The Garden of Liberalism

A Theory of Liberal Neutrality and Toleration

Bouke R. de Vries

Thesis submitted for assessment with a view to
obtaining the degree of Doctor of Political and Social Sciences
of the European University Institute

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European University Institute
Department of Political and Social Sciences

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Abstract

This dissertation is on liberal neutrality and toleration. The first part asks what kinds of comprehensive doctrines or worldviews should be tolerated by a liberal state. Specifically, it considers to what extent, if any, doctrines that (partially) reject citizens' freedom and equality in the public and/or private sphere merit toleration. The second part asks whether liberal states should be neutral towards tolerable doctrines. Besides considering whether their policies should be neutrally justified towards such doctrines, it considers whether states should (sometimes) equalise policy consequences amongst them. In doing so, this dissertation focuses on consolidated liberal democracies and the doctrines of citizens.

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Introduction

0.1 Research questions

Suppose that the plants of a garden represented citizens' comprehensive doctrines or worldviews. In that case, when may/should a liberal state – the gardener – obstruct or foster the growth of those plants? That is, when is it morally permissible/required for states to impede or aid citizens' doctrines? This is the question animating this dissertation.

All liberals worthy of the name would agree that some gardening is necessary. They would concur that states have a moral duty to interfere with doctrines that crowd out others, such as Fascist or Jihadist doctrines. At the same time, certain forms of interference are clearly impermissible. A state that only allows one type of vegetation to grow is not a liberal democracy but an autocracy (recent attempts by the Burmese authorities to promote Theravada Buddhism at the expense of Islam and other religions may be a case in point[1]). Put differently, if states are to respect citizens' free and equal status, they should accept limits on how they can pursue (what they regard as) a Garden of Eden or perfect society.

This leaves many questions unanswered though. Exactly what doctrines are candidates for interference and how may/should states interfere with them? When are mild forms of interference appropriate, such as denying tax benefits or refusing airtime on television/radio; and when are more militant forms due, such as closing down websites, proscribing marches, or even imprisoning people and banning associations? These issues are addressed in the first part of this dissertation, which focuses on toleration. The second part, which focuses on neutrality, asks under what conditions, if any, states may enact policies that are predicated on the view that some tolerable doctrines are better than others, i.e. more non-instrumentally valuable. It also considers when, if ever, the fact that state policies may unevenly burden or benefit tolerable doctrines is a reason for either revoking these policies, or for offering redress to citizens whose doctrines are burdened/denied benefits (e.g. legal exemptions, subsidies, symbolic recognition).

Some definitions. With Max Weber (Weber & Owen, 2004 [1918], p.33), I understand a 'state' to be a "human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory". In asking how states should treat citizens' doctrines, I do not wish to commit to a view on the (im)plausibility of attributing corporate agency to states. If states are not real agents, perhaps because they lack their own goals, or because they fail to pursue these rationally (for a discussion of the requirements of group agency, see List & Pettit, 2011), this dissertation's central question may be

[1] http://thediplomat.com/2015/08/the-truth-about-myanmars-new-discriminatory-laws/

reformulated as follows: Under what conditions, if any, may/should state officials (e.g. legislators, judges) undermine or promote citizens' doctrines?

By a 'comprehensive doctrine', I mean a set of moral, metaphysical, and aesthetic beliefs that a person holds at a given time (whilst these beliefs may change, they are often quite tenacious and are sometimes held for a life-time). Such doctrines have two components. They contain a conception of the good life, i.e. an understanding of what makes life worth living, such as scholarly activity, contemplating art, religious devotion, drinking beer, or watching football (R. Dworkin, 1985, p. 191), and a conception of justice, that is, a notion of how just or fair societies are ordered (Rawls, 2005, p. 13).

0.2 Chapter outline

Part I: Toleration

Chapters 1 and 2 separate the chaff from the wheat. That is, they ask what kinds of doctrines should and should not be tolerated by the state. I define toleration or tolerance (I use these terms interchangeably) as follows:

> *Toleration/tolerance*: State S tolerates a comprehensive doctrine D if and only if S refrains from interfering with D (despite being able to), or interferes with D without aiming to undermine D's views or practices.

By non-interference, I mean that S does not try to obstruct expressions of D's views or practices inspired by D. Expressions of D's views may be obstructed by e.g. denying D's adherents airtime on television/radio, closing down their websites, prohibiting their marches, banning associations organised around D, and so on. D's practices are obstructed when S prevents these practices from taking place under certain circumstances (some examples below), or when they are criminalised altogether, whereby those engaging in them may or may not be fined or prosecuted.

The second disjunct ('or interferes with D without the aim of undermining D's views or practices) is premised on the view that *not* every act of interference constitutes an act of intolerance (cf. Boucher & Laborde, 2014, p. 15). Thus, a demonstration of environmentalists may be prohibited because of a terrorist threat. Since such a ban has nothing do with the views or practices of environmentalists, this is not an act of intolerance. Similarly, when the state cancels an open-air mass in order to contain a virus, it is not intolerant of the religion in question, as the ban's rationale is to contain the virus rather than to supress the religion's views and practices. (To determine whether states seek to undermine a doctrine's views or practices, one might ask: does the state want those views or practices to (partially) disappear? This would

be the case for e.g. Neo-Nazi or Jihadist views and practices, but not necessarily for those of the environmentalist and religious groups just mentioned.)

Toleration may be principled and/or pragmatic. State S tolerates doctrine D on principled grounds if and only if S does not interfere with D's views or practices in order to undermine these. There are two possibilities here. One is that S could successfully interfere but abstains; this should not just be due to weakness of will or irrationality/ignorance on S's part, but because S considers there to be *moral* reasons for not interfering (for liberals, these will be based on e.g. justice, reciprocity, fairness). The other possibility is that S interferes with D's views and practices without wanting to undermine them. Instead, D's views and practices have extrinsic features that warrant such interference (think of the prevalent virus or looming terrorist attack in the above examples). Hypothetically, it may be that the state never allowed expressions of certain views or practices whilst tolerating these on principled grounds. However, such permanent interference would almost always attest that D has intrinsic features that are seen as problematic, so that we are not dealing with toleration after all. (Another way of putting this is that under moderately favourable circumstances, expressions of views and practices tolerated on principled grounds may be expected to be free from interference most of the time.)

By contrast, pragmatic toleration is based on the fear that interfering with D will lead to bad consequences, whereby the badness of the consequences has nothing to do with the fact that D's views or practices may be undermined (were circumstances more favourable, states would interfere with these views and practices). Thus, state S may condone demonstrations by Neo-Nazis or the discrimination of Jewish customers in Neo-Nazi stores not because S does not want to supress Neo-Nazi views and practices (on the contrary, this may be a principal government objective), but in order to avoid riots[2].

(As an aside, some might find it strange that principled toleration is compatible with having positive attitudes; the assumption being that "[w]e cannot, properly speaking, be said to tolerate things which we welcome, or endorse, or find attractive" (Mendus, 1988, p. 3). Whilst nothing important turns on terminology here – what I am interested in is how states should act – note that we do regularly describe both individuals and states as 'tolerant' when they find a wide range of lifestyles agreeable; cf. Balint, Forthcoming, chapter 1).

Let us turn to intolerance then. I define intolerance as the absence of toleration/tolerance.

> *Intolerance*: State S does not tolerate a comprehensive doctrine D if and only if S interferes with D in order to undermine D's views or practices

[2] Notice that pragmatic toleration tends to be less robust than its principled counterpart, for as soon as states come to believe that interfering is sufficiently advantageous, they will usually do so. Rawls (2005, p. 147) calls such a strategic and often short-lived equilibrium a "modus vivendi", and pragmatic toleration is also known as 'modus vivendi toleration'.

This definition's teleological component – the 'in order to undermine' part – is meant to distinguish cases of intolerance from accidental interference, i.e. interference based on extrinsic features of D (think of the virus and terrorism cases just mentioned). States seek to undermine D's views or practices when at least part of their motivation for interfering is to make these views/practices less popular, if not eradicate them altogether.

To avoid confusion, states are seldom, if ever, intolerant of *all* views of a comprehensive doctrine. Even the most unreasonable doctrines have views that merit toleration; for example, a Jihadist doctrine may support charitable acts. Whilst intolerance is a matter of degree, then, I will be speaking of states being tolerant/intolerant of doctrines simpliciter for ease of reference.

1. Illiberalism in the public sphere: The Fair Value account of toleration

Liberalism is premised on the view that restrictions on personal liberty require a strong justification. Accordingly, to be a candidate for interference from a liberal perspective (which means that one is tolerated on pragmatic grounds at best), a doctrine must support illiberal practices. Whereas this dissertation's first chapter focuses on doctrines that support illiberal practices in the public sphere, the second looks at doctrines that do so in the private sphere. (The reason for drawing this distinction is that I will argue that the private sphere should allow for more illiberalism. Note, however, that this is a conclusion of my argument rather than a premise; I do not beg the question by building this normative proposition into my definition of the private.)

As was mentioned, chapter 1 asks how states should deal with comprehensive doctrines that advocate illiberalism in the public sphere. Organisations and institutions belonging to this sphere include (but are not limited to): political parties, the for-profit sector, state organisations (e.g. civil administration, courts, the army, police force), and publicly funded schools and universities. Doctrines that oppose citizens' freedom and equality within (some of) these organisations/institutions do not just encompass Neo-Nazi and Jihadist doctrines. They may also be found in the views of more moderate groups, such as the Dutch Orthodox-Calvinist Staatkundig Gereformeerde Partij (SGP) party, which until recently refused women the right to stand for political office; those of the British National Party, which was forced to admit non-Caucasians to their parties; certain (non-violent) anarchists, libertarians and technocrats; and groups that seek to exclude homosexuals from the military.

The chapter begins by explaining why liberal states should not tolerate comprehensive doctrines that incite law-breaking. Next, I reject five approaches for dealing with doctrines that are law-abiding yet still unreasonable in that they oppose basic rights or seek to deny non-basic rights on discriminatory grounds (note that this conception of unreasonableness is more encompassing than Rawls'; more on this in due course). The first three approaches are found to be too tolerant. They either insufficiently protect

liberal democracies from existential threats, or fail to secure what Rawls (2005, pp. 324–31) calls the "fair value" of citizens' rights, i.e. their ability to make effective use of their rights. The remaining two approaches are rejected for being too intolerant. They either sanction interference when this is likely to be ineffective, or do so when the money spent on interfering – though likely to be effective – could be better invested in addressing the causes and perlocutionary effects of unreasonable views.

Instead, I defend an account of toleration that I call the 'Fair-Value-of-Rights' approach or simply 'Fair Value', which draws on (whilst transcending) the work of Kirshner (2014); Quong (2010); Rummens & Abts (2010); and Waldron (2014). As I argue, this approach best secures the substantive enjoyment of rights. Specifically, it best ensures that citizens have the agency to exercise various rights, as well as adequate access to their rights. Three measures are defended:

- When doctrines incite law-breaking or pose a threat to citizens' basic rights, interference is due – think of proscribing marches, closing down websites, outlawing parties (e.g. Neo-Nazist, Jihadist, and violent anarchist doctrines)
- In the absence of such incitement and threats, non-discriminatory yet unreasonable doctrines should be tolerated on pragmatic grounds (e.g. peaceable anarchist doctrines, certain libertarian and technocratic doctrines)
- In the absence of such incitement and threats, doctrines that are both unreasonable and discriminatory should be interfered with when this is more likely to secure the fair value of citizens' (basic or non-basic) rights than other ways of addressing these doctrines' popularity and perlocutionary effects (e.g. the doctrines of the SGP and BNP, doctrines seeking to exclude homosexuals from the military).

Besides defending this theory of toleration, the chapter provides an overview of different approaches for dealing with unreasonable doctrines. I have labelled and located these approaches along a spectrum ranging from least to most restrictive, which may provide a useful framework for future research. Bringing together three strands of literature – those on militant democracy, (Rawlsian) unreasonableness, and hate speech, this chapter should interest anyone working in these areas. In light of the recent rise of extremist parties and movements in various liberal democracies (e.g. far-right nativism, Salafism), policy-makers should also take note.

2. Illiberalism in the private sphere: The EO³ account of toleration

Chapter 2 asks how states should deal with comprehensive doctrines that support illiberal practices in the *private sphere*. Such doctrines maintain that, in at least some respects, people should not be treated as free

and equal within (certain) private groups. These include: families, religious and cultural communities, and various associations that are often understood to be more voluntary (e.g. sport teams, dining clubs, fraternal societies, motor clubs, isolated racial enclaves, and philatelic groups). (Importantly, I will not be looking at groups that straddle the private/public divide. One might think of faith-based organisations that receive subsidies for delivering social services, and private groups with (quasi) monopolies on widely needed goods – e.g. education, water. How the illiberal views of such semi-private groups should be treated raises more issues than I can address in this dissertation (I talk about the former elsewhere; see De Vries, manuscript).)

Three claims are defended. First, doctrines that support unreasonable private practices should be treated the same as doctrines supporting unreasonable practices in public. In other words, the 'Fair Value' account ought to be applied here. Second, whilst doctrines that inspire reasonable private illiberalism raise challenges to citizens' autonomy and social equality, the solution is not for states to try and liberalise the private sphere, as proposed by e.g. Chambers (2002); Kymlicka (1995); and Okin (2002a). Instead, and this brings me to my third claim, they should tolerate illiberal but reasonable private practices *on the condition* that three measures are taken. First, states should censor certain statements of reasonable private illiberalism in the public space, which I call 'expressions of obloquy'. Second, states should ensure that citizens have equal opportunities in the public sphere (e.g. in politics, the for-profit sector, publicly funded schools and universities). Third, they should secure meaningful exit options for citizens, that is, substantive opportunities for them to leave their private groups. As censoring Expression of Obloquy, securing Equal Opportunities, and realising meaningful Exit Options are central to this approach, I call it EO^3.

This chapter makes several contributions to the literature. Rather than treating doctrines that support illiberal private practices as a homogeneous group (as is often done), I distinguish several kinds and show that these require different treatment. I also raise novel objections to liberal-reform approaches, i.e. approaches that seek to liberalise the private sphere (including reasonable groups). Lastly, I rebut recent criticisms of exit-rights approaches by Kukathas (2012) and Moles (2014), and defend a more elaborate theory of meaningful exit options than currently exists. Whilst various authors have stressed the need for meaningful exit options, they have said either precious little about their requirements (Galston, 2002, p. 123; Raz, 1995, pp. 185–90) or focused on specific ones, such as educational requirements (Lester, 2006; Okin, 2006, pp. 334–6; Spiecker, Ruyter, & Steutel, 2006); financial requirements (Barry, 2002, pp. 150–4); or the need for protecting individuals from oppressive cultural practices (Okin, 2006, p. 344; Shachar, 2001). (Though Spinner-Halev (2000) discusses all of these, I will argue that his approach is unsatisfactory.)

As all liberal democracies harbour private groups with (at least some) illiberal practices – e.g. most religious communities fall into this category – the practical significance of considering what kinds of treatment such groups are due should be obvious.

Part II: Neutrality

The previous chapters separated the wheat from the chaff, and considered how to deal with the latter. The remaining two consider how states should deal with the wheat and tolerable plants more generally. Chapter 3 asks whether states may deliberately treat some of these plants better than others (e.g. by using fertiliser on them, or pruning them more carefully). That is, it asks whether states are morally permitted/required to favour some tolerable doctrines over others (i.e. doctrines that merit principled toleration) *on account* of their non-instrumental value. Those who say 'yes' support a view called 'liberal perfectionism', whereas those denying this support 'justificatory neutrality'.

Justificatory neutrality

Justificatory neutrality requires that policies be justified by reference to values that citizens with tolerable doctrines can recognise as important, at least if they made a reasonable (i.e. minimally rational and good-faith) effort to reflect on these values. Paradigmatic examples of such 'public values' are a clean environment, prosperous economy, and public health. Whether people are Christians, Muslims, Jews, Atheists, Buddhists, Pagans, art lovers, or beer-drinking football fans, they are able to recognise these values as important.

Defenders of so-called 'consensus' and 'convergence' accounts of neutral/public justification disagree about what such recognition involves. (For an overview of the differences, see Quong (2013) and Vallier & D'Agostino (2014).) The above definition of justificatory neutrality remains agnostic between these accounts (both require, albeit for different reasons, that policies be justified by reference to public values (cf. Gaus & Vallier, 2009)). As the neutralism/perfectionism debate does not turn on which account is accepted, choosing sides would violate Ockham's razor.

Nor is it necessary to draw a sharp distinction between public values and non-public or perfectionist values. The fact that there are unambiguously public values, such as a clean environment, prosperous economy, and public health; as well as perfectionist ones, such as worshipping God or going to the opera/museums (assuming arguendo these activities to be non-instrumentally valuable) suffices to render the perfectionism/justificatory neutrality debate meaningful. Of course, some perfectionists may give low priority to state provision of perfectionist goods, whereas some defenders of justificatory neutrality – call these 'neutralists' – may support such provision on public grounds (e.g. subsidising museums may stimulate the economy by attracting tourists). Even so, self-identifying perfectionists and

neutralists do often disagree about the kinds of policies that ought to be implemented. That is, they do not merely disagree about the *reasons* for implementing various policies, which would render this debate rather insignificant.

In contrasting perfectionism and justificatory neutrality, I do not mean to suggest that perfectionists cannot partially endorse justificatory neutrality. Indeed, this debate tends to be about the *scope* of justificatory neutrality rather than about whether states should be justificatory neutral towards at least some tolerable doctrines. For neutralists, the state should be justificatory neutral towards *all* tolerable doctrines – call this a 'neutral state' (fig. 1).

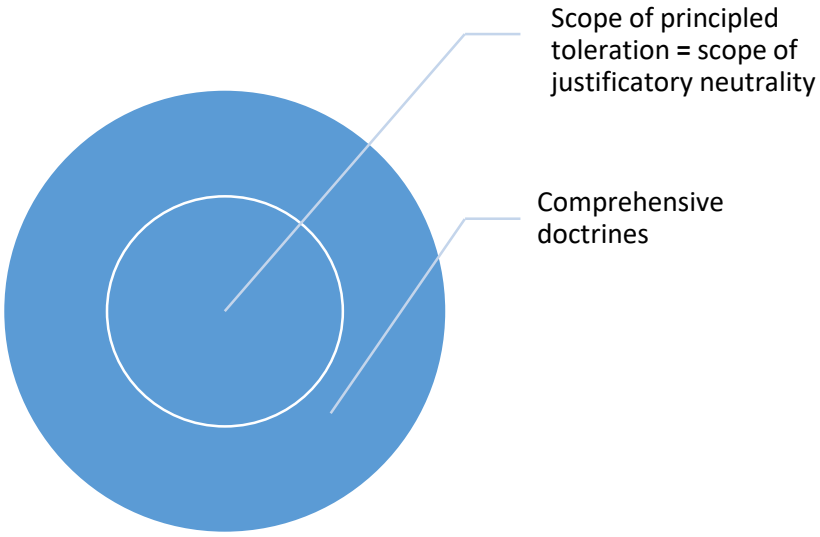


Fig 1. A neutral state

By contrast, perfectionists argue that justificatory neutrality applies at most to a narrower set of tolerable doctrines (fig. 2): those that are non-instrumentally valuable. Whilst they may believe that only one life is worth living and, consequently, that states need not be neutral at all, Wall (2010) points out that this is quite rare. Most perfectionists (if not all) believe that, as far as the good things in life are concerned, some have equal or incommensurable value (e.g. contemplating art, playing croquet, volunteering, spending time in the woods, being faithful to one's partner). Accordingly, these perfectionists are committed to justificatory neutrality amongst such goods – if one believes that certain things are not better than others, one cannot consistently maintain that policy justifications should be based on the belief that they are, at least not sincerely.

Even so, *all* perfectionists hold that there are some doctrines (or aspects thereof) to which justificatory neutrality does not apply. What does it mean for a policy P *not* to be justificatory neutral towards these? It means that P is at least partly meant to make the relevant doctrines (or parts thereof)

more/less popular *because* of their intrinsic or constitutive (dis)value. To be sure, such (dis)incentivising must respect citizens' rights, lest liberal perfectionism would be oxymoronic. Whilst censoring the views of tolerable doctrines or criminalising their practices is thus off the table – this would violate citizens' rights –, a perfectionist state may deny their inferior activities subsidies, tax-exemptions, and/or forms of symbolic recognition that are given to (more) valuable activities. For example, it may deny subsidies to Lucha Libre, soap-operas, or companies that offer dwarf-tossing, whilst giving such support to opera houses, museums, and anti-swearing movements such as the Dutch 'Bond tegen Vloeken'[3].

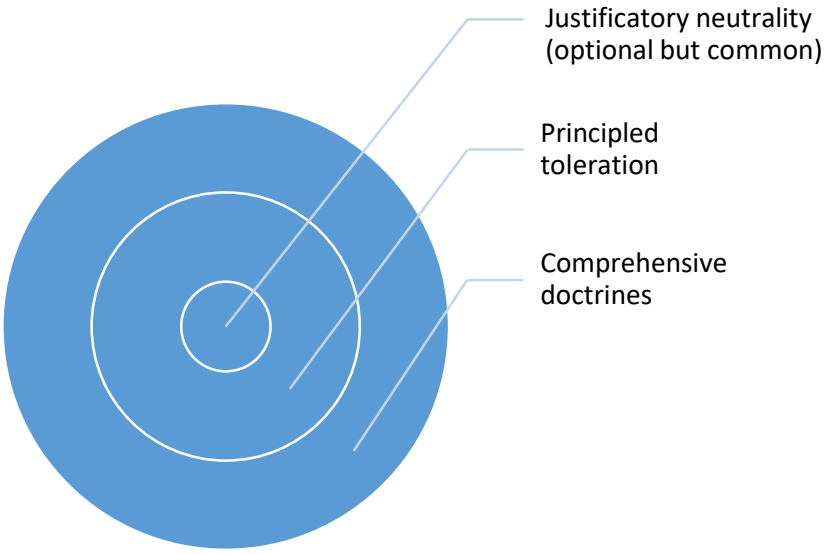


Fig 4. A perfectionist state

Consequential neutrality

Chapter 4 asks whether a different kind of neutrality is due. Even when we accept justificatory neutrality, there will be different ways of maintaining an orderly, publicly justified garden, *none* of which will serve all tolerable plants optimally (assuming the garden to be poly-cultural). Consider some policies that, despite having public or neutral justifications, unequally burden and/or benefit citizens' tolerable

[3] To be sure, even when neutralists have it their way, many political decisions will have perfectionist elements. By this, I do not just mean that state suppression of unreasonable doctrines is based on perfectionist judgements, for example that individual self-direction and social equality are important goods (though this is true). Rather, I mean that even when state officials try to make decisions on the basis of public values alone, coming to a verdict may require them to make perfectionist judgements (if they want to act for reasons, that is; they could simply use a lottery to decide). In some cases, this will be because public reason is *indeterminate*. For example, saying whether abortion is justified may be impossible unless one has a metaphysical (i.e. non-public) view on when personhood begins (cf. Bellamy, 1999, ch.2). Alternatively, public reason may be *inconclusive* when multiple ways of balancing public values are equally defensible (e.g. the public's interest in environmental programmes may match its interest in tax reductions, or these goods may simply be of incommensurable value); or when there are multiple ways of realising the same value (e.g. organising a football tournament and tennis tournament respectively may stimulate the economy equally well). (For more on the indeterminacy/inconclusiveness challenges for neutral/public justification, see Schwartzman, 2004). Despite the fact that perfectionism may not be (completely) avoidable, then, there remain relevant differences between neutralists and perfectionists in terms of *how much* perfectionism they allow.

doctrines. Helmet laws may help to avoid head injuries (and thereby keep down medical costs), but also legally prevent Sikh men from wearing turbans on motorcycles or on construction sites; military conscription may improve national security but also prevent Quakers from practising their pacifism; and the use of a particular culture's language for state services may ease communication, but also confers benefits on one cultural group that are denied to others.

Some would say that this is unfair. Indeed, they may argue that the burdens/benefits befalling citizens' tolerable doctrines should somehow be equalised. If one believes that remedying such inequalities is desirable as such, one supports a view that I call 'neutrality of consequences'.

There are two versions of neutrality of consequences/consequential neutrality. According to the first, the *impact* of policies on citizens' tolerable doctrines should be made more equal. I call this view 'neutrality of outcome' (whilst support for this view may be found in Cohen (1999, 2008), few theorists seem to accept it). According to the second version, the *absolute burdens/benefits* of policies should be equalised, as measured by a relevant currency (e.g. state funding, symbolic recognition). With Patten (2014, p. 115), I refer to this view as "neutrality of treatment" (besides being advocated by Patten (2014, ch.4), a hands-off version of this approach is defended by Balint (Forthcoming, ch.3)). To illustrate the difference, one can liken the first approach to giving a child more pocket money because his/her hobbies are more expensive than his/her siblings' hobbies, whereas the second would give each child the same amount or nothing. Similarly, a state committed to neutrality of outcome may give more subsidy to citizens whose religions are relatively expensive, whereas a state committed to neutrality of treatment would give all religions the same amount or nothing.

Two qualifications. First, defenders of both forms of consequential neutrality will usually argue that the *number* of a doctrine's adherents should be taken into account, so that doctrines that are more popular get more overall support but not more per-capita support. Second, neither group needs to (and usually will not) regard neutrality of consequences as a trump value. Instead, they are likely to see it as a value that has to be balanced against other values (as do Balint (forthcoming, ch.3) and Patten (2014, p. 106).

3. Neutrally justified perfectionism: A defence of Perfectionism á la Carte

The aim of chapter 3 is twofold. First, it defends justificatory neutrality (the neutral state). Second, it shows that justificatory neutrality is not just compatible with states playing a facilitating role in the provision of perfectionist goods and services, but that there is good public reason for them to do so.

The chapter begins by answering two objections to liberal perfectionism. The first, which has been raised by Patten (2014, pp. 129–130), is that perfectionism is unfair towards those who are unresponsive to attempts to help them flourish; these individuals pay for policies that fail to improve their lives. The

second objection, which has been made by e.g. Quong (2010, p. 102) and Waldron (1988, pp. 1145–1146), is that perfectionism is disrespectful towards (adult) citizens because it treats them as children, i.e. as beings incapable of looking after their own good. As I argue, both anti-perfectionist arguments have limited scope only, whilst the first also begs the question.

Next, I defend Nussbaum's (2011) argument for justificatory neutrality against some new challenges. According to Nussbaum, for states to judge citizens' doctrines as inferior or based on falsehoods may cause (warranted) feelings of civic inequality. After explaining why this is a compelling argument against perfectionism, I answer the worry that accepting it would disallow policies that are important for securing justice, such as implementing mandatory vaccination schemes and teaching evolutionary biology in public schools. I also rebut Steve Wall's (2014) recent objection that, unlike perfectionism, justificatory neutrality fails to respect citizens qua practical reasoners.

The final part then shows that justificatory neutrality does not preclude the state from playing a facilitating role in the provision of perfectionist goods and services (as is often assumed). In fact, I show that there is good public reason for it to do so. What does this role consist of? States should give citizens the opportunity to *voluntarily* donate money to independent committees of perfectionist experts. These committees would help citizens to flourish by giving perfectionist advice and making perfectionist goods and services available at discounted rates to those who opt into these schemes. Besides collecting voluntary donations for perfectionist committees, states would use part of the donations to monitor the committees and ensure that their goods and services are adequately spread across the country. This should improve citizens' access to perfectionist goods and services (as compared to a situation to where their provision is entirely left to the market).

As this approach allows individual citizens to choose between perfectionism and non-perfectionism, as well as between different kinds of perfectionism (different perfectionist schemes will be proposed, namely aesthetic, moral, and autonomy-based ones), I call it 'Perfectionism á la Carte' or simply 'PALC'.

This chapter is not just of interest to theorists working on public justification and perfectionism, but also to neo-liberal minded policy-makers seeking to cut subsidies for (high) culture, as well as to opponents of moral paternalism by the state (these groups may find this chapter's findings quite congenial). Rather than declaring war on the 'finer things in life' and human civilisation more generally, however, PALC defends new ways for the state to help provide perfectionist goods and services, besides proposing novel ways of funding these. Accordingly, those interested in saving perfectionist goods and services from neoliberalism's claws should also take note.

4. Costless Counterfactualism: A theory of minority rights

Having defended justificatory neutrality in the previous chapter, this chapter considers whether consequential neutrality can be vindicated. Specifically, it asks whether states should redress the unequal burdens and/or benefits that their policies may impose on tolerable doctrines. By 'redress', I mean that citizens whose doctrines are (unequally) burdened/denied benefits are given exemptions, subsidies or symbolic recognition in order to off-set these (relative) disadvantages. As it is usually minorities whose doctrines receive lesser benefits or suffer more burdens[4], I call any theory that offers such redress a 'theory of minority rights'.

The chapter begins by rejecting two theories of minority rights. These are the two forms of consequential neutrality mentioned previously, namely neutrality of outcome (which I noted finds its most sympathetic theorist in G.A. Cohen); and neutrality of treatment (which is defended by Balint and Patten). Both approaches fail, I argue, as they either show insufficient concern for citizens' autonomy or are likely to be unstable.

In their stead, I propose a different theory of minority rights. According to this approach, exemptions/compensation for policies that burden/deny aid to a citizen's doctrine are due if and only if this individual would be (partially) accommodated (i.e. better served) by equally publicly justified policies that should not be implemented because they serve citizens' doctrines worse overall, or because they were not selected through a lottery. (More on these conditions in due course.) As this approach uses a counterfactual baseline for determining whether exemptions/compensation are due, one that disallows public money to be spent on citizens' doctrines *unless* these would be accommodated under equally publicly justified policies, I call it 'Costless Counterfactualism'.

This novel theory of minority rights should interest theorists working on multiculturalism and state neutrality/public justification. Being easy to apply – Costless Counterfactualism offers a handy four-step model for deciding whether minority rights are due –, it should also be of interest to policy-makers. Finally, ordinary citizens may use Costless Counterfactualism's steps for determining whether they are treated fairly by their representatives; with suspicions about unfair treatment of cultural/religious groups being rife in many liberal democracies, this seems more important than ever.

0.3 Scope limits

Notice the following scope limits.

First, I focus on *consolidated* liberal democracies as opposed to liberal-democratic regimes that face existential threats due to internal divides (e.g. civil strife) and/or outside interference (e.g. foreign

[4] Though there may be exceptions to this in countries with economically and politically powerful minorities.

invasions). Throughout this dissertation, a few suggestions are made as to how fragile liberal democracies should act (or not act), but a more extensive treatment of this issue is beyond this dissertation's purview.

Second, the theory of liberal neutrality and toleration defended here is entirely *forward-looking*. Possible injustices that groups have suffered at the state's hands (or those of the wider society) are not taken into account. Nor do I consider the role of historical agreements between states and groups of private individuals, such as the educational exemptions given by the Canadian government to the Hutterites for populating the western frontier (cf. Kymlicka, 1995, pp.116-20). When injustice has occurred or agreements have been made, greater toleration and/or accommodation of the relevant groups' views/practices may be due. Determining whether this is so, however, would require me to engage with the literature on historical injustice and agreements, which would overly broaden this dissertation's scope.

Lastly, I focus solely on the comprehensive doctrines of *citizens*. Whether the doctrines of permanent non-citizen residents, temporary migrant workers, refugees, and irregular migrants should be treated differently is left open. (Some might say that because some of these individuals migrated voluntarily and/or because they impose certain burdens on the host society, they have a weaker claim to toleration/accommodation.) Taking a stance on this would require me to engage with (among other things) the cosmopolitanism-nationalism debate, which raises more questions than I can answer here. (Elsewhere (De Vries, 2016), I have explored some of the implications of my theory of neutrality and toleration for temporary migrant workers.)

Part I: Toleration

1 Illiberalism in the public sphere: The Fair Value account of toleration

1.1 Introduction

Which comprehensive doctrines merit toleration by the state and which do not? This is the question addressed in this chapter and the next. Whereas the next chapter focuses on comprehensive doctrines that support illiberal practices in the private sphere, this chapter focuses on doctrines supporting illiberal practices in the *public sphere*. Organisations and institutions belonging to this sphere include (but are not limited to): political parties, the for-profit sector, state organisations (e.g. civil administration, courts, the army, police force), and publicly funded schools and universities. Doctrines that oppose citizens' freedom and equality within (some of) these organisations/institutions do not just encompass Neo-Nazi and Jihadist doctrines. They may also be found in the views of more moderate groups, such as the Dutch Orthodox-Calvinist Staatkundig Gereformeerde Partij (SGP) party, which until recently refused women the right to stand for political office; those of the British National Party, which was forced to admit non-Caucasians to the party; certain (non-violent) anarchists, libertarians and technocrats; and groups that seek to exclude homosexuals from the military.

The chapter begins by explaining why liberal states should not tolerate comprehensive doctrines that incite law-breaking (section 1.2). Next, I reject five approaches for dealing with doctrines that are law-abiding yet still unreasonable in that they oppose basic rights or seek to deny non-basic rights on discriminatory grounds. (Note that this conception of unreasonableness is narrower than Rawls'; I say more about this in due course.) The first three approaches are found to be too tolerant (section 1.3). They either insufficiently protect liberal democracies from existential threats, or fail to secure what Rawls (2005, pp. 324–31) calls the "fair value" of citizens' rights, i.e. their ability to make effective use of their rights. The remaining two approaches are rejected for being too intolerant. Their problem is that they either sanction interference where this is likely to be ineffective (section 1.4) or do so when the money spent on interfering could be better invested in addressing the causes and perlocutionary effects of unreasonable views (section 1.5). Instead, I defend an account of toleration that I call the 'Fair-Value-of-Rights' approach or simply 'Fair Value' (section 1.6). As I argue, this approach best secures the substantive enjoyment of rights by ensuring that citizens have the agency to exercise various rights, as well as adequate access to their rights.

Let me remind the reader of the three general scope restrictions (section 0.3). All chapters in this dissertation (i) focus on *consolidated liberal democracies*, (ii) do not consider how the doctrines of *non-citizens* should be dealt with, or (iii) whether *historical injustice* and *historical agreements* require

modifications to the principles defended. With respect to this chapter and the next, notice also that I do not take sides in the debate about whether legislators or judges should have the ultimate verdict over matters of toleration. Whilst passing repressive legislation may often be up to parliaments, some might want courts to have the competence to overrule these laws and/or mandate revisions. They may worry about legislators' possible electoral incentives to ban rival parties (Ekeli, 2012, p. 178; Scanlon, 2003, p. 156); crack down on the creeds of unpopular minorities (Müller, 2015, p. 27); or leave repressive measures in place for too long (Kirshner, 2014, p. 31). They may also worry about electoral incentives for abstaining from interfering when interference is due. For example, there may be cases where interfering is likely to prove unpopular with the electorate, or where some intolerable party siphons off votes from rival parties (Müller, 2015, p. 29). By contrast, others might want legislatures to have the final say over matters of toleration. They may argue that judges are not immune from political expediency either (cf. Bellamy, 2013; Waldron, 1999), and/or that legislatures have (greater) democratic legitimacy.

Rather than getting into these intricate issues, these two chapters focus on what a *substantively just* account of toleration looks like, one that may guide both legislators and judges (among others).

1.2 Inciting law-breaking

The most obvious category that should not be tolerated are doctrines that incite law-breaking. Even if it is appropriate for fragile or non-consolidated liberal democracies to condone certain forms of law-breaking when necessary for their survival (I leave this for the reader to decide), this does not apply to consolidated ones. This is especially so when violence is incited; there would be little reason for entering into the social contract if one remained as unsafe as in a state of nature, which is why protection from violence is one of the state's core duties. (If one is not a contractarian, there are undoubtedly other (e.g. rule-utilitarian) grounds for interfering with violent doctrines.) Yet, I want to suggest, even doctrines that support non-violent law-breaking should be interfered with. Thus, if animal abolitionists urge people to chain themselves to the gates of mink farms, state interference (e.g. closing their websites, removing banners) is appropriate even when the abolitionists oppose violence. (This is not to suggest that doctrines that incite law-breaking should all receive the same penalties. Clearly, incitement of violent law-breaking should be punished more severely than non-violent law-breaking.[5] Furthermore, there is a lot to be said for punishing acts of civil disobedience less harshly than purely self-interested law-breaking, as society may have an interest in policies being morally evaluated by citizens. [6])

[5] Thanks to Rutger Birnie for pressing me on this point.
[6] To add to this, it seems plausible that defences of civil disobedience in general merit toleration as opposed to calls for *specific* illegal actions.

