

UC Riverside

UC Riverside Electronic Theses and Dissertations

Title

Tolerance as a Moral and Political Virtue

Permalink

<https://escholarship.org/uc/item/0cz5p3rb>

Author

Affolter, Jacob

Publication Date

2010

Peer reviewed|Thesis/dissertation

UNIVERSITY OF CALIFORNIA
RIVERSIDE

Tolerance as a Moral and Political Virtue

A Dissertation submitted in partial satisfaction
of the requirements for the degree of

Doctor of Philosophy

in

Philosophy

by

Jacob Dennis Affolter

June 2010

Dissertation Committee

Dr. Gary Watson, Chairperson
Dr. Bronwyn Leebaw
Dr. Andrews Reath
Dr. Georgia Warnke

Copyright by
Jacob Dennis Affolter
2010

The Dissertation of Jacob Dennis Affolter is approved:

Committee Chairperson

University of California, Riverside

Acknowledgments

When I finished this dissertation, I realized that the phrase “there are too many people to thank” is not a cliché.

First, I would like to thank my committee for their hard work and support. In particular, Gary Watson patiently read numerous drafts of chapters, not all of which made it into the final version. I am especially grateful for his initial suggestion that I write a dissertation on tolerance. Also, Georgia Warnke’s advice on how to organize the dissertation gave me new direction and confidence not only for the dissertation, but for all of my research. I can truly say that Prof. Warnke saved both my Master’s Thesis and my dissertation.

I also thank all of the people who patiently listened while I tried to formulate ideas about toleration. I am especially indebted to Rachel Anderson-Rassam, Jason Chang, Chris Franklin, Joshua Hollowell, Mark Jonas, Jeff Otter, and Neal Tognazzini. The graduate discussion group read multiple drafts of several chapters. I am especially grateful for their help in reformulating Chapter Three.

The late Prof. Paul Hoffman was a great help in all stages of my graduate studies. He served as advisor for my M.A. Thesis, led the graduate discussion group, and served as placement director. I was looking forward to learning more from him in the future, both about the discipline of Philosophy in general and Early Modern Philosophy. May his memory be eternal.

I would also like to thank Janet Mauren, Jayne Gayles, Kathy Saylor for their help with administrative matters, especially when we had to coordinate from across the country.

Several people helped by proofreading the final drafts of one or more chapters. This group includes Kh. Denise Reardon, Chris Kruse, Rev. Lance Long, Elizabeth Meyer, Jonathon Allen, Clerk Shaw, and David Palmer.

I also thank all of the family and friends who supported me through this. My sister Joy Long gave constant support and encouragement. Mrs. Annette Kirk and the Wilbur Foundation provided financial and moral support, and a perfect setting for reading and reflecting on the issues in the final two chapters. Above all, Dennis Affolter helped in more ways than I can list. I am especially grateful for his help in working through legal questions, terminology, and citations. I am also grateful to Dennis and Nancy Affolter for sacrificing their own interests by encouraging me to move halfway across the country in pursuit of education.

I am especially grateful for the support and encouragement of Fr. Josiah Trenham and Joshua Bright. Without their advice and encouragement at a crucial time, I would not have been able to finish the dissertation.

Finally, I am grateful to my grandmother, Mrs. Theresa Aileen Rich. She had the courage and dedication to pursue higher education at a time when most women did not get the opportunity. She also passed on a strong belief in the importance of education to her children. Without her hard work and sacrifice, I would not have been able to pursue this degree.

In Memory of
Nancy Jane Affolter (1947-1996)

and

Theresa Aileen Rich (1917-2002)

“She openeth her mouth with wisdom; and in her tongue is the law of kindness. She looketh well to the ways of her household, and eateth not the bread of idleness. Her children arise up, and call her blessed ...” The Book of Proverbs, 31:26-8

ABSTRACT OF THE DISSERTATION

Tolerance as a Moral and Political Virtue

by

Jacob Dennis Affolter

Doctor of Philosophy, Graduate Program in Philosophy

University of California, Riverside, June 2010

Dr. Gary Watson, Chairperson

This dissertation defends the virtue of tolerance against two types of critics. First, it defends tolerance against critics who claim that it is not a virtue at all. Second, it defends tolerance against critics who claim that we should dispense with “merely” tolerating others in favor of a more welcoming approach to difference. I agree that in many cases, we should celebrate diversity rather than simply put up with it. Moreover, we ought not to tolerate certain behaviors, such as murder or racial discrimination. Nevertheless, in many cases, we ought to view other people’s behavior as the kind of thing that we ought to disapprove of, but not act against. That is, we ought to tolerate others’ behavior.

In support of this claim, I argue that there is a hidden cost to attempts to leave tolerance behind. Without tolerance, people cannot engage in social cooperation despite serious moral disagreements. We may be able to create a society that allows difference.

However, without tolerance, we cannot have a society that permits serious moral disagreement. Having made this argument, I go on to discuss ways that we can ensure

that our moral and political principles leave room for tolerance. In particular, I discuss ways that we can enable people to respect each other's freedom, while still taking their moral disagreements seriously.

Table of Contents

| | |
|--|-----|
| Introduction | 1 |
| I. Preliminary Definitions | 2 |
| II. A Few Implications of the Definitions | 12 |
| III. Goals and Outline | 15 |
| Chapter One: A Defense of Tolerance as a Moral Virtue | 18 |
| I. The Strangeness of Acts of Toleration | 18 |
| II. The Strangeness of the Virtue of Tolerance | 23 |
| III. Moving Beyond Tolerance | 28 |
| IV. Against Leaving Toleration Behind | 34 |
| V. Qualifications | 36 |
| VI. Conclusion | 40 |
| Chapter Two: David Heyd on Political Tolerance | 42 |
| I. Terms of Debate | 42 |
| II. Tolerance and Modern Democracy | 43 |
| III. Two Responses to Heyd | 50 |
| IV. A Possible Reinterpretation of Heyd: States and Governments | 56 |
| V. Another Reinterpretation of Heyd: Core Commitments | 57 |
| VI. Toleration and Democratic Politics | 63 |
| VII. Conclusion | 67 |
| Chapter Three: John Rawls and Kok-Chor Tan on International Toleration | 69 |
| I. The Problem of International Toleration | 70 |
| II. The Principle of International Toleration in Context | 72 |
| III. International Order for Rawls and his Critics | 81 |
| IV. The Place of Toleration in Rawls's Philosophy | 89 |
| V. Decent States and Public Reason | 96 |
| VI. Response to Tan | 102 |
| VII. A Point of Agreement | 103 |
| VIII. Conclusion | 112 |

| | |
|---|-----|
| Chapter Four: Robert Audi and Christopher Eberle on Secular Reason | 113 |
| I. Tolerance and Secular Reason | 113 |
| II. Eberle on Civic Virtue | 115 |
| III. Audi on Civic Virtue and Secular Reason | 117 |
| IV. Challenging the Question | 123 |
| V. A Puzzle for Audi | 129 |
| VI. Replies to Objections | 134 |
| VII. An Example | 137 |
| VIII. Conclusion | 141 |
| Chapter Five: Will Kymlicka on Autonomy and Political Liberalism | 143 |
| I. Clarifying Terms | 144 |
| II. Kymlicka's Position on Liberalism and Autonomy | 147 |
| III. Kymlicka's Critique of Rawls | 152 |
| IV. Kymlicka's Argument against Rawls's Political Liberalism | 156 |
| V. Initial Difficulties with Kymlicka's Arguments | 159 |
| VI. Response to Kymlicka's First Argument: A Liberal Argument for Political Liberalism | 161 |
| VII. Response to Kymlicka's Second Argument: Political Liberalism is not Futile | 171 |
| VIII. An Objection | 176 |
| IX. Conclusion | 186 |
| Chapter Six: Toleration and Racist Speech | 188 |
| I. A Threat to Mutual Toleration | 189 |
| II. Justice Scalia on Speech, Freedom, and Regulation | 191 |
| III. Critical Race Theorists and the Harm of Racist Speech | 194 |
| IV. Responses to Critical Race Theorists | 201 |
| V. Speech Regulation and Mutual Toleration | 205 |
| VI. Three Dangers of Speech Regulation | 219 |
| VII. Mitigating the Dangers | 232 |
| VIII. Conclusion | 235 |
| References | 237 |
| Works Cited | 267 |

Introduction

Most people in the United States agree that tolerance plays an important role in public life. However, what it means to be tolerant and the appropriate limits of what we should tolerate are a matter of serious debate. Some critics have gone so far as to argue that tolerance is not a virtue that we should be anxious to promote.

In response to such critics, I will argue that tolerance is a virtue, and that it plays an indispensable role in public life for pluralist democracies. The virtue of tolerance helps us deal with a number of social problems. At the same time, we must be careful not to expect too much out of tolerance. It does not necessarily bring us to complete agreement or even mutual esteem. However, tolerance does enable us to live in a certain amount of harmony and agreement with each other, despite serious ongoing disagreements. For example, tolerance makes it possible for zealous Protestants and zealous Catholics to cooperate peacefully with each other in the United States, despite the fact that many people in both groups disapprove of each other's beliefs and practices.

This point brings out both the promise and the limits of tolerance. Tolerance does not eliminate disagreement and opposition. It does not bring us to agree on the truth. Nor does it generally bring us to see our differences as something to cherish and affirm rather than as reasons for opposition. Rather, it allows us to engage in peaceful social cooperation despite our disagreements. These are the limits of the virtue of tolerance. At the same time, these limits point to its promise. This virtue does not bring us to agreement, but it does help us to find ways to grant each other a certain measure of peace

and freedom while the disagreements continue. In that respect, tolerance helps us form a kind of harmony while remaining true to our conflicting beliefs and practices. Moreover, I will argue that to the extent that we reject tolerance, we reject the goal of maintaining a community that enables mutual respect while allowing people to take their moral, religious, and cultural disagreements seriously.

I. Preliminary Definitions

A. Tolerance and Toleration

In the course of the dissertation, I will discuss two closely related concepts. First, I will discuss the type of action that I will call “the action of toleration”, or simply “toleration.” Second, I will talk about a trait of character that I will call “the virtue of tolerance”, or simply “tolerance.” In practice, we use the terms interchangeably.¹ For clarity’s sake, I will make a distinction between the two terms, using “tolerance” exclusively to refer to the trait of character and “toleration” to refer to the action.

I draw a distinction between these two terms in order to emphasize that the virtue of tolerance is not simply a disposition to take the action of toleration.² At the very least, the virtue of tolerance requires a sense of when the action of toleration is appropriate and when it is inappropriate. For example, the virtue of tolerance does not require that we should tolerate violent activity by the Ku Klux Klan.³ In fact, I will argue later that a person who takes the action of toleration in such cases thereby shows that he lacks the virtue of tolerance to some degree.

In this respect, I draw on Aristotle’s observation that a virtue is a mean between two extremes. For example, a person with the virtue of courage does not rush foolishly into

danger. A person who consistently took such actions would be foolhardy, not courageous.⁴ Similarly, a person who never acts on his opposition to anything probably has some vice, such as overindulgence or just plain laziness.⁵ For example, the action of tolerating something like hateful violence against innocents is not consistent with the virtue of tolerance. Whatever the virtue of tolerance is, it is not simply a disposition to take the action of toleration in all circumstances.

B. Toleration (The Action)

In order to explain what I mean by the virtue of tolerance, I will start by defining what it means to tolerate something. When I use the term “to tolerate”, I mean that someone disapproves of someone else’s behavior, but restrains his disapproval.⁶ For example, suppose that Alice believes that people should not send their children to private high schools. In that case, there are a number of ways that Alice could tolerate people who send their children to private high schools. She could do nothing about it. She could argue with people, but not take any political action. She could write to her Congressman and encourage him to oppose voucher systems, but also encourage him not to pass laws that make private high schools illegal. In general, Alice tolerates the behavior of people who send their children to private high schools if she believes that there are actions that she could take to prevent them from doing so or punish them for doing so, but restrains herself from attempting such actions.⁷

In presenting this explanation of what it means to tolerate, I should make two qualifications. First, toleration is partly a matter of degree. A person can tolerate another person’s behavior fully or partially. Suppose that Alice acts on her disapproval of private

schools by writing to her Congressman and encouraging him to oppose voucher systems. We might say that she only gives them partial toleration.⁸

In many cases, a person who takes restrained action against some behavior counts as partly tolerating that behavior. Nevertheless, full toleration does not require that the person who disapproves take no action whatsoever. Some amount of active opposition to a behavior is compatible with full toleration. For example, suppose that Alice donates money to various charities, but consistently refuses to donate money to private schools. If the refusal to donate money were the extent of her opposition, we would probably not say that Alice refuses to fully tolerate private schools. Rather, her actions would more likely count as a refusal to support such schools.⁹

In many cases, people will disagree about which actions count as a refusal to fully tolerate some behavior. For example, suppose that Bertram is a British Anglican who believes that the government of the United Kingdom should support Anglican private schools in England but not Jewish, Muslim, or Roman Catholic private schools. People's intuitions may disagree about whether this counts as a refusal to fully tolerate Jews, Muslims, and Roman Catholics. Whether a person counts this as a refusal to tolerate or refusing an additional benefit may depend partly on what he thinks that citizens are entitled to. If a person thinks that people are entitled to full support for whatever form of education they consider appropriate, then he would probably think that refusing to fund schools for Muslims counts as partly withholding toleration. If a person thinks that people are only entitled to engage in private worship as they please, then he would probably think that refusing to fund schools for Muslims is consistent with full

toleration.¹⁰ Granted, it would constitute unequal treatment, but it is not clear that toleration requires completely equal treatment.¹¹

I draw out this point in order to argue that granting someone full toleration means that we guarantee him a certain floor of good treatment. To the extent that Alice refuses to grant this floor to people whose behavior she disapproves of, she only partly tolerates their behavior. People will likely disagree as to what this floor should be. To the extent that they disagree, they will disagree about what behaviors count as a refusal to fully tolerate. Nevertheless, once this floor is granted, the refusal of any further benefits or privileges count as a refusal of something like support, equal treatment, or affirmation. Once the floor is guaranteed, a decision to withhold of further good treatment may be wrong, but it does not count as withholding full toleration.

The second qualification is that not every case in which a person restrains his disapproval counts as tolerating in the relevant sense. It also matters what the person's reasons are for restraining his disapproval. There is a general sense of the word "tolerate" that just means putting up with something.¹² For example, if I just put up with loud music because I am timid or lazy, I tolerate it in one sense. However, when we talk about toleration in moral and political contexts, we often use the term in a more specific sense. In this sense, an action only counts as tolerating some behavior if the person restrains himself on the basis of a certain type of reason.¹³ For example, the restraint cannot be based on purely selfish reasons. Suppose that Alice wants the government to take more aggressive action against private schools. Then suppose that Alice restrains this desire, but only because she owns a catering business and private school fundraisers

are a major source of her income. If it were not, she would immediately write to her Congressman and urge aggressive action. In this case, Alice's restraint does not count as tolerating in the relevant sense. Similarly, suppose that Zachary strongly disapproves of his teenager's interest in death metal. Zachary thinks about burning his son's records, but Zachary refrains from burning them *only* because he guesses that the interest in death metal is just a phase. However, if Zachary thought that burning the records would be effective, he would burn them with no hesitation. Zachary's restraint is not toleration in the relevant sense. In contrast, if Alice's reason for restraining herself is that she believes that people have a right to educate their children as they see fit, then her decision to restrain her desire to take aggressive action against private schools counts as toleration.

Roughly speaking, a person fully tolerates another person's behavior when the reason that he tolerates the behavior is that the behavior meets some criterion such that one has an automatic obligation to grant it a certain floor of good treatment. So, for example, suppose that Vincent is convinced by the argument of Mill's *On Liberty*. Vincent also believes that it is always acceptable to argue with people about their behavior. Then suppose that he decides that his unmarried adult neighbor's overeating is purely self-regarding behavior.¹⁴ Vincent might then decide that he cannot legitimately do more than argue with his neighbor about his unhealthy behavior. In that case, his decision not to stage an intervention would count as granting full toleration. A refusal to even argue with the neighbor would count as something more than toleration.¹⁵ The decision not to stage an intervention would count as fully tolerating because Vincent recognizes the

behavior as meeting a criterion – self-regarding behavior –such that he is obligated to guarantee it a certain floor of good treatment.

In general, a person tolerates other people’s behavior when he disapproves of their behavior, but he believes that their behavior meets a criterion such that he has an automatic obligation to restrain his desire to act against their behavior. A person *fully* tolerates other people’s behavior when he restrains his desire to act against their behavior to the extent of granting them a certain floor of good treatment to which he believes that people are generally entitled. A person *partially* tolerates other people’s behavior when he restrains his desire to a lesser extent.

C. Tolerance (The Virtue)

The virtue of tolerance is a practical understanding of when to tolerate coupled with a disposition to tolerate -- or not tolerate -- when appropriate. Just as tolerating involves disapproval and restraint, the virtue of tolerance involves two components: a practical understanding of when one ought to disapprove and a practical understanding of when one ought to restrain that disapproval.¹⁶

The first component of the virtue of tolerance involves a practical understanding of when one should disapprove coupled with a willingness to follow this understanding. A person does not count as tolerant if he does not have a reasonable sense of what he ought to disapprove.¹⁷ This claim may sound surprising, given that merely disapproving of something does not count as refusing to tolerate it. After all, a person has to disapprove of something before he can tolerate it.

In support of the claim that excessive disapprovals count as a failure to fully cultivate the virtue of tolerance, John Horton presents a puzzle called the problem of the “ensorious tolerator.” The censorious tolerator is someone who unreasonably disapproves of many behaviors that are clearly good or indifferent, yet restrains his desire to act against those behaviors.¹⁸ Suppose that Walter vehemently opposes interracial marriage, but on principle refuses to publically criticize people who enter into such marriages. Walter is a censorious tolerator. He is censorious because his disapprovals are excessive. At the same time, he tolerates interracial marriage. Even though he does a lot of tolerating, it does not seem that Walter has completely attained the virtue of tolerance. It seems like Walter’s bad judgment on this issue is a reason to ascribe to him some vice that stands opposed to tolerance, such as being prejudiced or judgmental.¹⁹ In support of this claim, imagine that Walter’s friends reason with him and convince him that there is nothing wrong with interracial marriages. We certainly should not say that Walter has gotten *less* tolerant. In fact, it seems natural to say that Walter has gotten *more* tolerant.²⁰ This example indicates that the virtue of tolerance involves a practical understanding regarding what one should and should not disapprove.

With respect to this first component, it is not enough that a person knows what he should disapprove and what he should not disapprove. He should also have a reasonable sense of how much he should disapprove of particular behaviors and in what way. A person’s judgments of others’ behavior could fail to be consistent with tolerance in at least three ways. First, the disapproval could be unreasonable. A person could disapprove of something that is clearly good or indifferent. Second, a person might

disapprove of something more than the object of their disapproval deserves. Consider, for example, the citizens of River City in *The Music Man*. A con artist, Harold Hill, manipulates them into moral outrage over the introduction of a pool table in the local billiard hall. Suppose we grant the doubtful claim that the pool table could have a bad influence on the local children. Nevertheless, the citizens of River City certainly come to disapprove of the tables far more than they should.²¹ Contrary to what Mr. Hill claims, pool tables are not a major threat to public morals. Third, a person might disapprove of someone's behavior that is not appropriate to the kind of failing in question. For example, consider Mr. Darcy in *Pride and Prejudice*. Several members of the Bennet family are pretentious and annoying, but Mr. Darcy's disapproval of their behavior seems more like the appropriate reaction to moral failures, not the Bennets' lack of manners.²²

The second component of the virtue of tolerance involves a practical understanding of when he should restrain the desire to act on his disapproval, and a disposition to act on that knowledge. Most obviously, when a person ought to restrain his desire to interfere with others, a perfectly tolerant person will restrain his desire to interfere. For example, a school district in Wisconsin set up its computers in a way that prevented students from accessing information on non-Christian religions.²³ Tolerance would require that the school district refrain from interfering with their students in this way. Less obviously, tolerance requires that a person should recognize when he ought *not* to restrain his disapproval. For example, suppose that Barry sees that his neighbor getting involved in more and more immediately self-destructive behavior. Moreover, Barry is the only person that the neighbor trusts. However, Barry believes in a very strong principle of

noninterference and carries it to such extremes that he never even tries to talk to his friend about his behavior. Barry's actions may count as tolerating his friend. However, it is not at all clear that Barry's counts in favor of calling him tolerant. In fact, if Barry habitually carries toleration to such extremes, then we might see this behavior as a reason to say that Barry does not have the virtue of tolerance. Rather, we might conclude that the fact that he habitually tolerates when he ought to interfere stems from a vice that just looks like tolerance.²⁴

D. Action and Virtue

These examples underscore my earlier point that the virtue of tolerance is not just a disposition to tolerate.²⁵ Sometimes, the virtue of tolerance does not call for a person to restrain his desire to act on his disapproval. In many cases, a person has a strong obligation to act on his disapproval. In those cases, the fact that a person tolerates other people may sometimes cause us to suspect that he has a vice that stands opposed to the virtue of tolerance. It might even induce us to question whether all of those other times that the person tolerates things were really instances of the virtue of tolerance.²⁶

Similarly, there are times when a person who tolerates another's behavior does not express the virtue of tolerance because one ought not to disapprove of that behavior in the first place. In those cases, a person who tolerates does not act in a way that is consistent with the virtue of tolerance. It seems more likely that his behavior expresses some vice, such as being judgmental. Consider again the case of Walter, who restrains his disapproval of interracial marriages. His attitude counts as a failure with respect to the virtue of tolerance, even though it leads him to tolerate. It is a failure with respect to the

virtue of tolerance because a fully tolerant person would not disapprove of interracial marriage in the first place.

To clear up some confusion, I would stress that the fact that someone fails to be tolerant does not make him *intolerant*. There are many different ways that a person can fail to be tolerant. On the censorious side he could have many vices, including being judgmental, prejudiced, intolerant, or rude. On the indulgent side, he could be indifferent to morality, overly indulgent, self-centered, or lazy. Any of these vices could represent a failure to fully cultivate the virtue of tolerance.²⁷ However, not all of them count as intolerant. In particular, a person who is excessively judgmental but always restrains himself from acting on his excessive judgments fails to be tolerant, but it is not clear that we should call him intolerant.

E. Vocabulary

At this point, I should clarify a few points about how I am using my terms. In normal speech, we use the terms “toleration” and “tolerance” interchangeably. For ease of explanation, I will distinguish between the two. I will use these terms as follows:

1. To tolerate: A person tolerates another person’s behavior when he BOTH:
 - a. Disapproves of another person’s behavior
 - b. AND as a matter of principle, restrains his inclination to take that action against that behavior.
2. Toleration: “Toleration” refers to an act or policy of tolerating a particular behavior.
3. Tolerance: Tolerance is a virtue by which a person:
 - a. Has a reasonable sense of what he should or should not disapprove
 - b. Has a reasonable sense of when he should or should not restrain his disapproval
 - c. Is disposed to act on this knowledge.
4. Tolerant person: A tolerant person has the virtue of tolerance.

5. Tolerant action: A tolerant action is any action that is consistent with the way that a tolerant person would respond to a particular situation.
6. Action that expresses the virtue of tolerance: An action expresses the virtue of tolerance when
 - a. the action is tolerant
 - b. AND the person does the action in part because he has the virtue of tolerance.
7. Acting from tolerance: A person acts from tolerance when his action expresses the virtue of tolerance.

To clarify the last two definitions, I should point out that in my use of the terms, a person can take a tolerant action without acting from tolerance. More generally, a person can act in a way that is consistent with a virtue without acting from that virtue. For example, a politician who kisses babies only in order to get their parents' vote does not act from the virtue of kindness.²⁸ Similarly, a person can take a tolerant action without acting from tolerance. For example, suppose that Tom only tolerates Roman Catholics because he makes lots of money selling candles to their churches. Tom's actions are tolerant in the sense that they are consistent with tolerance. Still, his actions do not express the virtue of tolerance, because Tom is acting from self-interested economic motives.

II. A Few Implications of the Definitions

Having given these explanations of what I mean by the action of toleration and the virtue of tolerance, I would point out three implications. First, in this way of using the terms, an action can be tolerant without being an instance of the type of action that I call "toleration." For example, suppose that Clarinda writes to her Congressman asking for very aggressive action against the KKK. In that case, Clarinda is not tolerating anybody. She does not tolerate the KKK because she is taking vigorous action against them. She

does not tolerate the KKK's victims because she esteems and supports the victims. Nevertheless, her action is tolerant because it is consistent with the virtue of tolerance. At least, it is consistent with the virtue of tolerance if we make the plausible assumption that tolerance requires that we show little toleration (if any) towards racist terrorists.²⁹

A second, related implication is that it is possible that a person could count as acting inconsistently with the virtue of tolerance just because he judges that some behavior is wrong, even though he does not act on this judgment. If his disapproval of some behavior is unreasonable or excessive, then he may lack tolerance, even though he does not refuse to tolerate people who engage in that behavior. For example, suppose that Darius mistakenly judges that it is immoral to listen to jazz. It may be the case that Darius fails to be tolerant, even though he in no way interferes with anyone who wishes to listen to jazz.

The third implication is that a person's actions can count as tolerating some behavior and even fully tolerating, even though he places himself in sustained, persistent opposition to the behavior that he tolerates.³⁰ For example, Christians and Muslims often criticize each other and attempt to convert each other. Their actions do not necessarily count as refusing to grant each other full toleration. In order to judge that these actions count as withholding toleration, we would have to hold that people are entitled to a floor of good treatment that includes freedom from religious proselytization. A person might make this judgment, and therefore judge such Christians and Muslims as refusing to fully tolerate each other.³¹ However, without this additional judgment the mere fact that they vigorously oppose each other does not entail that they refuse to tolerate each other.

This last point leads me to some key assumptions that I will make about the role that the virtue of tolerance plays in our public life. I take it that tolerance is a public virtue. In making this claim, I mean that it is a virtue that we hold each other responsible for, so that someone who lacks the virtue of tolerance would be regarded as engaged in publically undesirable behavior.³² This judgment is stronger than the mere judgment that they are doing something wrong. In the United States, many Christians and Muslims believe that members of the other religion are doing something wrong by holding false beliefs and engaging in deficient forms of worship. However, they do not always regard each other's behavior as *publically* undesirable. Even though they judge the other person's behavior as wrong, they do not see it as a transgression of any public norm. In fact, many Christians would regard other Christians as violating a public norm if they treated those who practice Islam as if practicing Islam violated a public norm.

This distinction between private and public matters is closely related to the distinction between right actions and legitimate action. Sometimes, a person will judge that an action is wrong, even morally wrong, but at the same time legitimate from a certain perspective.³³ For example, suppose that Fareed believes that the sale of marijuana causes harm to the individuals involved and to the public. For that reason, Fareed might think that a person who argues for marijuana legalization is doing wrong. At the same time, Fareed might judge that the action of arguing for marijuana legalization is legitimate. Fareed might even judge that as a public matter, it would be wrong to fault a person for advocating the legalization of marijuana.

This point brings me to the issue of the role that the virtue of tolerance is supposed to play in modern democratic states. I will assume that the virtue of tolerance is supposed to help us maintain second-order agreements about how to manage moral, cultural, and religious differences and disagreements.³⁴ One of the major questions that this dissertation will address is whether tolerance is fit to play this role. Some people argue that even though it is often necessary to tolerate, the virtue of tolerance plays a limited role. Other people argue that the virtue of tolerance is not enough, and we would do better to go beyond the virtue of tolerance and replace it with something more welcoming of difference. I will argue that both are mistaken.

III. Goals and Outline

In this dissertation, I will defend the view that the virtue of tolerance is well suited to serve the role of helping us to manage our disagreements.

In the first chapter, I defend the view that tolerance is a moral virtue. In particular, I respond to critics who charge that we should aim at something more welcoming than tolerating people. For example, critics have argued that we should affirm and celebrate difference, rather than “merely” tolerate people. In response to such critics, I argue that affirmation of difference has a place. However, we should be cautious about trying to dispense with tolerance as a matter of public virtue. If we do so, then we risk seriously limiting people’s ability to take their moral disagreements seriously.

In the second chapter, I defend the view that tolerance is a political virtue. I respond to an argument by David Heyd, who argues that modern democratic states do not consider it important or desirable to tolerate their citizens. Rather, Heyd argues that they

aim to be neutral in a way that is inconsistent with “merely” tolerating people. In response to Heyd, I will argue that even if these traits are more central to certain kinds of liberal democracy, the requirement that the government tolerate citizens still plays an important central role in any democratic politics for any kind of modern democratic state.

In the third chapter, I argue that it is coherent for liberal states to recognize a principled obligation to tolerate nonliberal states. To that end, I defend John Rawls’s argument for this claim. In particular, I respond to Kok-Chor Tan’s criticisms of John Rawls’s book *The Law of Peoples*. I conclude that Rawls’s account in his earlier work of the proper way to justify liberal regimes also justifies tolerating certain nonliberal regimes.

In the fourth chapter, I discuss the implications of the virtue of tolerance for the issue of secular reason. Robert Audi argues for a strong, general restriction on the application of religious reasons to political issues. In response, I argue that tolerance does require some restraints on the use of religious reasons in politics. However, these restraints should be applied on a case-by-case basis. A general prohibition would not be helpful.

In the fifth chapter, I defend John Rawls’s political liberalism against certain criticisms made by Will Kymlicka. Kymlicka argues that Rawls compromises liberalism’s central commitment to autonomy in order to win the support of communitarian groups. Kymlicka further argues that this compromise is both morally unacceptable and unlikely to work. I argue that Kymlicka is mistaken on both counts. I argue that Rawls has good reasons to fear that liberal states would unfairly interfere with citizens with restrictive moral or religious codes. Political liberalism guards against this

problem. Consequently, it is morally desirable on liberal grounds, and it is also capable of winning the support of citizens who might otherwise reject liberalism altogether.

In the final chapter, I apply my arguments from the previous chapters to the question of whether the government should regulate racist hate speech. In particular, I address the question of whether or not it poses a threat to free speech and mutual toleration. To answer this question, I focus on the question of whether it could lead to unfair restrictions on social conservatives. I argue that social conservatives had good reason to see a threat of intolerance. However, their fears were misdirected. Well-formulated, fairly implemented restrictions on racist hate speech need not threaten the speech interests that social conservatives were most eager to protect. In that respect, hate speech regulations do not necessarily pose a serious threat to mutual toleration.

Chapter One: A Defense of Tolerance as a Moral Virtue

Anyone who defends the claim that tolerance is a virtue is likely to come under attack from two directions. The virtue of tolerance is related to disapproval and restraint. Some people do not like the disapproval and some people do not like the restraint.¹ In this chapter, I will respond to both types of criticism of the claim that tolerance is a virtue. First, I will respond to critics who argue that tolerance is not a virtue because there is something incoherent about the idea that one ought to cultivate a disposition to restrain disapproval. Second, I will respond to critics who argue that tolerance is not enough. According to these critics, we should generally not tolerate people with whom we have differences. Rather, we ought to stop disapproving of them and respond more positively towards them. In reply to both sets of critics, I will argue that they present valuable insights. Nevertheless, I will argue that tolerance is a moral virtue and that there are serious problems with the attempt to dispense with tolerance in favor of something more affirming.

I. The Strangeness of Acts of Toleration

The first argument against the claim that tolerance is a virtue holds that the very act of choosing to tolerate is somehow incoherent. The simplest form of this argument says that if a person believes that something merits disapproval, then he must also believe that he ought to take some kind of action against it.² At least, he must believe that he ought to take such an action if he is able.³

Preston King presents one form of this argument. As King points out, we normally do not say that it is good to do nothing about evils. It would seem that if you disapprove of something, then the natural response is to think that you should take action against it. Granted, you might not be able to do so. However, if you could stop someone from doing something bad, it would seem that you should. Consider the case of Don Quixote. Early in Cervantes' novel, Don Quixote sees someone severely and unjustly beating a young child. Don Quixote stops the man from beating the child, and then moves on. As soon as Don Quixote leaves, the man beats the child even harder.⁴ A little later in the book, the child finds Don Quixote and tells him what happened. This time, Don Quixote does not help him.⁵ We do not commend Don Quixote for his refusal to defend the child from injustice, at least not if Don Quixote is able to do something effective to stop the injustice. Along these lines, we might think there might be something incoherent about the idea that it is good to tolerate something that one believes to be bad.

In response to this argument against toleration, King observes that it makes sense to restrain your disapproval if you disapprove of some behavior, but you disapprove even more of every action that you could take against it. For example, suppose that in 1960 the government of the United States could have effectively stopped Communism worldwide if and only if the United States Air Force engaged in a massive saturation bombing campaign against the Soviet Union. Anyone who disapproved of saturation bombing more than he disapproved of Communism would therefore find it appropriate to tolerate Communism. It would be possible to do something about it, but the costs would simply outweigh the benefits.⁶ Building on King's observation, I would point out that in

some cases a person might choose to partially tolerate something because he disapproves of the most effective means to stop it. Suppose, for example, that Bertram believes that he could prevent a number of abortions by burning down the clinics. Suppose also that he believes that every other effective option will almost certainly fail to stop some of the abortions that he would prevent by burning down the clinics. Nevertheless, Bertram might decide that he disapproves of some aspect of burning down the abortion clinics more than he disapproves of abortion. For example, he might strongly disapprove of risking the lives of the guards or taking the law into his own hands. If this disapproval were strong enough, then it would make sense to refuse to burn down the clinics. Instead, he could resort to means that he found less effective but morally acceptable, such as organizing boycotts, political lobbying, and attempting to persuade women not to go into the clinic. In that case, Bertram would have good reason to engage in partial toleration of abortion.

I think that King is partly correct, but his argument misses something important. These examples seem less like tolerance and more like putting up with something for strategic reasons. In such cases, a person only puts up with something because he has no morally acceptable means to stop it. For example, suppose that Manfred is a pacifist whose only way to stop Nell from shooting Oscar is to shoot and kill Nell. If Manfred refuses to kill Nell, we would not say that he tolerates Nell's behavior. He is simply unable to stop her by any morally acceptable means.

In contrast to these examples, many cases of tolerance involve cases in which people are willing to use certain means against one kind of behavior, but refuse to apply the

same means against other behaviors. In many cases, a person simply believes that a particular set of means that is acceptable to use against some kinds of behavior of which he disapproves is not acceptable to use against other kinds of behavior of which he disapproves.

For example, consider the case of Sarah, an Anglican living in Brighton, England, in 1905. Sarah disapproves of people who preach Islam. One of her friends asks her to sign a petition asking for Parliament to make it illegal to preach Islam in Britain. The proposed law calls for a six-month jail sentence. As a matter of political principle, Sarah refuses to sign the petition. This would be case of toleration, and it seems perfectly rational for her to oppose the law. Moreover, this decision would not necessarily indicate that Sarah disapproves of people who preach Islam to a lesser degree than the people who support the petition disapprove of Islam. Now suppose that another friend comes along and asks Sarah to sign a petition to abolish jail sentences for theft. When Sarah refuses, her friend says, “But you oppose putting people in jail for preaching Islam.” Her friend correctly identifies the puzzling point about such cases. Sarah does not generally disapprove of putting people in jail. However, she disapproves of putting people in jail for preaching Islam, even though she disapproves of preaching Islam. More importantly, Sarah’s position seems perfectly rational and consistent.

In this example, Sarah does not generally disapprove of the means that would be necessary to stop people from preaching Islam. Yet she disapproves of using those means to stop people from preaching Islam. Still, King could respond that in this case Sarah disapproves of the necessary means in that she thinks that they are out of

proportion to the offense. She might think that the evil of putting someone in jail outweighs the evil of preaching Islam. Perhaps all cases of religious toleration stem from a concern that the means of prevention are worse than the offense. Nevertheless, not all instances of toleration fit this pattern. Suppose that John believes that as a teacher, he must treat a wide range of moral views impartially. In particular, he believes that he must help students develop and defend ideas that he finds abhorrent. Now suppose that his student Alice comes to him with a paper defending traditional Western views on gender roles that John finds blatantly sexist. John knows from past experience that Alice sincerely supports these views. John might decide that he may not discourage her from pursuing the argument. It does not follow that John thinks that the means necessary to prevent her from engaging in this behavior are worse than the behavior itself. He could stop her by simply steering her towards another topic. He might think that any transgression of his perceived professional duty would be a much less serious moral wrong than the behavior that he wants to prevent. Nevertheless, he could see it as his duty to restrain himself from committing the lesser evil, even though it would stop a greater evil.

I use the example of John and Alice because it points to something that Preston King's argument does not quite capture. Sometimes, we refrain from taking certain actions against certain behaviors of which we disapprove because those behaviors fall into a certain category. However, we are willing to take the same actions against some other types of behavior, even though we think that the behaviors that we act against are much less serious. This seems to indicate that in many cases, we do not disapprove of the

means in question. Nor is it exactly a matter of proportion. Rather, we simply think that certain types of means are generally inappropriate for combating certain types of behavior. The ACLU often opposes the government when it takes relatively mild actions against things that the members of the ACLU find absolutely abhorrent.⁷ Similarly, many people who believe that abortion is far worse than arson or law-breaking still refuse on principle to burn down abortion clinics. That is the point that calls out for some explanation.

II. The Strangeness of the Virtue of Tolerance

For the purposes of this chapter, I will assume that there are many good reasons to tolerate. These reasons include respect for rights, avoiding bad consequences, and possibly other reasons.⁸ The main question for this chapter is whether the trait of character that we call “tolerance” is a virtue. Even if we grant that it make perfect sense to tolerate many kinds of behavior that we disapprove of, the claim that tolerance is a virtue might still be incoherent. As Bernard Williams says, “All toleration involves difficulties, but it is the virtue that especially threatens to involve conceptual impossibility.”⁹

Williams ultimately concludes that tolerance is a virtue, but he presents a particularly strong argument against that claim. To develop his argument, he starts with an historical observation that brings out some of the strangeness of the virtue of tolerance. Williams argues when religious toleration began to take hold in Early Modern Europe, the main reason for the change was not that the people came to restrain their disapproval. Rather, this change represented an increase in skepticism or indifference to religion.¹⁰ It was not

the case that people became better at restraining their disapproval, but rather that they came to care less about the disagreements in question.

Building on this point, Williams identifies a puzzling aspect of the claim that tolerance is a virtue. He points out that in the Early Modern period, people did not actually come to tolerate each other more than before. Rather, they simply stopped disapproving of each other as much as they did before. A person only tolerates when he disapproves of the action in question. People who believe that it is perfectly acceptable to play baseball do not tolerate playing baseball. Consequently, a decrease in the number of things of which a person disapproves of actually implies a decrease in the number of things that a person tolerates. I assume that when we promote tolerance, we are not encouraging people to disapprove of more things.¹¹ It would seem, then, that if we treat an increase in toleration as good, then we must be praising people for their restraint. That is, there must be something good about the act of restraining oneself from acting against things of which one disapproves.

This point raises a problem for the claim that tolerance is a virtue. There is something odd about praising a disposition to restrain one's action against things that are bad. It would seem at first glance that the natural reaction to bad things is to try to stop them. Imagine that you heard someone say, "I really admire Anna. When she discovers that something bad is happening, she rarely does anything about it." This statement would seem strange. Granted, if a person disapproved of many things that he ought not to disapprove of, then we would want him to restrain his desire to act on his disapprovals. However, in such cases what we would really want is that the person stop disapproving of

such things. At most, a disposition to tolerate would be a second-best trait. However, virtues are supposed to be traits that we praise. So, it seems odd to claim that tolerance is a virtue.

At this point, it might seem that I could respond to Williams by arguing that he uses a mistaken definition of tolerance. His argument seems to treat tolerance simply as a disposition to tolerate. In contrast, I argued in my introduction that tolerance involves a sense of when tolerating is appropriate. Moreover, on my definition, if a person overcomes a habit of disapproving of things that he ought not to disapprove of, then the person becomes more tolerant. Consequently, it would seem that Williams's arguments do not apply to my argument. Williams is correct that there is something odd about praising a disposition to tolerate. However, the virtue of tolerance involves more than just a disposition to tolerate.

While I could make this argument, I do not think that it addresses Williams's main concern. Williams's concern seems to be that we do not find something good about the act of tolerating itself.¹² In this sense, it is not clear being tolerant somehow makes us better people. This argument applies both to a general disposition to tolerate and to the virtue of tolerance in my sense.

To see the force of Williams's concern, consider a similar argument from David Heyd. Heyd argues that toleration is not a virtue in the sense that it is not a "naturally based trait of character."¹³ Drawing on Aristotle, Heyd argues that in the strongest sense of the term, a virtue must be something that realizes some natural human potential. Restraining the desire to act against bad behavior is called for in many situations.¹⁴ Nevertheless,

Heyd argues, “It is hard to see toleration in terms of self-realization or the actualization of human potential.”¹⁵

Whatever one thinks of Heyd’s argument, it is significant that he does acknowledge that tolerating others is often good. Moreover, he does see some connection between toleration and virtue. He specifically mentions that patience and temperance often call for toleration.¹⁶ I would add prudence to this list. However, these qualities do not always call for toleration. While some virtues often call for toleration in certain circumstances, Heyd does not consider this fact sufficient to qualify tolerance as a virtue.¹⁷

Circumstances may call for us to be curt with others or to keep secrets, but we do not think that a person’s life is somehow intrinsically better because he is sometimes curt or secretive. There is no virtue of “secretiveness”, nor a virtue of knowing when to be curt. In the strongest sense of term “virtue”, Heyd only includes dispositions towards an action that in and of itself makes a person’s life better if he regularly performs it.¹⁸

For the sake of argument, I will grant Heyd and Williams the claim that tolerance does not actualize self-potential, nor does it involve an action that is intrinsically beneficial to the person who performs it. I would simply reply that not all virtues meet this criterion. As Philippa Foot points out, many virtues are virtues simply because it benefits society if people have them.¹⁹

Along these lines, I would argue that tolerance benefits society because it helps people deal with a perennial human weakness. In the modern world, we often face situations that pull us in two directions. When we encounter something that we disapprove of, we can easily be tempted to make one of two mistakes. First, we often lose restraint and

overstep the bounds of appropriate action. We may interfere more than we have a right to interfere, and even when we have the right we may do more than is wise. In short, we often move too quickly from disapproval to action. Second, we can easily slide from legitimate restraint to simply not caring, even when we ought to care.²⁰ In general, the balance between disapproval and restraint is difficult to maintain. Moreover, human life regularly puts us in situations where we are tempted to lose that balance. Consequently, we need toleration, not to achieve some single internal or external good, but to fight normal human tendencies that prevent us from achieving other goods.

In fact, Heyd and Williams both acknowledge this point in portions of their writings. Heyd qualifies his claim that tolerance is not a virtue. He says, "... toleration is neither political nor a virtue, at least in the strict sense that I will try to elaborate."²¹ Commenting on such passages, Sabl concludes, "[A]s [Heyd] recognizes, it might be a virtue in the broader sense relating to what a heterogeneous society needs to work well."²² Similarly, Williams acknowledges the existence of executive virtues. As he says, they "do not so much involve objectives of their own as assist in realizing other objectives."²³ So, while Heyd and Williams hold that tolerance is not a virtue in a very particular sense, they seem open to the possibility that it is a virtue in a wider sense.

In the end, Williams and Heyd do not seem to be primarily interested in the question of whether or not tolerance is a virtue. In particular, Williams's main point is that we cannot ground the belief that the action of toleration is valuable in the claim that the trait of character called "tolerance" is good. Rather, "toleration will be supported by a variety of attitudes, and none of them is very specifically directed to a value of toleration as such

– still less to the moral belief in toleration based on the value of autonomy.”²⁴ On Williams’s view, we do not decide that the virtue of tolerance is good and consequently promote the action of toleration. Rather, we regard the trait of character as good because we have antecedent reasons for wanting people to learn how to tolerate others. Human beings have a natural weakness for both moral indifference and persecution. Consequently, it is good for society that they learn to control this weakness.

III. Moving Beyond Tolerance

A. The Form of the Argument

So far, I have argued that it is coherent to consider tolerance a virtue. There is nothing incoherent about restraining one’s disapprovals, and a practical understanding of how to carefully manage one’s disapprovals is also a valuable trait of character. Having made this point, I now want to argue against the claim that tolerance is a second-best virtue because “mere” toleration is not enough. According to this view, tolerance is not bad, but it would be better if we could supersede tolerance by developing a less judgmental attitude towards difference.²⁵

T.M. Scanlon presents an argument that illustrates the general form of this position. Scanlon does not hold this view, but he presents it as an argument worth considering. To understand this argument, we should start by noting that we can divide human behavior into three categories:

Category A: The Acceptable: Things that we do not disapprove of, or at least not in a way that would give us reason for acting against it. (*Giving to the poor, watching baseball*)

Category B: The Tolerable: Things that we disapprove of in a way that would give us reason to act against it, but ought to tolerate. (*Astrology*)

Category C: The Intolerable. Things that we ought not to tolerate. (*Most cases of theft*)²⁶

Scanlon posits that we might prefer to live in a world in which nothing fell into the category of the tolerable.²⁷ It is not entirely clear what this claim would entail. If Scanlon only means that we should prefer to live in a world in which nobody does anything wrong, then I would not dispute him. However, he might mean to discuss a stronger claim. The view that Scanlon describes might imply that if a person's attitude towards difference were perfectly adjusted, then the only things that the person would disapprove of in a way that would motivate a person to act against them would be things that we ought not to tolerate. So, a person with a perfect attitude towards difference would find everything either acceptable or intolerable.

Having presented this view, I should qualify it in a couple of ways. My first qualification is that I am not considering the extreme version of the view that Scanlon describes. The extreme version holds that if any particular individual's attitude towards difference were perfectly adjusted, then he would have no occasion to tolerate. I expect that few people, if any, hold this view. A more plausible view is that if *everyone's* attitude towards difference were perfectly adjusted, then none of us would have any need to tolerate. I will call this view "approval optimism."

Approval optimism implies that all instances of toleration would fall into one of two categories. In the first category, people who have the proper attitude towards difference would find that they must disapprove of the behavior of someone who lacks the proper attitude. However, the people with the proper attitude also find that they must tolerate

the behavior of those who lack the proper attitude.²⁸ For example, suppose that John expresses racist opinions that are bad enough that we ought to disapprove of them, but just mild enough that we should not try to prevent him from making such statements. In that case, we would have occasion to tolerate John, but we have to tolerate only because John lacks the proper attitude towards difference. In the second category, a person disapproves of something that a person with the proper attitude towards difference would not. However, given this inappropriate disapproval, it is better that he tolerate. For example, suppose that John unfairly and ignorantly disapproves of certain cultural traditions, such as wearing headscarves. In that case, we should prefer that John tolerate rather than that he refuse to tolerate. However, John would not disapprove and therefore not have to tolerate if he had the proper attitude towards difference. In both categories, toleration only becomes necessary because someone – either the one who tolerates or the one who is tolerated – lacks the proper attitude towards difference.

My second qualification is that approval optimism does not hold that people with the perfect attitude towards difference would cease to *disagree* with each other's tolerable behavior. It merely implies that they would cease to *disapprove* of each other. To see the difference between disagreement and disapproval, consider Philippa Foot's account of what disapproval involves. According to Foot, the fact that a person makes a negative judgment about another person's behavior is not sufficient for his judgment to count as disapproval. According to Foot, only certain people are entitled to disapprove of any particular action.²⁹ As an example, Foot describes a case in which an elderly couple decides to purchase a house on the seashore. Foot argues that only certain people can

disapprove of that action. Namely, close friends, relatives, and experts in finance or real estate can disapprove. But a random passerby or distant acquaintance can only judge the couple's decision a mistake. In Foot's view, anybody can judge anyone else's decision a mistake, but only certain people are in a position to disapprove.³⁰

I bring out this point from Foot in order to clear up a possible confusion about approval optimism. Approval optimists do not hold that people with the right attitude towards difference will come to agree with each other's behavior. Rather, they merely hold that they will come to the view that they are not entitled to disapprove of each other's behavior. Or, at least, their disapproval will not be the kind that would constitute a reason to take action against that behavior.³¹ Consequently, their disapproval will not call for any restraint.

Suppose, for example, that a Muslim family moves next door to a zealous Christian who has the proper attitude towards difference. Out of a desire to convert the Muslim family, the Christian realizes that he has held many false and stereotypical views about Islam. The view that Scanlon describes does not hold that the Christian will come to the view that Islam and Christianity are equally true or good. Rather, it holds that the Christian will come to the view that Islam does not reflect badly on a person's character in the way that entitles a neighbor to disapprove of their religious practices. So, approval optimism does not imply that engaged toleration will eliminate disagreement in society. Rather, it implies that people will come to see that no tolerable behavior is bad in a way that entitles others to disapprove of such behavior. Or, at least, they will not disapprove in a way that gives them a reason to do anything about it.³²

B. Engaged Tolerance

In order to see why a person might think that we could leave tolerance behind for something more positive, I will draw on the work of Kathryn Abrams. It is not clear that Abrams holds to approval optimism. However, in a recent article in the *Nomos* series, she argues that we should do more than merely encourage people to tolerate one another. She calls the view that people should merely leave each other alone “forbearant toleration.” In contrast, she argues for a view that she calls “engaged toleration.” Engaged toleration involves cultivating a more positive attitude towards difference.³³ A person who cultivates the virtue of engaged tolerance would take a more sympathetic attitude towards people of whose behavior he is inclined to disapprove. This distinction does not necessarily imply that the person will come to approve of such behavior. Rather, as Abrams says, “The goal of engaged tolerance is, first, to understand the opinion or practice on its own terms, and second, to reflect on the implications it may have for the tolerator’s own moral, normative, or intuitive frame.”³⁴

In one sense, I have little disagreement with Abrams. Abrams and I may have different views about the extent to which engaged tolerance needs to be balanced against other concerns. Nevertheless, I agree that most of us could use more engaged tolerance. To give an illustration of someone that has achieved this goal, I would point to Bruce Cumings’ book *North Korea: Another Country*. In that book, he discusses in detail the sufferings that the North Koreans underwent during the Korean War.³⁵ Moreover, he analyzes news reports about Kim Jong-Il and explains why some of the incidents described look bad only when they are taken out of their cultural context.³⁶ This book

helps to blunt the edge of some of the more disturbing reports about North Korea. As an example of the lack of engaged tolerance, I suspect that many people disapprove of Islam only because they have negative stereotypes, such as the idea that all Muslims support terrorism.³⁷ I suspect that it would be much better if such people knew more about Islam. If they knew more about Islam, they might be less prone to make extreme judgments.

