BALANCING THE PLURALITY OF LIBERAL VALUES

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ABSTRACT

Nathan W. Dean: Balancing the Plurality of Liberal Values
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The thesis of this dissertation is that liberal pluralism supports the rejection of state policies that reflect an imbalance of liberal values. Specifically, it argues that liberal pluralism is inconsistent with permitting the promotion of values like autonomy, equality, and democracy to crowd out other values like liberty, toleration, and privacy. It also argues that liberal pluralism is inconsistent with the promotion of overly narrow conceptions of liberal values (e.g. promoting equality by guaranteeing strict economic equality while showing little or no concern for equality of status or objective well-being, and vice-versa).

The individual chapters of this dissertation reaffirm the importance of maintaining a balance of liberal values, while finding fault with a number of well-meaning attempts to promote particular liberal values. Examining the promotion of liberal values like autonomy, equality, and fairness from the perspective of liberal pluralism, it becomes clear that because these liberal values often conflict with others, it is typically unwise to emphasize one or more of them without consideration for the others. Liberal theorists who refuse to seek a balance of liberal values, or pretend that there is nothing to balance in the first place, run the risk of supporting policies that undermine the promise of liberalism even as they promote particular liberal values. This dissertation serves as a reminder of the costs of inattention to balance and the benefits that can be achieved through the cultivation of explicitly liberal pluralist strategies for securing liberal democracy.
To Jennifer. For everything.
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INTRODUCTION

This dissertation contributes to an understanding of “liberal pluralism”, a conception of liberalism that is predicated upon the beliefs that human values are “irreducibly multiple, frequently in conflict with one another, and sometimes incommensurable”\(^1\) and that liberalism is particularly well-suited to accommodate the plurality of human values. Its thesis is that liberal pluralism supports the rejection of state policies that reflect an imbalance of liberal values. Specifically, it argues that liberal pluralism is inconsistent with permitting the promotion of values like autonomy, equality, and democracy to crowd out other values like liberty, toleration, and privacy. It also argues that liberal pluralism is inconsistent with the promotion of overly narrow conceptions of liberal values (e.g. promoting equality by guaranteeing strict economic equality while showing little or no concern for equality of status or objective well-being, and vice-versa). The dissertation consists of three chapters, each of which is concerned with (re)balancing the diversity of values (e.g. liberty, equality, democracy, autonomy, toleration, privacy, fairness, fraternity, and humanitarianism) that is commonly associated with both classical and contemporary liberalism, and that is enthusiastically embraced by liberal pluralists.

The liberal pluralist interest in maintaining an appropriate balance of liberal values is particularly warranted in the context of contemporary Western democracies. Many of these societies are marked by increasing diversity and their citizens are perhaps more autonomous (that is, more procedurally free to choose what they would like to believe and to be) than at

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\(^1\) Crowder, 2007: 122.
any other point in history. Though increasingly diverse and fairly autonomous, these citizens often find themselves subject to substantial pressure to conform to distinctively liberal conceptions of the good. This pressure is not only a function of the mainstream media and culture, but also of the policies and practices of various liberal institutions (e.g. legislatures, executives, courts, bureaucracies, public schools, etc.). In addition, many citizens also find themselves at once free and equal in the eyes of the law, but also burdened by the limitations associated with increasingly distressing socioeconomic inequalities. Many citizens are, in other words, (1) simultaneously less constrained by tradition and more constrained by the mainstream liberal culture and liberal institutions, and (2) simultaneously more free to enjoy the fruits of social mobility from a legal standpoint and, as a result of the proliferation of profound socioeconomic inequalities in recent decades, less free to capitalize upon the absence of various discriminatory legal restraints.

In real terms this situation means that a significant number of citizens in liberal democracies find themselves incapable of fully enjoying the fruits of liberalism. These citizens may be fairly autonomous, but substantively incapable of opting out of the dominant liberal paradigm. They may also find themselves procedurally free to fill almost any role in their societies, but substantively incapable of exercising that freedom. Thus, the poor are free to fill roles for which they are too poor to earn the qualifications and, in similar fashion, citizens are free to embrace a wide variety of cultural differences, but only so long as their cultures happen to already be internally diverse and essentially liberal.

The claim of this dissertation is that liberal political theorists would do well to take a fresh look at the balance between liberal values reflected in the policies and practices of Western democracies, because it is this balance, and not simply the values themselves, which enables all citizens to fully enjoy the fruits of liberalism. Accordingly, this dissertation
evaluates the impact of various liberal viewpoints on the balance of liberal values from the perspective of a conception of liberalism—liberal pluralism—that is particularly sensitive to the dangers of monistic and imperialistic versions of liberalism. Specifically, it reconsiders the appropriate balance of liberal values, responding to those theorists who often seem to

- valorize toleration to exclusion of autonomy (e.g. John Gray and Chandran Kukathas);
- valorize autonomy to the exclusion of toleration (e.g. George Crowder, Will Kymlicka, Susan Moller Okin, and Daniel Weinstock);
- valorize equality to the exclusion of liberty (e.g. Brian Barry, Stephen Macedo, Susan Moller Okin, Ian Shapiro, George Crowder, and Corey Brettschneider);
- valorize fairness to the exclusion of fraternity and humanitarianism (e.g. Eric Rakowski, G.A. Cohen, and Ronald Dworkin); and
- valorize fraternity to the exclusion of fairness (e.g. Elizabeth Anderson and Samuel Scheffler).

The first chapter, “Liberal Pluralism and the Exit Rights Strategy”, is a defense of a particular strategy (the “exit rights strategy”) endorsed by the liberal pluralists William Galston and Jeff Spinner-Halev. The intention of the exit rights strategy is to guarantee individuals a substantive and meaningful right to exit their cultural and religious groups. The chapter will (1) show that this strategy is far more sensitive to concerns related to the liberal values of liberty, toleration, and privacy than its rivals, and (2) claim that this sensitivity emerges from its proponents’ realization that the state can guarantee a meaningful right to exit without at the same time promoting a conception of autonomy so robust that it crowds out liberty, toleration, and privacy. The chapter will argue that the exit rights strategy is

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3 See, e.g. Crowder, 2004; Crowder, 2007; Kymlicka, 1995; Kymlicka, 2002; Okin, 2002; Weinstock, 2009.

4 See, e.g. Barry, 2001; Macedo, 2000; Okin, 2002; Shapiro, 1999; Crowder, 2007; Brettschneider, 2011; Brettschneider, 2012.


superior to its rivals because it not only safeguards the conditions of choice and exit for the
times when individuals change their minds and wish to leave non-liberal cultural and
religious groups (thereby safeguarding autonomy), but also permits the pursuit of a wide
range of valuable ways of life for those individuals who choose to remain within them
(thereby also safeguarding liberty, tolerance, and privacy).

The second chapter, “Liberal Pluralism and Democratic Persuasion”, consists of a
critique of Corey Brettschneider’s conception of “democratic persuasion” and a proposal for
an alternative conception consistent with the goals of liberal pluralism. Democratic
persuasion is the main practice associated with Brettschneider’s theory of “value
democracy”. It refers to both the state’s defense of the values of free and equal citizenship
and its efforts to convince citizens to adopt the democratic values of freedom and equality as
their own. The chapter will consider whether or not Brettschneider’s conception of
democratic persuasion is sufficiently sensitive to the importance of maintaining a balance
between the liberal impulse to promote values like equality and autonomy, on the one hand,
and the liberal concern to foster toleration and to safeguard liberty and privacy, on the other.
The chapter will ultimately conclude (1) that Brettschneider’s aggressive view of democratic
persuasion does not, in fact, do enough to foster toleration and to safeguard liberty and
privacy, and (2) that liberal pluralists nevertheless have good reason to favor an alternative
and significantly more constrained view of democratic persuasion.

The third chapter, “Liberal Pluralism and Luck Egalitarianism”, is a liberal pluralist
defense and critique of the luck egalitarian approach to distributive justice. The goals of luck
egalitarians, generically speaking, are to concurrently eliminate the impact of unchosen
circumstances (“brute luck”) on the wealth or capabilities of individuals and to fully permit
their free and genuine choices (“option luck”) to have unlimited impact on the wealth or
capabilities of those same individuals. The chapter will claim that it is possible to conceive of luck egalitarianism in such a way that it to some significant degree responds to liberal pluralist concerns regarding the balancing of values. It will also consider whether or not this more responsive revised conception is luck egalitarian enough to continue to warrant that label. The chapter will ultimately conclude that a revised “pluralist egalitarian” approach to distributive justice would go a long way toward satisfying liberal pluralist concerns regarding the balancing of values, but that pluralist egalitarianism has about as much in common with other popular approaches to distributive justice (like democratic egalitarianism and prioritarianism) as it does with luck egalitarianism.

Taken together, the chapters of this dissertation reaffirm the importance of maintaining a balance of liberal values, while finding fault with a number of well-meaning attempts to promote particular liberal values. Examining the promotion of liberal values like autonomy, equality, and fairness from the perspective of liberal pluralism, it becomes clear that because these liberal values often conflict with others, it is typically unwise to emphasize one or more of them without consideration for the others. To claim that balance is required is not, of course, to claim much in the way of superior insight regarding the exact nature of the optimal balance. What this dissertation offers, instead, are (1) arguments against conceptions of liberalism which are significantly (though not always egregiously) overloaded in favor or one more liberal values as opposed to others, and (2) arguments in support of those theorists whose conceptions of liberalism are more self-consciously concerned with maintaining an appropriate balance of liberal values.
CHAPTER 1: LIBERAL PLURALISM AND THE EXIT RIGHTS STRATEGY

I. Introduction

Liberal pluralists are liberals who accept the “truth of value pluralism” (roughly, the idea that human values are “irreducibly multiple, frequently in conflict with one another, and sometimes incommensurable”) and the claim that liberalism is particularly well-suited to accommodate the plurality of human values. Some of them disagree, however, about whether the core purpose of liberalism is to safeguard a robust version of individual autonomy for all citizens or to maximally protect “legitimate differences among individuals and groups over such matters as the nature of the good life, sources of moral authority, reason versus faith, and the like.” While all liberal pluralists agree that there is no one supervalue that trumps all others, some—call them Autonomy Liberals or “autonomists”—believe that all liberals ought to agree that “a way of life in which personal autonomy is encouraged is better from a pluralist point of view than one in which personal autonomy is stifled or neglected.” Others, call them Toleration Liberals or “tolerationists”, believe that those who accept the truth of value pluralism are committed to something like the pursuit of “a policy of maximum feasible accommodation, limited only by the core requirements of

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7 Crowder, 2007: 122.
9 Crowder, 2007: 141; see also, Weinstock, 2009.
individual security and civic unity" rather than the imposition or the promotion of a particularly robust version of autonomy.\textsuperscript{10}

George Crowder, William Galston, Joseph Raz, and Jeff Spinner-Halev are liberal pluralists; they all accept the philosophical truth and the practical reality of value pluralism and agree that liberalism is particularly well-suited to accommodating the plurality of human values.\textsuperscript{11} They disagree, however, when it comes to the liberal values of toleration and autonomy. Galston and Spinner-Halev, perhaps the best representatives of the Toleration Liberal position, emphasize the value of toleration, deemphasize the value of autonomy, and argue that the appropriate response of the liberal state to the non-liberal groups within its midst is a guarantee that all citizens enjoy a realistic right to exit the groups that they have joined or were born into.\textsuperscript{12} They contend that non-liberal groups housed within the liberal state represent worthwhile forms of life no matter how unfree or discriminatory they may appear to be from the perspective of liberal sensibilities so long as they do not subvert basic human rights or so-called “liberal purposes”.\textsuperscript{13} Crowder, Will Kymlicka, Susan Moller Okin, and Daniel Weinstock, on the other hand, emphasize a robust conception of the value of autonomy and believe that the liberal state ought to guarantee that all citizens are capable of a substantial degree of reasoned critical reflection about conflicting goods and are (1) capable of revising their beliefs, attachments, and ends and (2) willing to do so. They claim that

\textsuperscript{10} Galston, 2002: 20 (emphasis in original).


\textsuperscript{12} See, e.g. Crowder, 2002; Crowder, 2004; Crowder, 2007; Crowder, 2009; Galston, 1991; Galston, 1999; Galston, 2002; Galston, 2005; Raz, 1986; Raz, 1988; Spinner-Halev, 2000; Spinner-Halev, 2005; Spinner-Halev, 2008.

\textsuperscript{13} Galston, 2002; Galston, 2005; Spinner-Halev, 2000; Spinner-Halev, 2005; Spinner-Halev, 2008.

\textsuperscript{14} See Galston, 1991: 213-37; Galston, 2002: 126-8; see also, Spinner-Halev, 2005; Spinner-Halev, 2008; Mautner, 2008. For example, the liberal state may legitimately interfere with group practices in order to protect human life, to protect and to promote the normal development of basic capacities, and to safeguard the development of “social rationality”. Galston, 2002: 23-4.
Toleration Liberals are wrong to think that particularly worthwhile lives can be led absent the cultivation of robust autonomy and that a right to exit can be both realistic and divorced from the promotion of robust autonomy.\textsuperscript{15}

This chapter defends the tolerationist exit rights strategy and the minimalist version of autonomy that goes along with it. It argues (1) that the minimal degree of autonomy required by the exit rights strategy is superior because it offers individuals the option to remain constrained by their groups or to leave them if they so choose and (2) that guaranteeing a realistic right to exit is distinguishable from promoting robust autonomy because the right to exit does not, in fact, depend upon the cultivation of a high degree of critical reflection, a self-reflective disposition, or what Lucas Swaine refers to as “an attitude of revisability regarding one’s beliefs, attachments, and ends.”\textsuperscript{16} It concludes that the tolerationists get the better of the argument because their exit rights strategy safeguards the conditions of choice and exit for the times when individuals change their minds and wish to leave and permits the pursuit of a wide range of valuable ways of life for those that choose to remain.

II. Autonomy

Before I proceed to introduce Galston’s brand of tolerationism and consider some autonomist objections to it, I want to say a few words about autonomy. My goal is not to canvass the vast body of scholarship regarding this complex notion, but simply to identify what autonomists seem to mean when they use the terms autonomy, substantial autonomy, strong autonomy, and robust autonomy, and what tolerationists seem to mean when they

\textsuperscript{15} Crowder, 2004; Crowder, 2007; Kymlicka, 1995; Kymlicka, 2002; Okin, 2002; Weinstock, 2009.

\textsuperscript{16} Swaine, 2010.
talk of minimal autonomy, balanced autonomy, and heteronomy. Autonomists claim that lives of robust autonomy are superior to minimally autonomous ones and cite “Mill’s celebration of individuality as the life of energetic and restless self-creation” as an example of the kind of autonomy that they have in mind.\footnote{Crowder, 2007: 129.} Tolerationists, on the other hand, tend to think of the minimally and sufficiently autonomous individual as one who is merely (1) capable of making non-coerced and considered choices and (2) capable of leaving his or her group for another or to enter the mainstream liberal society, and they claim that the lives of the minimally autonomous are in no crucial way inferior to robustly autonomous ones.\footnote{See Galston, 2002; Galston, 2005; Galston, 2006a; Spinner-Halev, 2005; Spinner-Halev, 2008; Swaine, 2010.}

Swaine’s working definition of autonomy is useful here, as it illustrates the incremental steps along the path from the state of illiberal coercion at one pole to the state of Millian robust autonomy at the other. He defines autonomy (what I am calling “robust autonomy”) as the “condition in which one engages in unforced and considered choosing, complemented by a self-reflective disposition and an attitude of revisability with respect to one’s interests, beliefs, aims, and attachments.”\footnote{Swaine, 2010: 74.} When autonomists talk of substantial, strong, or robust autonomy they mean something along the lines of all four of these components in Swaine’s definition. They mean to say, in other words, that autonomy consists of “(a) unforced choices; (b) considered choosing; (c) an attitude promoting modifications or changes to one’s ends, attachments, beliefs, and interests, as appropriate; and (d) a self-reflective disposition.”\footnote{Swaine, 2010: 74; see also, Burtt, 2003.} My claim is that these four components of (robust) autonomy adequately
capture what the autonomists have in mind when they aim to promote the development of Millian citizens engaged in energetic and restless self-creation.

If we subtract (c) and (d) and retain only (a) unforced choices and (b) considered choosing, we are left with what Swaine calls “heteronomy” and what I take to be a good working definition of tolerationist minimal autonomy. This minimalist conception of autonomy is focused upon guaranteeing the conditions of choice. Tolerationists want to see that choices are non-coerced, that choices are the result of at least some small degree of critical reflection, and that individuals find themselves in a position to act upon their choices. They do not believe that the liberal state ought to impose or even to promote the cultivation of an attitude of revisability or a self-reflective disposition. This unwillingness to impose or to promote the two components that push autonomy from its minimal to its robust form is at the very heart of the dispute between autonomists and tolerationists. Autonomists think that lives lived without an attitude of revisability and a self-reflective disposition are inferior to those lived with them, and tolerationists disagree because they see no reason why the liberal state should be concerned to see that free choosers are not only capable of revising their beliefs, attachments, and ends but also so ready and willing to do so that they consistently and perpetually engage in “energetic and restless self-creation”.

III. Tolerationism and its Critics

The purpose of this section is to introduce Galston’s brand of tolerationism and then discuss four lines of objection to it that have been pursued by autonomists. The first line, Kymlicka’s, is based on an argument about the nature and limits of the liberal conception of toleration. He claims that liberal tolerance is marked by an historical and ongoing commitment to autonomy and that the liberal state has the right to compel newly arriving immigrant groups (and perhaps others) to support autonomy. The second line of objection
hinges upon an argument regarding the relationship between acceptance of the truth of value pluralism and the value of autonomy. Crowder and Weinstock both argue that truly committed value pluralists must endorse a robust conception of autonomy and that tolerationists must choose between their commitment to value pluralism and their rejection of autonomy. The third line of objection has to do with the extent to which the essential conditions of the tolerationist exit remedy mirror the essential conditions of robust autonomy. Autonomy Liberals argue that anyone committed to a realistic right to exit is also committed to a robust conception of autonomy. And the fourth line of objection has to do with the need for the promotion of liberal values independent of concerns related to whether or not the right to exit is genuinely realistic. Autonomy Liberals argue that the liberal state has reason to intervene in the inegalitarian and non-democratic practices of even those non-liberal groups that already guarantee a right to exit based on robust autonomy.

A. Galston’s Tolerationism

The Supreme Court case, *Wisconsin v. Yoder*, illustrates an important practical distinction between Autonomy Liberals and Toleration Liberals. The case was concerned with a challenge by the Old Order Amish community to a Wisconsin law which required school attendance until the age of sixteen. The Amish claimed that the law interfered with their free exercise of religion. The Court found that the right of parents to remove their children from school before the age of sixteen on religious grounds must be respected unless compelling state interests dictate otherwise and that Wisconsin failed to make such a case. Autonomists tend to think the case was decided incorrectly (at least as a question of political theory) because allowing Amish parents to remove their children from school before the age of sixteen.

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of sixteen threatens the cultivation of robust autonomy; tolerationists tend to think the case was decided correctly (at least as a question of political theory) because they think that liberalism is properly concerned with safeguarding the diversity of reasonable conceptions of the good and not with imposing or even promoting robust autonomy.

Galston looks back to the history of liberal thought for the origins of the fundamental disagreement between autonomists and tolerationists that culminates in their contrasting interpretations of Yoder. There are, he contends, “two concepts of liberalism” within the liberal tradition, (1) a Reformation concept of liberalism based on diversity and geared toward Lockean tolerance, and (2) an Enlightenment concept of liberalism based on autonomy and geared towards the Kantian or Millian promotion of rational self-direction. Devotees of Reformation liberalism think Yoder was decided correctly and devotees of Enlightenment liberalism think it was decided incorrectly. Galston, a devotee of Reformation liberalism, contends that Yoder was decided correctly because the robust autonomy ideal of Enlightenment liberalism protected by the Wisconsin law is not, in fact, an essential feature of all associations and communities housed within the liberal state.22

Galston mentions with disapproval a “standard liberal view (or hope)” which says “that autonomy and diversity fit together and complement one another.”23 He argues, to the contrary, that those who promote autonomy do so at the expense of diversity, and vice-versa.24 Promoting autonomy means undermining “the lives of individuals and groups that do not and cannot organize their affairs in accordance with that principle without


23 Galston, 1995: 521. This “standard liberal view (or hope)” is perhaps best exemplified by the work of Will Kymlicka. See Kymlicka, 1989; Kymlicka, 1995.

undermining the deepest source of their identity” and promoting diversity means embracing certain ways of life that either reject or do not encourage autonomy. Galston opts for the sacrifice of (some) autonomy because he thinks (1) that liberalism, properly understood, is about the protection of diversity, not the promotion or facilitation of autonomy, and (2) that a commitment to the protection of diversity is most consistent with the Berlinian notion of value pluralism (with the aforementioned idea that human values human values are “irreducibly multiple, frequently in conflict with one another, and sometimes incommensurable”). He wants to protect diversity because he accepts Isaiah Berlin’s assertion of the truth of value pluralism and he endorses Reformation liberalism because since it is not fixated upon the promotion of autonomy or any other particular value, it is well-suited to accommodate the plurality of human values.

Galston’s brand of tolerationist liberal pluralism is marked by a “principle of expressive liberty” that justifies the nature and delineates the bounds of the liberal accommodation of plural values and diverse ways of living. The principle of expressive liberty amounts to “a robust though rebuttable presumption in favor of individuals and groups leading their lives as they see fit, within a broad range of legitimate variation, in accordance with their own understanding of what gives life meaning and value” and that further “implies a corresponding presumption (also rebuttable) against external interference with individual and group endeavors.”

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27 Crowder, 2007: 122.
28 Galston, 1995; Galston, 1999; Galston, 2002; Galston, 2005.
29 Galston, 2002: 3.
liberty, is optimally tolerant—it permits the flourishing of diverse forms of life, liberal and non-liberal alike, “constrained only by the ineliminable requirements of liberal social unity.”

Expressive liberty “protects the ability of individuals and groups to live in ways that others would regard as unfree” and permits groups to take measures to prevent their members from becoming robustly autonomous so long as they frustrate no liberal purposes and their members remain substantively free to leave.

Galston contends that the essential constraints on expressive liberty imply and require a substantive and enforceable right to exit for individual group members. Groups are permitted to “order their internal affairs as they see fit”, and may do so in ways that “significantly abridge individual freedom and autonomy” so long as they do “not coerce individuals to remain as members against their will, or create conditions that in practical terms make departure impossible.” At a minimum, effective exit rights must meet two criteria: “(1) it must be practically (physically, economically, logistically) possible for someone who wishes to exit to act on that desire (call this the anti-imprisonment criterion); and (2) education and cultural circumstances should not be such as to eradicate any meaningful capacity to choose (call this the anti-brainwashing criterion).”

Galston also claims that a meaningful right to exit must satisfy these four sets of conditions:

- **Knowledge Conditions**: “the awareness of alternatives to the life one is in fact living”
- **Capacity Conditions**: “the ability to assess these alternatives if it comes to seem desirable to do so”

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33 Galston, 2006a.
• *Psychology Conditions:* “freedom from the kinds of brainwashing that give rise to heartrending deprogramming efforts of parents on behalf of their children, and more broadly, forms of coercion other than the physical that may give rise to warranted interference on behalf of affected individuals”

• *Fitness Conditions:* “the ability of exit-desiring individuals to participate effectively in at least some ways of life other than the ones they wish to leave.”

Galston acknowledges that the liberal state ought to protect the ability of individual members to leave their groups but he does not think it should require groups to cultivate a capacity for critical reasoning beyond the minimal degree required for exit and for liberal democratic citizenship. He uses the Amish community to express this point. That community discourages both active participation in public affairs and critical reasoning but nevertheless satisfies both criteria and all four conditions of the realistic right to exit, or so Galston claims. Individual members are physically, economically, and logistically capable of leaving; they are aware of alternatives, possess enough of a capacity for critical reasoning to assess those alternatives should they choose to do so, have not been brainwashed, and generally can participate effectively within society if and when they choose to leave. It is true that when the Amish remove their children from public school before the age of sixteen they may very well compromise the full development of their autonomy but, so far as Galston is concerned, this is not an issue for the liberal state. No liberal purposes are undermined simply because some people are less engaged in public affairs and do not engage in the kind of critical reflection and rational self-direction commonly associated with the Enlightenment ideal of autonomy.

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34 Galston, 2002: 123.
B. Autonomist Responses

1. Liberal Toleration and the Commitment to Autonomy

Kymlicka defends a version of what Galston calls the “standard liberal view (or hope)”, the view that says that the values of autonomy and toleration fit together and complement one another. In the face of Galston’s claim that autonomy promotion undermines toleration, Kymlicka responds by saying that liberal tolerance and autonomy are actually “two sides of the same coin.” He distinguishes between the modus vivendi conception of tolerance associated with the Ottoman millet system and what he has identified as autonomy-based liberal tolerance. The millet system, Kymlicka says, was “generally humane, tolerant of group differences, and remarkably stable” but it did not result in anything that could be called a liberal society. The “legal traditions and practices of each religious group, particularly in matters of family status, were respected and enforced”, but the state “did not recognize any principle of individual liberty of conscience.” Liberal toleration, on the other hand, not only protects groups from persecution by the state but also “limits the power of illiberal groups to restrict the liberty of their own members…” Liberals are indeed committed to a conception of toleration, says Kymlicka, but it is a distinctly liberal conception of toleration that does not apply to groups that are unwilling to

38 Kymlicka, 1995: 158.

39 “In the ‘millet system’ of the Ottoman empire…Muslims, Christians, and Jews were all recognized as self-governing units (or ‘milletts’), and allowed to impose restrictive religious laws on their own members…Since each religious community was self-governing, there was no external obstacle to basing this self-government on religious principles, including the enforcement of religious orthodoxy. Hence there was little or no scope for individual dissent within each religious community, and little or no freedom to change one’s faith.” Kymlicka, 1995: 156-7.


42 Kymlicka, 1995: 158.
at least facilitate the development of individual autonomy for all of their members (or to permit the state to do it for them). 43

2. Autonomy and Respect for the Plurality of Human Goods

Crowder argues that acceptance of the truth of value pluralism implies support for the promotion of internally diverse cultures. His claim is that acceptance of the truth of value pluralism leads the liberal pluralist to want to promote a diversity of goods 44 not just a diversity of cultures. Crowder believes that diversity is optimally satisfied by a society that not only accommodates multiple ways of life but also ensures that the members of each way of life—each cultural or religious group—find themselves capable of developing “a variety of goods, virtues, and personal projects.” 45 I call this “the argument from diversity”.