The reason why animal activists who have chained themselves to the gates of mink-farms may be forcefully removed (and messages calling on people to do so censored) is that such actions impose costs on society that are not democratically justified. Whilst the need for law and order renders it justified to impose certain costs on citizens (at least within legitimate regimes; more on this below), these costs are justified in part because citizens have a say over which laws are implemented, and are able to challenge the laws that are implemented– in Pettit's (2012) words, they are justified because citizens have "authorial" and "editorial" powers. Now the problem with (the incitment of) law-breaking is that it fails to respect these powers, or at least the authorial ones. Protecting people's political autonomy therefore justifies state interference with (the incitement) of law-breaking – indeed, it requires it.

As I already briefly mentioned, state interference is only justified when the state in question is legitimate (one could imagine authoritarian regimes where certain forms of law-breaking are morally permissible, as the regimes in question fail to adequately protect citizens' interests). Though entire libraries could be written on this topic, let me explain briefly why I think liberal-democratic states are legitimate. (Doing so is important not just to avoid preaching solely to members of the liberal-democratic church, but also because the reasons for protecting liberal democracy shape the principles of toleration defended later.)

In my view, the main reason for protecting liberal democracies is that they best realise the values of personal autonomy and social equality. (These need not be their only boons; perhaps most importantly, liberal democracies have been attributed a better record in avoiding gross and systematic violations of human rights (cf. Quong, 2010, p. 300).) I define a person as autonomous if and only if they can independently endorse their life were they to reflect on it – this definition draws heavily on that of Colburn (2010, p. 19). 'Independently' means that one is free from brainwashing, manipulation, and coercion. Being able to 'endorse one's life' means that one can recognise as important the goals and values that guide one's life, or at least enough of them (cf. Colburn, 2010, p. 25)[7].

There are different views as to why personal autonomy matters. Autonomy-based liberal perfectionists see it as an intrinsic good – John Stuart-Mill (2008 [1859]) may be a proponent of this view, though some will say his utilitarian commitments suggest otherwise – or as prerequisite of the good life – for example, Raz (1986) and Kymlicka (1995) have argued that people's lives lack value unless they can independently endorse their lives. In addition, various harms are associated with autonomy deficits, such as low self-esteem and diminished well-being (Wichmann, 2011). Without trying to assess these accounts

[7] What matters in this conception is *not* that one regularly reflects on one's life but that one could endorse one's life *if* one reflected on it – which is compatible with living (largely) on auto-pilot. This conception is premised on the view that actual reflection on one's projects and goals is not a necessary part of the human good.

here – this is a task well beyond this dissertation's purview –, I assume that liberals rightly treat personal autonomy as a core value.

Another important value that is well served in liberal democracies is social equality. By social equality, I mean the absence of (excessive) hierarchies of influence and power amongst citizens, especially intergenerational ones. Such hierarchies are addressed in different ways by liberal-democratic regimes. Think of the allotment of equal bundles of rights to citizens, the imposition of caps on party financing, the implementation of redistributive policies, and the provision of special support for children from poor backgrounds.

Why care about social equality? Whether it matters intrinsically is dubious. To say that it does invites the levelling down objection, i.e. the objection that it is good to make some people worse off – or simply not better off – just to bring about greater equality. Moreover, often when people sense that equality is intrinsically important, rival moral theories such as sufficientarianism and prioritarianism account for these intuitions just as well, rendering it unclear whether equality is being valued.

Though its status as an intrinsic value is thus unclear, various goods are associated with social equality. Besides preventing the risk of domination by one's fellow citizens (Kolodny 2014a, 2014b), social equality is found to be strongly correlated with increased levels of trust and well-being and lower levels of anxiety and illness across different societies (Pickett and Wilkinson 2011).

1.3 Unreasonable doctrines

I have argued that doctrines that incite law-breaking do not merit toleration because, if generalised, law-breaking undermines the liberal-democratic order. (Whilst this may be thought to allow for minor forms of (non-violent) law-breaking, I suggested that there is no reason for allowing only some citizens to break the law, and, indeed, good reason against it.)

The next question to be asked is: how should states deal with doctrines that are law-abiding but still 'unreasonable' in that they (i) oppose basic rights or (ii) seek to deny non-basic rights on discriminatory grounds (e.g. on the basis of citizens' race, religion, or sexual orientation)? (Note that this definition of unreasonableness is more encompassing than Rawls', which also treats rejection of the "duty of civility" as sufficient for being unreasonable, that is, the duty of legislators and judges to justify their decisions by reference to public reasons when fundamental political matters are at stake (Rawls, 2005, p. 61); more on this duty in chapter 3). Though my argument does not require me to settle on exhaustive lists of basic and non-basic rights (or specific interpretations of such rights), I assume that basic rights include the civil, political and social rights that citizens standardly have in a liberal democracy, such as freedom of conscience, speech, and association, the right to vote and run for political office, rights to education and to choose one's occupation, adequate nutrition, shelter, and so on. Examples of non-basic rights are the right

to bear arms, to have paid sex, or to smoke marihuana. What distinguishes such rights is that they are not necessary for a liberal democracy to function, let alone for people to live minimally decent lives. However, when a doctrine seeks to deny non-basic rights to citizens on discriminatory grounds – think of a doctrine that seeks to deny Muslims the right to bear arms, or to deny Mexican-Americans the right to smoke marijuana –, it is still violating core liberal-democratic principles in that it tries to establish a society with two classes of citizens. (By contrast, if a doctrine seeks to abolish the right to bear arms or smoke marijuana for all citizens, it is not unreasonable.)

As was mentioned, I focus in this chapter on law-abiding yet unreasonable doctrines that challenge people's full and equal *civic or public* status. Examples of such doctrines may be found in the racist ideology of the British National Party (BNP), which was forced by The Equality and Human Rights commission in 2009 to change its constitution when it won two seats in the European parliament. Until then, the BNP's constitution stated that membership was "strictly defined within the terms of, and our members also self-define themselves within, the legal ambit of a defined 'racial group' – this being 'Indigenous Caucasian' and defined 'ethnic groups' emanating from that Race"[8]. Another example may be found in the creeds of the Dutch Orthodox Calvinist Party (the Staatkundig Gereformeerde Partij or SGP). Until forced by the European Court of Human Rights to allow women on its electoral list, this party disallowed women to run for political office on grounds that the "man is the head of the woman" and that the "participation of women in both representative and administrative political organs" is "incompatible with women's calling" (*SGP v. The Netherlands*, 2012, par.9). Yet another example may be found in the views of certain anarchist groups, not all of which condone violence or lawlessness[9].

Besides opposing (some) citizens' political rights, a comprehensive doctrine may challenge their civic freedom and equality in other ways. Perhaps most importantly, they may oppose citizens' (equal) rights in employment and/or education. Thus, proponents of some conservative doctrines want to exclude homosexuals from the military in order to deny "taxpayer-funded benefits to homosexual partners of service members"[10]. Regarding education, many faith-based schools and universities in the US have a well-known history of refusing black students (see e.g. *Bob Jones Universty v. United States*, 1983, *Brown v. Dade Christian School, Inc.*, 1977). And many far-right nativist ideologies seek to exclude Muslims from high-ranked positions on grounds of their presumed disloyalty.

What is important here is that whilst the doctrines inspiring these views and practices are unreasonable, they *need not* incite lawless behaviour. As many anarchists, members of the BNP SGP, far-

[8] British National Party Constitution, eighth edition, 2004
[9] http://peacefulanarchism.com/
[10] http://www.frc.org/onepagers/keep-the-law-against-open-homosexuality-in-the-military

right nativists, etc. are law-abiding individuals, there is no reason for believing an 'unreasonable yet law-abiding doctrine' to be oxymoronic.

What follows is a discussion of five approaches for dealing with such doctrines.

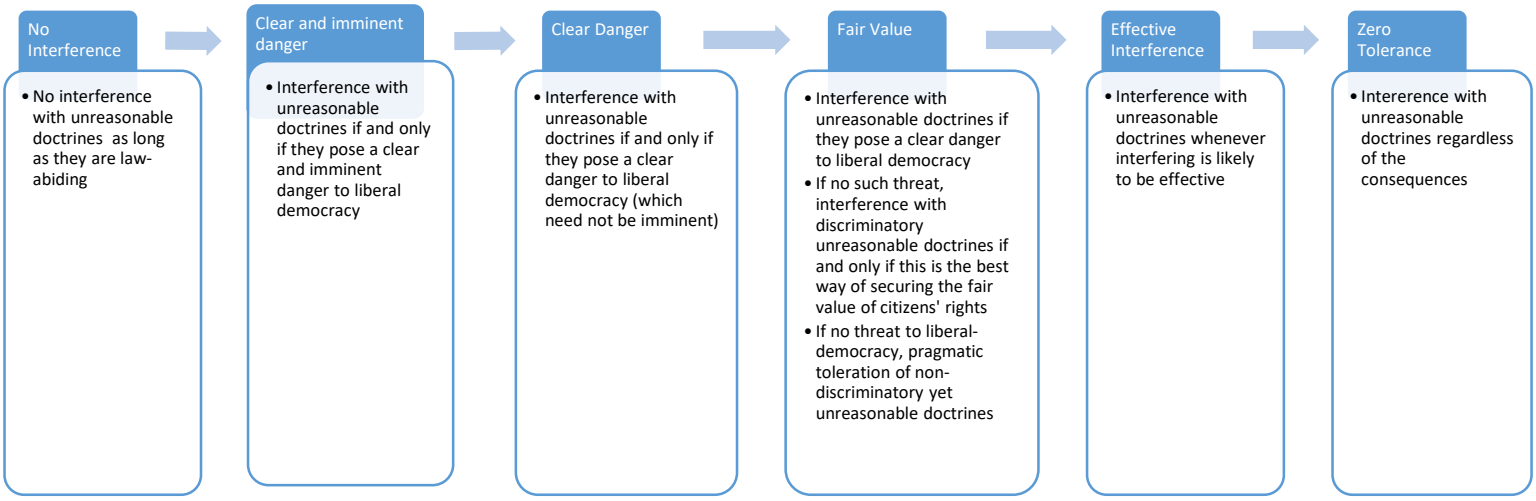


Fig.3 Approaches for dealing with law-abiding yet unreasonable doctrines, ranging from least to most restrictive.

1.3.1 No Interference

According to 'No Interference', states should not interfere with unreasonable yet law-abiding doctrines, *even* if this would help to protect liberal democracies from existential threats. (I assume here that no laws exist against articulating unreasonable views, for it is the desirability of such laws that is at issue). On this view, censoring unreasonable views that do not incite illegal behaviour is always impermissible – think of proscribing marches, shutting down websites, prosecuting individuals. Writes Chandran Kukathas:

> "The liberal state should not favour any particular doctrines or world views", and it "should show no less sympathy to dissenters who happen not to share the beliefs and practices of the majority or the powerful […] Rather, the liberal state must tolerate in its midst those who work towards its destruction, and "it must resist the temptation to turn its fiercest critics into compliant believers in the liberal creed" (Kukathas, 2001, p. 321)

This approach finds perhaps its most influential expression in the US Supreme Court decision in *Brandenburg v. Ohio* (1969). In this case, the court ruled that

> "the constitutional guarantees of free speech and press do not permit a State to forbid or to proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action".

What to make of No Interference? Some ways of protecting liberal democracy are clearly beyond the liberal pale, as they show too little respect for citizens' freedom. GDR-style snitching, American-style snooping, and stripping people of their citizenship/deporting them all fall into this category. If such Draconian measures are necessary to protect liberal democracy, then Kelsen's remark that, as a liberal-democrat, one should "remain faithful to one's flag, even when the ship is sinking" seems to apply (Kelsen & Schmitt, 2015 [1932], p. 20).

However, a range of less militant measures may be deployed. Even if one considers it impermissible to deny unreasonable citizens the freedom to communicate, for instance, states could still impose certain restrictions on the expression of unreasonable views in public. These may include denying members of unreasonable groups air time on television/radio or proscribing demonstrations that would attract large-scale media attention. (Of course, for such restrictions to be justified, some might say that they should be both effective and the least restrictive means. I consider these issues later; my point here is merely that such measures should not be dismissed a priori.) Restricting access to mass media would still allow unreasonable individuals to communicate their ideas, but prevent them from reaching an audience of thousands if not millions. Another relatively soft measure would be to enact political barriers that leave citizens' freedom to associate intact. For example, parties that oppose the Israeli state's democratic character are prohibited from competing in elections for the Knesset, whilst being allowing to exist (Tyulkina, 2015, p. 119).

In what follows, I argue that at least when the liberal-democratic order is imperilled, i.e. when citizens' basic rights are at risk, such measures are justified if likely to be the most effective. (Later, I argue that interference is due in a wider range of cases; to reject No Interference, however, this stronger claim need not be accepted). We already saw that the boons of saving liberal democracies are substantial – think of the protection of personal autonomy and social equality offered by such regimes, and the lower risk of gross and systematic human rights abuses (section 1.2). Whilst these benefits are an important reason for rejecting No Interference, I have to show that countervailing reasons are not tipping the scales in the other direction. To do so, I shall consider four possible counterarguments.

1.3.1.1 Objections and some rejoinders

1.3.1.1.1 Freedom of speech

First, it might be said that even relatively soft forms of interference (e.g. proscribing demonstrations, denying television/radio airtime, allowing parties to exist but not to compete in elections) violate citizens' freedom of speech. According to some free-speech advocates, whilst inciting violence or other rights violations should be illegal, further restrictions unduly undermine citizens' autonomy. (This view is especially popular in the US.)

What to make of this? Though free speech is an important right, I believe that its value may be outweighed by the (joint) value of other rights that may be threatened under No Interference, such as freedom of religion and conscience, rights to education, shelter, nutrition, bodily integrity, and so on. Were the liberal-democratic order replaced by an unreasonable regime, such as a fascist or theocratic one, at least some groups' access to (some of) these rights would be curtailed. (In response, it might be said that freedom of religion, conscience, and the right to education require not just free speech, but a freedom of speech that is *as extensive* as defenders of No Interference want. Even if this is so – which I doubt –, note that this would still leave many rights with weaker connections to free speech insufficiently protected, such as the right to bodily integrity.)

Indeed, I suspect that free speech is *itself* better served when states impose (modest) restrictions on the expression of unreasonable doctrines when this is necessary for protecting liberal democracy, even when these doctrines are peaceable and law-abiding. In all unreasonable regimes I can think of, at least some groups' freedom of speech would be significantly worse off. Thus, if a far-right movement seized power, Jews and Muslims may become unable to speak their minds publicly (amongst other things). The same applies when a libertarian regime is established under which the poor would starve to death; consumed by their daily struggle for survival, these individuals would have little time and resources for making their views known. Nor does free speech tend to flourish in theocracies (e.g. Iran) or dictatorial regimes (e.g. North Korea, Zimbabwe). (Perhaps certain forms of anarchism could in principle be equally good, if not better, guardians of free speech than liberal democracy; by eradicating power hierarchies, more people may be able to express their views in anarchist societies. However, the chances that liberal-democratic regimes will ever be replaced by anarchist societies are so minute that this possibility need not detain us.)

Some might reply that were liberal democracies to transform into unreasonable regimes, this is just too bad. On this view, freedom of speech does not allow states to interfere with unreasonable but law-abiding doctrines, no matter what the consequences. (One can liken this prohibition to prohibitions on killing; we are not allowed to kill innocent people just to prevent others from killing more people. Indeed,

even when you know that you are a going to kill five people later unless you kill one person now, killing that one person in order to quench your bloodthirst is not allowed.)

This reply begs the question. Whether freedom of speech disallows such interference (or should do so) is what needs to be shown here. Since there is good reason for restricting free speech when it is necessary for saving liberal democracy (see my argument above), the free speech-argument does not seem able to vindicate No Interference.

1.3.1.1.2 Democratic legitimacy

A related argument says that No Interference is necessary for maintaining the state's democratic legitimacy. According to Dworkin (among others), state policies are only legitimate when all citizens are able to have a *say* about them, no matter how unreasonable their political views (R. Dworkin, 2009, p.vii).

What to make of this argument? If suppressing unreasonable doctrines undermines the state's democratic credentials – I leave this for the reader to decide –, so does tolerating such doctrines when this allows them to gain control of politico-legal institutions. All unreasonable doctrines with some chance of being implemented in the future (which excludes anarchist doctrines; see my earlier comment) seem to offer *worse* opportunities for political participation than liberal democracies. Thus, far-right doctrines (if implemented) are likely to undermine the political rights of Jews and/or Muslims; technocratic or epistocratic doctrines would shift political power to unelected groups of experts, or at least prevent non-experts from competing for certain political offices; libertarian doctrines would allow wealthy party donors to dominate elections; and so on. Since the absence of meaningful opportunities for political participation diminishes the state's democratic legitimacy, merely pointing to the (putative) loss of legitimacy when states censor unreasonable doctrines does not allow one to oppose censorship. Instead, defenders of No Interference must show that the loss of democratic legitimacy is *greater* when unreasonable speech is censored.

Corey Brettschneider has suggested one reason for thinking it is:

> "Any attempt to discriminate based on the content of a particular viewpoint would threaten a regime's democratic credentials, even if those viewpoints were themselves deeply inegalitarian. Coercively limiting or banning a non-liberal viewpoint would prevent citizens from *actively affirming* the core values of democracy", which is problematic as "we must have the option to consider and reject egalitarian values if we are to be truly free to affirm them" (Brettschneider, 2012, p. 76; my italics)

According to this view, exposure to unreasonable doctrines is necessary for the "active affirmation" of liberal-democratic values, such as freedom, equality, reciprocity, and fairness. The idea is that *without*

such exposure, citizens may be unable to independently assess, and, as a result, independently endorse these values. Whilst some maintain that the legitimacy of liberal democracies does not depend on citizens' active affirmation/endorsement of liberal-democratic values, but rather on these regimes being sufficiently just (Clayton, 2006, ch.5), let us grant Brettschneider this premise. In that case, we are faced with two requirements of democratic legitimacy: (i) citizens should be able to actively affirm liberal-democratic values, and (ii) they should have meaningful opportunities for political participation.

Later, I consider in detail when interference with unreasonable doctrines is due (section 1.6.1). For now, I merely want to suggest that it is *sometimes* due in order to meet both conjuncts. To realise (ii), I have already suggested that interfering with unreasonable doctrines is necessary when (some) citizens stand to lose meaningful opportunities for political participation. What remains to be shown is how (i) can be realised despite such censorship.

I think this can be achieved as follows. States could require schools to teach children about unreasonable doctrines, as well as require public libraries to hold copies of their (canonical) works. Being taught about these doctrines in school and having access to their literature would allow citizens to think about why unreasonable doctrines reject liberal democracy, or important aspects thereof. Such reflection does not require that they (also) witness the marches of far-right movements or have access to television/radio programmes defending unreasonable forms of libertarianism or technocracy/epistocracy. Nor does it require that parties organised around such doctrines be allowed to participate in elections or, indeed, to exist at all (note, however, that rejecting No Interference does not require one to support such far-reaching measures; the softer ones I have mentioned suffice).

In short, states can censor unreasonable but law-abiding doctrines in certain ways *whilst* providing citizens with sufficient opportunity for affirming liberal-democratic values. Since such interference is sometimes necessary for protecting liberal democracy (more on this below), the argument from democratic legitimacy fails to vindicate No Interference. Of course, some will say that it is simply a basic fact that democracy categorically proscribes interference with unreasonable but law-abiding doctrines (as we saw, the same may be said about freedom of speech). However, in the absence of reasons for thinking it is, liberal-democracies are well-advised to impose (modest) forms of censorship if necessary to protect their politico-legal systems from existential threats. Lest the lives of many citizens may take a turn for the worse (section 1.2).

1.3.1.1.3 Least restrictive means

At this point, a critic may argue – and this brings us to the third objection – that balancing the pros of interfering against its cons is unnecessary. Interfering is always impermissible, they may say, because it is not the least restrictive means. Instead of censoring unreasonable but law-abiding doctrines, states could

try to convince their proponents of their falsehoods, which is more respectful of individual freedom. Brettschneider has made a proposal along these lines. In his view, states should defend liberal-democratic values, whereby they "should not merely recite the values that underlie rights" but "argue for them" so as to "change the minds of the opponents of liberal democracy, and, more broadly, to persuade the public of the merits of democratic values" (Brettschneider, 2012, p. 6). Call this the 'persuasion only' approach.

Why would the persuasion only-approach be more efficient? Because, some will say, having discussions with the unreasonable is more likely to change their minds than censoring them. In addition, they may say that anyone witnessing these discussions may become aware of the shallowness of unreasonable doctrines, which may reduce the number of unreasonable citizens and/or the intensity of their unreasonableness. An example of this may be found in the botched performance of former BNP leader Nick Griffin on the BBC's Question Time.[11] According to some commentators, Griffin's inability to handle criticism of the BNP's racist views contributed to the subsequent demise of the party. Though this may be difficult to ascertain, it is conceivable that some who watched this event had their faith in the party's doctrine shaken.[12]

What to make of the persuasion-only approach? Whilst this approach is certainly less restrictive, I suspect it is not always the best way of curbing the influence of unreasonable but law-abiding doctrines. Interfering with such doctrines (perhaps in addition to trying to persuade their proponents of the merits of liberal democracy) may sometimes work better. In some cases, the deterrent effects of interference (e.g. fear of legal penalties and/or of being brandished an extremist) may successfully discourage people from adopting unreasonable doctrines, or insofar as they already subscribe to these, from adopting ones that are even more unreasonable. (Some empirical evidence for this may be found in the successful suppression of various extremist parties in The Netherlands, Germany, and Belgium over the past decades; see e.g. Bale (2007); Donselaar (1995).) This need not only be due to the effectiveness of deterrence-strategies; it is also true that people are not frequently talked out of their political views. In fact, trying to do so may cause them to harden their line in defiance.

As for the idea that public discussions may expose the shallowness of unreasonable doctrines, this also seems sanguine. With their popularity often due to their ability to orate like Alcibiades rather than reason like Socrates, many influential unreasonable individuals (e.g. Wilders, Farage) seem relatively immune to the force of argument.[13] Indeed, giving them a public platform may backfire, causing unreasonable doctrines to become more widely supported.

[11] https://www.youtube.com/watch?v=4iKfrY9l2kY
[12] This example is borrowed from Matteo Bonotti.
[13] Note that liberals who accept justificatory neutrality (as Brettschneider seems to do) are committed to the view that the state should not appeal to metaphysical, religious or otherwise comprehensive views when trying to persuade people of the wrongness of their unreasonable beliefs. Instead, it should only appeal to values on which there is an overlapping consensus (these include general values, such as freedom, equality, reciprocity, fairness, stability, as well as more specific ones, such as public health, a

Another problem for the persuasion only-approach concerns the state's ability to reach its intended audiences. Many unreasonable citizens may not want to have discussions with state officials. Though states could confine their attempts to persuade by promoting liberal-democratic values in general (non-targeted) ways, this may not always work either. Possible ways discussed by Brettschneider (2012, pp. 94–5) – organising public speeches, dedicating monuments or holidays to champions of liberal democracy – may fail to attract the attention of many (unreasonable) citizens. Not everyone lives near anti-segregation monuments, cares about why they get days off work, or listens to state speeches (especially in an age of personalised media). Whilst teachers could be required to defend liberal democracy during compulsory civic education classes, this may not be enough. After all, many citizens are likely to forget these lessons, or at least a great deal of them ('who above the age of 25 can name five topics covered during their civic education?'). In short, effectively fighting unreasonable doctrines with words seems to require that citizens be reminded of these words throughout their lives.

As Lopez- Guerra (2012) discusses, this problem may be solved by coercively exposing adult citizens to arguments for liberal democracy. He gives the example (without explicitly endorsing it) of requiring them to go to "deliberative meetings where they would have to listen to, while remaining free to reject, the state's position" on these matters. A more realistic proposal, I suspect, would be to require citizens to watch videos about the normative foundations of liberal democracies when they renew their passport or ID-card, which would be every 5 years or so.

Measures like these would regularly expose citizens to the 'why' of liberal democracy and, correspondingly, the 'why not' of unreasonable doctrines. Yet many would feel hesitant about force-feeding arguments for liberal democracy to adults. And, I suspect, rightly so – such measures seem both intrusive and denigrating.

To be sure, I am not denying the importance of trying to persuade the unreasonable. What I am suggesting here is merely that persuasion is not a panacea, and that it remains necessary for states to interfere with unreasonable doctrines, at least sometimes. (I say more about when this is the case in section 1.6.)

1.3.1.1.4 Abuse of state power

Lastly, No Interference may be defended on pragmatic grounds. Some might say that states should not interfere with unreasonable yet law-abiding doctrines because of the risk that they will *abuse* their power. Previously, I cited reasons for not wanting legislators to decide about matters of toleration (section 1.1).

prosperous economy, national security). This restriction may hinder attempts to persuade the unreasonable by narrowing the set of permissible arguments (though perhaps this problem can be avoided when ordinary citizens are delegated by states to engage in comprehensive reasoning (cf. Clayton & Stevens, 2014); such delegation is not disallowed by liberal neutralism in any clear sense). In any case, I do not want to put too much weight on this problem, as it only constitutes a problem for liberal neutralists.

According to the current objection, *no* state official (or group of officials) should be able to have law-abiding doctrines suppressed, no matter how unreasonable. The danger that this competence will be overused is simply too big (as was mentioned, state officials may have ulterior motives for suppressing the views of their political rivals, unpopular minorities, and so on).

What to make of this objection? It is unclear to me why the risk of over-inclusion could not be satisfactorily addressed by sanctioning state officials who are found to have acted carelessly or opportunistically by independent committees, whose task would be to evaluate whether decisions to interfere (or not to do so) were justified in light of the available information. (cf. Kirshner, 2014, p. 138). Of course, since humans make errors, the risk of over-inclusion may not be completely solvable. I do not think there is a knock-down argument against those who say that the risk of over-inclusion – no matter how small – disallows any form of interference with unreasonable but law-abiding doctrines – no matter how soft. Rather than trying to offer such an argument, then, I proceed here from the (I believe not implausible) assumption that this risk is sufficiently low in some states, or could be reduced to acceptable levels.

If this optimism is warranted, then given the importance of protecting liberal democracy from unreasonable but law-abiding doctrines, (relatively soft) interference with such doctrines is sometimes justified and No Interference should be rejected.

1.3.2 Clear and Imminent Danger

Consider a more restrictive approach. According to what Ekeli calls the 'Clear and imminent danger approach', "states should suppress illiberal doctrines if and only if these pose a clear and imminent danger to […] the stability of liberal democratic institutions", where such a danger exists when (some) citizens' basic rights are under threat (Ekeli, 2012, p. 173). This approach has been advocated by John Rawls, who argued – or rather asserted – that

> "for free political speech to be restricted, a constitutional crisis must exist requiring the more or less temporary suspension of democratic political institutions", whereby such restrictions can only be justified "for the sake of preserving these institutions and other liberties" (Rawls, 2005, p. 355)

Central to Clear and Imminent Danger is the idea that states may not take precautionary actions to protect liberal democracy from unreasonable doctrines (Sunstein, 2005, pp. 219–20). Instead, interference is only permitted if there is good evidence that such doctrines pose an acute and existential threat to the liberal-democratic order. (With Kelsen, one might say that only when the liberal-democratic ship is sinking may states try to salvage it.)

What does such evidence consist of? Though often unspecified, Alexander Kirshner (2014) has made some helpful suggestions. He has argued that there must be an unreasonable group with the "capacity and intent" to overthrow the liberal-democratic order, where such a capacity either requires a "dominant position within a country's main political institutions, such as a national legislature" or a position that would allow for such an overthrow (Kirshner, 2014, p. 130). Examples of the former may be found in the (quasi)authoritarian parties that currently rule Hungary (Orban' Fidesz party), Turkey (Erdogan's Justice and Development Party), and Russia (Putin's United Russia). An example of a group that clearly imperilled liberal democracy before gaining control of political institutions may be found in the fascist NSDAP who managed to seize power despite having won only 2.6% of the national vote in the 1928 German elections (Pappas, 2015, p. 795). Evidence for the intention to overthrow the liberal-democratic order may be found in such things as "recent statements or other compelling proofs demonstrating that leading figures within a political organisation, collectively, had a strong preference for non-democracy and a plan for achieving it"; a history of "lack of respect for the law and the institutional limits on […] the power [of party leaders] when in office"; and the development of "techniques for maintaining power once democracy is undermined", such as militias (Kirshner, 2014, pp. 131–132).

Despite being preferable to Clear Danger, I believe the Clear and Imminent Danger approach should also be rejected. To postpone interference until unreasonable doctrines pose an ascertainable existential threat may often prove too late – by that time, interference may have become futile. For example, whilst the Western-European experience with supressing far-right parties has been relatively positive (e.g. Bale, 2007; Donselaar, 1995), Cas Mudde has argued that curbing the popularity of such parties *once* they have entered into mainstream politics and gained ownership of their preferred topics (e.g. multiculturalism, immigration) proves difficult (Mudde, 2007, p. 275). The risk of postponing interference is especially large when unreasonable groups are able to block future democratic challenges to their power through constitutional reform and/or when they possess substantial control over children's education (cf. Quong (2010, pp. 301–3).

1.3.3 Clear Danger

Having rejected Clear and Imminent Danger, consider its less tolerant cousin: the 'Clear Danger' approach. According to Clear Danger, states may interfere with unreasonable but law-abiding doctrines if and only if they imperil liberal democracy *regardless* of whether they pose an imminent threat. Unlike Clear and Imminent Danger, this approach thus allows for preventive measures. One might think of closing websites with unreasonable messages, proscribing marches of unreasonable groups, interfering with unreasonable political parties in various ways (e.g. by disallowing them to compete in elections (see above); prosecuting their leaders, as Belgium did when the leader of the Front National, Daniel Féret, was

sentenced to 250 hours of community service for disseminating discriminatory flyers in 2006; and banning political parties, which was the fate of the German communist party KPD in 1952 and the Dutch far-right CP'86 party and Turkish Refah party in the late 1990s).

The Clear Danger approach comes in two versions. According to the first, whether an unreasonable doctrine should be tolerated depends wholly on the threat it poses to liberal democracy, whereby the case for interference increases the greater the threat. Since the threats posed by unreasonable doctrines will vary across contexts, I call this the 'Wholly Contextual Containment' version of Clear Danger.

A defence of Wholly Contextual Containment may found in Alexander Kirshner's work (2014). According to Kirshner, "preventive action is warranted when there is the real likelihood that antidemocrats will attain a position that allows them to thwart or ignore normal democratic and legal mechanisms", but not when "opponents of democracy pursue antidemocratic ends but are unlikely to achieve them" (Kirshner, 2014, p. 27, p.137). Whilst considering the ban on the Islamist Refah party in Turkey to have been justifiable (even though the way the Turkish court went about it was not in Kirschner's view), he notes that banning minor parties such as the BNP or the National Socialist Movement in the US whose chances of undermining the American politico-legal order are described as "vanishingly small" is not (Kirshner, 2014, p. 93). In a similar vein, a fringe party that chooses its leader through a hereditary system is said to merit toleration if there are "many heterogeneous parties that compete for power" so that the "organisation's antidemocratic structure would not substantially affect any particular individual's ability to join a party that selected its leader democratically" (Kirshner, 2014, p. 75).

The other version of Clear Danger is the "Concentric Containment" approach defended by Steven Rummens and Koen Abts (2010). Like Wholly Contextual Containment, this version requires states to interfere with unreasonable doctrines that endanger liberal democracy, even if this threat is not imminent. Unlike the former, however, the degree or intensity of the state's interference does not wholly depend on the magnitude of the threat. According to Concentric Containment, the *kind of agent* that advocates or practices an unreasonable doctrine matters also.

To explain further, Rummens and Abts distinguish different layers of political influence. Ordinary citizens form the outer layers of this model, as their influence qua individuals will usually be the smallest; social movements and parties outside of government form the intermediary layers, as their influence will usually be greater than those of private individuals but not as big as those of governments and supreme courts, who are located in the core. On this view, the closer one gets to the core, the more intolerance of unreasonable views and practices is due (Rummens & Abts, 2010, p. 653). Whereas individual citizens may still be given considerable leeway in expressing their unreasonable views, when they join social movements or other civil society groups, restrictions may be imposed on "the right to protest or the right to assemble" (Rummens & Abts, 2010, p. 655). Once we get to the sphere of political parties, these

requirements become even more stringent: "If parties are set on participating in the system of representative democracy, it is appropriate to require that they unconditionally endorse the full set of procedural and substantive presuppositions of the game they want to play" (Rummens & Abts, 2010, p. 655). Failure to do so, Rummens and Abts (2010, p. 655) note, may be penalised with administrative sanctions or even a ban.

In short, Concentric Containment requires the state to adopt a uniform approach for dealing with agents *within* each layer (this is at least what I gather from Rummens and Abts's remarks). Thus, if there are two equally unreasonable parties A and B (let us say both outside of government) where A is more influential than B, then ceteris paribus, it would be impermissible – contrary to what Wholly Contextual Containment says – to repress A but not B, or to repress A more strongly, just because A is more influential.

1.3.4 Objections and some rejoinders (and rebuttals of these rejoinders)

Later, I will argue that when interference with unreasonable but law-abiding doctrines is due, states should observe the Concentric Containment logic in determining the appropriate degree/intensity of interference. For now, I want to argue that both versions of the Clear Danger approach are too tolerant of certain kinds of unreasonable doctrines: those that are discriminatory but pose no significant threat to the liberal-democratic order – not even in the long term. As I understand it, an unreasonable doctrine is discriminatory if and only if it seeks to deny (basic or non-basic) rights to a determinate subgroup of citizens on the basis of morally irrelevant criteria (e.g. race, religion, sexual preferences). The problem with such doctrines is that they may subvert the fair value of citizens' rights (i.e. their ability to take advantage of their rights), *even* when these rights are not at risk (i.e. even when these rights are unlikely to be revoked in the foreseeable future).

The term 'fair value' is borrowed from Rawls (2005, pp. 324–31), who distinguishes mere formal rights from rights of which the fair value or "worth" is secured. For Rawls, possible obstacles to a right's fair value are "ignorance, poverty, and the lack of material means generally" (Rawls, 2005, pp. 325–6). What I want to argue here is that discriminatory doctrines may undermine the fair value of rights in other ways, and that Clear Danger fails to address this problem. There are at least two ways. Discriminatory doctrines may undermine the *agency* that citizens need for exercising various rights and/or their *access* to these rights.

If the fair value objection holds, Clear Danger is in trouble. For if we care about citizens having rights (as we should if we care about their autonomy, which I argued in section 1.2 we should), then we should care about them being able to take advantage of their rights, especially when this ability is unequally distributed (in which case social equality is also undermined).

1.3.4.1 The 'Fair Value' objection

Let us look at each way in which discriminatory doctrines may subvert the fair value of rights, before rebutting some arguments according to which the fair value objection is not fatal for Clear Danger. To do so, it is instructive to consider a fictive (yet empirically realistic) discriminatory incident discussed by Maitra (2012, p. 115).

> *Subway rider:* "An Arab woman is on a subway car crowded with people. An older white man walks up to her, and says, 'F***in terrorist, go home. We don't need your kind here.' He continues speaking in this manner to the woman, who doesn't respond. He speaks loudly enough that everyone else in the subway car hears his words clearly. All other conversations cease. Many of the passengers turn to look at the speaker, but no one interferes" (Maitra, 2012, p. 115).

Incidents like these may undermine the fair value of the Arab woman's rights – and those of the victims of discrimination more generally – in at least two ways.