In that sense, I agree with Abrams that engaged tolerance is a good thing. In fact, some amount of engaged tolerance is already built into my definition of tolerance. In particular, tolerance requires us to have a decent sense of what we ought to disapprove of. It is hard to see how we could do this without an adequate understanding of other points of view.

I only take issue with proponents of engaged tolerance if they combine engaged tolerance with approval optimism. Those who combine these two views would predict that those who fully cultivated engaged tolerance would cease to disapprove of each other's behavior in a way that would motivate action against it. On this view, people might still have disagreements, but those disagreements would not lead to a desire to act out of disapproval. Consequently, an approval optimist would think that whenever a person disapproves of someone else's tolerable behavior in a way that motivates him to act against that behavior, one of the two people must have failed to fully cultivate the virtue of engaged tolerance.

IV. Against Leaving Toleration Behind

A. First Response to Approval Optimism

In response to these possible implications of Abrams' argument, I would offer two responses to approval optimism. The first response is one that I suspect that Abrams would share. I do not think that we are going to get everyone to cultivate engaged tolerance. Moreover, some behaviors that are inconsistent with engaged tolerance will still be ones that we ought to tolerate. For example, let us suppose that engaged tolerance is incompatible with passionate denunciations of others' religious practices. Still, it seems likely that we should protect people's right to make such denunciations. More generally, it seems unlikely that every failure of engaged tolerance will be something that we ought not to tolerate.³⁸

B. Second Response to Approval Optimism

My second response is that it seems unlikely that if we all fully understood each other, we would cease to disapprove of each other's behavior. Moreover, people will sometimes legitimately desire to correct other people's behavior and beliefs in various ways that they ought to restrain. In that respect, I do not think that people who fully cultivate engaged tolerance will be able to dispense with tolerating each other. Not all of our serious disagreements stem from a lack of mutual understanding. Sometimes, we simply think that the other person's ideals are bad. Moreover, sometimes the appropriate response to our disagreements is to disapprove of the other person's behavior and desire to act on that disapproval, but also to recognize that we ought to restrain our desire to act against the behavior.

Consider, for example, the following case. Imagine that Alice is a professor at Grand Old Ivy, a small, private liberal arts college. One of her senior undergraduate advisees, Marissa, is very open about her belief in hierarchical gender roles. On careful study and reflection, Alice and Marissa come to drop some of their stereotypes and develop a greater sensitivity for the other's point of view. Nevertheless, there is a good chance that they will not come to perfect agreement, nor will they even cease to disapprove of each other's positions. Consequently, Alice may often be in a position in which she would like to comment on Marissa's opinions in ways that are inappropriate in her role as a college professor. If Alice did not have such desires, then she would be excessively indifferent to the welfare of her student. Yet, in many cases Alice will have a professional responsibility to restrain such desires.

Of course, it could be asked whether Alice really has the standing to disapprove of Marissa's opinions, and, moreover, whether Alice may legitimately desire to go beyond what her professional responsibilities allow. I would argue that Alice does have such standing, for two reasons. First, I think that people that work closely with each other have a right to some amount of general concern for each other's well-being. Second, Marissa's views are about a public matter. They also involve a general view about how other people ought to behave. Consequently, Alice has some right to approve or disapprove of Marissa's opinions. Moreover, she can legitimately desire to urge Marissa to change those opinions. However, I would also hold that Alice's position of authority gives her reason to exercise an extra measure of restraint.

In general, I assume two things. First, there are a number of ethical questions on which we must respect people's right to differ. Second, some of those issues are important, and eliminating all desire to change the other person would show a lack of proper concern. Consequently, a person who never disapproved of tolerable behavior would show a lack of care for others. Moreover, a person who never had any desire to act on his disapproval of tolerable behavior would show a lack of care for others. If our desire to change people never ran a little bit ahead of the actions that we may appropriately take, then we would show a lack of proper concern for others' well-being. Implicit in this view is the position that our strong disagreements with others do not all stem from misunderstandings. Consequently, even if we all fully cultivate engaged tolerance, we will not stop disapproving of others, and we will therefore still find occasions that call for forbearant toleration.

V. Qualifications

A. Public and Private Virtue

Having made this argument, I should specify that my goal here is not to argue against those who believe in approval optimism. As a personal matter, some people may think that if we all cultivated the correct attitude towards difference, then none of us would ever disapprove of each other's behavior. At least, we would not disapprove in a way that would motivate us to act against that behavior. I do not mean to dispute them. My goal, rather, is to argue that they should not make this view a matter of *public* virtue.

To illustrate my point, I would use the example of people with inclusive views about religion. There are people who hold that no one should say that his own religious

practices are right and others' are wrong. I do not mean to take issue with those who take this irenic, inclusive view of religion. My point is merely that we should not treat the fact that a person who rejects this approach as a reason to ascribe a lack of public virtue.³⁹

Some writers seem to make this move. For example, Diana Eck argues that people who do not value positive engagement with other religions go against the spirit of the Constitution.⁴⁰ I do not dispute Eck for holding that people ought to value positive engagement with other religions. I merely argue that we should not treat the failure to do this as going against the spirit of the Constitution, nor as going against the principles of religious freedom that underlie the First Amendment. We should not assume that people lack engaged tolerance, or otherwise lack civic virtue, if they take a more judgmental response to other religions.⁴¹

Of course, in many cases a person desires to act on his disapproval of others' behavior because he lacks some kind of public virtue. For example, people sometimes oppose others' religions because of misunderstandings, and in many cases those misunderstandings clearly stem from stereotypes, prejudice, and intellectual laziness. In such cases, it is perfectly legitimate to hold that those who disapprove of others' religions lack public virtue. However, we should not presume in advance that all such disapproval is based on intellectual vice. Suppose that Martha makes strong statements against Islam. Then suppose that Nona takes Martha's arguments in the most sympathetic possible light, but still shows that they clearly go against the evidence. Moreover, suppose that Nona has observed a similar pattern in Martha's judgments. In that case, it is perfectly appropriate for Nona to fault Martha for making hasty judgments. However, Nona earns

the right to make this criticism through her careful, sympathetic observation. She should not judge that someone is lacking engaged tolerance just because he takes a negative stance towards other religions.

To the extent that we regard engaged tolerance as a public virtue, we should be clear that support for engaged tolerance does not necessarily imply approval optimism. If we hold each other responsible for violations of engaged tolerance, we should not assume as a public matter that those who disapprove of others' religious or moral beliefs and practices lack engaged tolerance.

B. Pluralism and its Rivals

I should also stress that in another sense, I do not even oppose people who attempt to privilege their positive view of difference in social and political life. To some extent, it may be impossible to avoid granting a certain amount of hegemony for one view or another. For example, in the nineteenth century Justice Story argued that the common law presupposes traditional Christian moral views and we should interpret it in line with those views.⁴² In the twentieth century, Ronald Dworkin argued that we should to some extent use liberal beliefs about justice as a guide to interpreting the Constitution.⁴³ It may be the case that it is impossible to avoid biasing legal interpretation in some direction. If so, then people may legitimately contend that we should to some extent bias social and political life in the direction of their inclusive religious views. I would not dispute their right to contend for their views in this way, nor would I ascribe to them any lack of public virtue.

At the same time, I would oppose any person with inclusive views who pretends that what he is doing is somehow different from many people who would try to establish a similar hegemony for Christianity, or for Judeo-Christian morality.⁴⁴ Inclusive views do not somehow transcend the clash of religious perspectives. The legitimacy of inclusive views is a matter on which different religious traditions disagree. For that matter, these views are contested within many religions, including at least Buddhism, Christianity, Hinduism, and Islam.⁴⁵ Consequently, I would argue that any attempt to privilege the view that we should be inclusive on religious matters should be treated like any other attempt to privilege one religion or moral point of view over another.

To illustrate my point, let me return to Bernard Williams's account of the history of toleration. Williams argued that the growth in religious toleration in the Early Modern Period was originally due to a growth in skepticism and indifference, not a move towards valuing toleration for its own sake. I have argued that in fact many people who are neither skeptical nor indifferent are still committed to tolerance. In my view, this is a major social achievement. We have found ways for people with radically different, *and opposed*, religious views to share a system of social cooperation. Certainly, there are stresses and strains. Abrams shows us many difficulties that need to be worked out. However, we have for the most part managed to agree that religious differences over which our ancestors fought are no reason to regard our neighbors as lacking in public virtue.

My main concern about approval optimism is that it seems to imply that vigorous disagreement over moral and religious matters is incompatible with public virtue. In the

old days, Puritans and Roman Catholics vigorously disagreed over religious questions. In those days, A Puritan would have regarded a Roman Catholic as necessarily lacking in public virtue. In return, the Roman Catholic would have regarded the Puritan as necessarily lacking in public virtue. My view is that we should build a society in which the Roman Catholic and the Puritan can recognize each other as having public virtue *despite* their vigorous disagreement. However, approval optimists seem to imply that both of them are lacking in public virtue, just because they vigorously disagree. You might say that Puritans and Roman Catholics each regarded the other as uncooperative members of society because they were on the wrong side of a religious disagreement. But approval optimism asks us to regard them as less than fully cooperative members of society just because they have a vigorous religious disagreement. In that respect, I hold that approval optimism represents a move away from an important public commitment to mutual toleration.

VI. Conclusion

My conclusion, then, is that forbearant tolerance is a virtue. Moreover, unless we attain perfect universal agreement on moral truth, tolerance is a virtue that we should not expect or want to move beyond. In particular, we should reject the view that when a person disapproves of others' tolerable behavior, then he must have failed to sympathetically engage with the others' point of view. Sometimes, we just disagree about things that really matter. Our great accomplishment is that we have enabled people to share a system of cooperation, despite the fact that they disagree on religious questions and believe that those disagreements really matter. According to John Rawls, our great task

is to extend this accomplishment from religious questions to moral and cultural disagreements.⁴⁶ In her advocacy of engaged tolerance, Abrams helps us to see some possible obstacles to this goal. I only caution that we should see vigorous disapproval of others' behavior as consistent with public virtue. We should also view a limited amount of active opposition to others' behavior as consistent with public virtue. Disagreeing actively and vigorously with another person's religious or moral beliefs should not be treated as a failure to respect that person. If we make this move, then we take a step back from the great accomplishment of creating a tolerant society.

Chapter Two: David Heyd on Political Tolerance

Goethe once argued that if the state tolerates its citizens' religious beliefs it insults them. On the strongest version of this claim, the state has no business disapproving of its citizens' actions. At least, it has no business disapproving of anything except those behaviors that it is obligated to actively oppose. Along these lines, David Heyd argues that tolerance is not a virtue for the modern democratic state. He argues that modern democratic states are bound by political principles that do not leave room for tolerating their citizens. Rather, they require the state to respect the rights and freedoms of its citizens in a way that prevents the state from disapproving of any tolerable behavior. In this chapter, I will discuss different ways of reading Heyd's claim. Ultimately, I will argue that even the most plausible reading of Heyd's claim rests on a mistaken view of the nature of modern democratic politics. Heyd's argument assumes that the political principles that underlie modern democracy are more determinate than we could reasonably expect. In contrast to Heyd, I will argue that in real democratic politics principles do not completely determine policy. Rather, they establish limits on legitimate government policy. Within these limits, a normal part of political life involves disputes over which behaviors the state should disapprove.

I. Terms of Debate

In the first part of this paper, I will discuss arguments for and against the claim that tolerance is a political virtue. More specifically, I will consider whether tolerance can be

a virtue for states or other government institutions. Throughout this discussion, I will assume that a state can be tolerant. A state can do something analogous to deliberation, and its deliberations can succeed or fail to express the kind of sensitivity that constitutes tolerance. In other words, it can succeed or fail at properly managing disapproval and at recognizing reasons to restrain legitimate disapproval.

In taking this interpretation, I assume that it makes sense to ascribe virtues to institutions. We can legitimately describe institutions as “just”, “principled”, “noble”, and of course “tolerant.” I will not discuss in detail how this is possible. I will simply assume that the question is whether it is good for a state to have a trait that can be roughly defined as a disposition to tolerate, with all the nuances discussed in earlier chapters. For my purposes, the main question is whether the action of toleration plays a central role in modern democratic politics. I will assume that if toleration does play such a role then tolerance is a virtue for modern democratic states.

II. Tolerance and Modern Democracy

A. Heyd’s Thesis

In a recent essay, David Heyd argues that once we accept the principles that underlie modern democracy, we can no longer consider tolerance a political virtue. In his words, “toleration is neither political nor a virtue, at least in the strict sense that I will try to elaborate.”¹ He even goes so far as to argue that modern states do not consider it legitimate to tolerate their subjects’ behavior.² According to Heyd’s own admission, this is an overly strong statement of the position. As he says, “This statement certainly sounds odd, especially to political scientists and legal theorists. But then, provocative

statements are often made by philosophers only to be later tempered and qualified.”³ Still, he does argue in these terms, and at least one of his respondents has taken him at face value.⁴ So, I begin by responding to the strongest form of this claim, namely the claim that the principles underlying the modern democratic state leave the state no room to tolerate its subjects’ behaviors. After that, I will build on this response in order to draw out what I believe to be Heyd’s main point.

The strong form of Heyd’s thesis holds that the combination of disapproval and restraint constituting toleration was possible for pre-modern states, but also holds that is not a legitimate option for modern democratic states. According to Heyd, in pre-modern states the ruler often ruled in his own person and consequently had wide discretionary power to impose his moral beliefs on his subjects. In such states, the ruler also had discretionary power to withhold such an imposition if he saw fit. As Heyd says, “From medieval times, the king or the ruler enjoyed the privilege of showing leniency towards communities or individuals under his jurisdiction.”⁵ Therefore, when the ruler disapproved of his subjects’ behavior on moral or religious grounds, the ruler had the discretion to both treat his disapproval as politically relevant and restrain his disapproval. In effect, he had the discretion not only to tolerate his subjects’ behavior, but also to tolerate their behavior in his capacity as head of state.⁶

Building on this point about pre-modern states, the strong form of Heyd’s thesis holds that a modern democratic state allows itself and its officials no such discretionary power.⁷ In a modern state, the state and its officials are governed by laws, constitutions, and political principles underlying the law. Moreover, the position of an official in a modern

state is not a personal right, but rather this position ultimately stems from the constitution and the principles underlying the constitution.⁸ According to Heyd, these laws and principles leave no room for the state or its officials to practice toleration. That is, there is no occasion on which a modern democratic state may legitimately both disapprove of someone's behavior and restrain that disapproval.⁹ So, it is never legitimate for the modern democratic state to tolerate a person's behavior.

To illustrate this point, consider the question of whether the laws or the constitution of a modern democratic state require that the state practice toleration. For example, it might seem that the United States is bound by the Constitution to tolerate religious differences. However, Heyd argues that this view is mistaken. The Constitution actually prevents the state from taking any stance on religious matters. Consequently, the Constitution does not allow the state to disapprove of religious behaviors, unless they violate some basic political principle.¹⁰ More generally, the Constitution and the laws do not take any negative position on any person's behavior unless his behavior violates some law or political principle such that the state ought to restrain the person. So, in those cases in which the laws or the principles behind them preclude action against a person's behavior, they also preclude disapproval.¹¹ In Heyd's words, "The law either permits or prohibits certain practices and activities. The prohibited act cannot be tolerated by the law and the permitted practice cannot be said to be endured as a matter of charity or restraint."¹² Consequently, the laws themselves never express both disapproval and restraint.

To further illustrate the point, consider an example involving city government officials. Suppose that Marvin is on the city council of a Chicago suburb. A local group has submitted an application for a permit to build a Hindu temple. Marvin disapproves of Hinduism, but regards himself as bound by the Constitution to vote in favor of giving the group the permit. This might seem like a clear example of state toleration. Marvin is a government official, and he disapproves of Hinduism, and he restrains his disapproval. However, on Heyd's view, Marvin may not disapprove of Hinduism in his official capacity.¹³ He is free to disapprove of Hinduism as an individual. However, unlike a premodern prince, Marvin may not make his personal disapproval a political matter. Rather, he must recognize a responsibility to refrain from disapproving in his capacity as a state official. As Heyd says, "The court operates on the basis of the law and has no values of its own which can be overcome or restrained. ... The same applies to political authorities, officials and institutions."¹⁴ So, in his role as a state official Marvin should experience no tension between disapproval and restraint. In that capacity, Marvin may not disapprove of others' religious practices, and therefore may not legitimately tolerate them. More generally, officials *qua* officials are only allowed to disapprove of those behaviors that they must restrict.

Heyd's thesis has a structure that should be familiar from the last chapter. Heyd's argument is a special case of approval optimism. Approval optimism holds that what a virtuous person disapproves of will coincide with what he cannot tolerate. In Heyd's case, approval optimism only extends to the laws, the constitution, and state officials in their capacity as state officials. In this respect, Heyd's argument is that toleration is

inappropriate in politics, not in ordinary life. On this basis, Heyd concludes that state officials who tolerate in their official role show a lack of political virtue.

In making this point, I should stress that there is one sense in which Heyd's argument is consistent with the claim that tolerance is a political virtue. In Heyd's view, individuals must often recognize an obligation to refrain from treating their personal disapprovals as a political matter. In this sense, Heyd acknowledges that the virtue of tolerance is politically relevant.¹⁵ However, he does not agree that this concession implies that tolerance is a political virtue. At one point, Heyd refers to the virtue of tolerance as a bridge between the personal and political.¹⁶ Heyd is clear that good political behavior requires individuals to do a lot of tolerating. At the same time, he holds that it is not appropriate for the state to do so.¹⁷

B. Heyd's Argument

In support of his claim that the principles that underlie modern democracy preclude the state from tolerating, Heyd argues that modern democracies are bound by principles that require neutrality. At least, they require neutrality towards any behavior against which modern democracies are not obligated to take action. Neutrality in turn is incompatible with toleration, because toleration requires disapproval. Hence, Heyd cites approvingly the ideas of Pierre Bayle. "[F]or Pierre Bayle, a tolerant political regime is only the second best option, to be gradually replaced by a completely neutral state that is totally indifferent to religious differences in society."¹⁸

In one sense, the claim that neutrality is incompatible with toleration is clearly true. Neutrality implies that the state refrains from taking sides on the issue in question.

Toleration involves disapproval, which requires a negative judgment about a person's behavior. For example, let us suppose that the state of France must remain neutral on the question of whether or not people with sufficient means may remain idle and unproductive. Then suppose that the French National Assembly passes a law whose preamble claims that the idle rich are parasites, but that we must nevertheless tolerate them. Such expressions of disapproval would violate neutrality. So, if the state must be neutral then it would not be appropriate for it to pass a law that includes this preamble. It might be appropriate for the state to pass a similar law that prevents people from unduly interfering with the rich, but neutrality would require that the National Assembly leave off the statement of disapproval. So, since tolerance requires disapproval, the state could refrain from interfering with the idle rich, but it could not legitimately tolerate them.

In support of the claim that the state must be neutral, Heyd insists that the modern state is constituted by laws and principles that are largely aimed at securing people's rights.¹⁹ Moreover, if the modern state is an impersonal institution, and so it has no real desires to restrain. Consequently, when it allows people to engage in certain behaviors, it does not tolerate them.²⁰ Heyd illustrates this point using the example of freedom of expression. He says,

An individual might be appreciated for her toleration of repugnant or offensive speech by another individual. But the state must respect freedom of expression as a fundamental right. This right may be justified in terms of skepticism, personal autonomy, communicative reason, etc., but not as a matter of indulgence or endurance. If a particular expression goes beyond the permissible limits, then the state must interfere with it rather than tolerate it.²¹

The general idea is that the state is always either obligated to refrain from disapproving of something as a matter of principle, or obligated to interfere with it as a matter of principle. There are no behaviors that a state may both disapprove and permit. If the principles require disapproval, then they require action against the behavior. If they allow the state not to act against the behavior, then they forbid disapproval.

When he makes this argument against state toleration, Heyd draws on a long tradition of similar claims. This tradition asserts that, in Goethe's words, "To tolerate is to insult."²² This tradition includes Immanuel Kant, Thomas Paine, and modern proponents of "toleration as recognition."²³ As Kant presents the view, the prince should claim no right to take a position in his official capacity on certain matters, such as the religious beliefs of his subjects.²⁴ Suppose that the prince is Christian and a subject is Jewish. If the prince in his official capacity tolerates Judaism, then he takes an official position that the Judaism merits disapproval. Consequently, if the prince in his official capacity tolerates the practice of Judaism, then he insults his subjects. The prince does not necessarily insult them merely by holding the personal opinion that Judaism is wrong or even by disapproving of it. Rather, he insults them when he presumes the right to make his disapproval an official matter.²⁵ As Kant says, an enlightened prince is one who "holds it to be his duty to prescribe nothing to men in religious matters but to give them complete freedom while renouncing the haughty name of *tolerance*."²⁶

I draw out this point from Kant because Heyd is not entirely clear about the sense in which the laws and officials of a modern democracy may not legitimately tolerate citizens' behavior. As I explained in the last chapter, disapproval involves more than

judging a behavior to be wrong. It also requires that one at least has the standing to have a legitimate desire to take action against that behavior. On one way of reading Heyd's claim, Heyd argues that unless the state should act against a particular behavior, it should not make *negative judgments* about that behavior. On another way of reading Heyd's claim, Heyd only argues that unless the state should act against a particular behavior, it should not *disapprove* of that behavior. Either way, I will argue that Heyd is wrong. Even if we grant that modern democratic states are committed to principles that demand neutrality, they can and do legitimately disapprove of various kinds of tolerable behavior.

III. Two Responses to Heyd

A. Initial Response to Heyd

In response to Heyd's argument, I would first point out that modern democratic states do in fact tolerate things. Moreover, they tolerate things in the most obvious way possible: they state their disapproval and do nothing about it. Nor does it surprise anyone when the state does so. People often dispute both the disapproval and the refusal to act, but they generally seem to regard the action of passing a condemnatory resolution as normal. Consider, for example, the Russian invasion of Czechoslovakia in 1968. The governments of both Romania and Yugoslavia both condemned the invasion, but neither country did anything serious to prevent or punish the invasion.²⁷ To my knowledge, few people would argue that a resolution expressing disapproval was illegitimate. On the domestic level, there was a debate in the French National Assembly over the *Black Book of Communism*.²⁸ Suppose that the National Assembly had passed a resolution denouncing the book. I doubt that anyone would find this action illegitimate, even if he

disagreed with it. At the same time, I doubt that many people would have demanded that the state censor the book. This seems like a clear case in which the option of disapproving, but doing nothing more than expressing disapproval, is a legitimate option for the state.

B. Sabl's Response to Heyd

The above examples suggest that states do in fact practice toleration. In his response to Heyd, Andrew Sabl gives a plausible account of how such toleration can be consistent with a state bound by democratic principles. Heyd argues that the state never has the appropriate kind of discretion to tolerate citizens' behavior. In all cases, it is either bound to be neutral or bound to act against the behavior in question. As part of this argument, Heyd must hold that the principles of modern democracy demand neutrality towards all behavior except those that are incompatible with those same principles. In his reply to Heyd, Andrew Sabl argues that this assumption is implausible. It would require that modern democratic principles give us a comprehensive set of answers to all questions about what behaviors the state should allow or restrict. However, such a comprehensive set of policy recommendations is far more than we can plausibly expect.²⁹

In support of this claim, Sabl argues that there are hard cases in which democratic principles do not suggest a particular policy. For example, Sabl mentions the question of whether the state may restrict the behavior of practitioners of Native American religion. Some such practitioners have claimed that they must be allowed to smoke peyote. Opponents claim that allowing them to do so would undermine legitimate attempts to fight drug use. Sabl claims that the basic principles of modern democracy will not

always provide a clear solution to this kind of conflict.³⁰ If so, then the core commitments of the state will not clearly generate either of the following claims:

- a) Basic democratic principles require the state to allow the people in question to smoke peyote.
- b) Basic democratic principles require the state *not* to allow the people in question to smoke peyote.

Nevertheless, the state must decide how to respond to the conflict between citizens who want the state to ban peyote and citizens who want to smoke peyote for religious reasons. Since the principles do not bind the state to take any particular actions, officials – in this case the legislature – must have some degree of discretion. Since they have the discretion to ban or not ban peyote, it would seem that the state also has the discretion to express its disapproval but do nothing. It would be strange to say that the state has the option of banning the use of peyote altogether, but does not have the option of merely stating its disapproval of the use of peyote in such ceremonies. So, it would seem that tolerating the religious use of peyote is within the range of the state's discretion.³¹

Sabl's argument, then, is that Heyd expects too much of the principles that underlie modern democracy. In Sabl's view, Heyd's argument against state discretion presumes that we can discover core principles of justice underlying modern democracy, and that these principles can settle all the hard cases of conflict between principles. In making this argument, Sabl could mean one of two things. First, he could mean that we will never get a constitution that settles every political issue. Second, Sabl could mean that neither the constitution nor the moral principles that underlie the constitution can settle all the political issues, in which case state officials have even greater discretion. I will

assume that Sabl intends the latter claim. In that case, Sabl's argument implies that there are cases in which the following two claims are true:

- a) The moral principles that underlie modern democracy do not forbid the state from restricting a particular behavior.
- b) These moral principles do not demand that the state restrict the behavior.

If Sabl is correct, then there are behaviors that the state has discretion to restrict or not restrict. If the state may use its discretion to restrict those behaviors, then it would seem that it also has the option of stating its disapproval of those behaviors. So, the state has both discretion to disapprove of the behavior and discretion to not restrict the behavior. Since it has discretion to do either of these things, then it is hard to see why it does not have discretion to both at the same time – and the combination of disapproval and restraint is close to the definition of toleration. Therefore, when the principles that underlie democracy leave the state with such discretion, one legitimate option is that the state tolerate the behavior in question.

C. A Possible Defense

In response to Heyd, both Sabl and I have argued that there seem to be clear cases in which the principles that underlie modern democracy give the state discretion to either allow or restrain someone's behavior. If the state uses its discretion to restrain the person's behavior, then it would legitimately tolerate their behavior. In response to this argument, Heyd could argue that in cases where political principles do not determine the state's action, the state has no discretion to tolerate. In such cases the state may not legitimately approve or disapprove of the person's behavior. It simply has the discretion

to act or not act.³² Consequently, in such cases the state does not have any legitimate disapproval to restrain.

If this point seems obscure, consider the following example. Suppose that the city council of a small town in South Carolina attempts to promote tourism and decrees that everyone within one mile of the town square must use Colonial architecture. We would hardly infer that the town council *disapproves* of people who wanted to construct a building with a Victorian façade. They simply restrict people's behavior in order to promote a certain goal. Along similar lines, Heyd might argue that if there really are hard cases, then the state must take sides, but without any expression of approval or disapproval.

To illustrate this point, consider an additional argument that Glenn Newey presents on behalf of the claim that modern democratic states may never tolerate a person's behavior. Newey argues that the notion of popular sovereignty entails that state officials have no discretion to tolerate. According to Newey, elected officials have some obligation to obey the wishes of the people who elected them.³³ I am not sure whether Newey means that they are responsible to their supporters or to all of their constituents. Either way, this doctrine would imply that officials have no discretionary power to make their personal disapproval a political matter, even in cases that are not clearly determined by the principles that underlie modern democracy. For example, suppose that basic democratic principles neither demand that the state allow smoking nor forbid the state from allowing smoking. In that case, the officials who disapprove of smoking would seem to have discretionary power to act on or restrain their disapproval. However,

Newey argues that they would have no such freedom because they would be morally bound to obey the wishes of their constituents. So, in their capacity as state officials, they may not legitimately translate their personal disapproval into political action. As far as their official capacity goes, they do not approve or disapprove. They simply follow the wishes of their constituents. Therefore, the state would never be in a position to put into action that combination of restraint and disapproval that constitutes toleration.³⁴

In response to this argument, I would point out that there are many cases in which the state actively disapproves of things, but restrains the extent of its opposition. A good example is smoking. In many cases, the state undertakes a campaign to stop people from smoking on the grounds that it is bad for public health. However, the state also recognizes principled limits on its right to oppose smoking. Similarly, Fotion and Elstrom point out that there are many cases in which people violate basic democratic principles, but the state partially restrains its actions against the behavior.³⁵ For example, suppose that democratic states are bound in principle to grant a right to immigrate regardless of religion. Then suppose that a group called Concerned Voters for American Traditions (CVAT) lobbies for restrictions on Muslim immigration. Since this democratic principle makes such actions undesirable, the state has some discretion to disapprove. It may even be bound to express disapproval. However, the state is not clearly bound to restrict this group from lobbying. In fact, other principles such as free speech or free political action may require that the state restrain its action against the group.³⁶ In such cases, the state not only has some discretion to tolerate the group, but the

Constitution and/or democratic principles might also demand that the state at least partially tolerate CVAT's activities.

It seems, then, that there are cases in which the principles that underlie modern democracy leave the state with more than just discretion to act or not act. There are cases in which these principles imply that the state may or even must disapprove of a particular behavior. At the same time, these principles allow or even require the state to refrain from acting against that behavior.

IV. A Possible Reinterpretation of Heyd: States and Governments

So far, I have argued against the most demanding interpretation of the thesis that a modern democratic state may not legitimately tolerate. However, my arguments have overlooked an important distinction. We could make a distinction between the state and the government. The state is an enduring entity that can persist through a number of changes in government. For example, the United States of America is a state that has been around since 1776. However, our government is (more or less) the current combination of Congress, President, and Supreme Court – a combination that has been around for less than one year at present writing.

If we make this distinction, then we could interpret Heyd as arguing that the state does not have any room for discretion, but the government does. On this view, citizens would be entitled to elect governments that expressed and acted on disapproval of various actions. However, as a matter of principle the state itself would not disapprove of any actions except those that violate the constitution or the democratic principles that underlie the constitution. In those cases, members of the government would be constrained by law

or by the principles that underlie the laws to restrain their actions. So, the government would be constrained to tolerate. However, the state itself would not disapprove of the behavior that the government was constrained to tolerate. So, the state would not tolerate.

This reinterpretation of Heyd would enable him to respond to some of the cases that I have described. For example, Heyd could argue that in the case that Sabl describes, the government tolerates the use of peyote but the state neither approves nor disapproves. However, this interpretation does not solve the problem that Fotion and Elstrom's arguments raise. Fotion and Elstrom argue that there are many cases in which the state is bound by its own principles to both disapprove and tolerate. In such cases, the principles that underlie the state require that the government both disapprove and restrain that disapproval. So, the state would tolerate the behavior in question.

V. Another Reinterpretation of Heyd: Core Commitments

A. The Interpretation

So far, I have argued that the strongest form of Heyd's thesis is not correct. Contrary to this strong thesis, modern democratic states do find occasions for toleration. However, it is possible that Heyd's real aim is to argue for a weaker thesis. At the beginning of his essay, Heyd notes that many people will be surprised at his thesis. In particular, he says, "Toleration is usually considered the fundamental, even constitutive virtue of liberalism, and its characteristic playground is the political."³⁷ Drawing on this statement, I would suggest that Heyd mainly intends to argue against a particular view of liberal democracy. On the view that Heyd argues against, liberalism is at its core committed to toleration.

Particularly salient examples involve toleration of racial and religious difference. The point could be extended to include issues such as free speech or political dissent. As Galeotti points out, France was largely unwilling to limit the freedoms of Communists, even when its government knew that some Communist terrorists were taking refuge in France.³⁸ In response to such examples, Heyd wants to argue that what goes on in these cases is not toleration, but rather state neutrality grounded in respect for rights. On Heyd's view, whether or not the state tolerates in some special cases, liberalism does not give such a central role to toleration. Rather, that role is played by some other principle, such as neutrality or respect for rights.

B. First Reply

Assuming that this is Heyd's thesis, I would offer three reasons why we should at least have reservations about this weaker thesis. First, not all modern democratic states are liberal in the way that Heyd describes. In particular, it fits neither civic republican states nor those democratic states that still make a cultural or religious heritage central. A good example of a civic republican state is France, which seems very committed to encouraging a certain common moral outlook among its people.³⁹ In particular, France is much less accommodating of religious difference than the United States, as shown in a famous case in which the government schools refused to allow young Muslim women to wear head coverings.⁴⁰ A good example of a democratic state that makes a cultural and/or religious identity central is Greece. As Kymlicka points out, "Anyone who is not Orthodox cannot be a true member of the Greek nation, accepting the Orthodox Church is a *de facto* criterion for gaining citizenship, and members of other religions are subject to

various legal disadvantages.”⁴¹ In such states, the state either endorses certain behaviors or at least endorses the view that those behaviors are preferable for its own citizens. However, they are still willing to tolerate dissenters, even if they do not grant them full equality.⁴²

These examples indicate that whatever one thinks of Heyd’s thesis as a moral matter, it is not an accurate description of the principles endorsed by all modern democratic states. Heyd points out that racial and religious minorities have become less willing to settle for “mere” toleration and demand neutrality or recognition.⁴³ Some people think that the state should recognize and fulfill such demands.⁴⁴ For liberal democracies that accept such claims, toleration might play a less central role than it initially appears. However, not all modern democratic states acknowledge an obligation to moral, religious, and cultural neutrality. Of course, we could claim that states that reject such neutrality are not really modern democracies. However, this claim would build some highly contestable moral principles into the definition of “modern” or “democracy.”

C. Second Reply

My second reply is that even states that are committed to neutrality still recognize some amount of obligation to tolerate people who dissent from foundational principles of the state. The United States’ current approach to free speech is an example of such obligations, albeit an extreme example.⁴⁵ The United States currently recognizes an obligation to tolerate speech by people who advocate political practices that directly contradict principles affirmed by the state. In particular, the United States tolerates a greater amount of racist speech than most countries. It even tolerates some people who

advocate the overthrow of democracy.⁴⁶ Moreover, this toleration is an extension of the rights that Heyd describes as central to modern democracy.

On this point, Heyd might argue that the state does not really tolerate because it cannot be said to have commitments. As he says, “Unlike a medieval sovereign, the state is an impersonal institution which cannot be described as ‘suffering’ in having to reconcile itself with beliefs and practices to which ‘it’ does not subscribe.”⁴⁷ In response, I would argue that Heyd’s arguments require that the state have something at least analogous to commitments. Otherwise, it is hard to account for his claims that the state is constrained by certain principles. If we are going to speak at all of states as taking actions or having traits of character, then it makes sense to describe Heyd’s modern democratic state as having a commitment to disapprove of certain behaviors, some of which it will be bound to tolerate.

Heyd might also reply that my argument only shows that there is some room for toleration by modern democratic states. It does not show that the virtue of tolerance is central to modern democracies. However, Heyd admits that the action of toleration plays a significant role in political affairs. I have argued that even if respect for rights is central, respect for such rights will often lead the government and even the state to practice toleration. Since toleration plays a significant role in politics, and the state often has occasion to tolerate, it would seem that tolerance is still an important political virtue. Moreover, it is an important virtue for states as well as citizens.

D. Third Reply

Finally, it is not clear that we can generalize Heyd's argument much beyond a few limited subjects, such as race and religion. Let us assume that all members of such groups want to be recognized and treated as fully equal to the members of other groups. Let us also assume that the state ought to secure such recognition and equality for racial and religious minorities. It does not follow that all other groups, nor all other behaviors, ought to be given the same kind of equal regard. For example, it is not clear that smokers have the right to have their behavior to be treated as equal to that of non-smokers. It may be perfectly legitimate for the government to prefer the behavior of smokers to that of non-smokers. To take a more extreme example, in most respects the state should not treat the moral beliefs of racists as equal to the moral beliefs or even the mere preferences of members of racial minorities. The citizens of the United States are currently in conflict over whether behavior based on the belief that same-sex unions are good and behavior based on the belief that they are bad should be given equal regard. In general, it seems implausible to say that no behavior should be tolerated and more plausible to say that some behaviors merit equal regard and some behaviors merit toleration. Part of modern democratic politics involves disagreement over which behaviors should get neutrality and which should get toleration.

To see an example of the kind of disagreements that leave room for toleration, consider the example of same-sex unions. One view on the subject would be that the government should practice neutrality by refusing in any way to favor those who believe such unions are right or those who believe such unions are wrong. Another view would

be that the government should take steps to deliberately interfere with those who believe that same-sex unions are wrong, but restrain the extent of its opposition. It could, for example, interfere with children's education in order to frustrate their parents' attempt to inculcate the view that such unions are wrong. At the same time, on this view the state would have a strong obligation to practice a good measure of tolerance towards people who hold this position. It could not, for example, restrain them from temperately expressing their opposition to such unions or require their churches to marry same-sex couples. A third view would be that the government should take steps to deliberately interfere with those who believe that such unions are good. It could, for example, undertake propaganda efforts or discriminatory taxation against same-sex couples. At the same time, it might not be allowed to criminalize such unions or to forbid their members from jointly owning homes. A final view might be that all of these options are legitimate, and that we should let the government and its citizens use ordinary political channels to decide which option to take. On any but the first view, the government would have a certain amount of room for legitimate toleration. In some cases, it would even be required to practice a certain measure of toleration.

More importantly, it is not immediately obvious which approach to same-sex unions the government should take. Perhaps the state should be neutral and treat as fully equal both those who approve of same-sex unions and those who disapprove of same-sex unions. Perhaps one viewpoint or the other should be to some extent merely tolerated by the government. The question of whether complete neutrality or some measure of

toleration is appropriate may simply be one of those issues on which people in a modern democracy can legitimately disagree.

VI. Toleration and Democratic Politics

A. A General View of Politics

If my responses to Heyd's arguments are correct, then they suggest a very different account of democratic politics than Heyd. On Heyd's view, political questions are largely determined by the principles that underlie modern democracy. There may be an area left over, but it is simply what Newey calls the "decisionistic residue."⁴⁸ On my view, the principles that underlie modern democracy set limits on the extent to which people can use government power to pursue their views. Within those limits, part of normal democratic politics involves a zone of legitimate contestation over what behavior the government will and will not disapprove. Sabl construes this zone in terms of hard cases.⁴⁹ However, I would argue that it goes beyond hard cases. Take, for example, Sabl's case involving the religious use of peyote. Sabl concludes that this is a hard case because it is not clear what democratic principles demand or allow. I would suggest that it might not be a hard case at all. Rather, it might definitely be the case that the government is neither obligated to allow nor obligated to forbid the use of peyote. In that case, we might conclude that this an area in which the principles that underlie the state definitely imply that the government may legitimately tolerate, legitimately withhold toleration, or perhaps legitimately ignore the issue.

My main point here is that one of the key things that democratic principles do is demarcate a zone of legitimate contestation. This zone sometimes involves issues about

which it is not clear what democratic principles demand. It may also include issues on which it is clear that democratic principles do not demand anything. More commonly, it involves issues on which democratic principles demand some limits, but leave open a wide range of options. For example, consider the issue of cohabitating unmarried couples. It may be legitimate for local governments to prevent or not prevent unmarried couples renting housing together. Short of this option, it may at least be legitimate for the government to allow or not allow private owners to refuse to rent to unmarried couples. At the same time, we might agree that the government cannot legitimately require people to rent out rooms in their own home to such couples. At the very least, most people would probably agree that government may not legitimately stop private individuals from privately admonishing couples not to engage in such behavior. In this case, certain state actions fall within the zone of legitimate contestation, and people may use the ordinary channels of voting, lobbying, and argumentation to try to get the government to take the option that they prefer. At the same time, there are certain things that each side in the moral disagreement may not do to each other. Consequently, the zone of legitimate contestation includes cases in which toleration is an appropriate option.

My account of the relationship between politics and principles suggests an alternative to Heyd's account of what goes on in politics. I assume that in a pluralist society, people will have competing moral visions. The point of democratic political principles is not to preclude all use of government power to promote one moral vision over another. Rather, the point of these principles is to set boundaries on the extent to which people may legitimately use government power in this way. These boundaries mark out a zone in

which the limited use of government power to encourage or discourage a controversial behavior is perfectly legitimate. Within this zone, if one side in the dispute wins the political contest, then the other side must acknowledge that they simply lost.⁵⁰ There was no violation of a higher set of political principles. The correct response when one side loses the political contest is that they try to win the next one. As Justice Scalia has said, “[E]very group has the right to persuade its fellow citizens that its view of such matters is the best.”⁵¹

I should stress that this view of politics does not lead to majoritarianism. I agree that there should be limits on the extent to which we may legitimately use political power to promote our point of view. For example, if the government may mildly promote one religion, it does not follow that it may shut down the buildings of other religions. I simply argue that the limits leave a substantial amount of discretion for the government to take some actions that favor one set of moral beliefs over another.

B. Four Kinds of Toleration

On this view of politics, there are several ways in which the state or the government practices toleration. First, sometimes the principles that underlie a modern democratic state will require that the government disapprove of and even take some action against a behavior. In these cases, the state endorses laws, constitutional measures, or political principles that require the government to restrain its disapproval. For example, suppose that some citizens want to take mild, peaceful, nongovernmental action designed to discourage people from entering into interracial marriages. I assume that the state should take action to discourage people from holding or promoting the opinion that interracial

marriages are wrong. However, the state may also recognize principles that limit the means that it may use to stop people from undertaking certain kinds of mild advocacy of racist beliefs. For example, free speech may require that the government refrain from fining people who politely and discretely express opposition to interracial marriage. In this case, the state both recognizes principles that require that the government disapprove and recognizes principles that require that it restrain its disapproval.

Second, sometimes the principles that underlie a modern democratic state allow the government discretion as to whether it will disapprove of a particular behavior. However, the state will also recognize principles that require some amount of constraint on that disapproval. For example, it is possible that the principles that underlie modern democracy do not require the government to take the position that individuals should not smoke in their own homes. At the same time, it seems legitimate for a government to judge that people should not smoke, and therefore the government may undertake an anti-smoking campaign. Still, the state may recognize certain principles concerning individual liberty that prevent the state from outlawing smoking altogether, at least in one's own home. If so, then the state's principles neither forbid nor require government disapproval, but the state does recognize principles that require restraint.

Third, sometimes the state will leave the government both discretion to disapprove and discretion to restrain that disapproval. For example, the state might neither recognize any principle that requires the government to outlaw marijuana nor recognize any principle that forbids the government from outlawing marijuana. Nevertheless, the government may decide that publishing propaganda against the use of marijuana is good,

but accept some additional principle about individual liberties that precludes making marijuana illegal. In this case, the principles recognized by the state allow the government to disapprove, and also allow the government to voluntarily take on an extra measure of restraint.

Fourth, in countries with federal systems the central government may be constrained to allow a lower level of government to block the policies of the central government. In those cases, the central government may have to tolerate the actions of the lower levels of government. It may also have to tolerate individual behavior directly out of respect for the lower level's jurisdiction. For example, Sen. Carol Mosley Braun once called for the federal government to denounce a state that flew the Confederate flag over state buildings.⁵² In that case, one option for the government was to officially disapprove of that state's actions, but not outright forbid it. The government's restraint of its disapproval in such cases could range from doing nothing to taking action just short of force. Whatever the extent of the toleration may be, one common way that central governments tolerate is that they disapprove of the policies of lower levels of government, but partially restrain their actions against the lower levels.

VII. Conclusion

Contrary to Heyd's arguments, tolerance is a political virtue and it plays a central role in modern democratic politics. A commitment to complete neutrality does not extend to all states or even to all issues within any country. Even in liberal countries, the political principles that underlie the state leave a significant zone of legitimate contestation over what actions the government may take on certain matters. Within that zone, the

government may legitimately disapprove of certain behaviors, even though the state has no definite position on the subject. At the same time, the principles that underlie the state will often allow or even require that the government restrain the extent to which it acts on that disapproval. In this sense, modern democratic principles allow people to use state power to pursue competing moral visions. At the same time, it sets limits that keep the extent to which they may use that power from going too far. In that respect, principles that require the government to practice toleration are a normal part of democratic politics. So, tolerance is a political virtue that still plays a central role in democratic politics.

Chapter Three: John Rawls and Kok-Chor Tan on International Toleration

In the last two chapters, I discussed the problem of toleration as an individual virtue and as a political virtue. In this chapter, I consider a challenge to the possibility of toleration in international politics. It might seem that toleration is inappropriate in this sphere. In particular, it might appear that liberal governments cannot recognize a principled obligation to tolerate other states. If a liberal state holds that the government ought to take some action, then it does so because the action protects someone's rights. If a liberal state holds that the government ought not to take that action, then it does so because the action would violate others' rights. If another state draws the lines differently, it might seem that the liberal government must therefore judge that the other state is violating someone's rights. In that case, it might appear inappropriate for the liberal state to tolerate the other state. Granted, it might generally be imprudent to intervene directly. However, a liberal state can not see itself as obligated in principle to tolerate forms of government that deny individuals' rights. Hence, there seems to be something incoherent about a principled commitment to international toleration on the part of liberal peoples.

In this chapter, I will argue that liberals can be committed in principle to tolerating certain nonliberal states. To make this point, I will examine the debate between John Rawls and Kok-Chor Tan. Rawls argued that some nonliberal states meet a criterion such that liberal states should recognize an obligation in principle to grant those states a very strong form of toleration. Tan argued that liberal states should only accommodate

nonliberal states because of the moral costs of intervention. I will argue that Tan's criticism is mistaken. Rawls provides good reasons to believe that the political liberalism leads to the conclusion that we should tolerate decent nonliberal states. Drawing on this discussion, I will conclude that a liberal state can coherently endorse international toleration.

I. The Problem of International Toleration

A. The Disagreement

In his late work, John Rawls took a very specific position on the issue of international toleration. Rawls argued for a position that I will call "Rawls's principle of international toleration." This principle holds that if a country meets a standard called "decency", then all other countries should in principle acknowledge an automatic obligation to recognize that country as a full and equal member of a Society of Peoples.¹ As Rawls says, "To tolerate also means to recognize these nonliberal societies as equal participating members in good standing of the Society of Peoples, with certain rights and obligations ..."²

On the subject of toleration, this is the principle to which Tan objects. Tan does not argue that we should invade decent states or any other nonliberal states.³ He simply argues that we should not regard ourselves as generally obligated to tolerate other states in this very strong sense.⁴ Circumstances may often demand that we tolerate other states, but the obligation to tolerate them is not a fundamental requirement of justice.⁵ As Tan says,

When we find a way of life tolerable, we accept it as permissible regardless of our power to challenge or change it. On the other hand, when we say we are forced to accommodate a way of life because of practical constraints, we should be ready to act once the constraints are lifted. Indeed if we are forced to accommodate a situation only because of constraints, then it seems that we are morally obliged to work toward the lifting of these constraints as an immediate objective.⁶

B. The Potential Incoherence of International Toleration

Tan and other critics have found something incoherent about Rawls's commitment to tolerating decent nonliberal states. To understand their perspective, it is important to emphasize what a strong claim Rawls makes. He does not just say that liberal governments should refrain from military intervention against decent governments. He argues that a liberal government should recognize them as fully legitimate. Legitimacy implies that liberal states must not try to get certain basic international institutions to take any action that is prejudiced against decent states.⁷ Rawls also goes so far as to argue that liberal states are severely constrained in the ways that they may base foreign policy on the belief that decent states ought to be liberal.⁸

Of course, it might not seem quite so strange for a liberal government to refrain from taking the position that other states should be liberal. After all, liberal governments demand that their citizens refrain from imposing their moral views on other people. A person who believes that everyone ought to be Protestant is expected to refrain from getting the state to take this position. Moreover, he is expected to respect the legitimacy of institutions such as mosques or Catholic Charities.

This response overlooks an important difference between the two cases. The liberal government does not just hold that people are wrong to engage in practices such as racial

or religious discrimination. It uses force against people who do so. In other cases, it requires people to contribute tax money that will be used to protect and even support causes that they oppose. Liberalism is also presumably committed to the view that coercion requires strong justification.⁹ Consequently, it might seem that a liberal government is committed the view that a state should not take action against a practice unless it would be wrong to establish a political order that permitted it. Something like this claim seems to be part of Tan's objection to Rawls. In particular, Tan argues that unless a state is willing to hold that its account of domestic justice is the single true account, it cannot impose conformity with that account of justice on dissenting citizens.¹⁰ This argument seems to imply that if a particular behavior is not morally wrong, then the state must tolerate it.

II. The Principle of International Toleration in Context

A. Rawls's Law of Peoples

In order to explain how Rawls arrives at his principle of international toleration, it helps to start by placing it in the context of his overall view of international relations. In his last book, *The Law of Peoples*, Rawls argues for a set of guiding principles for liberal foreign policy and international relations. He calls these principles "The Law of Peoples." These arguments are supposed to represent an extension of the general approach to political philosophy that he calls "political liberalism" to the international sphere.¹¹

As part of his Law of Peoples, Rawls divides countries into five groups:

1. Liberal Peoples
2. Decent Peoples
3. Benevolent Absolutisms
4. Burdened Societies
5. Outlaw States¹²

Liberal peoples are peaceful and well-ordered. They also meet a stronger criterion called reasonableness. Liberal peoples are organized according to a conception of justice that meets four criteria. First, it recognizes a set of basic liberties. Second, it specifies a strong principle of economic justice. Third, it gives a special priority to the liberties over other political goals. Finally, it is reasonable. That is, it specifies a system of social cooperation that all people could accept as free and equal citizens.¹³ In Rawls's terms, a state that meets these criteria is considered not only well-ordered but also reasonable.