Crowder also argues that respect for the truth of value pluralism implies support for providing everyone with the capacity for the reasoned critical reflection necessary to make difficult choices between conflicting goods. His claim is that liberal pluralists ought to promote the cultivation of a high level of practical reasoning and critical reflection for everyone, ensuring that all citizens find themselves in the best position to choose between the conflicting goods that life has to offer. Crowder believes that the inevitably hard choices inherent in the pluralistic moral universe ought to be made wisely and that this standard calls

43 Kymlicka, 1995: 158; Kymlicka, 2002. It is also worth noting, however, that Kymlicka makes an important distinction between liberal intolerance and liberal interventionism. He believes that there are in fact times when the liberal state may intervene in order to impose autonomy-facilitation on certain groups but thinks that such imposition would be improper when it comes to the case of “national minorities” and long-standing ethnic groups or religious sects, like the Amish and Mennonites, who emigrated many years ago and have been allowed to maintain certain illiberal institutions. Newly arriving immigrants, however, present a different case as far as Kymlicka is concerned. For these groups—groups that know in advance that liberal principles may be imposed and choose to come anyway—the case for the imposition of autonomy is definitely strong enough for state action. Kymlicka, 1995: 170.

44 Crowder’s use of “goods” seems to be a kind of shorthand for conceptions of the good and ways of life in line with those conceptions of the good. See Crowder, 2007: 135-6.

for strongly autonomous citizens—citizens who are self-reflective, aware of almost all of the
options available to them, and prepared to thoroughly consider the fitness of those options
for them even when those options clash with their current beliefs, attachments, and ends. I
call this “the argument from hard choices”.

a. The Argument from Diversity

Galston values diversity because he accepts the truth of value pluralism and he
favors a liberal state because of its tolerance for diversity. He believes that diversity is
important and ought to be accommodated because human values are plural and often
conflicting, and he believes that the liberal state accommodates reasonable diversity better
than any other. Crowder accepts this argument but thinks that Galston doesn’t go quite far
enough. He notes, first, that the argument ought to be reinforced by a principle that he calls
“respect for plurality”: the idea that acknowledgement of the truth of value pluralism
implies a degree of respect for each of the diverse and conflicting goods evident in the
human moral universe. Liberal pluralists ought therefore to (1) exhibit a corresponding
degree of respect for cultural and religious groups because (but only to the extent that) these
are repositories for the diverse and conflicting goods of the moral universe, and (2) agree
that “it is generally better that a society embrace a greater rather than narrower range of
values.”

The key to Crowder’s argument is a claim about the appropriate unit of diversity.
John Gray, a pluralist but not a liberal pluralist, argues that pluralists ought to care about
diversity amongst political communities and Galston, a pluralist and a liberal, argues that

47 Crowder, 2007: 132.
pluralists ought to care about diversity within political communities as well as between them. While Galston’s liberal version of pluralism leads him to favor permitting maximal diversity amongst cultural communities within the liberal polity, Crowder claims to take that logic one step further. Crowder argues that pluralists ought to care not only about diversity within political communities as well as between them, but also about diversity within cultures themselves. He asks, “Shouldn’t pluralist diversity be diversity not merely of states (Gray), nor merely of cultures within states (Galston), but of internally diverse cultures?”

Crowder’s claim is, then, that respect for the plurality of values entails not only the founding and preservation of liberal political communities but also the promotion of liberal and “internally diverse” cultures and groups themselves.

What are “internally diverse cultures”? According to Crowder, internally diverse cultures are cultures that permit and enable their members to pursue diverse and conflicting conceptions of the good. And what kinds of cultures permit their members to pursue diverse and conflicting conceptions of the good? They tend to be liberal cultures marked by a robust version of individual autonomy. These liberal cultures based on individual autonomy are particularly valuable, then, from a pluralist point of view because and to the extent that they feature members who “are genuinely able to pursue a multiplicity of goods and personal projects, either interpreting the culture in new or different ways, or transforming it.”

Ironically, Galston’s goal of a maximally diverse conception of liberalism is “optimally satisfied by a society that accommodates multiple ways of life, each of which allows...”

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49 See, e.g. Gray, 1995a; Gray, 1995b; Gray, 2000; Galston, 1999; Galston, 2002.

50 Crowder, 2007: 134.

its members to pursue and develop a variety of goods, virtues, and personal projects.”

The cultures themselves would seem to be less diverse—at the very least they all share a commitment to a robust version of individual autonomy and perhaps other liberal values like democracy and equality—but the goods available to their members are, Crowder claims, as diverse as they can be. The principle of respect for plurality, a principle implied by Galston’s own argument, provides a powerful justification for a robust version of individual autonomy because it is only amongst the profoundly autonomous—amongst those exposed to many different ways of life, capable of a high degree of reasoned critical reflection, and willing to seriously consider the revision of their beliefs, attachments, and ends (or goods or values)—that truly diverse goods develop and proliferate, or so Crowder claims.

b. The Argument from Hard Choices

Crowder also claims that a robust version of autonomy enables individuals to “choose critically and wisely when they are confronted by choices among conflicting goods.” He argues that those who acknowledge the truth of value pluralism should not only respect the plurality of human goods but also agree that pluralist choices ought to be taken seriously, and that a pluralist choice is not taken seriously when it is made arbitrarily or casually. Liberal pluralists ought to be highly attuned to the weighty and even tragic nature of choices between rival goods, and they ought to be concerned to see that pluralist choices are made “only for a good reason.”

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52 Crowder, 2007: 135, emphasis mine.
53 Crowder, 2007: 134.
55 Crowder, 2007: 137.
56 Crowder, 2007: 137.
According to Crowder, liberal pluralists will want to see that choices between rival goods are made on the basis of reasoned critical reflection and in light of an attitude of revisability. They will want to see that conflicts are not decided by resort to nothing more than “the mechanical application of conventional rules.” Conventional rules are problematic both because they are arbitrary—simply the product of this received tradition as opposed to that one—and because they “tend to rest on monist assumptions.” More specifically, conventional rules tend to rest on an assumption that the pluralist knows to be false, the assumption that there is something like a singular Good. Pluralists know that “the nature of the good life is subject to reasonable disagreement” and that, therefore, “conceptions of the good cannot be permanent bases for decision but must be subject to revision themselves and to balancing with other such conceptions.”

According to Crowder, the citizens of the liberal pluralist state ought to understand this truth. Moreover, they ought never forget that no matter what way of life they have chosen for themselves, they could have chosen otherwise, and may very well do so in the future.

3. The Right to Exit and the Value of Autonomy

Autonomy Liberals attack the tolerationist right to exit in at least two different ways. They claim (1) that the tolerationist defense of groups that do not value autonomy is incompatible with a realistic right to exit, and (2) that even a truly meaningful right to exit is insufficient to justify certain illiberal practices. The first argument is meant to show that the

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57 Crowder, 2007: 137.
58Crowder, 2007: 137.
60 Crowder, 2007: 138.
guarantee of a realistic right to exit implies the promotion of robust autonomy, and the second is meant to show both that a realistic right to exit is not enough and that exit is not the only reason for wanting the state to promote liberal values.

As is already clear from the discussion above, the conditions required for Galston’s right to exit are quite substantive. His liberal pluralist state is empowered to ensure, broadly, that groups are not prisons and that they do not brainwash their members and, more specifically, that groups do not undermine the state’s efforts to guarantee the knowledge, capacity, psychology, and fitness conditions essential to a meaningful right to exit. The tolerationist state guarantees that all citizens live free from outright physical coercion and that they are aware of other life-options, that all citizens are able to assess those options, that all citizens are psychologically capable of thinking for themselves, and that all citizens are fit to survive in the mainstream liberal society.

Autonomists aren’t typically satisfied by the use of a right to exit as the sole response to certain illiberal practices. They do not however, seem to take issue with Galston’s description of the essential conditions for exit itself. Their problem isn’t with Galston’s conditions per se, but rather with his insistence (1) that exit (and the conditions that make it realistic) ought to be the liberal state’s sole response to the illiberality of groups, (2) that his exit conditions do not amount to the facilitation of robust autonomy, and (3) that his conditions are satisfied by groups like the Amish. They think that the satisfaction of his conditions—the satisfaction of any set of essential conditions for a meaningful right to exit—cannot be achieved short of promoting robust autonomy for all members of society, that such an endeavor would surely entail the kind of state intervention (like mandatory

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63 Crowder, 2004; Crowder, 2007; Okin, 2002; Weinstock, 2009.
school attendance until the age of sixteen) that tolerationists are unwilling to endorse, and that not even this avowedly meaningful conception of exit offers sufficient protection for the rights of internal minorities.

Crowder argues that in order to be free to leave one must have the capacity to overcome “informational, economic, and psychological” obstacles, and Galston seems to agree.64 Galston’s conditions demand awareness, rule out brainwashing, and would even disallow communal property arrangements which render exit economically infeasible.65 Crowder also claims, however, that the capacity to overcome the obstacles to exit requires “the capacity to stand back from the group’s norms and to assess them critically—that is, the capacity for autonomous judgment.”66 He says that the exercise of the right to exit—meaning any meaningful right to exit, including Galston’s own—is contingent upon the capacity for independent judgment and that “[t]o be capable of independent judgment is to be autonomous.”67

The claim isn’t that Galston’s conditions do not amount to a meaningful right to exit, but that because they do, they are indistinguishable from the promotion of robust autonomy. The point for the autonomists is that the good faith application of Galston’s conditions actually yields results that Galston would himself reject. Weinstock, for instance, discusses the case of minority groups like the Amish living in the context of modern societies. He assumes that Galston’s knowledge conditions are satisfied without the need for any state action simply by virtue of the conditions of modern life and the ubiquity of the

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64 Crowder, 2007: 128; Galston, 2002; Galston, 2006a.

65 Galston, 2002; Galston, 2005; Galston, 2006a.


67 Crowder, 2004: 12.
mainstream liberal society, but contends that the remaining conditions will surely require substantial state intervention. Weinstock argues that it is precisely because groups cannot adequately regulate the awareness of options that they construct a host of “material, epistemic and psychological barriers” in order to prevent their members from (1) being in a position to assess the options as something conceivable for them, and (2) being in a position to participate effectively in those ways of life.  

Okin echoes Weinstock’s sentiments regarding the capacity, psychology, and fitness conditions (or he echoes hers) and also questions the satisfaction of the knowledge conditions. She wonders how a girl, educated in a sheltered setting on the basis of a curriculum understood to reflect the received will of God that informs her that the proper role of a woman is to be an obedient wife and full-time mother, can “be said to be ‘aware of…alternatives’ in any meaningful way, to be able to ‘assess these alternatives’ (or even to think it desirable to do so), or to be able to ‘participate effectively’ in other roles or ways of life?” It is precisely because groups are permitted to limit the autonomy of their members that such groups do not satisfy Galston’s conditions for a realistic right to exit.

In order to address the kind of scenario that Okin describes, Weinstock claims that a tolerationist like Galston must authorize a number of far-reaching intrusions by the state, not the least of which is a compulsory educational program aimed specifically at “counterbalancing many of the teachings and ethical dispositions inculcated by teachers and parents within the community in question.” Tolerationists cannot stop at ensuring that all

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68 Weinstock, 2009.

69 Okin, 2002: 226.


71 Weinstock, 2009.
children are aware of alternatives, but would have to “present the community’s vision of the proper role of women as false” and somehow “put in place mechanisms whereby the psychological and motivational hold of the community upon children is lessened…” The bottom line, then, is that a demand for the conditions required for a realistic right to exit is indistinguishable from a demand for robust autonomy, and robust autonomy requires the provision of a considerable education in the practice of reasoned critical reflection as well as the cultivation of an attitude of revisability, neither of which is consistent with Galston’s stance vis-à-vis non-liberal groups like the Amish.

The critics of tolerationism also argue that a realistic right to exit is not the only justification for the promotion of robust autonomy, and that the promotion of robust autonomy is not the only justification for interfering with the practices of non-liberal groups. The claims, made by Okin and echoed by Crowder and Weinstock, are (1) that “a realistic right of exit is only a necessary, not a sufficient, condition for genuine freedom” and (2) that the liberal state has reason to promote liberal ideals like autonomy, equality, and democracy even where a right to exit has been substantively guaranteed. A right to exit, no matter how substantive and realistic, is never enough because the right to exit is no help to those oppressed members of non-liberal groups (often women and girls) who find themselves “deeply attached to their cultures but not to their oppressive aspects.” Thus the critics insist that tolerationists are wrong to think that a right to exit can justify oppressively illiberal practices and that the liberal state can stop short of promoting liberal ideals (like autonomy,
equality, and democracy) that enable group members to opt out of oppression even as they maintain their cultural attachments and identification.

IV. Defending Galston and Tolerationism

Galston’s critics are wrong to think that the truth of value pluralism leads to a preference for internally diverse cultures marked by robust autonomy and consisting of members who make their choices on the basis of reasoned critical reflection rather than conventional rules. His critics are also wrong to think that a meaningful right of exit is indistinguishable from robust autonomy and that groups lacking coercive power must promote liberal values like autonomy, democracy, and equality. Finally, Galston’s critics are wrong to the extent that they believe that the values of autonomy and toleration are not in conflict and do not need to be balanced against one another.

A. The Alleged Link Between Value Pluralism and the Preference for Internally Diverse Cultures

Crowder claims (1) that an acknowledgement of the truth of value pluralism implies a principle of respect for the plurality of human goods; (2) that the principle of respect for the plurality of human goods implies a preference for a liberal society that is itself plural and that also ensures that the cultures or groups that it is home to are themselves internally diverse; (3) that internally diverse cultures are made up of members who find themselves capable of developing “a variety of goods, virtues, and personal projects”; (4) that internally diverse cultures tend to be marked by a robust version of individual autonomy (one that is concerned with exposing members to many different ways of life and with cultivating a high capacity for reasoned critical reflection and an attitude of revisability); and (5) that the liberal state often has reason (though perhaps not definitive reason) for intervening in the affairs of
groups which do not facilitate the cultivation of such a version of autonomy on their own. His “argument from diversity” is meant to show that liberal pluralists ought to promote cultures that are themselves liberal and dedicated to robust autonomy because promoting cultures like these is the only reasonable response to the truth of value pluralism and the best way to show respect for the plurality of human goods. I question neither the truth of value pluralism nor the claim that it implies a principle of respect for the plurality of goods. I do question, however, the view that the best way to exhibit respect for the plurality of goods is for the liberal state to demand or promote the universal adoption of the robust version of autonomy advocated by autonomists.

The promotion of robust autonomy, rather than being a recipe for the expression of maximal respect for the plurality of human goods, would actually pave the way for (heightened) tyranny of the liberal monoculture. In a society where all groups, in order to be seen as valid, must be liberal groups based on robust autonomy (and perhaps also internally democratic and egalitarian), the sum total of meaningfully distinct human goods that may be legitimately pursued diminishes rather than increases. The range of meaningful diversity narrows as the pressure of liberal conformity increases, and the universal promotion of robust autonomy threatens to dilute, if not dissolve, many reasonable ways of interpreting and pursuing the human good.

The autonomist response to this line of argument is to say that the concern regarding dissolution merely amounts, in Crowder’s words, “to the familiar conservative sentiment that

\[\text{Crowder, 2007.}\]

\[\text{See, e.g. Galston, 1999b: 875 (“...if we insist that each civil association mirror the principles of the overarching political community, meaningful differences among associations all but disappear; constitutional uniformity crushes social pluralism.”)); Galston, 2002; Galston, 2005; Spinner-Halev, 2000: 68; Spinner-Halev, 2005; Spinner-Halev, 2008; Thunder, 2009.}\]
any cultural change must mean destruction.”78 His point is that it isn’t the case that the imposition of robust autonomy will necessarily destroy non-liberal cultures and I don’t disagree. But I also think that the unjustifiable diminishment of meaningful cultural diversity comes well before complete destruction. Crowder is surely right that groups like the Amish would not necessarily disappear from the face of the Earth were their children required to attend public schools until the age of sixteen. The culture might, in fact, adapt and evolve. But in so doing, something crucial to their conception of the good could be lost (this, at least, has been their concern and the basis for the Yoder litigation). In order to pursue their way of life, the Amish seem to think it necessary to limit the exposure of their children to other ways of life (to the limited extent that they can) and to limit the degree of instruction in reasoned critical reflection and revisability that their children receive. Notice that this does not mean that they wish to completely shelter their children from other ways of life (and they couldn’t even if they wanted to) or that they wish to completely stifle their capacity for critical reasoning and unforced choosing. They would not deny their members autonomy per se, but they would wish to deny their members the robust version of autonomy associated with energetic and restless self-creation. Under the autonomist model—a model in which each group within the liberal state is expected to provide or permit the facilitation of robust autonomy—the Amish lose the capacity to take an alternative path; they have no choice but to accept robust autonomy and become liberals themselves.

The autonomist response at this point might be to wonder (as Crowder has) why the defenders of a valuable way of life would ever be afraid of subjecting it to critical reflection.79

78 Crowder, 2009: 165.

79 Crowder, 2009: 165.
I will have more to say about this later on in the chapter but for now I just want to say that groups like the Amish needn’t (and shouldn’t) reject critical reflection altogether. Their desire to stifle the cultivation of what Swaine calls an attitude of revisability and a robustly self-reflective disposition is simply a function of their conception of the good and their minimally autonomous lifestyle, and not necessarily an indication of the disvalue of their way of life. This is true because (1) they permit the facilitation of some critical reflection (enough, according to Galston, to make them satisfactory liberal democratic citizens\(^80\)) and expect their members to actively choose to remain in the group, and because (2) they don’t necessarily restrict critical reflection for some insidious reason (like a concern that theirs isn’t really the best conception of the good) but, rather, because part of what they believe in may be the undesirability of engaging in energetic and restless self-creation. That is, part of what they think is right and good may itself be the very unwillingness to think and act in accordance with some Enlightenment ideal, and the only way to really occupy a point of opposition to that ideal may be to refuse to engage in the very practices that make it a theoretical possibility. It may be the case that pre-theoretical submission to the received will of God, for instance, and robust autonomy simply do not mix. This is not because ways of life based on submission are necessarily lacking in value, but because at least some part of their value comes from something like a relaxation of the temptation to scrutinize certain features of one’s worldview.

The autonomists, unsurprisingly, remain unconvinced. Even were they to accept the claim that the universal demand for internally diverse liberal cultures would lead to a diminishment rather than an increase in meaningful diversity, they would continue to insist on robust autonomy. Autonomy Liberals are not at all comfortable with “something like a

\(^{80}\) Galston, 2002: 107.
relaxation of the temptation to scrutinize certain features of one’s worldview,” and think it universally unwise for people to make important choices about their conceptions of the good and how they wish to conduct their lives on the basis of reasons that have not been fully scrutinized.  

According to them, acknowledgment of the truth of value pluralism and adherence to the principle of respect for the plurality of human goods leads the liberal pluralist to every one of the following conclusions: (1) that each rationally and morally defensible way of life is just one out of many ways of life that are rationally and morally defensible; (2) that something significant (some defensible rival good) is lost when one chooses one way of life over all of the others; (3) that choosing between different ways of life is serious business; and (4) that the only way to take the activity of choosing between rival goods and ways of life seriously is to ensure that those who are making the choices are profoundly capable of subjecting their options to reasoned critical reflection and decidedly open to the conceivable need to revise their beliefs, attachments, and ends as appropriate.

What they are worried about is the possibility of the members of non-liberal groups making choices about how they wish to live their lives on the basis of conventional rules, because conventional rules reek of monism and monism is false. In more concrete terms, autonomists worry that people who choose to remain within a particular way of life without possessing a profoundly experienced sense that their beliefs, attachments, and ends are revisable without too much difficulty do not choose wisely. They worry, in short, about members (especially women and girls) choosing to remain without ever seriously comparing and evaluating the beliefs and practices of their group in light of the alternative beliefs and practices of other groups and the mainstream liberal society.

81 See Swaine, 2010.

82 Crowder, 2007; see also, Kymlicka, 1995: 91; Weinstock, 1997; Weinstock, 2009.
In responding to these concerns it is important to be clear about the nature of the tolerationist position I aim to defend. Galston neither dismisses the seriousness of choosing between rival goods nor claims that citizens can choose wisely without any exposure to other ways of life or without any capacity to reflect critically upon their options. What he says, and what I aim to defend, is (1) that defensible ways of life needn’t reflect a conscious awareness of the truth of value pluralism; (2) that groups needn’t maximize the exposure of their members to alternative ways of life; and, (3) that groups needn’t maximize the capacities of their members for critical reflection (let alone cultivate an attitude of revisability).

According to Galston, to hold that groups ought to reflect a conscious awareness of the truth of value pluralism “is to affirm what value pluralism denies—the existence of a universally dominant value.” Liberal pluralists know (or think) that value pluralism is true, but they have no reason to believe that truth itself qualifies as a “universally dominant value.” That is to say, they are not justified in claiming that those who subscribe to ways of life based on (what they take to be) illusion are any less entitled to their particular conceptions of the good. Nothing about an acknowledgement of the truth of value pluralism commits one to the conclusion that there is anything invalid about the many non-liberal groups built around the sometimes monist and sometimes mechanical application of unshakeable conventional rules.

Likewise, an acknowledgment of the truth of value pluralism does not commit one to the promotion of robust autonomy. A liberal pluralist’s recognition of the difficult and serious nature of plural choice does not commit him to wanting to see that children are exposed to a great many different ways of life (especially given the pervasiveness of the mainstream liberal society), that they are rendered capable of the high degree of critical

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reflection associated with robust autonomy, or that they are engendered with a self-reflective disposition and an attitude of revisability. The liberal state ought not to concern itself with monists who don’t know the truth, with limitations on exposure to other ways of life that do not extend beyond some minimal threshold (a threshold significantly lower than the degree of exposure evident in the mainstream liberal society), or with limitations placed on the capacity for critical reflection that do not undermine the capacity for meaningful choice. Where the exact line ought to be drawn in terms of exposure and in terms of the minimal capacity for critical reflection is up for debate, but Galston is surely right to say that the appropriate line for a liberal pluralist falls well short of promoting not only the capacity for unforced and considered choices, but also the willingness to engage in energetic and restless self-creation.

B. The Tolerationist Exit Rights Strategy Versus the Promotion of Robust Autonomy

Liberal pluralists agree that “[n]ot to be able to leave the group in which one has been raised for an alternative mode of life is a serious violation of the kind of freedom that is basic to liberalism,” and all autonomists and most tolerationists agree that “individuals must be not only formally free but substantively and more or less equally free to leave their religions or cultures of origin…”84 Among tolerationists, Galston endorses perhaps the “thickest” (most substantive) right to exit.85 As discussed above, he claims that in order to be meaningful a right to exit must satisfy four sets of conditions: (1) knowledge conditions, (2) capacity conditions, (3) psychology conditions, and (4) fitness conditions. The autonomist critics of Galston’s tolerationism tend not to quarrel with these four sets of

84 Okin, 2002: 206.

conditions. In fact, they tend to find them “entirely plausible.” Where autonomists differ with Galston isn’t on account of the conditions for realistic exit that he endorses, but with (1) his belief that a realistic right of exit amounts to something less than robust autonomy, and (2) his belief that expressive liberty protects the ability of individuals and groups to live in ways that others would regard as unfree, non-autonomous, non-democratic, and inegalitarian.

Galston’s response to the first concern is to say that the conditions required for a meaningful right to exit amount to a minimal rather than a robust version of autonomy. He is (since at least 2005) willing to endorse a “modest conception of autonomy as freedom of choice”, but continues to reject the “strong autonomy” of the autonomists that tends to imply the necessity of “highly developed capacities for rational reflection, for self-criticism, and criticism of the norms and practices of one’s community.” Galston’s right to exit implies the facilitation of autonomy, but it is a modest or minimalist version of autonomy. Whatever degree of reasoned critical reflection is necessary for modest autonomy is so minimal that it is regularly satisfied by non-liberal and robust-autonomy-rejecting groups like the Amish, groups who “have demonstrated their capacity for critical reasoning in the ways that it is publicly reasonable to expect it.”

Galston is no doubt correct that space does exist for a modest conception of autonomy that falls well short of energetic and restless self-creation, but it is another question whether or not his conditions are in fact modest rather than robust. In order to comprehensively defend the modest character of Galston’s version of autonomy, it would be

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86 Weinstock, 2009.


necessary to detail the ways in which groups like the Amish satisfy his conditions without, in so doing, cultivating robust autonomy. It seems clear enough that the knowledge conditions are satisfied by the Amish and “all but the most isolated minority groups living in the context of modern societies,” and that the real dispute emerges only when it comes to the capacity, psychological, and fitness conditions.89 The autonomist claim is that in order to satisfy these conditions the liberal state would have to “counteract the epistemic and motivational obstacles that groups routinely, and quite rationally put in place to retain membership” and “put in place a compulsory educational program with an avowedly perfectionist agenda, aimed at counterbalancing many of the teachings and ethical dispositions inculcated by teachers and parents within the community in question.”90 As the autonomists see it, there is no way to ensure the capacity, psychology, and fitness conditions without massive state intervention in the interest of promoting robust autonomy.

My reading of Galston’s conditions also suggests significant involvement and activity on the part of the liberal pluralist state, but it certainly does not suggest anything like the need to counteract the epistemic and motivational obstacles erected by groups, or the intentional counterbalancing of group teachings and ethical dispositions.91 Galston says that group members must have the ability to assess alternatives and in order to guarantee such a capacity the state needn’t directly counteract epistemic and motivational obstacles or counterbalance group teachings and ethical positions. And the same can be said for the psychology and fitness conditions, since the satisfaction of these conditions does not imply education in support of an attitude of revisability and a self-reflective disposition. That

89 Weinstock, 2009.
90 Weinstock, 2009.
certain people are members of monist groups that follow conventional rules does not mean that they are subject to imprisonment or brainwashing, and this is all that Galston is ruling out with his conditions. It is not his intention to eliminate all of the pressure to stay, but simply to ensure that people have the meaningful capacity to choose to leave and the physical, economic, and logistical capacity to follow through with that decision. These conditions do not imply teaching children that their way of life is wrong or serving up reasons for them to leave; they just necessitate ensuring (1) that they are aware of some alternative options; (2) that they can choose between those options; and (3) that they can make a reasonably successful move when the time is right.

C. The Non-Democratic and Inegalitarian Internal Practices of Non-Liberal Groups

Autonomists claim both that a realistic right to exit is insufficient to justify illiberal practices, and that the liberal state has reason to promote liberal ideals like autonomy, democracy, and equality even where exit has been substantively guaranteed. They think that tolerationists like Galston and Spinner-Halev go too far when they tolerate groups that do not promote particular liberal ideals even when this toleration is limited to groups that lack coercive power and do nothing to undermine a realistic right to exit. The exit rights strategy does not work, the autonomists say, because the citizens of the liberal state must be able to affirm their identities and remain in their groups without thereby subjecting themselves to “oppression”.