First, the agency she needs to exercise various rights may be subverted, such as her freedoms of speech, association, occupation, and right to run for political office. How does this happen? By reminding her of negative stereotypes about Arabs and Muslims, the old man's slur may dent the woman's trust in her capacities and worth that is necessary for taking advantage of these rights (see Benson (1994) for a discussion of the importance of trusting one's practical reasoning for personal autonomy; cf. also Rawls's (1999, p. 271)). Thus, being repeatedly called a terrorist may cause her to (implicitly) feel that she is not worthy of political engagement or other forms of civic participation. Similarly, black people who are repeatedly told that they are less intelligent because of their race can be expected to have less trust in their practical judgement than those who do not suffer such insults, which may deter them from pursuing high-ranked jobs and professions for which such trust is vital. In some cases, the targets of discrimination may come to believe these stereotypes themselves, at least partially. So, if you are repeatedly told that "you are worthless or contemptible —if they say that you are dumb, dirty, or lazy, simply in virtue of your race which you are powerless to change or conceal", then as West writes, it is not unlikely that "eventually you will come yourself to believe that this is so, especially if the message of inferiority is reinforced in subtle and not so subtle ways by the culture at large" (West, 2012, p. 238). I would add to this that even when this does not happen, people's agency may still be undermined given that such messages may reinforce their implicit biases against members of their own group – including themselves (e.g. Saul, 2013).

To be sure, the overall impact of discriminatory messages on people's agency need not always be negative. Some may be able to stoically endure such messages. Others may even feel empowered. As

Peter Balint (Forthcoming, ch.2) points out, acts of discrimination such as "putting a pig's head outside a Mosque, or throwing stones at a group holding a funeral procession […] might inadvertently strengthen rather than curtail the agency of their victims" by causing people to "rally around the flag". Even so, these cases seem to be the exception rather than the rule.

Second, the fair value of citizens' rights may be undermined when unreasonable discriminatory doctrines impede their access to rights. This happens when such doctrines incentivise rights violations. Statements such as 'all Arabs/Muslims are terrorists and do not belong here' – may signal to others that such views are more widely shared and embolden those who already hold them. Having these assurances may then incentivise individuals to deny services to the targeted groups, insult and/or assault them, or simply allow such things to happen (cf. Waldron, 2014). Indeed, even those opposed to discrimination may engage in discrimination when regularly confronted with discriminatory statements, as such statements may reinforce their implicit biases against the targeted groups. For example, regular exposure to racist views may prevent hiring committees from fairly considering applications from black candidates even when they want to avoid discrimination.

This concludes my discussion of how unreasonable doctrines may undermine citizens' agency and/or access to rights *even when* these doctrines do not imperil the liberal-democratic order. Notice that I am not suggesting that these mechanisms are exhaustive. There are other ways in which the fair value of rights may be undermined. Perhaps most importantly, groups targeted by discriminatory speech may interpret the state's toleration of such speech as a stamp of approval; alternatively, they may not so much believe that (most) state officials share the relevant discriminatory views, but that fighting these is not a major concern for state organisations. Either way, people's trust in the authorities may be diminished, which may prevent them from exercising various rights. For example, they might be unwilling to enter certain places worrying that the police will not protect them, or not take legal action when wronged as they believe that the justice-system is skewed against them. The reason for focusing on the agency/access conditions here as opposed to this 'trust-condition' is that the former are more likely to go unmet. One can imagine countries with strong free speech-traditions (e.g. the US) where toleration of discriminatory speech is not necessarily associated with state endorsement of such speech, or seen as evidence that addressing discrimination is not an important government objective.

1.3.4.2 Over-Inclusion?

A defender of Clear Danger might respond to the Fair Value objection as follows. 'Sure, there are ways in which Clear Danger renders it more difficult for certain groups to exercise their rights, but this does not count against this approach per se (or at least is not fatal for it). This is so because the ability of citizens to

exercise their rights may be undermined by speech that, we would all agree, merits toleration'. Consider another subway case (one that I devised):

> *Subway rider*:* You, a devout atheist and fellow subway commuter, notice that I, a deeply religious Christian, am reading a bible and tell me that you 'do not understand how any rational person can believe such fairy-tales'. Your words hurt me deeply and have the same perlocutionary effects as the old man's anti-Muslim/Arab slur. They undermine my self-confidence and, in doing so, my agency (suppose it is not the first time that my religious beliefs have been ridiculed). In addition, they adversely affect my employability by reinforcing negative stereotypes about believers (suppose many employers in the region are fervent Dawkinians).

I think it is fair to say that, if freedom of speech and conscience mean anything, the atheist must be free to tell me that believing what the Bible says is crazy, despite the harm done to my agency/access to rights. Whilst discrimination against Christian would-be employees should be addressed by the state, respecting freedom of speech and conscience requires that this be done by penalising discriminatory employers, introducing anti-discrimination campaigns, reducing the available information about candidates to what is essential, and so on. Yet if censoring is unjustified in *Subway rider**, a critic may say that the same applies to censoring the old man's speech in *Sub-Rider*. Call this the 'objection from overinclusion'.

To rebut this objection, I have to show that *Subway-Rider* and *Subway-Rider** are relevantly different. The following argument points to such a difference:

<u>The Compossibility Argument</u>

1. Liberal-democratic states should ensure that citizens can exercise their rights
2. Citizens in liberal democracies have rights to freedom of conscience and freedom speech
3. To ensure that citizens can exercise their rights, states should ensure that the way rights are exercised is compossible
4. Some speech acts do not allow other citizens to exercise their rights, i.e. are not compossible

(from 2, 3, 4)

5. ∴ Those speech acts are not covered by freedom of conscience and speech (or any other right for that matter)

(from 1, 2, 5)

6. ∴ Those speech acts should not be tolerated by liberal-democratic states

Premises (1) and (2) follow from the importance of allowing citizens to live autonomous lives (see section 1.2). To allow them to do so, it is necessary that, within certain limits, they be able to speak their minds

and act upon their conceptions of the good. Premise (3) follows from the duty of liberal states to show citizens equal respect. Such respect requires that they do not allow citizens to act in ways that prevent other citizens from exercising their rights; instead citizens should be forced (if necessary) to allow room for others. In short, the exercise of their rights ought to be compossible (Waldron, 1993, p. 223). Finally, premise (4) follows from the fact that tolerating certain speech undermines the fair value of citizens' rights so much that states are unable to undo the damage. That is, some speech acts are so threatening, debilitating, or conducive to discrimination that whatever measures are taken by a state to remedy their effects (e.g. awareness campaigns, offering psychological support to the targeted groups, sanctioning those who discriminate in employment), these cannot secure the substantive enjoyment of rights.

I want to suggest that the old man's speech in *Subway-Rider* falls under (4) but not the atheist's speech in *Subway-Rider**. Putting up with criticism of one's religion or otherwise comprehensive doctrine is something of which all (sane) adults are capable, or at least able to learn. Most citizens in liberal democracies manage to tolerate views that are opposed to their own on a daily basis, often without too much effort (which is why the Christian's response in *Subway-Rider** will strikes many as uncommon or at least exaggerated). If this is any indication, handling criticism of one's comprehensive doctrine, even if deemed offensive, is not something that is impossible to do, or at least learn to do. What this suggests is that ordinary criticism of citizens' religions and otherwise comprehensive doctrines meets the compossibility condition (where 'ordinary' means that citizens' free and equal civic standing is not challenged), as no-one is likely to be prevented from exercising their rights.

By contrast, the old man's slur in *Subway-Rider* seems to violate this condition. At least in societies in which there are power hierarchies amongst groups, as is the case in all liberal democracies, many struggle to cope with such attacks on their basic liberties and civic equality – even when trained to do so. (Though empirical data is obviously necessary here, the fact that some are able to stoically endure them, or are even empowered, appears to be the exception rather than the rule.) As a result, societies where unreasonable discriminatory doctrines are tolerated are likely to be ones where some groups will find it difficult to exercise various rights because of the harm to their agency. This would suggest that the compossibility requirement is not met.

If correct, then given that states have a duty to secure the fair value of citizens' rights (see above), they ought to interfere with such doctrines[14]. As Clear Danger only allows for such interference when liberal-democratic institutions are endangered, this approach should be rejected for being too tolerant.

[14] Distinguishing expressions that are compossible from those that are not may be challenging, especially in diverse societies where people's sensibilities may differ significantly. But just as we should distinguish between children and adults for legal purposes in lieu of a sharp boundary, I suspect the same can and ought to be done here.

1.4 Zero Tolerance

Let us take stock. I started by defending state intolerance of comprehensive doctrines that incite illegal actions. Next I rejected three increasingly restrictive approaches: No Interference was rejected for doing nothing to protect liberal democracy from law-abiding yet unreasonable doctrines, Clear and Imminent Danger for taking protective measures too late, and Clear Danger for failing to secure the fair value of citizens' rights by being too tolerant of unreasonable discriminatory doctrines. (As these approaches only differ in their degree of toleration, note that the 'fair value' problem is inherited by the first two approaches.) Before defending my own approach, consider two approaches that allow for state interference with unreasonable discriminatory doctrines even when no threat to liberal democracy exists. (Whilst I do not know any advocates of these approaches, seeing why they fail helps to explicate the virtues of my own approach.)

First, there is what I call the 'Zero Tolerance' approach. According to Zero Tolerance, states should *always* censor unreasonable discriminatory doctrines. Whilst spontaneous speech may be impossible to (directly) censor, other forms of speech may be relatively easily interfered with. For example, marches may be banned, websites shut down, political parties proscribed, and so on.

Zero Tolerance should be rejected because its approach is often ineffective, if not counterproductive. By requiring interference no matter what, it may increase the intensity of citizens' unreasonable discriminatory views and/or the number of citizens holding such views, which may neutralise if not outweigh any positive effects of interfering.

As to the former, I already mentioned that interfering with citizens' doctrines may cause a conservative backlash. Rather than moderating their views, those who are embittered about the state's meddling and/or worried about the possible demise of their doctrine or lifestyle may become more radical. When state interference drives them underground, such effects may be amplified. As studies by Cass Sunstein (2003) have shown, "a good way to create an extremist group […] is to separate members from the rest of society […] with such separation, the information and views of those outside the group can be discredited and hence nothing will disturb the process of polarisation" (Sunstein, 2003, pp. 112–3). Given the high correlations between extremism and out-group hostility (e.g. Christian fundamentalists have been found to be significantly more hostile towards homosexuals than non-fundamentalist groups (Altemeyer & Hunsberger, 1992), Jews (Glock, 1966), and various other religious groups (Altemeyer, 2003); for similar findings in the case of Muslim fundamentalists in Europe, see Koopmans (2015)), further amplification may occur when such enclave deliberation becomes increasingly difficult to disrupt.

State interference with unreasonable discriminatory doctrines may also increase the number of adherents. This happens when outsiders adopt (parts of) the doctrines that are suppressed, perhaps because they sympathise with those affected (who might be seen as victims or even martyrs (Downs, 2012), or

simply to express their dismay about the state's interference. Regarding the banning of extremist parties, for instance, research by Downs (2002, p. 48) has shown that "the perception of the parties of the putatively democratic 'establishment' allying to deny voice to a party or parties they deem illegitimate can ultimately serve to fuel [a party's] appeal".

Though a lot more is to be said about these issues, these observations seem enough for rejecting Zero Tolerance. By requiring interference under all circumstances, this approach may not just fail to address the problem of unreasonable discriminatory doctrines, but make it worse by increasing the prevalence and/or intensity of such doctrines.

1.5 Effective Interference

A more plausible approach requires state interference if and only if this is likely to be effective. 'Effective' means that there is a reduction in the weighted sum of the intensity of unreasonable discriminatory views and the number of people holding such views (the proper weight of each variable is left open here). Call this the 'Effective Interference' approach.

Effective Interference may be accused of creating perverse incentives. Groups with unreasonable discrimination doctrines seem to have an interest in radicalising/rebelling each time the state interferes with them. By doing so, threats of future radicalisation/rebellion become more credible, which may then protect them from future interference (or from stronger forms of interference).

To avoid this problem, state interference may be made dependent not on the effectiveness of interfering with a *single* group but on the effectiveness of interfering with *all* equally discriminatory groups. Provided this pool is large enough, for a single group to radicalise/rebel would then have a negligible effect on whether it faced future interference.

Even this one-size-fits-all version of Effective Interference is wanting. The problem with any version of this approach is that, not infrequently, resources spent on interfering with unreasonable discriminatory doctrines can be more fruitfully invested in promoting the victims' agency and access to rights directly. Thus, their agency may be better protected by being taught how to deal with hateful messages (e.g. how to stay calm, what to say/not to say when such messages are orally communicated) than by encountering a few more graffiti-sprayed slurs or having a few more encounters with discriminatory individuals. Similarly, investing in discrimination-awareness campaigns may better secure the victims' access to rights by signalling to citizens that discrimination is unacceptable even if deterring discrimination through interference would also be effective.

Since Effective Interference precludes such measures, it is less likely to secure the fair value of citizens' rights than the approach defended below. Liberals should therefore reject it.

1.6 Fair Value

Having rejected three approaches for being not restrictive enough and two for being overly restrictive, consider what I regard as the best approach for dealing with unreasonable doctrines: the 'Fair Value of Rights' approach or simply 'Fair Value'. Central to this approach is the claim that states should prevent unreasonable doctrines from undermining the fair value of citizens' rights. To do so, one of three responses may be due.

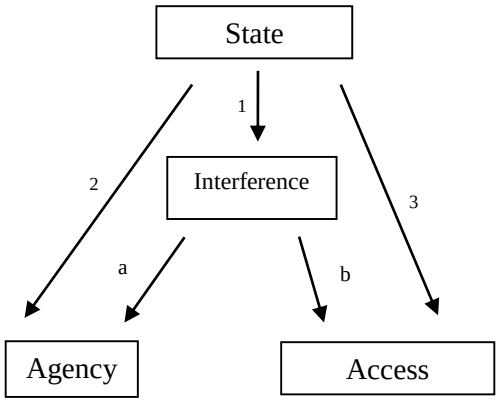


Fig.3 Three ways of dealing with unreasonable doctrines

The first is for states to *interfere* with unreasonable doctrines (1). As we saw, such interference may take different forms, including prohibiting marches, closing down websites, disenfranchising citizens, fining the leaders of social movements or parties, excluding parties from elections or banning them. (I suspect all these measures may be justified under certain circumstances except for disenfranchising. As Kirshner (2014) discusses, taking away people's right to vote seems to unduly restrict their political autonomy; space constraints prevent me from going into this issue here). If successful, state interference reduces the intensity of unreasonable views and/or the number of people holding such views (section 1.4). This may not just protect liberal democracies from existential threats (sections 1.3.2-1.3.3), but also protect the agency that citizens need for exercising various rights (a) and/or their access to their rights (b), which may require protection even when the liberal-democratic order is not imperilled (section 1.3.4).

The other two responses abstain from interfering but protect the fair value of citizens' rights in different ways (2 and 3). This may be done by (2) investing in their agential skills (e.g. by teaching citizens how to deal with discrimination) and/or by (3) improving their access to rights (e.g. by launching discrimination awareness campaigns, penalising employers who discriminate against job applicants). Many measures do both. Thus, publicly funded courses on dealing with hate speech may signal to the wider society that such speech is unacceptable; conversely, anti-discrimination campaigns may empower the victims of discrimination by showing them that the abuse they suffer is taken seriously. Nonetheless,

such policies may still promote either citizens' agency or their access to rights more, so that states have to choose which to prioritise.

Before considering what measures are due when, note that Fair Value is a sufficientarian, not a maximising principle. It requires states to provide sufficient opportunity for exercising rights, not to maximise this ability. Why not? Because maximising may conflict with other important public goals, such as economic growth, a clean environment, and public health. Above a certain threshold, the value of such goals *outweighs* the value of promoting citizens' ability to exercise their rights. Thus, whilst states should ensure that citizens have enough resources to be politically active (lest the fair value of their political rights is not secured), attempts to lower barriers to political participation – e.g. raising the salaries of politicians, increasing the number of seats in parliament – should leave room for investments in environmental projects, the development of new medicines, and so on.

What if legislatures fail to secure the fair value of rights? In that case, they have violated a moral duty, at least in consolidated democracies where the circumstances for securing these rights' worth are favourable enough. Should courts intervene in such cases? Whilst biding by my judicial review-agnosticism (see section 1.1), suffice it to say that *if* one believes judicial review to be justifiable, then overruling legislatures may be legitimate when judges know better how to secure the fair value of at least citizens' basic rights (for my list of basic rights, see section 1.3). That is, if there are *any* sufficient reasons for such overruling, citizens' inability to exercise their basic rights is one of them, given the harm this causes to their autonomy (and often to their social equality).

1.6.1 Discriminatory doctrines

In asking how states should deal with unreasonable doctrines, I distinguish between discriminatory and non-discriminatory ones (the normative relevance of this distinction becomes clear below). Consider first unreasonable discriminatory doctrines. As I argued in sections 1.2 and 1.3.2, both these doctrines and their discriminatory counterparts should be interfered with when they incite law-breaking and/or imperil liberal-democratic institutions. When such doctrines 'merely' undermine the fair value of citizens' rights by impairing their agency and/or access to rights (section 1.3.4), I argued in section 1.5 that interference is due when this can be expected to lead to a large enough reduction in the weighted sum of the intensity of unreasonable discriminatory views and the number of people holding such views. 'Large enough' means that interfering is likely to better secure the fair value of citizens' rights than taking measures specifically aimed at promoting their agency and/or access to rights, such as teaching them how to deal with hate speech or launching anti-discrimination campaigns. If this condition is not met, states should spend their resources on the latter kinds of measures.

Two comments on interference. First, when interfering is appropriate, its intensity/strength must follow the Concentric Containment logic (section 1.3.3). According to this logic, the closer a specific kind of political actor is to the centre of decision-making, the stronger the interference that is due. Whilst being sensitive to the dangers posed by different kinds of political actors, this logic provides clear norms. Specifically, it gives equal treatment to equally unreasonable actors of the same kind (e.g. private individuals, social movements, parties outside of government, governments, courts). This is desirable, as the question of how much influence each individual actor has, and, correspondingly, how strongly they ought to be interfered with (if at all), is likely to become highly politicised. Moreover, the difficulties of such evaluations makes it difficult for citizens to ascertain their fairness. Besides being a likely source of instability, such unclarity might be said to violate the visibility requirement of justice, i.e. the requirement that "justice must not only be done but be seen to be done (Rawls & Freeman, 1999, p. 443) – whether justice needs to be visible and, if so, whether more individualised approaches fail this requirement is left for the reader to decide. (In passing, note that whilst I accept the Concentric Containment logic, I reject the idea implicit in Rummens and Abts (2010) that (lawful) unreasonable discriminatory speech of private individuals should always be tolerated, given the harm this may do to the fair value of rights; see section 1.3.4).

Second, given the various political and/or personal incentives for (not) interfering (sections 1.1 & 1.3.1.1.4), there should be evaluation mechanisms for determining whether decisions (not) to interfere were justified in light of the information that was available (cf. Kirshner, 2014, p. 138). In addition, state officials who are found to have acted carelessly or opportunistically should be subjected to some form of disciplinary action.

Before looking at non-discriminatory doctrines, one more note on discriminatory ones. Thus far, I have focused on discriminatory doctrines that target relatively marginalised groups (e.g. women, homosexuals, black people). What if this is not the case? For example, what if some radical feminists accused all men of being rapists or being power-obsessed maniacs unfit for politics? Or the New Black Panther party made comparable claims about white people?

It is unclear as to whether being (relatively) privileged shields one from agential harms in such cases. If our different identities mediate discrimination in complex ways, as intersectionists argue, a lot may depend on what our other identities are. Suppose though that being privileged offers such protection or, alternatively, that it merely reduces the agency of the privileged to a fair level insofar as they feel overly entitled. In that case, it seems to me that states should still interfere. This is because even the most privileged groups may be denied service or goods or suffer other rights violations as a result of discriminatory speech. Thus, men may be denied a job on the basis of (implicit or explicit) biases against them in certain professions, even if this is less common. (This is not to deny that discrimination against

marginalised groups should be punished more strongly; the fact that the consequences for their members tend to be more harmful – they will usually find it more difficult to find an environment free from discrimination and other hostility – is plausibly treated as an aggravating factor; cf. Lawrence (1990); Matsuda (1989).)

1.6.2 Non-Discriminatory doctrines

Let us turn to unreasonable yet non-discriminatory doctrines. Besides anarchist doctrines (see section 1.2), one might think of certain libertarian creeds (those that predictably condemn some citizens to dire poverty or allow party donors to effectively determine electoral outcomes by not imposing caps on party financing); and technocratic creeds (those wanting to shift (formal) political power from the citizenry to unelected groups of engineers/professionals, and do so on a permanent basis – e.g. not just to deal with the financial crisis, as was the task of Monti's government in Italy in 2011). Unlike their discriminatory counterparts, such doctrines do not seek to deny rights to some determinate group (e.g. black people, women, homosexuals). Rather, their opposition to certain rights may affect *all* citizens, at least in principle. So, citizens may be more or less equally vulnerable in an anarchical society and any citizen could in principle fall below the poverty line under libertarian regimes.

How should such doctrines be treated? When they incite law-breaking or imperil liberal democracy, they ought to be interfered with just like any other unreasonable doctrine (see above). When doing so, the same strictures must be observed as in the case of discriminatory doctrines, meaning that interference must be based on the Concentric Containment logic, evaluated afterwards, and depending on the outcome of this evaluation, possibly sanctioned (idem for decisions not to interfere).

There is an important difference with unreasonable discriminatory doctrines though. In the absence of a threat to liberal democracy, spending public money on interfering with non-discriminatory yet unreasonable views in the *outer layers* (i.e. with the speech of private individuals and, somewhat closer to the centre, members of social movements) would be inappropriate. Rather than using the state's budget for preventing peaceful demonstrations of libertarians, censoring anarchist or technocratic websites, and so on, such money should be spent on more urgent public goals, such as reducing CO2 emissions or improving health-care services.

Why? Because the fair value of citizens' rights is unlikely to be affected by unreasonable non-discriminatory doctrines *as long as* these remain marginal. To illustrate this, recall the old man's slur in *Subway-driver*. Had the old man shouted: 'we are all terrorists", 'long live anarchy/technocracy' 'or 'public health care is theft', this would unlikely have dented anyone's agency. (I have yet to meet anyone who experiences such statements as a blow to their self-confidence.) Nor are such statements likely to undermine citizens' access to rights by triggering/reinforcing discrimination. For these effects to occur, it

seems necessary that some relatively easily identifiable subgroup be targeted (as defined by e.g. race, gender, sexual preferences), which is not something non-discriminatory doctrines do.[15]

Does this mean that, when liberal-democratic institutions are not at risk, private individuals and members of social movements have a *right* to publicly advocate non-discriminatory yet unreasonable views? Probably not, as this implies that they could lose this right just by gaining political influence. As rights are usually understood, they ought to be more robust than that (cf. Quong, 2010, pp. 311–2).

Conclusion

This chapter has addressed the following question: When, if ever, should comprehensive doctrines that oppose citizens' free and equal status in the public sphere be tolerated? I rejected five accounts of toleration before defending my own: The Fair Value account. My aim in the next chapter is to consider how states should deal with doctrines that reject citizens' freedom and equality in the private sphere.

[15] This difference may be due to the fact that indeterminate groups are less likely to have a group consciousness, i.e. less likely to self-identify as a group. Whether this is correct is for sociologists and psychologists to decide.

2 Illiberalism in the private sphere: The EO³ account of toleration

2.1 Introduction

This chapter asks how states should deal with comprehensive doctrines that support illiberal practices in the *private sphere*. Such doctrines maintain that, in at least some respects, people should not be treated as free and equal within (certain) private groups. These include: families, religious and cultural communities, and various associations that are often understood to be more voluntary (e.g. sport teams, dining clubs, fraternal societies, motor clubs, isolated racial enclaves, and philatelic groups). More specifically, a doctrine supports illiberal private practices if and only if the practices supported

(i) Are opposed to basic rights relating to the private sphere, and/or to giving adequate opportunities to citizens to exercise these rights

(ii) Seek to deny non-basic rights on discriminatory grounds

(iii) Restrict access to roles within private groups in one of the following ways:

  a. By denying the group's members an insufficient range of intra-group lifestyle options
  b. By excluding members from intra-group positions in discriminatory ways
  c. By raising the difficulties of exit and/or imposing negative costs
  d. By denying membership to outsiders in discriminatory ways

If (i) or (ii) is met, then a doctrine has unreasonable elements. If (iii) is met but not (i) and (ii), then a doctrine is reasonable but still has illiberal elements. By this, I mean that it is supportive of illiberal practices in the private sphere even if these practices are not opposed to basic rights (or giving citizens adequate opportunity to make use of their basic rights) and do not discriminatorily deny non-basic rights. (I give examples of doctrines that meet these various conditions in due course).

Three main claims are defended. First, doctrines that support unreasonable private practices should be treated the same as doctrines supporting unreasonable practices in public (section 2.2). In other words, the 'Fair Value' account ought to be applied here (section 1.6). Second, whilst doctrines that inspire reasonable private illiberalism raise challenges to citizens' autonomy and social equality (section 2.3), the solution is not for states to try and liberalise the private sphere, as proposed by e.g. Chambers (2002); Kymlicka (1995); and Okin (2002a) (sections 2.4 and 2.5). Instead, and this brings me to my third claim, they should tolerate illiberal but reasonable private practices on the condition that three measures are taken. First, states should censor certain statements of reasonable private illiberalism in the public space, which I call 'expressions of obloquy'. Second, states should ensure that citizens have equal

opportunities in the public sphere (e.g. in politics, the for-profit sector, publicly funded schools and universities). Third, they should secure meaningful exit options for citizens, that is, substantive opportunities for them to leave their private groups. As censoring Expression of Obloquy, securing Equal Opportunities, and realising meaningful Exit Options are central to this approach, I call it EO³.

Besides the scope restrictions already mentioned (section 0.3), this chapter does not consider cases where citizens depend on illiberal private groups for the delivery of basic services and goods (think of a private group that owns the only water source or piece of arable land, or that is the only provider of health or educational services). Nor do I look at cases where such groups receive subsidies for the delivery of social services, such as drug-rehabilitation programmes and after-school reading courses (I do so elsewhere; see De Vries (2016b)). Suffice it to say that, under both conditions, certain liberal norms are reasonably imposed, as strong public interests are involved.

2.1 Unreasonable private illiberalism

The previous chapter defended an approach for dealing with unreasonable comprehensive doctrines called 'Fair Value'. According to this approach, states should deal with such doctrines in ways that are most likely to secure the fair value or worth of rights. This is important, I argued, in order to allow all citizens to live autonomous lives. (To avoid repetition, I will not go over this ground again.)

In illustrating Fair Value's principles, all the examples I gave involved unreasonable doctrines that challenged rights relating to the *public* sphere, which was the topic of the previous chapter. However, Fair Value also applies to unreasonable doctrines that challenge rights relating to the *private* sphere. (This is not to suggest that these are mutually exclusive categories; with the exception of political rights and employment rights, most rights pertain to both spheres.) My aim here is to spell out what Fair Value's implications are for different forms of unreasonable private illiberalism.

Fair Value, it might be recalled, is based on three principles. First, when unreasonable doctrines imperil citizens' basic rights – e.g. their freedom of association, conscience, speech, rights to shelter, education, and bodily integrity – either by inciting people to violate these rights of by trying to abolish them democratically –, states should supress them. Doctrines that support private practices that are incompatible with basic rights include: those supporting forced marriages, honour killings, paedophilia, exposing minors to genital mutilation or denying them an education (for a defence of tolerating FGM and forced marriages, see (Kukathas, 1997, p. 88)). When I say that states should supress such doctrines, I mean that they should make these practices illegal (if they are not already) and penalise those who engage in them or incite others to do so (e.g. by fining or prosecuting them).

Second, when doctrines oppose basic private rights *without* imperilling these rights, they should be tolerated on pragmatic grounds if their views are non-discriminatory. By this, I mean that their views

do not oppose the (basic or non-basic) rights of a determinate subset of citizens. One might think of the views of the Dutch paedophile association 'Martijn', which advocates the legalisation of sex with minors; Jehovah's Witnesses who seek to deny children life-saving medical treatment; and groups that want to criminalise blasphemy. Whilst opposing basic rights, such groups do not target some determinate subset of the citizenry (regardless of their race, gender, sexual preferences, and so on, *everyone* goes through childhood and can make blasphemous statements). This is important, for as long as non-discriminatory doctrines remain marginal, they are unlikely to undermine citizens' agency or access to rights (section 1.6.2). Rather than spending money on interfering with them (e.g. by prohibiting peaceful demonstrations by Martijn or Jehovah's Witnesses, or closing their websites), then, public resources are more fruitfully invested in other, weightier public goals, such as saving the environment or improving health services.

Third, when unreasonable doctrines are discriminatory, i.e. when they target some readily identifiable subgroup of citizens, they are liable to state interference *even when* they do not imperil citizens' rights. One might think of doctrines that support exposing girls to FGM, or oppose the freedom to worship in mosques. The reason why interference may be required in such cases is that discriminatory doctrines violate the compossibility condition of rights; that is, they tend to deny citizens an equal opportunity to exercise their rights by undermining their agency and/or access to rights (section 1.3.4). As I discuss in section 1.5, whether states should actually interfere with these doctrines depends on whether alternative measures are more likely to secure the fair value of citizens' rights, namely those specifically aimed at promoting citizens' agency and/or access to rights. One might think of launching anti-discrimination campaigns or training people how to respond to hate speech.

2.2 Reasonable private illiberalism

So much for unreasonable private illiberalism. My next aim is to consider how states should deal with doctrines that support private practices that are illiberal yet reasonable, i.e. that are law-abiding and do not oppose basic rights or deny non-basic rights on discriminatory grounds. Examples of such practices are: The Catholic Church's ban on women's ordination; the Ultra-Orthodox Jewish custom of refusing to women the right to initiate divorce within the Jewish religion; the practice of the Pueblo Indians to deny housing benefits to religious converts; and the ethnicity-based restrictions on membership of certain Pagan groups and motorbike clubs.

The problem with such practices is this: they may undermine citizens' personal autonomy and, depending on whether their freedom is unequally restricted, their social equality. This may happen in two ways (fig 4.). First, by undermining the fair value of citizens' rights (1-2-3-4 and 1-3-4). Second, by illiberally circumscribing their access to social roles (route 1-4).

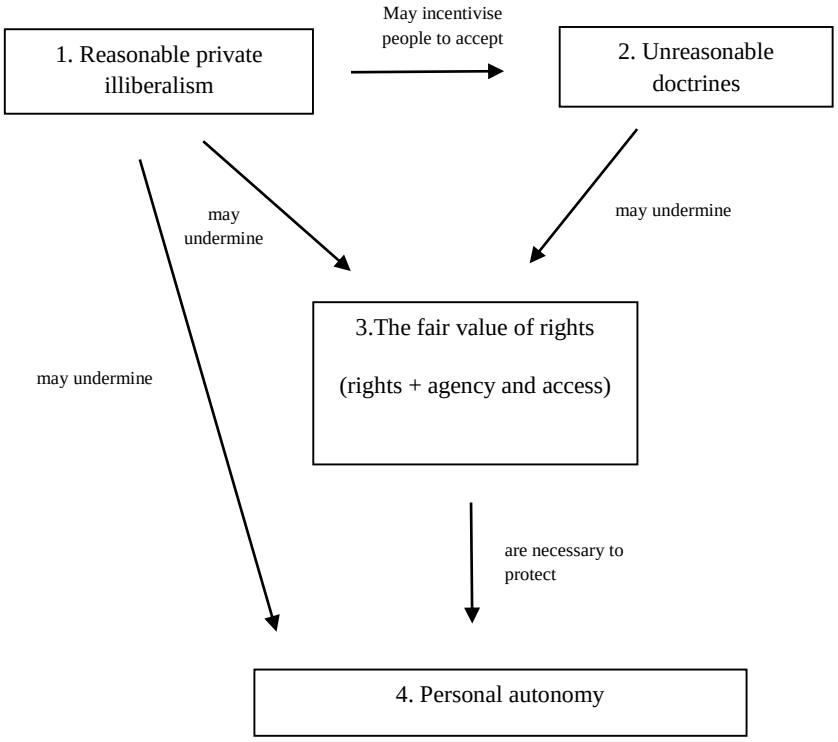


Fig. 4. Ways for reasonable private illiberalism to undermine citizens' personal autonomy

2.2.1 Fair value of rights

2.2.1.1 Spill-Over

Consider first how reasonable private illiberalism may undermine the fair value of rights. One way is that such illiberalism is conducive to unreasonableness (1-2-3-4). By this, I mean that those who are exposed to illiberal private practices may be more likely to (continue to) hold unreasonable views as a result. Thus, members of groups that expect women to do the lion's share of the housework; deny homosexuals access to leading positions or even membership altogether; and/or have an authoritarian leader may be more likely to deny women or homosexuals rights to political participations or support some form of dictatorship. Indeed, one might hypothesise that even non-members may be affected by such spill-over. Seeing women and homosexuals being denied equal liberty in private groups, for instance, may reinforce people's (implicit) biases against them even if they are not part of these groups.

It is beyond this dissertation's remit to empirically assess whether a causal relation obtains between (certain forms of) exposure to illiberal private practices and endorsement of unreasonable views. Still, some reflection on how strong this connection might be is important. Given that I argued that states should protect the fair value of rights, the *stronger* the evidence that people become/remain unreasonable

(partially) due to exposure to illiberal private practices, the stronger the case for interfering with such practices.

Some posit a very strong nexus. According to Susan Okin (1994), to believe that citizens should be treated as free and equal in public but not in private is psychologically implausible. Focusing on those who believe that women should do the lion's share of the child-rearing, she notes that such individuals are (effectively) bound to see women as second-class citizens, as people cannot be "split into […] political and non-political selves" (Okin, 1994, p. 29).

What should we make of this? There are certainly many examples of congruence; think of White Supremacists, Jihadists, members of the Westboro Church, and so on. (Of course, one has to ask in such cases whether people's unreasonableness is (partially) caused or maintained by their membership of illiberal private groups or rather whether such membership is a symptom of their unreasonable views; more on this below.) The point I want to make is that incongruence is also a common phenomenon.

Consider Carolyn Woo, president of Catholic Relief Services. In a recent interview, she notes that women's ordination is "off the table" for her, but praises the fact "the Church is ahead of the secular world when it comes to women in positions of leadership"[16]. Whilst some Catholics differ strongly on the issue, Woo is all but an anomaly within the Catholic community. Pope Francis himself recently referred to the gender wage gap as a "pure scandal" and called it a "Christian duty" to support equal remuneration for women[17].

In a similar vein, theologian of the Dutch Protestant party ChristenUnie (Christian Union) Maaike Harmsen writes in the party magazine that

> "biblical passages that exclude women from certain tasks and give them a different role to men […] do not offer grounds for concluding that their strictures apply outside the religious ceremony [eredienst] and contain guidelines for the ordering of society"[18] (My translation).

More examples could be cited – think of people who believe that homosexuality or atheism is an aberration but want homosexuals and atheists to have all the same rights nonetheless. I trust, however, that these cases suffice to discredit the idea that those supportive of illiberal private practices must also be hostile to civic freedom and equality, i.e. to citizens' freedom and equality *qua* citizens.

[16] http://www.cruxnow.com/church/2016/03/09/vatican-event-calls-for-boosting-womens-roles-in-world-and-church
[17] http://www.cruxnow.com/life/2015/04/29/is-pope-francis-a-feminist/; see also http://www.theguardian.com/world/2015/apr/29/pope-francis-christians-should-support-equal-pay-equal-work-gap-men-women
[18] http://wi.christenunie.nl/k/n15519/news/view/42357/170241/actieve-deelname-van-vrouwen-in-de-christenunie.html#.V4OcLrh96Uk

Even if Okin's claim is too strong, it might still be that citizens who support illiberal private practices are more likely to be unreasonable or continue to be. Moles (2014) has recently made an argument to this effect. Citing studies on people's automatic and unconscious responses to racist and sexist stereotypes by Dijksterhuis, Chartrand, & Aarts (2006); Greenwald & Krieger (2006); and Pearson, Dovidio, & Gaertner (2009), Moles argues that illiberal private practices may conduce to unreasonableness by reinforcing negative stereotypes (as such stereotypes affect people's attitudes subconsciously, note that they may also cause ant-racists/feminists to discriminate, even when these individuals try to avoid this). Indeed, Moles suggests that such contamination happens most of the time, noting that "It is not true that we normally resist spill-over" and that "the attitudes about race and gender that we display at home or in our private club will most likely be reproduced in the public arenas" (Moles, 2014, p. 95).