Rawls takes care to stress that there is more than one type of liberal people. Not all liberal peoples recognize the exact same set of liberties, and they may have very different economic principles.¹⁴ However, all liberal states are reasonable because their conception of justice is one that citizens could expect all other members of the people to accept as free and equal citizens. Rawls's Law of Peoples requires that all liberal peoples be tolerated.

Decent peoples are peaceful and well-ordered. However, they are not fully reasonable. They respect human rights and they give all their people the protection of a conception of justice. However, it is not one that every resident of their territory could accept as free and equal citizens. So, while they are well-ordered, they are not reasonable.¹⁵

Benevolent absolutisms are peaceful and respect basic human rights. However, they have no political mechanisms to ensure these rights.¹⁶ You could say that a benevolent absolutism is only as benevolent as its current rulers. Singapore might count as a benevolent absolutism.¹⁷

According to Rawls, benevolent absolutisms have the right to defend themselves and should not be subject to invasion. However, decent and liberal states do not owe them full toleration in the sense of recognizing them as equal participating members of a Society of Peoples.¹⁸

Burdened societies lack either the material resources or social organization necessary to maintain a well-ordered state.¹⁹ Iraq, Somalia, and Afghanistan are good contemporary examples. Burdened societies should be given whatever assistance is needed to bring them up to the level of decency.²⁰

Outlaw states are either aggressive against well-ordered states or fail to respect basic human rights.²¹ Outlaw states are not members in good standing of the Society of Peoples. They are subject to sanctions, including military intervention against human rights abuses in drastic cases.²²

B. Rawls's Use of "Toleration"

As the preceding list makes clear, Rawls holds that all decent and liberal states should be given full toleration. In order to understand why he calls this treatment "toleration", consider some points that I made in my introduction. There, I explained that to tolerate a person's behavior in the relevant sense means to recognize that it falls into a category such that it can not serve as a reason to deny people a certain baseline of good behavior.

One way to put this is that the state meets a *criterion* such that we are automatically obligated to guarantee it a certain *floor*. In the case of the Law of Peoples, the criterion is that the state be well-ordered and peaceful, and the floor is that we must recognize it as an equal participating member of the Law of Peoples.

1. The Criterion of Toleration

To unpack Rawls's principle, let me first explain what criterion he lays out as the standard for toleration. All peoples are to be tolerated if they are internally well-ordered and externally peaceful. To be more specific, they must be willing to uphold the terms of the Law of Peoples in common with other peoples, including an agreement not to initiate force against other peoples if they are peaceful and respect human rights.²³

Second, peoples must be well-ordered and guarantee basic human rights.²⁴ In the context of Rawls's Law of Peoples, this criterion means that they must meet three standards. First, they must organize their basic political and economic structures around a conception of justice.²⁵ This does not just mean that they must have well-defined laws and institutions. A conception of justice must specify a set of principles that are made known to the public and serves as a basis on which they may critique existing laws and institutions.²⁶ Second, they must have a legal system that conscientiously applies this conception of justice. Moreover, the judiciary and other officials must be willing to listen sincerely to appeals from groups who claim that their disadvantaged status is not justified by the people's conception of justice.²⁷ Third, the people must guarantee basic human rights, including a right of exit.²⁸

Rawls takes care to specify that basic human rights do not include all the rights that would be guaranteed by a liberal government.²⁹ For example, basic human rights require that the government respect free speech, respect minimal religious freedoms, and support a right to subsistence. However, a decent people might not guarantee all the rights typically provided by a liberal state. For example, a decent state might not guarantee full freedom of expression nor full equality in employment for religious minorities.³⁰ In his one example of a decent state, Rawls allows that it might deny members of religious minorities access to careers in the military or the highest levels of government.³¹

It is important to stress that Rawls does not allow that a decent state could indiscriminately or arbitrarily deny individuals any set of rights. Minorities and other disadvantaged people must have the right to challenge the claim that their status is consistent with the people's official conception of justice. As Rawls says, "It is necessary and important that different voices be heard, because judges' and other officials' sincere belief in the justice of the legal system must include respect for the possibility of dissent."³² Moreover, he stresses that the reason that benevolent absolutisms are not equal members of the Society of Peoples is that they do not give their people a role in decision-making. Still, Rawls makes it clear that in principle the mechanisms for dissent do not have to be liberal nor democratic.³³

In summation, Rawls asserts that the criterion for toleration is that a state be peaceful, respect human rights, and be responsive to protest. The protests must be in accordance with a well-defined, public conception of justice. Such states are well-ordered, whether

decent or liberal. In the Law of Peoples, all well-ordered states are guaranteed recognition.

2. The Floor for Toleration

Having given the criterion of toleration, I should spell out what kind of treatment those to be tolerated must receive. In the Law of Peoples, to tolerate a people requires that one recognize that people as “an equal participating [member] in the Society of Peoples.”³⁴ Recognition carries with it several concrete guarantees. First, other members of the Society of Peoples may not subject the people to military, diplomatic, or economic sanctions.³⁵ Second, it guarantees that the people may not be compelled to be part of any international institution that is prejudiced against it from the outset. For example, if all peoples must contribute to the IMF, then the IMF may not give preferential loans to liberal states over decent nonliberal states.³⁶ Third, they are also entitled to minimal assistance in times of extreme crisis. Fourth, they are entitled to freedom from drastically unfair trade laws.³⁷ When Rawls argues that decent states should be tolerated, he means that they should receive full recognition in this sense.³⁸

3. Toleration as a Matter of Principle

In describing Rawls’s dispute with the moral cosmopolitans, it is important to stress how strong of a claim Rawls makes with regard to toleration. He does not just argue that there are pragmatic reasons for granting toleration to decent states. Nor does he take the position that we should tolerate decent states out of fear that liberal states will go too far in their opposition. As Rawls says, “It is important to emphasize that the reasons for not

imposing sanctions do not boil down solely to the prevention of possible error and miscalculation in dealing with a foreign people.”³⁹ Rawls insists that it is simply part of the idea of political liberalism that political liberals acknowledge an obligation to support a certain type of Law of Peoples.⁴⁰ That Law of Peoples requires that we tolerate decent states. As Rawls says, “If all societies were required to be liberal, then the idea of political liberalism would fail to express due toleration for other acceptable ways (if such there are, as I assume) of ordering society.”⁴¹

In presenting these claims, I should stress that Rawls never denies that liberal individuals may wish for and even work toward a world in which every state is liberal. He clearly thinks that it would be better if all states were liberal.⁴² What Rawls denies is that we could ever be in a position in which liberal states could rightfully establish as a basic principle of international law that all states should be liberal. We might think that it would be nice to have a world order that favored liberal states over decent states. However, we can never hope to support such a world order. Such a move is not consistent with what Rawls calls, after Rousseau, “taking men as they are and laws as they might be.”⁴³ For Rawls, a world order that would favor liberal states is not a *realistic* utopia.

In making this point, it might seem like I have brought Rawls very close to his moral cosmopolitan critics. To some extent, this objection could be true. However, there is an important difference between Rawls’s position and Tan’s position. Tan acknowledges that circumstances may compel us to accept something like Rawls’s Law of Peoples.

However, Tan holds that this would be a concession to certain limitations. Moreover, we ought to work to overcome those limitations.⁴⁴

In contrast, Rawls holds that there are permanent conditions that make it impossible to support a world order that requires all states to be liberal. First, Rawls argues that liberalism demands stable institutions. By “stable”, he means that the citizens can justify those institutions to each other on the basis of a mutual uncoerced agreement.⁴⁵ As he says,

The point, then, is that the problem of stability is not that of bringing others who reject a conception to share it, or to act in accordance with it by workable sanctions, if necessary, as if the task were to find ways to impose that conception once we are convinced it is sound. Rather, justice as fairness is not reasonable in the first place unless in a suitable way it can win its support by addressing each citizen’s reason, as explained within its own framework.⁴⁶

Second, Rawls holds that without severe and unacceptable levels of government repression, it is impossible to secure a stable agreement on a comprehensive moral, philosophical, or religious doctrine.⁴⁷ That is, we cannot hope to secure a stable agreement on a set of principles that govern all areas of human life.⁴⁸ It might be possible to coerce people into such agreement, but we cannot secure an agreement that “aims at being acceptable to citizens as reasonable and rational, as well as being free and equal, and so addressed to their public reason.”⁴⁹ In what follows, I will argue that these two assumptions play a major role in Rawls’s case for the Law of Peoples. In one sense, this may mean that Rawls holds that toleration is a concession to limitations. However, it is not a concession to transient limitations. It is a concession to limitations that can not be overcome. Or, at least, overcoming them is not a possible basis for a political project.

Absent a drastic and unforeseeable change in human nature and/or the conditions of social life, it is impossible to do away with the limitations that necessitate toleration for decent states. In this sense, Rawls and Tan disagree over whether we should recognize an automatic obligation to tolerate decent peoples.

III. International Order for Rawls and his Critics

A. An Example: Earth 2200

In order to further clarify the debate over toleration, I will use an example to contrast Rawls with certain key alternatives, including Tan's position. Let us imagine that in 2200, every country in the world except four has endorsed and gone a long way toward implementing the principles laid out in the conception of justice that Rawls calls "justice as fairness."⁵⁰ The three remaining holdouts are Paraguay, Byelorussia, Spain, and Portugal.

Paraguay in 2200 is organized as a moderate Communist state. Mindful of the gross errors of the Leninist form of Marxism, they take care to have a decentralized, democratic government. There is also a minimal guarantee of free speech. However, freedom of the press is subject to a vote by assemblies in the provinces where the press is housed. Religious freedom is guaranteed, but religious worship and instruction are limited to the home and the church. There is also a minimal right to private property. However, the means of production are all owned by the provincial governments. In effect, this means that dissenters who are sufficiently at odds with the majority in their area can be shut out of most forms of employment. If a minority is sufficiently unpopular in the country as a whole, they can effectively be restricted to low-level employment. This minimum is enough for people to support a family, but allows for little economic or social advancement. However, everyone has a subsidized right of exit, and the Constitution guarantees that exile is the maximum possible punishment. They also aim to be self-sustaining. Hence they avoid trade and live at peace with their neighbors. Moreover,

they disband their military in favor of a minimal, decentralized police force and volunteer militias on the borders of their neighbors.

Byelorussia in 2200 is organized as a neo-Czarist state. In 2100, it reorganized itself as an Eastern Orthodox monarchy. However, it tempered some of the absolutism of the earlier Czarist state. In particular, serfdom was abolished and real power given to groups like the *mir* (peasants' associations). The Czar still has substantial control over the national government, but balanced by well-established rights for local institutions. A person's societal position is heavily affected by accidents of birth. Still, urban careers are largely open to talent, and rural people would have rights that encouraged, slow, steady material progress.

In matters of religion, appropriate concessions ensure a reasonable amount of self-government for religious minorities. Russian Orthodoxy retains a pride of place, including government sponsorship of missionaries and other institutions designed to mildly encourage Eastern Orthodoxy. Still, avenues are open for Jews, Muslims, Buddhists, and others to protest institutions that encourage discrimination and especially violence. Violations of the well-established rights and/or immunities of these groups would result in heavy penalties. Byelorussia is also peaceful and does not interfere with the internal affairs of other well-ordered states.

Spain in 2200 adopts a democratic government, but with the form of economic organization that Rawls calls "natural aristocracy." Like most other states of its time, Spain gives priority to the liberties that Rawls recommends. However, in Spain, careers are open to talent and there are significant provisions to promote equality of opportunity,

especially for the most talented youth. However, Spain has minimal redistribution of wealth. A well-run economic system ensures that few people, if any, must go without work. The minimum wage is enough for a decent living, and the state serves as the employer of last resort. However, people without the requisite talents and motivations can still fall to a quite low economic level. The government asks few sacrifices of those who get rich through talent and hard work, beyond those sacrifices that are necessary to guarantee others a social minimum.

Portugal in 2200 is just like Spain, without the guarantee of an economic minimum. In Portugal, you can fall as far as your lack of talent takes you.

It seems clear that Natural Aristocratic Spain, Neo-Czarist Byelorussia, and Moderate Communist Paraguay would all be well-ordered. They respect basic human rights and they are responsive to protests. Spain would also count as a liberal people, although one with a different form of liberalism than the rest of the world. Byelorussia and Paraguay would clearly not be liberal. Paraguay does not have sufficient economic freedom, and moreover lacks that freedom in a way that undermines the use of a person's liberty. Byelorussia, if nothing else, does not have a system that religious minorities could accept as free and equal citizens. Still, since they are well-ordered, Byelorussia and Paraguay would qualify as decent states. Portugal would not be decent because it fails to provide an economic minimum, which is a basic human right.

B. Three Responses to Earth 2200.

I raise the issue of Earth 2200 in order to clarify the difference between Rawls and Tan on the issue of toleration for decent states. There are many different principles that

people could propose to direct international relations in Earth 2200. I will describe three possibilities.

First, there is Rawls's Law of Peoples. According to these principles, liberal and decent peoples would be guaranteed toleration. Benevolent absolutisms and outlaw states would not.⁵¹ Moreover, there would be very little required in the way of economic distribution across international lines. Burdened societies and societies faced with sudden crises would be guaranteed assistance.⁵² However, each society would be essentially responsible for its own resources, and great inequalities in wealth among decent and liberal countries could be tolerated.⁵³ Liberal and decent peoples would also take steps to encourage other states to become well-ordered.

Second, there is Tan's version of moral cosmopolitanism. Tan would not propose anything like a world-state. However, he would propose a Law of Peoples that basically applied a liberal theory of domestic justice to the world as a community. Tan takes Rawls's "justice as fairness" as a case in point. Tan argues that liberals who endorse this theory of justice should apply it on a worldwide basis. Consequently, all states would be expected to guarantee all their citizens the largest set of liberties consistent with similar liberties for all. Moreover, they would organize international and domestic arrangements in the way that most benefits the least well off around the globe. For example, suppose that a small change in wealthy nations' trade laws would benefit the lowest-paid workers in the least developed nations, at a small cost to better-off workers in developed nations. Under Tan's moral cosmopolitanism, the wealthy nations would be morally obligated to make this change.

Third, I would suggest that there is a middle ground between Tan and Rawls. We might propose a modified Law of Peoples that took elements from both theories. All states would be expected to maintain a liberal conception of justice, but not necessarily the same conception of justice. At the same time, the Society of Peoples would reject Tan's more egalitarian distributive principles in favor of Rawls's modest duties of assistance. I will call this alternative "mandatory liberalism."⁵⁴ On the issue of toleration, Rawls apparently sees something like this proposal as his main opponent. As he says, "On this view, the guiding principle of liberal foreign policy is gradually to shape all not yet liberal societies in a liberal direction, until eventually (in the ideal case) all societies are liberal."⁵⁵

C. Complaint and Toleration in Earth 2200

1. Complaint under the Law of Peoples

I present these three options in order to clarify how the international community would respond to complaints of injustice in Earth 2200. The question at hand is what kind of complaints of mistreatment the international community would see itself as entitled to support under each option. I will assume throughout that all states are perfectly successful in securing their stated conception of justice.⁵⁶

I will start with Rawls. At a minimum, liberal states under Rawls's Law of Peoples would see themselves as entitled to hear the following types of complaint. They would be willing to hear complaints from people who were denied freedom to worship as they please, subject to the standard limitations recognized by liberal countries.⁵⁷ They would be willing to hear complaints from people who were both unable to secure employment

and also denied any assistance from the government. They would be willing to hear complaints from people who were denied the right to question whether the dominant group's conception of justice required that they be disadvantaged in any way. They would be willing to hear complaints from people who were not allowed to emigrate, provided that those people had a country willing to accept them.

The last two points need some clarification. First, there is something of an ambiguity in Rawls's claim that the government must respond to citizens who protest that they have been mistreated. It might seem that Rawls only holds that dissenters must have to question whether the dominant conception of justice authorizes the way that he has been treated. For example, suppose that Neo-Czarist Byelorussia advances a particular way of understanding Eastern Orthodox traditions as the basis for its government. It might seem that dissenters could only complain that those traditions do not authorize the particular disadvantages to which they have been subjected.

However, I would suggest another interpretation of Rawls. Another way to interpret Rawls is that he holds that the government must show that this disadvantage is necessary to maintain its traditions. That is, the state must show that the disadvantages that it places on dissenting individuals and minorities are necessary to maintain its system of government for the benefit of those who desire such a system. This requirement would prevent the government of Byelorussia from imposing compliance with Eastern Orthodox traditions arbitrarily or maliciously. On this interpretation, the international community would hear complaints that the state was imposing conditions on minorities or dissenters

in which the dominant group could just as well achieve its collective goals without imposing those conditions on minorities and dissenters.

I would add to this interpretation a neglected point about the right of exit. Tan and other critics have rightly raised the question of whether it does any good to grant residents of decent states the right to emigrate if no liberal country has any obligation to accept them. There are legitimate questions about how much this limited right ameliorates unfavorable conditions.⁵⁸ However, they overlook one important implication of the right of exit. The state has to maintain a right to exit that residents can exercise whenever other states agree to accept them, or if somehow open land appears.⁵⁹ This point is important because it implies that the state must be organized so that it can maintain itself even if dissenting minorities choose to leave. Consequently, the economic system cannot be essentially dependent on exploiting any individuals or minorities. It may be able to put them at a disadvantage, but that disadvantage must be a necessary side effect of a system that the government could maintain in the absence of the disadvantaged group. So, the international community could support complaints that a given country was run in a way that could not be maintained without denying a right to exit.

In *Earth 2200*, Rawls's Law of Peoples would only support protests from inhabitants of Portugal. In Portugal, people who are willing to work could find themselves unable to do so, with no help from the government. In that case, Portugal would not qualify as a decent people. It would apparently be an outlaw state, since it systematically neglects a basic human right.⁶⁰

2. Complaints under mandatory liberalism

Under mandatory liberalism, the international community would support all of the same complaints supported by Rawls's Law of Peoples. However, it would also support complaints from dissenters and minorities who do not get the benefits of liberalism. Essentially, it would support the complaints of people who are not treated as fully free and equal.

It seems clear that under mandatory liberalism, Neo-Czarist Byelorussia and Moderate Communist Paraguay would not be recognized as equal members of the international community. Suppose, for example, that the government of Neo-Czarist Byelorussia required all Jewish children to undergo some amount of education in Eastern Orthodoxy. Suppose also that they could show that this education was required to foster a civic identity and to put the children in a better position to argue for their rights on the majority's own terms. This policy does not seem to qualify as a violation of basic human rights, and it would help maintain the state's conception of justice. Still, it is hard to see that this could be considered reasonable. I doubt that Jews could accept these terms as free and equal citizens. Those terms require them to face a difficulty in transmitting their beliefs to their children that the majority does not accept for itself. So, it would seem that Neo-Czarist Byelorussia does not count as a liberal people, and would therefore be subject to censure under mandatory liberalism.

3. Complaints under Tan

So far, it is clear that there is a difference between Rawls's Law of Peoples and mandatory liberalism. Certainly, Tan would side with mandatory liberalism on the

question of tolerating decent states. Moreover, Tan would probably have to go a step further. I would argue that Tan's version of moral cosmopolitanism would have to support protests from citizens of Natural Aristocratic Spain.

The difficulty with Tan's moral cosmopolitanism is that it attempts to apply a single conception of justice to the entire world. In particular, it applies a domestic principle of justice to the entire globe. It might seem, then, that his moral cosmopolitan theories would require a single conception of justice for the entire world. Granted, Tan does not explicitly demand that there be a single principle of basic liberties. Still, he argues that the fact that people are not being treated as free and equal serves as grounds for the international community to take some unspecified action against a country. Consider, for example, the case of Natural Aristocratic Spain. Suppose that a citizen of Spain complained to the Rawlsian states that the Spanish government did not treat him as fully equal. Rawls notes that his justice as fairness is the most egalitarian form of liberalism, so this claim seems accurate. The question arises why Tan's international community will support the complaints of disadvantaged Jews in Neo-Czarist Spain, but not the complaints of disadvantaged low-income workers in Natural Aristocratic Spain.

IV. The Place of Toleration in Rawls's Philosophy

1. Overlapping Consensus and Public Reason

Having laid out the contrasting positions, I can now address the question of why Rawls thinks his principle of international toleration is necessary. In order to understand the place of toleration for decent states in Rawls's philosophy, it helps to start with the concept of overlapping consensus. Throughout Rawls's work, he is concerned with the

question of how people can affirm a government in common across serious moral, cultural, and religious differences.⁶¹ As part of this concern, Rawls has developed the idea of an overlapping consensus. The Law of Peoples represents Rawls's attempt to find an overlapping consensus for the international sphere.

One way to clarify the concept of an overlapping consensus is by contrasting it with other ways to approach disagreements. Consider the following three alternatives. Let us assume that Alice is a hedonistic rule utilitarian who would like to see other citizens shape their personal and social life along these lines.⁶² Let us also assume that Alice lives in a society that is composed of 40% ardent hedonistic rule utilitarians and 60% Christians who accept Maritain's account of natural law. Alice could advocate one of three approaches to handling her disagreements with non-utilitarian citizens. I will call the first approach "pure strategic action." On this approach, Alice recognizes no moral limits on her attempts to shape society into a hedonistic rule utilitarian mold. Any means to pursue her goal are acceptable.⁶³ I will call the second approach "morally constrained strategic action." Under morally constrained strategic action, Alice respects moral limits on the means that she may use to promote hedonistic rule utilitarian goals. However, all the restrictions on acceptable means are directly determined by hedonistic rule utilitarian principles. She does not regard herself as obligated to come to any mutual agreement with Christians to establish a set of shared principles that constrain the pursuit of their conflicting goals. This limitation brings me to my third option, overlapping consensus. In contrast to morally constrained strategic action, overlapping consensus requires that people who disagree accept a set of principles that limits the means that they may use to

promote their side of a disagreement.⁶⁴ Moreover, these principles involve more than *ad hoc* legal restrictions. Rather, they provide a unified basis for ongoing critique and reform of existing political, social, and economic arrangements. They therefore constitute an agreement that is something more than the mere coincidence of rules separately justified by the parties to the disagreement on their own terms.⁶⁵

The Law of Peoples attempts to find an overlapping consensus for countries that do not agree on a single conception of justice. That is, it attempts to find a set of principles that serve a basis for establishing rules and institutions that set limits to how they may pursue their often divergent goals. A key part of any overlapping consensus is that it involves an account of public reason. Public reason sets limits to what kind of arguments can be used as a justification in disagreements about how to interpret and apply the terms of an overlapping consensus.⁶⁶ For example, Rawls discusses the possibility of an overlapping consensus for liberal society. He insists that for such a consensus to be possible, we cannot allow people to justify arguments about the limits of political power based on their religious beliefs. Since we cannot expect all people in a liberal society to have the same religion, allowing religious beliefs into public reason would narrow the range of people who could accept the overlapping consensus. Consequently, the range of people who could accept the overlapping consensus would be too narrow to allow a common basis for stable, uncoerced, mutual governance.⁶⁷

To get an idea of how overlapping consensus works, consider the following example. Suppose that on Earth 2200 Vietnam decides to rework its school system. After discussing the issue in terms of generally accepted principles, a government committee

comes to the conclusion that fairness demands that the government equally fund government-run and parochial schools.⁶⁸ In debate, Sen. Park objects that the proposal is unacceptable because religion is superstitious nonsense. Sen. Nguyen also objects that God wants religion to be free from government contamination. Public reason does not admit either of these objections. Of course, either Senator would be justified in opposing the proposal on generally acceptable grounds. They simply may not argue the point based on controversial religious views, whether religious or atheist.

Rawls believes that for an overlapping consensus to be possible, the overlapping consensus must be complete. That is, it must be possible to settle most questions involving the basic conception of justice and constitutional issues solely on the basis of generally accepted principles.⁶⁹ Moreover, most citizens must be able to agree that the conclusions arrived at by public reason set an acceptable limit on their pursuit of personal and social goals justified on other grounds. It is important to stress that public reason is not supposed to apply to all areas of life. Rawls does not mean for churches to conduct internal debates based on public reason. As K. Roberts Skerret says, “Rawlsian criteria of fairness have crept into substantive ecclesiastical and doctrinal norms so that criteria of legitimacy begin to replace criteria of orthodoxy. But this is an enlargement of the scope of the idea of public reason that certainly Rawls did not envision.”⁷⁰ The Roman Catholic Church is free to govern its internal affairs according to the belief that God exists. It is only required to limit its activity to support laws and institutions that are justified in terms of public reason.⁷¹ Roughly speaking, people are allowed to use all of their religious and philosophical beliefs in private. Public reason establishes the basic

principles for public matters, and it also determines the boundaries of what is public and what is private.⁷²

2. Global Public Reason

Rawls makes it clear that the Law of Peoples is supposed to provide the content for global public reason. As he says, “The Law of Peoples with its political concepts and principles, ideals and criteria, is the content of this latter public reason.”⁷³ The idea is that the limits to legitimate action in the international sphere are set by the terms of public reason. This means that if a state has commitments that would require it to take an action that conflicts with the terms set by global public reason, then it must desist from those actions. In particular, global public reason will set certain norms of non-interference that prevent liberal governments from acting on their judgment that a decent people has an unreasonable form of government.⁷⁴ It is in terms of this global public reason that Rawls justifies his principle of international toleration.

3. The Law of Peoples

Rawls derives the content of global public reason from a thought experiment that he calls the Second Original Position. The Second Original Position asks us to imagine what would happen if representatives of various liberal countries met to determine principles for international relations.⁷⁵ In the Second Original Position, the representatives do not know what country they represent, how powerful it is, what its economic resources are, or which liberal conception of justice it endorses.⁷⁶ They only know that they represent a country that is committed to maintaining its independence and

implementing its conception of justice at home. Rawls then presents the hypothetical representatives with a menu of commonly accepted principles of international law and asks them to interpret those principles. He concludes that they would arrive at his Law of Peoples.⁷⁷

For present purposes, three points of agreement are important. First, they would arrive at a principle of non-aggression and non-intervention.⁷⁸ Second, they would agree that the right to non-intervention is limited by respect for basic human rights.⁷⁹ Third, they would agree that states have a right to economic independence and to set their own terms of trade. However, they must respect a minimal duty of assistance and agree not to impose grossly exploitative terms of trade on each other.⁸⁰

I would argue that these terms are not just separate principles. Rather, there is a single coherent idea running through all three. The general idea is that the representatives' main priority is to secure for their people the right to adopt and implement a conception of justice. As a corollary, they want to secure for their people the right to claim responsibility for implementing a conception of justice within a particular territory.⁸¹ On this point, it is significant that Rawls emphasizes that the participants in the Second Original Position are the representatives of peoples, not states. Granted, Rawls appears largely concerned with the point that states are aggressive.⁸² However, Rawls also emphasizes the point that decent *peoples* are distinguished from outlaw *states* in part by the fact that they have a genuine rule of law rather than "mere commands imposed by force." Along these lines, it appears that the representatives recognize a difference between a case in which a people adopts a conception of justice and a case in which an

elite imposes its rule on the people.⁸³ This distinction makes sense of Rawls's claims about both the rule of law and basic human rights. Decent states are able to maintain a rule of law centered on a conception of justice without violating basic human rights or denying a right of exit. If a state can do this, then there are good reasons to presume that the people has accepted the legitimacy of the government and its conception of justice.

Along these lines, it is important to stress that a decent state does more than just temporarily respect basic human rights. It secures a rule of law that provides a stable guarantee of those rights. Moreover, on my interpretation of Rawls, a well-ordered state must be able to do so while maintaining a right of exit. That means that it must do so in a way that can be maintained without provoking a mass exodus. Also, it cannot be run in a way that can only be secured by denying disadvantaged minorities the right to emigrate to a liberal state.

Taken together, these terms and their justification suggest a certain picture of the aims of Rawls's Law of Peoples. In the Second Original Position, peoples seek to secure their right to implement a conception of justice. They do not seek the right to arbitrarily impose that rule on dissenters and minorities. Nor do they seek the right to impose their conception of justice on other peoples. They only seek the right of all peoples to implement their own conception of justice, subject to limitations that distinguish this right from the mere imposition of commands by force. As representatives of peoples interested in freely choosing a conception of justice, they have no interest in imposing terms on others when those terms are not needed to secure their own conception of

justice. To that end, they have no interest in violating basic human rights, denying a right of exit, or placing gratuitous demands on minorities or dissidents.

V. Decent States and Public Reason

A. Rights and the International Community

Given the general aims of the Law of Peoples, I would argue that Rawls's global public reason cannot support the protests of people who want their decent state to be liberal. Global public reason already supports many kinds of complaints. In order to do more than Rawls's principle of toleration allows, the international community would also have to be willing to support protests from a person who received all the benefits of a decent state. That is, the protestor would have to be in a position in which he was given all the benefits of a conception of justice. His basic rights could not have been violated. Moreover, he would have to be allowed to leave the country if he could find a place to go. The conception of justice would have to be sustainable in his absence. In addition, it would have to be the case that the government could not ameliorate his situation without hampering the implementation of their conception of justice for those who have accepted it. If the government failed to meet one of these conditions, then it would not be decent. So, if proponents of mandatory liberalism have a quarrel with Rawls, then they must hold that the international community would support a demand that goes beyond these conditions. More concretely, they would have to hold that Neo-Czarist Byelorussia and Moderate Communist Paraguay should not get full recognition despite meeting all these conditions.

My present task is to show why Rawls thinks that international community can support the claims of individuals against states that are not well-ordered, but not against decent nonliberal states. After all, the Jews in Neo-Czarist Byelorussia are not being treated as free and equal citizens. They might plausibly question why the international community must ignore their complaint while it supports the complaints of economically disadvantaged residents of Portugal.

In answer to this question, I would argue for the following three points. First, global public reason provides a basis for supporting the right of a people to secure their own conception of justice. Second, the right to secure a conception of justice would not include a right to violate basic human rights. Moreover, a right to violate basic human rights might go against the right of a people to secure their own conception of justice. Third, global public reason cannot support a right for individuals to be treated as free and equal citizens. Consequently, there is no basis in global public reason for the international community to support the protests of individuals who want to be treated free and equal citizens if this protest would conflict with the right of a people to secure their own conception of justice. At the same time, there is a basis in global public reason for supporting the right of individuals to basic human rights.

My first point is that global public reason provides a basis for supporting the right of a people to secure their own conception of justice. In fact, this point is constitutive of the Second Original Position.

This point in turn leads to the second point. As I argued previously, the people in the Second Original Position would make a distinction between cases in which a people

adopts a conception of justice and cases in which an elite imposes its rule by force. There is good reason to think that when a state fails to secure basic human rights, the people have not really adopted the conception of justice. Consequently, global public reason provides a basis for supporting the protests of people whose basic human rights have been violated. For example, if a state cannot maintain itself without allowing any kind of freedom of speech, then it is hard to believe that the people has really accepted the conception of justice endorsed by the state. Moreover, it is hard to see how the state could support anything like this claim without invoking controversial philosophical or religious claims that cannot be supported on the basis of global public reason. Consequently, there would be no basis in global public reason for refusing to support the protests of individuals whose rights have been violated.

In contrast, global public reason does not provide any basis for members of decent states who want to be treated as free and equal citizens. Global public reason is designed to support a right of peoples to implement a conception of justice. The issue at hand is whether an individual has the right to demand that he be treated as a free and equal citizen, even when this concession would disrupt the capacity of the state to maintain its conception of justice. In such cases, the state has a basis within global public reason to refuse to accommodate dissenters. Namely, the state must take this action in order to sustain the right of the rest of the population to sustain their legitimate conception of justice. Consequently, the international community has a clear basis in public reason for supporting the people, but no clear basis for supporting the right of peoples to be free and

equal. So, the international community would have to decline to support the right of individuals to be free and equal.

On this basis, I would argue that the trouble with the right to be a free and equal citizen is that there is no clear way to get this additional right out of the Second Original Position. In the Second Original Position, the peoples are primarily interested in securing the right of everyone to implement a conception of justice. They do not have a basic interest in assessing the justice of each other's conception of justice. As long as they do not impose unnecessary restrictions on individuals, nor deny individuals the ability to maintain themselves, peoples have no interest in assessing the justice of each other's states.

Moreover, it is significant that global public reason does not include any comprehensive moral, philosophical, or religious doctrines. Rawls develops his view in the context of the overall approach known as "political liberalism." A key assumption of political liberalism is that we cannot sustain a long-term public agreement on any comprehensive doctrine.⁸⁴ Moreover, Rawls assumes that an overlapping consensus requires a basis that citizens can justify to each other on a mutually acceptable, uncoerced basis. Consequently, global public reason has no basis for supporting a right of individuals to be treated as free and equal citizens. Basic human rights can be supported based on the peoples' interest in distinguishing between a people that has adopted a conception of justice and mere commands imposed by force. A right to the benefits of a liberal state cannot. So, global public reason supplies a basis for supporting the claims of

dissenters in states that are not even decent. However, there is no basis in global public reason for supporting further claims.

Granted, proponents of mandatory liberalism could simply suggest that we add in the claim that all people should get the benefits of a liberal state. We certainly could do this. It does not follow that we should do this. Without abandoning political liberalism, we cannot include a comprehensive doctrine. In its absence, it is hard to see how mandatory liberalism is anything other than an *ad hoc* principle. However, once we add *ad hoc* principles, we must face the question of why we cannot add other *ad hoc* principles. We could say that all states must adopt justice as fairness. We could say that all states must be Natural Aristocratic, or Christian Democrat, or any other political ideology. Once we establish mandatory liberalism, it seems that we are on a slippery slope toward including the claim that everyone has the right to the best conception of justice. If our principles of international law can support the claims of dissidents in Neo-Czarist Byelorussia, it is open to question whether it can refuse to support the claims of dissidents in Natural Aristocratic Spain.

Of course, Tan seems willing to go down this particular route.⁸⁵ However, it is important to see where it leads him. If global public reason supports a right to the benefits of the correct conception of justice, then two different types of liberal states cannot support the same Law of Peoples. Any two states that adopt a different set of liberal principles will have to interact on the basis of morally constrained strategic action.

Even if a person accepts Tan's proposal, this point shows something very important about Rawls's Law of Peoples. As Tan recognizes, Rawls does not just manipulate the

Law of Peoples to include decent peoples.⁸⁶ Rawls develops his approach to domestic justice under the assumption that we need a shared basis for mutual government, and we cannot get a stable agreement on a comprehensive doctrine. Absent agreement on a comprehensive doctrine, global public reason must respect the right of different peoples to pursue different conceptions of justice. It is not the case that Rawls manipulates his principles to support a prior assumption that decent peoples must be tolerated.⁸⁷ Rather, Rawls's principle of international toleration is a natural extension of political liberalism. In Rawls's terms, "[I]t is important to see that the Law of Peoples is developed within political liberalism and is an extension of a liberal conception of a justice for a domestic regime to the society of peoples."⁸⁸

B. The Position of Dissenters

In making these arguments, I should stress that Rawls is not saying that dissenters in decent states may not hold that their state ought to be liberal. They may certainly argue for this position on philosophical or other bases. Moreover, they may use whatever rights the Law of Peoples supports in order to attempt to convince their fellow citizens that the state should liberalize. At the same time, they lack a basis in both domestic and global public reason for making this claim. So, they may attempt to convince their government and their fellow citizens to change. Barring success at this task, they have no recourse to the international community to support their desire to be treated as free and equal citizens. Individuals and even peoples outside of their community are free to agree with their protests, but severely constrained in their right to actively support those protests.

VI. In Response to Tan

So far, I have argued that Rawls can consistently claim that a state can implement political liberalism at home while affirming his principle of international toleration. Still, Tan might not be satisfied with this argument. On Tan's view, both domestic political liberalism and the liberal principle of international toleration are insufficiently liberal.

A good example of Tan's reasons for his view is his argument that Rawls's principle of international toleration denies individuals their rights on the basis of arbitrary characteristics. Along these lines, Tan points out that liberalism holds that people should not be denied certain rights on the grounds of morally arbitrary characteristics such as race, class, gender, or religion. However, nationality is just as much an accident of birth as anything else. Rawls's Law of Peoples effectively denies residents of decent states the benefits of liberalism on the basis of their nationality. On this point, Tan quotes Pogge, who argued, "Nationality is just one further deep contingency (like genetic endowment, race, gender, and social class), one more potential basis of institutional inequalities that are inescapable and present from birth."⁸⁹

In response to Tan, I would argue that Rawls does not overlook this concern. However, he sees the problem in terms of a conflict of two values. Rawls essentially affirms a right of political association. This involves the right to form a people and freely adopt a conception of justice. Most political liberals, if not all, will also affirm that every individual should have the right to a liberal government. If so, then there is a conflict of liberal values. Rawls faces the difficulty of trying to balance these two values.

If we consider the problems in terms of conflicting values, Tan's objection to Rawls faces serious problems. Consider a domestic analogy. Let us suppose that liberal values imply that no child should be raised in a hierarchical religion. It does not follow that a liberal government ought to espouse this value. If opposition to hierarchical religion is in fact a liberal value, then it still must be balanced against freedom of thought, religious freedom, and freedom of association. A person could reasonably think that the proper balance of liberal values precludes any prejudicial government action against those who support internally hierarchical religions. Along these lines, Rawls takes the position that his principle of international toleration sets the proper balance between the right of political association and liberalism's more egalitarian concerns. If my arguments about public reason are correct, then Rawls concedes about as much as he can without effectively nullifying any right to choose a conception of justice.

VII. A Point of Agreement

A. The Issue

So far, I have argued against Tan that Rawls has good reason to argue that political liberalism leads to support for his principle of international toleration. Still, there is one subject on which I agree with Tan, but on which I suspect that he misinterprets Rawls. Tan apparently interprets Rawls as holding that the principle of international toleration forbids liberal states from publically criticizing decent states for adopting nonliberal policies. I will argue that Tan's interpretation is mistaken. There is little textual evidence that Rawls holds this extreme position, and there is nothing in the Law of Peoples that rules out official criticism of decent states by liberal states.

In making this claim, I should emphasize that I distinguish between two senses of “public criticism.” In the first sense, representatives of a liberal state criticize the decent state’s policies in international public fora, such as the United Nations. In the second sense, the liberal state simply makes an official statement criticizing the decent state. Tan’s writings are unclear as to whether he thinks that both views are ruled out. When he first discusses the issue, he notes that criticisms within liberal societies are permitted and then says, “but, presumably, public criticism by liberal representatives in international political forums like the United Nations, the European Union, and other similar international bodies is apparently ruled out.”⁹⁰ Later, however, he simply says that “Rawls raises the worry that criticism of decent peoples will undermine mutual respect among peoples ...”.⁹¹ Moreover, the latter quote follows a distinction between making a judgment and acting on a judgment.⁹² I will assume that Tan thinks that both forms of criticism are ruled out. I will argue that official criticism in general is acceptable, and that official criticism made within international institutions is acceptable in a qualified way.

B. Evidence for Restrictions on Criticism

1) Direct Textual Evidence

As far as I can tell, there is no direct textual evidence that Rawls believed that official criticism were ruled out, even in international fora. The closest thing to textual evidence comes in Walzer’s *On Tolerance*. James Nickel points out that Walzer claims that Rawls suggested this idea to him, presumably in conversation or in correspondence. Walzer wrote, “Collective condemnation, breaks in cultural exchange, and active

propaganda can serve the purposes of humanitarian intolerance ...”.⁹³ Walzer then explained in a footnote that Rawls suggested these actions to him as instances of intolerance short of forceful intervention. So, there is some reason to believe that Rawls would regard collective condemnation and propaganda as instances of intolerance.

On the other hand, the term “active propaganda” is ambiguous. Moreover, the use of the term “collective condemnation” is significant. Collective condemnation is not necessarily the same as independent statements made by various countries. Rather, it suggests an organized effort. A domestic analogy would illustrate this point. Suppose that Edgar is the only Protestant in a Catholic neighborhood in New England. It may be annoying if his neighbors often make individual comments encouraging him to convert. It is another thing entirely if they organize a delegation to express their concern over his religious errors. The latter is much more likely to send the message that he is not viewed as a fully legitimate member of the community. Similarly, a collective condemnation by multiple societies may imply that they do not view the target of the condemnation as a good member of the Society of Peoples. A series of independent criticisms by the same governments do not necessarily send the same message. So, the fact that Rawls forbids collective condemnation does not imply that he means to rule out criticism by various countries.

2) The Contrast with Criticism in Individual Societies

While there is little direct evidence that Rawls intended to rule out public criticism, several authors have argued this point based on comments made in the text. The first piece of evidence that Rawls intends to rule out official criticisms of decent peoples is

that he emphasizes that individuals may make criticisms. In his earlier essay, “The Law of Peoples”, Rawls said, “There would be no political case to attack these nonliberal societies militarily or to bring economic or other sanctions against them to revise their institutions. Critical commentary in liberal societies would be fully consistent with the civic liberties and integrity of those societies.”⁹⁴ Both Tan and Tesón draw the inference that Rawls means to rule out critical commentary in international public fora. The fact Rawls use the term “in liberal societies” seems to support this claim. I would add that the term “in liberal societies” rather than “by liberal societies” could be taken to indicate that the criticisms may only be made by liberal individuals within those societies, not by their official representatives.

Still, the evidence is ambiguous. Rawls does not specifically rule out critical comments in international fora, provided that the criticisms do not seem to advocate prejudicial treatment of the decent peoples in question. I will return to the question of whether it need do so below. In any case, it would be too much to infer from this passage that official criticism by liberal governments outside of international fora would be ruled out.

3) Arguments about Comments in the United Nations

The second piece of evidence is that Rawls discourages the United Nations from taking positions on whether liberal statements should be decent. After Tan surmises that public criticism is ruled out, Tan makes the following claim:

Rawls confirms this point in *The Law of Peoples*. He writes: “The United Nations (ideally), should not offer incentives for its [well-ordered]

member peoples to become more liberal, for this would lead to serious conflict among its own members. ... [I]t is [also] not reasonable for a liberal people to adopt as part of its own foreign policy the granting of subsidies to other peoples as incentives to become more liberal, although persons in civil society may raise private funds for that purpose” (1999 pp. 84-5).”⁹⁵

Moreover, in a footnote to this passage, Tan attributes to Rawls the view that public criticism would imply sanctions. As Tan says, “Such criticisms, Rawls fears, come with sanctions of some sort.”⁹⁶

The passage cited does not itself support the claim that critical comments are ruled out, at least not without further argument. In context, this passage clearly deals with the question of offering material incentives. The issue of criticism is not mentioned anywhere in the passage quoted, nor in the pages surrounding it. Moreover, on the following page Rawls specifically says, “I shall argue later ... that self-determination, duly constrained by appropriate conditions, is an important good for a people, and that the foreign policy of liberal peoples should recognize that good and not take on the appearance of being coercive.”⁹⁷ This comment indicates that Rawls is concerned about the appearance of coercion, not criticism *per se*.

Still, Tan raises the valid point that if we assume that all such criticism could reasonably be taken as a call for prejudicial action against decent peoples, these restrictions would rule out criticism in official fora. I think that Tan is mistaken to attribute this assumption to Rawls. I will return to this issue below.

4) Arguments from Mutual Respect

A fourth piece of evidence occurs in Rawls's comments about respect. Tan cites evidence that Rawls believes that criticisms would undermine mutual respect. As Tan says,

“Rawls raises the worry that criticism of decent peoples will undermine mutual respect among peoples, ‘an essential part of the basic structure and political climate of the Society of Peoples’ (1999 p. 122, also pp. 61-2). Yet ‘[l]apsing into contempt on the one side, and bitterness and resentment on the other, can only cause damage’ (1999 p. 62). Additionally, ‘[t]his lack of respect [from liberal peoples] may wound the self-respect of decent nonliberal peoples as peoples, as well as their individual members ... Denying respect to other peoples and their members requires strong reasons to be justified’ (1999 p. 61)”⁹⁸

In response to Tan, I would point out that none of these passages directly refers to the issue of official criticism. Moreover, the passage on p. 61 clearly raises the issue of “politically enforced sanctions.” The passage as a whole reads, “If liberal peoples require that all societies be liberal and subject those that are not to politically enforced sanctions, then decent nonliberal peoples – if there are such – will be denied a due measure of respect by liberal peoples. This lack of respect may wound the self-respect of decent nonliberal peoples as peoples, as well as their individual members, and may lead to great bitterness and resentment. Denying respect to other peoples and their members requires strong reasons to be justified.”⁹⁹ In none of the passages cited does Rawls specifically say that official criticism must lead to bitterness and resentment.

5) Argument from the Content of the Law of Peoples

Still, Tesón points out that the Law of Peoples does not provide any basis for criticizing decent peoples. In my terms, there is no argument against decent peoples from

within global public reason. Tesón draws the conclusion that there is no basis for criticizing decent peoples in fora such as the United Nations.¹⁰⁰

In response to this argument, I contend that the premise is true but the argument is invalid. It is true that global public reason provides no basis for condemning decent peoples. However, global public reason provides no reason why a person may not condemn decent peoples, either. Consider an analogy from the domestic sphere. People with various secular and religious ideologies are free to argue with each other, provided that they respect the terms of political liberalism. Similarly, liberal peoples are free to criticize decent peoples and vice-versa. For that matter, liberal peoples are free to criticize other liberal peoples for having the wrong kind of liberalism. Of course, there is no basis for an official condemnation by the United Nations. However, this fact does not necessarily prevent liberal peoples from expressing criticism, even in official fora.

Of course, if we assume that criticism in international fora always implies a call for action, then criticisms in international fora would be ruled out. However, I would argue that not all criticisms in international fora necessarily imply a call for action. I grant that in many cases criticisms would carry such implications. Usually, we make a statement for a reason.¹⁰¹ Most of the time, we might expect that discussions in institutions like the United Nations are directed to questions about what that institution should do. Or, at least, they would be intended to inform other nations about intended actions by different countries. This implication applies even more strongly in institutions like the IMF. If a representative of South Korea made a statement denouncing neo-czarist Byelorussia in the IMF, it would be reasonable to infer that the representative meant this statement to

influence IMF policy. Consequently, such a criticism would violate the Law of Peoples, which forbids such institutions from acting prejudicially against decent peoples.¹⁰²

Still, it is conceivable that an institution like the United Nations would contain fora designed only for the exchange of opinions. Suppose that everyone understood that nations freely criticize each other in the General Assembly, and also understood that such criticisms are not calls for action. In essence, suppose that the General Assembly were a debating society. In that case, there would be little reason to think that official criticism in this fora would imply sanctions. In the right context, official protests in international fora would not undermine mutual respect between peoples.

C. The Spirit of the Law of Peoples

So far, I have found little in the way of textual evidence for the claim that Rawls means to rule out official criticisms by decent people of liberal peoples. Moreover, I will now argue that ruling out such criticisms would go against the spirit of the Law of Peoples. The Law of Peoples is supposed to establish a framework within which different peoples can implement their various conceptions of justice. If they also wish to try to persuade other countries to adopt a different conception of justice, then that is their right. This is no more a violation of the Law of Peoples than attempting to persuade an individual to become a feminist or a deep ecologist. Provided that a country clearly affirms toleration, there is little reason to think that persuasion is ruled out.

Of course, it might be argued that such actions would undermine mutual respect. Rawls does seem to be very concerned about protecting the self-respect of decent peoples. However, this claim is implausible. For example, in 2000, Sweden denounced

the election of George W. Bush.¹⁰³ To my knowledge, few people in the United States were aware of this, much less cared. Similarly, I doubt that the last czar of Russia would have fainted on learning that the United States officially disapproved of empires. In the context of a secure Law of Peoples, decent peoples can handle a little official criticism. As Tan aptly points out, this is especially true if they are allowed to criticize liberal states in return. If anything, it is condescending to suggest that a decent people must have such fragile *amour-propre* that they cannot stand a little criticism.

My general assertion is that Rawls does not intend to cut off all forms of official criticism of decent states. To illustrate this point, I would like to give a picture of the stance liberal citizens of liberal states are supposed to take towards decent peoples. Suppose that Karen is a citizen of South Korea in Earth 2200. Karen is concerned about the situation of Jews in Byelorussia. Karen is allowed to speak out, raise awareness, shelter exiled dissidents, and organize conferences. She is not allowed to encourage her government to take actions that violate the Law of Peoples. However, there is nothing obviously wrong with lobbying her government to make an official protest against Byelorussia. Rawls is clear that civic virtue requires that citizens of liberal states hold their governments responsible for upholding a reasonable Law of Peoples. However, it does not seem that official protests contravene that Law of Peoples. As Tesón rightly argues, the Law of Peoples does not authorize such protests. However, nothing in the Law of Peoples rules them out, either. Protesting or not protesting against decent states is just one option that governments may take within the bounds of the principle of international toleration.

VIII. Conclusion

In summation, I conclude that a person can both endorse liberalism and practice toleration in the international sphere. Let us assume that all liberal individuals believe that all individuals ought to receive certain rights. It does not follow that the liberal individual must hold that his state should affirm this claim. He must affirm that his state should establish a domestic political order in which such rights are guaranteed. He must also affirm that other states should be granted the same rights. However, Rawls gives good reasons for caution about making this last claim a foundational commitment of the state. He also gives good reasons to affirm an international order that treats other kinds of state as legitimate. Still, liberal governments are free to express their disagreement with decent peoples. Mutual toleration is perfectly compatible with encouraging other people to change their mind. As long as a regime of toleration is ensured, there is nothing particularly dangerous or offensive about promoting your point of view. Tolerating while criticizing may even be the most respectful way to treat people with whom we disagree, as much in the international sphere as in the domestic.

Chapter Four: Robert Audi and Christopher Eberle on Secular Reason

In previous chapters, I defended the claim that tolerance is both a personal and a political virtue. The aim of this chapter is to discuss what tolerance requires of citizens. In recent years, a number of theorists have argued that civic virtue requires that the ideal citizen respect a secular reason requirement.¹ In particular, Robert Audi has argued that the ideal citizen would not support any policy that requires coercion of his fellow citizens if that citizen's only reasons for supporting the policy were religious.² It might seem that tolerance would lead to acceptance of a secular reason requirement. After all, a tolerant person must have some desire to allow people to live by standards that he disagrees with. My argument in this chapter will be that tolerance does not underwrite a secular reason requirement. In fact, if tolerance is established as a public virtue, it renders such requirements unnecessary, and possibly counterproductive.