The real issues here are (1) what counts as oppression, and (2) what is the proper role of the liberal state? The autonomists call it oppression when, for instance, girls are raised within a religious community that teaches them to believe that God’s intention is for

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them to be obedient daughters, sisters, wives, and mothers, and they contend that that oppression remains even when members are substantively free to leave. Women are oppressed when their groups practice private discrimination, and this oppression is not eliminated by a realistic right to exit because even with that guarantee they are still faced with the unconscionably tragic choice between their cultural identities and their right to equal treatment. The same is presumably true when group members must choose between their cultural identities and their rights to live strongly autonomous lives and to live free of non-democratic procedures.

Tolerationists recognize how difficult it must be to choose between one’s identity and one’s fondness for liberal values, but they fail to see how this difficulty implicates the liberal state.93 For them the women in the example are not at all oppressed, first, because their groups lack the power to compel them to follow the rules or even to stay on as members and, second, because if they decide to leave they have a place to go—they can enter any number of liberal groups or simply enter the mainstream liberal society itself.94 As the tolerationists see it, a properly restrained liberal state permits its citizens to associate with whomever they please and to subject themselves to whatever non-coercive rules they wish to follow so long as they remain free to change their minds (and this is true even though the decision to leave may be unbelievably difficult and even though some members certainly may wish that their groups would just go ahead and liberalize).

To side with the autonomists would be to permit certain liberal values to crowd out other liberal and non-liberal values alike. If we demand that all groups promote autonomy, democracy, and equality, we thereby undercut the liberal citizen’s right to associate with

93 Galston, 2002; Spinner-Halev, 2005.

other people who reject those values in favor of others. Such a move is at odds both with the liberal conception of freedom and with liberal pluralist respect for the diversity of goods, because it places unreasonable constraints on the right to associate and on the pursuit of reasonable non-liberal conceptions of the good. The right to associate and the principle of respect for the plurality of goods do not obligate the liberal state to deny the importance of autonomy, democracy, and equality, or to accommodate the pursuit of every conceivable conception of the good. But they do mean that the state mustn’t undermine the practices of non-liberal groups that satisfy some reasonable moral minimum (no physical or psychological harm and a decent education for starters), especially when (1) those groups lack the coercive power to compel obedience to their rules or to prevent their members from leaving, and when (2) departing group members are welcomed by other liberal groups and by the mainstream liberal society.

D. Liberal Toleration and the Alleged Commitment to Robust Autonomy

Recall that Kymlicka distinguishes between the *modus vivendi* form of toleration associated with the Ottoman millet system and the autonomy-based form of toleration that he associates with liberalism. He also claims (1) that liberal toleration, unlike *modus vivendi* toleration, recognizes a “principle of individual liberty of conscience”\(^{95}\), (2) that liberalism “limits the power of illiberal groups to restrict the liberty of their members”\(^{96}\), and (3) that “[w]hat distinguishes liberal tolerance is precisely its commitment to autonomy—that is, the idea that individuals should be free to assess and potentially revise their existing ends.”\(^{97}\)

Kymlicka concludes both that “[n]o end is immune from…potential revision” and that

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96 Kymlicka, 1995: 158.

97 Kymlicka, 1995: 158, emphasis in original.
liberalism “is committed to (perhaps even defined by) the view that individuals should have the freedom and capacity to question and possibly revise the traditional practices of their community, should they come to see them as no longer worthy of their allegiance.”

I take it that much of what an autonomist like Kymlicka claims is also acceptable to tolerationists. They can agree (1) that liberal toleration is distinguishable from modus vivendi toleration and recognizes a principle of individual liberty of conscience; (2) that liberalism limits the power of illiberal groups to restrict the liberty of their members; and (3) that liberalism is committed to the idea that individuals should be free to assess and potentially revise their existing ends. The problem, from a tolerationist perspective, is that from (1)-(3) it does not follow (a) that liberalism is necessarily committed to the facilitation of robust autonomy, (b) that individuals should have the freedom and capacity to revise the traditional practices of their communities, or (c) that the values of autonomy and toleration are not in conflict with one another.

Galston never claims that liberal pluralism entails a modus vivendi form of toleration, nor (ultimately) does he deny a role for minimal and balanced autonomy. He does claim, however, that the more autonomy you demand, the less tolerant you are, and he certainly does not agree that all individuals must find themselves capable of revising the traditional practices of their communities or think that none of their ends are immune from potential revision. What liberalism recognizes is just what Kymlicka says it does, a “principle of individual liberty of conscience”, and liberalism is committed to just what he says it is, “the idea that individuals should be free to assess and potentially revise their existing ends.”

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100 Kymlicka, 1995: 158, emphasis mine.
None of this goes to show that autonomy does not conflict with toleration, that individuals must be so strongly autonomous that they recognize all of their ends as potentially subject to revision, or that individuals ought to find themselves in a position to demand (rather than to seek) egalitarian practices and democratic procedures from their groups. All the liberal commitment to the principle of individual liberty of conscience makes clear is (1) that the maximization of toleration is incompatible with liberalism, and (2) that individuals must have the capacity to leave groups whose beliefs or practices are inconsistent with their consciences. Both of these conclusions regarding liberty of conscience are wholly compatible with the tolerationist rejection of robust autonomy. I have the right to leave groups whose beliefs and practices conflict with my conscience, and that is why the liberal pluralist state does not tolerate coercive groups. But I cannot expect the liberal pluralist state to ensure that all or any groups will cater to my wishes. Instead, the liberal pluralist state is designed to safeguard basic human rights and liberal purposes, maintain a mainstream society reflective of the full panoply of liberal values, and enable its citizens to possess and to pursue their conceptions of the good subject only to that foundational commitment to human rights and liberal purposes.

V. Conclusion—The Conditions of Choice and the Right to Remain

A. Some Problems With Robust Autonomy

Crowder claims that “a way of life in which personal autonomy is encouraged is better from a pluralist point of view than one in which personal autonomy is stifled or neglected.”\textsuperscript{101} This is because he thinks that autonomy is required for a meaningful right to exit, because liberal values are essential for their own sake, and because making good choices

\textsuperscript{101} Crowder, 2007: 140-1.
between competing values requires autonomy and an awareness of the truth of value pluralism. It should be noted again that the version of autonomy that Crowder and other autonomists have in mind is by no means minimal. He endorses the superiority of the “substantially autonomous way of life” that is exemplified by Mill’s “celebration of individuality as the life of energetic and restless self-creation.” The autonomist version of liberal pluralism claims that an acceptance of the truth of value pluralism leads one to the conclusion that individuals are better off when they are quite strongly autonomous, when they are so conditioned toward a willingness to revise their ends that they are positively restless. I do not accept this claim and submit that individuals unmarked by Millian restlessness can indeed lead good lives. I also claim, accordingly, that the liberal state ought to remain largely unconcerned with the practices of these minimally autonomous ways of life, recognizing that individuals have every right to ignore the truth of value pluralism, reject energetic and restless self-creation, and associate however they please above the basic threshold of human rights and liberal purposes.

Robust autonomy is too robust because it overshadows other values and rules out ways of life that, though lacking in robust autonomy, are not at all bad. Devout religious believers and committed secular humanists alike have every right to reject the imperative of energetic and restless self-creation, as well as the idea that their deeply held beliefs, dearest attachments, and most crucial ends are, as Kymlicka puts it, not immune from potential

102 Crowder, 2007.
103 Crowder, 2007: 129.
104 I mean “Millian” in the sense that Crowder has in mind but do not mean to indicate that I think that Mill would necessarily endorse robust autonomy. See, e.g. Appiah, 2005: 51 (“Unlike many theorists of autonomy today, who would assign us all to undertake a comprehensive assessment of norms and values, Mill never confused the job description of the citizen with that of the moral theorist.”).
The autonomists may be right about the best way to live (always ready and willing to experiment and to change how one understands the world and lives, or something like that,) but they cannot prove that assertion, and there is at least some reason to believe that they may be quite wrong. What, to use just one hypothetical example, can they say about a woman like Mother Theresa? Can they say that her life was less well lived than it could have been because she never cultivated an attitude of revisability concerning her devotion to God and to care? Perhaps they would go that far, and perhaps they would be correct. The claim isn’t that she definitely wouldn’t have been better off (I don’t think that I can prove that) but just that there surely seem to be any number of healthy and morally sound ways of living consistent with a thoroughgoing rejection of restless self-creation and an attitude of revisability. What is confusing and troubling about the autonomist position is the belief that every citizen who finds herself capable of revising her ends must also be energetic and restless about doing so. “Experiments in living” might be a good idea for Mill and for others like him but that does not mean that liberals, especially liberal pluralists, should expect or even hope that everyone would live that way.

An additional practical point to consider is that people cannot live these healthy and minimally autonomous lives if we insist that they become Mill-clones. The state that imposes robust autonomy on its citizens (insofar as this is possible) rules out these ways of life, and the state that promotes robust autonomy (mostly, I suppose, through a particularly robust form of mandatory liberal civic education) makes it less likely that its citizens can pursue them. The irony, then, is that the state that promotes robust autonomy actually


106 I am simply assuming for the purpose of this example that Mother Theresa never cultivated an attitude of revisability concerning her devotion to God and to care and not making any claims about her actual attitude.

107 See, e.g. Swaine, 2010: 78-81.
constrains the meaningful options of its citizens by constraining their constraints. By strongly encouraging experimentation and restless self-creation, the autonomist state minimizes the capacity of individuals to constrain themselves from pursuing particular lines of inquiry and from engaging in particular practices. The strongly autonomous are taught to accept the truth of value pluralism and to cultivate a self-reflective disposition and an attitude of revisability. Their only option is then to be open to being anything (and open to being something else after that, and so on) and they can’t ever definitively say “This is who I am, this is where I stand, and these are my everlasting beliefs, attachments, and ends.” Thus the autonomist state is marked by a reduction rather than an increase in meaningful options because it says that all must be liberals, and it simply ignores the substantial advantages associated with lives of lasting devotion and the contented acceptance of traditional authority (or whatever we want to call the opposite of energetic and restless self-creation).

It is also worth keeping in mind that not all experimentation is salutary, and that energetic and restless self-creation can bleed into anomie. The mainstream liberal societies of Western democracies seem to be chock-full of strongly autonomous individuals, but they (the societies and the people) are not without their problems. In addition to robust autonomy (and I might argue because of it) we also find a whole host of social and personal ills, from avarice and consumerism, to substance abuse, depression, and social alienation. The liberal monoculture offers quick, easy, and pervasive instruction on instant gratification, but precious little on the goods that only come from restraint, and the individuals who might benefit from such restraint are to some extent simply out of luck. They can, of course,

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join almost any group or association that they wish, but keep in mind that if the autonomists have their way all groups and associations will be as internally liberal as the liberal state itself, and that initiation into them will never be more than provisional because everyone will be taught not only that change is permitted but also that one ought to be constantly ready and restlessly disposed toward moving on.

B. Choice is All About Having and Exercising Options, and One Option is Simply to Remain

Liberal pluralists are pluralists because they believe that human values are “irreducibly multiple, frequently in conflict with one another, and sometimes incommensurable,” and they are liberals because they believe that liberalism is particularly well-suited to accommodate the plurality of human values. The reason why liberalism is well-suited to the truth and practical fact of value pluralism is that, when well-conceived, it offers individuals the chance to possess and to pursue a range of conceptions of the good so wide that it is bounded only by considerations of basic human rights and liberal purposes. Liberalism, properly understood, permits individuals to associate however they please, so long as they neither break general laws nor undermine anyone’s realistic right to exit.

The best conception of liberal pluralism, then, is the one that offers the highest number of meaningfully different reasonable options without sacrificing basic human rights or liberal purposes. I claim that the tolerationist version of liberal pluralism better satisfies this criterion, because it more comprehensively permits individuals to remain as well as to exit, and to live lives of lasting devotion and contented acceptance of traditional authority (one pole) as well as lives of energetic and restless self-creation (the other pole) and everything in between. Minimal autonomy is better, more meaningful, and more in line with

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value pluralism, because it always offers the individual the chance to constrain herself (or to remain constrained) as well as the option to cultivate an attitude of revisability and a self-reflective disposition.\footnote{112}{See Spinner-Halev, 2000: 67-9. To be clear, I am advocating a liberal pluralist state that only promotes the minimal autonomy of “unforced choices” and “considered choosing,” and that leaves it up to individuals to determine whether or not they also wish to engage in energetic and restless self-creation.}

Tolerationists protect a larger set of options by simply guaranteeing the conditions of choice. Every individual is as free to leave as she is to stay, and for most tolerationists (Kukathas excluded\footnote{113}{See Kukathas, 2003.}) this freedom includes a substantive dimension. It means that even the Amish must satisfy (or permit the state to satisfy) Galston’s knowledge, capacity, psychology, and fitness conditions, or something very much like them. And this, in turn, means that every member of the Amish community will have the \emph{capacity}, though quite often not the \emph{willingness}, to revise his or her ends. This is both just enough and just right. Any more in the way of imposed autonomy, and we make it difficult for people to pursue certain worthwhile forms of life; any less in the way of autonomy and we allow groups to become prisons. The focus ought to be on the conditions of choice—the background conditions required for making considered choices between alternatives and for the capacity to leave one’s group—and it should be left up to the individual whether or not he or she wishes to engage in energetic and restless self-creation or to follow another path.

Toleration Liberals take seriously the need to balance liberal values (values like freedom and equality, autonomy and toleration), and they are right to claim that these values needn’t be endorsed by all of the groups within the liberal state. They rely instead on an exit rights strategy that is quite distinct from the promotion of robust autonomy, in that it focuses not on cultivating a willingness to engage in energetic and restless self-creation, but
on securing the minimal degree of autonomy that is required for unforced and considered choosing. This liberal strategy is most in line with the philosophical truth and the practical reality of value pluralism, because it safeguards maximal diversity and does so without sacrificing human well-being.
CHAPTER 2: LIBERAL PLURALISM AND DEMOCRATIC PERSUASION

1. Introduction

This chapter consists of a liberal pluralist critique of the practice of democratic persuasion and a proposal for a restrained version of the practice that appropriately balances liberal values and better accommodates the plurality of reasonable conceptions of the good. Democratic persuasion is the main practice associated with Corey Brettschneider’s theory of “value democracy” and refers to both “the process of defending the values of free and equal citizenship” and the liberal state’s efforts “to convince citizens to adopt the democratic values of freedom and equality as their own.”114 Liberal pluralism, for its part, is a conception of liberalism endorsed by those who accept the “truth of value pluralism” (roughly, the idea that human values are “irreducibly multiple, frequently in conflict with one another, and sometimes incommensurable”115) and the claim that liberalism is particularly well-suited to accommodate the plurality of human values.116 Liberal pluralists are very much concerned with minimizing the state’s interference with the practices of individuals, groups, and organizations, but have not had much occasion to weigh-in on democratic persuasion. The goal of this chapter is to fill in that gap and to advance the claims (1) that liberal pluralism, though it is consistent with the practice of democratic persuasion, is not

115 Crowder, 2007: 122.
consistent with the aggressive view of democratic persuasion endorsed by Brettschneider, and (2) that liberals have good reason to prefer an alternative, restrained, and distinctly pluralist view of democratic persuasion.

A. Civic Equality and the Theory of Value Democracy

Brettschneider’s Persuasive State is explicitly designed to combat hateful and discriminatory viewpoints in the way that it speaks, spends, and educates even as it continues to defend “robust rights of free speech, religion, and association.” The viewpoints held and practices engaged in by members of hate groups and discriminatory organizations are verbally criticized in public and in the context of childhood education, and they are also disfavored by the government when it comes to direct funding and tax breaks. Implicit in the justification for democratic persuasion are the assumptions (1) that realization of the ideal of free and equal citizenship is contingent upon citizens adopting democratic values as their own and (assuming we are prepared to grant this first assumption) (2) that democratic persuasion is, at worst, a very important and not-too-problematic tool for achieving the substantive guarantee of free and equal citizenship. While I do not question much of the reasoning behind these two assumptions, I do think that the issue is more nuanced than it at first it appears. Though it is true that free and equal citizenship cannot be substantively guaranteed if too few citizens endorse democratic values, and that the liberal state has an important role to play in seeing that the citizenry’s endorsement of those values never falls to unsafe levels, it is also important to keep in mind (1) that there are costs associated with democratic persuasion and (2) that it is doubtful that overtly hateful and discriminatory


118 Brettschneider, 2012.
viewpoints are (at least at present) the biggest threats to the realization of the ideal of free and equal citizenship.

Brettschneider’s theory of value democracy is justifiably concerned with defending civic equality against hateful and discriminatory challenges, and thereby contributing to the realization of the ideal of free and equal citizenship for all citizens. His aggressive conception of democratic persuasion is problematic, however, because it threatens liberal values other than equality (like tolerance, freedom of conscience, freedom of association, and the right to privacy), threatens to diminish both the appeal and the effectiveness of liberalism, and is largely unconcerned with truly major (but far less overt) obstacles to free and equal citizenship like institutional racism, institutional sexism, and profound socioeconomic inequalities.

The theory of value democracy goes both too far and not far enough. It goes too far in the sense that aggressive democratic persuasion fails to reflect the realities (1) that promoting a conformity of viewpoints regarding civic equality often comes at the expense of maintaining liberal tolerance, (2) that liberal society is largely unthreatened by the presence of a not overwhelming number of non-liberal groups, (3) that liberals can expect more of a reactionary than an assimilatory response from non-liberal groups whose views are openly and forcefully criticized in public and in the context of mandatory civic education, and (4) that stimulating a reactionary response is counterproductive—the non-liberal groups immersed within liberal societies will be less rather than more likely to want to liberalize if they are made to feel unwelcome and that their values are under attack. And the practice of democratic persuasion (aggressive or otherwise) also does not go far enough in the sense that merely encouraging people to be less overtly racist and discriminatory does almost nothing to address the examples of institutional racism, institutional sexism, and
socioeconomic inequalities that not only pose what I take to be the most serious threats to equal citizenship but also persist with the tacit and insidious approval of a great many well-meaning citizens who aren’t themselves overtly racist, sexist, or classist.

B. Liberal Pluralism and Liberal Purposes

William Galston’s “tolerationist” brand of liberal pluralism is marked by a “principle of expressive liberty” that justifies the nature and delineates the bounds of the liberal accommodation of plural values and diverse ways of living. The principle of expressive liberty amounts to “a robust though rebuttable presumption in favor of individuals and groups leading their lives as they see fit, within a broad range of legitimate variation, in accordance with their own understanding of what gives life meaning and value,” and that further “implies a corresponding presumption (also rebuttable) against external interference with individual and group endeavors.”

Liberalism, guided by the principle of expressive liberty, is optimally tolerant—it permits the flourishing of diverse forms of life, liberal and non-liberal alike, “constrained only by the ineliminable requirements of liberal social unity.” In particular, expressive liberty “protects the ability of individuals and groups to live in ways that others would regard as unfree,” and permits groups to take measures to prevent their members from accepting liberal values so long as they break no general laws and their members remain substantively free to leave.

Tolerationist liberal pluralists like Galston and Jeff Spinner-Halev oppose the liberal state’s promotion of the robust conception of autonomy associated with what George

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119 Galston, 2002: 3.
Crowder calls “restless and energetic self-making”\textsuperscript{122} and agree that “[t]here is no liberal or democratic reason to insist that voluntary associations are democratic or egalitarian.”\textsuperscript{123} They agree that the liberal state can and ought to tolerate inegalitarian and non-democratic groups that satisfy certain minimal standards (including a meaningful right to exit) because freedom of association guarantees liberal citizens the right to opt into or to remain within lifestyles and groups that are consistent with their consciences.\textsuperscript{124} And they believe that to insist that such groups must themselves be “internally diverse” and liberal is to improperly elevate certain liberal values (like autonomy, democracy, and equality) over others (like freedom of conscience, freedom of association, and the right to privacy), cut down on the meaningful choices available to the citizens of the liberal state, and undermine many of the beneficial attributes associated with a vibrant and diverse civil society.\textsuperscript{125}

Liberal pluralists aim to keep interference with group practices to a minimum, but also think that interference is always justified in order to further the so-called “liberal purposes” that undergird the unity, structure the institutions, guide the policies, and define the public virtues of the liberal pluralist state.\textsuperscript{126} For example, the liberal pluralist state may legitimately interfere with group practices in order to protect human life, to protect and to

\textsuperscript{122} Crowder, 2007: 129; see also, Barry, 2001; Crowder, 2004; Kymlicka, 1995; Okin, 2002; Weinstock, 2009.

\textsuperscript{123} Spinner-Halev, 2005: 160; see also, Galston, 1991; Galston, 1999b; Galston, 2002; Galston, 2003a; Galston, 2005; Spinner-Halev, 2008. Throughout this chapter my use of the term “liberal pluralism” refers to the “tolerationist” brand of liberal pluralism endorsed by theorists like Galston and Spinner-Halev rather than the “autonomist” brand of liberal pluralism endorsed by George Crowder. Contrast Galston, 2002; Galston, 2005; Spinner-Halev, 2000a; and Spinner-Halev, 2008 with Crowder, 2002; Crowder, 2004; Crowder, 2007; and Crowder, 2009.

\textsuperscript{124} Galston, 1999b; Galston, 2002; Galston, 2005; see also, Spinner-Halev, 2000a; Spinner-Halev, 2005; Spinner-Halev, 2008.

\textsuperscript{125} Galston, 1999b; Galston, 2002; Galston, 2005; Spinner-Halev, 2000a; Spinner-Halev, 2005; Spinner-Halev, 2008; Spinner-Halev, 2011; see also, Rosenblum, 1994; Rosenblum, 1999; Rosenblum, 2010.

\textsuperscript{126} Galston, 2002: 23.
promote the normal development of basic capacities, and to safeguard the development of “social rationality”\(^\text{127}\). This means not only that the state ought to refrain from restricting group practices unless they conflict with liberal purposes, but also (1) that the state ought not to impose its liberal values on groups through other means (like democratic persuasion) except to further liberal purposes, and, (2) that the state ought to tailor the interference associated with democratic persuasion in favor of certain liberal values in such a way that it does not undermine other ones. Tailoring interference so as to minimize conflict with other liberal values requires a kind of balancing of values that both warns against and prohibits a conception of democratic persuasion so aggressive that it consistently prioritizes promoting egalitarian dispositions over accommodating the expression of a wide and diverse range of reasonable conceptions of the good.

C. Liberal Pluralism and Democratic Persuasion

The aggressive democratic persuasion of value democracy does (from a liberal pluralist perspective) exactly what it must not do. It (1) imposes liberal values on non-liberal groups even when their practices neither violate nor threaten the pursuit of liberal purposes, and (2) fails to tailor justified persuasion such that it does not undermine freedom of conscience, freedom of association, or the right to privacy. The problem is not with democratic persuasion, per se, but with thinking that aggressive persuasion is sufficiently tolerant toward non-liberals and that democratic persuasion, aggressive or otherwise, is sufficient to secure the ideal of free and equal citizenship. The solution, then, is not to simply jettison the notion of democratic persuasion, but rather to conceive of it in a more restrained and tolerant way, and to be very clear about the limited role that it plays in

securing the goal of equal citizenship. My goal will be to introduce the possibility of such a restrained and explicitly pluralist version of democratic persuasion, one that contributes to the cultivation of good citizens without sacrificing liberal values other than equality or alienating the non-liberals within our midst who pose no serious threat to security or civic unity.

II. Value Democracy

A. Background and Definitions

Brettschneider’s theory of value democracy (1) defends “robust rights of free speech, religion, and association” that require “the state to refrain from coercively banning political viewpoints, religious groups, or civil associations,” and (2) underwrites both the state’s articulation of “the reasons that justify why rights should be respected in the first place” and the state’s efforts “to convince citizens to adopt the democratic values of freedom and equality as their own.”

According to Brettschneider, the Persuasive State simultaneously avoids the specter of two dystopias, the Invasive State and the Hateful State. The Invasive State is a police state marked by authoritarian interventions on behalf of liberal values (e.g., banning hate speech and hate groups in order to enforce equality). The Hateful State, on the other hand, maintains robust liberal rights protections and offers formal protections against racial discrimination, but its civil society is characterized by a discriminatory culture that treats minorities as inferior. By protecting “robust rights of free speech, religion, and association”, articulating “the reasons that justify why rights should be respected in the first place”, and persuading “citizens to adopt the democratic values of freedom and equality as


their own,” the Persuasive State restrains itself even as it combats the hateful and discriminatory viewpoints that challenge its stability and legitimacy.

1. Reflective Revision and Democratic Persuasion

Value democracy holds that the citizens of the liberal state are under an obligation not only to reflect upon the values of free and equal citizenship that justify their rights, but also to both transform their own hateful or discriminatory viewpoints and encourage other citizens to do so as well. Brettschneider calls this practice “reflective revision”. When citizens find themselves unwilling to transform their hateful or discriminatory viewpoints on their own, the Persuasive State is likewise obligated to convince them to transform those beliefs. Brettschneider calls this practice “democratic persuasion”.

2. The Principle of Public Relevance

The focus of reflective revision and democratic persuasion is on so-called “publicly relevant beliefs and practices,” meaning those beliefs and practices that “conflict with” the ideal of free and equal citizenship. While no beliefs and only certain practices are properly subject to the state’s coercive intervention, many beliefs (those that conflict with the ideal of free and equal citizenship) are properly subject to an individual’s own reflective self-criticism, the criticism of her fellows, and the criticism of the liberal state. Hate groups that do not commit crimes but “express an ideology that opposes the idea of equality,” and families that do not abuse their children but raise their girls to feel inferior to their boys, are at once justifiably exempt from coercive intervention and appropriate targets for reflective revision.

130 Brettschneider, 2012: 25, 51-64.
The personal beliefs and actions of groups, families, and individuals, no matter how private, “should be in accordance with public values” because such beliefs and practices “can impact the norms of free and equal citizenship” by “affect[ing] the ability of citizens to function in society and to see others as free and equal citizens.”

3. The Ideal of Free and Equal Citizenship

The ideal of free and equal citizenship itself “centers around the political ideal that all citizens have equal status under law” and entails what Bretschneider calls an “anti-caste principle: to affirm the ideals of free and equal citizenship, we must reject the idea that some citizens are to be regarded as second class.” Free and equal citizenship is inconsistent with “[b]eliefs that relegate women, minorities, or other groups to second-class citizenship” and with support for “public discrimination, such as in education and employment.” Groups like the American Nazi Party, the Ku Klux Klan, and other hate groups challenge the ideal of equal citizenship in at least one of the following senses: “they deny that all citizens possess equal rights, they oppose recognizing equal citizenship of minorities or women, or they defend discrimination in education or employment.” As such they are proper targets for reflective revision and for democratic persuasion.