I think Moles has a point. Whilst Okin seems to overstate the degree of overspill, *some* overspill may reasonably be expected in light of these findings from cognitive psychology. Whatever the truth of the matter is, however, I shall assume arguendo that illiberal private practices (unconsciously) influence our attitudes about citizens' civic freedom and equality. The question then becomes whether this provides (sufficient) reason for states to interfere with illiberal yet reasonable private practices.

I address this question in section 2.6. For now, I want to look at the other ways in which citizens' personal autonomy may be undermined.

2.2.1.2 Agency and access

Besides spilling over, there is another way in which reasonable private illiberalism may undermine the fair value of citizens' rights (and thereby their autonomy): by undermining their agency and access to rights. Consider these in the order stated.

Illiberal private practices may undermine people's agency (i.e. disempower them) by conveying that they are unworthy and/or incapable of decision-making, *even if* such practices are not unreasonable. Take the Catholic ban on women's ordination. As Clare Chambers notes, this ban may produce the following understandings in Catholics: "that women are not equal to men in the arena of worship, that women are not fit to lead their fellow worshippers, and that the voice of women does not need to be heard when religious leaders are formulating policy" (Chambers, 2002, p. 165). Due to the tendency of stereotypes to influence people unconsciously (see above), such understandings can arise even if no one openly claims that women are unfit for religious office.

When this occurs, exercising one's rights may become difficult. Many rights – e.g. freedom of speech, association, occupation, the right to run for political office – demand robust agential skills. Such difficulties may be compounded when the harm done to these skills conduces to an underrepresentation of

members of one's group in various domains. In a well-known study amongst undergraduate students at Brown University, Inzlicht & Ben-Zeev (2000) found that even when women were not explicitly reminded of negative stereotypes about their supposed inaptitude for maths and science, merely being in a male-dominated environment was enough to alert them to these stereotypes and cause them to underperform. If gender ratios matter here, similar effects might be expected in other contexts where women's underrepresentation is associated with negative stereotypes (e.g. on the work-floor, in politics). More generally, one might expect that groups whose underrepresentation is associated with negative stereotypes may suffer from such performance anxiety.

To see how reasonable private illiberalism may undermine access to rights, notice that it is not just the victims who may hold negative stereotypes about themselves. Others may hold them also. For example, men may share preconceived notions about women being poor leaders. To the extent that they do, these stereotypes may be (unconsciously) reinforced by illiberal private practices, which may lead to discrimination in employment, education, and other areas where citizens hold rights to fair treatment.

2.2.2 Private roles

Thus far, I have considered how reasonable private illiberalism may hamper citizens' autonomy by undermining the fair value of rights. Such illiberalism may affect their autonomy in another way: by illiberally preventing or discouraging them from taking up social roles. Specifically, private groups may impose illiberal restrictions on their members' lifestyle options and/or exclude non-members on the basis of illiberal criteria. As these restrictions only apply to those who are members or want to become members of *private* groups, I call these 'restrictions on private roles'. (1-4).

Importantly, private roles do not just include roles within a private group, such as its leaders or priests. They also include roles outside the group that people cannot take up *as long as* they are members. For example, women may be discouraged or prevented from pursuing a career as long as they are members of an Ultra-Orthodox Jewish community and Orthodox Calvinists may be discouraged or prevented from socialising with the members of other private groups (e.g. atheists) as long as they remain with this community.

Before looking at how restrictions on private roles affect (some) citizens' autonomy, note that such restrictions do *not* affect the fair value of rights. No liberal democracy recognises a right that other citizens associate with you in private. (This has been acknowledged by courts. For example, when an American fraternal society called the 'Benevolent and Protective Order of Elks' refused membership to a black person on the basis of his race, a district court ruled that the applicant's interest in joining a private club of his choice was not covered by his constitutional rights; see *Cornelius v. Benevolent Protective Order of Elks* (1974, at 1199).) Even if refused association undermines the worth of citizens' freedom of

association (to the extent that this is recognised as a separate right, which is not the case in e.g. the US), whether this can be understood as undermining the fair value of this right is dubious. For compelled association seems to violate the rights of citizens to choose with whom to associate.

In any case, terminology is not important here. What matters is that private groups – even if reasonable –may undermine citizens' autonomy by illiberally restricting their access to private roles, which raises the question of how states should respond. To answer this question, we need to get clearer on what such restrictions consist of. I distinguish three kinds (fig.5).

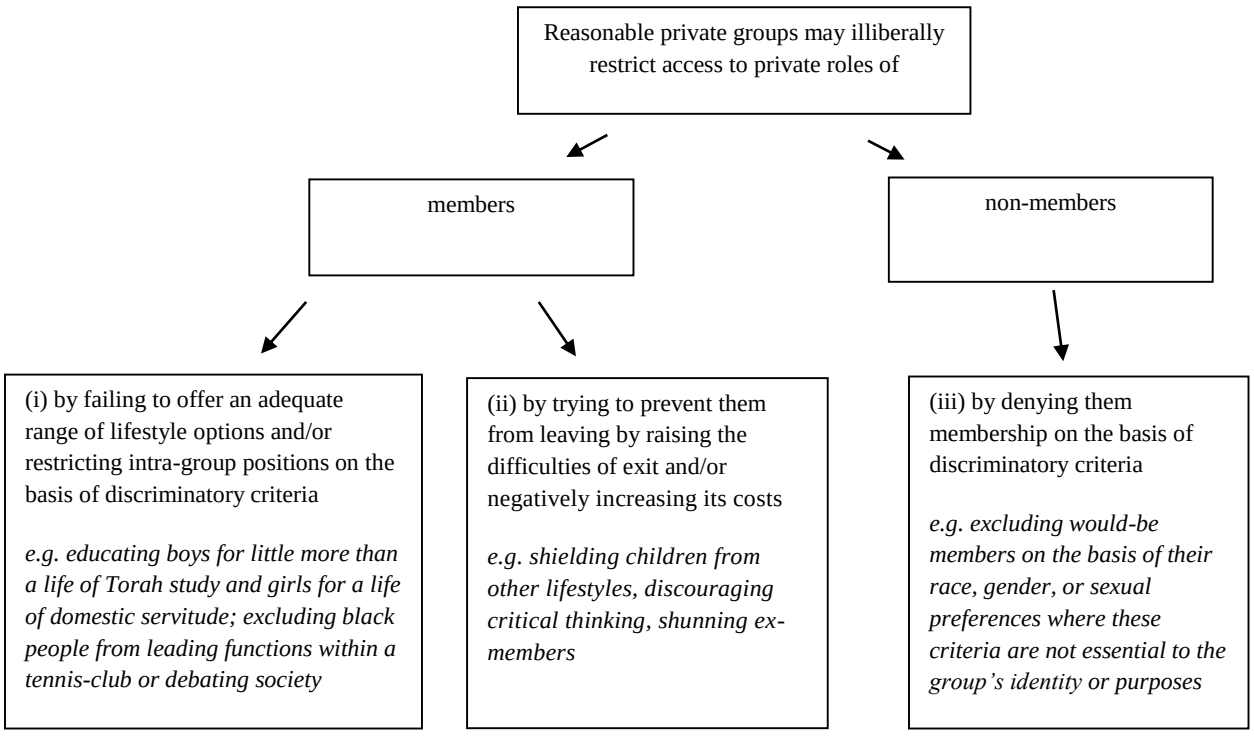


Fig.5 Ways in which reasonable private groups may illiberally restrict access to private roles

2.2.2.1 Inadequate range of lifestyle options/discriminatory intra-group exclusions

As shown by the fig.5, illiberal restrictions may affect the autonomy of members and non-members. The autonomy of members may be restricted in two ways. One is that they are denied an adequate range of lifestyle options and/or discriminatorily excluded from positions within the group (i).

Consider first cases where an inadequate range of lifestyle options is provided. By 'inadequate', I mean that people have insufficient (relevantly different) roles to choose from *qua* members of the group. Of course, *any* private group has to restrict the freedom of its members in certain ways, lest there is no reason for setting up or maintaining a group. The reason groups exist is that they allow us to achieve

things we cannot achieve alone. Yet this is only possible when certain restrictions are imposed on how their members behave, and often on who can become a member. Therefore, when saying that some private groups offer their members an inadequate range of lifestyle options, 'inadequacy' does not simply mean that the freedom of their members is restricted. Instead, it means the following: that according to liberal standards, the options of at least some members are insufficient. For example, Ultra-Orthodox Jewish boys may be prepared for little more than a life of Torah-study, whilst the socialisation of their female counterparts (and that of women in patriarchal groups more generally) may be devoted almost exclusively to a life of housework and care-giving (cf. Okin, 1998, pp. 672–3). (Note that for private groups to deny their members an adequate range of options, such restrictions need not be formalised. Thus, even if there are no written (or spoken) rules in a Catholic community that women take on the bulk of the care-giving, the mere presence of large numbers of "examples of conformity [to gender norms] may cause women to have an "indefinable feeling of appropriateness" about performing this kind of work (Chambers, 2002, p. 157)).

To be sure, merely facing such pressure does not prevent one from living autonomously as I defined it (section 1.2). Ultra-Orthodox Jews who are pressured into a life of Torah study or domestic work may independently endorse such lives. Nonetheless, the *chances* that one can live autonomously is higher (at least up to a point) in groups with more internal options, as there is more likely to be an option that is congenial to one.

Examples of such groups may be found in families in which the parents are football- or opera-enthusiasts and, as a result, prefer their children to watch football or go to the opera house with them. Such preferences are unlikely to deny their off-spring an adequate range of intra-group options. Why? Because they tend to be much less comprehensive and weaker than the preferences of devout believers for their children to adopt their religion. By 'less comprehensive', I mean that preferences for football/opera are compatible with a wider range of lifestyles. By 'weaker', I mean that the football- or opera-loving parents are likely to find it easier to accept when their children do not share their preferences for football/opera. (Observe that these criteria may come apart; thus my parents may have a strong preference for me wearing a headscarf that is compatible with lots of different lifestyles, namely all which do not require me to show my hair in public. Conversely, they may weakly prefer that I become a professional cyclist, which is a profession that excludes many different lifestyles given the amount of training and discipline it requires.)

Nor are bird-spotting societies likely to deny their members an adequate range of options. Bird-spotting (as far as I know) is compatible with a wide range of lifestyles, namely all those which do not prevent one from staring at birds once a week or so. And whilst members of bird-spotting societies may be expected to share a passion for birds, those who find their passion for ornithology waning are not usually

pressured to stay put. (Admittedly, there is a fuzzy boundary between private groups that offer an adequate range of intra-group options and those that do not; this does not affect my point though that relevant differences between groups on either side exist.)

The other category of illiberal intra-group restrictions has nothing to do with the adequacy of the options provided, but concerns the *grounds* on which members are excluded from private roles. I am referring to cases where people are excluded from intra-group positions on the basis of discriminatory criteria. 'Discriminatory' means that the used criteria are unrelated to the group's identity or purposes. For example, tennis-clubs or debating societies may exclude black people or women from leading positions within the group; to the extent that these exclusions do not derive from a racist or sexist/patriarchal self-understanding – instead, they may simply reflect the prejudices of some members –, such exclusions are discriminatory. (By contrast, were the KKK to admit black members, excluding these individuals from leadership would not be discriminatory in light of this group's identity and purposes.) To the extent that the excluded value the positions from which they are excluded, their ability to live a self-directed life is diminished.

2.2.2.2 Raising difficulties of exit/imposing negative exit costs

There is another way in which private groups may illiberally restrict their members' access to social roles, one that has nothing to do with the intra-group options that are available. This is by taking certain measures to prevent or discourage members from leaving, namely by raising the difficulties of exit and/or by negatively raising its costs (ii). Gerald Cohen explains the difference between costs and difficulties as follows: "The cost of an action is what I lose (but would have preferred to keep) as a result of performing it, whereas its difficulty for me is a function of how my capacities measure up to the challenges it poses" (Cohen, 2009, p. 171). Thus, a painful action is usually costly, given that pain is something most of us would want to lose or avoid, whereas putting a thread into the needle's tiny hole or returning a well-played tennis-serve tends to be difficult for most but not costly, as we do not usually lose anything valuable in doing these things (Cohen, 2009, p. 171).

How might illiberal private groups raise the difficulties of exit? One way is to shield their members from other comprehensive doctrines and lifestyles. As the numerous court cases about education requirements indicate (see e.g. *Mozart v. Hawkins Board of Education* (1987) and *Wisconsin v. Yoder* (1972) for cases where American parents tried to exempt their children from schooling policies in order to shield them from what they regarded as corrupting secularist views, or *Lautsi v. Italy* (2011) for a case in Italy where an atheist Finnish parent wanted the crucifix removed from her child's classroom), the desire to control people's exposure to other lifestyles is common, especially that of children. Another way in which exit may be made more difficult is by discouraging critical thinking. This may be done by

preventing people from becoming critical thinkers and/or by pressuring them not to deploy their capacity for critical thought. Though certainly not all illiberal private groups are against critical reflection, some are – for example, some religious groups require a "strong obedience to sacred texts and clerics' pronouncements" (Lester, 2006, p. 620).

(To avoid confusion, when groups seek to exempt children from schooling requirements, we are dealing with unreasonable illiberalism rather than reasonable versions and states should respond according to the principles laid out in section 2.2. This is because the right to education is basic in liberal-democracies; without it, (full) participation in society becomes difficult. Yet even when groups respect schooling requirements, they may still try to shield members from other's lifestyles and discourage critical thinking, which are reasonable ways of raising the difficulties of exit as I defined these terms.)

How does raising the difficulties of exit undermine people's autonomy? By creating obstacles to their living a life outside their private groups – lives that they may be better able to independently endorse. So, I may be unhappy with my membership of a religious community yet unable to leave because I do not know exactly how to go about it (indeed, in some cases, the very possibility of exit may be difficult to conceive for me). In addition, I may be unable to exit because my practical reasoning skills are underdeveloped and/or because, having exercised these skills so little, I lack the confidence to rely on them.

As was mentioned, private groups may also undermine their members' autonomy by negatively raising the costs of exiting. This happens when they sanction (certain) ex-members for exiting. The Amish practice of shunning those who leave, or are expelled from, the community after baptism would be a classic example of this. Another example is for groups to make ex-members financially worse off by boycotting their shops ((Barry, 2002, p. 153).

Whilst raising the costs of exit in *positive* ways will usually make it easier for people to independently endorse life within the group – by treating them well, they are more likely to find value in their membership – this does not seem to apply to the imposition of negative costs. Even when such costs make the decision to stay easier, autonomously endorsing one's life within the group seems often (if not always) to require that one finds one's membership non-comparatively valuable. In other words, continuing one's membership should not merely be the lesser evil.

2.2.2.3 Discriminatory exclusions of non-members

Lastly, private groups may illiberally restrict *non-members*' access to private roles. This happens when they deny them membership on the basis of discriminatory criteria (iii). By this, I mean that people are refused as members on grounds that are irrelevant to the group's purposes or identity. Take pagan groups that restrict membership to Caucasians; insofar as excluding non-Caucasians it is not part of their self-

understanding – suppose that this practice simply reflects the prejudices of some members whose views are not representative of that of the group as a collective agent –, this is a discriminatory exclusion. (Note that things would be different if such groups saw their mission as worshipping nature in the exclusive company of other Caucasians.)

Court cases about the lawfulness of (supposedly) discriminatory exclusions abound. Consider *Roberts v. United States Jaycees* (1984) and *Welsh v. Boy Scouts* (1993). In *Roberts*, the question was whether the United States Jaycees, a non-profit association that organises social, educational, and charitable events for men aged 18-35, could close down two Minnesota branches when these started to admit female members in the 1970s. Ultimately, the Supreme Court ruled that the constitution did not give the right to the national Jaycees organisation to refuse women. In *Welsh*, the question was whether a seven-year old could be excluded from the local Illinois branch of the Tiger Club for refusing to express a belief in God after his father filed for religious discrimination under the 1964 Civil Rights Act. Arguing that religious belief (and belief in God in particular) was part of the organisation's tenets, the local federal court found this exclusion to be lawful.

How do discriminatory exclusions undermine personal autonomy? They do so by excluding people where groups could admit them without compromising their mission or raison d'être. Insofar as some of the excluded would have liked to join (especially when this is a deep desire of theirs), their opportunities for living autonomously are reduced.

2.3 Liberal reform approach

I have argued that reasonable private illiberalism may undermine the autonomy of both members and non-members. When the autonomy of some subset of citizens is unequally affected, as is often the case (e.g. women may suffer greater intra-group restrictions than other members, black people may be denied membership but not people with different skin colours), social equality is undermined also.

To deal with these problems, some have defended what I call a 'liberal reform' approach (Chambers, 2002; Kymlicka, 1995; Okin, 2002b). Whilst the approaches favoured by these authors vary, they share the view that states should try to liberalise private groups, i.e. make such groups more accepting of the values of personal autonomy and social equality in their treatment of members and non-members. Kymlicka has thus argued that the aim of liberals should be to create a "fully liberal society" (Kymlicka, 1991a, pp. 170–1), whereas Okin, focusing on the family, has made the claim that "a society that is committed to equal respect for all of its members, and to justice in social distributions of benefits and responsibilities, can neither neglect the family nor accept family structures that violate these norms" (Okin, 2008, p. 22).

If successful, attempts to liberalise private groups would solve the above problems.

- The risk of spill-over would disappear, i.e. the problem that exposure to illiberal private practices, even if law-abiding, may engender or entrench unreasonable views (section 2.3.1.1). Without such practices, there would be nothing to spill over.
- The fair value of citizens' rights would be better protected (remember that illiberal private practices can undermine the agential and access conditions of these rights' worth; see 2.3.2.1). Thus, not only may Catholic women – and women more generally – be empowered when no longer excluded from priesthood, discrimination against them in employment and education may lessen when practices that reinforce stereotypes about female inferiority amongst employers and teachers disappear.
- Citizens would gain access to more private roles. This is because liberal private groups are likely to allow their members more intra-group lifestyle options and are less likely to try to make exit difficult or to impose negative exit costs. Furthermore, such groups are less likely to exclude non-members in discriminatory ways (section 2.3.2).

How might liberal reform be induced? There are different ways. Ranging from least to most restrictive, these include: state officials criticising illiberal private practices (e.g. teachers criticising sexist marriage regulations); denying financial benefits to private groups with illiberal practices (e.g. denying them tax exemptions if they exclude women from religious office); refusing such groups various legal entitlements (e.g. rights to own property, receive inheritances, have debts); compelling them to admit certain individuals (e.g. forcing the Jaycees to admit female members); and, most radically, criminalising private groups and/or prosecuting their leaders.

Because of the variety of available measures, the liberal reform approach is not easily rejected on pragmatic grounds. A common worry is that attempts to liberalise private groups may backfire. As is well-known, interfering can cause their members to become more illiberal (Ayelet Shachar (2001, pp. 35–6) has coined the term "reactive culturalism" for this phenomenon in the case of cultural communities). Private groups may respond to interference by clinging to orthodox norms (for example, burkini bans like the one recently introduced in Cannes[19] may increase Muslim support for the veil) and/or by (re)introducing such norms (as happened when Hindu groups in 19th-century India sought to defy the British colonial administration by reaffirming their commitment to Sati (Narayan, 1998, pp. 93–4; cf. Phillips, 2005, p. 114). Such backlashes may occur when people are disgruntled by the state's meddling (which may be especially likely when their group has suffered injustice at its hands) and/or because they

[19] http://www.bbc.com/news/world-europe-37062354

are anxious about the group's survival or loss of identity. However, when a wide range of measures is available for liberalising groups, including softer ones (e.g. denying tax exemptions to illiberal organisations, launching awareness campaigns to disseminate liberal norms), the risk of a backlash may be reduced. For this allows states to tailor attempts to induce liberal reform to specific situations.

Indeed, even when *no* measure is likely to liberalise a given private group, this does not count against Liberal Reform per se. Its proponents are not committed to the view that states should *always* try to induce liberal reform, no matter how grim the prospects. Instead, they are committed to a more modest proposition: that such attempts are sometimes due and, it seems, that there is always a pro-tanto reason for incentivising liberal reform when there is a chance of success.

2.4 Objections

Later, I argue that interfering with certain expressions of reasonable private illiberalism is appropriate. For now, consider why Liberal Reform (understood as the view that states always have pro tanto, and sometimes sufficient, reason for interfering with reasonable illiberal practices when there is a chance of success) is problematic. The problem is twofold. First, Liberal Reform undermines the fair value of rights (by undermining citizens' agency or access to various rights). Second, this approach unduly narrows the range of available private roles.

2.4.1 Agency and access

How does Liberal Reform undermine the fair value of rights? It does so by reinforcing negative stereotypes about the groups it seeks to liberalise. Such attempts may undermine the agency their members need for exercising various rights and/or their access to rights.

An example illustrates the point. When states try to make certain Muslim communities less patriarchal, agential harms may be incurred when such attempts undermine their members' self-confidence. Whilst these individuals may already feel second-class citizens due to discrimination against them in various domains (e.g. employment and education), such attempts may reinforce the idea that there is something wrong with them, thereby causing them to feel backward or less worthy. As a result, some Muslims may feel that it would be inappropriate for them to exercise various rights and liberties. For example, they may be reluctant to run for political office, demonstrate for various causes, and/or present themselves in public in certain ways (e.g. in traditional clothing, such as thawb, chador, niqab, or burqa). (Note that such disempowerment need not invariably occur; as was mentioned, discrimination sometimes leaves the victims unaffected or even strengthens their agency.)

Reinforcement of negative stereotypes may also fuel discrimination. When states seek to change a group's nomos, outsiders may (unconsciously) have their biases against the group's members affirmed. Thus, when states interfere with a Muslim community, non-Muslims may have their (implicit) conception of Muslims as second-class citizens affirmed. When such biases engender discrimination in areas where there are rights to fair treatment, such as (public) education and the for-profit sector, citizens' access to rights is obstructed.

2.4.2 Private Roles

There is another way in which Liberal Reform may undermine citizens' autonomy: by restricting the range of private roles available to them. The more successful attempts to liberalise the private sphere are, the more difficult it becomes for citizens to live illiberal lives. When they can only independently endorse such lives (or, less dramatically, when more liberal lifestyles are simply less attractive to them), their personal autonomy is compromised. Thus, Catholics may find it difficult to endorse their membership of the Catholic Church if female priesthood is introduced; members of the Boy Scouts may be unable to wholeheartedly identify with this group if homosexuals or atheists are admitted; and the Pueblo-Indians may have trouble accepting their tribe's terms of association when religious converts can no longer be expelled (below, I consider why this may be the case).

Besides undermining the personal autonomy of members of illiberal private groups, Liberal Reform may undermine the autonomy of non-members. Not rarely, people's reasons for joining such groups – or at least one reason – is that they are (partially) illiberal. For example, those joining a monastery or a religious cult frequently do so precisely because such organisations offer little room for individual choice (more on this shortly).

In response, a critic might say that interfering with illiberal private practices cannot undermine anyone's autonomy. They may say that only those who have been brainwashed, manipulated or fallen prey to sour-grape reasoning would want to live an illiberal life.[20] If correct, then trying to liberal private groups cannot undermine their members' personal autonomy, as they are not autonomous to begin with.

I want to resist the idea that people would never independently endorse an illiberal lifestyle. To think that all nuns in history and anyone who ever converted to an orthodox religion after a liberal upbringing did so under the spell of autonomy-inhibiting forces seems implausible. In addition, the critic's response has difficulties accounting for the many individuals who voluntarily left (sometimes deeply)

[20] One of Aesop's fables tells of a fox that wants to eat a bunch of grapes. Upon realising that the grapes are beyond its reach, the fox adopts the belief that the grapes are 'sour anyway' and no longer desires them. This is called 'sour-grape reasoning', as the fox's change of preferences has nothing to do with the (seeming) sourness of the grapes, but is instead caused by an unconscious mechanism that helps the fox to cope with the disappointment of not being able to reach the grapes – a form of cognitive dissonance reduction. As it bypasses the agent's capacity for rational thought, 'sour-grape reasoning' is generally considered to be autonomy-inhibiting (cf. Elster 1985).

illiberal private groups throughout history. Just think of defectors from the Amish or Ultra-Orthodox Jewish communities.

Besides such abductive evidence, there are positive reasons for believing that illiberal lifestyles may be endorsed by perfectly sane and independent-minded individuals. One is deference to tradition. As suggested by (among other things) the fact that many Reformist Jews choose to marry under Jewish law in spite of its sexist regulations, this motivation is not uncommon (Reitman, 2005). In fact, even when people do not support their group's illiberal practices (they may be indifferent about these practices or even oppose them), it may be rational for them – or at least not irrational – to oppose state interference. In order to see this, notice that they may find it important that the group's collective agency be respected (including its ability to set its own membership criteria), which is especially likely when the group has suffered injustice at the state's hands. If correct, then even those who do not support the group's illiberal practices may have their autonomy undermined when the state tries to liberalise the group, as they may be unable to endorse forced changes to the group's nomos.

There are also features of illiberal lifestyles specifically relating to their illiberalism that help explain why people may autonomously endorse them. Making choices regarding one's work, relationships, friendships, children, and the way one spends one's free time can be very burdensome, especially in post-industrial societies with their increased job uncertainty, cult of independence, and constant stream of (digital) information that vividly reminds us of our options. In addition, many of us long for answers to existential questions about life's meaning, the (possible) existence of a transcendental reality, and so on. The fact that illiberal private groups often provide (relatively) clear answers and guidance for both sets of issues suggest that people may have perfectly good reasons for joining or continuing to be part of such groups.

Finally, there is empirical evidence for the proposition that people can autonomously belong to illiberal private groups. Let me give one example. Whilst the Unification Church (a.k.a. the Moonies) are often depicted as an illiberal group with brainwashed members *pur sang* (not the least because they randomly assign their followers to their marriage partners), Eileen Barker's (1984) longitudinal study of its members in various Western countries suggests otherwise. Despite being "love-bombed", a method where during two days, newcomers are overwhelmed with displays of attention and affection by existing members, Barker argues (convincingly) that this method is by no means irresistible, as many do not subsequently join the church or leave within two years. Whilst admitting there to be a lot of variation, the general picture that emerges from this study is that a "potential Moonie is not the sort of person who will accept anything" (Barker, 1984, p. 244)). Rather than being brainwashed, those who become or remain members of the Unification Church are generally attracted by the guidance and clear sense of purpose it

offers in an uncertain world, along with the "the chance to be part of a Family of like-minded people who care about the state of the world" (Barker, 1984, p. 244).

At this point, a critic might accept that Liberal Reform compromises some citizens' autonomy. But, they may say, this is likely to happen to a *limited* degree only. As attempts to liberalise private groups will often be partially successful at best due to conservative backlashes, engaging in illiberal practices is likely to remain possible.

Though true, this does not vindicate this approach. The idea that Liberal Reform's justifiability depends on it not being 100 percent successful is problematic. Suppose that states tried to eradicate Islam in society by banning the veil and levying a special tax on Mosques; such attempts would clearly be illegitimate even if their (partial) ineffectiveness would allow for the continued practicing of the Islamic faith. Similarly, the fact that attempts to liberalise private groups may not succeed (or not entirely) cannot plausibly do any justificatory work.

2.4.3 Spill-Over

I have argued that by trying to liberalise private groups, Liberal Reform fails to respect citizens' autonomy. As private groups differ in their illiberalism, an implication of Liberal Reform is that states have to interfere with some groups more than others. When this happens, another core liberal value is undermined: social equality.

Shortly, I argue that these problems are fatal for Liberal Reform. For now, I want to answer an objection, namely that a possible correlation between support for private illiberalism and unreasonableness would vindicate Liberal Reform. As we have seen, there is reason for believing that exposure to illiberal private practices may increase the number of unreasonable citizens and/or the intensity or strength of their unreasonable views (section 2.3.1.1). If correct, this is problematic for reasons that should now be familiar: unreasonable doctrines may undermine the fair value of citizens' rights and, in some cases, even imperil the very survival of liberal-democratic institutions (section 1.3).

Does this justify state attempts to liberalise private groups? Moles (2014) thinks so. In his words, spill-over "gives us weighty reasons to interfere with associations", which leads him to conclude that there is "no injustice in forcing them to change their [illiberal] practices" (Moles, 2014, p.94; p. 101).

Some might object to this that liberalising the private sphere is not the least restrictive means and therefore unacceptable. One less intrusive and equally, if not more, efficient measure may be for states to propagate liberal-democratic values along the lines suggested by Brettschneider. Thus, states may invest in civic education, hold speeches, erect statues for the champions of liberal democracy, and so on (section 1.3.1). Another measure may be to spend more on enforcing anti-discrimination legislation in education and employment. Given the risk of conservative backlashes (section 2.4) and the fact that exposure to

illiberal practices need not make citizens unreasonable – even if the exposed are (somewhat) more likely to be unreasonable/act unreasonably (section 2.3.1.1) – such measures may be understood to be at least as efficient.

This response fails, as defenders of Liberal Reform may accept the least-restrictive-means principle. What they are committed to is not that states should always try to liberalise reasonable private groups, but that there be *some* contexts where it is appropriate to do so (section 2.4).

Rather, the reason why the spill-over objection does not vindicate Liberal Reform is this: the harm of (possible) spill-over is outweighed by the over-inclusiveness of this approach. Just as banning violent videogames in order to curb gun violence affects players who do *not* become more violent from playing such games (on the contrary, it may offer them a non-violent way of channelling their anger), so liberalising private groups affects citizens who support illiberal private practices without being (or becoming) unreasonable. As section 2.3.1.1 showed, such individuals are all but rare – remember Woo and Harmsen who had no problems reconciling their support for illiberal Christian practices with their support for liberal-democratic institution. In light of the possible harm to their autonomy – they may find it harder to endorse their life when the state succeeds in inducing liberal reform (section 2.5.2) – there is at least pro tanto reason for rejecting Liberal Reform.

In my view, this reason is sufficient within consolidated liberal democracies. Here, the harm to citizens' autonomy would be very high compared to what is gained by adopting Liberal Reform – somewhat greater support of liberal democracy in societies where citizens' basic rights are already firmly entrenched. This is true at least when states take certain non-reformist measures to counteract the harm to autonomy that reasonable private illiberalism may do (more on these below).

By contrast, when liberal-democratic institutions are imperilled (as determined by Kirshner's criteria; see section 1.3.2), liberalising the private sphere might be justifiable. Whilst this dissertation focuses on consolidated liberal democracies, let me say a few words about this. If trying to liberalise reasonable groups can ever be justified, such attempts must be the least restrictive means (i.e. they should work better than the above measures). Furthermore, the bar for doing so should be higher than when unreasonable views and practices are involved. This is so for two reasons. First, the fact that some reasonable citizens will be interfered with (remember that there is no necessary link between support of illiberal private practices and unreasonableness) is unfair to them. Second, by liberalising the private sphere to save liberal democracy, the thing that is being saved – liberal democracy – is devalued to a certain degree. Just as minimising killings (i.e. killing innocent individuals to save a greater number) reduces the value of human lives, as all of us become liable to being killed even if our ex-ante chances of surviving go up (Kamm, 1992, p. 386), saving politico-legal institutions by undermining some reasonable citizens' autonomy reduces the worth of these institutions.

2.5 The EO³ approach

I have argued that Liberal Reform undermines citizens' personal autonomy in two ways. The first is by undermining the fair value of citizens' rights (specifically, I showed how the agency and access conditions of the substantive enjoyment of rights may be violated). The second is by restricting the range of private roles available to citizens, whereby those who independently endorse illiberal lifestyles will find it more difficult to live accordingly. The fact that Liberal Reform requires greater interference with some private groups than others (remember that such groups differ in terms of their illiberalism) raises another problem, namely that the harm done to citizens' autonomy will be unequally distributed. This suggests that social equality is undermined also.

What I want to argue next is this: that the approach expounded in this section better protects citizens' autonomy and social equality than Liberal Reform, and is hence to be preferred even if there is some spill-over between private illiberalism and unreasonableness. According to this approach, the state should tolerate illiberal private practices as long as these are reasonable, i.e. insofar as they are law-abiding and do not oppose basic rights or seek to deny non-basic rights on discriminatory grounds. At the same time, states should take three measures to protect citizens' personal autonomy and social equality.

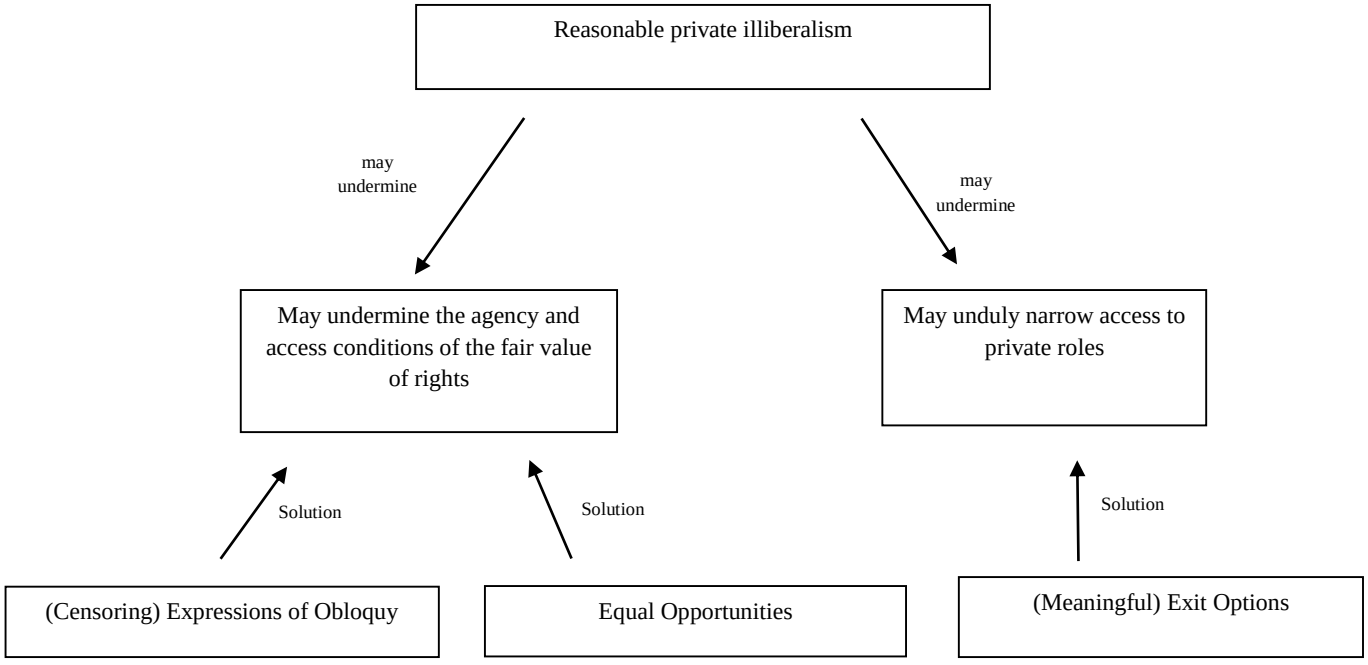


Fig. 4. Three measures for dealing with the challenges of reasonable private illiberalism

First, they should censor certain statements of reasonable private illiberalism in the public space. These are what I call 'expressions of obloquy'. Second, states should ensure that citizens have equal opportunities in the public sphere (e.g. in politics, the for-profit sector, publicly funded schools and universities). Third, they should secure meaningful exit options for citizens; that is, substantive opportunities for citizens to leave their private groups.

Let us look at each of these measures.

