having full access to all relevant information about such persons as Churchill; but, the operative word here is relevant. It is difficult to see why it was relevant to the British public to see Sir Winston suffering from the ravages of age. That does not seem to be the sort of information that bears upon the very legitimate public interest in whatever aspects of his life remain connected with his role upon the world stage.

In the more typical situation in which the right to destroy artwork is at issue—where the owner has no relationship to the work other than being the current owner—the default rule should be that *jus abutendi* is not recognized. The community's capabilities at stake, notably the very existence of the cultural life upon which it depends and in turn individual members of the community depend for their own development as genuinely free and self-defining moral agents, fit with the owner's own capabilities in a way that the lives of community members and the owners go maximally well if the art is not destroyed, whatever the owner's expressed preference may be.

Of course, as a practical matter, regardless of the legal rule, private owners may still destroy a work secretly. There is no feasible way to prevent a determined owner from doing so. But what if an owner bequeaths a work of art to a family member with instructions to destroy it? Must or even may the family member, who is now the owner, comply with those instructions? Or what if an owner does not bequeath it to anyone but simply orders its destruction upon death. Should these testamentary instructions be followed? This is an important question because most of the litigated right to destroy cases occur in just this context.[48] As Lior Strahilevitz correctly points out, "As a general matter, the law recoils at the idea of allowing the dead hand to destroy property."[49] There is good reason for this. The issue is raised, of course, that these owners are no longer living and no longer a member of their former communities, so it is not their opportunity to flourish with which we are concerned. But they were members of communities, and their obligation to them continue to the extent that they owned at death an asset that contributed significantly to that cultural life. Think of the obligation as something like a debt that is accrued but unpaid at death. If I owed the state accrued but unpaid taxes at my death, my death does not expunge the obligation; my estate must pay the taxes after I die. By the same token, the owners' obligations to their communities is one that persists beyond their death insofar as they are not free to destroy the asset that is the subject of the obligation. One cannot simply cut off one's communities

46. *Ibid* at 35.
47. *Ibid* at 41.
48. See Lior Jacob Strahilevitz, "The Right to Destroy" (2005) 114:4 Yale LJ 781 at 838.
49. *Ibid*.

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from the basis of one's ability to flourish after one dies any more than one could while one was alive.

IV. Religion, Liberalism, and the Search for "Big Meaning"

The final part of Mautner's remarkable book is dedicated to a discussion of the relationship between liberalism and religion. As Mautner notes,[50] for neutralist liberals that relationship is awkward at best. Liberalism's neutral stance on questions about the good lead it to regard any state support or preference for religion as illegitimate.[51] Mautner views this as a signal of weakness for neutralist liberalism because it cannot satisfy people's need for what he calls "big meaning."[52] By that, he means "the meaning embedded in a fairly coherent and developed system of propositions aimed at providing a response to fundamental human questions."[53] Religion, he argues, "is the most comprehensive system of big meaning available to us."[54] Neutralist liberalism cannot compete with religion, in Mautner's view, for two reasons: first, it lacks the institutions to spread its message, and, second and more profoundly, it simply does not have anything to say about the Big Questions. Indeed, that is its whole point: it leaves Big Questions to others.

Into this vacuum steps the liberalism of flourishing, according to Mautner. Although it cannot provide its own version of big meaning, the liberalism of flourishing enables individuals to engage with art. Through this engagement, they can use their own resources to develop coherent responses to life's big questions. According to Mautner, art does not serve as a direct substitute for religion in providing big meaning. What engagement with great works of art does provide, in his view, is "deep meaning."[55] Deep meaning provides "insights about the human condition and the world."[56] Deep meaning interacts with big meaning by enabling individuals to address and develop their own responses to fundamental questions. Encounters with great art prompt us, according to this theory, to question our own premises and prejudices and construct our own understandings of the world, ourselves, and the purposes of our lives.

Can art carry this much water? What about art of which the very point is to deny Big Meaning? All the artists to whom Mautner refers, ranging from Goethe to Rembrandt, are creators of "Great Art," mainstream, pre-modern Western art whose works are reasonably intelligible by the general public and the products of cultures that took for granted norms of rationality, coherence, human progress, and meaning. The twentieth century produced a very different kind of art, of course. This is the art of Dadaism and Surrealism, of Otto Dix and George Grosz, Franz Kafka and Samuel Beckett. This is the art of nihilism. It repudiates

50. See Mautner, *supra* note 6 at 10.
51. See *ibid*.
52. *Ibid.*
53. *Ibid.*
54. *Ibid.*
55. *Ibid* at 155.
56. *Ibid.*

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religion's core messages. Profoundly affected by the First World War, Otto Dix, for example, came to "see the process of life as an inescapable, horrifying and yet fascinating rhythm which free will, and therefore human morality, was incapable of influencing. What remained was a mere survival instinct, grotesquely impelling all forms of life including mankind."[57]

Mautner might persuasively respond that whether it affirms rationality and progress or not, art produced in the twentieth century still serves fundamental intellectual, moral, and even spiritual needs of humans. It addresses issues that are at the very core of human existence—love, hatred, beauty, insanity, happiness, etc. Consider the work of Mark Rothko, the abstract expressionist painter whose signature motif consisted of soft rectangular forms hovering over the surface of broad fields of color. Rothko is a popular artist, and many people enjoy his work for its color. But Rothko himself was very clear about the minimal role of color in understanding what he was trying to convey. He said, "If you are only moved by color relationships, then you miss the point. I'm interested in expressing the big emotions—tragedy, ecstasy, doom."[58]

The same holds true of all other modes of art. Consider the work of the great American playwright Edward Albee. Author of such masterpieces as *Who's Afraid of Virginia Woolf?* and *A Delicate Balance*, Albee addressed issues concerning the modern condition, including marriage, sexual relationships, and parental relationships. The plays are considered modern masterpieces because of their sensitive and powerful depictions of basic human emotions and personal struggles in the modern world—love, resentment, alcoholism, infidelity, and so on. This is precisely the stuff of Mautner's "deep meaning," and work such as this may well prompt the viewer to raise in one's own mind fundamental questions of the sort that go under Mautner's term "big meaning."