Free and equal citizenship is also implausibly consistent with certain non-hateful and merely discriminatory viewpoints. A family that raises its boys to be all that they can be and

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merely prepares its girls for domestic tasks doesn’t necessarily support the public
discrimination of women, but does hold beliefs that (according to Brettschneider) relegate
women to second-class citizenship. As such they, too, are proper targets for reflective
revision and for democratic persuasion.¹³⁸

B. Democratic Persuasion

1. The Need for Active Criticism

It is important that challenges to the ideal of equal citizenship are actively criticized not
only by citizens but often also by the state, in order (1) to clarify the non-compatibility of
specific hateful or discriminatory viewpoints with the ideal of free and equal citizenship, (2)
to avoid the appearance of complicity that may result from the state’s protection of the
expression of hateful or discriminatory viewpoints, and (3) to safeguard the stability and
legitimacy of the democratic regime.¹³⁹ It is important that citizens are made aware that a
policy like “separate but equal”, for instance, is not compatible with equal citizenship (non-compatibility), and that the state actively opposes the hateful and discriminatory viewpoints
of hate groups even while it protects their rights to association, expression, and assembly
(non-complicity). It is likewise a matter of public concern when citizens’ beliefs conflict with
the ideal of free and equal citizenship, because such views are “problematic from a
democratic point of view.”¹⁴⁰ They are problematic from a democratic point of view (a)
because such beliefs lack democratic congruence—there exists “a lack of agreement between
the egalitarian principles behind the laws and the discriminatory beliefs that citizens actually
hold”—and in that way threaten the legitimacy of the democratic regime (the argument from

¹³⁹ Brettschneider, 2012: 16-18, 37-44.
democratic congruence), (b) because private beliefs are often interconnected with public outcomes (the argument from interconnection), and (c) because “[r]egardless of what the law formally states, the law is carried out by public officials and bureaucrats who will often be influenced by their own beliefs” (the argument from public trust). 

Consider, for instance, a father and school board member who votes in favor of equal funding for girls’ and boys’ sports programs, says publicly “not only that all citizens should be treated equally on the basis of gender, but that equal access to sports is essential to girls’ ability to compete, and the ability to compete is essential to future citizenship,” and then “forbids his own daughters from participating in sports because of his belief, as a father, that girls should be confined to learning domestic tasks.” Brettschneider says that the board member’s decisions within his own family are publicly relevant because “participation in sports is an important way that girls learn to compete, and this skill is important to achieving success and equality in adult life.” His decisions are also “problematic from the standpoint of equal citizenship” for reasons of democratic (in)congruence, interconnection, and public trust. They are democratically incongruent “because he denies in his personal decision the same values and arguments that he has endorsed publicly.” They are also interconnected with public outcomes in the sense that they have the potential to undermine his daughters’ “chances to attain real-life equal

142 Brettschneider, 2012: 56.
143 Brettschneider, 2012: 59.
145 Brettschneider, 2012: 56.
citizenship.” 146 And, finally, his private decisions are problematic from the perspective of public trust because the beliefs they reflect may weaken his public protection (as a school board member) of the ideal of free and equal citizenship. 147

It follows that the board member’s private decisions are appropriate targets for active criticism, at least in the form of self-criticism and critique by fellow citizens. Brettschneider stops short of directly saying that the board member’s private decisions should also be subject to criticism by the state. He does say that “public scrutiny of the family and civil society using expression is consistent with protections against coercive intervention into those domains.” 148 But he also reserves democratic persuasion for “clear cases in which citizens have failed to incorporate an ideal of equal citizenship.” 149 I take this to mean that if the board member’s decisions are implausibly consistent with equal citizenship—as Brettschneider seems to think they are, in that he entertains no counterarguments 150—then his private decisions regarding his daughters’ (non-)participation in sports should also be criticized by the Persuasive State in the event that reflective revision fails to change his mind. 151

146 Brettschneider, 2012: 57.
147 Brettschneider, 2012: 57.
149 Brettschneider, 2012: 47-8, 63. Clear cases seem to include religious views which challenge the equal role of women in public life. Such views, though perhaps not ill-intentioned, “remain deeply incompatible with core values…” See Brettschneider, 2012: 48.
2. The Forms of Persuasion

Perhaps it is the case that the school board member forbids his daughters from playing sports for religious reasons, and that he and they are members of a religious community or group that shares his particular viewpoint regarding the education of girls. The group’s viewpoint regarding the participation of girls in non-domestic tasks may coexist with many other less controversial viewpoints and practices, including some that a value democrat might agree reinforce (or at least do not challenge) the ideal of free and equal citizenship. A group like this is properly subject to persuasion in the form of targeted criticism rather than outright condemnation. In such a case the state would criticize the discriminatory viewpoint while avoiding censuring the group as a whole (or perhaps even avoid direct confrontation altogether and simply signal its critique in the context of the general promulgation of the reasons and arguments for rights). A hate group like the Ku Klux Klan, on the other hand, warrants persuasion in the form of outright condemnation because the entire reason why groups like the Klan exist is to oppose equal citizenship status and equal protection under the law.

3. The Limitations on Persuasion

The Persuasive State is obligated to observe both a “means-based” and a “substance-based” limit on democratic persuasion. Value democracy “requires that the state not pursue the transformation of citizens’ views through any method that violates fundamental rights, such as freedom of expression, conscience, and association” (the means-based limit), and not to “seek to transform all inegalitarian beliefs, but only those that challenge the ideal of free


153 Brettschneider, 2012: 45.
and equal citizenship” (the substance-based limit). 154 For example, the state, meaning in this case individual U.S. Senators, was right to publicly criticize then-nominee Samuel Alito for his membership in a discriminatory Princeton University alumni group without taking steps “to coercively prohibit the beliefs they criticized.” 155 The state was right to criticize because the views imputed to Alito are incompatible with the ideal of free and equal citizenship (satisfying the substance-based limit), and right to limit its response to a non-coercive critique (satisfying the means-based limit). 156

4. The Manner of Persuasion
   a. The State as Speaker

The Persuasive State engages in expressive criticism of hateful and discriminatory viewpoints in an effort to promote the egalitarian values of free and equal citizenship. Public officials 157 criticize viewpoints that are inconsistent with political equality directly, through celebrations, and through apologies. Examples of direct criticism include the aforementioned Senatorial criticism of nominee Alito; judicial criticism of the discriminatory religious doctrine promoted by city councilmen in the case of Church of the Lukumi Babalu Aye v. City of Hialeah 158; Mayor Bloomberg’s criticism of anti-Muslim animus associated with the construction of the so-called “Ground Zero Mosque” 159; and perhaps also President

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157 Brettschneider is not all that clear on the issue but it seems that “the state” means any and all instrumentalities of the state (federal, state, and municipal)—the three branches of government, the bureaucracy, state colleges and universities, public schools, etc. See Brettschneider, 2012.
Obama’s statement that he thinks that same-sex couples “should be able to get married.”\footnote{See Fleming and McClain, 2013: 163; “Obama Endorses Same-Sex Marriage, Taking Stand on Charged Social Issue,” \textit{New York Times}, May 10, 2012, A1.} Celebrations include Martin Luther King Day and the construction of public monuments to honor the civil rights movement.\footnote{Brettschneider, 2012: 45-6.} And apologies include President Clinton’s apology for the Tuskegee syphilis study, along with the subsequent funding of a public memorial for the victims of the study and a National Center for Bioethics in Research and Health Care at Tuskegee University.\footnote{Brettschneider, 2012: 46, 63, 93-101, 153, 155, 163-4.} Through these methods (and perhaps others as well), the Persuasive State speaks in an effort to articulate the reasons for rights and to convince its citizens to adopt the values of freedom and equality as their own.

b. The State as Educator

The Persuasive State also persuades as it educates. It compels children to attend school and promotes democratic values (1) through instruction in the reasons for rights by means of non-neutral instruction on topics like the civil rights movement, the women’s movement, the gay rights movement, and the Holocaust, and (2) through efforts (a) to instill respect for basic liberal values (and to encourage reflection and debate regarding hard cases), (b) to transform religious beliefs that are at odds with the underlying values of democracy, (c) to dissuade children from endorsing racism, and (d) to “stress how some institutional arrangements and some decisions within the family threaten women’s equal citizenship.”\footnote{Brettschneider, 2012: 45-6.} Parents remain free “to express their views freely to their children, even when those views are opposed to the core values of free and equal citizenship,” but “there is no parental right
to exclude children from democratic persuasion, and parents can be coerced to the extent necessary to ensure that their children receive schooling and are exposed to democratic persuasion.”

c. The State as Spender

Lastly, the Persuasive State also speaks when it uses “financial means to promote the values of free and equal citizenship.” State promotion of free and equal citizenship takes the form of direct expenditures (the “funding of public education, civics curricula, and monuments”), grants to private organizations for the purpose of subsidizing activities with a public benefit, and special tax privileges for non-profits. The Persuasive State is under an affirmative obligation not to fund hateful or discriminatory groups that challenge the ideal of free and equal citizenship. The Persuasive State would be right, for instance, to refuse to recognize and fund a law school student group that discriminates against homosexuals, right to condition funding for adoption services on a group’s willingness to facilitate adoptions by gay couples, and right to deny non-profit tax-exempt status to a university that forbids interracial dating as well as advocacy for interracial marriage in the wider society. (It is worth noting here that the Persuasive State seemingly would not rescind the tax-exempt status of the Catholic church because its exclusion of women from the priesthood is not incompatible with equal citizenship for women, and though it does continue to preach

166 Brettschneider, 2012: 111.
against homosexuality and oppose gay marriage, it does not “seek to dissuade gays and 
women from serving in public life…”

III. Some Concerns Regarding the Persuasive State

The Persuasive State of value democracy is bound to attract criticism from those
theorists who accept “the logic of congruence” and from those theorists who accept “the
logic of autonomy”. “Muscular” democratic theorists like Brian Barry, Stephen Macedo,
Susan Moller Okin, and Ian Shapiro often seem to accept the logic of congruence and argue
that we should always resist compromising the democratic norms of fairness and equality,
and that we should enforce the principles and practices that follow from these norms “in
every sphere and ‘all the way down’.” They worry about the destabilizing impact of
illiberal values, claiming with Macedo (1) that liberal citizens should be “alert to the
possibility that religious imperatives, or even inherited notions of what it means to be a good
parent, spouse, or lover, might in fact run afoul of guarantees of equal freedom,” and (2) that
when confronted with such conflicts, liberal citizens should be “committed to honoring the
public demands of liberal justice in all departments of their lives.” The most militant of
these muscular democrats will be disappointed to see that the Persuasive State is not
prepared to use coercion to enforce the values of free and equal citizenship. While not
endorsing the full-fledged Invasive State, they are prepared to claim that ideals like
democracy, autonomy, and equality justify intrusive constraints on expressive liberty and


170 Rosenblum, 2010: 383; Brettschneider, 2012: 10-19; Barry, 2001; Macedo, 2000; Macedo, 2003; Okin, 1989;
Okin, 2002; Shapiro, 1999.

171 Macedo, 2000: 239.
freedom of association. Their willingness to accept such constraints is often most apparent when it comes to court decisions that they endorse and reject. Muscular democratic theorists tend to argue, for instance, that the Amish ought not to be permitted to remove their children from school before the age of sixteen (contra *Wisconsin v. Yoder*), that groups like the Jaycees ought not to be able to exclude women (pro *Roberts v. United States Jaycees*), that groups like the Boy Scouts ought not to be able to exclude gays (contra *Boy Scouts of America v. Dale*), that religious parents ought not to be able to exempt their children from learning about other cultures in public schools (pro *Mozert v. Hawkins County Board of Education*), and that private schools ought not to be able to refuse to renew the contracts of pregnant teachers based on the religiously based belief that mothers with young children should not work outside the home (contra *Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*).

At the other pole are those like Galston and Spinner-Halev who accept something like what Nancy Rosenblum calls the “logic of autonomy”. They agree that public institutions should reflect the democratic norms of fairness and equality, but do not think that there is any good reason to insist that these norms also govern the autonomous spheres wherein we find relationships, families, groups, and associations. They would presumably like to avoid

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172 See, e.g. Barry, 2001; Macedo, 2000; Macedo, 2003; Okin, 1989; Okin 2002; Shapiro, 1999; Weinstock, 2009; Crowder, 2007; Fleming and McClain, 2013.


176 827 F.2d 1058 (6th Cir. 1987).


178 See, e.g. Barry, 2001; Macedo, 2000; Macedo, 2003; Fleming and McClain, 2013; Okin 2002; Weinstock, 2009; Crowder, 2007; Arneson and Shapiro, 1996; see also Galston, 2002; Galston, 2005; Rosenblum, 2010.
the Hateful State as well, but they reject heavy-handed efforts on the part of the state to prevent its emergence. The most militant of these liberal pluralists (perhaps better called *libertarian* pluralists) will appreciate the restraint of the Persuasive State regarding coercion, but also disapprove of it (1) telling people how to run their relationships, families, groups, and associations, (2) indoctrinating children against the wishes of their parents, and (3) using its spending power to favor certain groups and disfavor others.\(^{179}\)

It is no wonder that the Persuasive State invites criticism from both sides of this debate, because it represents a laudable and useful effort to split the difference between the two. Brettschneider partially agrees with more and less muscular democrats like Macedo, Barry, and Okin among others, both in terms of their belief that liberal government needs support from liberal families and groups in order to survive, and in their contention that non-liberals must be transformed in order to maintain the requisite level of support for liberal values.\(^{180}\) He also partially agrees with the liberal pluralists like Galston, Chandran Kukathas, and Spinner-Halev, however, in terms of their unwillingness to compel the transformation of non-liberals and this, in turn, leads him to a somewhat unique hybrid position that replaces (some) coercion with an aggressive form of persuasion in order to achieve the requisite degree of transformation without trampling upon civil liberties.\(^{181}\) In practical terms this means, for instance, that Brettschneider favors the muscular democratic position regarding

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\(^{179}\) Chandran Kukathas may offer the best example of this libertarian conception of the right to privacy and the right to association. See Kukathas, 2003.

\(^{180}\) See Brettschneider, 2012; Barry, 2001; Arneson and Shapiro, 1996; Macedo, 1998; Macedo, 2000; Macedo, 2003; Okin, 2002; Fleming and McClain, 2013.

cases like *Yoder* and *Mozert*, but also seems to think that the Boy Scouts, rather than being compelled to accept gay members, ought merely to be subject to democratic persuasion.\(^{182}\)

There are at least two things we might doubt about Brettschneider’s seemingly reasonable effort to split the difference between congruence and autonomy. The first has to do with the need for transformation itself, the second with the kind and extent of persuasion that is required in order to bring it about. The proponent of democratic persuasion needs to show that transformation is truly required, that state-sponsored persuasion is required in order to bring it about, and that his conception of democratic persuasion is better than its rivals. I for one am inclined to agree with Brettschneider and others that at least some transformation of non-liberal individuals and groups is continually required in order to maintain a liberal democracy, and that some kind and some degree of state-sponsored persuasion is required in order to achieve that result. What I question, however, is whether Brettschneider’s conception of democratic persuasion is the best one that we can imagine. I wonder how effective it is at bringing about transformation, and (whether or not it is particularly effective) I worry about the costs associated with it. More specifically, (1) I doubt that hate groups and religious fundamentalists are a significant threat to liberal democracy in the United States; (2) I worry that direct, prominent, and continual state sponsored criticism of hate groups is more likely to operate as a form of free advertising for them, and as confirmation of their irrational fears about government conspiracies, than as a trigger for reflective revision on the part of their members or third parties; and (3) I worry that religious fundamentalists and other non-liberals will bristle, circle the wagons, and even radicalize in the face of direct, prominent, and continual state-sponsored criticism of their ways of life and compelled indoctrination of their children.

Given such doubts and worries I wonder whether or not there might a better way to achieve at least some of the ends that Brettschneider is after. I suspect that it is possible for the liberal state to remain non-complicit with efforts to seriously undermine liberal values and avoid the Hateful State without engaging in a particularly aggressive form of democratic persuasion. The restrained and liberal pluralist view of democratic persuasion that I will point towards in the next section should enable the liberal state to remain non-complicit with threats to equal citizenship, promulgate the reasons for rights, and gently persuade citizens to accept the value of free and equal citizenship that justifies those rights, while also balancing conflicting liberal values and supporting a vibrant and diverse civil society. This liberal pluralist version of democratic persuasion achieves these ends by moderating the persuasion in terms of tone and in terms of scope—both softening the manner of persuasion and reserving it for only those practices (practices reflective of hate and invidious discrimination) that truly threaten liberal purposes.

A. The Limited Upside of Aggressive Persuasion

Brettschneider distinguishes between “hateful” and “discriminatory” viewpoints, describes discriminatory viewpoints as “views that oppose or are inconsistent with the ideal of free and equal citizenship”, describes hateful viewpoints as extreme instances of discriminatory views, and claims that individuals “have no right to have their discriminatory or hateful views left unquestioned” by other citizens or by the state.183 Those who subscribe to hateful viewpoints “seek to bring about laws and policies that would deny the free and equal citizenship of racial, ethnic, or religious minorities, women, or groups defined by their

sexual orientation,” and those who subscribe to discriminatory viewpoints presumably seek something less than this that nevertheless challenges or is implausibly consistent with the ideal of free and equal citizenship. I mention these distinctions at the outset because Brettschneider doesn’t always (or even often) make clear which groups, practices, and beliefs are subject to criticism. Nor does he clarify whether the criticism called for is merely reflective revision by citizens or also democratic persuasion by the state.

It is clear enough, though, that groups like the American Nazi Party and the Ku Klux Klan hold hateful viewpoints, in that “they deny that all citizens possess equal rights, they oppose recognizing the equal citizenship of minorities or women, or they defend discrimination in education or employment.” Such groups are obvious targets for reflective revision, state criticism, and even state condemnation. They are the worst of the bunch because their views aren’t simply inegalitarian in a way that does not violate the ideal of free and equal citizenship, nor are they merely implausibly consistent with equal citizenship, but they are actually in direct opposition to the ideal. They do not (simply) hold that minorities are metaphysically or theologically unequal, but instead claim that they are unequal in ways that are highly relevant to democratic citizenship.

I’ll discuss my concerns about the application of aggressive democratic persuasion to merely discriminatory groups in the next sub-section, but for now I just want to question the need for and wisdom of aggressive state criticism and condemnation of hate groups. My first, practical, concern is that aggressive persuasion may simply be overkill. Hate groups like the Klan and the American Nazi Party are quite marginal and do not seem to pose any serious threat to liberal democracy. Though the liberal state surely has an interest in

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opposing groups of this type, it seems that they have been and continue to be successfully combated through exposure to the moderating influence of liberal public institutions and what Spinner-Halev refers to as the “mainstream liberal society”\textsuperscript{186}, through legislation, through the judicial system, and perhaps also through the kind of citizen-to-citizen reflective revision that Brettschneider also endorses.

What does the liberal democratic state get out of aggressively criticizing and condemning hate groups? What good would it do for the state to produce “public service announcements on radio and television telling people ‘Don’t believe the Klan; blacks should be regarded as equals’”?\textsuperscript{187} It is reasonable to question, as Larry Alexander does, whether an announcement like this would persuade anyone who would otherwise have been persuaded by the Klan, and whether these announcements would actually bring more attention to the Klan’s message than it could have garnered on its own.\textsuperscript{188}

Concerns such as these are distinguishable from claims that politicians should keep quiet about hate groups, that organizations like the Southern Poverty Law Center and the Anti-Defamation League have outlived their usefulness, or that the liberal state should in no way disfavor hate groups. Everyone, including government officials, can and should condemn hate groups (even if only in their hearts, the way they conduct themselves, and the way they raise their children), and the liberal state is justified in refusing financial benefits to them as well, both to indicate non-complicity and to tilt the playing field in favor of the benign elements of civil society. Liberal citizens and the liberal state are justified in countering hate groups, and they can do so without offering them free airplay or

\textsuperscript{186} Spinner-Halev, 2000.

\textsuperscript{187} Alexander, 2013: 4-5.

\textsuperscript{188} Alexander, 2013: 4-5. One can also imagine that such “bureaucratically generated propaganda” could serve as confirmation of some imagined governmental conspiracy against “white America” and as a tool for recruiting (even more of) the disaffected.
pretending for a moment that their viewpoints are sensible enough to demand direct refutation.

These concerns are distinguishable from the claim that the validity of the liberal democratic American state is no longer threatened by racism or sexism (or socioeconomic inequalities). There can be no doubt that deeply ingrained institutional racism and sexism threaten full citizenship for minorities and women, and that poverty and extreme socioeconomic inequalities do so as well. Finding solutions to these problems is a monumentally important task, and surefire remedies clearly are not readily available. The claim is not that hate groups are not a problem or that they are not an issue for the government, but rather that hearing the government denounce the Klan on the radio offers cold comfort to the citizens (and the non-citizens) who suffer from pervasive institutional racism and sexism as well as to the poor for whom the American dream is even less than a mirage. Nor, it would seem, are such criticisms likely to motivate the garden-variety beneficiaries of white privilege, male privilege, regressive tax laws, and corporate welfare to finally recognize the civic equality of their fellow citizens, for they can sleep easy knowing that they abhor violence, don’t hate anyone, and don’t (often) consciously discriminate.¹⁸⁹

¹⁸⁹ I submit that these peaceful, non-hateful, and not consciously discriminatory citizens represent the greatest obstacle to achieving the ideal of free and equal citizenship because all too often they are either unaware or unmoved by the profound but somewhat less salacious citizenship inequalities revealed by facts such as these:

- Women earned 77 cents for every dollar a man earned in 2012.
- In 2012, the median earnings of American women working full time year-round were $37,791. American men earned a median income of $49,398.
- African-American women earn 69 cents for every dollar paid to African-American men, and Latinas earn just 58 cents on the dollar compared to Latino men. The disparity grows wider when these women are compared to non-Hispanic white men.
- Black Americans are nearly three times as likely as white Americans to live in poverty. Hispanics are 2.6 times as likely as white Americans to live in poverty.
- Since the 1960s the difference in black and white incomes grew from about $19,000 in 1967 to roughly $27,000 in 2011.
- The income gap between whites and Hispanics has widened over the past 40 years. In 1970, the difference between white and Hispanic incomes was about $15,500; by 2011 the gap had grown to roughly $27,000.
Though I certainly acknowledge that hate groups are a problem and should be opposed, I also claim (1) that combating them is not priority number one when it comes to achieving the ideal of equal citizenship, (2) that there probably are better ways—like eliminating socioeconomic inequalities—to address their persistence, and (3) that aggressive democratic persuasion is neither sufficient nor even necessary to bring about their demise.

B. The Substantial Downside of Aggressive Persuasion

Brettschneider argues “that religious beliefs should not be exempt from the principle of public relevance”, and that “[w]hen religious beliefs oppose the core values of free and equal citizenship, democratic persuasion is justified in order to transform [those] beliefs.”

The reach of these arguments is obviously heavily dependent upon the determination of

- In 1984, the median net worth of black households was less than 1/10th (9%) that of white households. By 2011, the black-white wealth gap had widened even further: black household wealth was 7% that of white households. Hispanic net worth also is notably smaller than white net worth, and the gap has widened over time. In 1984, the typical Hispanic household had 13% of the wealth of the typical white household, compared with 9% in 2011.
- Black men were more than six times as likely as white men in 2010 to be incarcerated in federal and state prisons, and local jails, the last year complete data are available. That is an increase from 1960, when black men were five times as likely as whites to be incarcerated.
- Black Americans are 10 times more likely to be imprisoned for illegal drug offenses than whites, even though both groups use and sell drugs at the same rate.

http://www.pewsocialtrends.org/2013/08/22/race-demographics/

\(190\) See, e.g. Chambers and Kopstein, 2001: 838-9, 848, 856, 859 (Claiming (1) that “socioeconomic factors are very important in understanding why people join ‘bad’ organizations”, (2) that “[p]overty, downward social mobility, diminished economic expectations, and even basic inequality…can create illiberal citizens that no amount of deliberation will convince otherwise”, (3) that “[c]ertain economic insecurities weaken commitment to core liberal democratic values by giving people reasons to distrust the promises of liberal democracy and to seek out scapegoats and targeted groups”, and (4) that “rights, civic education, promotion of good associations, and an expanded public sphere will not be enough to build liberal democracies (or maintain the quality of established liberal democracies) if failure in social justice leads to disillusionment with the promise of liberalism.”).

\(191\) Brettschneider, 2012: 143. Prior to 2012 it seemed that Brettschneider only meant to claim “that when citizens try to impose their religious views on others through legislation that they should be stopped by the Court, and also told why it was wrong to do so, which is that it violates the tenets of equal citizenship.” Spinner-Halev, 2011: 777. While it remains true that Brettschneider “does not believe that the state should wantonly seek to transform illiberal beliefs” (Spinner-Halev, 2011: 777) it is not (now) the case that he would limit democratic persuasion to instances in which “citizens try to impose their religious views on others through legislation”. See Brettschneider, 2012.
public relevance and the inconsistency of particular beliefs and practices with the ideal of free and equal citizenship. The definition of public relevance is, however, somewhat hollow and its scope is seemingly quite broad. The principle of public relevance states that “beliefs and practices that conflict with the ideal of free and equal citizenship can be of public concern, and should be changed to make them compatible with democratic values.” This seems to mean that many beliefs and practices that are at least implausibly consistent with equal citizenship (including religious beliefs and practices) are publicly relevant, and being publicly relevant are subject to both reflective revision and (when necessary) democratic persuasion. The only limitation Brettschneider places on the reach of public relevance is to say that it leaves “immune from democratic persuasion many beliefs about the internal structure of the family and civil society.” For instance, government scrutiny of citizens’ dinner guest lists, or spying on them in order to determine the consistency of their beliefs with equal citizenship is out of bounds.

Brettschneider’s discussion of public relevance and his rejection of government spying on its citizens tell us absolutely nothing about the nature of the “many beliefs” that are immune from democratic persuasion. We are told that many beliefs are immune, but then we aren’t given a single example; instead we are left with the impression that any and all beliefs and practices that are at least implausibly consistent with equal citizenship are subject to democratic persuasion (so long as their discovery isn’t the result of government spying).

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196 See, e.g. Brettschneider, 2012: 127 (Claiming that “there is no such thing as ‘private speech’ that is immune from justification or that should be protected from the influence of either other citizens or the state.”).
It is also worth noting the extent to which the principle of public relevance simply depends upon what counts as implausibly consistent with equal citizenship. Putting all of this together, it seems that for Brettschneider beliefs and practices are publicly relevant and subject to democratic persuasion no matter where they are found, so long as (1) they are at least implausibly consistent with equal citizenship, (2) their discovery is not the result of government spying, and (3) reflective revision has failed to bring about the desired transformation. With all of this in mind, I now want to consider some examples of beliefs that Brettschneider claims are and are not implausibly consistent with equal citizenship, raise some concerns about the implications of his determinations, and question whether or not these determinations are anything other than political conclusions that will surely change with each new crop of government officials.