2.5.1 Expressions of obloquy

In sections 1.3.4 and 1.6.2, I argued that unreasonable discriminatory statements may undermine the fair value of citizens' rights by undermining their agency. Messages such as 'all Arabs or Muslims are terrorists' and 'No voting rights for black people' are not infrequently so damaging to citizens' self-confidence, especially in contexts where they regularly face such abuse – that it becomes difficult for them to exercise various liberties (think of rights to political participation, freedom of speech, occupation, and association). What I want to suggest here is this: that certain expressions of reasonable private illiberalism are likely to have the same effects, and therefore also call for state interference.

What kinds of expressions are these? Those that are so degrading that it is impossible to see how those who subscribe to such views could believe that people are due (equal) moral concern – call these 'expressions of obloquy'. One might think of the messages spread by White supremacist organisations – think of signs or banners reading 'White power' or 'Blacks not welcome', or of associations that, despite not self-identifying as White Supremacist, have a policy of excluding black people, such as tennis-clubs and debating societies. Another example may be found in the messages of the Westboro Church whose members have become infamous for protesting at funerals of American soldiers, the deaths of whom they see as a punishment for the toleration of homosexuality in the United States, and, more recently, for their protests at vigils for the victims of the Orlando gay night-club shooting[21]. As reported on their website, this group's mission is the following:

> "WBC engages in daily peaceful sidewalk demonstrations opposing the homosexual lifestyle of soul-damning, nation-destroying filth. We display large, colorful signs containing Bible words and sentiments, including: GOD HATES FAGS, FAGS HATE GOD, AIDS CURES FAGS, THANK GOD FOR AIDS, FAGS BURN IN HELL, GOD IS NOT MOCKED, FAGS ARE NATURE FREAKS, GOD GAVE FAGS UP, NO SPECIAL LAWS FOR FAGS, FAGS DOOM NATIONS"[22] [original capitals].

[21] https://www.washingtonpost.com/news/post-nation/wp/2016/06/18/hundreds-counter-protest-westboro-baptist-demonstration-in-orlando/?utm_term=.c436ec7c7190
[22] http://www.godhatesfags.com/wbcinfo/aboutwbc.html

Even if such messages do not incite violence against black people or homosexuals or publicly oppose their rights, they may be equally harmful to the agency of members of marginalised groups. That is, one can appreciate how such messages may undermine their self-confidence and esteem in the same way attacks on their basic rights do. As a result, by allowing such obloquy into the public realm, the agential skills and dispositions that citizens need for exercising various rights (see above) may be compromised.

This suggests to me that censoring public messages of the Westboro's church and Whites Supremacist groups would be appropriate. Whilst forbidding these groups from communicating – let alone outlawing them – would be too big a constraint on citizens' freedom of association and speech (more on this below), the state should see to it that their degrading and vilifying statements do not become embedded in the public space in the form of banners, texts written on walls, or other visible signs (cf. (Waldron, 2014). (Demonstrations are trickier, as they are not permanent features of the public space. Without being quite sure how to deal with them – there may be room for different approaches –, forbidding demonstrations at places where their target groups are concentrated (e.g. predominantly black neighbourhoods, vigils for the victims of Orlando) would seem appropriate, as being targeted in this way can be especially intimidating and, as a result, harmful to agency).

Exactly what forms of censorship are due (and when) can be left open, however. What matters for the more general account of toleration developed here is that *some* form of censoring is due in order to protect the fair value of rights.

Objections

At this point, some may accuse my account of being too restrictive, whereas others may charge it with being insufficiently restrictive.

The first accusation is based on an argument from analogy. If states should censor public messages of White Supremacists and the Westboro Church even if these are reasonable (i.e. even if they are law-abiding and do not oppose basic rights or seek to deny non-basic rights on discriminatory grounds), then the same fate should befall public expressions of the Catholic ban on women's ordination, such as processions headed by priests. But since the latter restrictions would be impermissible, a critic may say, my account is too restrictive.

This does not follow. It seems to me that the messages of White Supremacists and the Westboro Church do considerably more damage to citizens' agency than those of the Catholic Church. The reason, I believe, is that whereas the former's tenets deny citizens and people more generally equal concern, those of the Catholic Church do not. In the latter case, we can appreciate how someone might support the ban on women's ordination (e.g. on the basis of religious belief or out of deference to tradition) whilst believing that women have equal moral status – remember Woo and Harmsen. This suggests to me that tolerating

processions and other public expressions of this ban does *not* do irreparable damage to the substantive enjoyment of rights, whereas tolerating the obloquy of White Supremacists and the Westboro Church does. If correct, then given the harm to autonomy caused by interfering, tolerating the former but not the latter would seem appropriate. (This is not to suggest that states should not redress the stereotypes of female inferiority that are reinforced by the Catholic ban on female priests; below I consider what kinds of measures ought to be taken.)

According to the second charge, my account of toleration is too lenient by limiting interference to public expressions of obloquy. Why not go further? Why not ban White Supremacist organisations or the Westboro church? Indeed, why not ban *all* private groups organised around similarly degrading views if this helps to protect the agency of their subjects and/or reduce discrimination against them in areas where this is not allowed (e.g. the for profit sector, publicly funded universities)?

To answer this question, it is instructive to distinguish different kinds of private groups. Few liberals (if any) would ban families or groups of friends, even if these groups regularly made such statements. And rightly so, I believe; doing so would be a massive restriction on their members' autonomy. Nor would many liberals be in favour – again for good reasons – of censoring the speech of such groups, for example by closing their email-accounts. Knowing that one's most personal interactions are being monitored for obloquies may not just be stressful, but also prevent groups from flourishing that require a fair amount of spontaneous interaction. Regarding the family, for instance, some have argued (and I believe plausibly) that unless communication amongst its members is largely free, the intimacy that makes such groups valuable becomes difficult to realise (e.g. Brighouse & Swift, 2014).

Even so, some might still want to deny certain rights to groups such as the Westboro Church and White Supremacist organisations. They may look for inspiration in the Dutch Civil Code. According to Dutch law, associations seeking legal recognition and, entailed by this, rights to hire or own property, receive inheritances, have debts, and so on, cannot discriminate (see especially articles 2:26-2:52). Leaving aside what non-discrimination means here, one might argue that the above rights should be *conditional* on groups not holding degrading beliefs about certain groups. On this view, whilst members of White Supremacist organisations and the Westboro church should be allowed to convene in their homes and communicate (e.g. exchange emails, letters), they ought to be denied the right to own clubhouses, receive inheritances, et cetera.

Is this justifiable? One common reply is 'only when their degrading views are not part of the group's purposes or identity'. Regarding the right of private groups to exclude members, Stuart White thus argues that

> "an association which defends a disputed exclusion rule by reference to a special expressive commitment must be required […] to make a reasonable case that this expressive commitment is central to its overall purposes; and this will require showing, I think, how the commitment does enter into the motivation and self-understanding of a large proportion of the association's current membership. Some such requirement simply has to be in place if we are to prevent associations cynically inventing expressive commitments to try to keep people out" (White, 1997, p. 388).

According to this logic, the Jaycees and Boy Scouts may refuse women and homosexual/atheist members respectively – whilst keeping the above legal entitlements – as long as these exclusions are expressive of their goals or self-understanding. Indeed, the same criterion may be applied to restrictions within the group. For example, only private groups that do not deny leadership positions to women or homosexuals on the basis of discriminatory grounds (i.e. grounds unrelated to these groups' purposes or identity) may be deemed eligible for rights to own property, have debts, receive inheritances, et cetera.

Influential as this criterion is in US jurisprudence, I fail to see its appeal. The fact that groups can avoid having to admit certain individuals by making their racist, sexist, or homophobic exclusions central to their identity or purposes (e.g. a tennis club may transform into a White Supremacist group whose members play tennis in order to get around these restrictions) strikes me as perverse. Making such bigotry central to one's group should not be rewarded.

If I am right about this, then other things equal, either *both* (private) racist tennis clubs and White Supremacist organisations should be denied the aforementioned legal rights or *none* should. Much as I find their views and practices deplorable, I believe none should.

One problem with forcing private groups to change their terms of association is that this tends to be antithetical to people's motivation for becoming or continuing to be members. As was mentioned, part of what makes membership valuable to many is that the groups of which they are members can set their own terms of association, i.e. that they have collective autonomy. This counts against the proposed restrictions; whilst deciding whether a given group norm has emerged endogenously or extraneously may be difficult, for the state to require private groups seeking the above rights to admit certain individuals as members or to open positions within the group for certain members can hardly be seen as an endogenous change. Another problem with such requirements is that they may have a stifling effect on the group's internal life. Notwithstanding the differences in intimacy and spontaneity between, on the one hand, more formally structured organisations with clubhouses, legal personality, etc. and, on the other, families or groups of friends, it is certainly not rare for the former to "attempt to replicate the bonds of literal fraternity" by fostering relationships amongst members that are "close, intimate, and continuing" whereby "the club functions as an extension of their homes" (Rosenblum, 1998, p. 69). As a result, one can

appreciate how the sceptre of state interference, lawsuits, and blackmailing may inhibit intimacy and spontaneity.

Some might say that these are not real problems, as the Westboro Church, White Supremacists, and racist tennis clubs have no *right* to organise themselves around such degrading views, even if they are not unreasonable. To assume otherwise, it might be said, is to beg the question against those seeking to deny them legal rights.

This is to misunderstand the point. The argument is not – or not just – that these groups' collective autonomy and capacity for intimacy/spontaneity would be restricted, but that of *all* private groups, including those with innocent views. *All* of them would be constrained in their ability to choose their members/set their internal rules, as well as in their members' ability to share intimacy and act spontaneously. Whilst some might say that this does not matter when groups would not exclude people on the basis of degrading views anyways (neither insiders nor outsiders), allowing for collective autonomy and intimacy/spontaneity does not merely require that groups can choose the right thing – morally defensible terms of association –, but that they have a genuine choice in this regard. No freedom to make morally faulty choices, no collective autonomy or sufficient opportunity for intimacy/spontaneity.

The current proposal is also beset by (more) pragmatic problems. Insofar as forcing private groups to abandon their degrading practices if they wanted to own property, receive inheritances, and so on, renders it *impossible* for them to function (note that many private groups are too large and complex to operate from people's homes), anomie looms. According to Galston and Rosenblum, when such groups fall apart, the risk of anti-social behaviour by their (ex)members increases; no longer subject to group discipline and bereft of an association where they can find meaning and that may help them cope with life's vicissitudes and disappointments, such individuals may be more likely to embark on a nihilistic, violent path (Galston, 1991, p. 255; Rosenblum, 1998, p. 31)[23].

Even if this risk is exaggerated, however, other problems remain. Perhaps most importantly, the question of whether private groups hold views that are (sufficiently) degrading is bound to spark controversy; whereas some actors may have political or personal incentives to crack down on certain groups, others may have countervailing incentives. This is problematic not just because of the instability this may engender, but also because such extrinsic interests may result in groups being *wrongly* suppressed. Indeed, even in the absence of such ulterior motives, the frailties of human judgement may have this result. (Whilst my proposal to censor expressions of obloquy comes with the same risks, note

[23] Writes Galston: "The greatest threat to children in modern liberal society is not that they will believe in something too deeply, but that they will believe in nothing very deeply at all. Even to achieve the kind of free self-reflection that many liberals prize, it is better to begin by believing something" (Galston, 1991, p. 255).

that the stakes are much lower, as the relevant groups would not be forced to surrender their collective autonomy in the ways just discussed.)

In short, there are compelling principled and (more) pragmatic reasons for why rights to own property, receive inheritances, have debts, etc. should not be denied to private groups with degrading views (again, assuming these groups not to be unreasonable). These reasons strike me as sufficient *even when* denying such rights has a positive impact on citizens' agency and/or access to rights. So far, I have not talked about this, but it is far from clear whether citizens' agency and/or access to rights would be (significantly) improved if private groups were denied the above benefits. By removing degrading messages from the public space, states already show their commitment to protecting citizens' agency and signal to the wider society that such messages are problematic; whether (much) more is to be gained from taking these additional steps is not clear. Would it empower (some) homosexuals if they knew that the Westboro Church was forced to have its gatherings in their members' attics, or that this group could not receive inheritances or have debts? Would such restrictions reduce discrimination against them in areas where discrimination is illegal?

Insofar as these effects occur, I suspect that they do not outweigh the costs to citizens' associational lives (including those of homosexuals), which we saw may be significant. In addition to this, the (more) pragmatic problems of withholding the rights in question – the risk of anomie, instability, and erroneous judgement – would remain. All in all, I believe this gives liberals sufficient reason not to deny rights to own property, receive inheritances, and have debts to the above groups.

This leaves one more question: Should states criticise groups such as the Westboro Church and White Supremacists when they are reasonable?

I believe not. In my view, there are principled reasons for not criticising degrading views of private associations if these views are reasonable, i.e. if they do not challenge people's freedom and equality qua citizens. Now there may be few, if any, empirical examples of groups that regard some citizens as morally inferior (e.g. black people, homosexuals, atheists) *without* being unreasonable. If correct, such groups are always properly subjected to state criticism. However, my thesis is that in these cases, only their unreasonable views should be criticised, not those that are degrading in different ways. This means that whilst it is permissible – indeed morally required – for states to criticise the belief that black people, homosexuals, and/or atheists should be treated as second-class citizens, they should not criticise the belief that (some of) these groups are morally inferior.

To vindicate this claim, imagine that a religious group believes that they are God's chosen people – call them The Superiors –, and that they are morally better than others as a result (note that I am not talking about the Jews). Unlike most other groups that believe in their own moral superiority, however, The Superiors believe that other citizens should have equal rights and liberties. Despite feeling superior,

they believe that showing respect for human life requires that one does not support political institutions that treat people as second-class citizens, given how difficult it is psychologically to live under such institutions.

Should The Superiors be criticised by the state? (Assume also that they do not publicly propagate their belief in their moral superiority in order to protect the agency of those they deem inferior.) I believe not. Even if it is legitimate for private individuals to criticise their views, this does not apply to the state. Why not? Because state criticism can be (and often is) quite intimidating. When one allows other citizens equal space to organise around their beliefs (as do The Superiors – indeed, they may even think it is perfectly legitimate for other groups or individuals to believe that *they* are inferior), I believe that one should not be subjected to such intimidation, or suffer the heightened risk thereof (indeed, it may even be reasonable for a member of the Superiors to feel like a second-class citizen if their group is criticised nonetheless).

An analogy helps to illustrate the point. Suppose that a young child believes that his older brother is morally inferior. He confesses this belief to his diary, but never tells his brother about it. One day he accidently leaves his diary on the kitchen table. His father accidently reads the passage with the relevant confession. Should he scold the child? I think not. When some agent or agency has coercive power over you, being criticised can be quite frightening. Accordingly, when you do not violate the rights of others and, relatedly, allow them equal space to live as they see fit, being criticised for believing in another's moral inferiority by a coercive agent/agency seems inappropriate. (Though I am not quite sure what to call the right to be free from such criticism, it may be understood as part of the right to privacy.)

2.5.2 Equal opportunities

This brings us to the EO³'s second measure. To protect the fair value of citizens' rights, states should also ensure that citizens have equal opportunities in the public sphere, that is, in politics, the for-profit sector, state organisations (e.g. civil administration, courts, the army and police force), and publicly funded schools and universities. By 'equal opportunity', I mean that those who are equally ambitious and talented have (broadly) equal chances in occupying positions in these domains.

As section 2.3.1.2 showed, there are two ways in which reasonable private illiberalism may undermine citizens' ability to compete for such positions on equal terms. First, by undermining their agency, which happens when illiberal private practices reinforce negative stereotypes about their groups (think of stereotypes of female inferiority being affirmed by bans on women's ordination). As we saw, such stereotypes may harm people's self-confidence, an effect that may be amplified when such stereotypes conduce to an underrepresentation of groups in certain areas. Second, by reinforcing (implicit) biases against groups within the wider society, which may undermine their access to rights by causing

discrimination in hiring practices (e.g. non-Catholics on hiring committees may have the same biases about female inferiority that are reinforced by the Church's ban on female priesthood).

As I argued, being unable to compete for public positions on equal terms is problematic because it is harmful to citizens' autonomy. To add to this, we can distinguish at least two reasons why this is so. First, occupying (or even merely pursuing) such positions may be part of citizens' conceptions of the good life. Second, they tend to be advantage-conferring. By this, I mean that they offer those who occupy them certain resources (especially money and power) that may render it easier for people to pursue their goals in life. When either of these conditions apply, citizens may find it more difficult to live autonomously.

How can states secure equal opportunities? Rather than giving a full answer (which would require an account as to how income and wealth inequalities that translate into superior educational or networking opportunities for some ought to be addressed), my aim here is more limited. I am only concerned here with how states can address the ways in which reasonable private illiberalism may undermine equal opportunities.

To fight overt forms of discrimination, penalising acts of discrimination in the for-profit sector, state organisations, and publicly funded universities may be the best approach. However, we saw that discrimination may operate in subtler ways, namely through implicit biases. To deal with this kind of discrimination, Bohnet (2016) has recently argued that de-biasing individuals (e.g. by investing in diversity training as many American universities do) is less promising than re-designing environment (e.g. by nudging, leaving out demographic information from resumes).This is because people are not just prone to all sorts of cognitive biases, but frequently also overly confident in their decision-making abilities even when told about these biases (e.g. Kahneman 2013). Other ways of countering negative stereotypes include giving additional weight to the applications of marginalised groups or introducing quotas.

Such measures may also promote citizens' agency by providing role-models and countering stereotype anxiety threats resulting from under-representation in certain areas. Another way in which the citizens' agency may be protected from harmful stereotypes is by offering them perseverance and resilience training at school. Finally, to the extent that illiberal private norms deny equal learning opportunities to some groups (e.g. girls in patriarchal communities), states could offer them special after-school tutoring programmes or other forms of educational support.

Whichever of these (or other) measures work best ought to be adopted.

2.5.3 Exit options

EO³'s third measure is to secure meaningful exit options. Such options should give citizens a *substantive* as opposed to merely formal opportunity to leave their private groups, which requires that certain epistemic, financial, and other obstacles be addressed – more on this shortly. (Note that the formal right of

exit, which forbids coercively preventing people from leaving, is covered by rights to free association in most liberal societies.) Such opportunities are especially important for protecting the autonomy of members of illiberal private groups (as we saw, such groups circumscribe the range of what I called 'private roles' more than do liberal groups). Where these individuals might otherwise lack an adequate range of lifestyle options (section 2.3.2), securing meaningful exit opportunities allows them to join or set-up another group that is more congenial to them, or simply to live how they see fit unaffiliated. (Of course, not all of them will exercise their exit rights; even those unhappy with important aspects of their group may prefer to stay and try to change its nomos, i.e. exercise their "voice" as Albert Hirschman (1970) called it, or simply put up with the disliked aspects, i.e. show "loyalty" in Hirschman's vocabulary. This is all fine; what matters is that citizens have the opportunity to leave.) Whilst having different lifestyle options is not valuable per se – at least not in any obvious sense –, having a broad enough range helps to protect citizens' autonomy by rendering it more likely that a lifestyle will be available to them that they can independently endorse (section 2.3.2).

If my argument is sound, the so-called 'Liberal Reform' approach fails to secure such a range. (section 2.5.2). Even if liberalising private groups gives their members more intra-group options, it overly narrows the spectrum of relevantly different lifestyles. Specifically, I argued that, since there is good reason for people to endorse illiberal lifestyles, such options ought to feature on every citizen's lifestyle menu (section 2.5.2). What is more, state attempts to liberalise private groups were shown to create inter-group inequalities, as some but not other groups will be interfered with (or interfered with more heavily). This, we saw, not only undermines social equality, but may also harm their members' agency and/or access to rights by reinforcing negative stereotypes about them (section 2.5.1). Rather than accepting Liberal Reform, then, it seems that liberals should support an approach that secures meaningful exit options.

Whilst various authors have stressed the need for meaningful exit options, they have either said little about their requirements (Galston, 2002, p. 123; Raz, 1995, pp. 185–90) or focused on specific ones, such as educational requirements (Lester, 2006; Okin, 2006, pp. 334–6; Spiecker et al., 2006); financial requirements (Barry, 2002, pp. 150–4); or the need for protecting individuals from oppressive cultural practices (Okin, 2006, p. 344; Shachar, 2001). (Whilst Spinner-Halev (2000) discusses all these requirements, I will argue that his approach is unsatisfactory.) Revisiting this issue is therefore necessary.

When do citizens enjoy meaningful exit options? My suggestion is when the *difficulties* of exit are below a threshold level. Drawing on Cohen's distinction between difficulties and costs (see section 2.3.2), I define the difficulties of exit as follows:

Difficulties of exit: exiting a group is difficult for me if and only if the option of exiting is unthinkable to me, OR insofar as it is thinkable, there are things preventing me from exiting even if I wanted to.

Exit costs are reduced to the requisite (threshold) level when states do the following things:

a. Make an autonomy-facilitating, pluralist education compulsory for children
b. Ensure that citizens have the financial wherewithal to leave private groups
c. Proscribe practices that deny meaningful exit options (e.g. foot-binding, forbidding older children to leave their homes, drugging people to prevent them from exiting)

(To be sure, I am not claiming that securing meaningful exit options is the *only* justification for measures (a)-(c). All three are supported by additional reasons relating to the need for teaching tolerance and protecting well-being – accordingly, insofar as these other reasons are sufficient, the need for securing meaningful exit options offers another sufficient justification.)

Before considering how (a)-(c) may reduce the difficulties of exit, a few words on why states should not address the *other* ways in which citizens' access to private roles may be hindered, namely through the imposition of exit costs or discriminatory exclusions (section 2.3.2).

2.5.3.1 Exit costs

Whilst seeking to reduce the difficulties of exit, EO³ does not have to ambition to reduce its *costs*, that is, the value of the things that people lose by exiting (see section 2.3.2.2). Some believe that, unless exit costs are so low that citizens become willing to leave, they lack meaningful exit options. Kukathas makes this mistake when he argues that states can only secure such options by ensuring citizens do not have the "wrong kinds of preferences" (Kukathas, 2012, p. 48). But just as I do not need to prefer McDonald's food over haute-cuisine to have a meaningful opportunity to eat at McDonald's, so I may be perfectly happy with my membership of some private group (suppose that its members treat me well and that I identify with its tenets) without lacking a meaningful opportunity to join some other group or simply be unaffiliated.

A critic may reply as follows. Even if low exit costs are not necessary for meaningful exit options, states should still interfere with the imposition of *negative* exit costs – think of the shunning or boycotting of defectors. The reason being that such costs are autonomy-inhibiting (see section 2.3.2.2).

One immediate problem with this proposal is that imposing negative exit costs may be appropriate in certain cases. When an ex-member misbehaved, not talking to that person or shopping at their store may

be the morally right thing to do, or at least be morally permissible. (Moreover, such a response may serve an important function by symbolically affirming the group's nomos).

In response, it might be said that states should only interfere with the imposition of *immoral* negative costs. But this is also problematic. For one thing, such interference may often be ineffective. Regarding the shunning practices of some groups, Barry rightly rejects as implausible the idea that "marrying outside the group would be made much easier if you could obtain a court order requiring your parents to invite you to tea once a month, under supervision of a social worker to ensure that they talked to you" (Barry, 2002, pp. 152–3). Furthermore, by denying citizens a choice of whom to associate with, such orders violate their autonomy and render them vulnerable to blackmail. (Idem for coercing people to do business with ex-members of their group or, as Barry (2002, p. 153) proposes, financially compensating the latter.)

Whilst states could avoid these problems by only deploying soft measures (e.g. by merely trying to persuade the Amish to cease shunning their lost sons and daughters), such measures still seem objectionable. As I argue in chapter 3 – but cannot begin to discuss here, they involve more state perfectionism than can be justified.

In short, even when imposing negative exit costs is immoral, for states to prevent or discourage their imposition would be unjust (and therefore worse).

2.5.3.2 Discriminatory exclusions

What about discriminatory exclusions? As we saw, private groups may discriminate against non-members by excluding them on grounds unrelated to the group's identity or purposes (think of pagan groups excluding non-Caucasians where such exclusions are not part of their mission or self-understanding), or against members by discriminatorily excluding them from certain intra-group positions (think of tennis-clubs or debating societies that deny leadership positions to black people or women even though such racism/sexism is not part of their raison d'être).

Should states discourage or even prohibit such exclusions? One problem with this proposal is that it requires states to determine what counts as the group's identity or purpose(s), which is often contested (even amongst its members). Furthermore, insofar as groups are compelled to change their terms of association, their collective autonomy is undermined. This is problematic, as many people do not just want to be part of a group, but of a *self-governing* group (section 2.6.1). In addition, coercively changing a group's terms of association may have a stifling effect on its functioning, as threats of law-cases (and blackmailing) may diminish opportunities for intimacy and spontaneity amongst its members (section 2.6.1).

The solution to these last two problems may be to merely encourage rather than force groups to change their terms of association. In that case, however, there remains a problem. Discouraging discriminatory exclusions but not non-discriminatory ones has morally perverse implications (section 2.6.1). It rewards groups that make discriminatory exclusions central to their identity or mission; such groups would no longer be liable to state attempts to change their nomos. Thus, a tennis-club that excluded black people from membership or leadership would be let of the hook when it redefined itself as a whites-only tennis-club, or as a club where all leading positions are occupied by white people. This strikes me as unacceptable.

2.5.3.3 Exit difficulties

Let us look more closely at the three measures that are necessary and jointly sufficient for securing meaningful exit options.

2.5.3.3.1 Education

The first is to make an autonomy-facilitating, pluralist education compulsory for children (a). Such an education should equip citizens with the critical thinking skills and knowledge of alternative lifestyles that they need in order to enjoy substantive exit opportunities.

Being able to think critically is necessary, for unless people can reflect on group norms and evaluate these, exiting may be very difficult. In some cases, the very possibility of deviating from group norms may be difficult to conceive; thus, an Amish member who has only attended school until age 14 may be unable to step back and reflect on Amish norms, let alone question these. Less dramatically, they may be able to conceive of an exit but lack the requisite confidence for deciding to leave. Such (frequently) momentous decisions seem to require that one has a minimum degree of confidence in one's practical judgement, confidence that may be lacking *unless* schools teach and stimulate students to think critically.

How advanced should people's critical reasoning skills be? I suspect that Spiecker et al. (2006, p. 320) are right that, in order to have meaningful exit options, they should at least be educated to stage 3 of Lawrence Kohlberg's scale of moral development (cf. Kohlberg, 1981, 1984). At this stage, people can follow rules because they deem them correct rather than to simply meet social expectations, even if they cannot rationally justify these rules (this would require a higher capacity for practical reasoning characteristic of stage 4 and above (Spiecker et al., 2006, p. 320).

Having meaningful exit options also requires that people have knowledge of alternative lifestyles. Without such knowledge, the possibility of exiting may be difficult to contemplate, especially for members of close-knit cultural and religious communities.

Jeff Spinner-Halev has questioned this. Even for members of close-knit communities such as those of the Hutterites, Amish, and Hasidic Jews, he believes being taught about different lifestyles is otiose:

> "Most Hutterites, the Amish and Hasidic Jews all know that they are surrounded by a society with different ways of life. […] Many Hasidic Jews live and work in New York City. How can one possibly argue that they do not see a wide range of options of how they might want to live their lives? The Hasidic children in Alaska may be given a narrow education, but they certainly are aware that there are different ways to live. Even Hasidic Jews in Jerusalem are aware that there are other ways of life" (Spinner-Halev, 2000, pp. 49–50)

The problem with this view is that mere awareness is insufficient. Having meaningful exit options also requires having some sense of what living in other social milieus is like. But this requires a fair amount of knowledge of what strangers believe and how they live – knowledge that goes beyond what one can observe on the street. (Compare Steven Mazie's (2005) account of how the exit opportunities of the Amish are severely limited by the absence of such knowledge; despite spending part of their adolescence outside the community as part of their Rumspringa, Mazie argues that they do not acquire the in-depth knowledge of lives in the wider 'English' world that would render their exit options meaningful).

What would such a pluralist education look like? All schools – public and private alike – would be required to teach students about different cultural, religious, and philosophical doctrines and the lifestyles they inspire, whereby those geographically close ought to be prioritised (this is necessary, as these are most likely to be adopted by exiters). As long as such doctrines/lifestyles are reasonable, students should receive purely descriptive information about them, i.e. information of the form: 'this group believes *x* and does *y*' (more on this requirement below). Amongst the things they would learn are the views of different groups on religion, cosmology, sexuality, work, friendship, the treatment of insiders and outsiders in private more generally, political justice, and so on. To ensure that this information is retained (and counteract possible parental attempts to prevent such retention), schools should regularly assess children's knowledge and fill in any lacunas.

As Emile Lester discusses, the best time for such a pluralist education may be during students' sophomore or junior year. To do it any earlier, he warns, may lead to "a chaotic sense of self that cannot be reversed or a dramatic blow to the student's self-esteem" (Lester, 2006, p. 626). At the same time, he warns that a pluralist education should not take place later, as by that time, people's socialisation may be

so far that "any sense of distance" has become difficult to achieve (Lester, 2006, p. 627; cf. MacMullen (2007). Whether this proposal is pedagogically sound is something for the experts to decide; my aim here is merely to flag that the timing of a pluralist education may be important.

Why should teachers not evaluate reasonable comprehensive doctrines and lifestyles? Besides the fact that this may cause a backlash (remember that many parents seek to control their offspring's moral education), one reason is that this may deny children experience in practical reasoning, i.e. experience in making up their own mind about ethical matters and the good life. This is problematic, for such experience helps protect their ability to exit (see above). Another reason is that non-evaluation protects people from feeling denigrated. As their sense of identity and self-esteem tends to be bound up with respect for their doctrines, when state officials and civil servants – including teachers – portray their doctrines as inferior or false, this is often experienced as denigrating (Nussbaum, 2011).

I discuss this issue at length in the next chapter. For present purposes, it is important to note that such feelings of denigration do not disallow state criticism of unreasonable doctrines or lifestyles. This is because criticising such doctrines and lifestyles is necessary for protecting the liberal-democratic order, which I argued in section 1.2 states have a duty to do.

2.5.3.3.2 Subsistence

According to the second measure, states should ensure that citizens have the wherewithal to leave their private groups (b). Unless they can subsist outside these groups, exiting is very difficult. One thing that this requires is that citizens can afford shelter, food, and other life necessities. This condition is not met when exiting Hutterites have to leave (almost) all their possessions with the Hutterite community (this group does not recognise private property), or when people are financially dependent upon their partner. In addition, citizens must have the language skills to survive outside the group and other basic skills, such as the ability to navigate the housing market and deal with financial institutions (cf. Ben-Porath, 2010, p. 1026).

Some might say that, even when people are unable to subsist outside their private groups, they can still exit if they wanted – it is just that this is very costly. If correct, this would contradict my previous claim, namely that states should address the difficulties of exit and not its costs. Whilst the distinction between difficult actions and (merely) costly actions may become blurry here, I am inclined to say that we are dealing with the former. Being able to exit seems to require that one can *survive* after exiting, at least for a long enough period (insofar as ones dies, this should not be due to exiting). Accordingly, just as serving an ace is difficult for mediocre tennis-players, given the low probability of success; so exiting is difficult for those unable to subsist independently, given the likelihood that they will perish outside the group. (Notice though that nothing of practical significance turns on the use of labels here; whether we are

dealing with difficulties or (mere) costs, protecting citizens' autonomy and welfare requires states to ensure that they can subsist outside their private groups).

As far as close-knit communities are concerned, Spinner-Halev believes that they should provide their own members with the financial resources necessary for exiting. He thus suggests that the Hutterites should set-up a fund that guarantees each exiter a "few thousand dollars" (Spinner-Halev, 2000. p.77). I have the same concerns about this proposal as I do about Barry's proposal (which requires groups to compensate ex-members if they boycott their shops). Not only does it violate citizens' autonomy by denying them the freedom to set their own terms of association, it also renders them vulnerable to blackmail. As a result, I believe it is the state's duty to ensure that citizens can subsist.

2.5.3.3.3 Restrictions

According to the third (and final) measure, states should proscribe practices that deny citizens meaningful exit options and that are not already proscribed by the previous measures, such curtailing children's education, or by the formal right of exit, which forbids physically coercing people to stay put. What are some examples? One might think of binding girls' feed (which may prevent them from leaving their family insofar as their handicap makes them dependent on its care); preventing older children from leaving the home (which may deny them the requisite knowledge of other lifestyles); and drugging people without their consent so as to prevent them from exiting.

Of course, some of these practices are already forbidden in liberal democracies because of the physical and/or psychological harm they inflict (at least the first and the third). Again, I am not claiming that the *only* reason for proscribing them is that they deny meaningful exit opportunities, but that this is a sufficient reason.

2.6 Conclusion

How should states deal with comprehensive doctrines that support illiberal practices? Whereas the previous chapter looked at doctrines that support illiberalism in the public sphere, this chapter looked at those that do so in private (whilst the two may overlap, we saw that this is not necessary the case).

I first considered how states should deal with doctrines that support unreasonable private practices. Here, I applied the 'Fair Value' account for dealing with unreasonable doctrines defended in chapter 1. Next, I considered how doctrines that inspire reasonable private illiberalism ought to be dealt with. After distinguishing three ways in which such illiberalism may undermine citizens' autonomy and social equality, I discussed an influential approach for dealing with these problems: The Liberal Reform approach. Whilst this approach addressed some of the problems of reasonable private illiberalism, we saw that it created new ones. Rather than accepting Liberal Reform, then, I defended my own approach: EO^3.

This approach requires states to tolerate illiberal but reasonable private practices *on the condition* that three measures are taken. First, they should censor public expressions of obloquy; second, they should secure equal opportunities; and third, they should secure meaningful exit options.

Part II: Neutrality

3 Neutrally justified perfectionism: A defence of Perfectionism á la Carte

3.1 Introduction

Thus far, I have addressed the question: what kinds of comprehensive doctrines do and do not merit toleration in a liberal society? To answer this question, I distinguished between unreasonable and reasonable doctrines. In order to decide how unreasonable doctrines ought to be dealt with, i.e. doctrines that incite law-breaking, oppose basic rights, and/or seek to deny non-basic rights on discriminatory grounds, I proposed the Fair Value account of toleration. According to Fair Value, interference is due if doctrines incite law-breaking or when they imperil citizens' basic rights, thereby threatening the liberal-democratic order. When this is not the case, I argued that unreasonable doctrines that are discriminatory should be interfered with insofar as this best secures the fair value of citizens' rights (if this is not the case, other measures ought to be taken to address their causes or perlocutionary effects). By contrast, those that are non-discriminatory should always be tolerated on pragmatic grounds, as they do not undermine the fair value of rights.

As I went on to show, some doctrines inspire illiberal practices without being unreasonable. Such doctrines were found to merit principled toleration – as well as the practices to which they give rise – on the proviso that three conditions are met. First, states should censor public expressions of obloquy; second, they should secure equal opportunities; and third, they should secure meaningful exit options. I called this approach EO³.

This chapter and the next consider whether states should be *neutral* amongst doctrines that merit principled toleration, that is, amongst reasonable doctrines, or whether they may be perfectionist instead. To give a complete answer to this question, we need to know two things:

i. May the state favour some reasonable doctrines because of their greater non-instrumental value?
ii. Should the state equalise the consequences of its policies amongst reasonable doctrines in some way?

Those who say 'yes' to (i) support justificatory neutrality, whereas those who answer (ii) in the affirmative support neutrality of consequences (section 1.2).

This chapter defends justificatory neutrality. In what follows, I offer some novel criticisms of arguments that have been given for this view, before defending Nussbaum's (2011) argument for justificatory neutrality against some new challenges. According to Nussbaum, for states to judge citizens' doctrines to be inferior may cause (warranted) feelings of civic inequality. The second part argues that, contrary to what is often thought, justificatory neutrality does not preclude the state from playing a role in the provision of perfectionist goods and services. Indeed, I show that there is good public reason for it to do so.