I. Tolerance and Secular Reason

There are good reasons to suspect an affinity between secular reason and the virtue of tolerance. In this paper, I will focus on one particular advocate of secular reason, Robert Audi. Audi supports a position that I will call his "secular reason requirement." This position holds that an ideally virtuous citizen of a liberal democracy would accept a *prima facie* obligation to support a coercive policy only when he meets two criteria. First, he must have an adequate secular reason to support the coercive policy.³ Second, that reason must be enough to motivate his support for the policy.⁴ For example, suppose

that John is a Muslim living in Zeeland, Michigan. In 2007, Zeeland had to decide whether or not to drop a long-standing ban on the sale of alcohol.⁵ Suppose also that after careful thought, the only argument that John could find for supporting the restriction on alcohol was based on specifically Islamic principles. According to Audi's secular reason requirement, John would have failed in the ideal of good citizenship if he had supported the policy. Alternatively, suppose that John was able to present a good argument for the restriction based on public health concerns. However, if John were honest with himself, he would see that without his religious beliefs, he would not consider this argument sufficient for supporting the restriction. In that case, John would have failed in the ideal of good citizenship if he supported the policy based on the public health argument. To meet this ideal, John could only support the restriction if he had a secular argument in its favor that he would find sufficiently motivating independent of his religious convictions.

The virtue of tolerance has some affinity with secular reason requirements because the virtue of tolerance requires sensitivity to reasons to restrain one's disapproval. As I said in my introduction, one component of the virtue of tolerance requires that a person be willing to nuance and moderate his negative judgments of people whose behavior he disapproves. The other component requires that he recognize and act on reasons to restrain his desire to interfere with behavior that he disapproves of, even when his desire to interfere is legitimate. Let us assume for the sake of argument that tolerant people will support liberal democracy. It is generally accepted as part of liberal democracy that some amount of religious freedom is appropriate. So, it would seem that if a tolerant person

realizes that his only reason for restraining another is based on religious beliefs that the other person does not share, he would not support coercion based on that belief. More generally, a tolerant person would support the claim that a secular reason requirement is part of civic virtue.

I will argue that tolerance does not underwrite a secular reason requirement. A tolerant person would restrain the application of his religious beliefs to politics. At least, he would acknowledge that he should not move directly from “my religion says that this behavior is wrong” to “the government should coerce people not to engage in this behavior.” However, his self-restraint need not go as far as Audi recommends. Tolerance requires some restraint on religion in politics, but not a secular reason requirement.

II. Eberle on Civic Virtue

Before discussing the secular reason requirement, I will lay out some standards of public virtue that I believe tolerance requires. In his book *Religious Conviction and Liberal Politics*, Christopher Eberle lays out several principles that constrain debate over coercive policies in a liberal democracy.

First, Eberle argues that respect for one’s fellow citizens requires that a person refrain from supporting coercive policies unless he has moral reasons for supporting those coercive policies.⁶ This standard seems like a natural prerequisite for tolerance. Suppose that a person regards himself as entitled to coerce others any time it furthers group or personal self-interest. In that case, the person has not even gotten to the point where tolerance becomes an issue. If a person is not even going to recognize reasons to

restrain the imposition of selfish interests on others, it is hard to believe that he is going to restrain the imposition of his moral standards on others.

Second, Eberle argues that respect for one's fellow citizens requires that a person be willing to present those policies to his fellow citizens.⁷ Again, this standard seems like a natural requirement of tolerance. Tolerance requires both caution in judging other people and willingness to recognize reasons to restrain one's self from acting on negative judgments. If a person accepts these requirements, it is plausible to think that he would at least think that people have a right to ask why he wants to stop them from engaging in behavior that they regard as acceptable.

Third, Eberle argues that respect for one's fellow citizens requires that a person be willing to listen to others' arguments.⁸ Again, this standard seems like a natural requirement of tolerance. A tolerant person should be appreciative of the difficulty of accurately evaluating others' behavior and character. It would be unreasonable for almost any person to think that he could do this without listening to what they have to say in their defense. Similarly, virtually any human being would be arrogant if he did not think that other people might have reasons for restraint on coercion that he had not anticipated.

Fourth, Eberle argues that respect for one's fellow citizens requires that a person be willing to seek reasons to support coercion that the other could accept.⁹ Ideally, this would mean reasons that all parties could accept. Falling short of this standard, a person could find one reason that the supporter of the policy could accept and one reason that the recipient of coercion could accept.¹⁰ I do not know that this requirement follows from a

commitment to tolerance. However, it seems plausible that a person who fails to even seek such reasons does not treat the other as a fully equal citizen. So, on the assumption that a tolerant person would support a functioning liberal democracy, I will assume that a tolerant person would accept this restriction as a requirement of civic virtue.

This last restriction entails a partial agreement with Audi's secular reason requirement. In a pluralistic society, we should expect that not everyone will accept the same religious beliefs. Consequently, reasons acceptable to all parties would have to be secular. However, Eberle only argues that we have a responsibility to seek such beliefs. He does not hold that we have a responsibility to drop our support for coercive policies if we do not find them. Of course, we have to be open to any good argument that we ought not to support a particular coercive policy. Still, Eberle holds the mere fact that we do not have an adequate secular reason is not a sufficient reason to conclude that we ought not to support that policy.

III. Audi on Civic Virtue and Secular Reason

A. Audi's Position

Audi argues that a person should not support any coercive policy that he only supports because he holds certain religious beliefs. When he takes this position, Audi does not remove religion from politics altogether. For example, he allows that a person can legitimately be motivated to support coercive policies on religious grounds. He merely specifies that the person should only support such policies if he is *also* motivated by adequate secular grounds.¹¹

Moreover, Audi holds that religious beliefs may be applied to politics in ways that are not justificatory. In particular, he argues that a person may use religious beliefs – his own or another’s – as evidence. Religious beliefs are used evidentially when they are presented as sociological facts rather than religious truths.¹² Suppose that Alice was a Roman Catholic in Zeeland, Michigan, at the time of the debate over legalizing the sale of alcohol. Alice could have argued that we should be careful about offending the sensibilities of our neighbors. Alternatively, she could argue that we should be cautious about overturning longstanding traditions. In either case, the fact that many Muslims or Southern Baptists have longstanding religious objections to alcohol could be introduced as evidence.

Audi also argues that a person may use religious texts and language heuristically. A religious belief is used heuristically when someone uses it to illustrate a point that he means to justify on other grounds.¹³ For example, suppose that Edgar, an atheist, gives a speech in support of greater social support for impoverished single mothers. Edgar might introduce the parable of the Good Samaritan to illustrate the case that we should not allow disapproval of others to become an excuse to ignore their social needs.¹⁴

A significant point about both evidential and heuristic uses of religious belief is that the person who uses them in these ways need not accept the beliefs. Hindu or Roman Catholic citizens can recognize the fact that Seventh-Day Adventists believe that one should not work on the Sabbath. The Hindus and Roman Catholics can then use this fact as evidence for or against particular social policies. Moreover, they can do this while still rejecting the belief in question. Audi’s secular reason requirement only restricts those

who want to use the claim that his religious beliefs are *true* as a justification for coercive policies.¹⁵

It is worth stressing that Audi only intends his secular reason requirement as a standard of civic virtue. He repeatedly emphasizes that he does not support any restrictions on free speech. In his view, people should be allowed to introduce religious arguments as justification for coercive policies if they please. He merely argues that the ideal citizen would voluntarily refrain from doing so.¹⁶

B. Audi's Consequentialist Argument

Audi presents a number of arguments for the claim that an ideal citizen would accept his secular reason requirement. The argument I find strongest is the argument that if citizens do not accept this standard, then there will be bad consequences for society. In particular, Audi points out special features of religious belief that can make its use as justification for coercive policies especially divisive. First, religious groups are often passionately concerned with outsiders, either to condemn or to convert. Second, religion can tempt a person to see himself and his group as more important than others. Third, religion also involves an appeal to religious authority. Finally, people typically attempt to pass their religion on to their children.¹⁷

Most of Audi's arguments for the divisiveness of religiously based coercion point to reasons why religion has an especially polarizing effect on political debate.¹⁸ For my purposes, the most important feature of Audi's argument is that it suggests that allowing religious grounds as political justification will make people unwilling to listen to countervailing reasons. For example, suppose that a Hindu becomes accustomed to

appealing directly to his religious grounds to justify coercive policies. Then suppose that he is challenged by a Mormon on these points. The fact that he grounds his political judgments on religion may give him a number of reasons to reject the Mormon's arguments out of hand. First, the Hindu may simply argue that his religious beliefs are authoritative, and therefore not up for debate or compromise. Second, he may consciously or unconsciously look at the Mormon simply as a Mormon and therefore not see his views as worth considering. More disturbingly, if prolonged, such habits can lead to both sides seeing politics as a contest between their groups rather than as a form of shared deliberation. I would add that this problem can become worse when the religious divisions persist across generations, potentially dividing society into warring identity groups.¹⁹ In these ways, allowing people to make direct appeal to their religious reasons as justifications can be more polarizing than many other types of conflict.²⁰

Granted, as Eberle points out, religious beliefs are not the only type of beliefs that can be divisive.²¹ Still, Audi grants that if other types of beliefs have the same features that he identifies, then we should want to exclude them.²² More importantly, there are significant categories of belief that do not share the features that Audi identifies. People do not generally pass on their beliefs about econometrics to their children. Similarly, most people no longer appeal to authoritative texts for beliefs about nutrition. Granted, we appeal to experts as authorities. However, reasonable people do not adhere to these authorities in the same way. For example, suppose that someone eats very few eggs on the authority of nutritionists who warn about cholesterol. Then suppose that a distinguished panel of informed scientists denies that eggs are a significant source of

cholesterol. This fact would probably cause people to have some doubt about their beliefs about the dangers of eating eggs. In contrast, consider the case of Orthodox Jews who do not eat pork. If someone points out that the New Testament authorizes people to eat pork, this appeal to a rival authority is unlikely to cause any change in Orthodox Jews' beliefs. In much the same way, people disagree about scientific predictions concerning climate change, but we hardly expect society to divide into conflicting factions over the issue.

There are reasons, then, to think that religion has special features that make the justificatory use of religious beliefs for coercive policies especially likely to polarize society. Granted, some other types of belief might share these features, but not all do. Audi grants that if some other type of belief has these features, then we should refrain from using it to justify coercive policies.²³ I will leave aside the question of whether other such categories of belief exist. Rather, I would agree with Audi that the threat of polarization gives us good reason to be cautious about allowing their use as justification for coercive policies.

C. A Response from Eberle

On the issue of polarization, Eberle provides a response that helps illuminate Audi's concerns. On a related issue, Audi argues that people resent being coerced on the basis of others' religious belief. Audi suggests that religious people should ask themselves how they would feel if someone imposed restrictions on their activities based on the belief that dandelions are a sacred species. As Audi says,

Then one might ask the religious voters supporting the protections whether they would accept comparable restrictions of conduct, as well as similar job losses or mandatory changes in their daily work, on the basis of coercive legislation protecting the dandelion as a sacred species or prohibiting miniskirts and brief bathing suits as irreverent.²⁴

In response to Audi, Eberle asserts that he would resent such coercive legislation, but no more than he would resent any other kind of coercion that he disagreed with. That is, he would simply resent not being allowed to mow his lawn. The fact that the restriction was based on a religious belief would be irrelevant. Eberle grants that he would find the belief about dandelions irrational, and therefore especially frustrating. However, he contends that if the person could provide a reason why a rational person could consider dandelions a sacred species, then he would not resent this coercion any more just because it was based on a religious belief.²⁵

I grant Eberle's point. However, I would also argue that the point gets some of its force from the fact that it deals with an isolated instance of coercion. Suppose, however, that Eberle lived in a county where 90% of the people practiced a religion centered on a particular variety of deep ecology. Let us call it the religion of neo-ecologism. Suppose that Eberle constantly found his plans thwarted by the majority's religious beliefs. Then suppose that one day he found his plans similarly thwarted by the fact that a 60% majority held a position about economic forecasting that Eberle disagreed with. I suspect that Eberle would be less annoyed by this intrusion than the intrusions that were based on religious beliefs. In fact, he might even feel a bit of relief that at least this time it was about something other than neo-ecologism.

Building on this example, I would argue that what people fear when someone brings his religion into politics is that their own beliefs will be completely ignored. Consequently, their own religious and moral beliefs will have significantly less influence over their own lives. On this point, Audi's argument that religion involves strong authorities is significant. If someone wants to restrict my behavior based on his reading of economic data, I can argue that his views are incorrect. However, counterarguments are less likely to get me very far with someone who bases their views on the sayings of a scripture or a religious leader. That is especially true if the religious source directly endorsed coercive action. The problem, then, is not so much that the other person gets to present his religious reasons. It is that once religious reasons are included, people have reason to fear that their countervailing reasons – religious or otherwise – will not be listened to. To that end, there are good reasons why a person should want to keep the justificatory use of religious reasons out of politics. Granted, the same reasons may apply to *some* comprehensive secular worldviews such as deep ecology, Communism or the more radical forms of feminism. Nevertheless, there are reasons to fear that coercion based on religious grounds will be more polarizing than coercion based on most types of secular grounds.

IV. Challenging the Question

While I am not entirely convinced by Eberle's response to Audi, it does suggest a valuable way to approach the subject. As Wolterstorff has pointed out, Audi primarily discusses the requirements that civic virtue places on the person who is making political arguments and decisions. However, it is also valuable to look at the question from the

point of view of the person to whom a religious argument is offered. Wolterstorff argues that a secular reason requirement is disrespectful of religious persons because it absolves people of the requirement to address them in their particularity. For example, suppose that a member of the Christian majority were to address a group of Orthodox Jews. A secular reason requirement would not allow the Christian to offer them justifications that appealed to the Orthodox Jews' particular beliefs.²⁶ Granted, it would allow the Christian to appeal to the Orthodox Jews' beliefs as sociological evidence. However, the requirement would demand that the Christian give them substantially the same arguments that he would give to any other citizen, even on matters that directly affect Orthodox Jews as such.

This argument suggests a fruitful way to re-examine the issue of secular reason requirements. It is helpful to ask why people want to introduce religious arguments into public debate. Audi tends to focus on majorities that want to impose their religious beliefs on minorities. Given the danger of religious domination, there are good reasons to focus on this issue. However, this is not the only reason that religious minorities introduce their religious beliefs into political debate. Sometimes, their purpose is to defend themselves against domination by secular ideologies, especially those that are subtly influenced by the majority's religious traditions.²⁷

Wolterstorff provides a good example of this kind of argument. He argues at length that America's policy of funding secular public schools and only secular public schools discriminates against some religious groups. As he explains, some parents hold religious beliefs according to which they are required to give their children a fairly holistic

education. We can assume for the sake of argument that this education meets all goals of secular schools as well as the equivalent secular education. If so, then our current practices discriminate against parents who hold such religious beliefs. If they want to fulfill their religious obligations, then they must pay taxes for secular public schools and pay for a private religious education.²⁸

Mark Jensen has pointed out a difficulty with this argument. Jensen points out that Wolterstorff's argument concerning public schools can be justified in secular terms. After all, a person does not have to agree with the parent's religious beliefs to see that they have some case for a charge of unfairness.²⁹ Granted, the argument requires some understanding of their religious beliefs. However, Audi allows the evidential use of religious beliefs. So, it is not clear that Wolterstorff provides a counterexample to Audi's position.

I grant that the fact that Audi allows the evidential use of religious beliefs goes some way towards alleviating Wolterstorff's concern. Still, we should carefully consider whether a secular reason requirement would really solve the problem of religious domination. As I argued above, one major reason that religious beliefs can be divisive is that the use of religious justifications in public debate can cause people to fear that they will lose control over their lives. However, if the goal is to allow people to have a greater amount of control over their own lives, it seems strange to discourage them from using their religious beliefs as justifications. This is particularly true in cases in which a policy is likely to interfere with someone's practice of their religion. For example, consider parents who argue that secular education is not religiously neutral. It is hard to make this

case without explaining why it would go against their faith to send their children to such schools.

To see the force of this point, let me revisit Eberle's treatment of the dandelion example. One problem with Audi's argument is that he tends to treat the issue as if the choices were between a secular reason requirement and no restrictions on religious reasons whatsoever. However, this is a false dilemma. There are other standards of civic virtue than the secular reason requirement. Eberle clearly holds that we should expect the ideal citizen to have morally weighty reasons for coercing others. Perhaps more importantly, Eberle holds that a good citizen should be willing to listen to challenges to his arguments for coercive policies. Let me apply this to the dandelion example. Suppose that Eberle finds that he may not mow his lawn because his neighbors believe that dandelions are a sacred species. It is not clear that Eberle should expect his neighbors to rescind the law simply because it is based on a religious belief. Rather, a more fruitful approach would be that he ask why the fact that dandelions are sacred is sufficient reason to prevent him from mowing his lawn. In particular, Eberle should ask the majority whether his actions really create enough disruption of their lives to justify the coercive policies. If they have a good answer to this question, then it is hard to see why they are bad citizens for advocating this particular coercive policy.

I raise this point to illustrate my major objection to Audi's secular reason requirement. I grant that civic virtue requires some limits on the justificatory use of religious reasons. However, I do not see why a blanket restriction is helpful. I grant that in some cases, coercing others based on one's religious reasons can be unfair to

minorities. However, such coercion does not always have to be unfair. Before I fault someone for coercing members of a religious minority, I would like to know how much of a disruption it creates in the minority's life. Suppose, for example, that members of the Jewish community in a small town in Iowa argue that Sunday closing laws harm their community. The harm might be economic harm, embarrassment caused to their children, or just inconvenience. The Christian majority has the responsibility to consider the Jewish minority's reasons. However, the final decision should involve questions such as:

- How important is this law to the majority's way of life?
- How disruptive is it to the minority?
- Are there ways to mitigate the effects of the law?
- Would allowing exceptions and exemptions significantly undermine the laws?

If the gain to the majority is small enough or the disruption to the minority is large enough, then the law should not be put in force. I should stress that I am not concerned about how strongly the majority or the minority feel about these issues. I am concerned about whether the policy affects things that are central or peripheral to their way of life. For example, Mill notes that Muslims generally feel more strongly about pork than they feel about alcohol, even though Islam apparently forbids both.³⁰ This alone should not make a strong difference as to how their preferences should be treated. Rather, for Muslim objections to receive extra weight they would have to show that exposure to pigs had a strong connection to other parts of their value system in such a way that requiring them to tolerate people keeping pigs in their community would cause serious disruption to their way of life.

If people are willing to ask these kinds of questions and act on the answers, then it is not clear that religion need have the polarizing effects that Audi predicts. Moreover, I

would fear that a blanket prohibition on the justificatory use of religious reasons would tend to short-circuit valuable conversations on these issues. Consequently, a secular reason requirement might actually create more friction than it eliminates.

A good illustration of my argument is the court case *Mozert v. Hawkins*. In this case, a fundamentalist parent in Tennessee asked to have her children excused from the use of a particular reader in her English class. She argued that while she did not object to exposing her child to any part of the reader, the overall effect of the choice of readings conveyed beliefs about morality and religion that she opposes. The teachers agreed to give an alternative assignment, but the school board interfered and stopped them.³¹ As John Tomasi argues, the original agreement seems like a reasonable, even admirable, solution. The parties who were directly involved discussed the situation and found a way to meet both the state's education requirements and the parents' concerns. It was only when someone from the outside made it a matter of abstract principle that it had to go to litigation. When both sides were willing to compromise, they were able to accommodate the insertion of religious concerns into politics.³²

In making these arguments, I do not deny that civic virtue requires that we recognize some limits on the direct application of our religious beliefs to politics. In particular, a good citizen of a liberal democracy should not see the fact that his religion deems some behavior immoral as a fully adequate justification for prohibiting such behavior, especially on members of other religions. However, it does not follow that he should never use his religious beliefs as a reason for supporting coercive action. The most

important point is that he genuinely listen to others when they provide reasons that override his religious arguments for coercion in particular cases.

V. A Puzzle for Audi

A. A Puzzle

Drawing on Eberle, I argued earlier that the virtue of tolerance requires that people genuinely listen to others when they present reasons why religious justifications for coercive policies should be overridden. If this claim is correct, then it raises a puzzle for Audi's overall approach to the justificatory use of religious beliefs. Audi argues that we should expect that secular reason will be sufficient to resolve political disagreements. He does not think that it will solve all disagreements. Still, he thinks that we can arrive at moral truth by secular reason. At least, people can arrive at enough moral truth to come to agreement on most major political issues.³³

This claim creates a difficulty for Audi's claim that we need to discourage people from introducing religious grounds into as justification for coercive policies. If Audi is correct that we can arrive at convincing secular reasons for moral claims, then it would seem that we can simply present those reasons. If I am correct that civic virtue requires tolerance and tolerance requires that we listen to countervailing reasons, then a good citizen would be willing to override his religious objections when there is a good secular reason to do so. If a good secular reason is available, then we should be able to answer any religious reason that creates a problem.

A good illustration of this argument is Audi's case in which someone considers dandelions a sacred species. Suppose that a person says, "The religion of neo-ecologism

is true and it gives us good reasons to believe that dandelions are a sacred species.

Therefore, people with sufficient dandelions in their yard should not mow their lawns.

Moreover, we should pass a law forbidding people to mow their lawns.” Generally

speaking, if a person argues that their religion X requires belief Y that supports bad law

Z, we should be able to say one of the following:

- a) Religion X does not really lead to the belief Y.
-- The religion of neo-ecologism does not really lead to the view that dandelions are a sacred species.
- b) Belief Y does not really provide a good reason to support bad law Z.
-- Just because a species is sacred, it does not follow that we can never cut them down.
-- There are ways too uproot the dandelions before mowing.
- c) Belief Y does provide a good reason to support bad law Z, but there are sufficient countervailing reasons that we should not support bad law Z.
-- Allowing people to protect everything that they regard as sacred would lead to an extremely burdensome amount of legislation.

If some such reason for overriding the neo-ecologists’ argument is available, then it

would seem that we can simply present the opposing reason. There is no need to

supplement it with a blanket restriction on religious justifications for coercive policies.

However, if no such opposing reason is available, then it is hard to see what harm is done

by the law. I am assuming, of course, that civic virtue requires that people allow people

with whom they disagree to pursue alternative ways of life to some extent. The goal of

this chapter is to ask whether civic virtue demands secular reason alongside – or as part

of – the virtue of tolerance. My response is that if people are tolerant, then it would seem

that religious reasons should not create a huge problem for politics. If there are reasons

to restrain the direct application of their religious beliefs to politics, then tolerant people

should be convinced by those reasons. If not, then it is hard to see what harm it does to

allow the law. In fact, it would seem to impose an arbitrary restriction on people who want to pursue a religious way of life.

B. An Objection

At this point, Audi could respond that my argument ignores the distinction between the justificatory use of religious grounds and the evidential use of religious belief. The neo-ecologists could just as easily introduce the fact that many people believe that dandelions are a sacred species as a reason that people should not mow their lawn. People who disagree with their religion could then quite appropriately ask why that fact is adequate reason to support a law. There is no reason for the neo-ecologists to bring in the further claim that the people who believe that dandelions are a sacred species are correct. So, there is really no need to use religious grounds as justification for coercive policies.

There are at least three problems with this objection. First, this objection presumes that coercion is always simply justified or unjustified. However, I argued in my first chapter that normal liberal politics involves a zone of legitimate contestation. There are issues on which liberal principles permit the majority to vote either way. In some such cases, we could expect that people with different religious beliefs will vote different ways. For example, suppose that liberal principles are compatible with requiring non-essential services to shut down one day a week. In that case, it seems reasonable that Roman Catholics could vote for Sunday as the day for closing, and Seventh-Day Adventists could vote for Saturday. Each side can legitimately choose one position that is justifiable on the grounds that their religion is true. Granted, they should be willing to listen to countervailing secular reasons. However, if there are no such reasons, then it

seems fair that both sides should be able to default to their religious beliefs. In this case, each side will not be asked to accept some principle such as, “the majority’s religious beliefs should determine the day of rest.” Rather, each side would be allowed to contend politically for their preferred day, and each side would have to accept the outcome of the political contest as legitimate.

Second, this objection presumes that we can easily translate justificatory use of religious beliefs into secular reasons. In making this assumption, it also presupposes that we already have a political vocabulary that is sufficient to accommodate all the claims of religious minorities. Audi needs this assumption. Without it, it would be hard to support his claim that secular reason is sufficient to settle most political issues in a liberal democracy. Moreover, if we do not have an adequate secular vocabulary, then his claim that we can attain a second-order community across these disagreements is dubious.³⁴ Or at least, his secular reason requirement would be a hindrance to such a community. If the terms in which we are regularly expected to discuss political matters cannot provide adequate voice for religious minorities, then the supposedly public settlements of these issues in secular terms will almost certainly exclude legitimate minority concerns.

Audi’s argument depends on the assumption that we can settle most political issues with secular reason. However, there are reasons to doubt this claim. I will not go into the variety of objections here. Still, it is enough to note that theorists such as Lyotard and Hauerwas have called this assumption into question.³⁵ Even Habermas has conceded that religious minorities will need a lot of help to translate their concerns into secular discourse.³⁶

I present this second reply because it points to my main objection to the claim that evidentiary language is sufficient to accommodate religious citizens. If tolerance involves respect for people who want to live different ways of life, then a secular reason requirement is an obstacle. Suppose that a Christian is concerned that the current set of laws does not sufficiently accommodate Orthodox Jews. It is hard to see why he would want Orthodox Jews to express their objections in secular terms. Rather, the best response is to try to understand Orthodox Jews on their own terms. This response appears in Stanley Hauerwas' criticisms of secular reason requirements. Hauerwas relentlessly insists that Christians should approach politics on Christian terms.³⁷ Critics have questioned whether Hauerwas' position would allow Christians to ignore the concerns of other religious groups.³⁸ Hauerwas' response is that Christians should listen to other religious groups. However, he believes that a Christian who wants to listen to Muslims or Hindus should *actually listen to Muslims or Hindus*. He should not pretend that all their concerns can be translated into a neutral, secular language. If Hauerwas is correct, then people committed to tolerance should not affirm a secular reason requirement. In fact, they should regard such requirements as misguided attempts to short-circuit the messy but unavoidable process of actually talking to people who disagree with us to see if we can find common ground.³⁹

To some extent, Audi recognizes this problem. He only presents the secular reason requirement as a *prima facie* obligation. So, he allows that there are legitimate excuses for using religious arguments as justifications for coercive policies.⁴⁰ Moreover, he acknowledges that when secular reason does not suggest any solution, people may fall

back on religious justifications. However, he argues that if such exceptions are very common, then liberal democracy will not function well.⁴¹ My main response to this claim is that if it is true, then it is hard to see why we need a secular reason requirement. If adequate secular reasons are available, then they should be enough to override religious reasons on a case-by-case basis. It is not clear why we need a blanket restriction on the justificatory use of religious reasons. Tolerance and civic virtue only require that a person be willing to genuinely listen to other people when they offer objections.

VI. Replies to Objections

At this point, it might seem that I have underestimated a serious problem. I have assumed that religious people will be reasonable and listen to countervailing reasons. Moreover, I have assumed that they are tolerant and therefore already committed to respecting others' desire to maintain alternative ways of life. However, not all religious people are reasonable or tolerant. As Rawls aptly says, a free society will likely contain unreasonable and even mad individuals.⁴² If such people bring their religious reasons into politics, then they will eliminate any possibility of consensus on a system of fair cooperation. More disturbingly, if they become a majority, they may pay not attention to the needs or legitimate desires of people who disagree with their religion.

My arguments also require people to subject their religiously inspired political beliefs to review by reason. My position requires that people acknowledge that their beliefs about the relationship between their religious beliefs and politics are not set in stone. I take this position for two reasons. First, I assume that the beliefs of a religion about politics are less central than other parts of their religious beliefs. Second, I assume that

we should treat our beliefs about the connection between general principles and specific matters of policy as especially prone to error. As situations change, the proper application of various principles changes as well. For example, almost no Christians interpret the traditional prohibitions on usury so strictly that they want to outlaw house loans.⁴³ Similarly, I do not know any Christian who follows the ancient canons against going to Jewish doctors.⁴⁴ This does not mean that the people in question repudiate the principles behind these rules or even believe that the rules were inappropriate for the time. Moreover, people who no longer follow these rules often adamantly refuse to compromise traditional principles in accordance with other changes in the culture around them. They simply hold that while some things should be constant, others have to be applied differently in different contexts.⁴⁵

Finally, I assume that religious questions about how to treat outsiders, especially on matters involving coercion, are less central than rules that apply to the faithful. In that respect, I assume that the primary goal of religious people is to live a certain sort of life and establish a certain sort of community. How they deal with outsiders should be more subject to contextual variation and therefore be more subject to review by reason than other sorts of religious belief and practice are.

I grant that some people would not accept these limitations, and that they could pose a problem. This view may even be incompatible with some religions. However, it is hard to see how secular reason provides a defense against such people. They are not going to obey it anyway. If a Christian will not listen to a Jew who tells him that a particular law actually disrupts an existing Jewish community, then he is not going to agree to a prior

restraint out of fear that it might disrupt some unspecified community. The problem with Audi's secular reason requirement is that it will only restrain people whom we have no need to restrain.

This problem is especially acute when we consider that Audi only presents the secular reason requirement as a standard of civic virtue. He explicitly denies that he intends to interfere with free speech. It is hard to imagine, though, that a person who is not going to behave well without a secular reason requirement will voluntarily accept it. More disturbingly, it would seem that this requirement could silence more reasonable religious voices. As Michael Perry argues, the main effect of a secular reason requirement would be to silence people that want to present more nuanced religious arguments. As Perry says, the solution for bad religious arguments is not to eliminate all religious arguments, but to encourage good religious arguments.⁴⁶ So, it would seem that a blanket restriction on the use of religious reasons as justification in politics may be not only unnecessary but dangerous. It silences those whom we should not want to silence, and leaves those who should be silent free to speak. A secular reason principle, then, would only constrain those who do not need it.

A perhaps more difficult problem is that some people will consciously or unconsciously act in bad faith. For example, some people may be unwilling or unable to distinguish between their emotional attachment to an issue and the actual effect that it has on their way of life. Similarly, people may be unwilling to undertake the difficult task of coming to understand other people's concerns.

I grant that this is a problem. However, once again I am not convinced that secular reason provides a solution. As Wolterstorff says, allowing people to present religious reasons may cause serious problems if a society contains a high level of religious animosity.⁴⁷ However, in those cases it is not clear that we are really going to be able to sustain the kind of deliberative approach to politics that Audi envisions. In those cases, it is more likely that we will either find a *modus vivendi* or simply rely on the good will of the majority.

Moreover, the mere fact that people accept a secular reason requirement does not mean that they will be able to faithfully carry it out. To successfully fulfill the secular reason requirement, people must be able to keep their religious beliefs from unduly biasing their view of what secular reason requires. If a person is able to do this, then it is hard to see why he would not be able to negotiate about religious matters in good faith. Once again, it appears that the people who are able to carry out a secular reason requirement are the ones who do not need it.

VII. An Example

In order to clarify my concerns, let me apply it to a real-world case. In a pair of essays, Rainer Forst deals with a case in which the government of Bavaria passed a law that a crucifix must be hung in every public school.⁴⁸ Forst argues that such actions send the message to Jewish and other non-Christian students that they are not full members of society.⁴⁹

In response to Forst, I concede that there is much substance to his argument. If the crucifixes were meant as a statement that Jews and other non-Christians are unwelcome

in society, then I would agree that such actions are unacceptable. However, his argument turns on a close identification of a positive affirmation of Christianity with a negative judgment of others religions. It is contestable whether we should interpret the statement that way. As Forst notes, this move arose partly out of a concern that the value-relativism of the Weimar state had paved the way for the Nazis' rise to power.⁵⁰ In this context, it is possible to interpret the Germans' actions as saying something like, "We affirm that there are transcendent values. We also affirm that Christianity is one way of access to those transcendent values. Moreover, it is one with a special importance in Bavarian society, both historically and in the present day." It does not immediately follow that other religions or secular philosophies are not also ways of access to those transcendent values.

In making this argument, I do not claim that the law mandating crucifixes is legitimate. I only contend that we should not close off debate merely because the Christian majority supports the law for religious reasons. Nor should we close off debate merely because religious content is involved.⁵¹ The first step should be to seriously assess the motivations of the Christian majority. Suppose that proponents offer a rationale like the one described. We should not automatically take their claims at face value. Rather, we should take into account sociological evidence, other policies advanced by supporters, and other factors. To use an American parallel, we should not automatically believe someone who insists that he intends for his Confederate flag to represent "heritage not hatred." We cannot simply dismiss his claims. However, if we have sufficient evidence of insincerity or self-deception, then we may reject his proffered explanation. Moreover, we should ask whether his actions show adequate respect for the

legitimate reasons that African-Americans and other Southerners have for associating the Confederate flag with racial discrimination.⁵²

Perhaps more importantly, we should open up the question of how disruptive such decisions actually are to the Jewish community. We should also ask what kind of message revoking the law sends to Bavarian Christians. This involves both gauging the reaction of the relevant communities and assessing whether or not it is reasonable. Moreover, we should ask whether there are viable alternatives, and whether there are ways to mitigate the problems caused for the Jewish community. For example, suppose that someone suggests putting up a cross, crescent, and star of David in every classroom. That might be a solution, or it might be taken to convey a relativist message, i.e. that it does not matter what a person believes. Alternatively, the decision to put crosses and only crosses in public school classrooms might be legitimate. However, the majority may have a responsibility to compensate in some way. For example, the Bavarian schools may need to put a greater emphasis on the historic contribution of the German Jewish community to Bavarian culture.

Finally, I would point out something odd about Forst's discussion. For whatever reason, Forst discusses the issue largely in abstraction from the Holocaust. However, given our proximity to the Holocaust, the issue cannot be ignored. I take no stand on the relationship of German Christianity to the Holocaust. Still, it is at least plausible that the Holocaust nullifies the right of Bavarian Christians to express their religion in this public way. To put it bluntly, Germany is about the last place on Earth where one can lightly dismiss people who associate government display of Christian symbols with white

supremacy. However, the issue should be discussed thoroughly. There are some legitimate concerns on the Christian side of this debate. In particular, Pope Benedict (a Bavarian) has raised concerns that Europeans have developed a form of self-hatred, especially with respect to the Christian influences on their several cultures.⁵³ I do not know what the outcome of such discussions should be. I only argue that the issue requires thorough discussion. It cannot be easily resolved with appeal to an abstract principle about the role of religious reasons in politics.

I raise this issue as an example of the problem of secular reason. We should be wary of a blanket presumption against the inclusion of religious reasons in politics. At the same time, we should expect people to recognize the legitimate concerns of adherents of other religions and secular ideologies. We should not close off debate by imposing a blanket secular reason requirement.

Of course, dealing with these problems is not going to be easy. Discussing them could bring to the surface hidden resentments and even create new conflicts. The debates will require much patience on all sides. In advocating such moves, I make two assumptions. First, the society must have healthy enough political and social institutions to absorb and adjudicate the conflict. I include in this assumption both government institutions and institutions that are part of what Rawls calls the background structure. Universities, churches, nonprofits, interfaith discussions, and other institutions in civil society are at least as important as the government in fostering the trust and communication needed to find amicable solutions. Second, the society must secure a strong enough guarantee of basic toleration that the minority need not fear that they could lose all civil standing.

More generally, I assume that the public has enough of the requisite civic virtue to be willing to listen to alternative points of view and treat others with respect. In this respect, I agree with Wolterstorff's argument that in times of great animosity, a secular reason requirement might be a necessary evil. When I argue that we should reject the secular reason requirement, I implicitly trust that modern democratic structures are strong enough to handle social conflicts that have religious implications. I also trust that modern religious groups in liberal democracies have learned enough from history that we can trust them to be committed to tolerance.

VIII. Conclusion

My conclusion is that liberal democracy does not need a secular reason requirement as a standard of public virtue. It needs tolerance. To live together harmoniously, people must be willing to listen to each other and willing to make concessions that accommodate different ways of life. This goal is not well served by discouraging people from presenting their religious beliefs as justifications for coercive policies. A better way to encourage healthy political debate would be to encourage people to acknowledge that their fellow citizens often have legitimate concerns that legitimately override their religious arguments. If a person is willing to genuinely listen to others, then it is hard to see what harm is done by allowing him to occasionally justify coercive policies on the basis of religious beliefs. If there are good countervailing reasons in a particular case, then he will acknowledge them. If there are no such reasons, then it is hard to see what harm is done by allowing religious grounds into debate. However, if a person is unwilling to listen to others, then it is hard to see why he is going to accept a secular

reason requirement. In general, we should not discourage people from bringing religious beliefs to bear on politics. Instead, we should encourage people to listen carefully to see if they have misjudged people whose behavior they would censure. We should also encourage them to listen carefully to people who present reasons to restrain their disapproval. In other words, we should reject a secular reason requirement and simply promote tolerance.

Chapter Five: Will Kymlicka on Autonomy and Political Liberalism

In a series of books and articles, Kymlicka has argued forcefully that the liberal commitment to toleration is grounded in a more fundamental commitment to autonomy. Consequently, he argues that wherever liberal governments have jurisdiction, they should oppose groups that do not support autonomy. He concedes that in many cases liberal governments do not have the authority to demand that certain groups support autonomy. However, he holds that within its jurisdiction, a liberal government should prevent citizens from interfering with others' autonomy. In this respect, Kymlicka holds that autonomy sets the limit to toleration.

On this basis, Kymlicka argues against both communitarians and political liberals. He opposes communitarians because they are not fully committed to supporting autonomy. He argues against political liberals because they compromise the liberal commitment to autonomy by putting toleration ahead of autonomy. In Kymlicka's view, political liberalism is designed to accommodate communitarian groups. He objects to this supposed accommodation on two grounds. First, this accommodation is morally objectionable because it compromises liberalism's core commitment to autonomy. Second, this compromise is futile, because communitarian groups have little or no reason to accept it.

This chapter will show that Kymlicka's argument against political liberalism is mistaken on both counts. First, he is mistaken to treat political liberalism simply as an attempt to accommodate communitarian groups. Kymlicka's argument succeeds in part

because he discusses groups that reject autonomy altogether. However, the spectrum is much wider than he recognizes. Groups tend to support autonomy in different ways and to different extents. Some of these groups may support autonomy, but still find themselves at odds with liberals on a number of points. In particular, I will argue that Rawls's political liberalism can be read as an attempt to accommodate such groups, not an attempt to accommodate full-scale communitarians. Once we bring these other groups into the picture, we can see that Kymlicka's argument against political liberalism is mistaken on both counts. It is not a moral compromise and it is not futile.

I. Clarifying Terms

Before delving into the arguments, I should start by clarifying a few terms. I use "autonomy" to mean the right and capacity to decide for oneself how to live. As Kymlicka puts it, a person is autonomous to the extent that he is permitted to and capable of rationally revising his ends, i.e. his beliefs goals, plans, and purposes.¹ I should stress that autonomy does not just mean being allowed to choose one's way of life. To be autonomous, a person must have access to sufficient material goods to have a genuine range of choices.² He must also have enough education to be capable of learning about and rationally assessing different ways of life.³

Building on this point, I will use "liberal" to refer to any position that holds that institutions should be designed to support autonomy. In this sense, liberalism is opposed to libertarianism, which holds that a person only needs to have the right to choose one's way of life. Libertarians often hold that a person's freedom is not limited if his limited means and/or limited education constrain his capacity to choose between different ways

of life. I should also stress that people can be liberal about different aspects of human life. For example, a Roman Catholic might hold that the government should be liberal. However, he might also vehemently oppose any attempt to reorganize his church along liberal lines.

When I use the term “political liberalism”, I refer to a particular approach to the way that citizens should justify liberal institutions and policies to each other. Two key features distinguish political liberalism from other theoretical approaches to liberalism. First, politically liberal governments pursue a particular way of justifying the legitimacy of their forms of government. A politically liberal government does not endorse the claim that its form of government is legitimate because liberal ways of life are superior to all other ways of life. Rather, a politically liberal government merely claims that its citizens can justify its government to each other *politically*. That is, they can justify the government to each other on the basis of widely shared political customs and traditions.⁴

At the same time, Rawls and other political liberals do not necessarily object to private individuals who justify liberalism to themselves in other ways. They only hold that there should be a public justification that is political in the sense described above. Moreover, they hold that the government should not justify the legitimacy of its institutions on a non-political basis. In contrast, private individuals are free to adopt supplemental justifications for endorsing liberalism. In fact, Rawls hopes that private individuals will find other justifications for liberalism rooted in their particular moral, philosophical, and religious beliefs.⁵ However, these additional justifications, while important and helpful,

should not be made part of the public justification for liberal political and economic structures.

Second, politically liberal governments do not justify specific policies based on the claim that liberal ways of life are superior to other ways of life, outside of the political sphere. For example, a politically liberal government would not discriminate against hierarchical religions on the grounds that hierarchical institutions are bad in all areas of life.⁶

I should stress that there is a difference between a political liberal and a person who supports a liberal political system. Political liberalism is a theoretical view about the relationship between political principles and liberal political systems. A person who supports a liberal political system may or may not be a political liberal. In particular, Kymlicka supports a liberal political system, but he opposes political liberalism. Whether or not political liberalism actually makes a practical difference on matters of policy is a matter of debate. For now, the key point is that political liberalism involves more than just the claim that one's government ought to be liberal.

“Communitarian” refers to a family of political theories that argue for a strong emphasis on the value of community in political philosophy. For the most part, I will follow Kymlicka's use of the term. Kymlicka uses “communitarian” to refer to theories according to which liberal theories of justice or liberal public cultures do not place enough emphasis on the value of community. Moreover, Kymlicka argues that communitarians are committed the view that people do not have a fundamental interest in being able to revise their goals, plans, and moral commitments.⁷ For the purposes of this

chapter, I will use the term “communitarian group” to refer to any group whose members – or at least whose leaders – claim to have communitarian ethical or theoretical commitments. I will also follow Kymlicka in assuming that communitarians are committed to some thesis about our interest in being able to revise their goals, plans, and moral commitments.

II. Kymlicka’s Position on Liberalism and Autonomy

A. Autonomy and Toleration

Kymlicka argues that liberal governments have two basic reasons for practicing toleration. First, within its jurisdiction, a liberal government practices toleration because it supports autonomy. However, it should not tolerate the actions of a group that wishes to hamper its members' capacity for autonomy.⁸

Second, outside their jurisdiction, liberal governments should tolerate because they have little authority to compel others to respect autonomy. Kymlicka argues that liberal governments should – and generally do -- recognize clear limits to their jurisdiction.⁹ For example, liberal governments generally accept that they cannot invade Saudi Arabia to force its government to give full rights to women. They may use economic incentives and other forms of pressure. Still, to some extent liberal governments should tolerate nonliberal countries.¹⁰ Moreover, Kymlicka argues that the government does not have full jurisdiction over national minorities and certain other groups. For example, Kymlicka argues that the government of the United States does not have the right to force the Pueblo to grant full freedom of religion to Protestants within their community.¹¹ He even cautiously endorses the view that certain groups like the Hasidim or the Amish have

the right to retain certain traditional exemptions in matters such as education.¹² Kymlicka holds that in such cases, the government ought to object to the group's policies, but may be constrained to tolerate the group to some extent.

B. Kymlicka against Communitarianism – and Libertarianism

When Kymlicka argues that liberalism has a core commitment to autonomy, he sees himself as arguing against communitarians. On Kymlicka's view, autonomy consists of the right and capacity to choose and pursue one's own goals, plans, and moral commitments. As he says, "What 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."¹³ Kymlicka describes communitarians as committed to one of two theses. Some hold that certain ends are so fundamental to a person's identity that he cannot revise them. Others hold that certain ends are so fundamental to a person's identity that he has no interest in being able to revise them.¹⁴ As Kymlicka says, "One prominent theme in recent communitarian writing is the rejection of the liberal view about the importance of being free to revise one's ends. Communitarians deny that we can 'stand apart' from (some of) our ends."¹⁵

In response to these claims, Kymlicka argues that we can always conceive of ourselves as rejecting any particular ends. He grants that we could not evaluate all of our ends at once. However, he insists that no end is so fundamental to our identity that we could not conceive of replacing it at some point in the future. As he says, "There must always be some ends given with the self when we engage in such reasoning, but it does not follow that any particular ends must always be taken as given with the self."¹⁶ For

example, a woman may be strongly committed to feminism. However, she can always conceive of the possibility that she will someday come to believe that this moral commitment is mistaken and replace it with a commitment to a more restrictive view of women's roles.¹⁷

In laying out this argument, I would stress how strong a claim Kymlicka is committed to. At times, Kymlicka writes as if he only had to prove that a person can revise his ends. For example, he says of Sandel, "For so long as Sandel admits that the person can re-examine her ends – even the ends constitutive of her self – then he has failed to justify communitarian politics."¹⁸ However, Kymlicka's thesis requires something stronger than this psychological claim. His claims about autonomy also require a much stronger ethical claim. Kymlicka must hold that we have a fundamental interest in being able to rationally revise our ends.¹⁹

This ethical claim is stronger than it might initially appear. Kymlicka's position does not just require that others refrain from interfering when we want to revise our ends. Rather, it involves the claim that we always have a fundamental interest in securing our capacity to rationally revise those ends, even when we have no desire to revise them.²⁰ Moreover, Kymlicka must hold that this interest has a priority over nearly every other interest, including the right to follow one's conscience.

To see why Kymlicka's position requires this very strong thesis, consider his disagreement with Chandran Kukathas, a libertarian who opposes both liberalism and communitarianism.²¹ Kukathas argues that a person's most fundamental interest lies in the right to follow his conscience. However, for Kukathas, it does not matter much how

one's conscience is formed.²² For example, Kukathas gives the example of a Muslim fisherman in Malaysia with very little education. He argues that as long as the fisherman is able to do what he believes to be right, his interest in following his conscience has been satisfied. It does not matter that the fisherman was given little opportunity or encouragement to reflect on whether or not his views about what constitutes a good life are correct.²³ Along these lines, Kukathas argues that if a person's conscience demands that he take actions that hamper his autonomy, then his interest in following his conscience takes precedence.²⁴

In contrast, Kymlicka is committed to the view that the interest in securing one's autonomy is fundamental, even for people that have no desire to exercise that right. This commitment emerges clearly in two of Kymlicka's arguments. First, he argues the liberal commitment to autonomy requires that the government compel parents give their children a certain type of education, even if the parents believe this education to be bad for the child. Kymlicka's justification is that a child will not be free if he is not able to rationally revise his ends when he comes of age.²⁵ To that end, the children must develop the capacity to appropriately gather and assess all of the information that their culture can provide. Kymlicka writes, "[A] liberal state will want children to learn the cognitive and imaginative skills needed to evaluate different ways of life, and to survive outside their original communities."²⁶

In making this argument, Kymlicka commits himself to the view that autonomy takes precedence over conscience. His argument could not be supported on the grounds of respect for conscience, because nobody's conscience would be violated by allowing

parents to limit their children's education. Presumably, the parents' conscience demands that they restrict their child's education. Nor will a lack of education limit the child's freedom of conscience when he comes of age. If the child decides that he wants to revise his ends later, then his lack of education will not stop him from making the attempt. He may be considerably less skilled at the task, but not being good at something does not limit one's right to follow one's conscience in the matter. If it were, then the fact that we do not train children to work on farms would be a limit on the freedom of conscience of anyone who decides to become Amish as an adult. So, Kymlicka's argument must require that we put autonomy ahead of conscience. That is, the argument must assume that the child's future right to be autonomous trumps the right of his parents to follow their conscience now.

The strong priority that Kymlicka gives to support for autonomy over respect for conscience emerges even more clearly in his treatment of financial autonomy. Kymlicka argues that a responsible adult may not take actions that hamper his future financial autonomy, even if that is what his conscience demands. In particular, he takes issue with the Canadian courts' decision in *Hofer v. Hofer*. This case involved Hutterite communities, which hold all property in common. Two lifelong members of one such community were expelled for apostasy. They sued to gain compensation for the labor that they had put into building the community. The courts denied their claim. Kymlicka, in contrast, supports their claim, and approvingly cites a dissenting justice who supported the supposed apostates on the grounds that it was "as nearly impossible as can be" for Hutterites to leave their community if they have to do so without compensation.²⁷

In taking this position on the Hutterite case, Kymlicka essentially argues that nobody can voluntarily enter a community if doing so will severely constrain their capacity for economic independence in the future. Note that in this case, the Hutterite communities will not stop a person from following his conscience if he decides to leave. Nor is this policy quite the same as imposing a financial penalty on people who depart. It is simply an economic consequence of communal property arrangements.²⁸ As Kukathas argues, requiring that such groups liquidate their assets to accommodate departing members could severely disrupt the life of the community.²⁹ Consequently, Kymlicka apparently takes the position that persons may not voluntarily enter or form communities if a future decision to leave those communities would involve serious financial hardship. In that respect, Kymlicka's argument implies that the possibility that a person will desire autonomy in the future is sufficient reason to override his freedom of conscience *now*. Consequently, Kymlicka's claim that we have a fundamental interest in autonomy requires much more than the psychological claim that we are capable of revising our ends. It also involves the ethical claim that we have an interest in sustaining our future capacity to revise our ends, even at the expense of following our conscience now.

III. Kymlicka's Critique of Rawls

A. Political Liberalism

Against the communitarians, Kymlicka holds that we have a fundamental interest in securing autonomy, understood as the capacity to rationally revise our ends. On this basis, Kymlicka also opposes those liberal theorists whom he views as accommodating communitarians by making toleration more fundamental than autonomy. These theorists

would not allow the government to take prejudicial action against a group merely because the group's members do not support the right and capacity of other members to revise their ends. Kymlicka notes several different terms for this position, and settles on the term "political liberalism."³⁰ On Kymlicka's view, political liberalism compromises liberal principles in order to accommodate communitarian groups. Kymlicka views this compromise as both morally objectionable and futile.