1. Inegalitarian Beliefs, Discrimination, and the Ideal of Free and Equal Citizenship

According to Brettschneider, it is possible for groups to discriminate in ways that do not challenge the ideal of free and equal citizenship. The Catholic Church, for instance, neither challenges equal citizenship nor expresses beliefs that are implausibly consistent with that ideal when it excludes women from the priesthood.197 This theological inegalitarianism is distinguishable from a challenge to the civic equality of women. The Catholic Church does not hold views inconsistent with recognition of the civic equality of men and women, or claim that women are in any way unfit for secular positions of authority.198 This case demonstrates the “substance-based limit” to democratic persuasion in action. Criticism (at least from the state) is restricted to instances in which the views expressed directly challenge

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or are implausibly consistent with the ideal of free and equal citizenship.\textsuperscript{199} The Catholic Church escapes such criticism for its merely theological discrimination against women and against gays, but “may” threaten equal citizenship to the extent that it campaigns against same-sex marriage and gay adoptions.\textsuperscript{200}

Unlike the Catholic Church, the father and school board member from the example alluded to earlier is subject to criticism because “he has not internalized the value of equal citizenship.”\textsuperscript{201} Brettschneider concludes that this male citizen, father, and school board member should be criticized, at least by other citizens and presumably also by the state, should reflective revision fail to do the trick (1) because “participation in sports is an important way that girls learn to compete, and this skill is important to achieving success and equality in adult life”, (2) because the father and school board member “does not truly believe the public values he claims to endorse” (the argument from democratic congruence), (3) because his decisions as a non-state actor have the potential to undermine his daughters’ chances to attain real-life citizenship (the argument from interconnection), and (4) because he is failing to follow through on his public commitments and pronouncements as a public official (the argument from public trust).\textsuperscript{202}

In order to tease out the implications of this example (call it “The Hypocritical Public Official” example), I first want to change around some of the facts to create two more examples:

- The Non-Hypocritical Public Official: He is a citizen, father, member of a particular religious community, and member of the town school board who votes in favor of

\textsuperscript{199} Brettschneider, 2012: 89.

\textsuperscript{200} Brettschneider, 2012: 134, 166-7.

\textsuperscript{201} Brettschneider, 2012: 56.

\textsuperscript{202} Brettschneider, 2012: 56-9.
equal funding for girls’ and boys’ sports programs, saying publicly that he believes in the civic equality of all citizens regardless of gender, race, ethnicity, or sexual orientation. He is also known to forbid his daughters from participating in sports in accordance with his religious community’s understanding of the will of God.

• The Non-Hypocritical Private Citizen: He is a citizen, father, and member of a particular religious community who declares his belief in the civic equality of all citizens regardless of gender, race, ethnicity, or sexual orientation. He is also known to forbid his daughters from participating in sports in accordance with his religious community’s understanding of the will of God.

The male citizens in my examples are not hypocrites (or they are not hypocritical in the same way that Brettschneider’s male citizen is203). They haven’t said that “equal access to sports is essential to girls’ ability to compete” or that “the ability to compete is essential to future citizenship”, but just that, being civic equals, boys and girls are equally entitled to state money for sports. Nevertheless, they are both subject to democratic persuasion, perhaps not because they don’t truly believe in the public values they claim to endorse, or because they haven’t followed through on their public commitments and pronouncements, but because their decisions still have the potential to undermine their daughters’ chances to attain real-life citizenship.204 And it would also seem that their religious communities would likewise be subject to democratic persuasion as the source of the belief that girls should not participate in sports.

203 I recognize that arguments could be made that the male citizens in my examples are, in fact, hypocrites and I think I actually agree. My points are just that the two citizens in my example aren’t hypocritical in the same way as the Hypocritical Public Official and that they aren’t necessarily any more hypocritical than a church (like the Catholic Church) that purports to recognize the civic equality of women and homosexuals but rejects particular roles for women and publicly declares that gays are sinners and bound for Hell. Either civic equality is distinguishable from other kinds of equality or it isn’t and, so long as it is, I see no reason why a male citizen and a father cannot rationally affirm the civic equality of women even as he expresses the belief that women (or just the women in his community) ought, consistent with God’s will, to only assume domestic roles.

204 See, e.g. Brettschneider, 2012: 39-40 (Arguing that “[t]he values of freedom and equality could be undermined by non-governmental institutions if most citizens opposed these values and the rights of free and equal citizenship. For example, if families promoted discrimination in educating their children, it would risk undermining the formal respect for equality in the constitution.”); Brettschneider, 2012: 29 (Noting that “[t]he state uses democratic persuasion when it exercises its expressive capacity to criticize racist and other discriminatory beliefs in the family and civil society.”).
I changed the facts to remove the democratic (in)congruence and public trust arguments because I think that the argument from interconnection is where the action is. It doesn’t really matter whether or not this male citizen and father is a hypocrite, or whether or not he is a public official, it just matters that his decisions as a non-state actor have the potential to undermine his daughters’ chances to attain real-life citizenship. The argument from interconnection does a lot of work here and, though I agree with the argument conceptually, I don’t agree with its application. It is surely true that no father should have the power to forbid his daughters from, for instance, receiving an adequate education or adequate healthcare, because the exercise of that power would violate his daughters’ human and civil rights, and it surely also follows that the state shouldn’t hesitate to deny fathers this kind of power. It is far less clear, however, that the state should be in the business of publicly criticizing groups of individuals who are themselves free to think whatever they please (including that God insists on different roles for men and women), and are free to associate with whomever they please (perhaps only with those who agree that, among other things, God insists on different roles for men and women), provided that they neither harm nor imprison their fellows.205 The point is that before we move to officially and publicly criticize groups like these, it ought to be kept in mind that very often their members are simply living in accordance with their conceptions of the good, and are doing so (1) with the blessing of liberal values like tolerance, freedom of conscience, freedom of association, and the right to privacy, and (2) without breaking any general laws (from which they haven’t already received exemptions), expressing hate, or imposing their religious views upon non-members.

205 Note, however, that the group presumably wouldn’t even need to believe in different roles for men and women in order to attract criticism. If it is true that playing sports is crucial for equal citizenship then a group that forbids all children from playing sports regardless of gender will also be subject to criticism for undermining all of their chances to attain real-life citizenship.
Some of the issue here surely is about line-drawing. Brettschneider says equal
citizenship depends upon playing sports and others, myself included, disagree. This doesn’t
mean, however, that the only problem with democratic persuasion is Brettschneider’s
conclusion regarding this one particular example. The problem is larger than that, in part
because the disagreement regarding sports and citizenship goes to show that well-meaning
liberals can easily disagree about the appropriate reach and application of democratic
persuasion. The point isn’t that unanimity is required in order for Brettschneider’s
arguments to carry the day, but that reasonable disagreement over what counts as a threat to
citizenship makes it clear that democratic persuasion is more of a political football than he
lets on. What counts as implausibly inconsistent with equal citizenship is by no means clear,
and it seems quite likely that different parties, different administrations, and different public
officials will interpret its mandate quite differently and engage in democratic persuasion in
controversially inconsistent ways.

2. Aggressive Persuasion in the Context of Childhood Education

The Persuasive State persuades children as it educates them and does not permit
parents to isolate their children from educational persuasion by seeking religious exemptions
or by enrolling their children in private schools. The value democratic conception of
persuasive civic education is also remarkably robust. Children are taught not only to side
with Martin Luther King, Elizabeth Cady Stanton, and Harvey Milk (and to recognize the
errors of their opponents), but also to (1) respect the basic liberal values championed by
King, Stanton, Milk, and others; (2) reject racism; (3) transform any religious beliefs they
hold which are implausibly consistent with equal citizenship; and (4) recognize that some

family decisions threaten women’s equal citizenship. Schools as institutions and the curricula they use do not simply model the ideal of free and equal citizenship, but they also actively promote it, teaching children to recognize and to transform practices and beliefs that the state finds implausibly consistent with the ideal.

Brettschneider notes, for instance, that the child of a parent who endorses the Nazi Party will be taught that the Holocaust actually happened, and that the Nazis wrongly opposed the basic principles of liberal democracy. While this example of educational persuasion related to an unquestionably hateful viewpoint seems fairly uncontroversial, it does not speak to the implications associated with seeking to transform merely discriminatory viewpoints that are (so far as Brettschneider is concerned) implausibly consistent with equal citizenship. Teachers in the aggressively persuasive state aim to convince their students not only that Stanton was a hero and that the women’s movement helped to fulfill the promise of free and equal citizenship, but (presumably) also that the conception of gender roles put forth by particular communities or groups is false. The daughters of the religious fathers in the examples above would have to be taught that a father’s refusal to allow his daughters to play sports is the product of a flawed conception of gender roles, and that it threatens their chances at real-life citizenship. Similarly, Catholic children would have to be taught not only to honor Stanton and Milk but also that, while their church’s prohibition on women priests and its teachings on the sinfulness of

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209 See also Weinstock, 2009.

210 I say “a father” rather than “their father” because Brettschneider makes it clear that even though the goal is to convince children that all citizens should be treated as free and equal “parents should not be singled out and criticized directly in class for disagreeing with the state’s viewpoint” and “children should not be asked directly about their parents’ views…” Brettschneider, 2012: 99-100. I take it that disallowing the direct critique of individual parents and disallowing direct questions to children about their parents’ views does not rule out criticizing parents in general or criticizing the religious groups that parents and children belong to.
homosexual acts are consistent with equal citizenship, its opposition to gay marriage and adoption is not.\footnote{See Brettschner, 2012: 136, 166.} The point is that if transformation is a goal, criticizing the bad guys is allowed, and certain merely discriminatory religious viewpoints are fair game, then aggressive educational persuasion implies that some children will be told not only that violent and hateful fundamentalists are on the wrong side of things, but also that (in general terms) their parents, priests, rabbis, imams, and pastors are as well.

I find this view of educational persuasion troubling, both because aggressive educational persuasion is not required in order to transform a critical mass of non-liberals into good citizens, and because an unintended consequence of aggressive educational persuasion is that it renders liberalism less appealing to non-liberals (and because less appealing, less effective in safeguarding the rights of all citizens). Civic education can and should achieve modest transformation without singling out cultures or religions for criticism and condemnation\footnote{See Spinner-Halev, 2000b: 89.} and without taking an explicit stand on controversial issues like gay marriage, gay adoption, or the validity of gender roles within the family. Under a regime of moderate and restrained democratic persuasion, not every child will agree on all of the issues, but plenty of them will have the makings of good citizens, and some will, I suspect, experience less pressure from their parents and communities to reject the liberal values that are being imposed upon them.\footnote{A note on the aggressiveness of Brettschner’s view of democratic persuasion: In his discussion of what I’ve called the “form of persuasion”, Brettschner acknowledges that some discriminatory views “might best be criticized not through direct confrontation, but through the general promulgation of the reasons and arguments for rights.” (Brettschner, 2012: 44-5). He recognizes, in other words, that there are some views—he offers no examples, unfortunately—that are implausibly consistent with equal citizenship but, for whatever reason, not ripe for democratic persuasion. I make a note of this because I am admittedly critiquing a particularly aggressive construal of Brettschner’s theory. I’ve done this not because I am sure that Brettschner wouldn’t pull back from the implications I’ve described, but because, so far as I can tell, he hasn’t forestalled any of them. He might agree, for instance, that the state is better off not}
IV. A Restrained and Liberal Pluralist View of Democratic Persuasion

As discussed above, Brettschneider’s theory of value democracy (1) defends “robust rights of free speech, religion, and association” that require “the state to refrain from coercively banning political viewpoints, religious groups, or civil associations”, and (2) underwrites both (a) the state’s articulation of “the reasons that justify why rights should be respected in the first place”, and (b) the state’s efforts “to convince citizens to adopt the democratic values of freedom and equality as their own.”

The view of liberal pluralism that I endorse accepts (1) and (2)(a) without the need for further clarification and accepts (2)(b) with certain reservations. That view understands the liberal pluralist state to be primarily focused on the satisfaction of basic liberal purposes, but in a way that shows ample respect for expressive liberty—ensuring that “the intrusion of state institutions on individual lives is restricted to what is needed to secure the minimum conditions of civic unity and social justice.”

Liberal pluralists do not lament the presence of non-liberal groups that challenge liberal values without breaking general laws or threatening the conditions of public criticizing people like the religious fathers in my examples, that teachers shouldn’t tell children that the Catholic Church is wrong to oppose gay marriage and gay adoption, and that there exists a basic non-ideal theory problem associated with the implementation of democratic persuasion by political actors from different parties…but he hasn’t said so.

My intention has not been to caricature his theory, but simply to tease out what it might mean for those non-violent, non-hateful, and non-imposing non-liberals who are tolerated by the liberal pluralist state and whose viewpoints are, nevertheless, implausibly consistent with equal citizenship according to Brettschneider. I am worried less about the implications of his theory for his main targets, hate groups, than about the implications for what I take to be his secondary targets—the merely discriminatory and often religious groups whose views are fairly close to the border between being plausibly and implausibly consistent with equal citizenship. These merely discriminatory groups are particularly vulnerable under his theory because, as I’ve already pointed out, their relationship to equal citizenship is so crucially dependent upon judgment calls like whether or not playing sports is more like getting a decent education (crucial to citizenship) or more like playing chess or a musical instrument (not particularly relevant to citizenship).

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order and civic unity. They embrace the “internalized norms and habits” of liberal pluralism “that restrain us from compelling others to live life our way rather than theirs, even when we have good reason to believe that their way is mistaken”, and they welcome a strong, vibrant, and diverse civil society capable of expressing a broad range of conceptions of the good life—mitigating state power, providing arenas for the accommodation of deep differences, nurturing trust, ensuring important places of dissent, and cultivating useful liberal and non-liberal virtues.

Liberal pluralists recognize the need for good citizens, but won’t use just any means in order to create them. They do not demand, for instance, that citizens of the liberal pluralist state cultivate a self-reflective disposition; adopt an attitude of revisability with respect to their beliefs, attachments, and ends; or actively participate in public affairs. The Amish, by way of example, reject the attitude of revisability, endeavor to stifle the cultivation of highly developed powers of critical reason, and discourage active participation in public affairs, but so far as liberal pluralists are concerned, there are compelling reasons (like faith and conscience) for allowing them to do so. Likewise, liberal pluralism does not authorize interfering with the exclusion of women from the Catholic priesthood, nor would it impose state-endorsed beliefs on a private fundamentalist school that decided not to renew

216 See Galson, 1991; Galston, 1999a; Galston, 1999b; Galston, 2002; Galston, 2005; Spinner-Halev, 1999; Spinner-Halev, 2000a; Spinner-Halev, 2005; Spinner-Halev, 2008; Spinner-Halev, 2011; see also, Rosenblum, 1994; Rosenblum, 1999; Rosenblum, 2010; Swaine, 2010.


218 Galston, 1999b: 901.

219 See Galston, 2002; Galston, 2005; Spinner-Halev, 1999: 67; see also, Swaine, 2010.

220 Galston, 2002: 105-8 (This is in part because they nevertheless exhibit “a capacity for critical reasoning in the ways that it is public reasonable to expect it” and score high in terms of other virtues of citizenship like “[l]aw-abidingness, personal and family responsibility, and tolerance of social diversity…”).

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the contract of a pregnant married teacher because of its religiously based belief that mothers with young children should not work outside their homes.\textsuperscript{221}

The liberal pluralist state \textit{would}, however, be justified in removing all forms of “public encouragement and favor” for “associations conducting their internal affairs in a manner contrary to core public purposes.”\textsuperscript{222} Bob Jones University, for instance, a school whose students were prohibited on religious grounds from engaging in interracial dating, was appropriately denied the privilege of tax-exempt status.\textsuperscript{223} From the perspective of liberal pluralism, the compelling state interest in ending racial segregation was not sufficient to overcome freedom of conscience and association concerns, and so did not justify overruling the policy against interracial dating. But it does justify (1) “withhold[ing] recognition and legitimation from associations that speak and act along racialist lines”, and (2) the state’s “message that it considered the policy of Bob Jones University to be morally illegitimate as well.”\textsuperscript{224}

Liberal pluralists are, therefore, quite reluctant to supersede freedom of conscience and association concerns through the authorization of coercion, but they are willing to do so in order to safeguard civic unity and to advance fundamental liberal purposes. And in certain cases where coercion would not be justified, the liberal pluralist state is also prepared to take the intermediate steps of (1) disfavoring particular practices in order to remain non-complicit, and (2) persuading its citizens of the moral illegitimacy of certain objectionable


\textsuperscript{222} Galston, 2002: 112.


but not illegal practices.\textsuperscript{225} The liberal pluralist state is a persuasive one. But, unlike Brettschneider’s aggressively persuasive state, it is only concerned to target the proponents of hate and the proponents of particularly pernicious and politically relevant forms of discrimination because they, and only they, have the potential to threaten civic unity and to frustrate liberal purposes without actually breaking the law.

A. The Liberal Pluralist State as Spender

The liberal pluralist state is under an affirmative obligation to refrain from engaging in discrimination, to refrain from contributing directly to groups that engage in discrimination, and to remain non-complicit with practices that, though legal, threaten civic unity and core liberal purposes. This means that the non-discriminatory liberal pluralist state ought not to directly support discriminatory groups “through public funding, interest-free loans, publicly subsidized space, and the like,” because these forms of support offer positive incentives to such groups and undermine the strong public commitment to equal citizenship.\textsuperscript{226} It also means that the state is justified in revoking the tax-exempt status of groups, like Bob Jones University circa 1970, that engage in invidious discrimination so as not to comply with that kind of large-scale, systematic, and especially problematic discrimination.\textsuperscript{227} The liberal pluralist state is similarly justified in revoking the tax-exempt status of hate groups like the Ku Klux Klan, American Nazi Party, and Westboro Baptist Church because and to the extent that they actively deny that all citizens possess equal rights, oppose recognizing the equal citizenship of minorities or women, or defend invidious forms

\textsuperscript{225} See, e.g. Galston, 2003b: 34; Spinner-Halev, 2011.

\textsuperscript{226} Gutmann, 2003: 112; Brettschneider, 2012; see also, Spinner-Halev, 2011: 782.

of discrimination.\textsuperscript{228} The liberal pluralist state is justified in revoking the tax-exempt status of hate groups and groups that engage in invidious discrimination because they, and only they, pose a significant threat to civic unity and liberal purposes. Only these groups work to deprive their fellow citizens of that which liberal purposes are intended to safeguard and upon which civic unity depends: (1) their lives, (2) the normal development of their basic capacities (including a sense of one’s own dignity and self-respect), and (3) the kinds of understanding needed to effectively participate in the society, economy, and polity.\textsuperscript{229}

The liberal pluralist state would not, however, revoke the tax-exempt status of groups that do not engage in invidious discrimination and do not directly challenge the civic equality of their fellow citizens. Brettschneider is right, for instance, to distinguish between the kind of discrimination practiced by the Catholic Church and the kind of discrimination that was practiced by Bob Jones University. One form of discrimination seriously challenges civic equality while the other does not. Bob Jones University’s rule against interracial dating was a form of invidious discrimination because it amounted to “systematic discrimination within a group that is part of a larger, unambiguous institutional effort to undermine the basic idea of the equality of citizens” and was particularly troubling for its role in the common Southern strategy of establishing private schools in order to preserve de facto segregation and to undermine the legal protections afforded by civil rights laws and Supreme Court rulings.\textsuperscript{230} The rule against female priests is also inegalitarian and discriminatory, but as Brettschneider recognizes, it does not present a significant challenge to the civic equality

\textsuperscript{228} Brettschneider, 2012: 8, 134, 140-1.

\textsuperscript{229} See Galston, 2002: 23-4.

of women, and therefore does not justify revoking the tax-exempt status of the Catholic Church.

Similarly, the liberal pluralist state would not revoke the tax-exempt status of a group that believes it to be God’s will that (member) women and girls only engage in domestic tasks and forbids its members girls and women from playing sports. A group such as this is clearly engaged in discrimination but this kind of discrimination has more in common with the discrimination practiced by the Catholic Church than that practiced by Bob Jones University. Non-liberal groups like this one—groups scattered about the country and living well out of the limelight—clearly are not engaged in anything like the systematic and unambiguous institutional discrimination that Bob Jones University was a party to, and they offer no real challenge to the civic equality of member women, let alone women in general.

Representatives of the liberal pluralist government are not, of course, expected to be indifferent to parental choices regarding the issue of sports for girls. As individual citizens and as public figures they have every right to speak out against groups that forbid girls from playing sports, even when these groups pose no significant threat to the lives, basic capacities, or social rationality of women. The point to note here is just that the liberal pluralist state is itself indifferent to such viewpoints and careful not to disfavor practices (no matter how inegalitarian they may be) that do not threaten civic unity or liberal purposes.

B. The Liberal Pluralist State as Educator

Citizens have power in the liberal democratic state, including the power to transform the state over time into something that is neither liberal nor democratic.\(^{231}\) Accordingly, the liberal state needs good liberal citizens in order to remain liberal and democratic, and the

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\(^{231}\) Spinner-Halev, 1999: 83.
liberal pluralist concern for civic unity and basic liberal purposes demands that we see to the
cultivation of good citizens.\textsuperscript{232} Civic education plays an important role in cultivating good
citizens, and schools should teach core democratic ideals and core liberal virtues regardless
of whether these happen to conflict with the values of a particular culture or religion.\textsuperscript{233} It is
wrong, however, to think that the state ought to engage in aggressive democratic persuasion
where that includes the pervasive denial of religious exemptions and the singling out of
particular religions, cultures, and practices for criticism or condemnation.\textsuperscript{234}

Brettschneider is surely right that civics curricula needn’t and shouldn’t be viewpoint-
neutral.\textsuperscript{235} Instruction in the reasons for rights by means of non-neutral instruction on topics
like the Holocaust, the civil rights movement, the women’s movement, and the gay rights
movement seems wholly justified and largely uncontroversial. It also seems reasonable to
teach about and encourage the acceptance of basic liberal values and to invite children to
reflect upon and debate hard cases. Brettschneider goes too far beyond liberal-neutrality,
however, when he insists that no child may be exempt from any part of the civics
curriculum, and when he does not reject the use of viewpoint criticism in the classroom (or
at least limit such criticism to hateful, rather than merely discriminatory, viewpoints).\textsuperscript{236}

I agree with Brettschneider when he suggests that more schools ought to teach and
honor the contribution of Harvey Milk as well as Martin Luther King and Elizabeth Cady

\textsuperscript{233} See Spinner-Halev, 2000b: 89.
\textsuperscript{234} See Brettschneider, 2012: 96-9, 163-5; see also, Spinner-Halev, 2000b: 89.
\textsuperscript{235} Brettschneider, 2012: 95-104.
\textsuperscript{236} See Brettschneider, 2012: 95-104.
Milk’s pursuit of justice ought to be honored and the teaching of his story surely is an excellent way to promote democratic values. One can agree with Brettschneider about Milk, and about the fitness of his story for a civics curriculum, without also agreeing that every child must learn about him. It isn’t the case that every child needs to receive instruction in the gay rights movement, because not all citizens in a liberal democracy must be good citizens, and (even if they did need to be) good citizenship is not so dependent upon instruction regarding the gay rights movement that granting exemptions from receiving it would threaten the state’s liberal or democratic future.

It probably is true that teaching core democratic ideals cannot be distinguished from dissuading children from endorsing racism, sexism, and homophobia, or from the effort to transform religious beliefs that are at odds with the underlying values of democracy. Liberal pluralism does not demand that civics education be viewpoint-neutral or that, being non-neutral, it somehow shouldn’t have transformation as an end. The claim is just that while restrained transformation is appropriate, the directly critical approach to transformation associated with aggressive democratic persuasion is not. Modeling core democratic ideals in a non-neutral way is consistent with the maximum feasible tolerance standard of liberal pluralism, but the singling out of particular religions and cultures for criticism and compelled instruction in every conceivable expression of liberal values is not. The upside of the restrained version of educational persuasion called for by liberal pluralism is that it is far more tolerant, permitting greater exercise of freedom of conscience (and perhaps also inspiring a greater sense of belonging and loyalty), and the downside is that a tiny minority of children that could grow into good citizens conceivably might not because the state was

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unwilling to force them to hear their religions or cultures criticized directly, or to compel their exposure to subject matter that their parents find offensive.

The liberal pluralist goal of transformation ought not to be convincing students that laws against gay marriage are definitively unconstitutional and immoral, or that groups that advocate domestic roles for girls threaten the equal citizenship of women. Schools should simply teach the democratic ideals themselves (in an avowedly non-neutral way) and model those ideals within the institution itself. The children of non-liberal parents can draw conclusions for themselves about the conflicts between the inegalitarian views of their parents and religious leaders, and the fair and respectful treatment received by homosexuals and by girls from their teachers, coaches, counselors, administrators, and fellow students.

This restrained view of educational persuasion is sufficient to cultivate the good liberal citizens required in order to maintain the survival, health, and legitimacy of liberal democracy. Brettschneider’s more aggressive form of educational persuasion, one that singles out discriminatory groups for direct criticism and rules out exemptions, does not show adequate support for freedom of conscience and wouldn’t necessarily yield better citizens. Most children of non-liberal parents are likely, given their inescapable immersion in mainstream liberal society, to become more liberal than their parents without being told in no uncertain terms that their discriminatory religions or cultures are incompatible with liberalism, and without being told that laws against gay marriage are unconstitutional and immoral. Better, I think, to subtly and gently transform these children by showing rather than telling, both because doing so shows respect for them and their nascent moral powers,

239 Spinner-Halev, 2000b: 89-93.
and because it leaves their parents feeling more welcome within liberal society and less concerned to go to great lengths in order to shore up the non-liberal values of their children at home.

C. The Liberal Pluralist State as Speaker

Recall that the Persuasive State also engages in expressive criticism of hateful and discriminatory viewpoints directly, through celebrations, and through apologies.\textsuperscript{242} The expressive criticism inherent in the celebrations and apologies that Brettschneider points to is usually (or largely) implied. It is true that to honor and celebrate Martin Luther King is to implicitly criticize George Wallace, Bull Connor, and the viewpoints that they represented, and that to apologize for Tuskegee is to implicitly criticize the racism of past American administrations. Implied criticisms like these are probably unobjectionable from the perspective of liberal pluralism. As has already been noted, the liberal pluralist state is “far from fully neutral with respect to conceptions of the human good”, and has a compelling interest in reproducing “the conditions necessary to its own health and perpetuation.”\textsuperscript{243} This would seem to mean that some degree of transformation is justified not only in the context of education but also in the context of celebrations and apologies. The keys here, however, are that the inherent criticism is (or could be) (1) by implication (or, at least, acceptably subtle, gentle, non-divisive, and tolerant toward diverse conceptions of the good) and, (2) appropriately limited to examples of hateful practices, hateful viewpoints, and instances of invidious discrimination.

\textsuperscript{242} Brettschneider, 2012: 45-6, 147, 156-7.