What does this role consist in? States should offer citizens the opportunity to *voluntarily* donate money to independent committees of perfectionist experts. These committees would give perfectionist advice to their donors and make (discounted) perfectionist goods available to them. Besides collecting donations, states would use part of this money to monitor the perfectionist committees and ensure that their goods and services are adequately spread across the country. This should improve citizens' access to perfectionist goods and services (as compared to a situation in which their provision is entirely left to the market).

As this approach allows individual citizens to choose between perfectionism and non-perfectionism, as well as between different kinds of perfectionism (different perfectionist schemes will be proposed, namely aesthetic, moral, and autonomy-based ones), I call it 'Perfectionism á la Carte' or simply 'PALC'.

I proceed as follows. Section 3.2 looks in more detail at the disagreement between liberal neutralists and perfectionists. The next two sections address arguments for and against each view. Section 3.3 considers three objections to liberal perfectionism, including Nussbaum's objection (which I believe is fatal), whereas section 3.4. answers (what I regard as) the main objection to justificatory neutrality. Having defended justificatory neutrality, section 3.5 shows that this kind of neutrality does not preclude the state's involvement in delivering perfectionist good and services, and that its involvement is in fact desirable from a public reason-perspective. Section 3.6 concludes.

3.2 Defining liberal perfectionism and liberal neutrality

3.2.1 Liberal perfectionism

I define liberal perfectionism as follows:

> *Liberal perfectionism*: As far as reasonable doctrines are concerned, the state may treat some doctrines better on account of their greater non-instrumental value and, correspondingly, less valuable ones worse on account of their lesser value.

Call more valuable doctrines 'superior doctrines' and those with less value 'inferior doctrines' (some examples below).

What does treating reasonable doctrines better/worse involve? Let me first say what it does not involve. Because of their liberal commitments, liberal perfectionists cannot treat inferior doctrines in ways that would violate citizens' rights; thus, they cannot force them to adopt superior doctrines or engage in more valuable practices, or censor or prosecute citizens with inferior doctrines on grounds of their doctrines' lesser value. Nor can they spend astronomical amounts of public money on doctrines on account of their superiority, at least not if this would condemn citizens to dire poverty or deny them access to other basic goods.

Rather than giving states a carte blanche to promote good lives/discourage bad ones, then, liberal perfectionism only sanctions less intrusive measures. On this view, states may seek to promote superior doctrines by subsidising or giving symbolic support to their activities or, what amounts to the same thing, by denying such benefits to inferior doctrines (Raz, 1988, p. 161). In addition, most liberal perfectionists are likely to allow certain forms of nudging, i.e. presenting people's options in ways that render it more likely that they will choose the good or valuable ones, "without forbidding any options or significantly changing their economic incentive" (Thaler & Sunstein, 2009, p. 6). One might think of taking advantage of people's conservative biases by making valuable options opt-out rather than opt-in, or their loss-aversion biases by spotlighting what they stand to lose from inferior options rather than to gain from the alternatives. The reason why these or other moderate perfectionist measures should be allowed, liberal perfectionists argue, is that it is important that citizens can live flourishing lives, as defined by some determinate conception of the good life.

For some liberal perfectionists (e.g. Colburn, 2010; Raz, 1988), helping citizens flourish is a requirement of justice. In their view, "each person's fair share of resources or advantages should be determined by reference to how much each person needs to flourish to the appropriate degree, as specified by the correct conception of the good life" (Quong, 2010, p. 122). By contrast, others (e.g. Chan, 2000; Horton, 2012) believe that favouring tolerable comprehensive doctrines on the basis of their non-instrumental value is merely permissible, i.e. neither required nor disallowed by justice. As my case against liberal perfectionism below applies to either view, this difference can be left aside.

There are at least three kinds of perfectionism. The first allows states to promote valuable activities on the basis of their non-instrumental value – call this 'valuable activities-perfectionism'. Such promotion may include subsidies for opera, tax-exemptions for museums, the protection of valuable forests – assuming arguendo these things to be intrinsically or constitutively valuable (cf. Dworkin, 1985, pp. 221–33). Though less common, valuable activities-perfectionism may also involve discouraging

citizens from engaging in activities on the basis of their (relative) lack of non-instrumental value. State officials might, for instance, brand Lucha Libre or roller derby as inferior or valueless.

Then there is 'moral perfectionism'. This form of perfectionists allows states to promote moral behaviour beyond what is required for maintaining justice. (I assume that teaching citizens reciprocity, tolerance of other lifestyles, respect for basic rights, and so on are all necessary for maintaining a just society; what defines moral perfectionism, then, is the view that thicker and more sectarian moral virtues than these may be promoted by states.) Examples are subsidies for the 'Bond tegen Vloeken', a Dutch anti-swearing movement[24], and refusing tax benefits to companies that offer dwarf-tossing (a form of entertainment where people with dwarfism are tossed onto mattresses or at Velcro-coated walls whilst wearing protective gear).

Finally, there is 'autonomy-based perfectionism'. As personal autonomy is a core liberal value, I argued previously that liberal states should create conditions under which all citizens enjoy a meaningful opportunity to live autonomous lives (chapters 1 and 2). What distinguishes states that espouse autonomy-based perfectionism from those that do not, then, is not that they protect citizens' autonomy; instead, it is that they promote a thicker ideal of autonomy, one that is sectarian because many good-faith liberal-democrats reject it. One might think of a Millian self-direction, whereby people regularly subject their beliefs and goals to Socratic scrutiny and shape their lives accordingly. Ways in which states may seek to promote such self-direction include: liberalising (reasonable) private groups; levying taxes on substances such as marijuana that cause memory loss; forbidding subliminal messaging in advertising; teaching children that it is intrinsically good to live an examined life (or, with Socrates, that the unexamined life is not worth living); subsidising courses on avoiding cognitive biases or perseverance and resilience training and so on.

Significantly, these and other policies are *not* perfectionist if they are meant to promote public values only, such as economic prosperity, public health, and a clean environment. Thus, opera houses may be subsidised in order to stimulate the economy by attracting tourists; dwarf-tossing may be restricted to prevent injuries that may present a burden on health-services; educational programmes that warn against cognitive biases may be justified to fight discrimination in employment or education; et cetera. When promoting such values are the *sole* reason for implementing a policy P, then P is non-perfectionist. By contrast, when the non-instrumental (dis)value of the activity or thing that P encourages/discourages figures in P's justification, P is perfectionist.

[24] http://www.bondtegenvloeken.nl/

3.2.2 Liberal justificatory neutrality

I understand liberal justificatory neutrality to be the negation of liberal perfectionism:

> *Liberal justificatory neutrality*: as far as reasonable doctrines are concerned, states may not favour some doctrines over others on account of their non-instrumental value

Put positively, 'neutral justification' requires that state policies be justified by reference to values that proponents of tolerable doctrines can recognise as important, at least if they made a decent effort to reflect on them[25]. Values that meet this criterion are called 'public values' and policies backed by such values 'public reasons'. Paradigmatic examples of public values are a clean environment, prosperous economy, and public health. Whether a Christian, Muslim, Jew, Atheist, Buddhist, Pagan, art lover, or beer-drinking football fan, those committed to liberal democracy can recognise these values as important if they made a decent effort to reflect on them, where 'decent' means that they avoid gross logical errors and are not driven by anger or resentment towards certain groups (cf. Gaus (2010, p. 26). (As was mentioned, there are different views on how idealised these moral and epistemic requirements should be, in particular between so-called consensus neutralists and convergentists (section 0.2); for our purposes, we can bracket these differences.)

By requiring state policies to be justified by reference to public reasons, justificatory neutrality rules out perfectionism. In order to see this, note that when states favour some reasonable doctrines over others on account of their non-instrumental value, these grounds cannot be recognised as important by adherents of the disfavoured doctrines, at least not by all of them. Thus, at least some beer-drinking football fans (the author included) do not appreciate the value of opera; some raised in The Hague fail to see the problem with swearing (swearing being part of Hague folklore); and some Ultra-Orthodox Jews fail to understand the value of Millian self-direction.

3.3 Objections to liberal perfectionism

To show that justificatory neutrality is preferable to liberal perfectionism, this section assesses three objections to the latter. Whilst the first begs the question too much and the second only counts against certain forms of perfectionism, the third is found to be decisive against *all* forms of liberal perfectionism.

[25] Sensu stricto, states may be justificatory neutral if they randomly choose their policies (e.g. through a lottery). I ignore this possibility for reasons that should be obvious.

3.3.1 Unfairness towards holdouts

The first objection, which has been raised by Alan Patten (2014), is premised on the assumption that perfectionist measures will usually fail to help all citizens flourish due to the "general stickiness of preferences in response to government interventions" (Patten, 2014, p. 129). According to Patten, those who are unresponsive suffer unfair treatment:

> "The unresponsive members of the target group are already badly off by virtue of having an inferior conception of the good. The perfectionist policy, however, makes them even worse off […] They do not get the benefit, but they do have to absorb the costs of the policy, and they are left with a conception of the good that is now harder to realise and even less rewarding" (Patten, 2014, pp. 129–30).

On this view, subsidising museums, anti-swearing organisations, and implementing autonomy-promoting curricula treats some citizens unfairly, namely those who remain unwilling to visit museums, give up swearing (perhaps because it is part of Hague folklore), or abandon their illiberal practices. All these individuals will have less money for their conceptions of the good than under a neutralist regime. Call this the 'hold-out' objection.

What to make of this? Some might say that the hold-out objection does not block perfectionist measures that are likely to backfire. Citizens may deliberately engage in inferior activities in order to defy the state's high-brow attempts to mend their ways, which may render these activities as accessible as before, if not more (perhaps because of economies of scale). Thus, insofar as state criticism of dwarf-tossing increases its popularity, the price of this form of entertainment may drop as the number of companies offering it increases (assuming no market failures occur). In such cases, the hold-out objection does not apply, as hold-outs would be better able to act upon their conceptions.

I do not believe this counts against this objection. For if there is (sufficient) reason for believing that perfectionist measures will be counterproductive, then perfectionist states should not implement them in the first place, thereby pre-empting the need for blocking them.

There do seem to be cases, however, where Patten's objection fails to block perfectionist measures that need blocking. This is when such measures are sufficiently likely to succeed, meaning that there is a high enough probability that citizens will adopt superior conceptions of the good, but where this will render it easier for hold-outs to act on their inferior conceptions. Thus ticket prices for Lucha Libre may drop when states successfully dissuade citizens not to attend wrestling matches, which makes it cheaper for hold-outs to attend.

Of course, hold-outs will only become better capable of acting upon their inferior conceptions if Lucha Libre does not die out (in the sense that no more matches are organised). But since this is quite

unlikely given its popularity, this scenario is an implausible benchmark for determining whether perfectionist measures against Lucha Libre are justified. Instead, our benchmark should be the more realistic scenario where this sport survives despite possible reductions in its popularity. (Note that even when outcome probabilities do not matter, perfectionist measures would not be blocked, as one might then just as well assume that there will be no hold-outs).

But that is not all. Even when acting upon their conceptions becomes (more) difficult for hold-outs, one might wonder why this delegitimises perfectionist measures. Many policies that fail to benefit their intended beneficiaries seem justifiable nonetheless. Thus, I may miss a 'dangerous cliff' sign and fall into the abyss. Yet just because I did not benefit from the sign, my tax contributions to it do not seem unfair if the ex-ante probability of my noticing it was high enough. Why are perfectionist measures not justified in the same way?

Patten might say that the chance of my failing to notice the sign are much lower than the chance that I will change my conception of the good for a superior one. But then what about mandatory vaccinations against a (non-infectious) disease that is rare but would instantly kill me? I may never contract this disease but still be forced to immunise myself, leaving me less money to spend on my conception of the good.

It might be said that contracting this lethal disease is *worse* for me than never adopting a superior conception of the good (perhaps not because death is bad, but because of the missed goods of an extended life). This is not so clear though; whilst contracting the disease (and dying instantly) may be bad, when we weigh its badness against the small probability of its occurrence, it is unclear whether the expected benefits would outweigh those of many perfectionist measures. For such measures may promote activities that, if I were to adopt them, would improve my life immensely.

Some may respond as follows: 'There is a categorical difference between being made worse off and not being made better off. Whilst citizens may be forced to pay for a reduced risk of becoming worse off, they may not be forced to do so for a higher chance of becoming better off'. But this begs the question. The perfectionist might simply deny that there is such a difference (or at least a categorical one), thereby allowing for certain levels of expected improvements to justify the use of state coercion.

I conclude that Patten's hold-out argument not only has limited scope, but also begs the question against perfectionists.

3.3.2 Paternalism

According to the second objection, liberal perfectionism is paternalistic in that it fails to treat (adult) citizens as competent practical agents. As Jeremy Waldron puts it:

> "Messing with the options that one faces, changing one's payoffs can be seen as manipulation […]. If it is done intentionally, it also takes on the insulting aspect of manipulation, for it treats the agent as someone incapable of making independent moral decisions on the merits of the case" (Waldron, 1988, pp. 1145–6).

In a similar vein, Jonathan Quong (2010, p. 74) locates the wrongness of perfectionism in its paternalist character, whereby paternalism is understood to be problematic because it

> "treats citizens as if they cannot make effective decisions about their own good, and thereby diminishes the moral status accorded to citizens" (Quong, 2010, p. 102).

Whilst not all paternalist policies are perfectionistic (e.g. seat-belt laws and special taxes on cigarettes are not; by promoting public health and bringing possible economic benefits, such policies serve public values), those who reject perfectionism on grounds of its paternalism seem to assume that perfectionist policies are necessarily paternalistic, or at least infantilising. (Some accounts only count as paternalistic those policies that restrict a person's freedom or autonomy (cf. G. Dworkin (2016) for a discussion), which would mean that e.g. autonomy-based perfectionism is non-paternalistic. Whether they are right to do so is unimportant here; what matters for our purposes is whether perfectionism is guilty of infantilising citizens, not whether it is necessarily paternalistic).

I think this widely-held assumption is false. For one thing, some might say that people can only be infantilised when they are known personally be the infantiliser. Since states do not know citizens personally (assuming the citizenry to be large enough), the notion that perfectionist measures infantilise citizens may be said to be non-sensical. On this view, if no *individual* citizen is deemed incapable of promoting their own good by such measures, such measures cannot be infantilising.

Whilst I think the 'non-sense' objection is an important one (though I am unsure as to whether it applies to all perfectionist measures), let us assume arguendo that there is something infantilising about perfectionist measures that are motivated by the expectation that some will screw up. In my view, this objection would only defeat certain kinds of perfectionist policies. There seem to be at least two categories that are not pessimistic about citizens' abilities and will-power: (i) those that merely seek to *convenience* citizens by helping them to avoid situations where they have to promote their own good, and (ii) those that are based on *non-idealised counterfactual preferences*.

3.3.2.1 Convenience

One can liken the first set of measures to installing self-correcting spell-checkers on people's computers. Rather than assuming workers to be incapable of identifying their typos or being too lazy to correct these,

spell-checkers may be simply installed for quicker identification and correction of mistakes. Similarly, allowing a (private) opera house to be constructed in a central location in town need not assume that citizens are unable to recognise value and respond to it appropriately (things may be different if the location is chosen so as to capitalise on certain cognitive biases, as some nudges do; I leave this open). Instead, states may simply want to make valuable activities more accessible.

Nor does imposing perfectionist restrictions on adverts for soft-drugs or prostitution necessarily infantilise citizens, I suspect. Rather than implementing such restrictions on grounds that (some) citizens are incapable of resisting the temptation to smoke pot or visit a prostitute, states may simply not want them to be distracted from their pursuits by these adverts (the assumption being that even if one is perfectly capable of resisting these activities, doing so may be inconvenient because it is energy- and time-consuming).

This assumes, of course, that merely thinking about smoking marijuana or visiting a prostitute is not a weakness per se. Whilst this may be contested, I believe this is correct. Only when people give in to these thoughts do they show themselves to be weak or incapable of doing the good thing; whereas people are usually believed to have relatively little control over whether their attention is occupied by various visual stimuli, whether they act upon these is a different matter. If this is so, then merely helping citizens to avoid situations in which they have to resist the pull of worthless activities (or are simply consumed by the thought of engaging in them) is not infantilising as such. It only becomes so when states do this *because* they consider citizens incapable of such resistance.

But then what about the statistical knowledge that, within large enough populations, some will succumb to the temptations of marijuana or paid sex? I do not think this defeats my point. Insofar as such knowledge does not enter the state's motivation for restricting adverts for prostitution or soft drugs, this fact is irrelevant. Furthermore, even when part of the state's reasons for acting, such infantilising motivations do not block the current restrictions if sufficient support can be derived from convenience-related reasons. (The assumption being that while bad motivations may reflect poorly on an agent's character, the permissibility of their actions depends on whether good enough motivations are possible for their actions.)

3.3.2.2 Non-idealised counterfactual preferences

Turn then to the second category of non-infantilising perfectionism. States may believe that, were citizens to watch an opera (or several), they would appreciate its value and recognise the importance of its survival. Yet since many citizens do not have time to do so (a day only has so many hours and there are many other pastimes), states may decide to subsidise opera in order to protect it. Whatever is wrong with this motivation – some may believe that it shows too little concern for citizens' real or empirical selves

(who may oppose subsidising opera) – I do not think it is infantilising. For such states are not pessimistic about citizens' ability to recognise and respond appropriately to opera's value – they may genuinely believe that were citizens to see opera, they would appreciate its value and want to sustain it.

It might be replied that, the state's motivation notwithstanding, opera subsidies may still be *experienced* as infantilising and are therefore problematic – this would be a modified version of the paternalism/infantilisation charge. Given that perfectionist measures frequently have infantilising motivations, and that ascertaining the state's motivation is more difficult than that of natural persons (cf. Lægaard, 2015), citizens may believe that they are treated as infants. If we accept the aforementioned visibility requirement of justice, i.e. the requirement that "justice must not only be done but be seen to be done (Rawls & Freeman, 1999, p. 443) (see section 1.6.1), such beliefs may be said to disallow perfectionism.

I am unconvinced, as states could try to *assure* citizens that they are not seen as weak-willed or barbarians (or both). They may explicitly tell them that the reason for implementing perfectionist policies has nothing to do with some supposed deficiency on their part. In addition, they may refrain from enacting policies that are widely seen as paradigmatically paternalistic (e.g. bans on gambling, dwarf-tossing and the consumption of psilocybin mushrooms).

In short, even this modified paternalism/infantilisation objection only seems to disallow certain forms of perfectionism, not perfectionism as such.

3.3.3 Civic inequality

The final objection is decisive in my view. According to Martha Nussbaum (2011), citizens are disrespected when policies are justified by reference to the belief that their (reasonable) doctrines are inferior. As she puts it, "for a public official in a leading role to say that X's doctrine is not as well-grounded as Y's is inevitably to denigrate X, and we want our political principles to show equal respect to X and Y" (Nussbaum, 2011, p. 33). Whilst admitting that respect is ultimately due to *persons* rather than their doctrines, Nussbaum argues that this does not salvage liberal perfectionism:

> "Respect is for persons, not directly for the doctrines they hold, and yet respect for persons leads to the conclusion that they ought to have liberty to pursue commitments that lie at the core of their identity, provided that they do not violate the rights of others and that no other compelling state interest intervenes" (Nussbaum, 2011, p. 17).

Being liberals, we saw that liberal perfectionists would not deny those with inferior reasonable doctrines basic freedom to act upon their doctrines; in this regard, Nussbaum's portrayal of perfectionism may be

misleading. However, liberal perfectionists would spend tax money on superior doctrines on account of their superiority (section 3.2.1). According to Nussbaum, this is denigrating, as people's self-respect tends to be bound up with the state's respect for their doctrines. Specifically, by conveying that their doctrines are inferior, states may cause them to feel *second-class citizens*, even when such feelings are not as pronounced as when people are denied rights or other benefits because of their race or gender. Call this the 'civic-inequality' objection.

I believe the civic-inequality objection is compelling. Even when (seemingly) perfectionist measures are not just cynical, egoistic attempts to serve the interests of particular groups but meant to promote *everyone's* well-being, people not rarely feel treated as second-class citizens. Thus, many inhabitants of the Dutch city of Katwijk felt that the municipality's 12,000 Euro subsidy for the Bond tegen Vloeken (a Protestant anti-swearing movement) in 2007 unfairly favoured the interests of Protestants and religious people more generally. After anti-swearing posters were displayed across the town, opponents put up banners nearby saying: "Why must the atheistic majority pay for this campaign"?[26][27].

Indeed, even perfectionist subsidies for the arts seem capable of engendering feelings of civic inequality. In recent years, leader of the PVV (the Dutch Freedom Party) Geert Wilders has dismissively referred to subsidies for high culture as "leftist hobbies" and "development aid for the Canal District" [Grachtengordel] (Kuitenbrouwer, 2012). The suggestion being that such subsidies are meant to cater to well-to-do leftist elites, who are thought to be overrepresented in Amsterdam's canal district. Despite sparking criticism from various politicians, artists, and other groups[28], Wilders' remarks seem to have resonated with segments of the Dutch population.

If perfectionist policies are indeed capable of generating feelings of civic inequality, this is problematic. Such feelings may not just be intrinsically bad (I leave this open), they may also dent citizens' self-esteem and confidence, even if this does not always happen (section 1.3.4). In addition, one might plausibly worry about their impact on social cohesion and solidarity (as well as on various goods that may be parasitic on cohesion and solidarity amongst citizens, such as political stability and support of welfare schemes). Of course, even if these empirical hypotheses are *prima facie* plausible, they still need to be tested. Yet until this is done, I believe there is good reason for resisting liberal perfectionism.

Some might reply that the civic-inequality objection is only damaging in certain cases. If perfectionism may cause citizens to feel like second-class citizens because they identify with their conceptions of the good, then the more tenuous the link between activities deemed inferior by

[26] In Dutch: "Waarom betaalt de atheïstische meerderheid deze campagne?"
[27] https://www.indymedia.nl/nl/2007/10/47667.shtml
[28] http://www.volkskrant.nl/politiek/wie-gebruikte-de-term-linkse-hobby-s-het-eerst~a1789750/

perfectionist policies and citizens' conceptions, the weaker the case for justificatory neutrality. This is important, as it might be said that perfectionist measures are *only* blocked when feelings of civic inequality are sufficiently strong.

It is true that the current objection's force is determined by the strength of such feelings. However, even if we grant that feelings of civic inequality only block perfectionist measures above some intensity threshold, this does not make much practical difference in diverse societies (and almost all contemporary liberal democracies are highly diverse). Given the variety of conceptions of the good life in such societies, there are always likely to be *some* citizens who strongly feel that they are treated as-less-than-equal by perfectionist policies (even if unknown, assuming these individuals to exist seems like a safe bet). Since liberalism requires legislation to be justified to the "very last individual" (Waldron, 1993, p. 37), this seems enough to block the large majority of perfectionist measures (including the ones mentioned in section 3.2.1).

But does this not prove too much? If perfectionist measures are problematic because they are conducive to feelings of civic inequality, does this not disallow mandatory classes on evolutionary biology and vaccination schemes, or the publication of Muhammed cartoons? For some citizens, these things favour the interests of a particular group: the more secular majority. Yet few liberals would want to exempt children from evolutionary biology classes and mandatory vaccination schemes (cf. De Vries, 2015), or censor artists who want to draw Muhammed cartoons. And I suspect rightly so.

This concern about over-inclusion strikes me as unwarranted. Whilst it is true that the above policies may cause some to feel second-class citizens, each policy is firmly supported by public reasons. Knowing some evolutionary biology is important for one's future employment and education opportunities, as well as for understanding the worldviews of large groups in society (such understanding may not only promote tolerance but is also important for securing meaningful exit options; see section 2.6.3). Making vaccination schemes compulsory does not just protect the health of children who are immunised but also that of the wider population by safeguarding the herd immunity. And without the freedom to mock the prophet Muhammed, freedom of speech and artistic expression would be severely limited, as equity would require states to prohibit the mocking of all (historical) figures that people care about, both religious (e.g. Jesus, Buddha, Ron Hubbard, Joseph Smith) and non- or not explicitly religious (e.g. Mandela, Ghandi, Marx, Atatürk).

Why does it matter that these policies are backed by public reasons? The answer cannot just be that it renders them neutrally justified. For then the question becomes why neutrally justified policies that induce feelings of civic inequality are justified, whereas perfectionist policies that do so are not. The answer, I believe, is that promoting public values is necessary for creating and maintaining a just society. As the state's core duty (and legitimating function) is to secure justice (section 1.2), the fact that citizens

may feel treated as second-class citizens by policies that promote public values and, in doing so, justice does not count against such policies.

But then what about justice-based perfectionism (section 3.2.1)? If policies serving justice are warranted even when causing feelings of civic inequality, then insofar as perfectionist policies are required by justice, they too would be warranted *regardless* of whether they induced such feelings.

Though true, I believe that perfectionist policies (at least the ones standardly thought of as perfectionist, including those mentioned in section 3.2.1) are not required by justice. Whilst this topic is well beyond this dissertation's remit, suffice it to say this: perfectionists who claim otherwise seem to *overstate* the badness of not living a flourishing life according to perfectionist standards and/or *understate* the badness of feeling a second-class citizen because the state judges one's lifestyle as inferior. If demands of justice are by definition very weighty ones (as I assume they are), it is dubious as to whether people's interest in opera houses, swear-word free environments, Millian self-direction, etc. even comes close to a life with adequate housing, nutrition, health, equal opportunities in employment and education, freedom of speech, and so on. (Of course, one might inflate the notion of justice so that it encompasses the perfections of the first life; however, this would not reduce the difference in importance between the two sets of goods, which is what matters here.) Furthermore, even if improved access to the above perfections is important, its importance still seems to be outweighed – or even cancelled – by the badness of people feeling less-than-equal citizens, at least if my earlier conjectures are justified.

3.4 Does justificatory neutrality disrespect citizens' rationality?

Thus far, I have shown two anti-perfectionist arguments to beg the question and/or have limited scope, before defending Nussbaum's anti-perfectionist argument against some novel challenges. I now want to rebut a sophisticated objection to perfectionism raised by Steven Wall (2014), which I call the 'rationality-objection'.

According to Wall, treating citizens with respect means treating them as competent practical agents, i.e. as beings who can recognise good reasons and act accordingly. In his view, perfectionist states do this but *not* their neutralist counterparts:

> "Respecting persons requires us to view them as beings who are not stuck with their commitments, but rather as beings that have the capacity to assess, and if called for to revise or abandon, their commitments in response to the reasons for having them. A view of reasonableness that includes epistemic […] elements can take proper account of this aspect of respect for persons. It is much less clear that Nussbaum's view can do so" (Wall, 2014, p. 478).

The idea seems to be this: Just as people are not disrespected when told that they err in believing the earth to be flat or 6,000-years-old, so it is not disrespectful for states to (implicitly) convey to them that opera is intrinsically valuable, that dwarf-tossing and swearing are morally problematic, or that Millian self-direction is a prerequisite of the good life. On the contrary, doing so is necessary for respecting citizens' ability to recognise (un)truth or (dis)value and shape their commitments accordingly. (In a way, this argument turns the paternalism/infantilisation objection on its head (section 3.3.2); whilst perfectionism is widely seen as infantilising, Wall's view is that non-perfectionism/neutralism treats citizens as infants by deeming them incapable of appreciating and acting upon good reasons).

The problem with the rationality objection lies in a hidden premise. The premise is that states that abstain from implementing perfectionist policies (despite being well-placed to do so) must regard citizens as "stuck with their commitments". This seems false. States may be justificatory neutral simply because they want to spare citizens feelings of civic inequality (section 3.3.3). This is compatible with either being optimistic that citizens would revise their conceptions when presented with good reasons, or simply not having a view on this. Thus, they may either be confident that citizens are capable of appreciating the value of opera/the examined life or the disvalue of Lucha Libre/swearing, or simply not have an opinion as to whether citizens have this capacity. (Of course, state officials may have an opinion *qua* private individuals, but these views do not constitute those of the state as a corporate agent; see section 0.1).

Some might still feel that not contradicting a person who tells one that the earth is flat or 6,000-years-old would be disrespectful. Even if one does not want one's interlocutor to feel inferior, does respecting them as a rational agent not require one to speak one's mind? If so, is it not similarly important for states to disclose their views on the human good (or come up with such views and do so)?

No, because there are relevant differences. For one thing, states that make perfectionist judgements are not (usually) challenged by citizens to do so. A better analogy, therefore, would be to go uninvited to a meeting of the Flat-Earth society in order to challenge its members' astronomical views (or rather use a megaphone to make one's views known not just to the society but to the entire neighbourhood, as the state's perfectionist judgements are not just noticed by those whose doctrines are deemed inferior). No one would say – and rightly so – that unless one intervenes in this way, one disrespects members of the Flat-Earth society. This holds true *even* if one believed that having a more accurate understanding of the earth's shape would improve the lives of the society's members.

What is more, for fellow private citizens to contradict each other's views seems less disrespectful (if at all) because they are horizontally situated. The fact that states exercise coercive power over citizens appears to be an aggravating factor, as people seem more sensitive to the opinions of those wielding such power. (Just think of a parent telling their young child that the child's cartoon is utterly valueless as opposed to some other child in their class).

3.5 Perfectionism á la carte

This concludes my defence of justificatory neutrality. My next aim is to show that, contrary to what is often assumed, justificatory neutrality does not preclude the state from playing a role in the provision of perfectionist goods and services. In fact, I will suggest that there is good public reason for it to do so.

3.5.1 Independent perfectionist committees

What kind of role is this? My proposal is that independent committees of perfectionist experts should be created. These committees would offer perfectionist goods and services to citizens willing to spend money on this (such donations would be purely voluntary; more on this below). The state's role would be threefold. States would (i) collect citizens' donations, (ii) monitor the perfectionist committees, and (iii) ensure that the committees' services and goods are adequately spread across the country. (For reasons explained shortly, the costs of these tasks should also be covered by citizens' donations.)

Different perfectionist committees would specialise in different areas of the human good. Some would help citizens with living autonomously; others with living morally exemplary lives; and yet others with engaging in aesthetically valuable activities. Correspondingly, on the first of these committees we would find experts on autonomy (e.g. psychologists, philosophers); on the second ethicists (who may be of different stripes – Kantians, Aristotelians, Stoics, utilitarians); and on the third aesthetic experts (e.g. art and literary critics). By differentiating in this way, citizens would be free to decide in which of these areas, if any, they wanted to improve their lives. As this approach allows citizens to choose between perfectionism and non-perfectionism, as well as between different kinds of perfectionism, I call it 'Perfectionism á la Carte' or PALC for short. (Unlike traditional perfectionism, however, I shall argue that PALC is compatible with state neutrality.)

Before considering why PALC should be adopted, let me say more about its various aspects.

3.5.1.1 Tasks

Each perfectionist committee would have two tasks. They would (I) advise donating citizens through (e)mail, text messages and, where possible, personal meetings how they could improve their lives; and (II) offer them free or discounted access to various courses, workshops, and other events. Thus, autonomy committees may advise donors about budgeting, withstanding social pressure, and avoiding cognitive biases; as well as offer (discounted) workshops on perseverance and resilience, logic courses, and classes on theories of autonomy. Moral committees may advise donors about giving to charities, volunteering, and relationships issues; as well as offer (discounted) courses on moral philosophy and cognitively-based compassion training. And aesthetics committees may advise donors about exhibitions and concerts, offer (discounted) tickets for these events, as well as for art and literature courses. Whilst such advice is likely

to be circulated beyond each committee's clientele basis (e.g. by being put online), opportunities for free-riding are limited, as more personalised tips and courses/workshops are relatively easily excludable.

3.5.1.2 Experts

Should only academics and professionals serve on the perfectionist committees? Some might say that when it comes to producing art, dilettantes may be as skilled as formally trained artists (indeed, Art Brut is sometimes championed as superior to its institutionalised counterparts) and therefore should be allowed to serve on aesthetic committees. And if Driver (2013) is right that those who acquired moral knowledge through virtuous living may be as knowledgeable as the philosophically trained (cf. (Archard, 2011), this may be a reason for admitting them to moral committees.

I want to push back on this. Much as laypeople may be capable of dispensing sound judgement, this is often not what is needed. To help citizens appreciate art and live morally exemplary lives, explaining *why* something is beautiful/moral is often more important than merely telling them *that* it is. Indeed, when trying to make them (more) moral or autonomous, merely telling them what the right view or choice is can be counterproductive, as competency in these areas requires a capacity for independent judgement. Accordingly, citizens' capacity for moral/autonomous living will often be better served by helping them to disambiguate concepts, detect invalid inferences, and learn about different views on morality/autonomy. Since academics and professionals outperform laypeople in these tasks (cf. Singer, 1972), there is good reason for excluding the latter from the committees.

Even if I am too pessimistic about the abilities of dilettantes, however, their exclusion may still be justified. Formal degrees are a relatively reliable and cost-efficient benchmark for deciding who is knowledgeable and who is not – to determine this in the case of laypeople, more would need to be spent on the screening and testing of applicants. Since such demarcation is necessary if we want our committees to be competent, there is good reason for admitting only the formally trained, as any euro spent on vetting would-be experts cannot be spent on perfectionist goods and services.

3.5.1.3 Pro bono

For similar reasons, work for the committees should be pro bono as far as possible. The less spent on remunerating experts, the more can be invested in perfectionist goods and services (at least insofar as the experts would remain as motivated). Why would anyone volunteer for the committees? For the prestige and honour that this will hopefully bring them and/or to further their careers. To promote the former, states may bestow honours and decorations on experts who have served for a long enough period. To promote the latter, such service could be used for measuring impact (a.k.a. public outreach), which is

already part of the UK's Research Excellence Framework for allocating funding to universities[29]. Apart from such self-interested motives, people may have altruistic reasons for serving on the committees.

I suspect these motivations may be sufficiently powerful and widespread to make PALC work. The fact that many lawyers already do comparable pro bono work is encouraging in this respect – if lawyers, then why not experts on aesthetics, morality, and autonomy?

3.5.1.4 Independence

The committees would operate largely independently from the private sector and government, in much the same way central banks do. They may make agreements with companies for the delivery of perfectionist goods and services, but not have financial or personal stakes in them. To guard against such ulterior interests, states should monitor the committees by screening their experts and probing into allegations of fraud. (This task may be delegated to non-state organisations, but then these organisations should be monitored by the state.) Whilst state officials may also have a hidden agenda, they have one important advantage over other potential watchdogs: they can be voted out of office. (Of course, this will only work if there are independent media that can expose such agendas; I assume this condition to be met.) At the same time, the committees should keep enough distance from politics to protect them from political bias. Three measures may help to achieve this. First, officials acting as watchdogs could be appointed for relatively long periods (e.g. 6 to 8 year-terms) so as to render them less vulnerable to short-term electoral interests. Second, they may be required to have different political backgrounds to keep each other's ideological biases in check. Third, they may be made to pledge that they will not abuse their power.

3.5.2 Why adopt this approach?

Why accept PALC? Because it avoids the cons of perfectionism whilst retaining its pros (or at least some important ones). More specifically, I believe this approach to be better supported by public reasons than either traditional perfectionism or a hands-off neutralism (i.e. a wholly privatised approach to the delivery of perfectionist goods and services).

Consider first how PALC avoids (traditional) perfectionism's cons. For one thing, its á-la-carte character defuses the holdouts-objection. Even if there are holdouts, that is, even if perfectionist measures enacted under PALC do not cause all donors to adopt superior conceptions of the good (or parts thereof), this is not problematic as such individuals have *voluntarily chosen* to contribute to these measures and can opt-out if they want.

The paternalism/infantilisation charge also does not apply. Whilst infantilising offers are possible (think about offering to pay for someone's driving license if they do not take up smoking), such offers are

[29] http://www.ref.ac.uk/

based on negative judgements about *specific* people's abilities or will-power. PALC does not make such judgements; rather than offering the committees' services to a specific group deemed incapable of promoting their own good, *all* citizens are offered these services.

Finally, PALC avoids the civic-inequality objection. By delegating perfectionist judgements to independent committees, states no longer rank citizens' reasonable conceptions of the good, which, I argued, is what engenders feelings of civic inequality (section 3.3.3).