B. Rawls's Political Liberalism

In the sections that follow, I will argue that Kymlicka is mistaken to portray Rawls as compromising liberalism's commitment to autonomy. Before going on to discuss Kymlicka's arguments directly, I should briefly lay out the main features of Rawls's version of political liberalism. In his later work, Rawls develops this view in detail. He starts from the assumption that we should expect that the members of a free society will not sustain an uncoerced agreement on any comprehensive doctrine.³¹ A comprehensive doctrine specifies what counts as a good life across many domains, not just the political. Religions, deep ecology, radical feminism, Freudianism, Kantianism, and Mill's philosophy could all count as comprehensive doctrines.³² Rawls argues that a liberal government should not attempt to ground its political system in any particular comprehensive doctrine. Rather, it should attempt to find a basis for liberalism that can be accepted both by people with liberal comprehensive doctrines and by people with nonliberal comprehensive doctrines.³³

Rawls's political liberalism marks out two ways in which it limits appeals to liberal comprehensive doctrines. First, political liberalism does not allow a liberal government

to justify its own legitimacy based on the claim that people ought to be autonomous in all spheres of life. Citizens under politically liberal governments are free to believe that people should be autonomous in all spheres of life and act on this belief. However, political liberalism holds that the state should not justify the adoption of a liberal political system on the basis of any comprehensive doctrine.³⁴ For example, suppose that South Korea were to adopt democracy and welfare capitalism. Political liberalism holds that the state should not justify this system on the basis of the claim that such a system is justified by Kant's or Mill's philosophy. Rather, it should justify its system based on the claim that citizens can justify the system to each other based on customs and traditions widely shared by members of that society.³⁵

Second, political liberalism does not justify specific policies based on any comprehensive doctrine. In particular, it does not justify policies based on the claim that people ought to be autonomous in all spheres of life. Rather, it only justifies policies based on the claim that people have a right to political autonomy.³⁶ For example, the United States Conference of Catholic Bishops held that any Catholic professor teaching theology at a Catholic university must have a *mandatum* from the local Bishop.³⁷ Alternatively, certain religious groups heavily discourage women from pursuing careers outside the home.³⁸ Some people with comprehensive liberal commitments might object to such ways of life on Kantian or Millian grounds. However, political liberalism would not allow the government to take prejudicial action against such groups based on the claim that these ways of life are bad ways to live. Rather, political liberalism only allows

people to take action against such groups if their ways of life can be shown to limit some person's political or economic autonomy.³⁹

These features of political liberalism limit liberalism's commitment to autonomy in two ways. First, the state cannot justify any particular policy on the basis of a commitment to the goodness of autonomy in all aspects of life. Second, the state cannot justify itself on the basis of the claim that autonomy is good in all aspects of life. In this sense, political liberalism sets limits to the government's commitment to autonomy.

C. Kymlicka's Opposition to Rawls

In response to Rawls, Kymlicka argues that liberal governments should assume that the capacity to revise one's ends is valuable in all aspects of life.⁴⁰ I take it that this argument implies that a liberal government should at least endorse the view that some comprehensive liberal doctrine is true, and possibly endorse some particular comprehensive liberal doctrine. Presumably, Kymlicka also believes that the government's endorsement of comprehensive liberalism should affect government policy in some way.

On this point, the disagreement between Rawls is over the relationship between comprehensive doctrines and liberal governments. To see this point, consider two contrasting senses of the term "comprehensive liberal." In the first sense, a comprehensive liberal is simply a person who believes, as a private individual, that some comprehensive liberal doctrine is true.⁴¹ In this sense, Rawls and Kymlicka are both comprehensive liberals. In the second sense, frequently used by Kymlicka, a comprehensive liberal also believes that the *state* should endorse a comprehensive

doctrine. In contrast, a political liberal believes that the state should not explicitly endorse a comprehensive doctrine, at least as a foundational principle. Rawls clearly wants it to be possible for a person to be a political liberal and still be a comprehensive liberal in the first sense of the term.⁴² Whether or not political liberalism and comprehensive liberal doctrines are compatible, Kymlicka clearly thinks that political liberalism is undesirable.⁴³ In response to Rawls, Kymlicka endorses comprehensive liberalism in the second sense and argues that the *state* should endorse some comprehensive liberal doctrine.

IV. Kymlicka's Argument against Rawls's Political Liberalism

A. Political Liberalism is a Moral Compromise

In defense of his position, Kymlicka offers two related arguments against Rawls. First, Kymlicka argues that political liberalism is morally objectionable because it compromises liberalism's commitment to autonomy.⁴⁴ Kymlicka insists that liberalism is committed to something more specific than toleration. Kymlicka argues that there has been at least one other viable model of religious toleration, and that this model conflicts with liberalism. The alternative model of toleration that Kymlicka describes is the Ottoman Empire's "millet system." Under the millet system, people were divided into religious groups called millets. For example, there was an Eastern Orthodox millet, a Non-Chalcedonian Orthodox millet, a Jewish millet, and a Muslim millet. Each millet was guaranteed freedom from external persecution. However, individuals had very little scope to contest or contravene the established orthodoxy of their millet. Nor were people allowed to apostatize, unless they did so in order to convert to Islam.⁴⁵

Kymlicka uses the example of the millet system to show that not all forms of toleration are compatible with liberalism. The millet system only requires groups to tolerate each other. However, it does not require the groups to support the right of individuals to freely revise their ends. As Kymlicka says, “There are other forms of religious toleration which are not liberal. They are based on the idea that each religious group should be free to organize its community as it sees fits (sic), including along non-liberal lines.”⁴⁶ In contrast, liberalism supports the right of individuals to question the established orthodoxy of their communities. On this basis, Kymlicka concludes that liberalism is distinguished by a core commitment to support for individual autonomy. As he says,

This shows, I think, that liberals have historically seen autonomy and tolerance as two sides of the same coin. What distinguishes *liberal* tolerance is precisely its commitment to autonomy – i.e. the idea that individuals should be free to rationally assess and potentially revise their existing ends.⁴⁷

Communitarians reject this commitment.⁴⁸ So, political liberalism’s attempt to win the support of communitarians violates a commitment that is essential to liberalism.

B. Second Argument: Political Liberalism is Futile

Kymlicka’s second argument is that Rawls’s attempt to win the support of communitarian groups is unlikely to succeed. To that end, he points out that Rawls’s concessions to communitarians mainly involve the way that policies are justified. As Kymlicka says, “[P]olitical liberalism in fact offers very little to communitarian groups. It offers them a different argument for liberal principles and liberal institutions, but it does not offer any significant change in the principles or institutions themselves.”⁴⁹

In particular, Kymlicka takes issue with Rawls's claim that the fact that communitarian groups want to be tolerated gives them reason to welcome political liberalism. Kymlicka points out that political liberalism's offer of toleration demands a price from communitarian groups. Rawls is willing to allow a certain amount of intervention in the internal affairs of these groups in order to ensure the political autonomy of their members. For example, under political liberalism apostasy cannot be a crime, and children must be clearly informed that they will not be penalized for leaving their group. Moreover, children must receive enough education to ensure that they can survive in the wider society.⁵⁰ Kymlicka argues that such policies will not be congenial to communitarian groups. In his words, "there is a cost to non-liberal minorities from accepting Rawls's political conception of the person – namely, it precludes any system of internal restrictions which limit the right of individuals within the group to revise their conceptions of the good."⁵¹ As Rawls himself acknowledges, even if the state does not deliberately promote the exercise of autonomy in all spheres, its support for political autonomy is bound to have some "spillover effects" that undermine groups that oppose autonomy.⁵²

Along these lines, Kymlicka argues that communitarian groups do not have much reason to welcome Rawls's political liberalism. Kymlicka concedes that if the only two options were active government opposition to their way of life and support for political autonomy, communitarian groups might accept autonomy. However, he points out that there is a third option: the millet system. Under the millet system, the communitarian groups would be free from government intervention. They could make apostasy a crime

and reject all government interference with education. Given a more congenial possibility like the millet system, groups with no commitment to individual autonomy have no reason to prefer political liberalism.⁵³

V. Initial Difficulties with Kymlicka's Arguments

My response to Kymlicka centers around one central concern. Kymlicka's arguments mistakenly narrow the spectrum to groups that support autonomy and groups that restrict autonomy. If we read Rawls as trying to accommodate groups that have no interest in autonomy whatsoever, then Kymlicka's arguments work fairly well. However, it is not clear that such groups are the main target of Rawls's political liberalism. Rather, we can read political liberalism as an attempt to accommodate groups with a partial commitment to autonomy.

To see this point, consider the following example. Suppose that the Clarks are a devout Roman Catholic family living in a suburb of Toronto. The Clarks want to give their child an education that teaches them all the standard subjects in math, science, and humanities. However, they want this education to come from a Roman Catholic perspective. To that end, they send their children to Jesuit schools that give a very thorough education, including a decent exposure to competing religions and secular ideologies. However, the school deliberately and unapologetically approaches these subjects from a Roman Catholic perspective. Moreover, prayers and community service are integrated into the curriculum. The goal of the school is that the students fully understand and accept Roman Catholic faith and morals.

This example poses a difficulty for Kymlicka's argument because the Clarks are neither wholly committed to autonomy nor opposed to autonomy. Rather, they support a certain amount of autonomy.⁵⁴ Moreover, they are committed to giving the children all the tools to think for themselves. However, they do so in a way that encourages them to think autonomously within a relatively traditionalist, hierarchical religious structure.⁵⁵ They will make their children able to question Roman Catholicism, but they will not encourage them to do so. They will also encourage a certain amount of deference to authority, at least to the extent of accepting the infallibility of the Bishop of Rome. For Rawls, the Clarks would not count as comprehensive liberals.⁵⁶ At the same time, they are not wholly opposed to developing their children's autonomy. I will call groups with this kind of constrained commitment to autonomy partial liberals.⁵⁷

I single out religion because Kymlicka and Rawls are both explicitly concerned with religious groups, particularly on the issue of education. However, I could raise similar points about deep ecologists, radical feminists, moderate Marxists, or many other people with secular comprehensive worldviews.⁵⁸ When dealing with people who have such commitments, the question of what counts as support for autonomy is more difficult than it may initially appear. Kymlicka's arguments are less convincing if we read political liberalism as an attempt to accommodate partial liberals rather than communitarians. There are good liberal reasons to accommodate partial liberals, and there are good reasons for partial liberals to accept this accommodation.

VI. Response to Kymlicka's First Argument: A Liberal Argument for Political Liberalism

A. A Difficulty about Autonomy

My first response to Kymlicka is that political liberalism does not compromise liberalism's commitment to autonomy. One major problem with Kymlicka's arguments is that they overlook the question of how a liberal government should treat partial liberals. The problem of how to deal with partial liberals raises serious difficulties about what counts as support for autonomy. In particular, it raises questions about whether commitment to autonomy leaves sufficient room for people to take moral disagreements seriously. There are reasons to fear that support for autonomy could mask an unfair bias against people with more restrictive moral codes.⁵⁹

Bernard Williams presents a version of this problem in a late essay. There, Williams rejects the view that respect for autonomy gives us much reason to tolerate others. To support this claim, he asks us to suppose that the belief that it is immoral to interfere with others' autonomy is an essential component of liberalism. He then asks what a person committed to supporting autonomy will do when he encounters a person who holds conflicting moral doctrines.⁶⁰ Let us assume that the person holds something like Mill's principle. Mill said that the only justification for interfering with the liberty of another is to prevent them from harming others or to require them to do their part of public duty.⁶¹ Williams argues that is not clear whether this kind of liberal would really do any tolerating.

In support of this position, Williams raises the question of what a liberal will do when he encounters someone who is violating another person's autonomy. For example,

suppose that Laura believes that it is wrong for women to engage in traditional practices with sexist origins. Suppose also that her neighbor Melinda is a schoolteacher who always wears a head covering for religious reasons. Laura agrees not to directly disturb Melinda. However, Laura's liberal friends instruct Laura that she may not refuse to work with Melinda. Nor may she request that her daughters be removed from Melinda's classroom. She may not refuse to rent an apartment to Melinda, nor even refuse to rent a room in her home to Melinda. In short, she cannot dissociate herself from Melinda in any way.⁶² At this point, Laura might reasonably question what happened to her right to live an autonomous lifestyle.⁶³ As Williams says, "But if the agent who disapproves of the other's values and is committed to the attitude of toleration is cut off from all such expressions, it becomes increasingly unclear what room is left for the agent genuinely and strongly to disapprove of the other's values."⁶⁴

As Williams explains, the problem with grounding toleration in support for autonomy is that it must harmonize two principles. First, it must explain what behaviors count as violating others' autonomy. Second, it must explain how a person who disapproves of another person's behavior could express his disapproval without violating the other person's autonomy. Williams asserts that the only way to harmonize the answers to these questions is to let the right to disapprove of another person set limits on what counts as a violation of others' autonomy. He then argues that this is what support for autonomy is not supposed to do. Respect for autonomy is supposed to make a person's freedom to live his own life as he sees fit determine the limits of how others may treat him.⁶⁵

I believe that Williams's argument can be answered fairly easily. However, my main interest here is not the solution, but the problem. Williams points out that one question about commitment to autonomy is whether it really leaves people with room to act on their disapprovals. In particular, he raises the question of what effect support for autonomy has on people who believe that a wide range of behaviors are wrong, despite the fact that those behaviors do not harm anyone or limit anyone's freedom. Let us say that such people have "restrictive moral codes." The question arises whether liberalism leaves people with restrictive moral codes much freedom to take their moral commitments seriously. Suppose that it turns out that liberalism systematically and extensively favors people with non-restrictive moral codes. If so, then there may be reasons to doubt the claim that liberalism gives people adequate freedom. More specifically, the question is whether liberalism leaves people with enough scope to take their moral objections seriously.

Of course, I do not claim that liberals should accommodate all people with restrictive moral codes. For example, I do not suggest that liberals should tolerate the behavior of those who act on moral beliefs that allow them to deliberately injure their children or coerce members of religious minorities. I only argue *some* people with restrictive moral codes show enough respect for autonomy that liberals ought to respect them. Moreover, some of the same people might come into conflict with a government committed to a form of comprehensive liberalism. In what follows, when I speak of restrictive moral codes, I generally mean *legitimate* restrictive moral codes.

B. Kymlicka on Civic Education

I raise this point because it presents a serious problem for Kymlicka. There are good reasons to fear that support for autonomy will mask an unfair bias against people with restrictive worldviews. Moreover, I find indications of such a bias in Kymlicka's treatment of the issue of civic education.

In his writing on civic education, Kymlicka argues that children should probably be required to attend common schools at some point in their educational process. He concedes that sectarian or monocultural schools may be beneficial at early stages. In particular, he concedes that such schools may help children acquire a well-defined conception of what makes a good life.⁶⁶ However, he argues that at some point in their education students need to sit side-by-side with people who have a very different view of the world.⁶⁷ In support of this position, Kymlicka offers two arguments. His primary argument is based on a concern for civic virtue. According to Kymlicka, common schools are necessary so that children can develop enough sympathy with people who follow different ways of life that we can count on them to treat others fairly. Kymlicka considers this sympathy an essential part of civic virtue in a liberal democracy.⁶⁸ He also suggests, but does not definitely affirm, that we need common schools in order to ensure that students become autonomous. As he says, "While autonomy may not be needed to fulfil (sic) the social role of citizen, it may be needed if children are to enjoy life to the greatest extent possible. If so, then children may have a right to an autonomy-promoting education, even where their parents resist it."⁶⁹

In response to these arguments, I contend that Kymlicka cannot sustain his case against sectarian schools based solely on a concern for supporting autonomy. Rather, his arguments mask an unfair bias against people with sectarian commitments. In particular, I will challenge the idea that sectarian schools necessarily produce students who are less autonomous than the products of common schools.

In support of this claim, I would first assert that a good sectarian school would be committed to teaching students how to revise their ends.⁷⁰ Within most religious groups, there will be questions about what the tradition requires. Moreover, there is always some need to adapt traditional principles to new situations. To that end, a good sectarian education will teach the child to use the resources of the tradition to answer questions about new situations. Roman Catholics will need to teach their children how to read the Scriptures and the Fathers. Muslims will need to teach their children how Islamic legal debate works. Old-Order Mennonites will have to teach their children the principles for evaluating new technologies. Sometimes, a tradition may endorse one and only one final end. However, there will still be a need to figure out which secondary ends contribute to that final end.⁷¹ To that end, a good sectarian education will nurture the student's capacity to think autonomously about new situations. Of course, bad sectarian schools will not develop this capacity. However, we should not blame all sectarian schools for what happens in the bad ones. Good sectarian schools will teach students to think autonomously within the bounds of their tradition.⁷²

Of course, supporters of autonomy might question whether such constrained inquiry hampers students' autonomy. After all, the curriculum is designed deliberately to

inculcate a particular worldview. A critic could argue that a child's education should not favor one worldview over another. Or, at least, it should not favor one autonomy-supporting worldview over another. It should only favor those worldviews that are consistent with liberal political commitments.

In response, I would concede that sectarian schools are biased in favor of a particular worldview. However, I would contend common schools could hardly avoid doing the same thing. As Thiessen points out, we are not born autonomous. The capacity to rationally revise one's ends must be nurtured. This means teaching children how to reason, and those lessons cannot avoid influencing the child's worldview. Moreover, as Thiessen argues, a child's education will influence him in subtle ways whether his teachers intend to do so or not.⁷³

Two anecdotes from my graduate education illustrate this point well. I once casually pointed out to a fellow student that Plato does not present his famous Republic as the best city. Rather, Socrates only gets to the Republic after his interlocutors reject the ascetic city.⁷⁴ My friend is well educated and reads Greek, but he was surprised to learn this fact. Some time later, I pointed out to a friend that St. Clement of Alexandria argued that people who collect foreign wines are like the foolish kings who imported water from distant countries.⁷⁵ I found it amusing that we now take such things more or less for granted. In contrast, my friend found it strange that someone would see diverse consumer goods as a sign of decadence. In both examples, my friends' views were constrained by the fact that a preference for the ascetic life is not something that they would consider. Nobody taught them that the ascetic life was undesirable. They may

have even discussed it in a theoretical way. However, most discussions about social and historical issues in North American common schools would proceed with the assumption that there was something a little strange about this way of seeing the world. In general, common school education is likely to subtly inculcate certain moral perspectives whether its designers intend that it do so or not.

Building on this point, I would contend that we should be suspicious of the claim that common schools can avoid constraining a child's understanding of the world. Imagine that two parents send their children to sectarian schools. Rachel Clark attends a Jesuit school like the one that I described above. Margaret Anderson attends a common school. Now suppose that the issue of welfare reform comes up in their civics classes. At some point in either class, a student might say, "If you thought that, then you would have to say that blatant racism was acceptable." It would be understood that supporting blatant racism was out of bounds. This kind of assumption serves as a "fixed point" in the discussion.⁷⁶ Now suppose that in the sectarian classroom, Rachel says, "If you thought that, then you would have to say that we have no individual duty to help the poor." If someone challenged the claim that we have an individual duty to help the poor, then Rachel might say, "We ought to accept the authority of the Sermon on the Mount." These ideas would serve as fixed points in the discussion.

Now suppose that Margaret Anderson were to make a similar claim in the common school civics class. Alternatively, suppose that one of her Muslim fellow students made a similar reference to the Qur'an. Ideally, we might hope that such claims would lead to a thorough discussion of the student's objections. Given unlimited time, the class could

thoroughly discuss various interpretations of Catholicism and Islam and carefully reflect on what it means to accept or reject these perspectives. Such a discussion is unlikely to happen. Even if there were teachers capable of managing such discussions, there simply would not be time.⁷⁷ Margaret and her Muslim counterpart would be subtly or explicitly encouraged to bracket this concern.

The constraints placed on classroom discussion tend to channel a student's autonomous thought in particular directions. This fact in itself is reason for concern.⁷⁸ However, a more serious problem is the way that certain assumptions pervade the curriculum.⁷⁹ For example, I was a non-Catholic at a Jesuit high school. I was surprised to discover that the Advanced Placement test in European History started "European History" around 1492. My Jesuit-trained teachers would scarcely have imagined leaving out Ancient Greece and Rome. Similarly, it was quite natural for my English Literature instructor to point out themes from the Apostle Paul in contemporary film. Our school made us aware that there are other worldviews. Still, it operated with a default assumption towards a Roman Catholic view of the world. Along these lines, note that compared to Rachel Clark, Margaret Anderson is likely to be less trained in Scripture, patristics, Church history, and liturgy. She is even less likely to be trained in how to look at other subjects through these perspectives. Again, it is not that anybody tries to hamper her from doing so. They simply have not trained her to do so. Moreover, she will probably be less aware of the biases that her school has inculcated precisely because nobody desired to inculcate them.

It might be objected that it is the job of the parents and churches to inculcate religious beliefs. However, this objection assumes that developing a mature religious perspective is easy. It is relatively easy to memorize one's catechism. It is not so easy to learn how to apply Scripture and tradition to new situations. This task requires a balance between rigid adherence to rules and *laissez-faire* acceptance of any new idea that comes along.⁸⁰

Of course, it may still be objected that a sectarian education will encourage students to reconsider secondary ends, but not final ends. This may be true in some cases. However, Kymlicka insists that liberalism is not committed to compelling people to revise their ends, only to ensuring that they are capable of doing so.⁸¹ Along these lines, I contend that there is no particular reason to think that revising one's final ends involves a different set of capacities than revising one's secondary ends. Also, as I have argued, the common school is likely to encourage students to accept certain ends without serious examination whether it desires to do so or not. If our interest is merely in developing the capacity to revise one's ends, then there is little reason to think that common schools are superior to sectarian schools. If Kymlicka also wants to insist that students spend time rethinking these commitments, then he moves significantly in the direction of favoring ways of life that involve the exercise of autonomy. At the very least, he advocates policies that cannot be justified merely on the grounds of promoting the capacity for autonomy.

Of course, Kymlicka also makes a case that students need some exposure to common schools in order to develop civic virtue. In particular, they need the regular contact with

people from different ways of life that common schools are more likely to offer. Without this exposure, they are unlikely to develop adequate tolerance.

My main objection to this argument is that Kymlicka offers little empirical evidence.⁸² Moreover, Thiessen cites evidence that students who attended sectarian schools tend to be more tolerant than those who attended common schools.⁸³ I would not positively endorse Thiessen's point, since his statistics could be based on an overly generous conception of what counts as tolerance.⁸⁴ However, my main point is that this is an empirical question. Moreover, it is an empirical question on a matter that is very hard to measure, at least without biasing the question of what counts as being "tolerant." People are unfortunately prone to think that those who disagree with them must not have understood their perspective. Consequently, I would argue that we should not accept the civic virtue argument without strong empirical evidence based on generally accepted measurements of what counts as tolerance.

I should stress that in all of these arguments, I do not mean to oppose common schools. They cannot be faulted for a certain amount of bias, because this is a problem that nobody could possibly avoid. I simply argue that we should not argue against sectarian schools unless we can clearly show that they fail to achieve some criterion that we could reasonably expect common schools to achieve. I do not think that Kymlicka has presented such a criterion, and so I suspect that his arguments smuggle in an unfair bias against partial liberal ways of life.

C. Liberalism and Fairness

I raise this point about education to challenge Kymlicka's view that political liberalism is a moral compromise. This example shows that there are good liberal reasons to prefer political liberalism. There are good reasons to fear that comprehensive liberals will fail to adequately protect partial liberals. Some liberals do in fact want to justify policies based on the claim that comprehensively liberal ways of life are better. For example, Gila Stopler attempts to argue on grounds of political liberalism that the government should actively oppose patriarchal religions.⁸⁵ I do not accept her argument about political liberalism. However, the example does show that some comprehensive liberals are not quite as committed to anti-perfectionism as Kymlicka assumes. Consequently, liberals have good reason to worry that comprehensive liberals will not treat people with more restrictive ways of life fairly. In this respect, liberals have good reason to be concerned about whether liberalism really gives people adequate scope to take their moral objections seriously. Political liberalism attempts to provide protection for such people against unfair treatment. So, there are good liberal reasons to prefer political liberalism to comprehensive liberalism.

VII. Response to Kymlicka's Second Argument: Political Liberalism is not Futile

A. Autonomy as a Good

Just as liberals have reasons to offer protections to partial liberals, partial liberals have good reasons to welcome these protections. Using traditionalist religious group as an example, I will argue that such groups have good reason to welcome liberalism's support

for autonomy. At the same time, they have reasons to prefer political to comprehensive liberalism.

There are many reasons why members of a religious group with a moderately traditionalist and even authoritarian outlook might want to encourage their children to develop autonomy. First, there are many good reasons that they should want their children to be able to hold national political leaders accountable. As Plato famously argued, in a democracy the people who come to power tend to be those who are good at struggling for power. They may not be good at actually governing, because of either incompetence or corruption.⁸⁶ Everybody has good reason to be watchful of demagogues and other bad politicians. To that end, everybody should have some skill at recognizing those who would advance themselves by flattering the people.

Second, there are good reasons for traditionalists groups to want their children to be wary of sophists within and without. No group can completely avoid the question of how to apply their traditions to new situations. To that end, children need to be carefully trained to understand the group's traditions and scriptures. In particular, they need to be able to sort out arguments that represent legitimate new applications of these sources from sophistical arguments. For example, most Christian books of saints' lives describe saints who stopped clever heresies that threatened to lead astray large numbers of people. The Bible also affirms that Christians should expect to have to deal with such people.⁸⁷ To that end, traditionalists have good reason to teach their children to think autonomously within the bounds of their religion in order to distinguish the voice of the tradition from sophistry.⁸⁸

Finally, unless a group is heavily isolated, they have good reason to shield their children from corrupting non-rational influences like Hollywood and Madison Avenue. Traditionalists have more to be concerned about than rational arguments from well-meaning liberal outsiders. In the modern world, we are constantly bombarded with propaganda and worse from people who simply want to exploit us. Hence, traditionalists have reason to encourage their children to develop the capacity to autonomously monitor and reject corrupting influences.

Of course, Kymlicka aptly points out that some nonliberal groups will find autonomy dangerous and even threatening. Teaching children to approach outside influences autonomously tends to spill over into questioning the traditions and leadership of the group. However, the extent to which such groups will find such spillover effects threatening is a matter of degree. It depends partly on how rigid they are in the interpretation of their traditions. A group that follows the letter of its traditions rigidly has less reason to worry about debating how to apply its religion to new circumstances. An even slightly more flexible group must treat this problem seriously. Moreover, the extent to which a group needs its members to be autonomous depends partly on how willing the group is to isolate itself from the modern world. Groups that are significantly engaged with modern culture have strong reason to fear that their children will be swayed by something other than rational argument. Groups that are less engaged have less to fear about the influence of the media. For partial liberals, the costs of spillover effects could be outweighed by the protection that autonomy provides from other dangers.

Still, there are costs to teaching children to question authority. Kymlicka points out that autonomy threatens certain groups because it is difficult to teach children to be appropriately critical of their political leaders without teaching them to be suspicious of other forms of authority. He cites evidence that children tend to be equally suspicious of all forms of authority.⁸⁹ However, if Kymlicka's evidence is accurate, then all it shows is that we are doing a bad job of educating children. A person that is equally suspicious of all forms of authority is bad at reasoning.⁹⁰ Most people have ample reason to believe that their parents are more knowledgeable of and concerned for their welfare than politicians. Moreover, if a nonspecialist treats his opinions about global warming as equal to those of professional climatologists, then he is simply bad at reasoning. If children are not learning these lessons, then we need to think seriously about how well we are educating them. Both comprehensive liberals and partial liberals have an interest in teaching students to balance deference to authority and questioning authority. They will likely disagree on the proper balance. Still, it is not clear that this disagreement must lead to conflict, provided that the government does not deliberately bias policy in favor of liberal comprehensive doctrines.

B. Against the millet system

At this point, Kymlicka could aptly point out that groups with a limited commitment to autonomy may still resent liberal interference. If such groups had complete independence over internal affairs, then they could decide for themselves what amount of autonomy they wanted to foster. To that end, there are good reasons for partial liberals to prefer the millet system to political liberalism.

In response to this claim, I would first question Kymlicka's picture of the millet system. Kymlicka treats it as a successful model of toleration. This claim is questionable. Kymlicka tends to underrate the extent to which the millet system was an instrument of Muslim domination. The rights of other groups were set in Muslim terms. Moreover, the extent to which the Ottoman Empire in particular, and pre-modern Islamic societies more generally, were tolerant of Christians and Jews is a matter of debate among historians.⁹¹ For example, Mark Handley describes actions taken against Christians by non-Ottoman Islamic governments in North Africa and argues, "It seems more likely ... that these sorts of measures, combined with the realization that socio-economic advancement could be achieved most easily through acceptance of Islam, which created the circumstances whereby Christianity dwindled and died in eleventh- and twelfth century North Africa."⁹²

More importantly, there is reason to doubt whether such limitations are an accident of the Ottoman Empire. Political liberalism offers two significant advantages over the millet system. First, it allows traditionalist groups to contest the fairness of the terms by which they are governed. For example, Nicholas Wolterstorff argues that our current system for funding education is unfair to certain religious groups.⁹³ In a defense of political liberalism, Mark Jensen argues that there is ample room within politically liberal discourse to make this case.⁹⁴ More generally, if political liberalism functions as designed, it gives internally nonliberal groups significant room to make the case that the system is illegitimately biased against them.

Second, traditionalists have good reason to be wary of granting the community or its leaders the privilege of using political power to suppress internally dissenting members. There is always the possibility that heretics will gain power within their community.⁹⁵ Liberalism provides a hedge against such possibilities in two ways. First, it allows the orthodox remnant to exit and establish a separate group, within certain limits. Second, a certain amount of individual autonomy may better equip members of the group from being swayed by the heretics who come to power.

Along these lines, I would argue that partial liberals have little reason to accept the millet system. In particular, they have little reason to accept a millet system whose terms will be set by comprehensive liberals, some of whom may be hostile to partially liberal ways of life. I argued above that partial liberals have good reasons to support the capacity for individual autonomy. Political liberalism grants them individual autonomy, but also provides protections that allow them to challenge political institutions that are biased in favor of comprehensive liberalism. Consequently, they have good reason to prefer political liberalism over a millet system organized and run by comprehensive liberals.

VIII. An Objection

A. An Alternate Reading of Kymlicka

At this point, Kymlicka might respond that my argument sets up a straw man. I have argued that liberalism should accommodate partial liberals, and that political liberalism does a better job of accommodating them than comprehensive liberalism does. However,

Kymlicka might argue that comprehensive liberalism is equally committed to accommodating partial liberals.

There are good reasons to think that Kymlicka wants to accommodate partial liberals. In particular, Kymlicka argues that liberals oppose perfectionism. Perfectionists believe that the state may undertake policies designed to favor one comprehensive doctrine over another, even though both comprehensive doctrines are fully compatible with liberal justice.⁹⁶ For example, a perfectionist state might say that hierarchical family arrangements are inherently demeaning to women, and that this fact alone justifies the state in taking policies designed to undermine such arrangements. Non-perfectionists might undermine such arrangements if they somehow limit a person's political autonomy. However, perfectionists might allow the state to deliberately undermine such arrangements just because they view those arrangements as inherently unworthy. Kymlicka argues that liberalism is inherently opposed to perfectionism, and therefore comprehensive liberals would not interfere with partial liberals any more than political liberals would interfere with partial liberals.

Significantly, Kymlicka makes something very close to this argument in response to Rawls. At one point, Kymlicka argues that political liberalism does not in fact offer any concessions to communitarians on matters of domestic policy. Rather, it only offers a different justification for the same set of domestic policies. Kymlicka then suggests that Rawls's main goal might be to provide a protection for rational adults against people who would force autonomy on them against their will.⁹⁷ In response to Rawls's concern, Kymlicka says,

But most comprehensive liberals do not endorse this sort of hyper-liberalism. As I noted earlier, the standard liberal view is not that people should or must revise their ends, but simply that people be legally free and practically able to do so, should new circumstances, experiences, or information raise questions about their previous commitments.⁹⁸

This passage indicates that Kymlicka believes that because comprehensive liberals are committed to opposing perfectionism, comprehensive liberals would reject any attempt to use state power against partial liberals. At least, they would not use state power against partial liberals any more than political liberals use state power against partial liberals.

If this interpretation of Kymlicka is correct, then it suggests a different reading of Kymlicka's disagreement with Rawls. As I said earlier, both Kymlicka and Rawls endorse some kind of comprehensive liberal doctrine. The disagreement between them is over whether or not the state should endorse a comprehensive liberal doctrine. On this reading of Kymlicka, Kymlicka believes that comprehensive liberalism includes a commitment to opposing perfectionism. Consequently, comprehensive liberalism is already committed to accommodating partial liberals. In that case, there is no reason to adopt political liberalism. There is no need to accommodate partial liberals, because the anti-perfectionism built into comprehensive liberalism already prevents the state from deliberately taking prejudicial action against them. At the same time, is both morally objectionable and futile to attempt to accommodate communitarian groups.

It might seem that on this reading of Kymlicka there is no practical difference between Kymlicka's view and Rawls's view. Rawls argues that because the state *should not* endorse a comprehensive liberal doctrine, it must not act in ways that are deliberately designed to favor comprehensive liberals over partial liberals. Kymlicka argues that

because the state *should* support a comprehensive liberal doctrine, which includes opposition to perfectionism, it must not act in ways that are deliberately designed to favor comprehensive liberals over partial liberals. So, on matters of ordinary domestic policy, there would be no practical difference between Rawls's view and Kymlicka's. There would be a difference in the way that the state justifies its form of government and its policies. However, the way that it treats partial liberals would be the same. As Kymlicka says of political liberalism, "It offers them [communitarians] a different argument for liberal principles and liberal institutions, but it does not offer any significant change in the principles or institutions themselves."⁹⁹

I grant that on the reading that I am suggesting here, there is little difference between Rawls and Kymlicka on matters of ordinary domestic policy. However, there would still be a significant difference between their views on issues involving foreign policy and national minorities. As I argued in the last chapter, Rawls's refusal to allow the government to endorse a comprehensive doctrine leads him to endorse the view that liberal states should support an international order that treats liberal and decent nonliberal states as equally legitimate. In contrast, Kymlicka would allow the government to endorse a comprehensive doctrine, and therefore take actions designed to encourage nonliberal states and national minorities to liberalize.¹⁰⁰ So, on the reading of Kymlicka given in this section, Kymlicka's opposition to perfectionism leads to a difference on matters of foreign policy, but not to a difference in ordinary domestic policy.

If this reading of Kymlicka's argument is correct, then it leaves him with a powerful argument against Rawls. On this reading, Kymlicka argues that Rawls makes a fairly

large sacrifice for nothing. Rawls adopts political liberalism in order to accommodate someone – either communitarians or partial liberals. Kymlicka believes that making concessions in order to accommodate communitarians is both morally objectionable and futile, and making concessions in order to accommodate partial liberals is unnecessary. Moreover, either accommodation requires Rawls to sacrifice the right of liberal states to provide valuable moral and material support for liberal individuals in decent nonliberal states.

B. Liberal Perfectionism

In response to this argument, I would challenge Kymlicka's claim that comprehensive liberalism necessarily includes opposition to perfectionism. I offer two arguments against this claim. First, many comprehensive liberals are not in fact wholly committed to anti-perfectionism. Second, Kymlicka offers little argument for the claim that they should be committed to anti-perfectionism.

Kymlicka claims that comprehensive liberalism requires a strong opposition to perfectionism. However, it is not obvious that comprehensive liberalism and perfectionism are incompatible. Certainly comprehensive liberalism would not directly force people to abandon their moral or religious views, at least if they are willing to respect the rights of others. However, there are more subtle ways that comprehensive liberals might use government power to favor a particular set of worldviews. Suppose, for example, that comprehensive liberals decided that any kind of patriarchal family structures were inherently degrading. The government might take a number of actions based on this belief. It might subsidize propaganda. It might require schools to expose

students to arguments against such structures, without requiring exposure to arguments in their favor. It might require government organizations or even private businesses to subsidize day care at the expense of policies that are friendlier to two-parent families. For example, one of my colleagues complained that his university greatly increased the price of family housing, but portrayed increased support for day care as a form of compensation. It might also require private agencies to subsidize birth control. At the extreme, it might take direct discriminatory action against groups that promote such structures. For example, it might revoke the tax-exempt status of churches with male-only hierarchies, or churches that encouraged patriarchal family structures. It might do the same to churches that oppose birth control. All of these actions might be justified on the grounds that they encourage a power imbalance in favor of men over women within the family, and thereby prevent women from exercising autonomy, even though they have the capacity for autonomy. In that respect, it would favor comprehensive liberal worldviews with a very strong interpretation of what autonomy requires over partial liberals. In that respect, comprehensive liberalism is compatible with perfectionism.

Moreover, as an empirical matter, some comprehensive liberals support precisely the kind of perfectionist policy that Kymlicka claims that they oppose. Actually, there is even ambivalence on this question in Kymlicka's own work. As I argued above, Kymlicka supports educational policies that cannot be justified merely on the grounds that they support the capacity for autonomy. Rather, they favor worldviews that encourage people to exercise a greater range of autonomy. In that respect, Kymlicka's position on education seems to be a significant departure from his stated opposition to

perfectionism. If Kymlicka really opposes perfectionism, then he must change his position on civic education.

Still, even if Kymlicka were to adjust his position on civic education, other comprehensive liberals do not seem to share Kymlicka's strong anti-perfectionism. Some liberals construe support for autonomy in ways that require that they oppose institutions that do not support autonomy in other spheres. Meira Levinson has argued that liberals should oppose sectarian education.¹⁰¹ Gupreet Mahajan argues that a person should not have to leave his religion just because he objects to inequalities that other members see as part of the religion.¹⁰² Kok-Chor Tan has argued extensively that liberalism should welcome the fact that its policies tend to undermine groups that do not support autonomy in other areas of life.¹⁰³ Granted, he occasionally notes that liberals may have other grounds for non-interference.¹⁰⁴ However, he also advocates such policies as interfering with groups with a gender-based hierarchy and supporting a covertly atheist system of public education.¹⁰⁵ Kymlicka must be aware of such views. He cites Levinson, and Tan credits Kymlicka for reading multiple drafts of a later book.¹⁰⁶ Since such views exist, there are reasons to fear that some comprehensive liberals take the position that Rawls's political liberalism opposes.

Alongside those who argue for interference with partial liberals, there are a number of liberal writers whose toleration for partial liberals seems mainly constrained by political liberalism, if that. Gila Stopler argues at length that even political liberals should deliberately disfavor patriarchal religions, due to alleged spillover effects on women's autonomy in other spheres.¹⁰⁷ Matthew Clayton argues that a political liberal should not

raise his children with the goal that they accept a particular religious or secular comprehensive doctrine. Still, he acknowledges that there are good reasons not to allow the government to disfavor such groups.¹⁰⁸ Michel Pendlebury goes so far as to say,

[A] conception of the good can be unreasonable in relation to some or all of those who *do* endorse it insofar as some of its main tenets are palpably incompatible with their interests. I am inclined to think that any conception of the good that is committed to values in an afterlife in place of earthly well-being belongs to this class.”¹⁰⁹

However, he concedes that the state should not intervene on the grounds of state neutrality towards comprehensive doctrines.¹¹⁰

I recognize that such views are in the minority among liberals, and even in tension with other aspects of their work. However, there are people that hold such views. Nor are such views confined to academic writing. For example, Thiessen cites official studies in Alberta and Great Britain that insisted that sectarian schools produce bad citizens, despite a lack of hard empirical evidence for this position.¹¹¹

The conclusion I would draw from such examples is that neither Rawls nor I has set up a straw man. There are forms of comprehensive liberalism that would allow the government to take actions based on opposition to partial liberal ways of life. Consequently, there are good reasons for partial liberals to prefer comprehensive liberalism.

C. Kymlicka's Arguments against Perfectionism

Given the empirical evidence that not all comprehensive liberals oppose perfectionism, Kymlicka needs to provide a strong argument that comprehensive liberalism leads to anti-perfectionism. However, it is not clear that he succeeds in doing

so. I have found two arguments in Kymlicka's work for the claim that comprehensive liberalism precludes perfectionism.

Kymlicka's first argument appears in *Contemporary Political Philosophy*. There, Kymlicka argues that liberals believe that people should be allowed to live their life "from the inside." As Kymlicka says, "Why then do liberals oppose state paternalism? Because, they argue, no life goes better by being led from the outside according to values the person does not endorse. My life only goes better if I am leading it from the inside, according to my beliefs about value."¹¹²

I would respond to this argument in two ways. My first response is that it is not clear that this is why all liberals endorse comprehensive liberalism. Kymlicka does not give much of a positive argument for this claim. He mainly responds to alternative defenses of comprehensive liberalism and then offers his argument as a default.¹¹³

My second response is that it is not clear that allowing people to live life from the inside precludes milder forms of perfectionism. It certainly precludes the grossest forms of coercion. However, there are many ways that the government can undermine groups without directly preventing people from doing what they choose. For example, it can undertake propaganda campaigns, subtly bias tax laws or other economic structures, and give preferential subsidies and tax exemptions. Moreover, as I discussed earlier, it can and does extensively interfere with the education of their children. I do not find Kymlicka's argument on this point sufficient to support his claim, especially in light of the evidence that many comprehensive liberals do not share his strong opposition to perfectionism.

Kymlicka's second argument is that there are practical problems with attempts to protect the cultural structure by favoring more deserving ways of life. In "Liberal Individualism and Liberal Neutrality", Kymlicka argues that a perfectionist democracy would have to engage in public deliberation about which ways of life are more deserving. Such deliberations would tend to unfairly penalize less articulate people.¹¹⁴ Moreover, this effect would have a disproportionately large effect on marginalized groups. Marginalized groups would have to argue for their claims on the dominant group's terms. This would put them at a significant disadvantage in attempts to argue in defense of their way of life.¹¹⁵

While this is a good argument, it is not clear that it can support the strong form of anti-perfectionism that Kymlicka needs. It may show that the state should not create a single rank ordering of all ways of life. However, Kymlicka has to show not only that the state may not rank-order all ways of life, but also that it cannot generally prefer comprehensive liberal ways of life over partial liberal ways of life. Moreover, he has to show that the state should do this despite the fact that it explicitly endorses comprehensive liberalism. For example, suppose that someone argues that the Roman Catholic Church's prohibition on women in the priesthood constitutes gender discrimination. Suppose we also agree that comprehensive liberalism forbids any form of gender discrimination. It is not clear why the state would refuse to support something that is a foundational commitment of state. This is not a minor issue like choosing between wrestling and opera. It involves an issue on which the state already has a fundamental commitment, namely to the importance of autonomy in all ways of life. I

grant that there might be some room for caution due to the potential for misunderstanding in the evaluation of specific practices, especially those of cultural minorities. However, this is a practical problem. Moreover, similar problems accompany many unavoidable issues, including the question of what counts as adequate political autonomy. It is not clear that it is sufficient to make such a strong kind of anti-perfectionism a foundational commitment of the state. However, Kymlicka needs to make such a strong argument. He must show that comprehensive liberalism *necessarily* implies anti-perfectionism, especially given the fact that many comprehensive liberals have not drawn that implication. Otherwise, there is good reason to think that partial liberals need the kind of protection that political liberalism offers.

The conclusion that I would draw from the examples given above is that neither Rawls nor I have set up a straw man. Kymlicka has not proven that comprehensive liberalism entails anti-perfectionism. Moreover, there are comprehensive liberals who encourage the government to take actions based on opposition to partial liberal ways of life. Consequently, there are good reasons for partial liberals to prefer political liberalism to comprehensive liberalism. Moreover, since liberals have good reason to treat partial liberals fairly, liberals in general have good reason to prefer political liberalism to comprehensive liberalism.

IX. Conclusion

In the end, I do not conclude that Kymlicka's position on the relation between autonomy and toleration is wrong. Rather, I merely argue that his attempt to use this relation to argue against Rawls fails. On regular domestic issues, Rawls may not be any

less committed to support for autonomy than Kymlicka. However, his political philosophy can better account for the difficulty of determining what counts as support for autonomy. The world does not come neatly divided into those who wholeheartedly support autonomy in all aspects of life and those who oppose autonomy. There are a number of groups who have good reason to support the capacity for autonomy, especially in the political sphere. At the same time, such groups also have reason to fear that a government committed to comprehensive liberalism will refuse to tolerate them on grounds other than fairness. In particular, they have reason to fear that the government will construe commitment to autonomy in a way that gives little weight to their right to take restrictive moral or religious commitments seriously. Given such concerns, there are good reasons for partial liberals to welcome the protections that political liberalism gives them. There are also good reasons why all liberals should recognize an obligation to extend such protections. Consequently, I would argue that Kymlicka's critique of Rawls is mistaken on both counts. Rawls's political liberalism does not compromise an essential liberal commitment in order to accommodate communitarian groups. Nor is it a futile accommodation. Rather, political liberalism recognizes that liberals and partial liberals both have good reasons to support a commitment to autonomy that is realistic about the limits of autonomy. To that end, there are good reasons to believe that the liberal commitment to autonomy requires toleration of groups with a partial commitment to autonomy.

Chapter Six: Toleration and Racist Speech

In the first five chapters of this dissertation, I mainly discussed questions related to ethical and political theory. In this chapter, I will attempt to apply the ideas from these discussions to a particular issue in public policy: restrictions on racist speech. In recent years, there has been an active and sometimes acrimonious debate in the United States over the issue of enforced regulations on racist speech. Many commentators have noted that this issue has created strong divisions among people who are politically left-of-center in the United States. Commentators have offered various theories about the source of these divisions. At the same time, most participants in these debates agree that the regulations correct serious abuses, but also pose significant risks.¹

This chapter will take a slightly different approach than most discussions of this issue. Rather than examine the issue directly in terms of free speech, I will consider whether regulations against racist speech threaten mutual toleration across moral disagreements. To that end, I will examine one prominent set of proposals, those offered by several leading proponents of Critical Race Theory in their anthology *Words that Wound*.² In particular, I will consider whether their proposals pose a serious threat of intolerance against people with restrictive moral codes. I will argue that they do pose a threat, but we can mitigate that threat. Building on this argument, I will conclude that we should not just discuss the problems posed by regulations on racist speech. We should also ask what steps we could take to avoid those problems.

I. A Threat to Mutual Toleration

In the last chapter, I discussed a particular threat to mutual toleration. Namely, I raised the question of whether regulations designed to promote individual autonomy could lead to mistreatment of people with restrictive moral codes. As I said in the previous chapter, many people believe that a wide range of behaviors are morally wrong, even though they do not harm anyone or limit anyone's freedom. In many cases, such people may also wish to openly criticize people who do not accept their code. They may also advocate social practices or legislation that is biased to some extent towards their particular restrictive code. I argued in that chapter that liberals have good reason to be concerned that they treat people with restrictive moral codes fairly. At least, they have good reason to be concerned that they treat some people with restrictive moral codes fairly.³

Restrictions on racist speech pose a particular threat to people with restrictive moral codes. Namely, they license the government to label other people's beliefs as hateful, and more importantly to restrict the expression of those beliefs on the basis of the claim that such ideas are hateful. If we allow such restrictions, then people with restrictive moral codes have reason to fear that their objections to others' behaviors might be unfairly labeled as hateful, and therefore subject to restrictions. For example, some people charge that any opposition to same-sex marriages represents a form of hatred.⁴ Others consider it a form of hatred when Christians argue that Judaism is not the true religion and that Jews should convert to the true faith.⁵ Consequently, people who express their belief in restrictive moral codes could be subject to social, civil, and even

criminal sanctions. If we empower the opponents of restrictive moral codes to label restrictive codes as hateful, and therefore restrict the free speech of the proponents of such codes, then we risk undermining our ability to sustain mutual toleration across serious moral and religious disagreements.

When I make these claims, I should stress that there is one argument that I will not use. I will not argue that there is anything hypocritical about refusing to tolerate the intolerant. For example, suppose that a Christian named Gerald is deliberately rude and uncooperative towards anyone who practices Judaism. Then suppose that Henrietta responds by organizing a boycott of Gerald's business. Henrietta's actions are not obviously hypocritical. She simply judges Gerald could not have any reasonable objection to Judaism that justified such mistreatment. She may hold that people can reasonably object to the Judaism. For example, they might reasonably argue that that all religion is harmful or that Jesus is the Messiah. However, Henrietta could hold that no reasonable objection would justify the way that Gerald treats people who practice Judaism. Therefore, she could argue that her refusal to tolerate Gerald's intolerance is entirely proper; on any reasonable measure, Gerald's behavior is far worse than the behavior of which he disapproves. Therefore, Henrietta could reasonably conclude that she is justified in partially refusing to tolerate Gerald's intolerant behavior. Granted, in many cases it may be unwise or even hypocritical to refuse to tolerate the intolerant. Still, people who refuse to tolerate the intolerant are not necessarily inconsistent.

I do not generally object to tolerating the intolerant. Rather, this chapter deals with a more subtle problem. Sometimes we must grant people the authority to declare others'

behavior intolerant and therefore subject to censure. However, there is a danger that we will come to regard anyone who opposes something that we approve of as intolerant. Worse yet, by labeling people as intolerant we might absolve ourselves of the responsibility to consider whether we are in fact treating them with the respect that they deserve. My goal in this chapter is to assess whether the extent of this danger would be greater if we allow enforced regulations against racist speech.