\textsuperscript{243} Galston, 1991: 6, 8; see also Galston, 2005: 41; Spinner-Halev, 1999.
The kind of expressive criticism that has the potential to conflict with liberal pluralism is the more direct and confrontational kind. That said, and interestingly enough, liberal pluralists would not seem to have any reason to object to the Brettschneider examples discussed above. The liberal pluralist state should not, need not, and would not prohibit public officials from criticizing and even condemning particular viewpoints, practices, and groups. Senators have every right to criticize nominees for the Supreme Court for their membership in discriminatory groups; the Mayor of New York City has every right to criticize anti-Muslim rhetoric; and the President of the United States has every right to criticize the passage of a same-sex marriage bans. The standard of maximum feasible tolerance governing the liberal pluralist state neither justifies nor warrants the muzzling of public officials—they can criticize or condemn whatever practices, viewpoints, and groups they like regardless of whether or not they challenge the ideal of free and equal citizenship. Public officials are quite welcome to criticize the Ku Klux Klan, Bob Jones University, the Catholic Church, and fathers who steer their daughters toward domestic tasks. None of these criticisms are objectionable from the standpoint of liberal pluralism because each of these politicians is merely expressing his or her own individual and Constitutionally-protected concerns.244

In some ways it is hard to imagine what truly objectionable examples of persuasive government speech would actually look like. Consider Larry Alexander’s example once again: “[G]overnment public service announcements on radio and television telling people

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244 The Supreme Court’s admonition of the town council members in the *Church of the Lukumi Babalu Aye v. City of Hialeah* case comes closest to official government speech but I don’t think the Court was criticizing the illiberal views of the councilmen so much as criticizing their efforts to impose those views on others through unconstitutional legislation. See *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993); Brettschneider, 2012: 145-61; Spinner-Halev, 2011.
‘Don’t believe the Klan; blacks should be regarded as equals.’ Alexander is right to distinguish between this kind of official “government speech” and “speech by particular members of the government”, and to worry that government speech “will be viewed by many as bureaucratically generated propaganda.” It is also worth thinking about what government speech of this type would look like when aimed at merely discriminatory groups. Would the government also run public service announcements telling people “Don’t believe the Catholic Church; homosexuals should be allowed to marry”, or “Don’t believe your religious leaders; women should not be limited to domestic tasks”?

These hypothetical public service announcements sound a bit like caricature and maybe they are, but after we distinguish, as Alexander does, between “government speech” and “speech by particular members of the government”, it is hard to know for sure what kind of speech Brettschneider has in mind. If he simply means “speech by particular members of the government”, then there probably is no liberal pluralist objection to his suggestions, but it seems like he means something more than that. None of this is meant to deny the possibility or the wisdom of government speech. I acknowledge that the state speaks, and I agree that it ought to engage in some degree of persuasion, not only when it spends and when it educates, but also when it celebrates, when it apologizes, and even when it explains its rationale for denying particular groups direct funds or tax-exempt status. That said, Senators criticizing Supreme Court nominee Alito during his confirmation hearing is not the same thing as teaching public school children about Martin Luther King, denying Catholic Charities state funds if they continue to refuse to facilitate gay adoptions, or denying Bob Jones University tax-exempt status so long as it engages in invidious

245 Alexander, 2013: 4-5.

246 Alexander, 2013: 4-5.
discrimination. In the first case individual members of the government are expressing their personal views about the potential unfitness of a candidate for the Supreme Court based upon his membership in a discriminatory organization, and in all the other cases the state itself is taking an official and non-neutral stance in order to promote liberal values, remain non-complicit with hate and discrimination, and (in those instances at least) gently and respectfully transform its citizens.

V. Conclusion

The solution is not to simply jettison the notion of democratic persuasion but, rather, to conceive of it in a more restrained and tolerant way, and to be very clear about the limited role that it plays in securing the goal of equal citizenship. We often have good reason to criticize that which we tolerate in an effort to convince others to change their ways, but we can go too far if we are not careful, and find ourselves prioritizing certain liberal values (like equality, democracy, and autonomy) over other ones (like liberty and privacy), and sabotaging our own efforts. Somewhere between criticizably lax passive approval and “overzealous criticism [that] may infringe both liberty and privacy rights and also be counterproductive” lies the zone of moderate, respectful, subtle, and gentle persuasion. I submit that liberal pluralism offers the best glimpse of this moderate zone wherein liberal values can be safely and fruitfully balanced by strictly tying both coercion and state-sponsored persuasion to the goals of safeguarding civic unity and advancing fundamental liberal purposes.

It is also worth repeating that democratic persuasion, aggressive or otherwise, has but a small role to play in guaranteeing civic equality. Any realistic effort to secure that goal

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would also require addressing the socioeconomic inequalities that represent perhaps the greatest obstacles to the achievement of genuine civic equality. What recommends the liberal pluralist view of democratic persuasion is, then, that it advances toward the goal of civic equality at least as well as Brettschneider's aggressive version, and in a significantly less costly manner.
CHAPTER 3: LIBERAL PLURALISM AND LUCK EGALITARIANISM

I. Introduction

The purpose of this chapter is to consider a liberal pluralist alternative to the luck egalitarian approach to distributive justice. It scrutinizes the luck egalitarian approach and some of the common objections to it, in light of the “diverse objections to inequality” identified by Thomas Scanlon.\(^{248}\) Some of the most convincing objections to luck egalitarianism are implicitly based upon the “specific values”\(^{249}\) associated with Scanlon’s objections, and the most convincing luck egalitarian rebuttals to those objections are ones that explicitly acknowledge, accept, and seek to accommodate those values. Hence the success of the luck egalitarian project is in part contingent upon its compatibility with Scanlon’s objections to inequality. I consider this case for compatibility and conclude (1) that canonical luck egalitarianism cannot withstand two common objections (the harshness objection and the stigma objection), (2) that canonical luck egalitarianism cannot withstand the harshness and stigma objections because it fails to accommodate the specific values which underlie Scanlon’s objections, and (3) that canonical luck egalitarianism can be revised and moderated in order to accommodate the specific values and withstand the common objections, but not without sacrificing certain attributes seemingly essential to any version of

\(^{248}\) Scanlon, 2003a; Scanlon, 2007; see also, Scanlon, 2003b; Scanlon, 1976; Rawls, 2001: 130-32; Rawls, 2007: 244.

luck egalitarianism. The chapter concludes by making the case for a liberal pluralist alternative to luck egalitarianism in line with Scanlon’s objections.

In his paper, “The Diversity of Objections to Inequality”, Scanlon advances the claim that the values and concerns of egalitarians support five objections to inequality: a humanitarian objection, a status equality objection, a non-domination objection, and two procedural fairness objections (collectively, “Scanlon’s Objections”). Scanlon’s conception of egalitarianism and his objections to inequality follow from the widely endorsed commitment to treating all persons with equal respect and concern. The “merely formal” principle of “equal consideration”, though it “provides a fruitful—even essential—starting point for moral argument” is, however, “too abstract to exercise much force in the direction of substantive equality.” Equal consideration is only realized, Scanlon argues, by means of substantive concerns, reasons, and objections to inequality underwritten by other more specific values “most of which are not essentially egalitarian.” Though Scanlon does not explicitly identify the specific values that he has in mind, I think that they at least include the values that we might call humanitarianism, fraternity, and fairness (collectively, the “specific values”).

The specific values in turn yield the concerns and reasons which justify Scanlon’s Objections. Humanitarianism yields the concerns and reasons behind Scanlon’s humanitarian objection; fraternity yields the status equality and non-domination objections; and fairness yields the two objections concerned with procedural equality: the real equality of opportunity and equality of

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253 See Scanlon, 2003a; Scanlon, 2007; see also, O’Neill, 2008; Hausman and Waldren, 2011.
benefits objections. The resulting humanitarian-, fraternal-, and fairness-based objections offer a unique and particularly useful framework within which to evaluate candidate egalitarian approaches to distributive justice. It is doubtful that an approach to egalitarian distributive justice can be both valid and insufficiently responsive to the concerns associated with Scanlon’s Objections. Accordingly, the concern of this chapter will be to see whether or not the luck egalitarian approach to distributive justice is or could be sufficiently responsive to those objections. It will proceed as follows: Section II includes a brief discussion of Scanlon’s Objections; Section III describes the luck egalitarian approach to distributive justice; and Section IV introduces the most common and effective objections to luck egalitarianism (the “Common Objections”) as well as the best rebuttals to those objections. Finally, in Section V I conclude that a more moderate and avowedly “pluralist egalitarian” approach to distributive justice could better respond to Scanlon’s Objections, and I question whether or not a revised conception of luck egalitarianism can play this role and still remain identifiably luck egalitarian.

II. Scanlon’s Objections

A. Overview

- **Humanitarianism:** The specific source-value that generates the egalitarian’s concern for eliminating the avoidable suffering of all persons. The value of humanitarianism underwrites the humanitarian objection.

  (1) *The Humanitarian Objection:* “We often have reason to eliminate inequalities for essentially humanitarian reasons, because taking from those who have more is the only, or the best, way to alleviate the hardships of those who have less.”

- **Fraternity:** The specific source-value that generates the egalitarian’s concern for abolishing humiliation, stigmatization, and

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254 Scanlon, 2007: 15.
domination and for promoting the full citizenship of each one of her fellows. The value of fraternity underwrites the status equality and non-domination objections.

(2) The Status Equality Objection: “We sometimes have reason to eliminate inequalities because they create humiliating differences in status.”

(3) The Non-Domination Objection: “We sometimes have reason to eliminate inequalities in order to prevent those who have more from exercising unacceptable forms of power over those who have less.”

• Fairness: The specific source-value that generates the egalitarian’s concern for ensuring that well-being is not determined by endowments and circumstances that are arbitrary from a moral point of view. The value of fairness underwrites the first procedural objection—real equality of opportunity and the second procedural fairness objection—equality of benefits.

(4) The First Procedural Fairness Objection—Real Equality of Opportunity: “We sometimes have reason to eliminate inequalities in order to preserve the equality of starting places that is required if our institutions are to be fair. Great inequality of wealth and income can, for example, undermine equality of opportunity and the fairness of political institutions.”

(5) The Second Procedural Fairness Objection—Equality of Benefits: “In at least some cases, if an agency is obligated to deliver some good to various beneficiaries, it must, absent special justification, deliver it in equal measure to all of them.”

B. A Brief Discussion of Scanlon’s Objections

1. Humanitarianism and the Humanitarian Objection to Inequality

Scanlon claims that egalitarians object to distributive inequalities to the extent that they reflect the failure of institutions to prevent, eliminate, or reduce the avoidable suffering

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255 Scanlon, 2007: 15.
256 Scanlon, 2007: 15.
257 Scanlon, 2007: 15.
258 Scanlon, 2007: 16.
or deprivation of persons. Equality is only a proxy for the success of humanitarianism, however, and not all equalities are created equal from the standpoint of humanitarianism. While the value of humanitarianism often gives egalitarians a reason to raise the level of well-being of the least advantaged to the point that their welfare equals that of the most advantaged (leveled-up equality), it does not support leveling down the well-being of the most advantaged such that their welfare equals that of the least advantaged (leveled-down equality). Reasonable egalitarians do not “fetishize” equality and can always reject a distributive principle that undermines humanitarian concerns.

Consider, for instance, Scanlon’s discussion of male life expectancy. He says that egalitarians object to the disparity in male life expectancy between the U.S./China (74.2 and 70.4 years, respectively) and Malawi (37.1 years) on humanitarian grounds, but that they of course do not favor a leveled down equalization (37.1 years for each country) over the grossly unequal status quo. Reasonable egalitarians object to the disparity in life expectancy between Malawi and the developed world not because of the inequality itself, but because of what it seems to indicate: that some human beings are living lives that are much shorter than they ought to be and much shorter than they must be.

2. Fraternity

a. The Status Equality Objection to Inequality

Scanlon claims that egalitarians also object to inequalities that mark people as inferior. They object to social arrangements that feature stigmatizing differences in status

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260 See Scanlon, 2007: 5-6; but see Brighouse and Swift, 2006.


(caste systems, racial discrimination, sexual discrimination, etc.) and to purely economic inequalities that force “the poor to live in a way that is reasonably seen as humiliating.”

Reasonable egalitarians object to these two forms of status inequality on the basis of what we might call the negative-fraternal impulse to ensure that one’s fellows are not damaged by feelings of inferiority and shame, and the positive-fraternal impulse to ensure that status inequalities do not damage the emotional and cultural bonds between members of a particular democratic society.

The status equality objection, unlike the humanitarian objection, is genuinely egalitarian. The humanitarian objection is non-egalitarian because it is “non-comparative” and “specific”, and the status equality objection is genuinely egalitarian because it is “comparative” and “unspecific.” The humanitarian objection is non-comparative in the sense that it operates on the basis of some type of objective scale of well-being. A 37.1 year life expectancy for Malawi is clearly bad in this day and age because we know that human beings can live much longer lives, and this would be true even if the world average suddenly leveled-down to 37.1 years. The status equality objection is, by contrast, comparative in the sense that it is concerned with relationships and comparisons between individuals. For instance, we only know how well Caste B is being treated in terms of status by comparing their treatment with the treatment of Caste A. The humanitarian objection is specific in that it is concerned with an absolute level of benefit above which inequalities do not seem to matter (at least in terms of the humanitarian objection). And the status equality objection is, by contrast, unspecific regarding the level of benefit in that Caste B’s feelings of inferiority and


\[265\] Scanlon, 2003a: 204.
shame are seen as a bad thing, regardless of whether Caste B’s feelings of inferiority and shame are high or low from a historical or international perspective (if such a thing could be determined). Both objections support the elimination of inequalities but only the status equality objection does this for “genuinely egalitarian” reasons.\(^{266}\)

One very important characteristic of the status equality objection is that it does, in fact, provide a reason for a kind of leveling down. In order to render Castes A and B equal in terms of status, for instance, it may be necessary to eliminate A’s benefits even if these benefits cannot, for whatever reason, be transferred to B. Strictly speaking, no transfer of benefits from the most to the least advantaged occurs when we prohibit “[s]ocial practices conferring privileges of rank or requiring expressions of deference”, but egalitarians will still want to level down in such cases by eliminating A’s non-redistributable benefits.\(^{267}\)

Fraternity, unlike humanitarianism, justifies reducing everyone to a lower non-aristocratic position, even though this means (in a sense) that the lot of the aristocrats gets worse while the lot of the commoners stays the same.

b. The Non-Domination Objection to Inequality

Scanlon’s concern for eliminating domination leads him to find fault with a state of affairs in which some members of society have vastly greater resources than others, and find themselves in a position to “determine what gets produced, what kinds of employment are offered, what the environment of a town or state is like, and what kind of life one can live there.”\(^{268}\) The objection that emerges from this fraternal impulse to prevent domination and enable all citizens to share in the nature and design of society does not seem to require a

\(^{266}\) Scanlon, 2007.

\(^{267}\) Scanlon, 2003a: 204.

\(^{268}\) Scanlon, 2003a: 205.
strict equalization of resources or capabilities. Unlike the strict equality of status required by the status equality objection, the non-domination objection only calls for an equalization of societal power sufficient to undermine the genuine control of some over others. Egalitarians pursue this goal of a domination-free society in terms of both political and economic power, and favor mechanisms that make it more difficult for particular segments of the population to assert continual control over the basic institutions of society. In practice, these seem to include mechanisms—e.g. progressive taxation, affirmative action, and campaign finance reform—that empower the least advantaged, protect socially vulnerable minority groups, and restrain the capacity of the moneyed and the affluent to control politics.

I’ve chosen to categorize non-domination as a fraternal objection because I think that the main impulse behind it is to see that citizens can and do live like fellows, and that no less-than-all-encompassing group can simply dictate the structure, attributes, and mores of society. The objection does, however, bear an important resemblance to the fairness-based first procedural objection. Egalitarians favor progressive taxation, affirmative action, and campaign finance reform for fraternal reasons and for fairness reasons. They favor such programs both because of their non-egalitarian desire to prevent domination and because of their (somewhat more) egalitarian desire to ensure that procedures are fair and that no one misses out on an opportunity for reasons—like gender, race, nationality, ethnicity, and class—that are arbitrary from a moral point of view. What this helps to show is that egalitarians have multiple reasons for objecting to inequalities—often multiple reasons for objecting to the same kinds of inequalities—and that it is quite possible that the degree of equalization called for by any one value will be insufficient to fully satisfy another.
3. Fairness

Scanlon contends that egalitarians sometimes have reason to object to inequalities that undermine political and economic equality of opportunity, and to inequalities that result from the unequal provision of benefits to particular groups of entitled beneficiaries. They object to these inequalities because they are seen as unfair. It is unfair (1) that particular inequalities in holdings render opportunities unequal—that some individuals can do, be, and have things that others cannot simply because they were born into wealthier families or communities, and (2) that some institutions provide more (or better) benefits to some entitled beneficiaries and not others.

The egalitarian sense of fairness relied upon by Scanlon seems to mean—to use some well-known but meaningfully different metaphors—that we ought to begin the race at the same starting line, that the playing field ought to be level, and that we ought to cut up the pie into equal slices unless we’re aware of a sufficient reason for doing otherwise.269 Such a sense of fairness animates the egalitarian’s objections to inequalities that might survive (in whole or in part) the implementation of policies based on the objections underwritten by humanitarianism and fraternity.270 In other words, inequalities that no longer reflect the taint of suffering, deprivation, discrimination, oppression, humiliation, stigmatization, exploitation, or domination may still be objectionable to the extent that they reflect one or both of the two kinds of unfairness discussed below.


270 This also means, of course, that fairness itself may sanction particular inequalities that would not survive the humanitarian and fraternal objections.
a. The First Procedural Objection to Inequality—Real Equality of Opportunity

According to Scanlon, egalitarians favor a real and lasting form of equality of opportunity that is broad enough to cover opportunities in both the economic and the political spheres. They think it unfair and morally wrong that some have minimal opportunities for economic and political success and believe that the equalization of opportunities requires the elimination or reduction of inequalities in holdings that tend to undermine an individual’s chances for political and economic success.\textsuperscript{271} Egalitarians are very much aware of the somewhat obvious negative correlation between socioeconomic inequality and equality of opportunity. Where we find great inequalities in wealth and income we also find that an individual’s prospects for success in the market depend heavily on the families and communities into which they are born rather than on the choices that they make or the effort that they exert.\textsuperscript{272} Likewise, where we find great inequalities in wealth and income we also find that the wealthy have much more control over the political process, through their contributions to candidates and office holders and in terms of their own potential candidacies.\textsuperscript{273} The egalitarian response, then, is simply to object to inequalities in holdings to the extent that they undermine real equality of opportunity.

b. The Second Procedural Objection to Inequality—Equality of Benefits

Lastly, egalitarians object to the unequal provision of benefits to the equally entitled. They object, in other words, to a situation in which Able and Baker are equally entitled to receive X and Baker either receives no X, less X, or lower quality X than does Able. The

\textsuperscript{271} Scanlon, 2003a; Scanlon, 2007.

\textsuperscript{272} Scanlon, 2007; see also, Rawls, 1999a; Rawls, 2001.

\textsuperscript{273} Scanlon, 2007.
equality of benefits objection, like the status equality objection, is genuinely egalitarian. It is egalitarian because it is both comparative and unspecific. Egalitarians determine whether or not benefits are being provided fairly by comparing the levels of provision across individual beneficiaries (comparative), and they are concerned with the unequal provision of benefits no matter the level of the benefits being provided to those who receive less (unspecific). They determine the fairness of the provision of X by looking to see what is provided to Able and what is provided to Baker, and they object to any lesser (or worse) provision to Baker without regard to any objective-scale determination regarding the amount of X that individuals require.

To illustrate the equality of benefits objection, Scanlon considers the provision of a higher level of basic services by the state of Israel to Jewish Israeli villages than to otherwise comparable villages occupied by Israeli Arabs. He claims that the inequality here “seems so clearly objectionable” because it easily fits the criteria of the equality of benefits objection. Because the egalitarian assumes that the Israeli government is obligated to supply the services at issue, and because she assumes that Israeli Jews and Israeli Arabs have the same claim to the services, she finds it unfair that the equal claims of Israeli Arabs result in an inequality of benefits. This isn’t to say that all individuals, or even all citizens, always have the same claim to particular benefits, or that nothing could ever justify the unequal provision of benefits to the equally entitled, but only that the unequal provision of institutional

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276 Scanlon, 2007: 11.
benefits to the equally entitled without “special justification” is objectionable on fairness grounds, no matter what else it might have going for it.\footnote{See Scanlon, 2003a; Scanlon, 2007.}

III. Background on Luck Egalitarianism

A. “A Family of Views”

In her 1999 paper, “What is the Point of Equality?”, Elizabeth Anderson used the terms “luck egalitarian” and “equality of fortune” to refer to a family of views which take “the fundamental injustice to be the natural inequality in the distribution of luck.”\footnote{Anderson, 1999: 289 (Quoting Richard Arneson). Anderson’s claim was (and continues to be) that luck egalitarianism subverts the real “point of equality”. According to her, there is no non-instrumental reason for pursuing distributive equality and the only equality that really matters is the condition of “relational” or “democratic” equality shared by the citizens of a democratic state. Anderson, 1999; Anderson, 2007; Anderson, 2008a; Anderson, 2008b; Anderson, 2010; see also, Scheffler, 2003a; Scheffler, 2003b.} Her stated aim was to criticize the work of all theorists who subscribe to the view that “[t]he concern of distributive justice is to compensate individuals for misfortune.”\footnote{Anderson, 1999: 289} Anderson has ascribed the luck egalitarian viewpoint to Richard Arneson, G.A. Cohen, Ronald Dworkin, Thomas Nagel, Eric Rakowski, and John Roemer.\footnote{Anderson, 1999: 289; see also Arneson, 1999; Arneson, 2004; Arneson, 2008; Cohen, 1989; Cohen, 2008; Dworkin, 2000; Nagel, 1991; Roemer, 1993; Temkin, 1993; Temkin, 2001; Temkin, 2003a; Temkin, 2003b} At this point virtually every theorist that has been dubbed a luck egalitarian has shown him or herself willing to use the term (which is not to say that all of them agree that they are in fact luck egalitarians), but there are, nevertheless, some important distinctions between the views of the theorists that Anderson mentions. Luck egalitarianism, as Anderson herself acknowledges, is family of views that cluster around a somewhat elusive theoretical core.\footnote{See Anderson, 1999: 289-95.} In addition, the family has grown in the years since the publication of Anderson’s paper, and there now exists a second
generation of theorists who have further tweaked, moderated, and complicated what continues to be known as luck egalitarianism.²⁸²

Important implications of this family-resemblance dynamic are that there may be no clearly canonical luck egalitarians (no one who in no way qualifies or moderates the theoretical core) and that the critiques offered by Anderson and others often do not fully apply to most real world luck egalitarians.²⁸³ Virtually all luck egalitarians diverge from the strict and extremist view that Anderson tends to criticize, and so the case can and has been made that all or most of her criticisms miss their marks—they land but only against a strict canonical conception of luck egalitarianism that virtually no one actually endorses.²⁸⁴ Although Anderson’s foil is a kind of canonical luck egalitarian who may not exist, I do think that it remains useful to imagine and analyze a canonical version of luck egalitarianism, and that it is important not to get lost in all of the ways in which actual luck egalitarians stray away from the approach’s theoretical core. The disclaimer is, then, that what Anderson called “luck egalitarianism” and what I call “canonical luck egalitarianism” is (and must be) a stipulated construct from which all or most actual luck egalitarians diverge in various ways.

B. Moral Equality and Equal Consideration

To start with, I think that it might be worthwhile to consider what I see as the semantic bias inherent in the term “luck egalitarianism”. The term seems to suggest a kind of pettiness and a lack of theoretical sophistication that is largely inaccurate. By pairing “luck” with “egalitarianism” the term suggests that it is luck that luck egalitarians wish to equalize,

²⁸² See, e.g. Barry, 2006; Barry, 2008; Brown, 2005; Knight, 2005; Knight, 2006; Knight, 2009; Kymlicka, 2002; Kymlicka, 2006; Markovits, 2008; Segall, 2007; Segall, 2010; Swift, 2008; Tan, 2008; Tan, 2011; Tan, 2012.


²⁸⁴ See, e.g. Robeyns, 2008; Swift, 2008.
and this isn’t (necessarily) so. Most luck egalitarians are not exercised by the mere existence of natural inequalities and do not claim that it is bad or unfair that, for instance, some (the lucky) were born able-bodied and others (the unlucky) disabled. What is bad and unfair isn’t the variation in abilities, but the state’s willingness to permit the able-bodied to convert their undeserved abilities into greater holdings than the disabled, despite the fact that this chance thing (their non-disability) is arbitrary from a moral point view. The problem for luck egalitarians isn’t really with unlucky circumstances, but with the societally-determined inequalities in holdings that result from mere differences in unchosen circumstances.

Luck egalitarianism isn’t typically animated by a desire to fix or change natural endowments. At the heart of the approach is a foundational belief in and commitment to the moral equality of persons that in turn supports the claim that all persons have “a right to equal respect and concern in the design and administration of the institutions that govern them.”

Luck egalitarians argue (1) that one way that we can ensure that the state reflects and expresses equal respect and concern for all persons is by treating them fairly, and (2) that we treat persons fairly when we ensure that the actual distribution of holdings does not result from favoring some and disfavoring others on the basis of unchosen circumstances.

1. Circumstances (Brute Luck)

When luck egalitarians talk of morally arbitrary characteristics they typically refer to them as “circumstances” or, to use Dworkin’s term, “brute luck.” Society’s institutions are unfair if and when they permit brute luck to influence the distribution of holdings. Luck egalitarians think it unfair when some have more or less in the way of holdings as a result of

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circumstances over which they had/have no control—these circumstances are morally arbitrary characteristics like race, gender, ethnicity, social class, nationality, locality, family, native genetic endowments that individuals are simply born into, as well as the unchosen and unforeseeable things that happen to us in the course of our lives.

2. Choices (Option Luck)

On the other hand, it is not unfair when society’s institutions permit the voluntary and genuine choices of adults—what Dworkin calls “option luck”\textsuperscript{287}—to affect an individual’s holdings. It is not unfair that some have more or less in the way of holdings as a result of the free choices that they have made about how they wish to conduct their lives. Luck egalitarians, we begin to understand, are committed to the moral equality of persons, but not necessarily committed to an equality of holdings. Certain unequal distributions are justifiable because they reflect deserved inequalities, and deserved inequalities are by their definition not unfair. More formally: luck egalitarians do not believe “that it is bad for some to be worse off than others”, but they do believe “that it is bad for some to be worse off than others through no fault or choice of their own.”\textsuperscript{288} Desired inequalities, unlike undeserved inequalities, are not arbitrary from a moral point of view: we fail to treat people as our moral equals when we permit them to do worse on the basis of characteristics or circumstances they didn’t and couldn’t deserve, but the same isn’t true when we permit them to do worse on the basis of the free choices they have made about how they wish to live their lives.\textsuperscript{289}

\textsuperscript{287} Dworkin, 2000.

\textsuperscript{288} Temkin, 2001: 334, emphasis mine.