Perhaps things would be different if states used public money for discharging their three duties (collecting donations, monitoring the committees, and ensuring an adequate spread of perfectionist goods and services). In that case, citizens may feel that the state *endorsed* the committees' judgements. But, according to PALC, the state's involvement should be wholly funded from voluntary donations. Besides sparing citizens feelings of civic inequality, there are two more reasons why this should be so. First, forcing citizens to fund the non-popularly elected committees seems undemocratic; second, by taking money that they could have spent on their conceptions of the good, citizens' autonomy may be undermined.

But will citizens not feel second-class when their doctrines are deemed inferior by the committees? This is unlikely. As was noted, a necessary condition for why perfectionist judgements by the state are often experienced as denigrating is that states are *vertically* situated vis-à-vis citizens; since the committees lack coercive power over citizens, such feelings seem improbable. In any case, for these groups to make perfectionist judgements is not much different from private individuals making them, and therefore ought to be tolerated if freedom of speech means anything.

At this point, it might be asked: Does helping citizens to flourish not render states perfectionistic, even if they do not decide what such flourishing consists in? After all, this presupposes that flourishing is good.

I believe not. The claim that it is good to flourish or live an excellent life is one that Christians, Muslims, Jews, Atheists, Buddhists, Pagans, art lovers, beer-drinking football fans, etc. may all accept. They will disagree profoundly as to what flourishing amounts to, but this does not mean that they cannot converge on this general claim. (Liken it to the claim that eating good food is valuable; virtually all people would accept this even if they disagree profoundly about what food is good).

Thus far, I have argued that PALC avoids traditional perfectionism's cons. Yet I also believe that there are good public/neutral grounds for implementing this approach. To vindicate this claim, I have to show that leaving the provision of perfectionist goods and services entirely to the market is undesirable. Put positively, I have to show that there is good reason for states to fulfil the roles assigned by PALC.

One was already discussed: by monitoring the committees, states seem best capable of guaranteeing the quality of perfectionist goods and services. This is because offering good quality when this is costly is

not always in a private company's interest. (Whilst it is true that state officials who act as watchdogs may also be corrupted by money (e.g. bribes), adding this layer of quality-control is still likely to improve the quality of perfectionist goods and services insofar as the three precautionary measures are taken that I proposed.)

Another reason has to do with the state's ability to reach donors. Because of its vast bureaucratic and administrative apparatus, states may be able to reach more citizens than private companies. When this increases the number of donors, scale advantages may be secured. Whether or not this happens, however, the fact that more citizens will hear about available perfectionist goods and services is desirable, as this may allow more of them to flourish.

Lastly, states seem better capable of securing an adequate spread of perfectionist goods and services. Specifically, they can require committees not to confine their goods and services to urban areas. (Whilst e.g. opera houses and museums are not easily spreadable, the various courses and workshops that were mentioned may be partially or temporarily offered in rural areas.) Of course, there may be incentives for states to cater to more populous (and powerful) urban populations; the point I am making here is merely that these incentives are *less* strong than in the case of private companies, as their very existence depends on making a profit.

Some might complain that such spreading is unfair. If those living at the periphery want better access to perfectionist goods and services, can they not just travel to cities or move there?

Especially when there are societal interests in the population being sufficiently spread (e.g. to avoid overpopulating cities), this view strikes me as problematic. Yet even when this is not the case, asking citizens to travel from afar (let alone moving to cities) seems sometimes too much.

Having discussed PALC's advantages over traditional perfectionism and a hands-off neutralism or wholly privatised approach to the delivery of perfectionist goods and services, let me say a few words about its costs. One is that non-excludable perfectionist goods may disappear unless funded from taxation. To see why this is not a real challenge for PALC, note that such goods are quite rare (e.g. museums, concerts, and the various courses that were mentioned are all excludable). The only examples I can think of are places of nature (e.g. beaches, parks, forests) and fireworks displays. Regarding the former, I suspect that funding places of nature is often justified on public grounds (e.g. to protect public health, fight global-warming) so that their survival need not be threatened. Whilst firework displays may be doomed on my approach (though perhaps one could honour donors to discourage free-riding), I believe this is a price worth paying given the various objections to enforcing perfectionism (if a perfection at all) and the public reasons against such displays (think of the environmental harm and distress to pets that they cause).

Another cost of PALC is that perfectionist goods and services may disappear even if they are excludable. Thus, not enough donations may be collected to keep opera and certain esoteric museums alive. I am happy to bite this bullet. Just as a child should not take its siblings' pocket money *even if* it wants to spend the money on things it believes will improve the siblings' lives (e.g. puppets); so an adult should not take other citizens' hard-earned income with the aim of spending it on things (s)he values – e.g. opera – *even if* (s)he believes these things will improve the latter's lives (cf. Rawls, 1999, p. 250). Unfortunately, many unlearn this truth between childhood and adulthood.

3.6 Conclusion

The first part of this chapter defended justificatory neutrality against perfectionist objections. In the second part, I showed that this kind of neutrality is not just compatible with states playing a role in the provision of perfectionist goods and services, but that there are good public reasons for them to do so. Let me conclude by noting that, whilst all liberal democracies are traditionally perfectionist to some degree (at least all that I know of), justificatory neutrality and PALC need not be mere utopian ideals. Within many liberal democracies, there are demands for equal recognition and cults of personal choice that resonate with their principles, suggesting that these ideals may be part of a "realistic utopia" as Rawls (2001) would call it, i.e. a state of affairs that could be achieved.

4 Costless Counterfactualism: A theory of minority rights

4.1 Introduction

Having defended justificatory neutrality (and shown that this kind of neutrality is not just compatible with states helping to provide perfectionist goods and services, but that there are also good public reasons for them to do so) this chapter considers whether *additional* forms of neutrality are due. Specifically, it asks whether states should redress the unequal burdens and/or benefits that their policies may impose on citizens' reasonable comprehensive doctrines by offering legal exemptions and/or compensation. Even when neutrally justified, state policies may have an unequal impact on such doctrines. Thus, helmet laws may help to avoid head injuries (and thereby keep down medical costs), but also legally prevent Sikh men from wearing turbans on motorcycles or construction sites; military conscription may improve national security but also prevent Quakers from practising their pacifism; and the use of a particular culture's language for state services may ease communication, but also confers benefits on one cultural group that are denied to others. I refer to any theory that seeks to exempt/compensate citizens whose doctrines suffer (greater) burdens, or are denied (equal) benefits as a 'theory of minority rights', as this fate usually befalls minorities. (Though there may be exceptions to this in countries with economically and politically powerful minorities.)

The chapter rejects two theories of minority rights (section 4.1), before defending its own (sections 4.2-4.6). According to 'neutrality of outcome', states should equalise the *impact* of policies on citizens' reasonable doctrines – henceforth simply 'doctrines'. According to what Patten (2014, p. 28) calls "neutral treatment", states should ensure that the *absolute benefits* given to citizens' doctrines are equal, as measured by a relevant currency – e.g. money, symbolic recognition. One can liken the first approach to giving a child more pocket money because its hobbies are more expensive than their siblings', whereas the second would give each child the same amount. Both approaches fail, I argue, as they either show insufficient concern for citizens' autonomy or are likely to be unstable.

In their stead, I propose a different theory of minority rights. According to this approach, exemptions/compensation for policies that burden/deny aid to a citizen's doctrine are due if and only if this individual would be (partially) accommodated (i.e. better served) by equally publicly justified policies that should not be implemented because they serve citizens' doctrines worse overall, or because they were not selected through a lottery. (More on these conditions in due course.) As this approach uses a counterfactual baseline for determining whether exemptions/compensation are due, one that disallows

public money to be spent on citizens' doctrines *unless* these would be accommodated under equally publicly justified policies, I call it 'Costless Counterfactualism'.

Notice the following scope restrictions. First, the fact that this dissertation assumes a just background (section 0.3) means that I will *not* engage with one prominent theory of minority rights: Eisgruber and Sager's (2009) "equal liberty" approach. According to Equal Liberty, exempting or compensating minorities is due if and only if they are unlikely to have been disadvantaged had they been the majority (or some other more powerful group). Thus, if the American Forest Service chooses to build a road that desecrates a Native-American site, Eisgruber and Sager (Eisgruber & Sager, 2009, loc.1004) suggest that redress (or cancelling the plan) is due, as it is likely that e.g. Catholics or Jews would have been accommodated had they faced a relevantly similar burden. Suffice it to say that this approach strikes me as implausible, as it seems to sanction unjust minority accommodations when majorities would have been unjustly accommodated.

Second, this chapter considers just one possible ground for minority rights: the impact of laws on citizens' doctrines. There may be others. For example, exemptions may be due to relieve physical burdens that laws impose on certain minorities (think of special parking rights for disabled people), or economic burdens (think of family-owned businesses being exempted from anti-smoking legislation); whereas subsidies for immigrant minorities may be due to foster their integration (think of subsidised language classes).

4.2 Against neutrality of consequences

This section rejects a view called 'neutrality of consequences'. According to this view, for states to publicly or neutrally justify their policies is insufficient. They should also neutralise the *consequences* of their policies[30]. Consequential neutrality comes in two flavours: what I call 'neutrality of outcome' and Patten's (2014, p. 115) "neutrality of treatment". Whereas the first maintains that the impact of policies on citizens' doctrines should be equalised, the second maintains that the absolute burdens/benefits of policies should be equalised, as measured by a relevant currency or currencies (for Patten, these are monetary support and symbolic recognition). (Observe that neutral treatment may be satisfied by a state that does not give active support to any doctrine; such a hands-off version has been recently defended by Peter Balint (Forthcoming, ch.3)[31].)

[30] Though it is in principle possible to accept consequential neutrality without accepting justificatory neutrality (Merrill, 2014), I have yet to encounter the first remotely plausible theory that does so. As a result, I ignore this possibility here.

[31] An argument from neutral treatment is also latent in Will Kymlicka's (1995) well-known defence of minority rights. In a nutshell, Kymlicka argues that minority cultures should be granted group-differentiated rights for the (unavoidable) majority biases of state policies. I focus on Patten's kindred theory here, as it also applies to groups without (explicitly) cultural doctrines/conceptions of the good. This is desirable, as I see no reason for favouring cultural commitments and preferences over not (explicitly) cultural ones that may be threatened by majority biases, such as preferences for "old-fashioned local shopping, television without advertising, vegetarian food, or landscapes with hedges, pre-electric typewriters" (Cohen, 1999,

To illustrate the difference between these theories of consequential neutrality, one can liken neutral treatment to giving equal pocket money to children irrespective of how well this serves their hobbies. This may involve giving them the same amount or giving no-one money. By contrast, neutrality of outcome does take into account how well each child's hobbies would be served. Insofar as their hobbies have unequal costs, this approach would thus sanction unequal distributions of pocket money. Similarly, a state committed to neutrality of outcome would give more subsidy to more expensive religions and sports, whereas a state committed to neutral treatment would give them all the same amount.

Two comments. First, Patten (2014, p. 162) has argued – and I suspect other proponents of consequential neutrality would agree – that the per-capita support should be equal, not the overall support (lest the smallest doctrines would get as much state support as the most popular ones, which seems unfair towards the latter's adherents). Second, they need not regard consequential neutrality as a trump value – neither Balint (forthcoming, ch.3) or Patten (2014, p. 106) does so. Instead, they may believe that it needs to be balanced against other values.

What to make of consequential neutrality? As for neutrality of outcome, this version tends to be rejected for not being responsibility-sensitive enough. Many theorists find it problematic that those who deliberately cultivated expensive tastes – e.g. drinking high-quality wines, attending opera – would not have to pick up the tab (e.g. Dworkin (2004); Patten (2014, p. 147)). However, even when such preferences are not deliberately cultivated, many would argue that expensive tastes do not merit accommodation (for an exception, see Cohen (1999, 2008)).

Whilst they may be right to do so, arguments from desert cannot (entirely) dispel their question-begging air. For defenders of neutrality of outcome may simply *deny* that people should be held responsible for their expensive tastes, or at least those not deliberately cultivated.

Rather than vainly conjuring up more examples of (supposedly) perverse accommodations, their opponents may respond as follows. They may say that even if accommodating expensive tastes is desirable in principle, this will be prohibitively expensive. But this cannot be a decisive objection, as both forms of consequential neutrality may be seen as pro-tanto values, i.e. as values that need to be balanced against others (see above). Whilst this means that these values will only be partially realised, their advocates may say that this is still better than nothing.

p. 92). Even if less common, the latter may be as central to a person's integrity and lifestyle, which is what matters from a liberal viewpoint. Furthermore, the argument that membership of a stable cultural community is necessary for exercising one's autonomy, as Kymlicka (1991b, pp. 165–6) has suggested, seems false in most cases – those not immersed in a particular cultural community (as we ordinarily define it) may be perfectly capable of living autonomous lives (Waldron, 1991). Only in very rare cases would a loss of culture seem to prevent people from living autonomously, such as when the cultures of uncontacted peoples are lost.

Unsurprisingly, then, my argument against neutrality of outcome is not desert-based. Rather, I reject it and neutrality of treatment for different reasons: they either unduly restrict citizens' autonomy or are likely to be instable. Either way, consequential neutrality should be rejected.

The problem with consequential neutrality (regardless of the form it takes) lies in its egalitarianism. By treating some form of equality of consequences as inherently desirable, it is committed to the view that there is (pro tanto) reason for not making any subset of doctrines better off *even* when this can be done without rendering anyone's doctrine worse off. Imagine a public court on which football-goals or basketball-posts can be placed, whereby each option would be privately funded and neither would undermine opportunities for other sports to be played. Despite the fact that no sport is made worse off, consequential neutralists would still maintain that there is reason for not accommodating either football or basketball fans. Similarly, when a country's national holidays/days of rest do not suit any religion (it is a traditionally secular country), they would argue that, even when no-one cares about the existing holidays and shifting is costless, no religion's holidays should be made into public holidays if not all can.

In my view, there is not even pro tanto reason for denying such benefits. Doing so disrespects citizens' autonomy. Perhaps if allocating a scarce good to a doctrine's adherents would *always* have a negligible impact on their autonomy, things would be different. However, citizens' autonomy-interests may be considerable. Unless the goals are placed, football-players in central London may have to travel an hour to reach a suitable pitch (De Vries, personal experience). And if no religion's holidays are accommodated, this may diminish the employment opportunities of (some) devout believers, as certain jobs can only be done during certain days of the week (e.g. primary schoolteachers or waiters/waitresses may be unable to take certain days off). Even when denying these benefits is not the same as causing harm (this is for the reader to decide), I take it that liberal states have a duty of beneficence to accommodate *some* citizens' doctrines rather than waste the available space for accommodations. Personal autonomy is too important for this (cf. section 1.2).

A critic might respond as follows. Whilst the adverse consequences for citizens' autonomy are regrettable, their badness is outweighed by the possible harm done to that other core liberal value: social equality (section 1.2).

If social equality is undermined by accommodating only some doctrines, this would be problematic. For the absence of social equality – the existence of power hierarchies amongst citizens – allows for domination and has been associated with various ills, including lower levels of trust, reduced health, and increased anxiety (section 1.2). However, I do not think social equality is always undermined. Just because a nearby court has been tailored to your sporting interests, for instance, does not give you any power over me. Whilst there may be other cases where social equality is impeded, this

would only suggest that no doctrine should be privileged in *these* cases. As consequential neutrality treats all forms of unequal state support for citizens' doctrines as problematic, not just those consolidating power hierarchies, this approach is not vindicated by such cases.

Consider another response. It might be said that consequential neutrality does not preclude accommodating some but not other doctrines. Rather than giving benefits to none, consequentially neutral states may use a *lottery* for deciding which doctrines are accommodated. Such lotteries would give football and basketball fans an equal (pro-rated) chance of having the court tailored to their sporting interests. Similarly, adherents of different religions would be given an equal (pro-rated) chance of winning the national holidays/days of rest.

I am unsure whether proponents of neutrality of outcome can accept this. If the unequal *impact* of policies on citizens' doctrines is problematic, this problem is not solved by using lotteries. Maybe the fact that everyone has an equal (pro-rated) chance of being made better off renders post-lottery inequalities *less* problematic. However, whether this allows proponents of neutrality of outcome to accept lotteries is unclear, as state policies would still have an unequal impact.

Neutrality of treatment is not plagued by this problem. Since what matters on this view is that citizens receive equal (pro-rated) resources to pursue their conceptions of the good (as opposed to equalising impact), this condition may be met when all have an equal (pro-rated) chance of winning the above benefits. (Perhaps on the condition that the draw be repeated every few years or so).

In my view, lotteries should not be used as a general approach for allocating scarce goods amongst citizens' doctrines. They are likely to generate too much instability. Why? Because showing losers that they were fairly treated, i.e. that state officials did not simply favour their own doctrines, proves very difficult. Showing True Random Number Generators to be reliable is challenging, as even scientists do not fully comprehend the quantum-mechanic processes on which these rely. Pseudo-Random Number Generators based on software programming or old-fashioned extracting-balls-from-containers may do better in this respect, as their workings are easier to understand by the public. Yet the fact that these methods are easier to manipulate, and have been manipulated in the past, may fail to curb suspicions of unfairness[32]. (Indeed, even when lotteries are conducted by independent organisations, such suspicions are likely to be rife; if scepticism about global warming is any indication, their independence may be doubted just as much.)

This assurance problem might be surmountable were the stakes not so high. However, we saw that the consequences for citizens' autonomy may be substantial. This provides good reason for believing that lottery-based versions of neutrality of treatment will be unstable, especially in

[32] Compare López-Guerra's (2010, pp. 15–6) discussion of how the benefits of lottery-based enfranchisement are offset by similar problems.

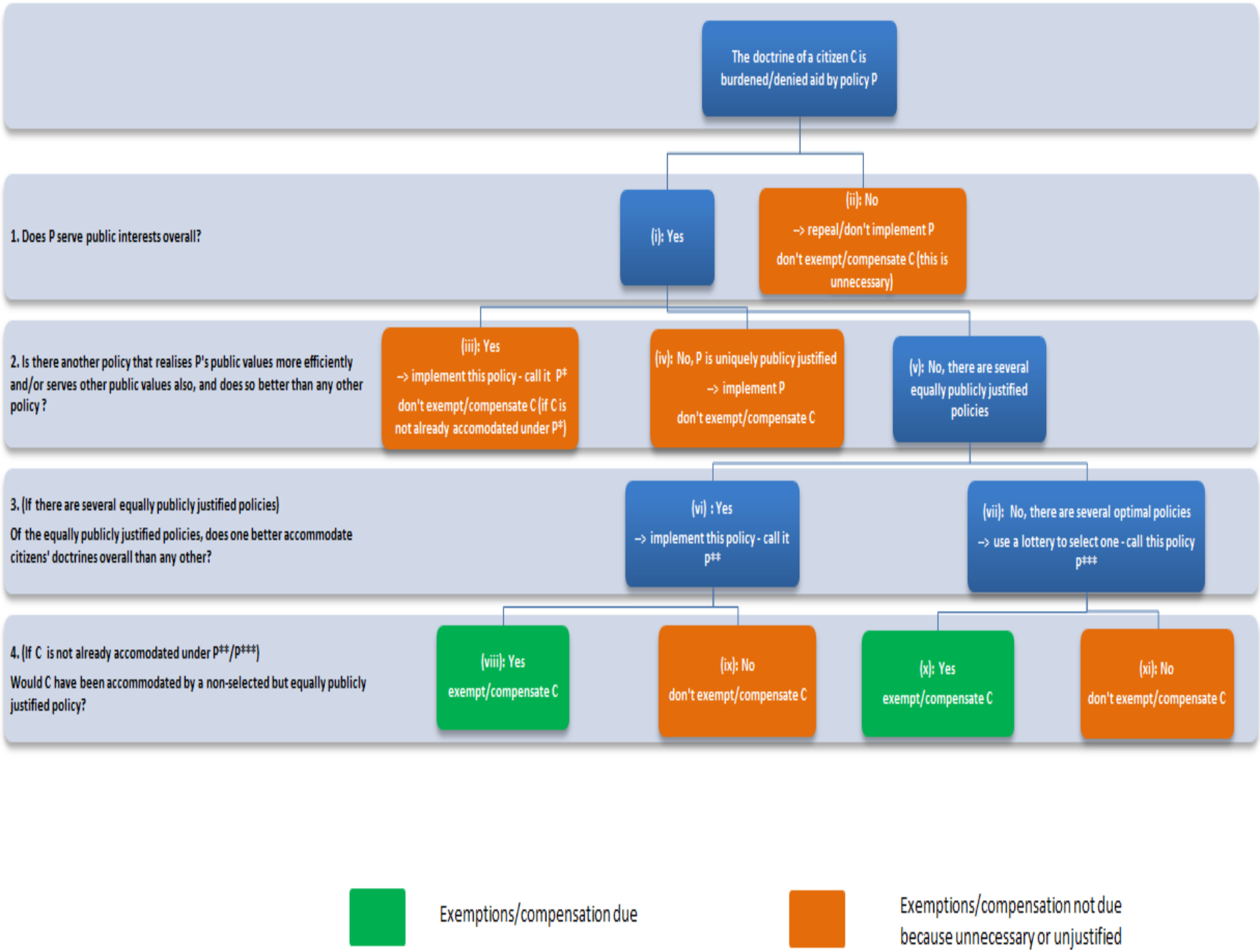
contemporary liberal democracies where the accommodation of cultural and religious preferences has become highly politicised.

Of course, a certain degree of instability may be traded-off for gains in justice. Were this kind of consequential neutrality (by far) the most just approach, its instability may be a necessary evil. However, the remainder of this chapter suggests that it is just an evil.

4.3 Costless Counterfactualism

Defenders of consequential neutrality are right about one thing: for states to neutrally or publicly justify policies is not enough. They should also take into account the consequences of policies for citizens' doctrines. Unlike defenders of consequential neutrality, however, I argue below that equalising resources or outcomes is unimportant. What matters is that citizens whose doctrines are burdened/denied aid by a publicly justified policy are given exemptions/compensation when they would be better off under an equally publicly justified policy. Whilst this may sometimes equalise burdens/benefits amongst doctrines, this would be a contingent outcome. In various cases, I argue that *no* redress is due to doctrines that receive more burdens/less aid, or only to some. This may lead to considerable inequalities, but, I show, this is the price to pay if we want policies to be publicly justified (as I argued in section 3.2.1 we should).

For reasons explained earlier (section 4.1), I call the theory defended here 'Costless Counterfactualism'. According to this approach, up to four questions need to be asked to decide whether exemptions/compensation are due for a policy or policy proposal P that burdens and/or denies aid to citizens' doctrines (see the diagram below). Whilst any person's doctrine may be burdened/denied aid, those of minorities are most likely to be affected, as they tend to have less economic or political influence (cf. Kymlicka, 1995, pp. 107–30). This is why I refer to Costless Counterfactualism as a 'theory of minority rights'.


The doctrine of a citizen C is burdened/denied aid by policy P
1. Does P serve public interests overall?
(i): Yes
(ii): No
-> repeal/don't implement P
don't exempt/compensate C (this is unnecessary)
2. Is there another policy that realises P's public values more efficiently and/or serves other public values also, and does so better than any other policy ?
(iii): Yes
-> implement this policy - call it P*
don't exempt/compensate C (if C is not already accomodated under P*)
(iv): No, P is uniquely publicy justified
-> implement P
don't exempt/compensate C
(v): No, there are several equally publicly justified policies
3. (If there are several equally publicly justified policies)
Of the equally publicly justified policies, does one better accommodate citizens' doctrines overall than any other?
(vi) : Yes
-> implement this policy - call it p**
(vii): No, there are several optimal policies
-> use a lottery to select one - call this policy p***
4. (If C is not already accomodated under P**/p***)
Would C have been accommodated by a non-selected but equally publicly justified policy?
(viii): Yes
exempt/compensate C
(ix): No
don't exempt/compensate C
(x): Yes
exempt/compensate C
(xi): No
don't exempt/compensate C
Exemptions/compensation due
Exemptions/compensation not due because unnecessary or unjustified

4.4 Does P serve public interests overall? (Step 1)

To decide whether exemptions or compensation are due, the first thing that needs to be asked is whether P serves public interests overall (step 1). Another way of putting this question is: is it preferable from a public-reason perspective to have P or not? For this to be the case, P must serve some public value(s), i.e. some value(s) that can be recognised as important by citizens with different reasonable doctrines (section 3.2.2); in addition, P's public value must not be cancelled or outweighed by countervailing public values. Unless these conditions are met, P is not publicly justified. Insofar as my argument for public justification is sound (see chapter 3), this means that P should be revoked or not implemented, thereby pre-empting the need for giving exemptions or compensation for P.

To be sure, many policies that burden and/or deny benefits to citizens' doctrines pass this first hurdle (some examples of those that do not shortly). Publicly justifiable policies that impose *burdens* may include: helmet laws that reduce medical expenses by preventing head injuries, but also legally prevent Sikh men from wearing turbans on motorcycles or construction sites; humane slaughter laws that protect animal welfare (assuming this to be a public value), but also prevent Jews and Muslims from eating kosher and halal meat; anti-weapon laws that protect public safety, but also prevent Sikhs from wearing a Kirpan in public; anti-pollution laws that protect public health, but also prevent Hindus from scattering ashes over rivers; and so on (for more on these and other cases, cf. Barry, 2002; Boucher & Laborde, 2014; Jones, 2011; Quong, 2006; Shorten, 2010). Publicly justified policies that *deny benefits* may include: using a particular culture's language for state services may ease communication, but also disfavours cultural groups with different languages (e.g. Patten, 2014); subsidising the delivery of social services by faith-based organisations may be more efficient (Monsma & Carlson-Thies, 2015), but also gives benefits to certain religions that are denied to others; legal recognition of marriage may stabilise relationships and reduce violence amongst young males (Wilcox 2011), but also privileges certain kinds of relationships (for competing views on the normative implications of these privileges; see Chambers (2013) and Macedo (2015); refusing to serve Halal options in government buildings may promote animal welfare (insofar as ritual slaughtering is more painful), but may also restrict Muslim's dietary options to vegetarian dishes. (Observe that some policies may both benefit some doctrines and burden others, such as recognising Christian holidays as national holidays but not those of other religions).

Still, there are policies that impose burdens and/or deny benefits that cannot be publicly justified. Rather than exempting or compensating citizens for these, Costless Counterfactualism requires that they be revoked/not implemented. Banning the wearing of burkinis on beaches and religious garment at schools (e.g. headscarves, kippahs, crosses) falls into this category. The public reasons for such bans are so weak –

if they exist at all – that any value these bans may have is likely to be *cancelled* by the harm done to citizens' autonomy and social equality.

In other cases, a policy's public value may be *outweighed*. It is conceivable that keeping the Bishops in the British House of Lords promotes cohesion and a sense of historical continuity (some might add that, as the Church of England claims, their presence adds "spiritual insight to the work of the Upper House"; whether this is a public value is debatable though[33]). If so, the public value of this arrangement is likely to be outweighed by its democratic deficit, as none of the 26 'Lords Spiritual' are elected. Rather than compensating other groups for their lack of representation (by giving them representatives or in other ways), then, Costless Counterfactualism requires this institution to be abolished.

Idem for when the economic costs of mandatory military service outweigh the possible benefits for national security. Under such circumstances, there would no need for exempting pacifists (e.g. Quakers, Hutterites, cosmopolitans of various stripes), as conscription ought to be abolished.

4.5 Is there a policy that realises P's public value(s) more efficiently and/or serves other values also, and does so better than any other policy? (Step 2)

If P serves public interests overall, the next question becomes:

> Is there another policy P* that realises P's value(s) more efficiently and/or serves other public values also, and does so better than any other policy?

When there is a P*, citizens whose doctrines are burdened/denied benefits by P would not need exemptions or compensation either, as P* ought to replace P. By serving public values more efficiently and/or serving more public values, a policy may give citizens more public value for money than P (whether this is so will depend on whether its *overall* score along these dimensions is better; rather than proposing an algorithm for balancing efficiency against breadth of public values served, I simply assume that such balancing is possible and should be based on what best secures justice).

Some examples illustrate the point. (In all examples, other things are equal.) First consider cases where P* is more efficient than P. By 'more efficient', I mean that P* secures P's values at lower cost, as measured against an appropriate time-frame – what time-frame is appropriate depends on the kind of

[33] https://www.churchofengland.org/our-views/the-church-in-parliament/bishops-in-the-house-of-lords.aspx

policy involved –, whereby transaction-costs are taken into account. For example, if bans on marijuana (P) serve public interests overall by protecting citizens from lung cancer and memory loss (as required by step 1), such bans should be lifted nonetheless when they are less efficient than tolerating marijuana's consumption and investing the money saved on publicising its dangers (P*). By opting for the latter policy, Rastafari who smoke marijuana for religious purposes would not need to be exempted. Similarly, if investing in military technology (P*) better serves national security than introducing mandatory military service (P), the former ought to be chosen. This would then preclude the need for exempting pacifists.

The same applies when P* does not necessarily promote P's public value(s) more efficiently, but promotes other public values as well (i.e. has positive public externalities). Thus, if serving meat dishes (P) is equally expensive as serving vegetarian/vegan dishes (P*), the latter should be chosen for being more environmentally and animal-friendly. In this case, those with conscientious objection to eating meat/all animal products would not need to be exempted. Similarly, if planting trees around a field (P*) reduces the impact of CO2 emissions as much as planting them in the middle (P), the former should be chosen if this would also stimulate physical exercise by allowing citizens to play football/toss a Frisbee. In this case, sport enthusiasts are given benefits they would lack under P.

To avoid misunderstanding, the reason for favouring P* over P in these cases is that P* serves public values better (by realising them more efficiently and/or serving more of them), *not* that it serves citizens' doctrines. At this stage, state officials should *only* consider what policy is best justified from a public-reason perspective, whereby the mere fact that a policy is good for a given doctrine is not a public reason for implementing it. For only its adherents may recognise this as important, whereas the previous chapter found that all policies should be neutrally or publicly justified.

To show that benefitting a person's doctrine (even if reasonable) is not a public value as such, the following test may be used. Even if other citizens had your body and life – suppose that your brain was miraculously transplanted – they may not care about (some) of your doctrine's pursuits and aspirations, such as your aim of honouring God by worshipping him/her or to see the opera. In this regard, giving tax-emptions to churches and subsidising opera is different from e.g. subsidising health care and fighting employment discrimination. If my brain was implanted in your body, I would care about your pain or lack of equal opportunity on the job market (which would now be my pain and lack of opportunity). What this shows is that promoting health care or fighting employment discrimination are public values, whereas merely promoting a person's doctrine is not. (Of course, citizens' doctrines may have goals that are publicly valuable, such as alleviating poverty. Whilst promoting these goals would promote their doctrines, this does not contradict my point. For in these cases, the state's aim would be – or in any case should be – to promote the relevant goals, not to promote citizens' doctrines as such. (This would instead be a side effect).

If the mere fact that a comprehensive doctrine is better off – even if reasonable – is not a public value as such, this has important implications. For one thing, it means that the state should not implement policies on grounds that these render (some) doctrines better off *insofar as* this goes against public interests. That is to say, if there is a uniquely publicly justified policy – which may be P itself or, if there is a single superior alternative policy, P* –, no other policy should be implemented just because it serves (some) citizens' doctrines better.

Some examples illustrate the point. If allowing Frisian (a minority language in The Netherland) to be spoken in parliament would undermine democratic deliberation – an important public function of a national language (cf. Baubock, 2003) –, the Dutch state should require parliamentarians to communicate in Dutch (which is not a real burden for Frisians, as virtually all of them speak Dutch). In a similar vein, when using Frisian for the delivery of state services is costlier, as many civil servants and/or service recipients do not speak Frisian (or not well enough), Dutch should be spoken. (Of course, when the parties involved speak Frisian well, this language may be used; I am only talking about cases where this would undermine efficiency.) The fact that the survival of the Frisian language may be imperilled does not alter this; as many citizens (including some speakers) may fail to appreciate the importance of its survival even if they made a good-faith and minimally rationally effort to reflect on it, this is not a public value.

Or suppose states faced a choice between hosting a football-tournament or a (ice)hockey-tournament. The tournaments have equal (expected) economic benefits, but more children are likely to join a football-team if the former is organised than the number of children who are likely to join a hockey-team if the latter is chosen. In this case, the football-tournament should be organised even when hockey is struggling to survive. Whilst hockey has a lot more to gain than football (the popularity and survival of which may be much less dependent on hosting the football tournament), the fact that the football tournament stimulates physical exercise better – a public value – means that it should be chosen nonetheless.

If I am right that public interests may not be compromised for the sake of citizens' doctrines, i.e. for the sake of activities or states of affairs of which only their adherents may see the value, this has another important implication. It also means that no exemptions/compensation should be offered to citizens whose doctrines are not accommodated under a uniquely publicly justified policy, at least not when this is costly. Thus, Frisians fluent in Dutch should not be exempted from speaking Dutch in court if this requires an interpreter to be hired. Nor should states subsidise Frisian education or invest in hockey facilities to compensate Frisophiles and hockey-fans for using the Dutch language/ hosting the football-tournament. In the absence of public reasons for doing so, granting such redress would still force citizen to pay for doctrines of which they may be unable to see the value (or parts thereof).

What if giving exemptions or compensation is costless though? As far as exemptions are concerned, these cases seem extremely rare. Insofar as the aim of anti-narcotic legislation is to prevent addiction, exempting Native-Americans from bans on the consumption of peyote may be one. Not only is Peyote not addictive (or hardly)[34], the fact that it is one of the most disgusting drugs (Gahlinger, 2003, p. 409) may render it superfluous to spend money on preventing other groups from using it (at least as long as more palatable drugs remain available). However, I doubt that there are many cases like this. More common may be ones where citizens can *internalise* the costs of an exemption. A well-known example is exemptions from conscription. As in many other countries, Dutch men who conscientiously objected to serving in the military before the draft was abolished could do social work instead (often in the health sector), which lasted equally long as the draft. Whilst I believe that these exemptions are morally appropriate, my interest in this chapter is in exemptions that are due *irrespective* of whether people are willing and able to internalise their costs.

What about costless compensation? Given that symbolic support may be costless, should some form of symbolic redress be offered to those whose doctrines are burdened/denied under uniquely publicly justified policies? (Think of state recognition of a disadvantaged religion, or the display of a culture's symbols during state ceremonies.)

I worry that this proposal may lead to a proliferation of claims for symbolic redress (perhaps because one group receiving such benefits may have a domino-effect). Even if this does not happen, however, citizens seem to lack a moral claim to symbolic compensation for uniquely publicly justified policies. It seems strange that one should be compensated for doing what justice requires one to do, even if one's doctrine is burdened more/aided less than others'. Suppose that a parent has three young children and that two want to go on a picnic, whereas the third wants to see the ballet (which is much more expensive). If the family is in bad financial weather, I do not think the third child is entitled to symbolic redress by being told that they are their parent's favourite child, or by being allowed to pick the first piece of cake (assuming the parents' cake-dividing skills to be sub-optimal). Or suppose one child wants to go to the British Museum, whereas the others want to go strolling in Hyde park. If the parents want their children to become tolerant of other cultures (a legitimate objective), then insofar as seeing other cultures' accomplishments in the British Museum helps to achieve this, no symbolic redress seems due if Hyde park is skipped. At least when the children who lose out have no reason for believing that their parents love them any less (taking into account their young age), expecting such redress seems unreasonable.

Similarly, for adult citizens to expect symbolic compensation for uniquely publicly justified policies would seem unreasonable. Of course, just because they lack a moral claim to such redress does not mean it should not be given. However, I believe there is good (public) reason for not doing so. Besides

[34] http://hallucinogens.com/peyote/is-peyote-addictive/

the worry about proliferation (see above), compensating citizens for things that serve justice best sends out a wrong signal: it suggests that politics is an area for pursuing sectarian interests rather than goals of which all citizens can reasonably be expected to recognise the importance (e.g. health, a clean environment, a prosperous economy).

The upshot is that, barring rare cases where exemptions are costless, no exemptions or compensation should be given for uniquely publicly justified policies.