II. Justice Scalia on Speech, Freedom, and Regulation

A. Justice Scalia's Argument

In order to understand the advantages and problems with regulations against racist speech, it helps to consider one recent challenge to such regulations. In 1990, Justice Antonin Scalia wrote the majority opinion for the Supreme Court of the United States in the case *R.A.V. v. St. Paul*. In that case, a juvenile skinhead (R.A.V.) in St. Paul, Minnesota, burned a cross on the lawn of an African-American couple. R.A.V. was charged with violating a city ordinance that read:

“Whoever places on public or private property a symbol, object, appellation, characterization or graffiti, including, but not limited to, a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm, or resentment in others on the basis of race, color, creed, religion, or gender commits disorderly conduct and shall be guilty of a misdemeanor.”⁶

The Supreme Court struck down the regulation, but R.A.V. was later convicted for the same incident under federal civil rights statutes.⁷

For present purposes, three features of Justice Scalia's opinion are particularly important. First, Justice Scalia acknowledged that the courts traditionally recognize certain kinds of speech as “unprotected”, and therefore subject to regulation.

Unprotected speech includes “fighting words”, libel, some types of commercial speech, and obscenity. The courts allow legislatures a certain amount of leeway to regulate such speech.⁸

Second, Justice Scalia insisted that even in cases of unprotected speech, the government has a strong responsibility to avoid content discrimination and especially viewpoint discrimination. Content discrimination occurs when the government chooses only to restrict speech that deals with a particular subject matter.⁹ For example, if the government passed a law forbidding obscene political speech but not other forms of obscene speech, then it would engage in content discrimination.¹⁰ Viewpoint discrimination occurs when the government only restricts speech that expresses one particular opinion about a subject matter.¹¹ For example, if the government did not forbid inflammatory speeches, but forbade inflammatory speeches that promote traditional gender roles, then it would engage in content discrimination.

Third, Justice Scalia allowed that some amount of content or viewpoint discrimination is permissible. In particular, he notes that the courts leave some areas of speech unprotected because they lead to serious social problems. At times, it makes the problem worse if the unprotected speech deals with a particular content or even a particular viewpoint. In such cases, the government may engage in content or even viewpoint discrimination.¹² For example, Justice Scalia argues that death threats against the President disturb public order to a greater degree than other death threats. Consequently, he allows that the government may forbid death threats against the President without generally forbidding death threats.¹³ Justice Scalia denied the prosecution’s claim that

racist fighting words are more likely to immediately cause harm or incite violence than other forms of fighting words.¹⁴ The court therefore held that the St. Paul statute violated the First Amendment.¹⁵

B. Toleration and Viewpoint Discrimination

I present the court's argument in this case because it points to reasons why viewpoint discrimination can pose a threat to mutual toleration. In my second chapter, I argued that politics in a liberal democracy involves a "zone of mutual contestation." Within that zone, people with conflicting moral views may legitimately attempt to influence the government to privilege their moral viewpoint. For example, they might be allowed to bias school curriculums in favor of certain moral beliefs, as some schools do by promoting abstinence. At the same time, they must respect certain boundaries. That is, they must respect a public agreement that no one may use certain weapons. For example, nobody may use the state's police power to stop people from engaging in private acts of religious worship, within certain limits.

One of the ways that a zone of legitimate contestation helps promote mutual toleration is by making most privileges open to all groups or none. At least, all groups may compete to privilege their moral perspective in all legitimate ways, and all groups are banned from privileging their perspective in illegitimate ways. It can create serious friction when the state decides in advance that one group may legitimately privilege their moral beliefs, but their opponents may not, even if the opponents win the relevant political contests. Still, it may be legitimate to discriminate against certain groups,

especially those opposed to treating others as equals. In particular, racist terrorist groups seem like a legitimate target for certain types of restrictions.

I raise this point because it illustrates part of what is at stake in the debate over restrictions on racist speech. We generally hold that people may not legitimately use the power of the state -- and certain other institutions -- to limit others' free speech. We do make exceptions, but most of those exceptions are generic, and they could apply to people with various moral perspectives. For example, the state may restrict people from using language that provokes immediate violence for any purpose. What the Critical Race Theorists argue is that the harm caused by racist speech is sufficient to allow an exception to the general prohibition on viewpoint discrimination. Essentially, they are asking the courts to allow certain privileges to one moral perspective; namely, opposition to racism. I will assume that we all agree with their opposition to racism. However, we must also consider the possibility that the tools that we design to use against racism will also be used against legitimate groups. We must therefore weigh the dangers posed by potential abuses of restrictions on racist speech against the benefits of protecting racial minorities from certain types of harm. To that end, it will help to examine the Critical Race Theorists' argument that racist speech causes serious harm to members of racial minorities.

III. Critical Race Theorists and the Harm of Racist Speech

A. Race and Harm

In order to understand the Critical Race Theorists' arguments, it helps to look at the argument as a response to arguments like those presented by Justice Scalia. Justice

Scalia challenges proponents of regulations against racist speech to present some kind of harm or danger that racist speech poses to a greater degree than similar kinds of non-racist speech. For example, proponents of restrictions on racial insults would have to show that racial insults are somehow more harmful or dangerous than other kinds of insults.

The Critical Race Theorists provide a strong response to Justice Scalia's challenge. In 1993, several leading members of this school of thought published an anthology called *Words that Wound*. The essays in this anthology argue for various regulations against racist speech and pornography. As part of these arguments, the authors present reasons why racist speech causes harm to a degree that similar kinds of non-racist speech would be less likely to cause.¹⁶ Essentially, the Critical Race Theorists point out that we do not generally believe that people have a legal right to deliberately cause severe emotional distress to other people. They also argue that racial insults cause severe emotional distress to other people to a degree that most insults would not.¹⁷ Consequently, they argue that certain types of racist speech should serve as additional categories of unprotected speech.¹⁸

B. Richard Delgado's Proposal

Richard Delgado's essay in *Words that Wound* provides a good example of the way that the Critical Race Theorists argue that racist hate speech harms its victims. Delgado proposes a new cause of tort action for racial insults.¹⁹ In support of this proposal, Delgado argues that individuals who are victims of racial insults should be able to sue for damages, but only if the incident meets three stringent standards. First, the person who

made the insult must have intended to demean the victim by referring to the person's race. Second, the recipient of the insult must have perceived this intention. Third, the insult must be such that people would commonly understand it as a demeaning reference to the person's race.²⁰

Delgado supports this tort action on three related grounds. First, he argues that racism is pervasive in American society and racial insults help to sustain and perpetuate racism.²¹ Second, he argues that racism causes serious damage to its victims. It makes it difficult to raise "confident, achievement-oriented, and emotionally stable children."²² It can also undermine a victim's physical well-being and cause him to develop a sense of inferiority.²³ As Delgado says, "Not only does the listener learn and internalize the messages contained in racial insults, these messages also color our society's institutions and are transmitted to succeeding generations."²⁴ So, people who use racial insults cause severe harm to their victims by sustaining racism. Third, Delgado argues that a racial insult is much more damaging to the victim than other forms of insults. When a person is subject to a racial insult, the insult brings to mind the entire history and present structure of racism, along with all of the harm that it causes to the person and his family. Consequently, it is likely to produce severe emotional distress, far beyond what most insults would produce.²⁵ "Racial insults, relying as they do on the unalterable fact of the victim's race and on the history of slavery and race discrimination in this country, have an even greater potential for harm than other insults."²⁶

Let us assume that Delgado's argument is correct. If so, then his proposed cause of action for racial insults would meet Justice Scalia's criterion for justifying content-

specific subcategories of unprotected speech. On my reading, Delgado argues that people should not have to live with the mental stress that a reasonable person would experience when exposed to such insults.²⁷ Tort law already recognizes similar causes of action.²⁸ Moreover, it is reasonable to think that the perpetrators ought to know that racial insults cause this sort of harm. As Delgado points out, people often use racial insults in order to demean members of disadvantaged groups precisely because the person making the insults knows that they are harmful.²⁹ In his words, “[B]ecause a person’s race is usually obvious, the maker of a racial insult is exploiting an apparent susceptibility rather than causing an unforeseeable injury ...”³⁰ Delgado simply wants the law to announce to everyone that racial insults cause severe emotional distress in reasonable members of disadvantaged groups, and that those who utter racial insults will be held responsible for the harm that they cause.

At this point, Delgado’s argument faces a significant problem. It is not clear that all demeaning racial insults cause more distress than all other kinds of insults. For example, certain kinds of insults about level of intelligence or physical deformities, with the right inflection, might cause more emotional damage than mild racial insults. It might seem that what we should simply do is to give a tort action for all forms of intentional infliction of severe mental distress, and let the judges and juries sort out what falls into this category.

In response to this claim, I would argue that there are certain advantages to singling out racial insults and making them tortious. Consider an example of non-racial infliction of emotional distress. Suppose that Jared’s parents died in a fire. Then suppose that his

co-worker Karen, knowing this fact, persistently makes comments about fires around Jared. In that case, Karen would exploit a known weakness in order to inflict severe mental distress. In that case, we might allow Jared to bring a tort action against Karen. However, we would have to leave it up to the jury to decide whether Karen knew or ought to have known this fact, and whether Jared's response was reasonable.³¹

What Delgado essentially proposes is that the legislature should circumvent the process of requiring members of racial minorities to prove that their distress was reasonable. Instead, the legislature should specify that people who use racial insults to demean others will be presumed to have exploited a known weakness. It may be that many other *particular* insults would cause a similar or even greater level of distress. However, it is not clear that any other recognizable *category* of insults would generally cause such a high level of distress. Granted, if such a category exists, we could mount a good argument for granting similar protections. Still, given the history of the United States, there are special reasons to think that we should not leave the juries to make decisions about racial insults on a case-by-case basis.

C. Mari Matsuda's Proposals

A similar argument to Delgado's appears in Mari Matsuda's essay in *Words that Wound*. Matsuda argues that the government should ban the dissemination of racist propaganda, including the public expression of racist views.³² Matsuda argues that racist statements damage the victims.³³ Moreover, the fact that the government intervenes to protect the perpetrator rather than the victim only deepens the wound.³⁴ As she says,

When hundreds of police officers are called out to protect racist marchers, when the courts refuse redress for racial insult, and when racist attacks are officially dismissed as pranks, the victim becomes a stateless person. Target-group members must either identify with a community that promotes racist speech or admit that the community does not include them.³⁵

Moreover, it poisons relationships between the members of dominant and subordinate groups. As Matsuda eloquently states the problem, "... racist propaganda forces victim-group members to view all dominant-group members with suspicion. It forces well-meaning dominant-group members to use kid-glove care in dealing with outsiders."³⁶

When she proposes these restrictions on racist propaganda, Matsuda attempts to specify a very narrow definition of racist speech. To that end, she proposes three criteria. First, the speech must involve the idea that the entire group is inferior to other groups. Second, the targeted group must be historically oppressed. Third, the message must be "persecutory, hateful, and degrading."³⁷ As Auxier points out, this last criterion apparently requires that the message be such that it in some way advocates persecutory action. She infers this from the fact that Matsuda allows that academic arguments for the inferiority of a group should not be grounds for action. Apparently, one reason that we should not forbid such arguments is that they do not directly advocate persecutory action.³⁸

One notable feature of Matsuda's argument is that she does not allow action against vicious slurs directed against members of the dominant group. For example, she argues that angry nationalists who belong to subordinate groups should not be restricted from making demeaning comments about the dominant group.³⁹ Matsuda justifies this point in terms that are similar to Delgado's arguments. She points out that insults against the

dominant group do not have the same force. Consequently, we can expect members of the dominant group to respond by walking away, and they do not need the protection of the law.⁴⁰ In her words,

The dominant-group member hurt by conflict with the angry nationalist is more likely to have access to a safe harbor of exclusive dominant-group interactions. Retreat and reaffirmation of personhood are more easily attained for members of groups not historically subjugated.⁴¹

If this point seems puzzling, consider the following case. Suppose that someone posted a vicious anti-Christian polemic on my office door in California, and I became severely afraid that my safety was threatened. My response would be unreasonable. However, if someone posted a similar anti-Jewish tract on my Jewish neighbor's door, then my neighbor would have legitimate cause for fear. The reader may disagree with my judgment in this case, but it gives an idea of why Matsuda thinks that there is a difference between speech directed against victim groups and speech directed against dominant groups.

D. Critical Race Theory and Justice Scalia

Delgado and Matsuda's arguments show that the Critical Race Theorists have come up with a plausible response to Justice Scalia's objections. The Critical Race Theorists argue that people should not have to go through life coping with the harms caused by exposure to certain kinds of racist speech. Moreover, certain types of racist speech form recognizable categories such that we can presume that instances of those categories cause harm. Other individual instances of speech may also cause harm. However, there are good reasons to take special measures to shield potential victims from certain kinds of

racist speech. Consequently, there are good reasons to single out those categories as unprotected by the First Amendment. If there are other such categories, they may also merit protection. However, we may permissibly restrict certain kinds of harmful speech without restricting all instances of severely harmful speech.

IV. Responses to Critical Race Theorists

A. General Responses

Most of the Critical Race Theorists' critics acknowledge that they raise legitimate concerns.⁴² However, many of those critics argue that the problems with their proposed regulations against racist speech outweigh the good that such regulations would produce. These critics raise four main types of objection.

First, some critics argue that the proposals violate some kind of principle of free speech. These principles could be either legal or constitutional. For example, Joshua Cohen argues persuasively that we have a fundamental interest in freedom of expression.⁴³ Nadine Strossen argues persuasively that there are serious dangers to allowing any kind of abridgement of First Amendment rights.⁴⁴

Second, some critics argue that campus speech codes violate some kind of principle of academic freedom.⁴⁵ Some people have advocated restrictions on racist speech could help the university by securing a hospitable environment for minority students. Such an environment would enable them both to study more effectively and to better bring their distinctive contributions to academic discussion.⁴⁶ Moreover, minority students are to some degree a captive audience, because in many cases they live in dormitories and must take certain required classes.⁴⁷ Nevertheless, many critics have argued that the potential

threat to academic freedom outweighs these benefits. The freedom to discuss a variety of ideas is essential to the educational and research missions of the modern university.⁴⁸ Restrictions on racist speech could lead to further restrictions that seriously hamper that academic freedom.⁴⁹

Third, some critics argue that there may not be principled reasons to oppose such regulations, but they are likely to produce undesirable consequences.⁵⁰ For example, a number of critics have noted that governments have used regulations against racist speech against minorities and dissenters.⁵¹ For example, Strossen notes that a British activist was charged with hate speech against Americans when she dragged an American flag around the ground as part of an anti-nuclear protest.⁵² In several cases, restrictions on racist speech were used against members of minorities who made racially charged comments to white police officers.⁵³

Fourth, some critics argue that other ways of dealing with racism are more effective. For example, Strossen describes a case in which students at the Arizona State University dealt with racial incidents by discussing the issue with the offenders. Their efforts eventually led to further positive results that promoted racial understanding and harmony on campus.⁵⁴

B. The Problem of Chilled Speech

In my discussion of threats to mutual toleration, I will largely build on arguments based on principles of free speech and academic freedom. In particular, I will focus on a problem known as “chilled speech.” Chilled speech occurs when a person’s speech is not itself subject to regulation, but the fear of censure prevents him from expressing his

views. Chilled speech can be a particularly strong problem when regulations are vague. For example, suppose that a university passed a general ban on “offensive” speech. The question of what is offensive is so difficult that people would likely be afraid to raise permissible questions and arguments for fear that someone would charge them with offensive speech.⁵⁵ Granted, some amount of vagueness may be unavoidable. For example, a rule against racist speech that simply gave a list of forbidden terms would be useless. It would be too easy to find or invent terms that were not on the list, or to thinly disguise racial insults in such a way that they are scarcely less damaging than the terms on the list.

A good example of chilled speech occurred in the case *Doe v. The University of Michigan*.⁵⁶ In that case, John Doe, a teaching assistant in biopsychology, charged that The University of Michigan had violated his free speech. The university adopted a policy that even strong proponents of regulations against racist speech have criticized as badly constructed.⁵⁷ One part of the policy forbade any speech in dormitories or educational settings that would tend to threaten discrimination, interfere with the full participation of other students, or create a hostile environment. This part of the policy authorizes discipline against

Any behavior, verbal or physical, that stigmatizes or victimizes an individual on the bases of race, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age, marital status, handicap, or Vietnam-era veteran status, and that ... Creates an intimidating, hostile, or demeaning, environment for educational pursuits, employment, or participation in University sponsored extra-curricular activities.⁵⁸

In the course of the litigation, the university dropped this portion of the policy.⁵⁹

Before the university modified the policy, John Doe sued the university because these restrictions made him afraid to discuss certain important issues in biopsychology. In particular, he was concerned that he could not safely discuss theories according to which there are biological bases for differences between members of different races and genders.⁶⁰ The administration insisted that they did not intend the rules to apply to classroom discussion.⁶¹

In his decision, Judge Avern Cohn struck down the university's policy, largely on the grounds of chilled speech. Judge Cohn argued that John Doe's fear that he would be censured for discussing controversial issues was genuine and reasonable.⁶² Moreover, Judge Cohn did not just argue this point in terms of abstract principles. He also cited the university's record of enforcement. The university claimed that it did not mean to censor classroom speech. In response, Judge Cohn argued that the guide issued by the university used a hypothetical classroom incident as an example of speech that violates the code.⁶³ Specifically, the example read, "A male student makes remarks in class like 'Women just aren't as good in this field as men,' thus creating a hostile learning atmosphere for female classmates."⁶⁴ He also argued that the university was very aggressive in pursuing the policy. As he said, "There is no evidence in the record that the Administrator ever declined to pursue a complaint through attempted mediation because the alleged harassing conduct was protected by the First Amendment."⁶⁵ Given this record, it is not surprising that the policy produced a "real and substantial" chilling effect.⁶⁶

V. Speech Regulation and Mutual Toleration

A. The General Problem

Judge Cohn's arguments point to the potential threat to mutual toleration posed by regulations on racist speech. As I said earlier, liberals have good reason to be concerned that they treat people with restrictive moral codes fairly. This interest in turn gives liberals strong reasons to ensure that they do not encroach on the free speech of people who advocate such codes. In particular, they should want people who advocate such codes to be free to protest when they see an instance of unfair bias. They cannot have such freedom if regulations forbid them from expressing their views. Nor can they have such freedom if chilling effects hamper them to the point that they are afraid to even try.

To illustrate the problem, I would point out the vehement opposition that many social conservatives have made to regulations against racist speech. Roughly, I define a social conservative as someone who balances a commitment to individual freedom and equality with a commitment to preserving certain other institutions or moral norms, some of which he accepts on the basis of tradition or social custom.⁶⁷ Social conservatives often, but not always, endorse the use of government power to reinforce these norms.⁶⁸ I use this term in contrast to economic conservatives – social conservatives may have widely ranging views about economic matters.⁶⁹ Quite a number of social conservatives protested strongly against restrictions on racist speech, especially campus speech codes. One socially conservative state senator in California went so far as to propose a law that forbade private universities from adopting such codes.⁷⁰

I focus on social conservatives in part because they have good reasons to support regulations against racist speech. After all, social conservatives often argue for restrictions on individual liberty for the sake of the common good.⁷¹ For example, Steven Shiffrin points out that Justice Scalia is willing to allow restrictions on obscene speech, but not restrictions on racist speech. Shiffrin concludes, “... the Court is not prepared to afford obscenity full constitutional protection—and Justice Scalia is adamant on the subject. Justice Scalia needs to reconcile his approach to racist speech with his approach to obscenity.”⁷² In theory, it might seem that social conservatives have reasons to abridge free speech in order to oppose racism, both for the sake of the victims of racism and to promote public virtue. At least, those social conservatives who believe that racism is wrong and harmful have good reasons to support restrictions on racist speech.

Shiffrin’s arguments point to reasons why social conservatives have reasons to support restrictions on racist speech. In fact, many conservative religious colleges and universities have enacted such restrictions. For example, Wheaton College’s Office of Multicultural Development issued a statement that reads, “Racial Harassment conflicts with Wheaton College’s Statement of Responsibilities and will not be tolerated. Therefore, all reported cases are taken seriously and investigated promptly.”⁷³ David Lipscomb’s Code of Conduct at one point forbade “racially offensive language/symbols.”⁷⁴ Even Bob Jones University claims, “Though no known antagonism toward minorities or expressions of racism on a personal level have ever been tolerated on our campus ..., we allowed institutional policies to remain in place that were racially hurtful.”⁷⁵ The fact that some socially conservative institutions felt free to enact such

codes makes it even more striking that so many social conservatives opposed such restrictions at other colleges and universities. Granted, it could be the case that these restrictions were enacted by a different set of social conservatives than the ones who protested against such restrictions. Still, this apparent discrepancy raises the possibility that some social conservatives were willing to enact such codes in their own institutions, but were frightened when liberals did so. This even more provocative.

As an empirical matter, I cannot say why so many social conservatives responded so vehemently against regulations on racist speech. Still, I will argue that they had good reason to do so. Such regulations posed a genuine threat to mutual toleration, and one that would fall most directly on social conservatives. By identifying the ways in which their free speech and/or academic freedom was threatened, I can better articulate the potential threat to our ability to sustain mutual toleration across serious moral disagreements.

B. Social Conservatives and Chilled Speech

In my view, the main threat to social conservatives from regulations against racist speech codes is the problem of chilled speech. Social conservatives may have some reason to fear that people will censure them if they make certain moral or factual arguments. They have even more reason to fear that people will be reluctant to endorse certain conservative ideas publically because they are afraid of being accused of racism.⁷⁶ Alternatively, social conservatives might fear that when they endorse certain factual claims, opponents will charge that the endorsement is evidence of latent racism. I would

suggest that the following cases involve ideas conservatives often endorse, and that their opponents might label racist or even hateful.

1) The Cultural Adjustment Argument

As George Nash points out, a number of conservatives have advanced the following argument to explain the difficult economic position of African-Americans. When any cultural group makes a transition from rural life to urban life, it takes a number of generations to adjust personal habits to fit the urban setting. According to many historians, African-Americans only moved to the cities in large numbers recently, through the “Great Migration” in the Twentieth Century.⁷⁷ Unfortunately, well-meaning entitlement programs interfered with the normal process of adjustment and set back the economic progress of African-Americans.⁷⁸

Even though this argument does not make direct reference to race, a person who wished to make this argument might still be afraid that opponents would accuse him of racism. Those who wish to draw practical applications from this argument would face an even greater problem of chilled speech. In particular, some people might use the cultural adjustment argument as a reason to oppose certain policies designed to help African-Americans. Take, for example, the issue of college admissions. The cultural adjustment argument might be used to oppose programs designed to increase the number of African-Americans admitted to specific colleges. First, some people might use the cultural adjustment argument as evidence that low admission rates for African-Americans do not reflect ongoing racism. Rather, the low numbers are to be expected due to cultural factors.⁷⁹ Second, some people might use the cultural adjustment argument to support the

claim that affirmative action programs are generally counterproductive to the normal process of an underprivileged minority's economic development. Consequently, there would be good reason to oppose such programs because they would harm the intended beneficiaries.

If a person wanted to make such arguments, then he might have reason to fear that he would be accused of racism. On a practical level, this argument would imply that many universities should not have admitted some subset of their African-American students. Moreover, the argument implies that African-Americans are *statistically* less likely to be prepared for certain pursuits, albeit due to cultural and economic factors rather than genetic traits. Some African-American students might take such arguments as personally insulting. Finally, the person who makes the argument might fear that people would use the fact that he believes this argument as evidence of latent racism.

If these chilling effects seem unlikely, keep in mind that there are certain statements in the literature that would exacerbate these fears. For example, Matsuda at one point refers to "cultural lag" as a racist idea. As she says,

Another difficult case is that of the social scientist who makes a case for racial inferiority in an academic setting based on what is presented as scientific evidence. Various theories of genetic predisposition to violence, cultural lag, and a correlation between race and intelligence fall into this category. Critics note that these pseudoscientific theories are racist and ignorant.⁸⁰

Matsuda does not define the term "cultural lag", but it is possible that she means something like the argument that I describe here. However, she does not advocate suppression of academic speech, provided that it is "free of any message of hatred and persecution."⁸¹

2) The Argument for a Monocultural Curriculum

Suppose that a student makes the following argument, drawing on the work of the social conservative author Russell Kirk. A liberal democracy must have some kind of definite political and cultural order.⁸² Traditionally, the roots of American order are found in what Kirk calls “America’s British Culture.”⁸³ Moreover, no secondary school or college really has time to introduce its students to thoroughly the history, philosophy, and literature of more than one culture. In that respect, real multiculturalism is impossible. All that a multicultural education would accomplish is to ensure that students have no more than a shallow understanding of any culture.⁸⁴ Given the special role that British culture plays in everything from capitalism to the common law, we have good reason to give that culture a primary role in public education in the United States.

Note that his argument says nothing about the superiority or inferiority of any culture. It is perfectly consistent with giving Chinese civilization pride of place in China or Taiwan. It is perfectly consistent with giving various African civilizations pride of place in various parts of Africa. It simply says that a political community always has to privilege some culture, and that in the United States there are good practical reasons to privilege Anglo-American culture.⁸⁵

A person making this argument would have reason to fear that people will view this position as racist or as an indicator of latent racism. This argument is easily confused with arguments for the superiority of Western culture, which is in turn easily confused with arguments that the peoples of Europe are superior to other ethnic groups. I assume that most white racists would argue for a monocultural, Eurocentric curriculum in the

United States and Europe. Hence, people who advance arguments such as Kirk's would have reason to fear that their opponents would accuse them of racism. In fact, Arthur Schlesinger, Jr., was denounced as a racist for advancing the kind of argument described here in his book *The Disuniting of America*.⁸⁶

3) Mel Gibson

The production of Mel Gibson's *The Passion of the Christ* provoked a significant amount of protest. Protests ranged from the claim that its content was inherently anti-Semitic to the claim that it could provoke anti-Semitic violence.⁸⁷ These claims have some plausibility, and Mel Gibson's later anti-Semitic comments gave more cause for suspicion.⁸⁸ There is a history of violence and anti-Semitism associated with Passion plays, that is, plays that depict the events leading up to the Crucifixion.⁸⁹ Moreover, some commentators accused Gibson of accentuating certain themes in ways that make portions of the movie anti-Semitic.⁹⁰ For example, they argue that he made Pilate more thoughtful and reluctant than the Gospels portray him.⁹¹ John Dominic Crossan also argues that Mel Gibson made the crowd scenes in such a way that it portrays the Jewish population of Jerusalem as more united in opposition to Christ than the historical record indicates.⁹²

Given such arguments, people who want to defend the movie might face a problem of chilled speech. Some opponents of the movie might accuse anyone with a favorable view of the film of anti-Semitism. Granted, this example is more about religion than race. However, religious bigotry and race hatred are often closely entwined for anti-Semites. Moreover, a person might fear that if he reads the historical record in a way that puts

more blame on the Jewish population of Jerusalem than the Roman rulers, then opponents will claim that his historical views must reflect an unconscious anti-Semitic bias. After all, many scholars have argued that the Gospels are a product of such bias.⁹³ As Samuel Sandmel argued in 1978, “John is widely regarded as either the most anti-Semitic or at least the most overtly anti-Semitic of the Gospels.”⁹⁴

4) The General Point

Some critics might treat any of these arguments as racist or as evidence that the person who presents the argument is racist. Consequently, social conservatives have good reason to fear that the chilling effects of restrictions on racist speech could prevent people from advocating these ideas.

C. A More Difficult Problem

In the last section, I argued that racist speech codes could create a problem of chilled speech, particularly for those who wish to advocate socially conservative ideas. This problem in turn relates to my more general concern that speech codes could lead to unfair treatment of people who advocate restrictive moral codes.

In earlier chapters, I gave several reasons why we should take care that a commitment to tolerance does not lead to unfair treatment of people with restrictive moral codes. In the preceding chapter, I argued that liberals have good reason to be careful that they do not construe their commitment to individual autonomy in a way that is biased against restrictive moral codes. Moreover, I pointed out in the first chapter that some people espouse the view that “merely” tolerating is a kind of insult. In particular, some argue

that if we consider a behavior socially acceptable, then we should regard a person's behavior as socially undesirable when he openly disapproves of that behavior.

When I present these arguments, I should stress that the problem is not that people try to convince each other to accept behavior of which they currently disapprove. I also allow that a certain amount of government support for such efforts can be legitimate. For example, in the first chapter I did not oppose those who would promote the idea that all religions are equally good, nor those who would use some amount of government power to support such views. I only objected to those who claim that promoting this idea is somehow different from promoting a particular religion.

Against the background of such concerns, there are good reasons to fear that restrictions on racist speech could subtly encourage unfair treatment of people with restrictive moral codes. In particular, regulations against racist speech enable people in authority to label other people's behavior as not just mistaken, but hateful. More importantly, they enable those in authority to label people with restrictive moral codes as hateful, but label the critics of restrictive moral codes as opponents of hatred. For ease of explanation, I will say that people with restrictive moral codes have "objections" to others' behavior. I will say that people who oppose restrictive moral codes make "criticisms."

As I said, there is danger with allowing people in authority to label people with restrictive moral codes as hateful, but not label critics of restrictive moral codes as hateful. Consider the following example. Suppose that Alice states a firm, polite, objection to homosexual acts. Then suppose that an affirming critic, Walter, angrily

denounces Alice for her objection. The danger is that those in authority will label Walter as promoting tolerance and Alice as promoting hatred. In fact, a number of universities have attempted to de-recognize student religious organizations because they restrict voting membership or leadership to people who share their beliefs on this subject.⁹⁵ These universities include Grinnell, Tufts, and the University of Wisconsin.⁹⁶ Moreover, Tufts initially derecognized a religious organization even though full membership was open to people with homosexual inclinations, so long as they agreed that acting on such inclinations is immoral.⁹⁷ More recently, The University of California's Hasting School of Law derecognized the Christian Legal Society (CLS) for refusing to granting voting membership to people who support same-sex unions. CLS's attorneys argue that the college took this action even though several other groups restrict membership to people who share the political purposes of their organization.⁹⁸ Outside of the academic setting, there have been cases in Canada and Pennsylvania in which people were arrested for protesting or handing out literature strongly denouncing homosexual relations.⁹⁹ In each of these cases, people faced punitive action for voicing or acting peacefully on their belief that same-sex unions are morally wrong.

An interesting example of this approach to hatred occurred at Yale in 1997. Several Orthodox Jewish men asked to be exempt from living on co-ed floors at Yale. The university refused. Some people might not see this action as intolerant.¹⁰⁰ At the same time, when the incident occurred, Yale would not have thought about discriminating against the students for being Jewish, nor even for being Orthodox Jewish. Nor would Yale have tolerated any interference with religious services, or actions deliberately

designed to make it difficult for them to keep kosher. Imagine that a woman named Beatrice offered one of these men a plate of non-kosher food. When he politely declined, Beatrice called him a “stupid Jew.” Then imagine that a critic named Clarinda heard of their desire to live off-campus and called them “ignorant bigots” with similar force. It is plausible to think that Yale would punish both students for a lack of civility. But it is also plausible to imagine that Yale would punish Beatrice for racism or religious hatred, but treat Clarinda’s comments as opposition to sexist bigotry.

I present this example because it illustrates that the way in which people determine what counts as hateful can lead to bias against people with restrictive moral codes. Many people would not consider Clarinda’s criticisms hateful. In fact, many people would see it as a commendable response to bigotry. The trouble here is that the Orthodox Jews in question objected to a certain behavior, namely living in close proximity to members of the opposite sex. Consequently, many people would see their objections as demeaning to women, and perhaps even hateful. At the same time, some of the same people would not see Clarinda’s response as hateful towards Orthodox Jews.

One possible reason for this distinction is that people do not treat objections to other people’s behavior as part of their identity. Consequently, we do not see those who criticize their objections as attacking their persons.¹⁰¹ This distinction strikes me as perfectly reasonable, especially in a university setting, which should encourage free discussion of conflicting moral beliefs. However, there are potential dangers if we allow people in authority to treat people who object to others’ behavior on moral grounds as different from those who criticize their moral objections. In particular, those in

authority may treat people with restrictive moral codes as hateful, but treat their critics as defenders of tolerance.

Again, I do not mean to take issue with people who criticize others' objections. Rather, I take issue with people who treat objections to people's behavior as inherently intolerant or hateful. Granted, some people declare or act on their objections in a hateful manner. However, people can also criticize objections in a hateful manner. My argument is directed at people who generally treat objections as inherently different in kind from criticisms of those objections. For example, consider the case of Clarinda. I would treat the disagreement between Clarinda and the Orthodox Jews as simply a disagreement on the substantive question of proper gender relations. Clarinda may be correct about the substantive point. The university may also be right to refuse to accommodate the Orthodox Jews. Nevertheless, it is very dangerous to treat people who act on considered moral views like people who are outright hateful towards others. In that respect, there may be good grounds for privately admonishing Clarinda for calling the Orthodox Jews bigots. More generally, she should be very cautious about treating her dispute with the Orthodox Jews as something other than a civilized disagreement.

I raise this example because it points to a serious problem for people with restrictive moral codes. The concern is that people could use restrictions on free speech to promote social norms that treat restrictive moral codes as inherently hateful towards the people whose behavior they oppose. Many people with restrictive moral codes are distinguished from the larger society primarily by the wide range of behavior to which they object. Suppose, for example, that Zachary is a wealthy, white Evangelical Christian from the

Chicago suburbs. Zachary would be part of the dominant group in society in every respect except the fact that he considers many behaviors immoral that most people in society do not oppose. Consequently, he has reason to be threatened by social norms that would grant protection to various groups, but label his beliefs as inherently hateful and therefore subject to penalty rather than protection.

D. Mutual Tolerance and Free Speech

I argued in earlier chapters that this general threat to mutual toleration is one that liberals have good reason to guard against. I would stress here that restrictions on free speech pose an especially strong obstacle to mutual toleration. If people are afraid that their views will be labeled as hateful, then it is difficult for them to articulate and express their views. Their reticence can cause a number of problems. Most obviously, it can prevent them from protesting when other people have treated them unfairly. Perhaps more importantly, such restrictions make it difficult for other people to stand up for them. Suppose, for example, that a professor named Andrew makes the cultural lag argument and critics accuse him of racism. Then suppose that Andrew's colleague Bertha disagrees with the cultural lag argument, but believes that Andrew's accusers have misrepresented his views. Bertha must face the risk that Andrew's critics will accuse her of racism or sympathy with racism if she defends Andrew. If that risk is serious, then it would take great courage to speak up in Andrew's defense. Several scholars who have faced accusations relate that many people privately encouraged them but were afraid to speak out publically in their favor.¹⁰²

By preventing people from defending their views, restrictions on racist speech might also make it more difficult to respond to mistaken but non-racist ideas. Let us assume that the cultural lag argument is misguided, but not racist. If we do not allow people to present this argument, then critics will not be able to respond to their arguments when those arguments are ungrounded. I do not claim that we can argue with everyone. It may be the case that neo-Nazis and members of the KKK are not interested in argument. The real danger is that we will be unable to reason with people who hold more reasonable but mistaken views because we deprive them of the opportunity to present their views and arguments. In general, if we want to promote mutual toleration between people who support and people who oppose restrictive moral codes, we have to make it possible for both sides to express their beliefs openly.

E. A Caveat

When I raise these concerns about speech restrictions, I should stress that I am not calling into question all official opposition to hatred. Nor do I oppose all cases in which government or university authorities take action against people with restrictive moral codes. In particular, I am not arguing that it is always illegitimate for those in authority to label opposition to restrictive moral codes as hateful. For example, suppose that university officials regularly make speeches and promote educational programs that argue against the view that same-sex unions are immoral. I am not arguing that such programs are legitimate, provided that they do not distort or caricature their opponents' views.

My argument, then, is not that it is always inappropriate for officials to officially oppose restrictive moral codes. Nor do I argue that they have no right to label such codes

as hateful. Rather, my argument is that there are serious dangers if we allow people in authority to *both* label restrictive moral codes as hateful *and* propose limits on hateful speech. If authorities do both of these things, then it is perfectly reasonable for advocates of restrictive moral codes to suspect that their freedom of speech is threatened. I do not mean to argue at this point that such policies are inappropriate, either separately or in combination. Rather, my point is that we must be aware that the combination is likely to create a problem of chilled speech. Therefore, in contexts where people in authority regularly label restrictive moral codes as hateful, we cannot overlook the possibility that restrictions on allegedly hateful speech will lead to chilled speech. Consequently, when the authorities are engaged in sustained opposition to certain moral objections, we must show some amount of reserve in placing restrictions on those who express the moral objections in question. We must also consider what measures can be taken to mitigate the problem of chilled speech.

VI. Three Dangers of Speech Regulation

A. Three Claims

Having laid out the nature of the threat to mutual tolerance, I will now assess the question of whether the Critical Race Theorists' proposals pose such a threat. I focus on Mari Matsuda's proposal, because in some ways it is more extreme than Delgado's. It censures apparently discursive speech instead of insults, and it does not require proof of malicious intent against a particular person. In that respect, it covers a much wider range of speech. Consequently, it could potentially create a much greater chilling effect. A

regulation that prevents a person from insulting others may inconvenience him. A regulation that prevents a person from publically advocating moral or political beliefs is a much greater burden.

In this section, I will argue for three claims. First, Matsuda's proposals, if fairly implemented, do not in themselves pose a significant threat to social conservatives' legitimate speech interests. Second, there may be good reason to be concerned that the arguments that she uses to justify her proposals pose a threat to mutual toleration. Third, there are definitely reasons to fear that such proposals will not be fairly implemented, and will therefore pose a threat to mutual toleration.

B. A Few Assumptions and Limitations

In order to argue for these claims, I will assume three things. First, I will assume that the dangers that Mastuda and Delgado identify are real and serious dangers. Second, I will assume that the examples of socially conservative speech listed above are core examples of the kind of speech that liberals should want to protect. More specifically, I will assume that if these kinds of speech are threatened, then there is a genuine threat to mutual toleration. Third, I will assume that we should take the idea that such kinds of speech might be restricted seriously enough that we should be wary of proposals that would lead to regulations against them.

I make this third assumption with some reservations. I will not deny that there has been mistreatment of social conservatives, especially in the university setting. For examples and analyses, see Daphne Patai, Jon Gould, Alan Kors, David Bernstein, and Neill Hamilton.¹⁰³ Hamilton gives an especially thorough analysis. However, I have not

yet found a source that gives statistics about the extent of the problem.¹⁰⁴ Hamilton gives detailed examples and some helpful statistics about the political views of professors, but he acknowledges that there is no comprehensive survey of the problem.¹⁰⁵ For the purposes of this chapter, I will assume that the problem is serious enough to provide a potential challenge to the legitimacy of restrictions on racist speech. Nevertheless, I will argue that we have ways to mitigate the problem.

I would also stress that I do not mean for anything in this chapter to advocate Matsuda's proposals, or any other. I only mean to argue that these proposals do not necessarily pose a threat to mutual toleration. In that respect, I provide an argument against critics who claim that such proposals threaten free speech. However, it does not follow that these proposals are a good idea. There are many other reasons to oppose the Critical Race Theorists' proposals. Strossen argues that they distract us from better ways of combating racism.¹⁰⁶ Shiffrin worries that they might provoke a backlash.¹⁰⁷ Alan Keyes finds them condescending.¹⁰⁸ Lively argues that the potential gains are not worth the time and effort spent arguing for them.¹⁰⁹ Nothing I say will provide an answer to these objections. I will only argue against critics who claim that the regulations pose a serious threat to free speech or mutual toleration.

C. First Claim: Matsuda's Proposals themselves do not Undermine Toleration

Matsuda and her co-contributors have carefully and deliberately designed their proposed restrictions on speech in a way that would protect the speech of people who advocate restrictive moral codes. I do not mean to argue that Matsuda intends to protect such speech. I find the essays in *Words that Wound* unclear on this point.¹¹⁰ Rather, my

point is that Matsuda deliberately designs her proposals in ways that include enough protection of free speech that they also protect the kind of arguments that responsible social conservatives want to present, if her proposals are fairly implemented.

I see little reason to think that Matsuda's proposals, if responsibly implemented, pose a threat to people with restrictive moral codes. Her proposals only regulate speech that is "persecutory, hateful, and degrading." Furthermore, they must involve the idea that the group is inherently inferior. Unfortunately, her essay does not give us much information about what these terms mean. Still, it seems probable that the terms would only apply to a limited range of speech. Consider, for example, the argument for a monocultural education. Nothing in this argument implies that the non-Western cultures are inherently inferior. Similarly, it would be a stretch to argue that *all* arguments for an emphasis on Anglo-American culture are meant to degrade people from other ethnic groups, much less persecute them. Consequently, there is little reason for anyone to fear that Matsuda's regulations, if properly implemented, would apply to the expression of legitimate opinions.

D. Second Claim: The Justifications for the Proposals might Undermine Toleration

1. The Contours of the Problem

Matsuda's proposals would not license punitive action against those who would express ideas like the cultural lag argument or the argument for a monocultural education. However, there is a deeper problem with her proposals. Even if the proposals themselves do not pose a threat, the arguments for them might. Each proposal represents a limitation on a general principle protecting free speech. Such limitations require justification.

Those justifications require that we fulfill two criteria. First, we must be able to identify features that justify leaving a certain type of speech unprotected. Second, we must affirm that the speech that we leave unprotected actually has those features.

The trouble with these criteria is that they require us to empower someone to make the decision that the criteria have been met. More to the point, we will probably have to attach the decision to some office or decision-making body. It could be judges, legislatures, or some administrative official. We must decide which office, if any, we can safely entrust with the decision. Whoever has the responsibility of making the decision has the potential to abuse it in ways that could threaten mutual toleration.

To illustrate this point, let us assume that Matsuda is correct that certain forms of racist speech meet the criteria described above. For example, part of Matsuda's argument is that certain racial minorities have been oppressed. I will also assume that the oppression must be ongoing, or have enough lingering secondary effects to create serious disadvantages for members of the group. The difficulty is that somebody has to decide that the group in question has been and continues to be oppressed in sufficient degree to justify the restrictions. As a corollary, the same person must decide that other groups have not been so oppressed or are no longer oppressed. Consequently, we have to trust that the decision-making body will have both the wisdom and self-control to avoid several potential abuses. We must trust that body to resist the temptation to identify groups as oppressed simply because powerful constituents sympathize with such groups. Moreover, we must trust it not to give into the pressure to identify groups that it does not like as oppressors. Keep in mind that many Germans saw themselves as oppressed in the

1930's. Given the terms of the Treaty of Versailles, this view was quite plausible.¹¹¹

Unfortunately, their political leaders chose to falsely identify the Jews as the oppressors rather than blame the real oppressors, i.e. the British and the French.¹¹²

The difficulty described here is partly the general problem of human fallibility.

However, there is an additional difficulty. Different types of offices carry different sorts of problems and temptations. The courts might be too far removed from the people.¹¹³

Juries might tend to have a bias against certain types of plaintiffs or defendants.¹¹⁴

Legislators are subject to all sorts of political pressures. Bureaucracies develop their own interests, which may not coincide with the interests of people that they are supposed to serve.¹¹⁵ Moreover, we have to ensure that there are adequate checks and balances on whomever we authorize to make the final decision about whether we should regulate a particular kind of speech.

To illustrate how this problem poses a threat to mutual toleration, let me turn to the example of religious speech. In recent years, a number of interreligious organizations have protested against Christian proselytization of members of other faiths.¹¹⁶ So far, they have restrained themselves from interfering with free speech. Nevertheless, it is possible that they could go further, along the lines of restrictions in Russia and many Islamic countries.¹¹⁷ Now suppose that political activists were to place significant pressure on university administrators to ban all attempts at religious proselytization on campus. Assuming for the sake of argument that such a ban would be oppressive, we must ask whether we can trust university administrators to withstand the pressure placed

on them to impose such a ban. If not, then it would be unwise to grant them the authority to decide that certain types of speech are hateful and therefore subject to sanction.

The question of what legitimately justifies restrictions on speech and whom we can trust to make that judgment is very difficult. Still, it is instructive to examine the Critical Race Theorists' proposed restrictions on racist speech in light of this question. I will approach this issue in three parts. First, I will examine Matsuda's proposals. Second, I will ask what judgments go into the conclusion that restrictions on speech are justified. Third, I will ask whether those judgments are subject to abuse in ways that could threaten the kind of social conservative speech that I described earlier.

2. Matsuda's Proposals

Matsuda argues for restrictions on racist propaganda, defined in part as propaganda that is "persecutory, hateful, and degrading." Matsuda basically argues that two jointly sufficient reasons justify such restrictions. First, racist propaganda harms the victims and society. Second, we have no reason to take racist ideas seriously.¹¹⁸ On the second point, Matsuda compares racism to Marxism. Matsuda insists that the world has thoroughly repudiated racism. As evidence, she argues that laws, treaties, and statements accepted by nearly every country in the world. The United States' refusal to limit racist propaganda is an exception.¹¹⁹ Even at that, the government opposes racist propaganda but constrains the mode of suppression out of First Amendment concerns.¹²⁰ As a point of contrast, she argues many people find Marxist thought a valuable resource when they wish to identify injustices.¹²¹ Therefore, such speech should not fall into the category of ideas that we have no reason to take seriously.

I bring out this last point because Matsuda's argument depends heavily on the (entirely correct) judgment that racism is wrong. Matsuda's argument targets discursive speech rather than targeting only direct attempts to harm a particular victim. Consequently, it is not clear that her proposals can be justified without the assumption that we have no reason to consider racist ideas seriously. Building on this point, I would argue that Matsuda's proposals require the following judgments:

- (1) The group has been severely and unjustly oppressed and/or is presently sufficiently oppressed to merit protection.
- (2) The oppression is so unjustified that we have no reason to listen to any argument in its favor.
- (3) Members of the group have reason to be severely distressed by exposure to arguments in favor of oppressing that group.

Moreover, to apply Matsuda's proposals, we must be able to make the following judgment:

- (4) The expression in question counts as advocacy of hatred/persecution, not an argument for a historically associated idea.

To clarify this last point, consider the example of arguments for a monocultural curriculum. Most likely, people have made racist arguments in favor of such curricula. For example, some people believe that whites are superior to nonwhites, and we should therefore prefer European culture to allegedly inferior cultures. However, other people present arguments that are not inherently racist, but that racists often endorse. In particular, it seems likely that some people who argue for a monocultural curriculum on pragmatic grounds are covering for racism. Nevertheless, we should clearly distinguish arguments that have been associated with racism in the past from arguments that actually assume racial inferiority. Moreover, we should be cautious about inferring that people who advance arguments that have historically been associated with racism hold those

views from racist motives. Only arguments that are inherently racist should be subject to censure.

I see two main dangers here. The first is the judgment of whether an idea counts as advocating hatred or persecution. Allowing institutions to regulate speech based on this judgment would seem to invite bias against people with restrictive moral codes. Consider the argument for a monocultural education. Some people might consider monocultural education a way of degrading other cultural groups, or even immigrants and minorities associated with other cultures. More generally, they might judge that any argument for privileging one culture over another insults members of the non-privileged group. Similarly, some people might view any attempt to bias institutions in favor of one lifestyle over another as a form of persecution. Moreover, the threat to free speech is particularly strong when opposition to a particular behavior is commonly associated with racism against a particular ethnic group. For example, proponents of multicultural education might use the fact that racists tend to support monocultural education as a justification for intimidating non-racists who also support monocultural education. We should therefore be very careful whom we empower to decide that a particular brand of speech counts as advocating hatred or persecution.

The danger that we might indiscriminately label an opposing group as persecutory becomes even stronger when it is conjoined with a judgment that their critics have been oppressed. As Justice Scalia says, we have special reasons to be concerned about regulations that are not viewpoint-neutral. The example involving Orthodox Jews at Yale illustrates this problem. Suppose that we agree that both Jews and women need

protection. Still, people could argue that refusing to accommodate Orthodox Jews does not count as an affront to all Jews. Consequently, universities would have free reign to privilege the interests of liberal white Christian women over the interests of male Orthodox Jews. Matsuda's proposals would seem to countenance restrictions on groups whose members ask for exemptions from policy because their beliefs about gender conflict with existing policy. The point here is not just that the groups might not receive exemptions. That possibility is unavoidable, and would often be appropriate. The more serious danger is that we might come to treat such people's behavior as equivalent to hatred or persecution when they merely advocate a certain way of life. So, when Orthodox Jews argue in favor of certain views about gender roles, people might treat their arguments as acts of hatred. Worse yet, other people might be treated as sympathetic towards sexism merely because they argue that the Orthodox Jews should be allowed to advocate these views.

A second danger comes when we allow people to make the judgment that certain ideas are so implausible that we have no reason to listen to them. Matsuda argues that the world has not repudiated Marxism.¹²² I agree to some extent, and I have found parts of Marx's work instructive. However, many people died through the implementation of Marxist-Leninist ideas.¹²³ I agree that we should not lump together all forms of Marxism. Nevertheless, if we allow racial speech codes, then we must trust the government to make this kind of fine distinction. If popular interpretations of the McCarthy era are correct, then we should be wary of trusting the government to do so.¹²⁴

In sum, I would say that there might be a danger that the justifications for Matsuda's proposals could pose a threat to mutual toleration. Whether or not the policies are justified would depend among other things on the extent of the risk, and on whether there are ways to mitigate the danger.

3. Caveat

I have argued that there are some dangers to accepting the Critical Race Theorists' justifications for their proposals, but it is not obvious that the dangers are serious enough to outweigh the harms that we permit if we allow racist speech. However, I must admit that I have presented what I regard as their strongest and safest arguments. At the same time, another undercurrent in their work gives reason for concern. It seems clear to me that they have developed proposals that protect the free speech of social conservatives. However, it is not clear whether or not they intend to do so.