\textsuperscript{289} Temkin, 2001: 335.
3. The Luck/Choice Principle

The luck egalitarian intuition—the intuition that says that it is bad for some to be worse off than others through no fault or choice of their own—supports what Kok-Chor Tan calls the “luck/choice principle” (hereinafter the “LCP”): the idea that “distributive justice should be fundamentally choice-sensitive but luck-insensitive.” The LCP is a “grounding” rather than a substantive principle of distributive justice. It further specifies the luck egalitarian intuition and the luck egalitarian conception of distributive justice, but does not operationalize the intuition in any substantive sense. The LCP isn’t (or needn’t be) a principle of morality or justice, and it doesn’t (or needn’t) suggest that substantive distributive justice must be wholly choice-sensitive or circumstance-insensitive.

IV. Some Common Objections to Luck Egalitarianism

The goals of this section are (1) to introduce the Common Objections, (2) to evaluate various luck egalitarian rebuttals to the Common Objections, (3) to show that all but one of the Common Objections emerge out of the same concerns which underwrite Scanlon’s Objections, and (4) to show that the Common Objections illustrate the invalidity of canonical luck egalitarianism and also reveal the possibility of a valid approach to distributive justice that may no longer warrant the luck egalitarian label. The so-called “free

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290 Tan, 2008: 666.
291 See Tan, 2008; Tan, 2011.
292 See Tan, 2008; Tan, 2011.
293 These distinctions between grounding and substantive principles of justice and between principles of morality, justice, and distributive justice will play an important role in the most successful rebuttals to two of the Common Objections.
will objection” to luck egalitarianism is the one Common Objection that I plan to consider that is in no way grounded in Scanlon’s Objections. I’ve included it in my list of the most effective Common Objections anyway because I think it is an important objection that should not be casually ignored, and because I think that the luck egalitarian rebuttals to the free will objection set the stage for one of the two distinct strategies for dealing with the Common Objections. One strategy—the one employed in response to the free will objection—seeks to avoid the Common Objections by limiting luck egalitarianism to the realm of ideal theory. The other (more successful) strategy insists upon a continued role for luck egalitarianism in non-ideal theory, while conceding that much revision is required in order to accommodate the legitimate values and concerns which animate the Common Objections.

Here are the three Common Objections:

- **The Free Will Objection:** Luck egalitarianism fails because it depends upon an unproven and metaphysically questionable “libertarian” understanding of the human capacity to distinguish between voluntary choices and unchosen circumstances.

- **The Harshness Objection:** Luck egalitarianism fails because it depends upon the morally implausible claim that, while any inequality resulting from brute luck matters morally, inequality resulting from option luck matters not at all. (This objection is concerned with the so-called “victims of option luck”).

- **The Stigma Objection:** Luck egalitarianism fails because it requires the collection and use of personal information that would cause the untalented to feel shame and to become a stigmatized class, undermining the egalitarian commitment to the expression of “equal respect and concern” for all persons. (This objection is concerned with the so-called “victims of brute luck”).

A. **The Free Will Objection**

1. A Description of the Objection
By now it should be clear that luck egalitarians place great importance upon the distinction between circumstances and genuine choices. The LCP says (at a fundamental level) that all inequalities arising from circumstances must be extinguished, and that any and all inequalities that arise from the genuine choices of adults are permitted. It would seem, then, that no question could be more important to luck egalitarians than whether or not it is possible to accurately and continually distinguish between brute and option luck inequalities. If we lack the capacity to distinguish between brute luck and option luck then it is hard to see how the luck egalitarian project can get off the ground, let alone win out over alternative approaches to egalitarian distributive justice.

Samuel Scheffler, a “relational egalitarian” critic of luck egalitarianism, has sketched out a “metaphysical case” against luck egalitarianism. He claims that “the plausibility of the luck-egalitarian position tacitly depends on a libertarian conception of what genuine choice would look like.”\(^294\) The position depends, in other words, upon the questionable assumption that the distinction between voluntary choices and unchosen circumstances can be made definitively enough for the distinction to bear “the enormous political and economic weight that luck egalitarianism places on it.”\(^295\) Scheffler’s claim is that the “libertarian” or “incompatibilist” metaphysical account of choice that luck egalitarians depend upon seems implausible, and that, plausible or not, it hasn’t been defended by the very luck egalitarians who seem to depend upon its veracity.

It isn’t simply the case that luck egalitarians are “incompatibilists”, and that relational egalitarians (like Scheffler and Anderson) are “compatibilists” and that is that, one group seeing things one way and the other group seeing things the other way. Scheffler concedes


that “few, if any, proponents of a luck-egalitarian position endorse” the metaphysical account of choice that he ascribes to luck egalitarianism. In fact, actual luck egalitarians are far more likely to be “agnostic about the nature of genuine choice, and even about whether human beings are capable of genuine choice.”

G.A. Cohen, for instance, endorses a version of the LCP and also acknowledges that genuine choice may not be possible for us, and that his conception of luck egalitarianism may be subordinate to certain metaphysical questions that cannot be answered.

Scheffler’s point is not that actual luck egalitarians claim that we can accurately and continually distinguish between genuine choices and unchosen circumstances, but that the plausibility of their position depends upon our capacity to make these distinctions. Luck egalitarianism does not work without the distinction between genuine choices and unchosen circumstances required by the LCP, and no one has shown that such a distinction can be made (because that distinction probably cannot be made). It is for this reason (the free will problem), as well as others, that Scheffler claims that luck egalitarianism fails as a candidate approach to egalitarian distributive justice.

2. Luck Egalitarian Rebuttals

At first glance it appears that the free will objection can simply be tossed aside because it is not a matter of political or moral philosophy—it might seem unfair or improper to introduce metaphysical concerns like this one into a discussion of political/moral philosophy. If hard determinism and incompatibilism are both true, then far more than the luck egalitarian approach to distributive justice would be in jeopardy, so it may not be appropriate for luck egalitarians to bear the (sole) burden of proving something that is

296 Scheffler, 2003a: 12.

perhaps beyond their ken and upon which so many other things (like, for instance, the conceptions of causation upon which our criminal and civil law) depend. That said, there surely is something to Scheffler’s underlying point that maybe it is a bad idea to put so much weight on a distinction that may only be a convenient fiction we humans employ in order to feel that we control our own destinies. Metaphysics notwithstanding, it does seem a fair objection, and it could be quite a powerful one. Luck egalitarians do need to tell us something about how the distinctions between choices and circumstances either can be made, or why (contrary to the seeming thrust of their arguments) they are not essential to the approach.

a. The Metaphysical Agnosticism Rebuttal

A luck egalitarian might respond to the free will objection with an expression of metaphysical agnosticism akin to Cohen’s. He might say, with a defender of luck egalitarianism like Carl Knight, that the approach “is not committed to either libertarianism or compatibilism, far less any particular formulation of free will and responsibility. It simply favors that account that is correct, or most correct.” It could be that it is always possible to distinguish between voluntary choices and unchosen circumstances, never possible to distinguish between voluntary choices and unchosen circumstances, or something in between, and the agnostic believes that his position remains valid no matter which one is true. Even in a world where there are few, if any, completely voluntary choices (and many think that we are living in such a world), the luck egalitarian would simply proceed in accordance with his mandate. He would extinguish inequalities in holdings resulting from brute luck and remain prepared to permit inequalities resulting from option luck, if and

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298 Knight, 2006: 179.
when genuine choices come into existence. The agnostic luck egalitarian could hold fast to the moral distinction between genuine choices and unchosen circumstances and maintain the theoretical category (not-unjust-inequalities-resulting-from-option-luck) regardless of whether any actual inequalities fit into that category now or in the future.299

b. The Limited Theoretical Scope Rebuttal

In order to make out the case for metaphysical agnosticism, the luck egalitarian defender might also want to claim or specify that luck egalitarianism is properly understood as a work of ideal theory and that its prescriptions are not intended for the non-ideal real world. Luck egalitarians rely upon idealizing assumptions that are not met in reality, so that they can work out the best conceivable approach to distributive justice for a fully just society.300 The claim is that because luck egalitarians (like John Rawls before them) make idealizing assumptions (including the assumption that we can accurately and continually distinguish between genuine choices and unchosen circumstances), they are entitled to simply ignore the free will problem or postpone contending with it until such time as luck egalitarianism is revised and adapted into a kind of non-ideal theory.

c. The Approximation Rebuttal

A luck egalitarian might also grant that it is difficult and perhaps impossible to truly distinguish between choices and circumstances, and nevertheless set about constructing a non-ideal world distribution that best approximates the goals of option-luck-sensitivity and brute-luck-insensitivity. This luck egalitarian, who squarely confronts the free will problem, must give us some reason to believe that the choice/circumstance distinction can do some

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299 See, e.g. Barry, 2006; Knight, 2006.

real work and yield a world that is more just than our own. John Roemer is one such luck egalitarian. He implicitly addresses the free will problem in the context of his own “pragmatic” conception of luck egalitarianism. Roemer acknowledges that we here in the less-than-fully-just-real-world cannot make the fine-grained distinctions between the inequalities that result from choices and those that result from circumstances. We cannot say that this or that individual is less well off because of circumstances, or more well off in spite of poor choices, but we can take steps to ensure that certain acknowledged matters of circumstance—like the characteristics Rawls called morally arbitrary in *A Theory of Justice*—have less influence on distributions. We can say (to use a somewhat more interesting example that Will Kymlicka adapts from Roemer’s work on smokers vs. non-smokers), for instance, that a 60 year old able-bodied hard-working and prudent black woman whose parents received only a primary education should not earn less than a 60 year old able-bodied hard-working and prudent white man whose parents were college educated.

Imagine two groups or “types” of people divided along the lines of age, gender, (dis)ability, race, and parents’ education level. Type A consists of 60 year-old able-bodied white males whose parents were college educated, and Type B consists of 60 year-old able-bodied black females whose parents received only primary education. Now imagine a range of incomes like this:

<table>
<thead>
<tr>
<th></th>
<th>Type A</th>
<th>Type B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Top 10%</td>
<td>&gt;$100,000</td>
<td>&gt;$33,000</td>
</tr>
</tbody>
</table>

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301 See Roemer, 1993.

302 Rawls, 1999a: Ch. 2.

The idea is that there is no need to redistribute within types, but that there is reason to redistribute between types. The ranges within types are assumed to be the result of voluntary choices made by similarly situated individuals, and the $67,000 difference between, for instance, the top 10% of Type A (> $100,000) and the top 10% of Type B (> $33,000) is assumed to be the result of unchosen circumstances. The $67,000 difference is caused by only those things that distinguish the top 10% of Type A from the top 10% of Type B: race, gender, and parents’ education level. The goal, then, is to ensure that each percentile earns the same amount regardless of type. We approximate circumstance insensitivity and choice sensitivity when we insist that the hardest working members of Type B earn as much as the hardest working members of Type A, and this is, again, because (presumably) all or most of the difference between their incomes can be attributed to morally arbitrary circumstances: race, gender, and/or parental education.

Roemer’s plan, and Kymlicka’s adaptation of it, shows that there are ways to confront the free will problem in the non-ideal real world without jettisoning the basic luck egalitarian desire to construct a choice-sensitive and circumstance-insensitive society. The distinction is clearly blunted, however, and some would undoubtedly be treated unfairly. It is by no means clear that Roemer’s scheme is the best way to approximate the distinction between choices and circumstances, but it does show that there is at least one way that a theorist might pursue luck egalitarian ends without having to assume away the free will problem.

3. Conclusion:
Scheffler is right that the free will problem presents a major obstacle to the direct application of the LCP to the real world. A luck egalitarian theorist offering a non-ideal theory version of the approach must say something (and probably a great deal) about the nature of the adaptations that he favors and how they would enable us to instantiate identifiably luck egalitarian principles, despite the fact that definitively distinguishing between choice and circumstance is at best infeasible, and at worst impossible. Non-ideal luck egalitarian theory has to show both that its conception of the approach could conceivably work and that its preferred method of adaptation to the real world wouldn’t render the conception unrecognizable as a species of luck egalitarianism. It needs to show that its adaptations are sufficient for real world operation and that the process of adaptation hasn’t left us with something that is indistinguishable from, for instance, the non-ideal prescriptions of relational egalitarianism or the status quo.

Roemer’s “pragmatic egalitarian planner” conception of luck egalitarianism may be one way to move in this direction. His conception still seems identifiably luck egalitarian, following adaptation, but he does not claim (so far as I can tell) that his method is the best way to approximate the choice-sensitivity and circumstance-insensitivity at the heart of luck egalitarianism. A fully fleshed out non-ideal theory conception of luck egalitarianism would need to include a claim like this (and support for it) before we could say that it offers an effective defense of luck egalitarianism against the free will objection (not to mention the two remaining Common Objections). Until then, Scheffler’s critique stands, and seriously calls into question the validity of non-ideal theory conceptions of luck egalitarianism.

The free will objection does not, however, constitute a major obstacle to ideal theory conceptions of luck egalitarianism, and it is important to note that almost all of the actual conceptions of luck egalitarianism on offer are works of ideal theory. An ideal theorist of
justice looks to identify the principles of justice appropriate for a “perfectly just society”, and is entitled to assume full compliance with those principles and to assume that certain aspects of life are different than they are in reality. Rawls, for instance, assumed full compliance, and also assumed that citizens are free and equal moral persons, that each citizen has the capacity for a sense of right and justice, that each citizen has the capacity to form and pursue a conception of the good, and that each citizen is capable of taking part in social cooperation and is willing to do so.\textsuperscript{304}

The question then, a question to which I do not have an answer, is whether or not distinguishing between voluntary choices and unchosen circumstances is merely infeasible or strictly impossible. My own guess is that such a distinction is not strictly impossible, or at least no (or not much) less feasible than Rawls’s idealizing assumptions, and not as infeasible as a “radically face-insensitive” idealizing assumption like (for instance) the assumption of human immortality.\textsuperscript{305} In any event, perhaps we can just remain agnostic on this count, and simply say that so long as the capacity to distinguish between voluntary choices and unchosen circumstances constitutes a valid idealizing assumption, then the free will objection, though a powerful threat to non-ideal theory conceptions of luck egalitarianism, can be sidestepped by ideal theorist luck egalitarians. As argued above, the onus ought to be on the non-ideal luck egalitarian theory to show that its adaptations address the free will problem and do so without undermining the luck egalitarian core. The onus also ought to be on ideal luck egalitarian theory to explicitly identify its idealizing assumptions and to explicitly acknowledge the limited theoretical scope of its prescriptions.

\textsuperscript{304} Rawls, 1999a.

\textsuperscript{305} See Robeyns, 2008.
B. The Harshness Objection

1. A Description of the Objection

The harshness objection questions the moral plausibility of an egalitarian approach to
distributive justice that “abandons” the “victims” of option luck to their fates, no matter
how dismal those fates may turn out to be. Imagine, for instance, that Able and Baker each
make a choice, and that that choice is (we will assume) both wholly voluntary and not at all
influenced by circumstances. Able puts all of his money into VHS VCRs while Baker puts
everything into Betamax VCRs. In time the VHS technology wins out over Betamax and
Baker loses everything, while A enjoys a bonanza. The canonical luck egalitarian would, the
critics claim, see this result as wholly fair, wholly just, and in no sense problematic despite
the fact that Baker is now destitute.

Able made a free choice and it worked out well; Baker made a free choice and it
didn’t work out well at all; end of story. It doesn’t matter if this one bad (or merely unlucky)
choice relegates Baker to dumpster-diving on the streets, because Baker is responsible for his
decision and his responsibility for the decision renders his condition neither unfair nor
unjust, no matter what all of that means for his present and future quality of life (or lack
thereof). But, the critics ask, isn’t this a bit harsh? One bad or merely unlucky choice, and
for that we abandon Baker to a life of abject destitution? Do luck egalitarians really believe
that an egalitarian approach to distributive justice can lack a social safety net of any kind and
still remain valid and egalitarian?
Now consider another hypothetical in which Mark and Frannie are able-bodied fraternal twins. The twins are, by all accounts and indications, equally endowed in terms of intelligence and in terms of their willingness to exert themselves. They attend the same college where both excel, and upon graduation Mark heads to Wall Street to work as an investment banker, while Frannie returns home to care for their ailing mother (their father having already passed). Mark’s choice was voluntary and so was Frannie’s (at least according to our conventional understanding of volition). In this way and in many others, Anderson notes, the burdens of dependent care “fall overwhelmingly on women who, given work arrangements that refuse to accommodate their dependent care responsibilities, are seriously disadvantaged in the job market.”306

Nevertheless, the canonical luck egalitarian again seems to see this result as wholly fair, wholly just, and in no sense problematic. Mark made a free choice and it led to his banker’s salary; Frannie made a “free” choice—she may have felt pressure and her sacrifice may have made financial sense in an unjust society like our own, but no one coerced her—and it led to her non-existent salary (or the minimal salary she can earn in the few hours she can spend away from their mother); end of story. It doesn’t matter if this one choice converts Frannie into a profoundly less attractive option for potential employers down the road, because she is responsible for her decision and her responsibility for the decision renders her loss neither unfair nor unjust.

Canonical luck egalitarianism does sound quite harsh. Luck egalitarians seem hell-bent on the elimination of brute luck influenced inequalities and paradoxically blasé about option luck inequalities that cause certain individuals—and often it is society’s most vulnerable individuals—to suffer and even perish as a result of potentially just one unlucky

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gamble. Canonical luck egalitarianism doesn’t fetishize equality (as some critics have claimed), instead it seems to fetishize the fairness and justness of distributions that result from voluntary choices. The critics of luck egalitarianism understandably question whether or not egalitarian justice can be such an austere and fairness-obsessed thing. Egalitarian justice—which both luck egalitarians and the lion’s share of their critics agree is rooted in a commitment to the moral equality of persons and the belief that the state ought to treat its citizens with equal respect and concern—must mean something more than choice-sensitivity and circumstance-insensitivity, and it simply must do something for Baker and for Frannie, or so the critics claim. Equal respect and concern must mean that the state will, among other things, ensure both that its citizens’ imprudent or merely unlucky choices do not cause them to fall below a sufficiently high social minimum, and that the burden of uncompensated labor does not fall to some and not others on the basis of morally arbitrary characteristics like gender or race. The question, then, is whether or not luck egalitarianism truly is, or must be, such an austere and fairness-obsessed approach to distributive justice, and whether this, in turn, truly means that the luck egalitarian state necessarily mistreats the Bakers and Frannies of the world?

2. Luck Egalitarian Rebuttals

a. The Scope Limitation Rebuttal

A luck egalitarian might limit the scope the LCP’s application to the fully just realm of ideal theory and argue (1) that only the Able-Baker example is conceivably problematic, and (2) that the Mark-Frannie example is flawed and doesn’t tell against luck egalitarianism properly understood. He could defuse the intuitive appeal of the Able-Baker example, first, by claiming that a prudent Baker living in a fully just world where brute luck inequalities have been wholly extinguished surely wouldn’t gamble away all that he has. Only a genuinely
and wantonly imprudent Baker would take such a risk in a fully just world in which all brute luck inequalities have been extinguished. The luck egalitarian apologist would claim that the bad choices of a Baker who gambles in such a way in the fully just luck egalitarian utopia would surely be so comfortably ascribable to Baker’s abject imprudence that we would (or should) no longer be disturbed by the resulting option luck inequalities and destitution. His losses would be as fair as fair can be, not unjust, and unproblematic in at least one important sense. In sum: the apologist acknowledges the limited scope of luck egalitarianism—the LCP is only a prescription for the fully just world of ideal theorization—and in so doing deflects the rhetorical force behind the Able-Baker example.307

The luck egalitarian could then address the Mark-Frannie example by objecting to the underlying assumption of persistent gender inequality in the fully just society. The entire point of extinguishing the impact of circumstances (and sex/gender is clearly a matter of circumstance) on holdings is so that we can be sure that any individual who earns less does so only because he or she is less ambitious (consider, for instance, the attention paid to gender in the Roemer/Kymlicka example discussed above). In the fully just circumstance-insensitive world, women would feel no more pressure to engage in uncompensated carework than would men, because similarly ambitious and hardworking women would earn just as much as similarly ambitious and hardworking men. Women would be no more likely than

307 In the fully just world of luck egalitarian ideal theorization, all inequalities (or portions of inequalities) traceable to brute luck are wholly extinguished. This means that all the inequalities that remain are the result of choices that are far more authentic and genuine than anything we have ever experienced. I am not at all sure that this idealized choice/circumstance distinction is even comprehensible to those of us who live in this far-from-ideal-real-world. I think that at least some part of the intuitive appeal of the harshness objection comes from a lingering suspicion that whatever distinguishes Baker and Frannie from Able and Mark is never solely a matter of pure and voluntary choice. It is hard for me to wrap my mind around what it would mean to be imprudent in a world where all brute luck inequalities have been extinguished. What motivation would there be for making an imprudent choice in such a setting? Would it be pure wantonness? If so, it would have to be a kind of wanton behavior attributable to no social or natural circumstances (not even a mental health disorder of some kind), and as the discussion of the free will objection touches upon, it is not at all clear that something like wantonness can ever have nothing at all to do with circumstances.
men to sacrifice their salaries to engage in uncompensated care-work because their salaries would be no less high on average, and so it would be no more rational for a family to sacrifice a woman’s salary than a man’s. Women would also, it is presumed, feel no more social pressure to be care-workers (or other similarly gender-correlated occupations) because no one would have ever had reason to think them better suited for that work than are men, or less well-suited for other kinds of work than are men. In a society where the impact of gender on holdings was completely eliminated from the beginning of human governance and up to the present day we would expect to see an even split of men and women engaged in (virtually) every occupational category, or so the canonical luck egalitarian apologist might claim.

One luck egalitarian response to the harshness objection is to say that the elimination of brute luck inequalities undercuts any conceivable harshness. If every choice is tainted by brute luck, then there are no victims of option luck because there will be no circumstance-free choices, and if not every choice is tainted by brute luck then option luck losers aren’t “victims” because they’re responsible for their failures in a most profound and definitive kind of way. The LCP yields no harshness, for no one can be a “victim” of option luck in the fully just luck egalitarian utopia.

b. The Value Pluralist Rebuttal

A moderate luck egalitarian who accepts the “truth” of value pluralism (roughly, the Berlinian idea that human values are “irreducibly multiple, frequently in conflict with one another, and sometimes incommensurable”308) can tackle the harshness objection in another way. Rather than (simply) limit the scope of luck egalitarianism, he can acknowledge and

308 Crowder, 2007: 122.
accept that the single-minded pursuit of the LCP would indeed yield harsh results, and still claim that the harshness objection can be avoided. Kok-Chor Tan, for instance, is a luck egalitarian and a value pluralist who acknowledges that unmoderated canonical luck egalitarianism is too harsh to the victims of option luck.  He doesn’t concede, however, that luck egalitarianism is invalidated by the harshness objection. Tan resists the harshness objection by clarifying two things: first, he notes that the LCP is a fundamental rather than an all-things-considered principle, and second he notes that the LCP governs the domain of distributive justice and not the larger domains of justice or morality. By limiting the operation of the LCP in this way, Tan leaves room within justice and within morality for the pursuit of other values that moderate the harshness of the option luck inequalities that would result from the unfettered operation of the LCP. In particular, Tan’s framework permits the pluralist luck egalitarian to acknowledge that egalitarians are also humanitarians, and that some principle of humanitarianism would guarantee a sufficiently high social minimum such that neither Baker nor Frannie would experience avoidable suffering. According to Tan, though the LCP remains the sole fundamental principle of distributive justice, humanitarian concerns take “precedence over the commitment to distributive equality.”

Tan says, in effect, that the harshness objection does no damage to luck egalitarianism because reasonable egalitarians can object to inequalities (even option luck inequalities).
inequalities) that result in exactly what Scanlon’s humanitarian objection forbids: avoidable suffering. Scanlon’s humanitarian objection to inequality illustrates why the harshness objection is effective against canonical luck egalitarianism (because canonical luck egalitarianism runs afoul of the humanitarian objection), and it reveals how the harshness objection can be resisted by a pluralist luck egalitarian like Tan (whose moderate luck egalitarianism fully accommodates the concerns behind Scanlon’s humanitarian objection).

So long as a luck egalitarian is a pluralist he can also be a humanitarian, and so long as he is a humanitarian he needn’t be harsh to option luck losers, no matter what the LCP says.

There is a limit, however, to the similarity between Tan’s egalitarianism and Scanlon’s. Tan moderates luck egalitarianism in order to respond to the harsh manner in which canonical luck egalitarianism permits avoidable suffering, but not on account of the harsh (or merely unjustifiable) manner in which canonical luck egalitarianism undermines the values of fraternity and non-distributive fairness. Tan does not explicitly acknowledge that a moderate pluralist luck egalitarian would also want to guard against option luck generated inequalities in holdings that result in status inequalities, domination, or procedural unfairnesses.

I think, however, that Tan’s domain de-limiting framework is nevertheless sufficient to accommodate the remaining specific values (and other non-specific values as well). Another pluralist egalitarian (or Tan himself were he so inclined) could add fraternal and non-distributive fairness concerns into the mix of values having an impact on distributions. Following Tan’s framework, this addition might mean that a substantive version of LCP

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314 Scanlon, 2003a; Scanlon, 2007; Tan, 2008; Tan, 2011.

315 See Tan, 2008; Tan, 2011.
would only apply to whatever holdings remain after avoidable suffering, status inequalities, domination, and procedural unfairnesses have all been eliminated.

Consider, for instance, the plights of Baker and Frannie. Under Tan’s conception of luck egalitarianism, neither of these would experience avoidable suffering or deprivation, but both could conceivably experience the ills of status inequalities, domination, unequal political and economic opportunities, and the unequal provision of benefits to which they are equally entitled. The claim isn’t that Tan would permit these ills, but that another pluralist luck egalitarian conception could (in Scanlonian fashion) include an explicit guarantee that no option luck inequalities would ever undermine the specific values of humanitarianism, fraternity, or fairness.

3. Conclusions

a. Rejecting the Scope Limitation Rebuttal

Before I consider the more effective value pluralist rebuttal, I want to briefly state my reasons for rejecting the scope limitation rebuttal. I reject the scope limitation rebuttal because I cannot agree that any choice, no matter how definitively genuine and wanton, could ever be sufficient (even in the context of ideal theory) to undermine the state’s commitment to preventing the ills targeted by Scanlon’s Objections. If canonical luck egalitarianism really means that Baker, for instance, is to lose everything on account of his voluntary choice, then I agree that canonical luck egalitarianism is too harsh and think it is too harsh precisely because it subverts the reasonable egalitarian’s humanitarian, fraternal, and procedural fairness concerns.