4.6 Of the equally publicly justified policies, does one better accommodate citizens' doctrines overall than any other? (Step 3)

Thus far, I argued that when P is publicly unjustified, no exemptions or compensation are due as P should be revoked/not implemented. By contrast, when P is publicly justified and uniquely so, or when there is another uniquely publicly justified policy P*, I argued that no exemptions or compensation are due.

According to step 3, if multiple policies are optimal from a public reason-perspective, the one that on the whole better accommodates citizens' doctrines than any other policy, call this policy P**, ought to be chosen. Which of several publicly optimal policies best accommodates citizens' doctrines overall is determined by two variables: (i) the number of citizens whose doctrines are not burdened/aided, and (ii) the impact of the spared burdens/conferred benefits on citizens' autonomy, whereby sparing burdens is more important than conferring benefits or aiding. I call this criterion 'weighted number neutrality', as it seeks to maximise the number of citizens whose doctrines are accommodated weighted by the benefits to autonomy, whereby the content of citizens' doctrines does not matter (this is the neutral part of it).

In what follows, I explicate how weighted number neutrality works and defend it against some objections. Next I consider cases where several equally publicly justified policies accommodate citizens' doctrines optimally, as measured by weighted number neutrality. In such cases, I argue that a lottery has to decide which policy is implemented – call this policy P***. Just as citizens who are burdened/unaided by P would not need to be exempted or compensated if there is a P*, exemptions/compensation for P would be unnecessary if their doctrines are accommodated by P** or P***.

4.6.1 Weighted number neutrality

When facing a range of equally publicly justified policies, the first thing to ask is whether any of them is uniquely Pareto-superior. Does some policy render citizens' doctrines better off than any other policy? If

there is a Pareto-superior P**, there is no need for considering how many citizens are spared burdens/denied benefits, or to probe into the size of these burdens/benefits. For in such cases, weighted number neutrality *always* supports the uniquely Pareto-superior policy.

There are two kinds of Pareto-superior P**s. The first consists of generally applicable rules and the second of rules with exemptions/compensation for certain groups. When available, I concur with Peter Balint (forthcoming, ch.3) that states should choose the former. Before explaining why, consider some examples.

Suppose that there are two equally efficient ways of securing government-buildings, namely

i. Introducing a fingerprint-identification system
ii. Introducing a pass-photo ID system, whereby Hutterite employees would be allowed to have picture-less IDs, as they regard pass-photos as idolatrous (since they are so few, this would not compromise security).

Other things equal, the fingerprint identification system ought to be chosen here. Similarly, when states can choose between

(a) sending their employees Christmas baskets[35] with wine, whereby 'sober' baskets are sent to non-drinkers.
(b) sending everyone baskets with exclusively non-alcoholic items (suppose that these sober baskets are equally expensive for the company and that the aggregate value of their products is the same).

The baskets with non-alcoholic items (b) ought to be chosen.

Why favour general rules over rules-cum- exemptions/compensation when both are Pareto-superior? Because the former are less conducive to under-inclusion (cf. Balint, forthcoming, ch.3). Some citizens who are entitled to exemptions/compensation may be too shy to request these, or simply not want to because of a troubled history with the state. Indeed, the hegemonic character of majority-biased norms may sometimes blind people to the fact that they are unfairly disadvantaged – think of non-drinking Muslims for whom it is so 'natural' that Christmas baskets contain wine that asking for wine-free baskets does not come to their minds. All these forms of under-inclusion are less likely to occur when general rules are chosen that – as far as known – do not burden/deny benefits to anyone.

4.6.1.1 Numbers

In the absence of a Pareto-superior policy, weighted number neutrality requires that the number of citizens is estimated who are spared burdens/denied benefits by different equally publicly justified policies, as well

[35] Baskets with food, wine and other items are traditionally given to Dutch employees around Christmas.

as the size of these burdens/benefits. If a policy scores uniquely best along these dimensions conjoint, this policy – P** – ought to be implemented (the appropriate weight of each dimension is left open).

Consider the number variable first. This variable is premised on the view that since living autonomously is an important good (section 1.2), the more citizens can do so, the better. This follows from the moral equality of citizens and basic principles of rationality; as we have no reason for favouring the autonomy of some (reasonable) citizens over others' (the moral equality principle), we should want as many to live autonomously as possible (lest we be irrational). Accordingly, if several policies are equally publicly justified, then other things equal, the one serving the doctrines of the most citizens ought to be chosen (this would be our P**).

Thus, if there is a group for whom having their fingerprints taken is a violation of (a) God's will, then other things equal, state organisations should opt for the fingerprint system only if the number of employees with this view is higher than the number of Hutterite workers (assuming only one system can be adopted). Similarly, if elections have to be organised on either a Saturday or Sunday (suppose that voting by mail is too unreliable and not enough people can cast their votes during weekdays), then other things equal, the elections should take place on Sunday if there are more Jewish than Christian citizens. And if a working language for state organisations has to be chosen, then ceteris paribus, the language of the largest cultural group should be selected.

4.6.1.2 Weighing

Numbers are not all that matter though. As was mentioned, the impact of policies on citizens' personal autonomy should also be taken into account. Specifically, when two policies burden/deny benefits to equal numbers of people, then ceteris paribus, the one that best allows citizens to live autonomously should be chosen. This will be the policy that best respects their commitments.

Whilst the impact of policies on citizens' commitments will be continuous, I want to suggest that, other things equal, *lexical priority* should be given to those allowing citizens to meet what I call 'integrity-demands', i.e. demands that are central to their conscience and/or self-understanding. Having lexical priority, such demands should not be balanced against weaker commitments. Specifically, what I term 'unavoidable integrity-demands' should have lexical priority over 'unavoidable mere preferences'; and unavoidable mere preferences lexical priority over 'avoidable integrity-demands' and 'avoidable mere preferences'. (Whilst the continuous character of these different kinds of commitments renders their boundaries arbitrary to some degree, there are normatively relevant differences; or so I suggest below).

Let me clarify these terms. An *integrity-demand* is a belief about how one should live that is central to one's integrity, i.e. central to one's conscience and/or self-understanding. Such demands are *unavoidable* when they are either unconditional (i.e. when they require one to act or refrain from acting

irrespective of whether other conditions are met), or when they are tied to things in which people have basic interests. Regarding the former disjunct, think of a pacifist's belief that they should abstain from serving in the army; or a Rastafari's belief that they should smoke marijuana for religious purposes. These prescriptions/proscriptions are unconditional because they do not depend on other states of affairs being realised. Regarding the latter disjunct, think of a Muslim's belief that they should wear a burqa; or the belief of a Sikh that they should carry a kirpan in public or wear a turban on construction sites (assume in this last case that Sikh construction workers have few alternative employment options). Without trying to make an exhaustive list of basic interests (the reader can plug in their own), going outdoors certainly counts as a basic interest (if not intrinsically valuable, then because of the many activities that depend on it), just as having meaningful employment opportunities (cf. Quong, 2006).

Integrity-demands need not be moral or religious. Take an artist's belief that their raison d'être is to turn their life into a great work of art; a Nietzschean's belief that they should live the macho life of an Übermensch; or the belief of Leiter's (fictive but not unrealistic) teenager that he should carry a dagger in school as part of a cultural tradition marking "the arrival of maturity for males in the community" (Leiter, 2013, p. 2). Despite not being (explicitly) moral or religious, these beliefs may be central to a person's self-understanding nonetheless[36]. Since what matters for personal autonomy is the depth of people's commitments rather than whether these commitments are moral or religious, such beliefs should be treated on a par with moral/religious integrity-demands. (To be sure, because morality and religion are central to the lives of many, they may be a common source of integrity-demands. Even if this is so, however, this would have nothing to do with some unique feature of religion or morality, i.e. with features that are lacked by other normative sources, such as aesthetic ones.)

Unlike unavoidable integrity-demands, *unavoidable mere preferences* are not central to people's conscience or self-understanding. Such preferences lack the requisite depth and are often (though not always) more fleeting than the former (cf. Greenawalt, 2009, p. 310). Thus, a person may prefer not to serve in the army on account of their pacifist sympathies, but these need not be nearly as deep as the beliefs of some Quakers that they should not take up arms. Similarly, a hippy may enjoy smoking marijuana, but, unlike some Rastafari, not see it is as part of their identity; and a football-fan may enjoy watching the game on television, but not care nearly as much as some fans who travel across the globe to attend football matches.

Finally, there are *avoidable integrity demands* and *avoidable mere preferences*. For examples of avoidable integrity demands, think of a Jew who believes that she should eat kosher when eating meat or a

[36] *United States v. Seeger* (1965) was one of the first Supreme Court cases where the claimants sought exemptions from conscription on the basis of non-religious or not explicitly religious views (the claimants appealed to their belief in a "supreme reality" and "a universal reality").

Sikh who believes that he should wear a Turban when riding a motorbike, but for whom eating meat/riding a motorbike is not central to their conscience or self-understanding. Thus, the Jew may merely enjoy eating meat (i.e. it may be a mere preference of her), or she may lack such a preference altogether (she may be vegan). Likewise, the Sikh may prefer motorbikes to other modes of transportation without being a motorbike enthusiast, or have no such preference whatsoever. Important is that neither individual would suffer an integrity-burden were the state to ban ritual slaughtering or require citizens to wear helmets on motorbikes – they could simply eat other food or use a different mode of transportation if they did not already do so. Only if they were unable to not eat meat or ride a motorbike (perhaps because there is no other food or no other mode of transportation) would their integrity be burdened.

For examples of avoidable mere preferences, imagine again that the Jew and Sikh have a weak preference to eat kosher meat or ride a bike with a turban were they to do these things (perhaps out of deference to tradition or to meet social expectations), but where not eating meat or riding a bike does not cause them to feel compromised. Unlike the previous case, they may simply not care that deeply about abiding by these cultural/religious norms.

As was mentioned, unavoidable integrity-demands have lexical priority over unavoidable mere preferences, and unavoidable mere preferences have lexical priority over avoidable comprehensive demands and avoidable mere preferences. This ordering is based on their importance to personal autonomy. People's autonomy suffers the greatest harm when they are unable to comply with integrity demands, that is, when they contravene their conscience or self-understanding. As Mark Wicclair's observes, acting against one's conscience can be "devastating and unbearable" and may "result in strong feelings of guilt, remorse, and shame as well as loss of self-respect" (Wicclair, 2011, p. 11; cf. Kukathas, 2003, p. 55). The same holds when people are not so much conscientiously burdened, but unable to live up to their self-understanding nonetheless (think of the artist who fails to meet the aesthetic standards they set for themselves). In such cases, endorsing one's life will be harder than when one has to forego unavoidable mere preferences, such as when hedonistic consumers of marijuana can no longer frequent Dutch Coffee-shops; or when bikers who enjoy the wind blowing through their hair are required to wear helmets. Unpleasant as these things may be, they are unlikely to be experienced as a form self-betrayal and, as a result, unlikely to prevent people from endorsing their lives.

Likewise, unavoidable mere preferences do greater harm to autonomy than avoidable integrity-demands and avoidable mere preferences. Even if not central to my integrity, I may still enjoy smoking marijuana or riding a bike without headgear, or feel more comfortable going outside in a burqa. Having these preferences frustrated may undermine my joie de vivre, thereby rendering it more difficult for me to endorse my life (this holds true even if these difficulties are much smaller than in the case of unavoidable integrity-burdens). By contrast, such difficulties are largely absent when I can avoid integrity-burdens or

mere preferences. So, when I find vegetarian food as tasty as meat dishes, or when I do not care about biking, my autonomy is not undermined in any meaningful sense when my preference for Halal-chicken when consuming meat or a turban when riding a bike are frustrated. (This is not to suggest that states should not try to respect these preferences; as these may still render it somewhat more difficult for people to live as they see fit, respecting them is desirable from a liberal perspective even if they have the lowest priority).

To see how the priority rules work, let us look at some examples (in each example, other things are equal). Suppose that there are more Christians than Muslims in a society, but that working on Fridays would require more Muslims to violate an integrity-demand than working on Sundays would require Christians to violate an integrity-demand. In this case, Friday should be the national day of rest despite the fact that the Muslim population is smaller (assuming convergence on a single day to be necessary for economic reasons). Similarly, if a governmental organisation has to choose between serving vegetarian dishes and Kosher meat dishes, then if one group of employees has a mere preference for vegetarian food that is unavoidable (i.e. unconditional) and a more numerous group for whom eating Kosher meat is an avoidable integrity-based demand, vegetarian dishes should be the default. (Of course, both options are not equally-well supported by public reasons in real life; for expository purposes, I have bracketed this difference).

There is a complication. Spared burdens, I noted, should have greater weight (other things equal) than denied aid. Thus, if schools have to design a PE curriculum, then insofar as a devout Muslim student objects to playing water-polo on grounds of its physical contact with boys from her class – suppose that she regards such contact as sinful –, other sports should be chosen (assuming that teaching cooperation through team-play, including between different genders, is a goal of PE, so that schools cannot let students do some other form of physical activity or have gender-separated games). Even if banning water-polo from the curriculum negatively impacts on its fans' autonomy (suppose that introducing PE students to water-polo is one of the main ways of recruiting new fans and players; without such exposure, the sport may struggle to survive), this reason is cancelled by the fact that some students are expected to violate conscientious demands.

To be sure, this is not because water-polo is not as important to personal integrity. For some, it may be. Nor is the reason that burdening/harming is always worse than not-aiding/benefitting. Inflicting (mild) harm is often a less serious wrong than denying aid, especially when lives are at risk. Accordingly, what we need is an explanation as to *why* not-aiding is the lesser evil in this case. I believe the reason is this: making an agent violate an integrity-demand undermines their dignity, whereas being unable to comply with such demands due to extraneous factors does not (at least when one's doctrine is not being targeted, as I assume it is not). So, when the Muslim student is forced to act against her conscience by

playing water-polo, she suffers a dignity harm, whereas the water-polo fan whose sport is no longer part of the PE curriculum does not, even if water-polo becomes extinct as a result. Whilst the fan's autonomy may be impaired (perhaps even more than that of the Muslim student were she required to play water-polo), being coerced to act against one's deeply held beliefs treats one much more as a tool or means than when one's favoured sport is no longer supported by the state. That is, even if the fan's integrity would be burdened were water-polo to disappear, the fan is not forced to burden their own integrity, which by any plausible standard constitutes a more severe act of instrumentalisation. If correct, respect for human dignity requires that the claim of the Muslim student be prioritised.

Space constraints prevent me from saying more about this, but I suspect only enforced violations of integrity-demands inflict such dignity-harms. Had the Muslim student merely a preference for playing sports without physical contact with males, the case for axing water-polo from the curriculum would seem a lot weaker, and the reasons against this certainly would not be cancelled. (In any case, once we allow mere preferences to block equally publicly justified policies, it seems that the set of eligible policies will often be empty within diverse societies. In such societies, there are always likely to be some who dislike a given alternative; returning to our PE example, one student may dislike tennis, another water-polo, yet another disc-golf, and so on. As realising various public objectives requires some policy to be chosen, I take this to be a *reductio*.

4.6.2 Objections, rejoinders, and some concessions

Hitherto, I have not said anything about whether citizens whose doctrines remain burdened/unaided under P** should receive exemptions/compensation, or what should be done when several equally publicly justified policies serve citizens' doctrines best overall. Before delving into these issues, consider some objections to weighted number neutrality.

4.6.2.1 Majority biases

To choose amongst equally publicly justifiable policies, I argued that a doctrine's number of adherents is a relevant factor. Some may worry that this unfairly advantages majorities. Indeed, such worries may persist even if minorities receive exemptions or compensation – either as part of a Pareto-superior P** or under step 4 –, perhaps because symbolic significance is attached to having one's doctrine served by the rule rather than by special provisions.

Just as forms of consequential neutrality seem to derive their *prima facie* force from concerns about discrimination or other unjust background conditions (section 4.1), I suspect such concerns fuel scepticism about the number criterion's fairness. When majorities have been unfairly privileged (or continue to be), rules favouring minorities may be desirable in order to compensate the latter for (past) wrongdoing.

However, this would be a matter of remedying injustice and, as a result, *not* count against Costless Counterfactualism's maximising logic as such. This logic would continue to be justified by the fact that if we care about each citizen's autonomy, and do so equally (as liberalism requires), then ceteris paribus, we should want as many of them to be spared burdens/aided.

4.6.2.2 Protestant biases

Costless Counterfactualism does not prioritise moral and religious integrity-demands over non-moral or non-religious ones. Even so, its weighing criteria may be accused of being biased towards Protestant-like doctrines, i.e., doctrines that focus more on individual conscientious demands than (collective) practices (cf. Laborde, 2015, p. 585.) By focusing on integrity-demands, some might say that certain practices do not get the protection they deserve. These are practices that play a pertinent role in citizens' lifestyles and self-conception (and are therefore important to their autonomy) *without* being obligated or mandated by their worldviews (oft-mentioned examples are aboriginal peoples' fishing, hunting, and dancing practices (e.g. Laborde, 2015, p. 593).

There is something to this objection. Suppose that a woman wants to be a good Muslim – this is an important commitment for her – but that there are a number of things she is not allowed to do. She cannot wear a headscarf in public buildings or a burkini on the beach, nor is she allowed to have her children circumcised or to take Friday afternoons off for worshipping. Even if this woman is unorthodox in that she does not feel conscientiously required to do any of these things in particular, for her to self-identify as a good Muslim may require that she does at least *some* of them. In cases like these, I believe states should not take an overly atomistic approach. That is, they should not merely consider whether interfering with *specific* (in)activities renders it more difficult for people to comply with integrity-demands, but also how policies may work *jointly* to undermine their integrity. The reason for this is that such demands – call them 'higher-order demands' – may be just as central to people's ability to live autonomously.

Rather than invalidating Costless Counterfactualism, then, the Protestant-bias objection requires our notion of an integrity-demand to be broadened, i.e. to be made more holistic.

4.6.2.3 Individualist biases

Even if this is an adequate response to the Protestant-bias objection, Costless Counterfactualism may still be deemed too individualistic. Jeremy Waldron has suggested that citizens whose doctrines are part of a group's nomos ought to have stronger claims to exemptions.

> "A requirement of state law may be irksome and burdensome to many, but it has a particular sort of impact on somebody whose life in the area to which the law applies has been organized on the basis of a quite

> different scheme of regulation. Such a person may well feel *torn* if the state law is applied to him - torn between a requirement imposed by the state and another imposed by his church or community. But it is not just a matter of how strongly *he feels;* nor is it a matter of his own strong or conscientious belief that he - or we all - ought to be under a different obligation. His being pulled in the direction of the cultural or religious practice (contrary to the state law) has *social* reality; it is not just a matter of subjective conviction" (Waldron, 2002, p. 24) original emphasis).

If doctrines with social dimensions are worthier of exemptions (and state support), weighted number neutrality is incomplete at best. For this criterion does not take into account whether citizens' doctrines are part of a (cultural or religious) groups' nomos.

I believe Waldron's view discriminates against citizens with (more) idiosyncratic doctrines. Perhaps members of (close-knit) cultural or religious groups are more likely to experience clashes between what the law requires and what they believe they should do. When violating cultural and religious norms involves being disloyal towards other group members and perhaps one's ancestors (if they belonged to the same group), this may be conscientiously quite cumbersome. Even if this is so, violations of idiosyncratic integrity-demands may be as deep, even if less common. Think of the artist who is forbidden by zoning laws to build an art studio on their land; being unable to produce art may be a gross act of self-betrayal for them, even when there is no artistic community pressuring them to paint or sculpt. Since what matters for personal autonomy is the depth of people's commitments, I conclude that idiosyncratic and (more) social doctrines should be treated alike.

4.6.2.4 The 'sufficient reason' objection

The final objection challenges Costless Counterfactualism's grounds for conferring exemptions. Specifically, it maintains that this approach fails to recognise at least one necessary condition. According to Kevin Vallier (2015), states should *only* offer exemptions for laws that burden citizens' doctrines when citizens lack sufficient reason to comply with the relevant laws. Whether this is so depends on whether they would prefer having *no* law to the laws in question were they to make a reasonable (i.e. good-faith and minimally rational) effort to reflect on the laws' merits (Vallier, 2015, pp. 7–10).

Vallier assumes here that whenever people suffer integrity-burdens under a law, they will have insufficient reason to prefer it to no law. "When a law places a substantial burden on the integrity of an individual, then arguably the individual has sufficient intelligible reason to object to the law", in which case she will "rationally prefer no law restricting her liberty to having the restriction" (Vallier, 2015, p. 14). I do not think this is always the case, and that this has perverse consequences. Imagine a society with mandatory military service and a ban on religious garments in public buildings. In such a society, a pacifist with strong patriotic sentiments may believe (were he to reflect on the matter) that he lacked

sufficient reason to oppose military service. Even when his pacifist beliefs are strong, his patriotism may be stronger. Similarly, a Muslim woman who is a devout democrat may believe (upon reflection) that she had insufficient reason to oppose democratically-enacted bans on the wearing of religious garments in public buildings. Whilst her religious convictions may be firm, her deference to democracy may be firmer. In such cases, it strikes me as perverse that citizens are deemed ineligible for exemptions *because* of their civic commitments. For if they were not such committed patriots/democrats, they would have sufficient reason for rejecting the above laws and, as a result, be eligible for exemptions on Vallier's account.

4.6.3 Lotteries

I have defended weighted number neutrality as a tie-breaker for choosing amongst equally public justified policies. However, what if it does not break the tie? What if there are *several* equally publicly justified policies that serve citizens' doctrines best overall?

In that (perhaps rare) case, the fairest way of choosing is to conduct a lottery. This is certainly preferable to state officials choosing whatever policy serves their own doctrines (or those of people they like). Even if ordinary citizens may favour their own doctrines when choosing amongst (equally) publicly justified policies (for an argument to this effect, see Billingham, 2015), such self-serving behaviour is unacceptable in the case of state officials. They are meant to represent *everyone's* interests.

Nor may state officials use their own perfectionist judgments as tie-breakers. Even if they intend to promote the good of all citizens (which would avoid the egoism-charge), I argued that such judgements raise warranted feelings of civic inequality (section 3.2).

Whilst lotteries stay clear of these problems, one might wonder how they can be put to use. My proposal is this: state officials should number policies they believe to be equally justified and to serve citizens' doctrines equally well, and then use random number generators (which are available on-line) to choose amongst these. Verifying whether they did would of course be impossible; indeed, we cannot even know whether they believed certain policies to be (all) optimal in the first place. However, this is not a problem; as the duties defended here are purely moral, they are not meant to be enforceable.

4.7 Would citizens' doctrines be accommodated by a non-selected but equally publicly justified policy? (Step 4)

What if citizens' doctrines are not accommodated under P** or P***? That is, what if their doctrines are not spared the burdens they seek to avoid and/or given the benefits they want? In that case, the final question becomes: Is there an equally efficient policy that would accommodate their doctrines? (step 4). If there is, the state should exempt/compensate them. If there is not, exemptions/compensation are not due.

4.7.1 When exemptions/compensation are not due

Consider these scenarios in reverse order. Section 4.4 argued that when citizens are not accommodated by a policy that is suboptimal from a public-reason perspective, they have no claim to exemptions or compensation (save for rare cases where exempting them is costless; I bracket these here). This meant that if using Frisian in parliament or for the delivery of state services would be less efficient, no exemptions or compensation for Frisians are due. Nor should hockey-fans be offered redress for organising a football tournament if such a tournament is more likely to stimulate physical exercise than a hockey-tournament. The reason for this, I argued, is that the mere fact that a doctrine is benefitted is not a public value as such.

If my argument in section 4.4 is sound (to avoid repetition, I will not go over this ground again), no exemptions or compensation can be due when citizens are burdened/unaided by P** or P*** *insofar as* policies that would accommodate them are inferior from a public-reason perspective.

4.7.2 When exemptions/compensation are due

But why are things different when citizens' doctrines would be accommodated under equally publicly justified policies? Why should they receive exemptions or compensation, especially when this is costly? Before explaining why, consider some examples of exemptions and compensation that are due.

According to Costless Counterfactualism, if the economic benefits of having national holidays and days of rest would be the same when based on the Jewish/Muslim calendar, exemptions and/or compensation are due to Jews/Muslims for using the Christian calendar. Where possible, they should be given paid days off on Fridays/Saturdays (of course, in that case, they may be expected to work on Sundays). When companies cannot afford such exemptions – even when Jewish and Muslim employees work on Sundays instead, employers may incur costs –, states should help cover these costs. (For more on this issue, see Jones, 2012.) As certain jobs and positions may not admit of exemptions (e.g. primary school teaching, bars that have their peak hours on Friday and Saturday night), states should also offer Jews and Muslims some form of compensation for their less-than-equal employment opportunities (e.g.

subsidies, symbolic recognition). (Idem for when elections take place on Saturdays – assuming that weekdays are unavailable because of low turn-outs and that voting by mail is too unreliable. In this case, Jews ought to be compensated.) In a similar vein, if organising a tennis tournament has equal economic benefits and stimulates physical exercise as well as hosting a football tournament, tennis fans are due compensation when the latter is chosen on account of the greater share of football fans. For example, states may invest in tennis facilities and require this sport to be included in PE curricula.

In passing, let me assuage a practical concern. Some might worry that this approach sanctions too many exemptions and/or too much compensation.

I do not think it does. For one thing, cases where policies are equally publicly justified seem to be quite rare. In most cases, one policy is likely to be preferable on grounds of its efficiency, positive public externalities, or because it offers a better mixture of these variables (section 4.4). Furthermore, we already saw that exemptions and compensation need not always be costly. Giving Jews and Muslims time off for worshipping may have little to no costs when they can catch up on their work at different times. Nor need various forms of symbolic recognition be expensive, such as depicting a group's cultural or religious symbols on the national flag, mentioning its accomplishments in the national anthem, and allowing its representatives to play a role at state ceremonies. Finally, states may be expected to tailor the money spent on exemptions/compensation not just to the impact of policies on citizens' autonomy (whereby imposed burdens count for more than denied aid; see section 4.5.1.2), but also to the available resources. Whilst exempting/compensating those who would be better off under equally publicly justified policy is important (more on this below), it is not so important that just any amount can be spend on it – doing so would neglect weighty public values such as a clean environment, prosperous economy, and public health. (Note that such resource-constraints may cause citizens to be less than fully compensated. In my view, this is something liberals should accept. When no policy of a set of equally publicly justified policies is Pareto-superior (section 4.5.1), it is unavoidable that some citizens have to suffer this misfortune (assuming the need for resource-constraints), as justice requires one of the policies to be implemented).

Yet why exempt/compensate citizens at all (and especially when this imposes costs on society)? Because the fact that other citizens' doctrines benefit from P** or P*** may be reasonably rejected as a reason for implementing P**/P*** by those who would be accommodated under other, equally publicly justified policies. By 'reasonable, I mean that there is no public justification for such choices, i.e. no public reasons that the unaccommodated could accept as compelling. Since *all* policy decisions ought to be publicly justified (section 3.2.1), these individuals suffer an injustice. To remedy this injustice, it seems to me that exemptions and/or compensation are due, *even* when this leaves less money for other public values, such as a clean environment or prosperous economy (though I noted that there are limits to this).

In response, a critic may say that choosing among equally publicly justified policies can be publicly justified when there is a P** (i.e. when there is a policy that maximises the weighted sum of the number of the citizens accommodated by a policy and the benefits to their autonomy). On this view, the fact that P** is uniquely favoured by weighted number neutrality is a public reason for choosing it.

I demur. Whilst the fact that P** serves citizens' doctrines better overall than any other policy is a reason for implementing it, this is not a *public* reason. This seems to follow logically: if the fact that someone else's doctrine is benefitted is not a public reason, even when benefitted greatly (section 4.4), then the fact that the doctrines of more people are (greatly) benefitted cannot be a public reason either. Thus, if I fail to see the value of religion, I will not come to see its value just because lots of religious people profit from a policy and/or do so intensely. (Those who believe that choosing P**s can be publicly justified are likely to be making a common error: that of mistaking public reasons for reasons that serve the most people).

Some might reply that, even if *choosing* amongst equally publicly justified policies is publicly unjustified, so is spending public money on exemptions or compensation. After all, citizens who have to contribute may be unable to recognise the value of the recipients' doctrines.

I think there is something to this objection. In my view, requiring certain groups to pay would be problematic. Take paid exemptions for religious observance. If the general public has to pay for exempting Jews or Muslims, then atheists and others who do not care about Sunday rest would have to chip in as well. I do not think this can be neutrally/publicly justified towards these individuals. Similarly, whilst I argued that tennis-fans are due compensation if the state decides to organise a football tournament when organising a tennis tournament would serve the public goals of stimulating the economy and/or promoting physical exercise equally well, it would be unfair to make citizens who do not care about football pay for this. Whereas the atheists would be the victims of other citizens' religiosity, those who do not care about football (or sports in general) would be the victims of the fact that other citizens do.

What to do instead? In my view, justificatory neutrality requires that church-going Christians/those who watch the football tournament bear the costs of exempting Muslim and Jewish workers/subsidising tennis facilities, at least up to a point. (The money necessary to do so could be raised from church taxes/football tickets). As these individuals benefit from having their comprehensive doctrines favoured by the state's policies, they may be reasonably expected to compensate those who would have been accommodated under an equally neutrally/publicly justified policy. Doing so does not violate the strictures of justificiatory neutrality, as offering such compensation is necessary to remedy an injustice: the injustice of having one's doctrine disfavoured on publicly unjustified grounds. Since remedying injustice is a public value – regardless of their doctrines, people find it important that the injustice they suffer be remedied – the above groups can be reasonably required to pay.

Consider one more objection. Perhaps denying exemptions/compensation to those who would be accommodated under equally publicly justified policies is only unfair if they did not have a *chance* of being accommodated. Since offering exemptions/compensation often imposes costs – money that could be used to improve public serves or simply be left to citizens to spend as they see fit – a critic may argue that using a lottery is preferable, at least when exempting/compensating citizens would be costly. Previously, I defended lotteries for choosing amongst policies that are not just equally publicly justified, but also serve citizens' doctrines equally well overall. On this proposal, legislators would use a lottery to choose amongst *all* policies that they deemed equally publicly justified, whereby they would not support (costly) exemptions/compensation for citizens who would be accommodated under policies that lose out (this is also different from the lottery I defended, which was merely meant to select a P*** without denying citizens a possible claim to exemptions/compensation). As these individuals stood a chance of being accommodated, the critic may say that this is not unfair, at least not if their chances of winning corresponded to the expected costs/benefits to their autonomy vis-à-vis other citizens' autonomy.

This proposal is identical to lottery-based versions of neutrality of treatment and should be rejected for the same reasons (section 4.1). For a lottery to determine who is accommodated is likely to generate much instability. As we saw, providing adequate assurances of a lottery's fairness is a Herculean task. Considering the impact that denying exemptions/compensation may have on citizens' autonomy and the fact that these issues are highly politicised in most liberal democracies, the use of a lottery (or rather its result) is likely to be heavily protested. By contrast, when P** or P*** is (partially) chosen on the basis of estimates of how well citizens' doctrines are served overall, these estimates can be shown to citizens who can then verify their accuracy. Furthermore, even when they deem them inaccurate, the fact that unaccommodated citizens may receive exemptions or compensation under my approach may also help to curb civil and political unrest.

This suggests the following. Whilst instability may sometimes be traded-off for gains in justice, denying exemptions/compensation on the basis of lotteries is likely to cause so much instability (and promote justice so little, if at all) compared to giving minority rights when the Costless Counterfactual-test is passed that we should favour the latter.

4.8 Conclusion

This chapter has done two things. First, it offered novel criticisms of certain theories of minority rights, namely those defending consequential neutrality. In particular, I took issue with recent defences of neutrality of treatment by Patten (2014) and Balint (forthcoming). Second, it defended an alternative theory of minority rights: Costless Counterfactualism. According to this approach, exemptions/compensation are due if and only if citizens' doctrines would be accommodated (i.e. be

spared the burdens/given the aid that they are denied by a given policy) under equally publicly justified policies that should not be implemented because they serve citizens' doctrines worse overall, or because they were not selected through a lottery.

Conclusion

Diversity has its perks. Just as a poly-cultural garden has better protection against pests and diseases and may be aesthetically more pleasing than a mono-cultural one, a society that harbours a variety of comprehensive doctrines (and lifestyles inspired by these) also has its advantages. For example, its diversity may enrich people's lives by opening up new perspectives and enabling borrowing from different ways of life (cf. Goodin's (2006, pp.294-5) discussion of what he calls 'polyglot multiculturalism'), and even increase economic productivity (cf. Kymlicka's (2013, pp.107-13) discussion of how ethnic diversity is nowadays treated as a market asset by many firms).

However, as should be clear by now, diversity also raises difficult questions. This dissertation has answered three of these questions.

The first was what kinds of comprehensive doctrines merit toleration. Specifically, I considered to what extent, if any, doctrines that (partially) reject citizens' freedom and equality in the public and/or private sphere should be tolerated by a liberal state. Here, I defended the Fair Value account for dealing with unreasonable views and practices and the EO³ account for dealing with reasonable private illiberalism.

The second question was whether states may favour some tolerable (i.e. reasonable) doctrines over others on account of their non-instrumental value. I argued that the answer is 'no', but showed that accepting justificatory neutrality does not preclude states from playing a role in the provision of perfectionist goods and services. In fact, I argued that there is good public reason for them to play the role assigned by PALC.

The final question was whether states should (sometimes) equalise the consequences of publicly justified policies for citizens' reasonable doctrines. Whilst arguing that this is not the case (both neutrality of outcome and neutrality of treatment were rejected), I defended an alternative theory of minority rights: Costless Counterfactualism.

Going forward

By way of conclusion, let me mention some areas for future enquiry.

First, the question of how states should deal with unreasonable comprehensive doctrines has been under-theorised, at least compared to other topics within political theory. Whilst there is a sizable literature on militant democracy, those working in this field usually focus on whether suppressing comprehensive doctrines is *undemocratic* as opposed to illiberal. Even if liberalism and democracy are bedfellows (as I believe they are), not enough has been written from a liberal or combined (i.e. liberal-democratic) perspective. Furthermore, both literatures could benefit from (increased) dialogue with the

literature on hate speech, which I showed provides some important lessons as to how states should treat unreasonable doctrines.

Second, this dissertation has not looked at groups that straddle the public/private divide. These include faith-based organisations that receive subsidies for delivering social services (as was mentioned, I talk about such groups elsewhere; see De Vries, manuscript). They also include private groups with (quasi)monopolies on widely needed goods, such as education and water. The reason for this restriction was that *unless* one knows how to treat groups that clearly fall into the public or private box, settling borderline cases is difficult. Even so, considering whether the above groups should be treated more like private groups (giving them more space to be illiberal) or public organisations (giving them less space) remains an important task.

Third, future research may extend this theory's scope. Rather than asking how states should deal with the comprehensive doctrines of citizens, one might ask how they should deal with the doctrines of non-citizen residents – and within that category, with the doctrines of permanent residents, temporary migrant workers (cf. De Vries, 2016), irregular migrants, and so on –, as well as with those of would-be migrants. Furthermore, there are questions to what extent, if any, states should tolerate different attitudes of sub-state polities towards neutrality and toleration. For example, what if indigenous peoples or the Quebecois are more perfectionistic? Or more/less tolerant in certain respects? Should this be tolerated by the Canadian federal government, and if so, what are the limits? Above the state, one might ask whether perfectionism is more acceptable in the case of the EU (or other supra-state unions). If the main objection to perfectionism is that it causes people to feel like second-class citizens, then given that few self-identify as European citizens, is perfectionism less problematic?

Last but not least, there are questions as to whether the principles of neutrality and toleration defended here require modification on a less ideal level. What if some groups have suffered historical injustice or made special agreements with the state? Does this strengthen the case for tolerating them and/or giving them minority rights, and, if so, what are the practical implications of this? And how should liberal-democratic regimes deal with diversity when facing existential threats due to internal divides (e.g. civil strife) and/or outside interference (e.g. foreign invasions)? Would it be permissible for such states to promote a specific comprehensive doctrine if this would strengthen liberal-democratic institutions? My hope is that dissertations on these questions will join this one on the shelf.

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