There are some reasons to fear that Matsuda, Delgado, and their colleague Charles Lawrence, III, are not particularly interested in protecting their opponents' free speech. They are sometimes free with accusations of racism. For example, they tend to label everyone who opposes multiculturalism as racist.¹²⁵ Worse yet, Lawrence gives the appearance of accusing anyone who disagrees with his proposals as racist.¹²⁶ Moreover, in the introduction to *Words that Wound*, the contributors explicitly argue that one problem with allowing explicit racism is that it reinforces more subtle forms of racism. As Matsuda and her fellow contributors say, "The first amendment arms conscious and unconscious racists – Nazis and liberals alike – with a constitutional right to be racist."¹²⁷ This statement shows that Matsuda and her contributors believe that some interpretations

of the first amendment create a “right to be racist”, and that she would like to deny that right. That alone would not be particularly troubling. The disturbing point is that Matsuda includes a general reference to liberal racism. This reference conveys the impression that Matsuda means to do more than simply deny that people have a right to engage in explicit racial discrimination.¹²⁸

Such statements raise the concern that she means to attack a much wider range of speech and action. In particular, such statements lead credence to the fear that the Critical Race Theorists’ aim is to intimidate people from making the more moderate claims that I identified above. As I have argued, one can use the law to inhibit speech without actually making the speech illegal.

Against these concerns, I would stress that in other places the Critical Race Theorists emphasize their commitment to free speech. In many places, they insist on the importance of free speech and the need for a strong justification for any exceptions. In particular, Matsuda lists neoconservative economic theories as ideas that we should not label as racist.¹²⁹ So, there is some reason to believe that they want to protect social conservatives’ rights to free speech. Still, their other claims treat policies such as promoting multicultural education and restricting racist speech as part of one program. Consequently, I find it hard to assess whether they would regard the fact that their proposals protect social conservatives’ speech as a positive achievement or an unfortunate but necessary byproduct.

Because the Critical Race Theorists make the kind of arguments that I have described, people who wish to pursue restrictive moral codes have understandable reasons to fear

that their free speech is threatened. However, I think that such fears are too hasty. The Critical Race Theorists pride themselves on being radical in both style and substance.¹³⁰ However, underneath the style I find the substance much less controversial than it might initially appear. Moreover, as I have explained, there are indications that they want to respect the right to free speech of non-racist conservatives. Whether or not they want to protect social conservatives' freedom of speech, they have managed to do so. Whatever their motives, the Critical Race Theorists have carefully crafted a sensible, moderate set of justifications for restrictions on speech. These justifications do not necessarily threaten the speech interests that people with restrictive moral codes are most concerned to protect.

E. Third Claim: Implementation is a Serious Problem

In the last section, I was mainly concerned about the danger that people could use the justifications for Matsuda's proposals to support legislation that threatens free speech. That said, there is another serious danger. I have only argued that Matsuda and Delgado's proposals would not have harmful effects, *if fairly implemented*. That last phrase is a very large qualification. Moreover, the problem of chilling effects can happen even if nobody is ever actually convicted of any wrongdoing. A person can cause serious damage to another person's reputation merely by bringing a charge against him. Consider, for example, the issue of campus speech codes. Hamilton reports that he was subject to charges of moral turpitude in response to his strong opposition to affirmative

action.¹³¹ On Hamilton's account, American universities have faced a series of waves of zealotry over the last two centuries. He reports that in many cases, a person's reputation is severely damaged by the mere fact that he has been charged with wrongdoing. He advises that people who have been wrongfully accused must accept the fact that some people will continue to believe the charges no matter how soundly the charges are refuted.¹³² He also points out that the task of defending yourself takes an enormous toll in terms of time, energy, and resources. In the case of academics, it can severely set back their research and therefore damage their careers.¹³³ The existence of such abuses would likely have a significant chilling effect, as we saw in the case of *Doe v. University of Michigan*. If we cannot reasonably ensure that people will fairly implement regulations on racist speech, then we have good reason to fear that such regulations pose a serious threat to mutual tolerance.

VII. Mitigating the Dangers

At this point, it is tempting to follow many other people who have written on this topic and say that there are just too many good arguments on both sides of the debate. However, I will hazard a brief argument for the claim that we can mitigate the threat that regulations against racist speech pose to mutual tolerance.

I have argued that both the justification for and the implementation of regulations against racist speech could pose real dangers. Consider the example of campus speech codes. Hamilton, Cohn, and others have cited instances of both abuse and chilling effects.¹³⁴ Still, it is not clear whether the problem was the codes themselves or the way that universities adopted and enforced the codes. Consider, for example, the University

of Michigan's policy. Their policy called for attempts at mediation, followed by formal procedures if a person refused the mediation.¹³⁵ This approach sounds gentle. However, there is a danger in the very informality of the proceedings. This informality deprives the accused of the protections that formal procedures would provide. It also deprives the accused of the benefit of counsel. This problem is serious with respect to any regulation. In matters related to free speech, the absence of protections can often produce chilling effects, and is therefore especially dangerous. In some ways, the presence of strong informal pressures can be more silencing than the threat of open, formal prosecution. It may also encourage spurious accusations. Significantly, Hamilton recommends that academics who have been subjected to contrived accusations make their defense as public as possible. The accused thereby force their opponents to justify the charges publically.¹³⁶

Against this background, I would make four proposals. First, we should be very wary of allowing administrative bodies, including university administrations, to adopt or enforce restrictions on speech. I include in the category of "administrative bodies" any university proceeding that has less strict procedures and fewer rights for the accused than a court of law.¹³⁷ To the extent possible, codes should be adopted by an open legislative or deliberative process and reviewed by the courts. In general, the proponents of restrictions on speech should provide strong evidence of the need for codes before adopting them and demonstrate a consistent record of providing rigorous protections for the accused after adopting them. If the proponents consistently fail to meet this criterion, then the courts should follow the lead of *Doe* and invalidate all but the narrowest

restrictions on racist speech. The threat of such invalidation could bring about two benefits. First, it would encourage strong protection for the accused. Second, it would force proponents to make their arguments explicit, both in the legislative bodies and the courts. If a person wants to argue that anyone who opposes multicultural education or engages in religious proselytization counts as persecuting people, then he should have to publically stake his reputation on that claim.

Second, when we formulate and adopt restrictions on speech, we should always consult those whose speech is most likely to be threatened.¹³⁸ One irony of the debate over campus speech codes is that social conservatives generally took an oppositional position. As Gould argues, they successfully fought the speech codes in the courts, but the universities have ignored the court and established speech codes anyway.¹³⁹ I would suggest that a better strategy might have been to work with those who established the codes and the procedures for enforcement to check potential abuses.

Third, when such measures are adopted, people in authority may have an additional duty to restrain any opposition to restrictive moral codes. When they adopt measures that potentially chill speech, people in authority cannot responsibly voice their opinions as freely as they could otherwise. For example, if there is unlimited freedom of speech, then it may be appropriate for university officials to openly call respectful opponents of same-sex unions “hateful.” However, if the university adopts restrictions on “hateful” speech, it is probably inappropriate to label such opposition as hateful. It may even be inappropriate for administrators and professors to vigorously oppose such views, at least in their official capacity. At the very least, they must take pains to clarify that they do not

mean to call such views as hateful in a way that would license restrictions on their proponents.

Fourth, officials may need to take affirmative measures to assure people whose speech seems to be threatened that their speech is not in fact threatened. For example, university administrations should regularly remind their communities that open discussion of issues like gender roles and immigration are welcome. It may help to invite the advocates of legitimate but unpopular views to participate in public forums. Moreover, there should be serious and public consequences for those who would use the speech codes to suppress unpopular views. In looking at the potential threats to mutual toleration, I have emphasized that one of the largest problems is chilling effects. In many cases, measures to encourage speech that might otherwise be chilled would help to offset this problem.

VIII. Conclusion

In the end, my conclusion is that we should provisionally hold that restrictions on racist speech are not a threat to mutual toleration. Consequently, the courts should not invalidate such restrictions on the ground of free speech, if the proponents generally make good faith efforts to ensure fair implementation and enforcement. Moreover, the proponents' efforts must be reasonably successful. To that end, those who favor such restrictions have a strong responsibility. If those who administer such restrictions do not do so fairly, then the courts should generally invalidate regulations against racist speech. We must all – proponents and opponents alike -- work to ensure that such proposals are fair and restrained. We must ensure that they are adopted in an open process that

includes sufficient input from those whose speech may be threatened. We must ensure that there are fair procedures and adequate protections for the accused. Moreover, we have a responsibility to take positive measures to avoid the problem of chilled speech. We must take positive efforts to ensure people with restrictive moral codes that their views may be expressed and will be treated with adequate respect. If we cannot succeed in this task, then we cannot be trusted to adopt and implement restrictions on racist speech. If we want the benefits that come from restrictions on racist speech, then we must also accept the responsibility to guard against dangers and abuses.

References

Introduction

¹ Nicholson 1985: 159.

² Oberdiek 2001: 24-6, Budziszewski 1992: 44, *inter alia*.

³ Horton 1996: 32-3, Crick 1971: 134, Nicholson 1985: 169.

⁴ Aristotle 1976, Book II. Cf. McDowell 2003.

⁵ Cohen 1994: 73-5.

⁶ See Fotion and Elfstrom 1992: 4-6; Williams 1996: 18-9; Scanlon 1996: 226; Mendus 1989: 8, 18-9; Oberdiek 2001: 66; and Newey 1999: 21-32; *inter alia*.

⁷ Several people have made the point that a person must believe that he can do something about another person's behavior in order to count as tolerating it. See Newey 1993: 179-80; Fotion and Elfstrom 1992: 5; Cohen 1994: 69, 94-5; Crick 1971: 146, 56-7; King 1976: 22.

⁸ King 1976: 52-3.

⁹ Oberdiek 2001: 66.

¹⁰ Mendus 1989: 5, 17; Fotion and Elfstrom 1992: 4-9, 22-3, 108-9, 57; Scanlon 1996: 227-8; Horton 1996: 28-9.

¹¹ See the discussion of this issue in Chapter Two.

¹² Newey 1999: 19-20, after Raz 1986: 254; Raphael 1971: 229; Cohen 1994: 80-1.

¹³ Fotion and Elfstrom 1992: 13, 31-44; Oberdiek 2001: 90-5; Cohen 1994: 71-3, 81-2. For a contrary view, see Fletcher 1996: 170.

¹⁴ Mill 1974: 141-2. Cf. Himmelfarb 1974: 57-8.

¹⁵ Scanlon 1996: 228, Fotion and Elfstrom 1992: 6, Budziszewski 1992: 7-9.

¹⁶ In this section, I am drawing heavily on McDowell's idea that a virtue involves a sensitivity to a certain kind of reason for acting in a particular way. McDowell 2003: 141-4. See also Newey 1999: 5.

¹⁷ Horton 1996: 34-41.

¹⁸ Horton 1996: 32-5, Newey 1999: 109-11.

¹⁹ Horton 1996: 32-3, 7-8; Crick 1971: 164; Newey 1999: 22; Ryan 1971: 39. Cf. Aristotle 1976, Book II, Chapter 4.

²⁰ Horton 1996: 34-5.

²¹ Willson 1999.

²² Austen 1999, Volume II, Chapter 11.

²³ Eck 2001: 304.

²⁴ Cohen 1994: 73-5. In this section, I draw on Hursthouse's observation that we often have many vice-terms that stand opposed to a single virtue. See Hursthouse 1999: 41-2, 2f.13. Cf. Aristotle 1976 Book II, Chapter 6.

²⁵ Newey 1999: 172, Fotion and Elfstrom 1992: 3.

²⁶ Oberdiek 2001: 25, 90-4.

²⁷ Hursthouse 1999: 41-2, 2f.13.

²⁸ Fotion and Elfstrom 1992: 159. Cf. Aristotle 1976, Book II, Chapter 4.

²⁹ Nicholson 1985: 169.

³⁰ See Cohen 1994: 76, 84.

³¹ See the sources cited in Chapter 6, note 5.

³² Here I am drawing on Audi's account of civic virtue and Rawls's discussion of non-legal political duties. I use the term "public" to emphasize that I mean to include both political and social norms. See Rawls 1999a: 136-7, Audi 2000: 145-80. Cf. Fotion and Elfstrom 1992: 132-3.

³³ Rawls 1993: 60-3, 236.

³⁴ Fotion and Elfstrom 1992: 132-3.

Chapter One

¹ Smith 2008: 243.

² Fotion and Elfstrom 1992: 17-8, King 1971: 178, Mendus 1989: 19, Newey 1999: 4. See also *Abrams v United States*, 250 U.S. 616 (1919), (Holmes, J dissenting.), cited in Smith 2008: 247-8.

³ King 1976: 22. See also sources cited in the introduction to this dissertation, note 7.

⁴ Cervantes 1980: 56-9.

⁵ Cervantes 1980: 344-5.

⁶ King 1976: 27-32, 8. See also Newey 1993: 182.

⁷ See Strossen 1990, Strossen 2001.

⁸ See for example, Locke 1990, Rawls 1971: 195-211, Mill 1974.

⁹ Williams 1996: 19.

¹⁰ Williams 1996: 19-21 See also Crick 1971: 150-1.

¹¹ In the literature, some people call this issue the problem of the “censorious tolerator.” See, for example, Horton 1996: 32-3, 7-9, Newey 1999: 164, 8. I discuss this issue in the introduction to this dissertation.

¹² I take this to be Williams’ claim because of comments made at Williams 1996: 21-3. Moreover, his discussion of autonomy as a possible ground for toleration seems to require that we recognize some value that makes the act of tolerating itself valuable. See Williams 2005: 130-8. Newey makes a similar point more explicitly, but later seems to reject it. See Newey 1999: 171-8.

¹³ Heyd 2008: 183-4.

¹⁴ Heyd 2008: 184.

¹⁵ Heyd 2008: 184.

¹⁶ Heyd 2008: 184.

¹⁷ Heyd 2008: 183-4.

- ¹⁸ See discussions of this issue at Newey 1999: 4; Cohen 1994: 81-2; Oberdiek 2001: 84, 108; Mendus 1989: 112.
- ¹⁹ Foot 1978a: 23. See also Sabl 2008: 221.
- ²⁰ King 1976: 31, Williams 1996: 26.
- ²¹ Heyd 2008: 171.
- ²² Sabl 2008: 221.
- ²³ Williams 1985: 9.
- ²⁴ Williams 2005: 138.
- ²⁵ A number of authors have pointed out that some people want those who disagree with them to do more than “merely” tolerate them. Horton 1996: 31, Fletcher 1996: 158-9, Fotion and Elfstrom 1992: 27-8, Oberdiek 2001: 5, *inter alia*. For contrary views, see Eliot 1940: 21, Fotion and Elfstrom 1992: 54-5.
- ²⁶ Steven Smith makes a similar division. Smith 2008: 244.
- ²⁷ Scanlon 1996: 226 Oberdiek 27-8. Smith claims that Stanley Fish holds a similar position (Smith 2008: 247, 72n9, 72n10). See Fish 1997, Fish 1996.
- ²⁸ Fotion and Elfstrom 1992: 123.
- ²⁹ Foot 1978b: 192-6.
- ³⁰ Foot 1978b: 193-4, 200.
- ³¹ Newey 1999: 20, Fotion and Elfstrom 1992: 59-60.
- ³² As Fletcher says, they may simply see it as none of their business. Fletcher 1996: 162.
- ³³ Abrams 2008: 206.
- ³⁴ Abrams 2008: 206-7 .
- ³⁵ Cumings 2003: 15-42.
- ³⁶ Cumings 2003: 155-73.
- ³⁷ Eck 2001: 222-3, 32-4, 87, 99.

³⁸ Fotion and Elfstrom 1992: 123, 31. I discuss this issue further in Chapter Two.

³⁹ Kai Kjær-Hansen makes a related point at Kjær-Hansen 1994: 44.

⁴⁰ Eck 2001: 80-1.

⁴¹ See Walzer 1994: 101-3 and Jones 1993: 137-40.

⁴² Kirk 2002: 35-8, Genovese 1994: 44-5, Colwell 1972: 55-67.

⁴³ Walker 1990: 40-6, 158; Dworkin 1986: 45-86.

⁴⁴ Eck sometimes seems to hold this view. See, for example, Eck 2001: 23-5, 80-1.

⁴⁵ On Christianity, see Eck 1993: xi-xii, 166-99, Benedict XVI 2004. On Hinduism, see Pati 2003. On Islam, see Poston 1992. I take the point about Buddhism from Poston 1992: 3.

⁴⁶ Rawls 1993: xiv-xvi.

Chapter Two

¹ Heyd 2008: 171.

² Heyd 2008: 175, 8-9. Heyd generally does not distinguish between actions of toleration and the “attitude” of toleration. However, his arguments imply that the action is illegitimate, since it generally points to the inappropriateness of combining disapproval and restraint.

³ Heyd 2008: 171.

⁴ Sabl 2008: 221.

⁵ Heyd 2008: 173.

⁶ Heyd 2008: 173-4.

⁷ Newey makes a similar point. See Newey 2008: 361.

⁸ Heyd 2008: 174-6, 90-1.

⁹ Heyd 2008: 175-6, 8-9.

¹⁰ Heyd 2008: 175, 8.

¹¹ Heyd 2008: 175-6, 9-80.

¹² Heyd 2008: 178.

¹³ Heyd 2008: 179-80.

¹⁴ Heyd 2008: 179.

¹⁵ Heyd 2008: 181-3.

¹⁶ Heyd 2008: 180.

¹⁷ Heyd 2008: 179-80.

¹⁸ Heyd 2008: 175.

¹⁹ Heyd 2008: 177-9, 89-90.

²⁰ Heyd 2008: 177-8.

²¹ Heyd 2008: 178.

²² Goethe 1981: 507, quoted at Forst 2007: 215.

²³ Paine 1973: 267, 324, cited in Smith 2008: 256-7; Kant 1990, cited in Forst 2007. For contemporary arguments, see Galeotti 2002 and Forst 2003.

²⁴ Kant 1990: 86-9.

²⁵ Jones 1993: 129, King 1976, and Raphael 1988: 141.

²⁶ Kant 1990: 88.

²⁷ Bekich 1985: 83-4 and Brezhnev's Visit 1976: 1821. This may not count as toleration in the strict sense, since it is doubtful that either country could do anything about it. Still, the general point holds. It seems legitimate in many cases for the state to pass a condemnatory resolution against other states but take no further action.

²⁸ Martin 1999.

²⁹ Sabl 2008: 222-3.

³⁰ Sabl 2008: 222-3.

³¹ Sabl 2008: 223.

³² Heyd 2008: 178, Fotion and Elfstrom 1992: 9-10.

³³ Newey 1999: 156.

³⁴ Newey 1999: 155-6.

³⁵ Fotion and Elfstrom 1992: 131.

³⁶ Fotion and Elfstrom 1992: 131.

³⁷ Heyd 2008: 171.

³⁸ Galeotti 2002: 129-30.

³⁹ Levinson 1999: 122-31.

⁴⁰ Significantly, Heyd claims that this case involves “the idea of separation of state and religion.” (Heyd 2008: 178). However, France is committed to something much stronger than the mere separation of state and religion, at least in the American understanding of this term. Its “laïcité” borders on anti-clerical. See Galeotti 1993 and Benhabib 2004: 183-98.

⁴¹ Kymlicka 2002: 264.

⁴² I grant that these states often deny certain privileges to those who engage in behaviors of which they disapprove. Still, they at least partially tolerate such behaviors, and what counts as full toleration is a difficult question. (See the introduction, pp. 4-5.)

⁴³ Heyd 2008: 175.

⁴⁴ See, for example, Forst 2003, Forst 2007, Galeotti 2002, and Young 1990.

⁴⁵ As Matsuda points out, the United States officially tolerates racist speech to a greater extent than most countries. Matsuda 1993a: 26-31. I discuss this issue more thoroughly in Chapter Six.

⁴⁶ Bollinger 1986: 17-23, *Abrams v United States*, 250 U.S. 616, 629-30 (1919), (Holmes, J dissenting.)

⁴⁷ Heyd 2008: 177-8.

⁴⁸ Newey 1999: 181.

⁴⁹ Sabl 2008: 222-3.

⁵⁰ Fotion and Elfstrom 1992: 131-2.

⁵¹ *Lawrence et al, v Texas*, 539 U.S. 558, 603 (2003), (Scalia, J. dissenting).

⁵² Young 1990: 66-7, after Gutmann and Thompson 1996: 135-6.

Chapter Three

¹ Rawls 1999b: 4, 49-60.

² Rawls 1999b: 59.

³ Tan 2000: 82; Tan 2006: 76, 84, 91-2; MacLeod 2006: 146. For an extended discussion, see Nickel 2006.

⁴ Tan 2006: 83-4.

⁵ Tan 2000: 23, Tan 2006: 83.

⁶ Tan 2000: 23.

⁷ Rawls 1999b: 4, 49-60.

⁸ See, for example, Rawls 1999b: 84-5.

⁹ See Eberle 2002: 88-93 for a defense of this claim.

¹⁰ Tan 2000: 172.

¹¹ Rawls 1999b: 9-10, 22-3.

¹² Rawls 1999b: 4, 63.

¹³ Rawls 1999a: 141-3, 77-9; Rawls 1999b: 14-5, 49-50 .

¹⁴ Rawls 1993: 6-7, 228-30; Rawls 1999a: 141-3; Rawls 1999b: 14,49-50, 84. Cf. Tan 2000: 171-3.

¹⁵ Rawls 1999b: 74-5, 87, 177.

¹⁶ Rawls 1999b: 4, 63.

¹⁷ It might also be a decent people, depending on how you classify entrenched one-party rule. See discussions in Kausikan 1998, Means 1998, and Bell 2006.

¹⁸ Rawls 1999b: 92.

¹⁹ Rawls 1999b: 90, 105-6.

²⁰ Rawls 1999b: 105-12.

²¹ Rawls 1999b: 5, 80-1, 90.

²² Rawls 1999b: 90-3, esp. 3n6.

²³ Rawls 1999b: 37-8, Tan 2006: 79-80.

²⁴ Rawls 1999b: 4, 59-60, 3. Rawls starts by saying that decent and liberal peoples are well-ordered (Rawls 1999b: 4, 63). However, the standards for decency include things like peacefulness and respect for basic human rights. Rawls does not build these requirements into his explanation of the term “well-ordered” in *Political Liberalism*. Still, Rawls may have believed that it is impossible for a well-ordered state to meet these standards. For brevity’s sake, I will assume that all well-ordered states are at least decent.

²⁵ Rawls 1999b: 59, 61, 7, 86, 8.

²⁶ Rawls 1993: 9, 16, 147-9; Rawls 1999a: 146-8; Rawls 1999b: 71.

²⁷ Rawls 1999b: 61. Rawls emphasizes this point in his description of one type of decent peoples (Rawls 1999b: 72.) It is also significant that the reason that benevolent absolutisms do not count as well-ordered is that they do not give the people a share in decision-making. See Rawls 1999b: 4, 63.

²⁸ Rawls 1999b: 37-8, 65, 74 and n15, 78-81.

²⁹ Rawls 1999b: 79-80.

³⁰ See Tan 2000: 130-1. For a full treatment of Rawls’s account of basic human rights, see Reidy 2006.

³¹ Rawls 1999b: 75-6.

³² Rawls 1999b: 72.

³³ Rawls 1999b: 71-5.

³⁴ Rawls 1999b: 59.

³⁵ Rawls 1999b: 59.

³⁶ Rawls 1999b: 42-3, 84.

³⁷ Rawls 1999b: 43. Along with this guarantee, it appears that decent and liberal peoples may not force any country to trade with other countries, beyond what a minimal duty of assistance requires. See Rawls 1999b: 38-9, 106-14.

³⁸ Of course, a person might place the floor elsewhere. For example, he might hold that liberal states should guarantee decent states non-intervention, but not full recognition. In fact, this is Rawls's position on benevolent absolutisms (Rawls 1999b: 92). I will not discuss such alternatives. Rawls sets the floor for toleration at a certain point, and I will grant this point.

³⁹ Rawls 1999b: 83.

⁴⁰ Rawls 1999b: 9-10, 22-3, 128.

⁴¹ Rawls 1999b: 59.

⁴² Rawls 1999b: 83.

⁴³ Rousseau 1898, Book I, Introductory Note, quoted in Rawls 1999b: 7, 13.

⁴⁴ Tan 2000: 23, 33.

⁴⁵ Rawls 1993: 140-4.

⁴⁶ Rawls 1993: 143.

⁴⁷ Rawls 1999b: 12, 5-8, 80-1. Cf. Rawls 1993: 36-7.

⁴⁸ For the difference between political doctrines and comprehensive doctrines, see Rawls 1993: 174-6.

⁴⁹ Rawls 1993: 143.

⁵⁰ Rawls 1971: Part I, Rawls 2001.

⁵¹ I pass over the difficult case of burdened societies.

⁵² Rawls 1999b: 37-8, 106-12.

⁵³ Rawls 1999b: 8, 39, 115-20.

⁵⁴ Obviously, there are other alternatives, but these three should be enough to convey the main point.

⁵⁵ Rawls 1999b: 60.

⁵⁶ Rawls develops his claims about toleration within ideal theory.

⁵⁷ For a discussion of these limits, see Locke 1990: 47-8.

⁵⁸ Tan gives a good discussion of this point at Tan 2000: 43-4. See also Deveaux 2000: 509.

⁵⁹ For example, if space travel became feasible, those who could afford it would presumably have the right to exit.

⁶⁰ While Portugal 2200 would be an outlaw state, it is probably not sufficiently bad to warrant invasion. Still, some prejudicial action would be acceptable.

⁶¹ This is not a sudden development in *Political Liberalism*. The concern is already present in *Theory of Justice*, expressed in ideas such as the veil of ignorance. See Rawls 1971: 136-42.

⁶² I pass over the question of whether Benthamites are automatically constrained to take this approach. See Williams 2006.

⁶³ Rawls attributes this view to realists (Rawls 1999b: 46-8). I think that this attribution is mistaken; many realists see the international sphere as governed by morally constrained strategic action. See Elman 2007: 13-4, after Waltz 1979. Thanks to Matthew Kieffer for help on this point.

⁶⁴ Rawls 1993: 16, 137-8; Rawls 1999a: 151-2.

⁶⁵ Rawls 1993: 16, 147-9; Rawls 1999b: 32. In this respect, Rawls's overlapping consensus involves more than the mere coincidence of a set of rules.

⁶⁶ Rawls 1993: 229-30; Rawls 1999a: 132-4; Rawls 1999b: 18-9.

⁶⁷ Rawls 1999a: 171; Rawls 1999b: 18-9, 54-5.

⁶⁸ For arguments along these lines, see Wolterstorff 2005: 176-7 and Jensen 2005: 166-8. Rawls mentions the issue at Rawls 1993: 248-9.

⁶⁹ Rawls 1993: 225, Rawls 1999a: 145-6.

⁷⁰ Skerrett 2005: 183-4. This may not be entirely accurate. Rawls sometimes anticipates “spillover effects”, but regards them as regrettable. See Rawls 1993: 193-4, 328; Tomasi 2004: 340-4.

⁷¹ Skerrett 2005: 183-4; Rawls 1993: 63, 138, 213, 21; Rawls 1999a: 158-62; Rawls 1999b: 56-7, 84.

⁷² Rawls 1999a: 161-2. Rawls does say that religion is not “privatized” (Rawls 1999b: 127). However, it seems undeniable that he generally wants to keep religious beliefs from directly affecting basic political questions. Moreover, public reason would have to set the boundaries of what is private and what is public. Otherwise, public reason would not be complete.

⁷³ Rawls 1999b: 55.

⁷⁴ Rawls 1999b: 37-8, 57.

⁷⁵ Rawls 1999b: 32-4, 55.

⁷⁶ Rawls 1999b: 32.

⁷⁷ Rawls 1999b: 39-42.

⁷⁸ Rawls 1999b: 37.

⁷⁹ Rawls 1999b: 37-8.

⁸⁰ Rawls 1999b: 38-9, 43, 106-14.

⁸¹ Rawls 1999b: 29, 34-5.

⁸² Rawls 1999b: 23-30.

⁸³ See, for example, Rawls 1999b: 24, 9-30, 65-6.

⁸⁴ Rawls 1999b: 12, 5-8, 80-1. Cf. Rawls 1993: 36-7.

⁸⁵ Tan 2000: 171-6.

⁸⁶ At times, Tan seems to miss this point. For example, he sometimes faults Rawls for modifying principles to accommodate nonliberals (Tan 2000: 31-2, Tan 2006: 88-9). However, he explicitly says that one of the purposes of his first book is to show that the problems in Rawls’s Law of Peoples reflect inconsistencies that are already present in the idea of political liberalism on a domestic level (Tan 2000: 4-10).

⁸⁷ Beitz 2000: 681, cited in Tan 2006: 88-9.

⁸⁸ Rawls 1999b: 9.

⁸⁹ Pogge 1989: 247, quoted in Tan 2004: 163. See also Beitz 1979.

⁹⁰ Tan 2000: 81.

⁹¹ Tan 2000: 33.

⁹² Tan 2000: 31-3.

⁹³ Walzer 1999: 115, quoted in Nickel 2006: 272.

⁹⁴ Rawls 1993: 67.

⁹⁵ Tan 2000: 27. Tan misquotes the 1999 edition of *The Law of Peoples*. In the passage after the ellipsis, Rawls does not say “[I]t is [also] not reasonable for a liberal people ...”. He says, “I suppose that it is not reasonable for a liberal people ...”.

⁹⁶ Tan 2000: 27n5.

⁹⁷ Rawls 1999b: 85.

⁹⁸ Tan 2000: 33.

⁹⁹ Rawls 1999b: 61.

¹⁰⁰ Tesón 1998: 113-5.

¹⁰¹ Wright 2001: 23-5.

¹⁰² Rawls 1999b: 42-3, 84. Apparently, only those institutions that all liberal and decent countries must join are forbidden from discriminating against decent peoples. Liberal peoples are free, for example, to form federations with likeminded peoples.

¹⁰³ U.S. Presidential race remains undecided; Florida recount, vote disputes delay decision, GOP retains control of Congress 2000.

Chapter Four

¹ See, for example, Audi 2000, Audi 1997b, Rawls 1999a, Pendlebury 2002, Macedo 2000. Some of these theorists propose a public reason requirement instead of a secular reason requirement. In this chapter, I will not discuss the differences between the two.

² Audi 2000: 86, 96; Audi 1997a: 123.

³ Audi 2000: 86, Audi 1997a: 123.

⁴ Audi 2000: 96, Audi 1997a: 123.

⁵ Churchill 2007.

⁶ Eberle 2002: 84-93.

⁷ Eberle 2002: 96-7.

⁸ Eberle 2002: 102-3.

⁹ Eberle 2002: 97-102.

¹⁰ Eberle 2002: 100-2, 23.

¹¹ Audi 2000: 94, 6.

¹² Audi 2000: 77.

¹³ Audi 2000: 77.

¹⁴ Audi 2000: 76-7.

¹⁵ Audi 2000: 94.

¹⁶ Audi 2000: 76, 85. For his full treatment of civic virtue, see Audi 2000: 145-54.

¹⁷ Audi 2000: 101-3, Audi 1997b: 31-2.

¹⁸ Audi specifically mentions polarization in the context of religious neutrality. Audi 2000: 39, Audi 1997b: 7.

¹⁹ Audi mentions “intergenerationality” at Audi 2000: 103, but he seems mainly concerned about parents’ desire to ensure that their children follow their religion.

²⁰ Audi 2000: 107.

- ²¹ Eberle 2002: 171-4, Perry 2003: 40-1, 8-50.
- ²² Audi 2000: 103.
- ²³ Audi 2000: 38-9.
- ²⁴ Audi 2000: 93.
- ²⁵ Eberle 2002: 136-40.
- ²⁶ Wolterstorff 1997: 110-1.
- ²⁷ Parekh 2008: 128-9, Deveaux 2000: 93-7, Hauerwas and Coles 2008: 285.
- ²⁸ Wolterstorff 1997: 115-6, Wolterstorff 2005: 166-7 See also McConnell 2002: 120.
- ²⁹ Jensen 2005: 161-3. Audi acknowledges that there may be a good case for funding parochial schools (Audi 2000: 54-5, Audi 1997b: 30). See also Rawls 2005: 248-9 .
- ³⁰ Mill 1974: 152-3.
- ³¹ Tomasi 2002: 204-9, Macedo 2003: 146-9.
- ³² Tomasi 2002: 208-9.
- ³³ Audi 2000: 112, 203; Audi 1997a: 137.
- ³⁴ Audi 2000: 112, Audi 1997a: 137 .
- ³⁵ Hauerwas 2000, Lyotard 1988: xi-xvi, 3-31. See also Caputo 1993.
- ³⁶ Habermas 2006: 10-3. I am indebted to Mark Jensen's presentation at the 2007 meeting of the North American Society for Social Philosophy on this point.
- ³⁷ For a brief summary of his views, see Hauerwas 2001b.
- ³⁸ See, for example, Mathewes 2000, Gustafson 2007.
- ³⁹ Hauerwas 2001a: 340, 4.
- ⁴⁰ Audi 2000: 95-6.
- ⁴¹ Audi 2000: 203.
- ⁴² Audi 2000: 178-9.

⁴³ Whether there ever was such a strict prohibition on lending money is up for debate. For a brief discussion of the history of Christian ideas on usury, see Vermeersch 1912.

⁴⁴ Roth 1969: 303, Brundage 1988: 27, Council in Trullo, Canon XI. See The canons of the Council in Trullo 1971: 370 .

⁴⁵ See Perry 2003: 42-3.

⁴⁶ Perry 2003: 40, after Johnson 1996: 65, 72-3.

⁴⁷ Wolterstorff 1997: 78-80. See also Eberle 2002: 152-65.

⁴⁸ Forst 2003: 212-5.

⁴⁹ Forst 2003: 210-2, 5-6.

⁵⁰ Forst 2003: 216-7.

⁵¹ The latter point seems to be more important to Forst.

⁵² For good discussions on this point, see Jacobs 1996 and Reed 2002.

⁵³ Benedict XVI 2006: 78-80.

Chapter Five

¹ Kymlicka 1995: 80-2; Kymlicka 1999: 91-3; Kymlicka 2002: 215-8, 28-30.

² Rawls 1971: 65-75; Mendus 1989; Oberdiek 2001: 54, 117.

³ Kymlicka 1995: 41, 81-2, 92; Kymlicka 2002: 237; Oberdiek 2001: 117-8.

⁴ Rawls 1993: 13, 137, 40, 92; Rawls 1999a: 143.

⁵ Rawls 1999a: 140, 53.

⁶ Rawls 1999a: 158-62 See also Rawls 1993: 138,213,21-2.

⁷ Kymlicka 1995: 80-2, Kymlicka 1999: 91-3; Kymlicka 2002: 215-8, 28-30.

⁸ Kymlicka 1995: 155-63, Kymlicka 2002: 239-2

⁹ Kymlicka 1995: 165-8.

¹⁰ Kymlicka 1995: 165-8.

¹¹ Kymlicka 1995: 40, 153, 64-6. Cf. Kymlicka 1995: 162-70, Kymlicka 2002: 349-52.

¹² Kymlicka 1995: 169-70, Kymlicka 1999: 90. Interestingly enough, Kymlicka seems to concede in the later work that groups that wish to retire from the modern world have the right to be free from liberal jurisdiction over education.

¹³ Kymlicka 1995: 158.

¹⁴ Kymlicka 1995: 91-3, Kymlicka 2002: 215-9. As far as I can tell, Kymlicka does not clearly distinguish these two positions. I distinguish them in order to emphasize that Kymlicka's arguments require a rejection of both positions.

¹⁵ Kymlicka 1995: 91.

¹⁶ Kymlicka 2002: 225.

¹⁷ Kymlicka 1995: 91-2. The example is mine, not Kymlicka's.

¹⁸ Kymlicka 2002: 227.

¹⁹ Kymlicka 1995: 91-2, 152-3, 9; Kymlicka 2002: 231-2.

²⁰ Kymlicka notes that Rawls is committed to the view that people have a "higher-order interest" in their capacity for autonomy. Kymlicka 2002: 235.

²¹ Kukathas notes in a footnote that ideas in one chapter of his book were based on critical comments sent to him by Kymlicka. Kukathas 2003: 2003 166n2.

²² Kukathas 2003: 58-64.

²³ Kukathas 2003: 59.

²⁴ Kukathas 2003: 36-7, 55, 77. To be more precise, Kukathas argues that freedom of association is more fundamental. But I will not go into this point here.

²⁵ Kymlicka 1995: 81-2, 92, 162; Kymlicka 2002: 228-30, 37.

²⁶ Kymlicka 2002: 237. Cf. Kymlicka 1995: 41, 81-2, 92.

²⁷ Kymlicka 1995: 161-2, Kymlicka 2002: 237-9.

²⁸ For a discussion of this issue, see the exchange between Barry and Kukathas. Barry 2002, Kukathas 2002.

²⁹ Kukathas 2003: 110-2, Kukathas 2002: 186-90, 201-2n3.

³⁰ Kymlicka 1995: 158-9, Kymlicka 2002: 230. He specifically lists Galston, Rawls, and Moon as political liberals. I think that Kymlicka is seriously mistaken to conflate these authors' views. Galston's *modus vivendi* liberalism and Rawls's political liberalism are very different, but I will not discuss the differences in this chapter.

³¹ Rawls 1993: 3-4, 37. See Chapter Five for my explanation of what Rawls means by "stability."

³² Rawls 1993: 12-3, 37, 174-5, 200. Rawls specifically mentions Kant and Mill. The other examples are my own, or borrowed from Cohen 2008.

³³ Rawls 1993: 9-10, 3-5, 38, 140-1, 90-2, 217, 36; Rawls 1999a: 146-8.

³⁴ Rawls 1993: 9-10, Rawls 1999a: 146-8.

³⁵ See references in Note 4 *supra*.

³⁶ Rawls 1999a: 146.

³⁷ Guidelines concerning the academic mandatum in Catholic universities (Canon 812) 2001.

³⁸ David Bernstein discusses a case in which a religious school was forced to retain a mother with children as an employee, against the religious belief of the school's leadership. Bernstein 2003: 111-3.

³⁹ Rawls 1999a: 158-64 and Stopler 2005.

⁴⁰ Kymlicka 1995: 82, Kymlicka 2002: 236-8.

⁴¹ Rawls 1993: 145-6, 200.

⁴² Rawls 1993: 168-72.

⁴³ Kymlicka also has some doubts about their compatibility (Kymlicka 2002: 230-2, 41-4).

⁴⁴ Kymlicka 1995: 80-2, 158-65; Kymlicka 2002: 230.

⁴⁵ Kymlicka 1995: 156-8, Kymlicka 2002: 230-4.

⁴⁶ Kymlicka 1995: 156.

- ⁴⁷ Kymlicka 2002: 231-2, citing Mendus 1989: 56.
- ⁴⁸ Kymlicka 1995: 91; Kymlicka 2002: 221-8, 40.
- ⁴⁹ Kymlicka 2002: 239.
- ⁵⁰ Kymlicka 2002: 237.
- ⁵¹ Kymlicka 1995: 161.
- ⁵² Kymlicka 2002: 236-7, citing Tomasi 2001. See also Rawls 1993: 190-5, 9-200.
- ⁵³ Kymlicka 1995: 162-3, Kymlicka 2002: 233-4, 9-40.
- ⁵⁴ On this point, I am indebted to Thiessen's discussion of "normal autonomy" in Thiessen 1993: 124-8. Thiessen in turn is drawing on Haworth 1986.
- ⁵⁵ See Thiessen 2001: 237-8.
- ⁵⁶ I take this to be the case because Rawls often speaks in a way that implies possible conflict between such views and comprehensive liberalism. Also, he sometimes contrasts comprehensive religious and comprehensive liberal views. See, for example, Rawls 1999a: 146, 9-50, 58-62; Rawls 1993: 145, 200. Moreover, he specifically references the Roman Catholic hierarchy's position on abortion at (Rawls 1999a: 169-70).
- ⁵⁷ For a good account of the spectrum of views on the value of autonomy, see Tomasi 2001: 17-20.
- ⁵⁸ Thiessen 2001: 249-50.
- ⁵⁹ Sabl 2008: 233; Fitzmaurice 1993: 53; Oberdiek 2001: 13, 7; Callinicos 1985: 60; Horton 1996: 36 after MacIntyre 1988: 33, *inter alia*.
- ⁶⁰ Williams 2005: 131-3. See also Williams 1996: 23-6.
- ⁶¹ Mill 1974: 68.
- ⁶² Kukathas 2003: 93-102, 15-8.
- ⁶³ Budziszewski 1992: 28.
- ⁶⁴ Williams 2005: 132.
- ⁶⁵ Williams 2005: 133.

⁶⁶ Kymlicka 1999: 89-90.

⁶⁷ Kymlicka 1999: 87-9.

⁶⁸ Kymlicka 1999: 81-3, 8-9, 91.

⁶⁹ Kymlicka 1999: 93.

⁷⁰ I am not exactly taking a position on how much they are committed to autonomy. I am assuming that they are essentially committed to developing the same capacities, even though their conception of it might be different.

⁷¹ Rawls makes this point in his discussion of Aquinas. Rawls 1971: 553-4.

⁷² Thiessen 2001: 132-42, Thiessen 1993: 255-73. See also Ammerman 1987: 184-7.

⁷³ Thiessen 1993: 119-24, Thiessen 2001: 68. See also McConnell 2002: 98-100.

⁷⁴ Plato 2004: 372c-4d.

⁷⁵ Clement of Alexandria 1954: 119-20.

⁷⁶ Rawls 1993: 8.

⁷⁷ Thiessen 1993: 131, Kirk 1996: 23-4.

⁷⁸ See Tomasi 2001: 89-90 for a good discussion of this issue.

⁷⁹ Thiessen 2001: 169-70, 77-80; Marsden 1997: 44-82; McConnell 2002: 97-9, 105-6, 15-8; Tomasi 2001: 92-3. Kymlicka admits that civic concerns would pervade the kind of curriculum he prefers. See Kymlicka 2002: 79.

⁸⁰ Moreover, as McConnell points out, a full day of a common school curriculum simply leaves children with less time, energy, and attention span for religious education. McConnell 2002: 117.

⁸¹ Kymlicka 1995: 91-2, Kymlicka 2002: 239-40.

⁸² Kymlicka refers to Callan 1995, but offers little else in the way of empirical evidence. Callan, in turn, does not cite a single empirical study in support of this claim, at least in this source. See Thiessen 2001: 237-8 for a response to Callan's philosophical argument.

⁸³ Thiessen 2001: 52-6, McConnell 2002: 127-9.

⁸⁴ Thiessen is aware of this problem and gives a good discussion at Thiessen 2001: 47-52. I only mean that I am cautious about endorsing his standards for measuring tolerance.

⁸⁵ Stopler 2005. Actually, Kymlicka thinks that political liberals would have to interfere with the educational policies of groups like the Amish. (Kymlicka 2002: 238.)

⁸⁶ Plato 2004: 488a-90e.

⁸⁷ May and Metzger 1973: Matthew 28:13-42, 1 Cor. 11:9, Jude, vv. 7-9., Cf. Chrysostom 1975: 281-4.

⁸⁸ Swaine 2006: 50-1.

⁸⁹ Kymlicka 1999: 91.

⁹⁰ See Rudinow and Barry 1999: 25, 19-21, 281-9.

⁹¹ See for example, Griffith 2008; Dennett 1950; Tritton 1970; Runciman 1968: 165-7, 79-207; Ware 1980: 96-8.

⁹² Handley 2004: 308, after Talbi 1990: 328-46.

⁹³ Wolterstorff 1997: 115-6, Wolterstorff 2005: 176-9.

⁹⁴ Jensen 2005: 167.

⁹⁵ Swaine 2006: 37-8, 43, 55-6.

⁹⁶ Kymlicka 2002: 215-8.

⁹⁷ Kymlicka 1995: 282; Kymlicka 1999: 93; Kymlicka 2002: 239-40, 47-8.

⁹⁸ Kymlicka 2002: 239-40.

⁹⁹ Kymlicka 2002: 239.

¹⁰⁰ Kymlicka 1995: 165-8, Cf. Kymlicka 1999: 93.

¹⁰¹ Levinson 1999: 143-60. She does allow religious schools, but only so long as they are not strongly influenced by any religious view that is not generally shared in society.

¹⁰² Mahajan 2005: 106.

¹⁰³ See, for example, Tan 2000: 63.

¹⁰⁴ Tan 2000: 67-8.

¹⁰⁵ Tan 2000: 50, 63, ff.38 .

¹⁰⁶ Kymlicka 2002: 308-9, Tan 2004: xi.

¹⁰⁷ Stopler 2005.

¹⁰⁸ Clayton 2006.

¹⁰⁹ Pendlebury 2002: 372.

¹¹⁰ Pendlebury 2002: 372-3.

¹¹¹ Thiessen 2001: 29-59.

¹¹² Kymlicka 2002: 216.

¹¹³ Kymlicka 2002: 213-6.

¹¹⁴ Kymlicka 1989: 900-1.

¹¹⁵ Kymlicka 1989: 901. See also Kymlicka 1995: 110-1, Habermas 2006: 10-1.

Chapter Six

¹ See, for example, Strossen 1990: 491-7, Lively 1993., powell 1995, Auxier 2007, and Matsuda 1993a: 17-8.

² Matsuda 1993b.

³ The way I have defined restrictive moral codes, it would probably include groups that are unreasonable and whom we should not tolerate – such as theocratic extremists. My point is only that liberals should regard some restrictive codes as legitimate and treat their proponents fairly. In one follows, I will generally use “restrictive moral codes” to mean “legitimate restrictive moral codes.”

⁴ Tozer 2003, Alleyne 2003. See also the website “Californians Against Hate”, which was directed against supporters of California’s Proposition 8. (Californians against hate 2010.)

⁵ See, for example, quotes from Alexander Rudin in Turner 1989 and Steinfelds 1989. Also, see Schindler 1989. (These sources are quoted in Kjær-Hansen 1994.) Similarly,

Abraham Foxman also calls strong disagreement with Judaism on the part of Christians “inherently anti-Semitic”, and equates liturgical prayers for the conversion of Jews with hatred. (Foxman 2003: 133-4, 8; Anti-Defamation League 2007.) For a balanced discussion of this topic, see Ammerman 1988.

⁶ R.A.V. v. St. Paul, 464 N.W.2d 507, 508 (1991), quoted at Shiell 1998: 82.

⁷ Lederer 1994a: 31 and Lederer 1994b: 194.

⁸ R.A.V. v. St. Paul, 505 U.S. 377, 381-4, 8-9 (1992), R.A.V. v. St. Paul, 505 U.S. 377, 417-9 (1992) (Stevens, J., concurring in judgment), Chaplinsky v. New Hampshire, 215 U.S. 568, 571-2 (1942), Cf. Strossen 1990: 507-19, Cohn 1997: 214.

⁹ R.A.V. v. St. Paul, 505 U.S. 377, 382-3 (1992).

¹⁰ R.A.V. v. St. Paul, 505 U.S. 377, 384-5 (1992).

¹¹ R.A.V. v. St. Paul, 505 U.S. 377, 391 (1992).

¹² R.A.V. v. St. Paul, 505 U.S. 377, 388-9 (1992).

¹³ The example is Justice Scalia’s. R.A.V. v. St. Paul, 505 U.S. 377, 388-9 (1992).

¹⁴ R.A.V. v. St. Paul, 505 U.S. 377, 393-4 (1992). Cf. Chaplinsky v. New Hampshire, 215 U.S. 568, 510-1 (1942).

¹⁵ R.A.V. v. St. Paul, 505 U.S. 377, 396 (1992).

¹⁶ Matsuda 1993a: 36, 8-9; Lawrence III 1993: 62; Delgado 1993: 89-90.

¹⁷ This is not the only kind of distress that they consider. (See Lawrence III 1993: 74-6.) Still, I think that my arguments would apply to most of the other concerns, so I will primarily discuss the issue in terms of emotional distress.

¹⁸ Lawrence III et al. 1993b: 7-10.

¹⁹ Delgado 1993: 89-90.

²⁰ Delgado 1993: 109.

²¹ Delgado 1993: 90-3.

²² Delgado 1993: 92.

²³ Delgado 1993: 92-3.

²⁴ Delgado 1993: 90.

²⁵ Delgado 1993: 99-100.

²⁶ Delgado 1993: 94.

²⁷ For problems with the notion of reasonable individual in this context, see Shiffrin 1999: 74-5.

²⁸ Delgado 1993: 96-103, Cf. Matsuda 1993a: 34-5.

²⁹ Delgado 1993: 94, 105.

³⁰ Delgado 1993: 94. Delgado is mainly concerned to make the point that racial insults are a dignitary affront. However, I think that he does need the additional point that people ought to know that they cause an especially severe affront. Otherwise, Delgado's argument would support a tort action for insults that touch on a vulnerable spot, even when they could not have known about it. This would be impractical at least.

³¹ Cavico 2003, Smith 2002: 39-41, Cf. Shiffrin 1999: 59, 74-5.

³² Matsuda 1993a: 26-31.

³³ Matsuda 1993a: 24-6 .

³⁴ Matsuda 1993a: 24-5.

³⁵ Matsuda 1993a: 25.

³⁶ Matsuda 1993a: 25.

³⁷ Matsuda 1993a: 36.

³⁸ Matsuda 1993a: 40-1, Cf. Auxier 2007: 232.

³⁹ Matsuda 1993a: 38-9.

⁴⁰ Matsuda 1993a: 39.

⁴¹ Matsuda 1993a: 39.

⁴² Strossen 1990: 487-95, Strossen 2001: 272-3, powell 1995, Auxier 2007, Lively 1993: 869.

⁴³ Cohen 1993: 226-30.

⁴⁴ Strossen 2001: 249-54, Strossen 1990, esp. 537-9. Matsuda agrees with this claim, although she draws different practical conclusions. Matsuda 1993a: 17-8, 35-6.

⁴⁵ See sources cited in Walker 1994: 132-6. Cass Sunstein discusses this issue in Sunstein 1996, and Golding 2000.

⁴⁶ Lawrence III 1993: 78-9.

⁴⁷ Strossen 1990: 501-6.

⁴⁸ Lawrence III 1993: 76-7.

⁴⁹ Kors and Silverglate 1998: 127-35. See also Smolla 1990.