1) Humanitarianism
I agree with Scanlon, Tan, and others that reasonable egalitarians are also humanitarians, and that they have non-egalitarian reasons for disapproving of a LCP distribution that results in avoidable suffering. Reasonable egalitarians object to the destitution of Baker even in the context of ideal theory because suffering is bad, Baker’s suffering is avoidable, and Baker’s imprudence has no bearing on whether or not he suffers. It may be fair in one sense that an imprudent Baker suffers in the largely inconceivable ideal theory world in which all brute luck inequalities have been eliminated, but that doesn’t make it altogether just, right, or desirable. Baker, no matter how imprudent, remains the moral equal of all his fellows, and continues to deserve equal respect and concern from the state. This doesn’t mean that he needn’t face any consequences for his imprudence, but it does mean that we shouldn’t simply abandon him.

2) Fraternity

I agree with Scanlon and others that reasonable egalitarians also endorse the condition of fraternity and have egalitarian and non-egalitarian reasons for disapproving of a LCP distribution that is fair in at least one sense, but that also leads to discriminatory, oppressive, exploitative, or humiliating differences in status or the social domination of some by others. Reasonable egalitarians object to Frannie’s poverty even in the context of ideal theory because her impoverishment is damaging to her social status and puts her in a position to be dominated by others. It may be fair in one sense that an imprudent Frannie finds herself impoverished in the largely inconceivable ideal theory world in which all brute luck inequalities have been eliminated, but that doesn’t make it altogether just, right, or desirable. Frannie, no matter how imprudent, remains the moral equal of her fellows and continues to deserve equal respect and concern from the state. This fact doesn’t mean that
she needn’t face any consequences for her choices, but it does mean that we shouldn’t simply abandon her.

3) Fairness

Lastly, I agree with Scanlon and others that reasonable egalitarians also endorse procedural fairness. Reasonable egalitarians object to the destitution of Baker even in the context of ideal theory because his destitution undermines the procedural fairness of various economic and political institutions. It may be fair in one sense that an imprudent Baker reaches the point of destitution in the largely inconceivable ideal theory world in which all brute luck inequalities have been eliminated, but that doesn’t make it altogether fair, just, right, or desirable. Baker, no matter how imprudent, remains the moral equal of his fellows and continues to deserve equal respect and concern from the state. This fact doesn’t mean that he needn’t face any consequences for his imprudence, but it does mean that we shouldn’t simply abandon him.

b. Preliminary Rejection of the Value Pluralist Rebuttal

The best defense against the harshness objection is one that acknowledges and accepts the truth of value pluralism and the necessary impact of diverse values on legitimate distributions. A defense that simply denies that the distributions yielded by canonical luck egalitarianism are in any sense unjust or undesirable is not valid. The distributions yielded by canonical luck egalitarianism are not only undesirable, but also unjust and even unfair in their harshness, and this is true even if we limit our analysis to ideal theory conceptions of the approach.

Tan’s pluralist and domain-delimited conception of luck egalitarianism, on the other hand, paves the way for a pluralist and Scanlonian conception of luck egalitarianism. Such a
moderate, pluralist, and Scanlonian conception of luck egalitarianism would satisfy the reasonable egalitarian’s concerns related to fraternity and procedural fairness as well as humanitarianism. Tan’s conception is only lacking to the important extent that he does not explicitly acknowledge that there are instances in which fraternity and procedural fairness, as well as humanitarianism, ought to take precedence over an LCP dictated distribution.

One question that remains is whether or not the accommodation of all three specific value concerns yields something no longer recognizably luck egalitarian, given what a small percentage of any distribution might end up being subject to the LCP. I suspect that these accommodations might give birth to a conception of liberal egalitarianism that looks as much like the democratic egalitarianism of Rawls or Anderson as it does like luck egalitarianism. As a result, I believe that the harshness objection—though weakened by Tan and by my inclusion of fraternal and procedural fairness concerns into his framework—remains standing and crucially important until such time as it is shown that accommodating the specific values produces a conception that both works and remains more luck egalitarian than anything else.

C. The Stigma Objection

1. A Description of the Objection

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316 Imagine, for instance, a distribution of 100 units. Tan might dedicate 60 units to the satisfaction of basic needs (humanitarianism) and then distribute the remaining 40 units according to the LCP. The concern for humanitarianism appears to take lexical priority over the LCP, but the same cannot be said for fraternal or procedural fairness concerns. Another value pluralist faced with the same 100 units and explicitly concerned with fraternity and procedural fairness as well as humanitarianism might dedicate 60 units to the satisfaction of basic needs, dedicate another 20 units to the satisfaction of procedural fairness, and another 15 to the satisfaction of fraternity, leaving only 5 units to distribution in accordance with the LCP. The value pluralist luck egalitarian could, I think, use Tan’s framework in order to satisfy the specific values, but doing so might mean that vanishingly small portions of distributions remain subject to the core principle of luck egalitarian distribution.
The harshness objection emerges from the claim that luck egalitarians abandon the so-called victims of option luck, and the stigma objection emerges from the claim that luck egalitarians humiliate and stigmatize the so-called victims of brute luck. The victims of brute luck are those whose holdings have been negatively impacted by unchosen circumstances, and they are in one sense very fortunate to find themselves living in the luck egalitarian utopia because it is only there that all of the distributive inequalities that arise from circumstances are eliminated. In another sense, however, the victims of brute luck are unfortunate to find themselves living in the luck egalitarian utopia. They are unfortunate because the retrieval of information required for the elimination of the impact of circumstances on holdings necessarily humiliates and stigmatizes them, or so the objectors claim. The luck egalitarian state may be fair in one sense, but it is also incredibly harsh to those that it abandons and incredibly disrespectful to those that it aids.

Jonathan Wolff, Anderson, and Scheffler all claim that the victims of brute luck are subject to disrespect and humiliation when and because they are called upon to petition the state on the basis of their shortcomings.317 In the context of what Wolff calls “shameful revelation”, the victims of brute luck are forced to go before the state and prove that they are so defective, stupid, untalented, ugly, and/or socially awkward that they simply cannot achieve a bundle of holdings consistent with their degree of prudence and willingness to expend effort.318 The brute-luck-deficient petitioner “is required not merely to admit but to make out a convincing case that [he] is a failure, unable to gain employment even when there is no difficulty for others.”319 The petitioner must demean himself, he must “admit to

[himself] and then convince others that [he] has not been able to secure a job, despite [his] best efforts, at a time when others appear to obtain employment with ease."^320

The luck egalitarian government offers compensation sufficient to close the holdings gap between, for instance, the innately intelligent and the innately stupid. Imagine, in Roemerian terms, that we have two types, Type I (the innately intelligent), and Type S (the innately stupid), and that Types I and S are equal along every other relevant dimension (race, gender, etc), such that we can be sure that all of the disparity between the holdings of Type I and the holdings of Type S is caused by the gap between the unchosen innate intelligence of Type I and the unchosen innate stupidity of Type S. So far all seems well and good—compensation reaches those disfavored by circumstances and ensures that no morally arbitrary characteristics are permitted to impact anyone’s bundle of holdings. The critics are quick to point out, however, that a great deal of information is required in order to show that unchosen innate intelligence/stupidity accounts for the holdings disparity, and that the revelation of this information will undoubtedly humiliate the stupid. The members of Type S will find themselves standing before a “State Equality Board” (or something of the sort)^321 and having to prove that they are so naturally stupid that they simply cannot compete with their peers. This procedure, the critics claim, is intrinsically disrespectful and necessarily humiliating.

Shameful revelation is yet another feature of luck egalitarianism that causes the approach to fail what Anderson calls “the fundamental test any egalitarian theory must meet: that its principles express equal respect and concern for all citizens."^322


offer “a very inadequate safety net for the victims of bad option luck” and subject the victims of bad brute luck to “the stigmatizing regime of the Poor Laws, in which citizens lay claim to aid from the state only on condition that they accept inferior status.”

Luck egalitarianism leaves us, then, with “the worst aspects of both capitalism and socialism”—allowing some to simply perish (the victims of option luck) and forcing others to grovel and demean themselves in order to receive the aid that they deserve (the victims of brute luck).

Wolff also makes it clear that shameful revelation remains a problem even for the ideal theory luck egalitarian. He anticipates a rebuttal claiming that the people of the fully just luck egalitarian utopia would not consider that one’s inability to contribute (in market terms) could be a source of shame or a reason for pity. One’s inability to contribute (as distinct from one’s unwillingness to contribute) is the result of morally arbitrary circumstances over which no one has any control, the luck egalitarian apologist might say. Knowing and believing that unchosen circumstances are wholly undeserved, the citizens of the luck egalitarian utopia would consider the difference between ability and inability to contribute no more meaningful than the difference between brown and green eyes—it marks a distinction for sure but it in no way impacts an individual’s moral worth or social standing.

Wolff agrees that shameful revelation would not be a problem in such a world, but he questions the validity of the idealizing assumption itself. He acknowledges that “in an enlightened society of equals [prejudice against those with low talent] might be considered an

324 Anderson, 1999: 308.
unfortunate fact about our barbaric prehistory”, but finds this to be a kind of “psychological speculation” that “we have little, if any, good reason to believe is true.” Accordingly, Wolff maintains that shameful revelation continues to undermine the egalitarian commitment to equal respect and concern, even in the more limited context of ideal theory.

2. Luck Egalitarian Rebuttals
   a. The Scope Limitation Rebuttal

Anderson and Scheffler improperly consider the prescriptions of ideal theory luck egalitarianism to be prescriptions intended for the non-ideal real world. They argue as though actual luck egalitarians have claimed something that they (largely) have not; they argue as though luck egalitarians have said that they think it just, good, and wise to implement the LCP in the here and now and without any revision or moderation. In fact, the luck egalitarian society isn’t—or at least it needn’t be—a scheme that simply replaces the status quo in the here and now. A description of the luck egalitarian utopia neither contains nor immediately implies any policy prescriptions for the here and now, and ideal theory luck egalitarians do not suggest that we immediately go about collecting or accepting the information required for the comprehensive elimination of brute luck influenced inequalities in the non-ideal real world.

What actual luck egalitarians tend to imagine, instead, is a utopian society (like Rawls’s “fully just” one) that was built from the ground up with certain idealizing assumptions already in place and in continuous operation from Time 1 to the present day.

329 See Anderson, 1999; Anderson, 2008; Scheffler, 2003a; Scheffler, 2003b.
330 See, e.g. Tan, 2008: 674; Robeyns, 2008; Swift, 2008.
Their scope de-limited claim is that no stigma would attach to an individual’s being less talented than his or her fellows in such a fully just luck egalitarian utopia. It is only in our non-ideal world—with our unjust history and with our traditions of mistreating so many vulnerable segments of the population—that shame attaches to what is wholly and quintessentially circumstantial: the diminished capacity to convert prudence and willingness into marketable work and the holdings that result from that work.

This rebuttal suggests that the critics of luck egalitarianism again misapprehend the nature of the luck egalitarian utopia. This misapprehension is akin to taking Rawls to mean that his two principles of justice ought to be applied here and now in the United States, and that his idealizing assumptions are meant as empirical statements about our present reality. That wasn’t what Rawls intended and it isn’t what the luck egalitarians intend either. The disrespectful and humiliating implications associated with collecting the information necessary for eliminating brute luck inequalities are very real and very important, but they simply do not exist in the ideal theory luck egalitarian utopia. Luck egalitarians can be criticized for having boxed themselves into the realm of ideal theory, but not for humiliating and stigmatizing the victims of brute luck through shameful revelation.

Unlike Anderson and Scheffler, Wolff at one point explicitly maintained that shameful revelation is also a problem for ideal theory luck egalitarianism. He objected to the LCP “even in an ideal egalitarian society” because he believed (and may still believe) that there is “little, if any, good reason” to think that people are capable of “overcom[ing] the prejudice against those of low talent.” In response, the luck egalitarian apologist would surely point again to Rawls’s own idealizing assumptions. His claim wouldn’t just be that


since Rawls made them that luck egalitarians can also make them, but that idealizing assumptions, like the assumptions that citizens have the two moral powers (the capacity for a sense of right and justice, and the capacity to form and pursue a conception of the good\textsuperscript{334}), and that citizens do not feel shame when brute luck inequalities are nullified, are part and parcel of ideal theory theorization. Ideal theorists are entitled to assume away prejudices and stereotypes in order to consider the nature and attributes of the fully just world.\textsuperscript{335} Luck egalitarians, in particular, are entitled to assume away “prejudice against those of low talent”\textsuperscript{336}, not because it doesn’t exist but precisely because it wouldn’t exist in the fully just world.\textsuperscript{337} With shame and pity out of the way, the stigma objection is (as Wolff himself seems to admit) not a problem for luck egalitarians.\textsuperscript{338}

b. The Value Pluralist Rebuttal

Luck egalitarians might concede that the stigma objection is an important one and agree that perhaps it cannot be fully sidestepped through an appeal to the scope limitation rebuttal, but also claim that they can nevertheless easily accommodate its concerns. They can agree that any reasonable construal of egalitarianism is pluralist, and properly concerned with values other than the limited aspects of the value of fairness reflected in the LCP. Luck egalitarians can hold fast to the importance of fairness without embracing moral monism, and they can welcome the balancing of values that would necessarily precede any all-things-considered determinations.

\textsuperscript{334} Rawls, 1999a; Rawls, 1999b.

\textsuperscript{335} See Robeyns, 2008: 353-55.

\textsuperscript{336} Wolff, 1998: 115.

\textsuperscript{337} See Robeyns, 2008: 354.

\textsuperscript{338} See Wolff, 2010: 343.
This value pluralist rebuttal to the stigma objection follows the model of the value pluralist rebuttal to the harshness objection. The claim is that because we can understand the LCP to apply to only those holdings that remain after basic needs have been met, and perhaps after other aspects of economic, political, and social justice have been guaranteed, no significant stigmatization will attend the collection of information or the transfer of holdings. Pluralist luck egalitarians might also endorse the scope limitation rebuttal, but their more fundamental and powerful response to the stigma objection would include an acknowledgement that at least one other value—fraternity—would tell against any measures that would disrespect or humiliate the citizens of any truly egalitarian state. The administrators of the luck egalitarian state simply cannot require shameful revelation, the value pluralist rebuttal says, because shameful revelation would contravene the value of fraternity and the concern for preventing humiliation and stigmatization underwritten by that value. There is an obvious tension between fairness and fraternity at play here, and a balancing would have to take place that would surely result in tradeoffs between the two values. The pluralist luck egalitarian’s beliefs are, then, that fairness is not forever trumped by fraternity or any other value, and that the LCP can and should solely govern the distribution of holdings not already earmarked for the satisfaction of more pressing concerns.

3. Conclusions
   a. Partial Rejection of the Scope Limitation Rebuttal

I partially reject the scope limitation rebuttal not because I don’t think it works, but because I think it gives up too much ground and represents a second-best refutation of the stigma objection. It only makes sense for luck egalitarians to fall back on idealizing assumptions when they absolutely must, and it is better to accommodate the values behind
the stigma objection themselves than to simply assume away the problem to which they apply. It is more powerful for the luck egalitarian apologist to say, “We can accommodate the specific values (and more)” than to say, “We don’t need to accommodate the specific values because we’ve imagined the world in such a way that fairness is the only concern.”

It surely is unwise for luck egalitarians to paint themselves into the corner of only engaging in ideal theorization, but the larger concern has to be with making the best argument and taking seriously as many values as possible. The LCP remains meaningful even if it is wholly relegated to the realm of highly idealized ideal theory, but it is leaps and bounds more powerful and important if luck egalitarians do not assume away value conflict, and if they also work to revise and moderate the approach so as to be applicable to the non-ideal real world. Luck egalitarians will only truly defeat the stigma objection when they can do two things: (1) accommodate rather than assume away the conflict of values (especially conflicts between the specific values themselves), and (2) point to a scheme for the revised and moderated substantive expression of the LCP that could conceivably work in non-ideal theory.

b. Preliminary Rejection of the Value Pluralist Rebuttal

The best defense against the stigma objection is one that (1) acknowledges and accepts the truth of value pluralism and the necessary impact of other values on the collection of information required in order to achieve legitimate distributions, and (2) does not relegate the LCP to ideal theory. Luck egalitarian apologists can limit the scope of their approach not to ideal theory, but (as Tan does) to the province of distributive justice, acknowledging (as Tan does not) that the LCP will need to be tempered by our fraternal concerns in order to prevent (or, at least, limit the extent of) shameful revelation. One question, however, is whether or not the accommodation of these fraternal concerns (shared by Scanlon,
Anderson, Scheffler, Wolff, and others) yields something no longer recognizably luck egalitarian. Until this has been determined, the stigma objection, though weakened by the scope limitation and value pluralist rebuttals, remains standing and crucially important.

V. Conclusion

It is unwise for the defenders of luck egalitarianism to rely as heavily as they do upon ideal theory scope limitation arguments. This strategy is unwise because it relegates all or most of the approach’s appeal to an unreachable utopia, and more importantly, because it tends to ignore the philosophical “truth of value pluralism” and the inevitability of value conflict. The luck egalitarian utopia is typically marked by the maximization of certain aspects of fairness at the expense of other values like humanitarianism and fraternity. This is surely fine so far as it goes (as a way of working out certain issues regarding fairness), but it also begs the question of how valuable an approach to distributive justice can possibly be that only works in ideal theory, while ignoring the impact of other values, including those specific values championed by other liberal egalitarians and evident in Scanlon’s Objections.

It is for these reasons that the value pluralist rebuttals stand up better to the harshness and stigma objections. Those rebuttals acknowledge, accept, and seek to accommodate the plurality of values, including the specific values. The proponent of the value pluralist rebuttal to the harshness objection admits that the LCP is harsh to the victims of option luck, acknowledges that the LCP implicates values other than distributive fairness, accepts that these other values must have an impact on distributions, and promises to somehow accommodate that impact within the luck egalitarian framework. Likewise, the proponent of the value pluralist rebuttal to the stigma objection admits that the implementation of the LCP would humiliate and stigmatize the victims of brute luck (at least within the context of non-ideal theory), acknowledges that the LCP implicates values other
than distributive fairness, accepts that these other values must have an impact on distributions, and promises to somehow accommodate that impact within the luck egalitarian framework.

What would it mean to accommodate the specific values within a luck egalitarian framework? First and foremost it would mean ensuring that the LCP does not yield distributions that cause or contribute to the avoidable suffering of individuals regardless of considerations of responsibility and blame. This outcome is the impact of humanitarianism on distributions. The luck egalitarian defender would also need to ensure that the LCP does not yield distributions that reflect, cause, or contribute to discrimination, oppression, exploitation, humiliation, stigmatization, or domination, regardless of considerations of responsibility and blame. This outcome is the impact of fraternity on distributions. Finally, the luck egalitarian defender would also need to ensure that the LCP does not yield distributions that reflect, cause, or contribute to unequal political or economic opportunities or reflect the unequal provision of benefits to the equally entitled. This outcome is the impact of the procedural aspects of fairness on distributions.

Moderate luck egalitarianism in the style of Kok-Chor Tan is concerned solely with distributive justice, and only applies the LCP as a kind of ideal theory grounding principle to the distribution of holdings that remain after basic needs have been met. Tan-style luck egalitarianism could also be further moderated, such that the LCP would only apply to the distribution of holdings that remain after the distributive impact of each of Scanlon’s Objections has been fully accommodated. In other words, the LCP would eliminate the impact of brute luck and give free play to option luck only so long as and only to the extent that doing so in no way undermines the full satisfaction of Scanlon’s Objections. It is appropriate to wonder, however, whether or not any holdings would remain after Scanlon’s
Objections have been satisfied and, if so, whether or not an application of the LCP to this subset of holdings is enough to warrant calling the approach a species of luck egalitarianism.

The approach that would result from such a value pluralist moderation of luck egalitarianism would surely look as much like other approaches to distributive justice as it does like luck egalitarianism. The resulting hybrid approach would only appear as luck egalitarian when it comes to whatever holdings, if any, remain after Scanlon’s Objections have been satisfied. The approach would appear democratic egalitarian in terms of its focus on fraternity (the distribution of holdings would not reflect or yield inequalities forbidden by the status equality and non-domination objections\(^{339}\)), somewhat prioritarian in terms of its focus on humanitarianism (the distribution of holdings would not reflect or yield inequalities forbidden by the humanitarian objection\(^{340}\)), and perhaps Rawlsian in terms of its concern for procedural as well as distributive fairness (the distribution of holdings would not reflect or yield inequalities forbidden by the real equality of opportunity objection\(^{341}\)). There is nothing wrong (which is not to say nothing problematic) with attempting to combine these approaches in order to satisfy Scanlon’s Objections, but there is something wrong with continuing the call the approach that emerges from this hybridization luck egalitarian. What we’re left with is really a kind of “pluralist egalitarianism”, an approach that is plural, both in terms of the values that it accommodates, and in terms of the approaches that it combines or borrows from.

Luck egalitarianism can be revised and moderated to accommodate the values and concerns which underlie Scanlon’s Objections. The approach to distributive justice that


\(^{340}\) See, e.g. Tan, 2008; Tan, 2011; Tan, 2012; Arneson, 2000; Arneson, 2008.

\(^{341}\) See Rawls, 1999a; Rawls, 2001; see also, Scanlon, 2003a; Scanlon, 2007.
results from this revision and moderation does not, however, retain enough of the characteristics of canonical or even moderated luck egalitarianism to warrant consideration as a species of luck egalitarianism. That said, what matters more than the question of appropriate categorization is the alternative pluralist egalitarian approach to distributive justice that is born out of luck egalitarianism’s revision. The pluralist egalitarian approach would seem to satisfy Scanlon’s Objections, combine attractive aspects of a number of popular approaches to distributive justice, and represent an intriguing alternative to the singular adoption of those popular approaches that could benefit from further articulation and debate by and between liberal egalitarians.
CONCLUSION

Each of the chapters in this dissertation concerns itself with the goal of maintaining an appropriate balance between liberal values and, in so doing, contributes to an understanding of liberal pluralism. Liberal pluralism, because of its interest in maintaining an appropriate balance of liberal values, also invalidates the attempts of some liberals to promote particular liberal values to exclusion of others. Theorists who insist upon the liberal state’s cultivation of robust autonomy for all citizens, or its guarantee of a congruence of values between the public and private spheres, are not sufficiently sensitive to the impact that such insistence would have on other liberal values like liberty, toleration, and privacy. This is also true for those theorists who emphasize fairness to the exclusion of fraternity and humanitarianism, and for those who emphasize fraternity to the exclusion of fairness.

Chapter 1 criticized those liberals (so-called “autonomists” like George Crowder, Will Kymlicka, Susan Moller Okin, and Daniel Weinstock) who insist upon the liberal state’s cultivation of robust autonomy to the detriment of other liberal values like liberty, toleration, and privacy. It also defended the so-called “exit rights strategy” of the liberal pluralists William Galston and Jeff Spinner-Halev, claiming that this strategy is far more sensitive to concerns related to the values of liberty, toleration, and privacy than its rivals. The chapter ultimately concluded that the liberal pluralist exit rights strategy is superior because it reflects an explicit effort to not only safeguard choice and exit for the times when individuals change their minds and wish to leave their cultures, but also to provide them with the complementary and substantive option to remain if they so choose.
Chapter 2 criticized Corey Brettschneider’s conception of “democratic persuasion” and his attempt to split the difference between “muscular democrats” like Stephen Macedo, Brian Barry, Ian Shapiro, and Susan Moller Okin and pluralists like Galston, Nancy Rosenblum, and Spinner-Halev. It considered whether or not Brettschneider’s intermediate position was sufficiently sensitive to the importance of maintaining a balance between the liberal impulse to promote values like equality and autonomy, on the one hand, and the liberal concern to foster toleration and to safeguard liberty and privacy, on the other. The chapter ultimately concluded that Brettschneider’s intermediate position was not sufficiently sensitive to maintaining the balance of liberal values, but that his insights could be channeled into a more constrained view that would pass liberal pluralist muster.

Chapter 3 criticized both the proponents and opponents of the luck egalitarian approach to distributive justice. It claimed that it is possible to revise (or merely reconceptualize) luck egalitarianism in such a way that it is no longer solely driven by a concern with the value of fairness. The chapter ultimately concluded that an avowedly pluralist conception of luck egalitarianism could sidestep a number of important objections, but that the resulting “pluralist egalitarian” approach to distributive justice would have as much in common with other popular approaches to distributive justice as it does with luck egalitarianism.

The policy implications of these conclusions are widespread and often somewhat inchoate. Generally speaking, the policies of liberal democratic states are consistent with liberal pluralism when they do not reflect an imbalance of liberal values. This means, for instance, that they do not insist upon fairness in the distribution of wealth or capabilities without simultaneously insisting on the objective well-being and equal social status of all citizens. It also means that liberal pluralist states do not concern themselves with the social
status of citizens without simultaneously concerning themselves with issues of fairness and objective well-being. The liberal pluralist state does not pursue fairness to the exclusion of other liberal values (like humanitarianism and fraternity), nor does it pursue fraternity to the exclusion of other liberal values (like fairness and humanitarianism). It does not abandon its citizens even when it would “fair” to do so, nor insist that they shame themselves in order to receive the benefits to which they are entitled. The liberal pluralist state does not ignore unfair inequalities in wealth or capabilities simply because all citizens are procedurally equal and everyone seems to have “enough” in terms of resources. Liberal pluralism, to offer a few somewhat concrete examples, rejects (1) the complete absence of a social safety net, (2) procedures for the determination and transmission of social services that cause beneficiaries to feel shame, and (3) a tax policy wholly unconcerned with redistributing wealth in order to compensate for unchosen circumstances.

The policies of liberal democratic states are also consistent with liberal pluralism when they are careful not to let liberal values like autonomy, equality, and democracy crowd out others like liberty, toleration, and privacy, and vice-versa. This means that they do not promote autonomy, equality, and democracy without simultaneously concerning themselves with the impact of that promotion on liberty, toleration, and privacy. It also means that they do not concern themselves with guaranteeing liberty, toleration, and privacy without simultaneously working to ensure civic equality, democratically sound public institutions, and at least a minimal degree of autonomy for all citizens. Liberal pluralism is inconsistent with (1) prohibiting parents from opting their children out of instruction designed to promote robust autonomy and transform them into liberals, (2) revoking the tax-exempt status of non-liberal groups that do not threaten civic unity or liberal purposes, and (3) manufacturing
official government speech the intention of which is to overtly condemn or criticize particular non-liberal cultures or groups.

It is important to acknowledge, in conclusion, that liberal values can only be balanced in the context of democratic deliberation, and that the optimal balance is clearly elusive and perhaps even unattainable. There is, however, a world of difference between acknowledging notions such as these and failing to keep the good of achieving a balance of values in mind when developing theory and generating policy prescriptions. Liberal theorists who refuse to seek this balance, or pretend that there is nothing to balance in the first place, run the risk of supporting policies that undermine the promise of liberalism even as they promote particular liberal values. This dissertation serves as a reminder of the costs of inattention and the benefits that can be achieved through the cultivation of explicitly liberal pluralist strategies for securing liberal democracy.
REFERENCES


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