Does Mautner sell autonomy liberalism short in its incapacity to provide big meaning? After all, that version of liberalism has powerful virtues, proven over history, not the least of which is individual freedom, and those virtues have made it highly attractive to political regimes around the world. In the last century, National Socialism in Germany offered big meaning without religion, but it obliterated all traces of personal freedom. With its demise, post-war Germany turned to a form of autonomy liberalism, instantiated in its 1949 Basic Law. One may ask whether or not this is an example of how autonomy liberalism can fill the void of both religion and despotism to provide big meaning through the integrity and dignity of the individual.

Although there is much to be said for the attractions of autonomy liberalism, Mautner is right, I think, about its inability to provide humans with big meaning. For the person who looks for such meaning, there is something lacking in autonomy liberalism. Autonomy liberalism's virtues—equal dignity of individual humans, personal liberty, fairness, toleration, the rule of law, and so

57. Matthias Eberle, *World War I and the Weimar Artists: Dix, Grosz, Beckmann, Schlemmer* (Yale University Press, 1985) at 38.

58. "Mark Rothko *No. 5/No. 22* 1950", MoMA, online: https://www.moma.org/collection/works/80566.

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on—important as they are, nevertheless are legal and political in nature. Missing are other virtues that are important to big meaning, including charity, friendship, honor, courage, gratitude, kindness, among others. Moreover, autonomy liberalism has nothing to say about the emotions, which constitute a profoundly important aspect of big meaning in our lives. With nothing to say about love, joy, pain, grief, anger, and hatred, autonomy liberalism contributes nothing to our need to develop what Kierkegaard called a "life-view," i.e., "a conception of the meaning of life and of its purpose."[59] Even if one takes what Thomas Nagel describes as the most external perspective, i.e., the universal standpoint of all sentient beings in all places and at all times,[60] from which perspective one's life appears to matter little, the possibility of meaning in one's life still remains. One still existed; one had life. The universe would not have been the same if one had not been part of it. Life matters. Every living thing affects everything else, no matter how trivially. Moreover, no one holds this external perspective constantly. Most of our lives are experienced from within the internal perspective, the view one has, both at any instant and over time, of one's own interest and that of others.[61] Or perhaps we toggle back and forth between the two perspectives.

The fact of the matter remains that as we actually live our lives, we experience emotions, and we feel a need to make some sense of them. Autonomy liberalism does not have the resources to do that, but art, in its various modes, does. Art gives expression to emotions that we experience, and in doing so, it assures us that these experiences are not unique to us. We share them with others. They are, in fact, part of the human condition. Even in their most painful aspects, they enrich our lives. Art leads us to reflect upon them and to gain some greater cognitive understanding of them and of ourselves. The point is not simply the familiar one that engagement with art has emotive effects, although that is true.[62] Rather the point is that art also facilitates cognitive gains through reflection, discernment, critical judgment, and analysis. These are precisely the sort of intellectual skills that Mautner argues are among the benefits of the liberalism of flourishing.

Readers of Mautner who are committed to religious faith or in search of comprehensive explanations of fundamental questions of existence will not be satisfied with the liberalism of flourishing. Liberalism, even in as capacious a version as Mautner's, is no substitute for God. I do not understand Mautner to argue that the liberalism of flourishing is intended to take God's place.[63] For the person of faith, the liberalism of flourishing offers a much richer alternative to autonomy liberalism, one that is at once entirely secular and entirely compatible with religious faith. For the non-believer, the liberalism of flourishing justifies the state taking an active role in enabling individuals to develop deeper understandings,

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59. Søren Kierkegaard, *Either/Or, Part II*, edited and translated by Howard V Hong & Edna H Hong (Princeton University Press, 1987) at 179.
60. See Thomas Nagel, *The View from Nowhere* (Oxford University Press,1986).
61. See *ibid*.
62. See Alex Neil, "Art and Emotion" in Jerrold Levinson, ed, *The Oxford Handbook of Aesthetics* (Oxford University Press, 2003) 421.
63. See Mautner, *supra* note 6 at 11: "[T]he liberalism of flourishing does not, and cannot, have at its disposal a coherent system of big meaning to be provided to the citizens of the liberal state."

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both cognitively and emotionally, of their own lives and the world in which they live. Although it does not itself provide a comprehensive view, it does enable individuals to create their own worldviews.

In the conclusion of his book Mautner asserts that "art is the closest secular equivalent to religion in the lives of human beings."[64] He furthers claims that "the liberalism of flourishing is better equipped than autonomy liberalism to compete with religion in the domains of big and deep meaning."[65] Mautner is justified in making those claims. He has made a powerful case for a version of liberalism that is an attractive alternative to autonomy liberalism. In a secular age, the liberalism of flourishing provides citizens with means of gaining insight into fundamental existential questions. It is an important book and deserves to be widely read.

64. *Ibid* at 167.
65. *Ibid*.

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