⁵⁰ Auxier 2007: 226-8, after Strossen, Lively, and Shiffrin. See Strossen 2001: 258-61, 74-7; Lively 1993: 83-6; Shiffrin 1999: 50, 82-3; Lively 1993: 83-6.

⁵¹ Strossen 1990: 512, 56-7; Strossen 2001: 266-71, Cohn 1997: 143, Cf. Lively 1993: 878-9.

⁵² Strossen 2001: 67.

⁵³ Strossen 2001: 267.

⁵⁴ Strossen 2001: 254-7, Cf. Strossen 1990: 562-4.

⁵⁵ Cohn 1997: 233. The example is mine. For a brief discussion of chilling effects, see Robertson 1997: 37.

⁵⁶ Doe v. University of Michigan, 721 F. Supp. 852 (1989). From here forward, I will cite the reprint of the case in Heumann et al. 1997.

⁵⁷ Lawrence III 1993: 83-8, Cf. Strossen 1990: 489n17, 90n21.

⁵⁸ Cohn 1997: 134.

⁵⁹ Cohn 1997: 134.

⁶⁰ Cohn 1997: 137.

⁶¹ Cohn 1997: 137.

⁶² Cohn 1997: 139.

⁶³ Cohn 1997: 138.

⁶⁴ Cohn 1997: 136.

⁶⁵ Cohn 1997: 144.

⁶⁶ Cohn 1997: 144-5.

⁶⁷ Here I am drawing on Mark Henrie and Robin West. Henrie 2004: 3-30, West 1990: 644-5. See also

⁶⁸ Tan argues that non-conservative liberals also consider that issues involving public morality and cohesive communities are important political concerns. Tan 2000: 15. I agree with Tan. However, I would think that many liberals would see these as derived from or clearly subordinate to a commitment to freedom and equality.

⁶⁹ West 1990: 657-8.

⁷⁰ Gould 2005: 40.

⁷¹ See, for example Kekes 1998: 36-41, 91-108. Also, see Kirk 1956 cited in Nash 1976: 160.

⁷² Shiffrin 1999: 61.

⁷³ Office of Multicultural Development 2009.

⁷⁴ I base this off an old student code of conduct on their website. A university representative informed me that the document was at least 10 years old, and was unsure why the change was made.

⁷⁵ Bob Jones University 2010. This document is an apology for racist policies previously enforced by the university.

⁷⁶ See Carter 1991: 186-90.

⁷⁷ Carole Marks notes that this is a common conception and questions the evidence for the claim in Marks 1985.

⁷⁸ Nash 1976: 257-8, Anderson 1967.

⁷⁹ See Matsuda 1993a: 6.

⁸⁰ Matsuda 1993a: 40.

⁸¹ Matsuda 1993a: 40.

⁸² Russell Kirk makes this argument in Kirk 1975.

⁸³ Kirk 1993: 1-12.

⁸⁴ Kirk 1996: 23-4.

⁸⁵ In presenting this view, I would stress that it should include due respect must be given to the ways in which African-American culture is a legitimate aspect of “America’s British Culture.” We should also give due respect and support to Latino culture in the Southwest and Native American culture. A full discussion of this issue is beyond the scope of this chapter.

⁸⁶ Hamilton 1995: 66.

⁸⁷ Kurtz 2004: 90-9, Corlett 2004: 12-3, 8-9.

⁸⁸ Harlow 2006.

⁸⁹ See Mork 2004 and other sources cited in Gilbert 2004. See also Levine 2004: 203.

⁹⁰ See, for example, Crossan 2006, Kurtz 2004, and Segal 2004.

⁹¹ Kurtz 2004: 91. Kurtz notes that other critics have made this argument.

⁹² Crossan 2006.

⁹³ See, for example, accusations that the Gospels are a product of anti-Semitism in Reinhartz 2004 and sources cited in Sikes 1941 and Harrington 1991: 120-2.

⁹⁴ Sandmel 1978: 101, cited in Kysar 2005: 147.

⁹⁵ When a group is de-recognized, the university may still allow it to meet, but it loses certain privileges such as preferential access to meeting rooms or the right to post flyers. Brief of Petitioner in *Christian Legal Society v. Martinez*, et al, case number 08-1371: 4, 23-5.

⁹⁶ McMurtrie 2000.

⁹⁷ Bishop 2000.

⁹⁸ Brief of Petitioner in *Christian Legal Society v. Martinez*, et al, case number 08-1371: 12-4. The Supreme Court of the United States granted certiorari on 12/7/2009. I have some reservations about the attorneys’ argument, since it fails to distinguish between beliefs and purposes.

⁹⁹ Pacholik 2008, MacDonald 2005.

¹⁰⁰ Scarponi 2001.

¹⁰¹ Jones 2006: 140-2.

¹⁰² See, for example, Hamilton 1995: 93-6 and Patai 1992: B1-B2, cited in Hamilton 1995: 94; and Genovese 1994: 112-3n53. Carter relates that African-American scholars who take positions that are unusual among African-American scholars face ostracization. Carter 1991: 102, cited in Hamilton 1995: 68.

¹⁰³ Patai and Koertge 2003, Patai 1992, Gould 2005, Kors and Silverglate 1998, Bernstein 2003 and Hamilton 1995.

¹⁰⁴ As the James Davidson Hunter argues, both sides in the “culture wars” tend to exaggerate threats. Hunter 1994: 156-8.

¹⁰⁵ Hamilton 1995: 63-102.

¹⁰⁶ Strossen 1990: 562-8.

¹⁰⁷ Shiffrin 1999: 50, 82-3.

¹⁰⁸ Cited in Strossen 1990: 486.

¹⁰⁹ Lively 1993: 865-70.

¹¹⁰ There are indications that they mean to protect such speech. In particular, Matsuda argues that what she calls “the Dead-Wrong Social Scientist” should not be charged with hate speech. (Matsuda 1993a: 40-1.) Moreover, she specifically mentions neo-conservative economic thought as “part of the ongoing efforts of human beings to understand their world and improve life in it (Matsuda 1993a: 37).”

¹¹¹ See, for example, Keynes 2005. Henig argues cautiously against this claim at Henig 2002: 17-22.

¹¹² Foster 1980: 13.

¹¹³ Genovese 1994: 100-1, Cf. Leader 1997: 149.

¹¹⁴ See sources cited in Vidmar 1994: 599-600.

¹¹⁵ Kaufman 1991, Downs 1967, Geva-May 2004.

¹¹⁶ See references cited in Note 4 *supra*.

¹¹⁷ On Islam, see Kymlicka 1995: 82, after Lerner 1991: 79-80 and Peters and De Vries 1976: 2. On Russia, Berman 1996: 426-7.

¹¹⁸ Matsuda 1993a: 37.

¹¹⁹ Matsuda 1993a: 26-31.

¹²⁰ Matsuda 1993a: 28-35.

¹²¹ Matsuda 1993a: 37-8.

¹²² Matsuda 1993a: 37.

¹²³ For a thorough but controversial study, see Courtois and Kramer 1999.

¹²⁴ Ellen Schreker argues that this claim is exaggerated in Schrecker 2002: 5.

¹²⁵ Lawrence III et al. 1993b: 14, Matsuda 1993a: 23-4, Lawrence III 1993: 85. See also their comment about “Reagan-Bush judges”, Lawrence III et al. 1993a: 134-5.

¹²⁶ Lawrence III 1993: 81-5. Some of his critics have expressed similar concerns that Lawrence lodges unfair accusations. See, for example, Strossen 1990, Kennedy 1989. Delgado responds to Kennedy and other critics at Delgado and Stefancic 2001: 87-96.

¹²⁷ Lawrence III et al. 1993b: 15.

¹²⁸ A person can take away a Constitutional right without amending the Constitution. The full-fledged protection of free speech that we currently employ stems from twentieth-century judicial interpretation. (Strossen 1990: 565-6.) The courts can create or eliminate Constitutional rights by precedent and interpretation.

¹²⁹ Matsuda 1993a: 37.

¹³⁰ Lawrence III et al. 1993b: 3-9.

¹³¹ Hamilton 1995: xi-xiv.

¹³² Hamilton 1995: 313.

¹³³ Hamilton 1995: xi-xiii, 67-8, 72-3.

¹³⁴ Hamilton 1995: 69, 91; Cohn 1997: 135-6; Jamieson 1997: 177-8.

¹³⁵ Cohn 1997: 135.

¹³⁶ Hamilton 1995: 71, 311-2.

¹³⁷ Although this is not Hamilton's recommendations, I am drawing on his point about the need for counsel. See Hamilton 1995: 72-3, 7.

¹³⁸ See Gordon Macdonald cited in Hutcheson 2004.

¹³⁹ Gould 2005: 149-72.

Works Cited

- Abrams, Kathryn (2008), 'Forbearant and engaged toleration: a comment on David Heyd', in Melissa S. Williams and Jeremy Waldron (eds.), *Toleration and its limits* (Nomos; New York: New York University Press), 195-219.
- Abrams v United States*, 250 U.S. 616 (1919)
- Alleyne, Richard (2003), 'Bishop's anti-gay comments spark legal investigation', *The Daily Telegraph*, 11/10/2003, p. 1.
- Ammerman, Nancy Tatom (1987), *Bible believers: fundamentalists in the modern world* (New Brunswick, NJ: Rutgers University Press).
- (1988), 'Fundamentalists proselytizing Jews: incivility in preparation for the Rapture', in Martin E. Marty and Frederick E. Greenspahn (eds.), *Pushing the faith: proselytism and civility in a pluralistic world* (New York: Crossroad), 109-22.
- Anderson, Martin (1967), *The Federal bulldozer* (New York: McGraw-Hill).
- Anti-Defamation League 'ADL Calls Vatican prayer for conversion of Jews 'a theological setback' and 'a body blow to Catholic-Jewish relations' ',
<http://www.adl.org/PresRele/VaticanJewish_96/5093_96.htm>.
- Aristotle (1976), *The ethics of Aristotle: the Nicomachean ethics*, eds. J. A. K. Thomson, Hugh Tredennick, and Jonathan Barnes (Harmondsworth: Penguin).
- Audi, Robert (1997a), 'Wolterstorff on religion, politics, and the liberal state', in Robert Audi (ed.), *Religion in the public square: the place of religious convictions in political debate* (Point/counterpoint; Lanham, MD: Rowman & Littlefield), 121-44.
- (1997b), 'Liberal democracy and the place of religion in politics', in Robert Audi (ed.), *Religion in the public square: the place of religious convictions in political debate* (Point/counterpoint; Lanham, MD: Rowman & Littlefield), 1-66.
- (2000), *Religious commitment and secular reason* (Cambridge, UK: Cambridge University Press).
- Austen, Jane (1999), *Pride and prejudice* (Oxford: Oxford University Press).

- Auxier, Adele Hutton (2007), 'Tiptoeing through the junkyard: three approaches to the moral dilemma of racist hate speech', *Notre Dame Journal of Law, Ethics & Public Policy*, 21, 215-61.
- Barry, Brian (2002), 'Second thoughts -- and some first thoughts revived ', in Paul Kelly (ed.), *Multiculturalism reconsidered: Culture and equality and its critics* (Malden, MA: Blackwell Publishers, Inc.), 204-38.
- Beitz, Charles R. (1979), *Political theory and international relations* (Princeton, NJ: Princeton University Press).
- (2000), 'Rawls's Law of Peoples', *Ethics*, 110 (4), 669-96.
- Bekich, Darko (1985), 'Soviet Goals in Yugoslavia and the Balkans', *Annals of the American Academy of Political and Social Science*, 481, 81-91.
- Bell, Daniel (2006), *Beyond liberal democracy: political thinking for an East Asian context* (Princeton, NJ: Princeton University Press).
- Benedict XVI, Pope (2004), *Truth and tolerance: Christian belief and world religions* (San Francisco: Ignatius Press).
- (2006), 'The spiritual roots of Europe: yesterday, today, and tomorrow', *Without roots: the West, relativism, Christianity, Islam* (New York: Basic Books).
- Benhabib, Seyla (2004), *The rights of others: aliens, residents, and citizens* (The John Robert Seeley lectures, 5; Cambridge, UK: Cambridge University Press).
- Berman, Harold J. (1996), 'Religious rights in Russia at a time of tumultuous transition: a historical theory', in J. D. Van der Vyver and John Witte (eds.), *Religious human rights in global perspective: legal perspectives* (Cambridge, MA: M. Nijhoff Publishers), 285-304.
- Bernstein, David E. (2003), *You can't say that!: the growing threat to civil liberties from antidiscrimination laws* (Washington, D.C.: Cato Institute).
- Bishop, Randy (2000), 'Belief Police', *Christianity Today*, 44 (7), 24.
- Bob Jones University (2010), 'Statement about race at BJU', <<http://www.bju.edu/welcome/who-we-are/race-statement.php>>, accessed 2/9/2010.
- Bollinger, Lee C. (1986), *The tolerant society: freedom of speech and extremist speech in America* (New York: Oxford University Press).

- 'Brezhnev's Visit', (1976), *Economic and Political Weekly*, 11 (47), 1821.
- 'Brief of Petitioner in *Christian Legal Society v. Martinez*, et al, case number 08-1371'.
- Brundage, James A. (1988), 'Intermarriage between Christians and Jews in medieval canon law', *Jewish History*, 3 (1), 25-40.
- Budziszewski, J. (1992), *True tolerance: liberalism and the necessity of judgment* (New Brunswick, NJ: Transaction Publishers).
- 'Californians against hate', (2010), <<http://www.californiansagainsthate.com/>>, accessed 3/4/2010.
- Callan, Eamonn (1995), 'Common schools for common education', *Canadian Journal of Education / Revue canadienne de l'éducation*, 20 (3), 251-71.
- Callinicos, Alex (1985), 'Repressive toleration revisited: Mill, Marcuse, MacIntyre', in John Horton and Susan Mendus (eds.), *Aspects of toleration: philosophical studies* (London: Methuen), 53-74.
- 'The canons of the Council in Trullo', (1971), in Henry R. Percival (ed.), *The seven ecumenical councils of the undivided church their canons and dogmatic decrees, together with the canons of all the local synods which have received ecumenical acceptance* (A select library of Nicene and post-Nicene fathers of the Christian Church, 14; Grand Rapids, MI: Eerdmans).
- Caputo, John D. (1993), *Against ethics: contributions to a poetics of obligation with constant reference to deconstruction* (Studies in Continental thought.; Bloomington, IN: Indiana University Press).
- Carter, Stephen L. (1991), *Reflections of an affirmative action baby* (New York: Basic Books).
- Cavico, Frank (2003), 'The tort of intentional infliction of emotional distress in the private employment sector', *Hofstra Labor & Employment Law Journal*, 21, 109-82.
- Cervantes, Miguel (1980), *El ingenioso hidalgo Don Quijote de la Mancha* (Barcelona: Editorial Planeta).
- Chaplinsky v. New Hampshire*, 215 U.S. 568 (1942)
- Chrysostom, St. John (1975), 'Homily XLVI', *Saint Chrysostom: Homilies on the Gospel of St. Matthew* (A Select library of the Nicene and post-Nicene fathers of the Christian Church. First series., 10; Grand Rapids, MI: Wm. B. Eerdmans), 281-4.

- Churchill, Kirstin (2007), 'Patrons call alcohol sales in Zeeland 'overdue'', *Grand Valley Advance*, November 19, 2007.
- Clayton, Matthew (2006), *Justice and legitimacy in upbringing* (Oxford: Oxford University Press).
- Clement of Alexandria, St. (1954), *Clement of Alexandria: Christ the educator*, trans. Simon P. Wood (The Fathers of the Church, 23; Washington, D.C.: Catholic University of America Press).
- Cohen, Andrew Jason (1994), 'What Toleration Is', *Ethics*, 116, 68-95.
- Cohen, Joshua (1993), 'Freedom of Expression', *Philosophy and Public Affairs*, 22 (3), 207-63.
- (2008), 'Democracy's Public Reason', *Distinguished Visitor Series* (Department of Philosophy, University of California at Riverside).
- Cohn, Avern (1997), 'Opinion in *Doe v. The University of Michigan*', in Milton Heumann (ed.), *Hate speech on campus: cases, case studies, and commentary* (Boston: Northeastern University Press), 131-46.
- Colwell, Stephen (1972), *The position of Christianity in the United States, in its relations with our political institutions, and specially with reference to religious instruction in the public schools* (Religion in America, series 2; New York: Arno Press).
- Corlett, J. Angelo (2004), 'Is *The Passion of the Christ* racist? due process, responsibility, and punishment', in Jorge J.E. Gracia (ed.), *Mel Gibson's Passion and philosophy: the cross, the questions, the controversy* (Popular culture and philosophy; Chicago: Open Court), 137-50.
- Courtois, Stéphane and Kramer, Mark (1999), *The black book of communism: crimes, terror, repression* (Cambridge, MA: Harvard University Press).
- Crick, Bernard (1971), 'Toleration and tolerance in theory and practice', *Government and Opposition*, 6 (2), 143-71.
- Crossan, John Dominic (2006), 'Jewish crowd and Roman governor', in Timothy K. Beal and Tod Linafelt (eds.), *Mel Gibson's Bible: religion, popular culture, and The Passion of the Christ* (Afterlives of the Bible; Chicago: University of Chicago Press), 59-68.
- Cummings, Bruce (2003), *North Korea: another country* (New York: New Press).

- Delgado, Richard (1993), 'Words that wound: a tort action for racial insults, epithets, and name calling', in Mari J. Matsuda (ed.), *Words that wound: critical race theory, assaultive speech, and the First Amendment* (Boulder, CO: Westview Press), 89-110.
- Delgado, Richard and Stefancic, Jean (2001), *Critical race theory: an introduction* (Critical America; New York: New York University Press).
- Dennett, Daniel Clement (1950), *Conversion and the poll tax in early Islam* (Cambridge, MA: Harvard University Press).
- Deveaux, Monique (2000), *Cultural pluralism and dilemmas of justice* (Ithaca: Cornell University Press).
- Doe v. University of Michigan*, 721 F. Supp. 852 (1989)
- Downs, Anthony (1967), *Inside bureaucracy* (Boston: Little).
- Dworkin, Ronald M. (1986), *Law's empire* (Cambridge, MA: Belknap Press).
- Eberle, Christopher J. (2002), *Religious conviction in liberal politics* (Cambridge, UK: Cambridge University Press).
- Eck, Diana L. (1993), *Encountering God: a spiritual journey from Bozeman to Banaras* (Boston: Beacon Press).
- (2001), *A new religious America: how a "Christian country" has now become the world's most religiously diverse nation* (1st edn.; San Francisco: Harper).
- Eliot, T. S. (1940), *The idea of a Christian society* (New York: Harcourt Brace and Company).
- Elman, Colin (2007), 'International relations theory for the twenty-first century: an introduction', in Martin Griffiths (ed.), (London: Routledge).
- Fish, Stanley (1996), 'Why We Can't All Just Get Along', *First Things: A Monthly Journal of Religion & Public Life*, (60), 18-26.
- (1997), 'Mission impossible: settling the just bounds between church and state', *Columbia Law Review*, 97 (8), 2255-333.
- Fitzmaurice, Deborah (1993), 'Liberal neutrality, traditional minorities, and education', in John Horton (ed.), *Liberalism, multiculturalism, and toleration* (New York: St. Martin's Press), 50-69.

- Fletcher, George (1996), 'The instability of tolerance', in David Heyd (ed.), *Toleration: an elusive virtue* (Princeton, NJ: Princeton University Press), 158-72.
- Foot, Philippa (1978a), 'Virtues and vices', in Philippa Foot (ed.), *Virtues and vices: and other essays in moral philosophy* (Berkeley: University of California Press), 1-18.
- (1978b), 'Approval and disapproval', in Philippa Foot (ed.), *Virtues and vices and other essays in moral philosophy* (Berkeley: University of California Press), 189-207.
- Forst, Rainer (2003), 'A tolerant republic?', in Jan-Werner Müller (ed.), *German ideologies since 1945: studies in the political thought and culture of the Bonn Republic* (1st edn., Europe in transition : the NYU European studies series.; New York: Palgrave Macmillan), 209-20.
- (2007), "'To tolerate means to insult": toleration, recognition, and emancipation ', in Bert van den Brink and David Owen (eds.), *Recognition and power: Axel Honneth and the tradition of critical social theory* (Cambridge, UK: Cambridge University Press), 215-37.
- Foster, Charles R., Jr. (1980), 'Annals of the American Academy of Political & Social Science ', 450, 1-19.
- Fotion, N. and Elfstrom, G. (1992), *Toleration* (Tuscaloosa: University of Alabama Press).
- Foxman, Abraham H. (2003), *Never again?: the threat of the new anti-Semitism* (San Francisco: Harper).
- Galeotti, Anna E. (1993), 'Citizenship and equality: the place for toleration', *Political Theory*, 21, 585-605.
- (2002), *Toleration as recognition* (Cambridge, UK: Cambridge University Press).
- Genovese, Eugene D. (1994), *The southern tradition: the achievement and limitations of an American conservatism* (William E. Massey, Sr. lectures in the history of American civilization.; Cambridge, MA: Harvard University Press).
- Geva-May, Iris (2004), 'Riding the wave of opportunity: termination in public policy', *Journal of Public Administration Research and Theory*, 14 (3), 309-33.
- Gilbert, Gary (2004), 'Antisemitism without erasure: sacred texts and their contemporary interpretations', in J. Shawn Landres and Michael Berenbaum (eds.), *After the*

- passion is gone: American religious consequences* (Walnut Creek, CA: AltaMira Press), 125-36.
- Goethe, Johann Wolfgang von (1981), *Maximen und reflexionen* (Werke, 6; Frankfurt am Main: Insel).
- Golding, Martin P. (2000), *Free speech on campus* (Issues in academic ethics.; Lanham, MD: Rowman & Littlefield Publishers).
- Gould, Jon B. (2005), *Speak no evil: the triumph of hate speech regulation* (Chicago: University of Chicago Press).
- Griffith, Sidney Harrison (2008), *The church in the shadow of the mosque: Christians and Muslims in the world of Islam* (Jews, Christians, and Muslims from the ancient to the modern world; Princeton, NJ: Princeton University Press).
- 'Guidelines concerning the academic mandatum in Catholic universities (Canon 812)', (2001), (United States Conference of Catholic Bishops).
- Gustafson, James M. (2007), 'The sectarian temptation: reflections on theology, the Church, and the university', in Theodoor Adriaan Boer and Paul E. Capetz (eds.), *Library of theological ethics* (1st edn.; Louisville: Westminster John Knox Press), 142-54.
- Gutmann, Amy and Thompson, Dennis F. (1996), *Democracy and disagreement* (Cambridge, MA: Belknap Press of Harvard University Press).
- Habermas, Jurgen (2006), 'Religion in the public sphere', *European Journal of Philosophy*, 14 (1), 1-25.
- Hamilton, Neil W. (1995), *Zealotry and academic freedom: a legal and historical perspective* (New Brunswick, NJ: Transaction Publishers).
- Handley, Mark A. (2004), 'Disputing the end of African Christianity', in A. H. Merrills (ed.), *Vandals, Romans and Berbers: new perspectives on late antique North Africa* (Burlington, VT: Ashgate), 291-310.
- Harlow, John (2006), 'Mel Gibson rants against Jews in drink-drive arrest', *The Sunday Times*, July 30, 2006, sec. Overseas News p. 1.
- Harrington, Daniel J. (1991), *The Gospel of Matthew* (Sacra pagina series 1; Collegeville, MN: Liturgical Press).
- Hauerwas, Stanley (2000), 'Many hands working: a response to Charles Mathewes', *Anglican Theological Review*, 82, 361-4.

- (2001a), 'Remembering as a moral task: the challenge of the Holocaust', in John Berkman (ed.), *The Hauerwas reader* (Durham, NC: Duke University Press), xiii, 729 p.
- (2001b), 'Reforming Christian social ethics: ten theses', in John Berkman (ed.), *The Hauerwas reader* (Durham, NC: Duke University Press).
- Hauerwas, Stanley and Coles, Romand (2008), *Christianity, democracy, and the radical ordinary: conversations between a radical Democrat and a Christian* (Theopolitical visions, 1; Eugene, OR: Cascade Books).
- Haworth, Lawrence (1986), *Autonomy: an essay in philosophical psychology and ethics* (New Haven: Yale University Press).
- Henig, Ruth B. (2002) *The Weimar Republic, 1919-1933* [online text], Routledge <<http://www.lib.utk.edu:90/cgi-bin/auth/connect.cgi?netlibrary=68004>>
- Henrie, Mark C. (2004), 'Understanding traditionalist conservatism', in Peter Berkowitz (ed.), *Varieties of conservatism in America* (Stanford, CA: Hoover Institution Press), 3-30.
- Heumann, Milton, Church, Thomas W., and Redlawsk, David P. (1997), *Hate speech on campus: cases, case studies, and commentary* (Boston: Northeastern University Press).
- Heyd, David (2008), 'Is toleration a political virtue?', in Melissa S. Williams and Jeremy Waldron (eds.), *Toleration and its limits* (Nomos; New York: New York University Press), 171-94.
- Himmelfarb, Gertrude (1974), *On liberty and liberalism: the case of John Stuart Mill* (New York: Knopf).
- Horton, John (1996), 'Toleration as a virtue', in David Heyd (ed.), *Toleration: an elusive virtue* (Princeton, NJ: Princeton University Press), 29-41.
- Hunter, James Davison (1994), *Culture wars: the struggle to define America; making sense of the battles over the family, art, education, law, and politics* (New York: Basic Books).
- Hursthouse, Rosalind (1999), *On virtue ethics* (Oxford: Oxford University Press).
- Hutcheson, Paul (2004), 'Law to protect gays opposed by faith groups; anti-homosexual sermons may be outlawed', *The Sunday Herald*, 10/24/2004, p. 1.
- Jacobs, Alan (1996), 'Flags, tradition, and charity', *First Things*, 67, 12-3.

- Jamieson, Kiki (1997), 'Paved with good intentions: the University of Wisconsin speech code', in Milton Heumann, Thomas W. Church, and David P. Redlawsk (eds.), *Hate speech on campus: cases, case studies, and commentary* (Boston: Northeastern University Press), 170-91.
- Jensen, Mark (2005), 'The integralist objection to political liberalism', *Social Theory and Practice: An International and Interdisciplinary Journal of Social Philosophy*, 31 (2), 157-71.
- Johnson, Luke Timothy (1996), 'Religious rights and Christian texts', in John Witte and J. D. Van der Vyver (eds.), *Religious human rights in global perspective: religious perspectives* (The Hague: M. Nijhoff Publishers).
- Jones, Peter (1993), 'Respecting beliefs and rebuking Rushdie', in John Horton (ed.), *Liberalism, multiculturalism, and toleration* (New York: St. Martin's Press), 114-38.
- (2006), 'Toleration, Recognition and Identity', *Journal of Political Philosophy*, 14 (2), 123-43.
- Kant, Immanuel (1990), 'What is enlightenment?', *Foundations of the metaphysics of morals and What is enlightenment?* (2nd , rev. edn.; New York: Macmillan), 83-90.
- Kaufman, Herbert (1991) *Time, chance, and organizations: natural selection in a perilous environment* [online text], Chatham House Publishers
<<http://www.lib.utk.edu:90/cgi-bin/auth/connect.cgi?netlibrary=35241>>
- Kausikan, Bilahari (1998), 'The "Asian values" debate: a view from Singapore ', in Larry Jay Diamond and Marc F. Plattner (eds.), *Democracy in East Asia* (The "Asian values" debate, 17-27; Baltimore: Johns Hopkins University Press).
- Kekes, John (1998), *A case for conservatism* (Ithaca, NY: Cornell University press).
- Kennedy, Randall L. (1989), 'Racial Critiques of Legal Academia', *Harvard Law Review*, 102 (8), 1745-819.
- Keynes, John Maynard (2005), *The economic consequences of the peace* (Kessinger Publishing's Rare Reprints; Whitefish, MT: Kessinger Publishing).
- King, Preston T. (1971), 'The problem of tolerance', *Government and Opposition*, 6 (2), 172-207.
- (1976), *Toleration* (London: Allen & Unwin).

- Kirk, Russell (1956), 'Mill's "On Liberty" reconsidered', *National Review*, 1, 23-4.
- (1975), *The roots of American order* ([1st edn.; LaSalle, IL: Open Court).
- (1993), *America's British culture* (The Library of conservative thought; New Brunswick, NJ: Transaction Publishers).
- (1996), 'The fraud of multiculturalism', in Jeffrey O. Nelson (ed.), *Redeeming the time* (Wilmington, DE: Intercollegiate Studies Institute), 17-40.
- (2002), *The American cause*, ed. Gleaves Whitney (Wilmington, DE: ISI Books).
- Kjær-Hansen, Kai (1994), 'The problem of two-covenant theology', *Mishkan: A forum on the Gospel and the Jewish people*, (21), 52-85.
- Kors, Alan Charles and Silverglate, Harvey A. (1998), *The shadow university: the betrayal of liberty on America's campuses* (New York: Free Press).
- Kukathas, Chandran (2002), 'The life of Brian, or now for something completely difference-blind', in Paul Kelly (ed.), *Multiculturalism reconsidered: Culture and Equality and its critics* (Malden, MA: Blackwell Publishers, Inc.), 184-203.
- (2003), *The liberal archipelago: a theory of diversity and freedom* (Oxford political theory.; Oxford: Oxford University Press).
- Kurtz, Paul (2004), 'The Passion as a political weapon: anti-semitism and Gibson's use of the Gospels', in Jorge J.E. Gracia (ed.), *Mel Gibson's Passion and philosophy: the cross, the questions, the controversy* (Popular culture and philosophy; Chicago: Open Court), 90-100.
- Kymlicka, Will (1989), 'Liberal individualism and liberal neutrality', *Ethics*, 99 (4), 883-905.
- (1995), *Multicultural citizenship: a liberal theory of minority rights* (Oxford political theory.; Oxford: Clarendon Press).
- (1999), 'Education for citizenship', in J. Mark Halstead and Terence McLaughlin (eds.), *Education in morality* (Routledge international studies in the philosophy of education; London: Routledge), viii, 276.
- (2002), *Contemporary political philosophy: an introduction* (2nd ed edn.; Oxford: Oxford University Press).
- Kysar, Robert (2005), *Voyages with John: charting the Fourth Gospel* (Waco, TX: Baylor University Press).

- Lawrence et al, v Texas*, 539 U.S. 558 (2003)
- Lawrence III, Charles R. (1993), 'If he hollers let him go: regulating racist speech on campus', in Mari J. Matsuda (ed.), *Words that wound: critical race theory, assaultive speech, and the First Amendment* (Boulder, CO: Westview Press), 53-88.
- Lawrence III, Charles R., et al. (1993a), 'Epilogue', in Mari J. Matsuda (ed.), *Words that wound: critical race theory, assaultive speech, and the First Amendment* (Boulder, CO: Westview Press), 133-6.
- (1993b), 'Introduction', in Mari J. Matsuda (ed.), *Words that wound: critical race theory, assaultive speech, and the First Amendment* (Boulder, CO: Westview Press), 1-16.
- Leader, Sheldon (1997), 'Contemporary pluralism and toleration', *Ratio Juris*, 10, 139-64.
- Lederer, Laura (1994a), 'The case of the cross-burning: an interview with Russ and Laura Jones', in Laura Lederer and Richard Delgado (eds.), *The price we pay: the case against racist speech, hate propaganda, and pornography* (1st edn.; New York: Hill and Wang), 27-31.
- (1994b), 'The prosecutor's dilemma: an interview with Tom Foley', in Laura Lederer and Richard Delgado (eds.), *The price we pay: the case against racist speech, hate propaganda, and pornography* (1st edn.; New York: Hill and Wang), 194-8.
- Lerner, Natan (1991), *Group rights and discrimination in international law* (International studies in human rights Norwell, MA: M. Nijhoff).
- Levine, Amy-Jill (2004), 'First take the log out of you own eye: different viewpoints, different movies ', in Mary C. Boys, Phillip A. Cunningham, and Kiki Thorpe (eds.), *Perspectives on The Passion of the Christ: religious thinkers and writers explore the issues raised by the controversial movie* (1st edn.; New York: Miramax Books), 197-211.
- Levinson, Meira (1999), *The demands of liberal education* (Oxford: Oxford University Press).
- Lively, Donald E. (1993), 'Reformist Myopia and the Imperative of Progress: Lessons for the Post-Brown Era', *Vanderbilt Law Review*, 46, 865-900.
- Locke, John (1990), *A letter concerning toleration* (Great books in philosophy; Buffalo, NY: Prometheus Books).

- Lyotard, Jean Francois (1988), *The differend: phrases in dispute* (Theory and history of literature.; Minneapolis: University of Minnesota Press).
- MacDonald, G. Jeffrey (2005), 'Jailed anti-gay protesters become causes celebres for conservative groups', *Religion News Service*, 2/9/2005.
- Macedo, Stephen (2000), 'In defense of liberal public reason: are slavery and abortion hard cases?', in Robert P. George and Christopher Wolfe (eds.), *Natural law and public reason* (Washington, D.C.: Georgetown University Press).
- (2003), 'Liberal civic education and religious fundamentalism: the case of *God vs. John Rawls*?', in Chandran Kukathas (ed.), *John Rawls: critical assessments of leading political philosophers* (4; London: Routledge), 145-65.
- MacIntyre, Alasdair (1988), *Whose justice? Which rationality?* (London: Duckworth).
- MacLeod, Alisdair (2006), 'Rawls's narrow doctrine of human rights', in Rex Martin and David A. Reidy (eds.), *Rawls's law of peoples: a realistic utopia?* (Malden, MA: Blackwell Pub.), 134-49.
- Mahajan, Gupreet (2005), 'Can intra-group equality co-exist with cultural diversity? Re-examining multicultural frameworks of accommodation', in Avigail I. Eisenberg and Jeff Spinner-Halev (eds.), *Minorities within minorities: equality, rights, and diversity* (Cambridge, UK: Cambridge University Press).
- Marks, Carole (1985), 'Black Workers and the Great Migration North', *Phylon* 46 (2), 148-61.
- Marsden, George M. (1997), *The outrageous idea of Christian scholarship* (New York: Oxford University Press).
- Martin, Malia (1999), 'Introduction', in Stéphane Courtois and Mark Kramer (eds.), *The Black Book of Communism* (Cambridge, MA: Harvard University Press).
- Mathewes, Charles (2000), 'Appreciating Hauerwas: one hand clapping', *Anglican Theological Review*, 82, 343-58.
- Matsuda, Mari J. (1993a), 'Public response to racist speech: considering the victim's story', in Mari J. Matsuda (ed.), *Words that wound: critical race theory, assaultive speech, and the First Amendment* (Boulder, CO: Westview Press), 17-50.
- (ed.), (1993b), *Words that wound: critical race theory, assaultive speech, and the First Amendment* (New perspectives on law, culture, and society, Boulder, CO: Westview Press).

- May, Herbert Gordon and Metzger, Bruce Manning (eds.) (1973), *The Holy Bible. Revised standard version* (New York,: Oxford University Press).
- McConnell, Michael W. (2002), 'Education disestablishment: why democratic values are ill-served by democratic control of schooling ', in Stephen Macedo and Yael Tamir (eds.), *Nomos* (Nomos, 43; New York: New York University Press), 87-146.
- McDowell, John (2003), 'Virtue and reason', in Stephen L. Darwall (ed.), *Virtue ethics* (Blackwell readings in philosophy; Oxford, UK: Blackwell Pub.), 121-43.
- McMurtrie, Beth (2000), 'A Christian fellowship's ban on gay leaders splits 2 campuses', *Chronicle of Higher Education*, 46 (36), A51.
- Means, Gordon P. (1998), 'Soft authoritarianism in Malaysia and Singapore', in Larry Jay Diamond and Marc F. Plattner (eds.), *Democracy in East Asia* (Baltimore: Johns Hopkins University Press), 96-112.
- Mendus, Susan (1989), *Toleration and the limits of liberalism* (Issues in political theory.; Atlantic Highlands, NJ: Humanities Press International).
- Mill, John Stuart (1974), *On Liberty* (London: Penguin Books).
- Mork, Gordon R. (2004), 'Christ's passion on stage -- the traditional melodrama of decide.', *Journal of Religion and Film*, 8.
<<http://www.unomaha.edu/~wwwjrf/2004Symposium/Mork.htm>>, accessed 3/4/2004.
- Nash, George H. (1976), *The conservative intellectual movement in America, since 1945* (New York: Basic Books).
- Newey, Glen (1993), 'Fatwa and fiction: censorship and toleration', in John Horton (ed.), *Liberalism, multiculturalism, and toleration* (New York: St. Martin's Press), 50-69.
- (1999), *Virtue, reason and toleration: the place of toleration in ethical and political philosophy* (Edinburgh: Edinburgh University Press).
- (2008), 'Toleration and its limits', in Melissa S. Williams and Jeremy Waldron (eds.), *Toleration and its limits* (Nomos; New York: New York University Press), 360-91.
- Nicholson, Peter (1985), 'Toleration as a moral ideal', in John Horton (ed.), *Aspects of toleration: philosophical studies* (London: Methuen), 158-74.

- Nickel, James W. (2006), 'Are human rights mainly implemented by intervention?', in Rex Martin and David A. Reidy (eds.), *Rawls's law of peoples: a realistic utopia?* (Malden, MA: Blackwell Pub.), 263-75.
- Oberdiek, Hans (2001), *Tolerance: between forbearance and acceptance* (Lanham, MD: Rowman & Littlefield Publishers).
- Office of Multicultural Development, Wheaton College (Ill.) (2010), 'Student Resources', <http://www.wheaton.edu/omd/resources/stu_resources.html>, accessed 3/6/2010.
- Pacholik, Barb (2008), 'Anti-gay activist distributes more flyers while awaiting court appeal', *Regina Leader-Post*, 10/8/2010.
- Paine, Thomas (1973), 'The rights of man', *Reflections on the Revolution in France and the Rights of Man* (Garden City, NY: Doubleday).
- Parekh, Serena (2008), *Hannah Arendt and the challenge of modernity: a phenomenology of human rights* (Studies in philosophy; New York: Routledge).
- Patai, D. (1992), 'The struggle for feminist purity threatens the goals of feminism', *Chronicle of Higher Education*, p. B1.
- Patai, Daphne and Koertge, Noretta (2003), *Professing feminism: education and indoctrination in women's studies* (New and expanded edn.; Lanham, MD: Lexington Books).
- Pati, Biswamoy (2003), *Identity, hegemony, resistance: towards a social history of conversions in Orissa, 1800-2000* (Readings; New Delhi: Three Essays Collective).
- Pendlebury, Michael (2002), 'In defense of moderate neutralism', *Journal of Social Philosophy*, 33 (3), 360-76.
- Perry, Michael J. (2003), *Under God?: religious faith and liberal democracy* (Cambridge, UK: Cambridge University Press).
- Peters, Rudolph and De Vries, Gert (1976), 'Apostasy in Islam', *Die Welt des Islam*, 17, 1-25.
- Plato (2004), *Republic*, trans. C. D. C. Reeve (Indianapolis: Hackett Pub. Co.).
- Pogge, Thomas Winfried Menko (1989), *Realizing Rawls* (Ithaca: Cornell University Press).

- Poston, Larry (1992), *Islamic da'wah in the West: Muslim missionary activity and the dynamics of conversion to Islam* (New York: Oxford University Press).
- powell, john a. (1995), 'Worlds apart: reconciling freedom of speech and equality', in Laura Lederer and Richard Delgado (eds.), *The price we pay: the case against racist speech, hate propaganda, and pornography* (1st edn.; New York: Hill and Wang), 332-42.
- R.A.V. v. St. Paul*, 464 N.W.2d 507 (1991)
- R.A.V. v. St. Paul*, 505 U.S. 377 (1992)
- Raphael, D.D. (1971), 'Toleration, choice, and liberty', *Government and Opposition*, 6 (2), 229-34.
- (1988), 'The intolerable', in Susan Mendus (ed.), *Justifying toleration: conceptual and historical perspectives* (Cambridge, UK: Cambridge University Press), 137-54.
- Rawls, John (1971), *A theory of justice* (First Edition edn.; Cambridge, MA: Belknap Press of Harvard University Press).
- (1993), *Political liberalism* (John Dewey essays in philosophy ; no. 4.; New York: Columbia University Press).
- (1999a), 'The idea of public reason revisited', in John Rawls (ed.), *The law of peoples with "The idea of public reason revisited"* (Cambridge, MA: Harvard University Press), 129-80.
- (1999b), 'The law of peoples', in John Rawls (ed.), *The law of peoples with "The idea of public reason revisited"* (Cambridge, MA: Harvard University Press), 1-128.
- (2001), *Justice as fairness: a restatement*, ed. Erin Kelly (Cambridge, MA: Harvard University Press).
- (2005), *Political liberalism* (Expanded edn., Columbia classics in philosophy.; New York: Columbia University Press).
- Raz, Joseph (1986), *The morality of freedom* (Oxford Clarendon Press).
- Reed, John Shelton (2002), 'The banner that won't stay furled', *Southern Cultures*, 8, 76-100.
- Reidy, David A. (2006), 'Political authority and human rights', in Rex Martin and David A. Reidy (eds.), *Rawls's law of peoples: a realistic utopia?* (Malden, MA: Blackwell Pub.), 169-88.

- Reinhartz, Adele (2004), 'Jesus of Hollywood', in Mary C. Boys, Phillip A. Cunningham, and Kiki Thorpe (eds.), *Perspectives on The Passion of the Christ: religious thinkers and writers explore the issues raised by the controversial movie* (1st edn.; New York: Miramax Books), 165-80.
- Robertson, David (1997), *A dictionary of human rights* (London: Europa Publications).
- Roth, Cecil (1969), *A short history of the Jewish people* (Rev. and enl. illustrated edn.; Hartford, CT: Hartmore House).
- Rousseau, Jean-Jacques (1898), *The social contract ; or principles of political right* (2d (rev.) edn.; London: Scribner's).
- Rudinow, Joel and Barry, Vincent E. (1999), *Invitation to critical thinking* (4th edn.; Fort Worth, TX: Harcourt Brace College Publishers).
- Runciman, Steven (1968), *The Great Church in captivity: a study of the Patriarchate of Constantinople from the eve of the Turkish conquest to the Greek War of Independence* (London: Cambridge University Press).
- Ryan, Alan (1971), 'The open society and utility', *Government and Opposition*, 6 (2), 235-40.
- Sabl, Andrew (2008), "'Virtuous to himself": pluralistic democracy and the toleration of tolerations', in Melissa S. Williams and Jeremy Waldron (eds.), *Toleration and its limits* (Nomos; New York: New York University Press), 220-40.
- Sandmel, Samuel (1978), *Anti-Semitism in the New Testament?* (Philadelphia: Fortress Press).
- Scanlon, T.M. (1996), 'The difficulty of tolerance', in David Heyd (ed.), *Toleration: an elusive virtue* (Princeton, NJ: Princeton University Press), 226-39.
- Scarponi, Diane (2001), 'Supreme court denies Yale lawsuit', *New Haven Register*, October 5, 2001, sec. Local News p. A5.
- Schindler, Alexander (1989), 'Jewish leaders call on evangelicals to repudiate their conversion goals', *Jewish Sentinel*, 6/8/1989.
- Schrecker, Ellen (2002), *The age of McCarthyism: a brief history with documents* (The Bedford series in history and culture; Boston: Bedford/St. Martin's).
- Segal, Alan F. (2004), 'The Jewish leaders', in Kathleen E. Corley and Robert L. Webb (eds.), *Jesus and Mel Gibson's The Passion of the Christ: the film, the gospels and the claims of history* (London: Continuum), 89-102.

- Shiell, Timothy C. (1998), *Campus hate speech on trial* (Lawrence, KA: University Press of Kansas).
- Shiffrin, Steven H. (1999), *Dissent, injustice, and the meanings of America* (Princeton, NJ: Princeton University Press).
- Sikes, Walter W. (1941), 'The Anti-Semitism of the Fourth Gospel', *The Journal of Religion*, 21 (1), 23-30.
- Skerrett, K. Roberts (2005), 'Political liberalism and the idea of public reason: A Response to Jeffrey Stout's *Democracy and Tradition*', *Social Theory and Practice: An International and Interdisciplinary Journal of Social Philosophy*, 31 (2), 173-90.
- Smith, Catherine E. (2002), 'Intentional infliction of emotional distress: an old arrow targets the new head of the hate hydra', *Denver University Law Review*, (80), 1-61.
- Smith, Steven D. (2008), 'Toleration and liberal commitments', in Melissa S. Williams and Jeremy Waldron (eds.), *Toleration and its limits* (Nomos; New York: New York University Press).
- Smolla, Rodney A. (1990), 'Academic Freedom, Hate Speech, and the Idea of a University', *Law and Contemporary Problems*, 53 (3), 195-225.
- Steinfels, Peter (1989), 'Evangelical Group Urges Conversion of Jews', *New York Times*, 5/21/1989, sec. 1 p. 37.
- Stopler, Gila (2005), 'The liberal bind: the conflict between women's rights and patriarchal religion in the liberal state', *Social Theory and Practice: An International and Interdisciplinary Journal of Social Philosophy*, 31 (2), 191-231.
- Strossen, Nadine (1990), 'Regulating racist speech on campus: a modest proposal?', *Duke Law Journal*, 1990 (3), 484-573.
- (2001), 'Incitement to hatred: should there be a limit?', *Southern Illinois University Law Journal*, 15, 243-80.
- Sunstein, Cass R. (1996), 'Academic Freedom and Law: Liberalism, Speech Codes, and Related Problems', in Louis Menand (ed.), *The future of academic freedom* (Chicago: University of Chicago Press), ix, 239 p.
- Swaine, Lucas (2006), *The liberal conscience: politics and principle in a world of religious pluralism* (New York: Columbia University Press).

- Talbi, Mohamed (1990), 'Le Christianism maghrébin: de la conquête musulmane à sa disparation', in Michael Gervers and Ramzi Jibrán Bikhazi (eds.), *Conversion and continuity: indigenous Christian communities in Islamic lands, eighth to eighteenth centuries* (Papers in mediaeval studies; Toronto: Pontifical Institute of Mediaeval Studies), 313-54.
- Tan, Kok-Chor (2000), *Toleration, diversity, and global justice* (University Park, PA: Pennsylvania State University Press).
- (2004), *Justice without borders: cosmopolitanism, nationalism, and patriotism* (Contemporary political theory.; Cambridge, UK: Cambridge University Press).
- (2006), 'The problem of decent peoples', in Rex Martin and David A. Reidy (eds.), *Rawls's law of peoples: a realistic utopia?* (Malden, MA: Blackwell Pub.), 76-94.
- Tesón, Fernando R. (1998), *A philosophy of international law* (New perspectives on law, culture, and society.; Boulder, CO: Westview Press).
- Thiessen, Elmer John (1993), *Teaching for commitment: liberal education, indoctrination and Christian nurture* (Montreal: McGill-Queen's University Press).
- (2001), *In defence of religious schools and colleges* (Montreal: McGill-Queen's University Press).
- Tomasi, John (2001), *Liberalism beyond justice: citizens, society, and the boundaries of political theory* (Princeton, NJ: Princeton University Press).
- (2002), 'Civic education and ethical subservience: from *Mozert* to *Santa Fe* and beyond', in Stephen Macedo and Yael Tamir (eds.), *Moral and political education* (Nomos; New York: New York University Press).
- (2004), 'Should compassionate conservatives be political liberals? Philosophical foundations of the faith-based initiative', in Ellen Frankel Paul, Fred Dycus Miller, and Jeffrey Paul (eds.), *Morality and Politics* (Cambridge, UK: Cambridge University Press), 322-46.
- Tozer, James (2003), 'Bishop: Gays should ask for medical help', *Daily Mail* 11/8/2003, p. 47.
- Tritton, A. S. (1970), *The caliphs and their non-Muslim subjects; a critical study of the Covenant of 'Umar* (London: F. Cass).

- Turner, Darell (1989), 'Evangelical statement stress importance of witness to Jews', *Religious News Service*, 5/9/1989.
- , 'U.S. Presidential race remains undecided; Florida recount, vote disputes delay decision, GOP retains control of Congress', (2000)*Facts on File Digest*, Nov. 7, 2000.
- Vermeersch, A. (1912), 'Usury', *The Catholic Encyclopedia* (New York: Robert Appleton Company).
- Vidmar, Neil (1994), 'Making inferences about jury behavior from jury verdict statistics: cautions about the Lorelei's Lied', *Law and Human Behavior*, 18 (6), 599-617.
- Walker, Graham (1990), *Moral foundations of constitutional thought: current problems, Augustinian prospects* (Princeton, NJ: Princeton University Press).
- Walker, Samuel (1994), *Hate speech: the history of an American controversy* (Lincoln: University of Nebraska Press).
- Waltz, Kenneth Neal (1979), *Theory of international politics* (Addison-Wesley series in political science; Reading, MA: Addison-Wesley Pub. Co.).
- Walzer, Michael (1994), 'Comment', in Charles Taylor and Amy Gutmann (eds.), *Multiculturalism: examining the politics of recognition* (Princeton, NJ: Princeton University Press), 99-104.
- (1999), *On toleration* (New Haven: Yale University Press).
- Ware, Kallistos (1980), *The Orthodox Church* (Harmondsworth: Penguin Books).
- West, Robin (1990), 'Progressive and conservative constitutionalism ', *Michigan Law Review*, 88 (4), 641-701.
- Williams, Bernard (1985), *Ethics and the limits of philosophy* (Cambridge, MA: Harvard University Press).
- (1996), 'Toleration: an impossible virtue', in David Heyd (ed.), *Toleration: an elusive virtue* (Princeton, NJ: Princeton University Press), 18-26.
- (2005), 'Toleration, a political or moral question?', in Geoffrey Hawthorn (ed.), *In the beginning was the deed: realism and moralism in political argument* (Princeton, NJ: Princeton University Press), 128-38.
- (2006), 'The point of view of the universe: Sidgwick and the ambitions of ethics', in Myles Burnyeat (ed.), *The sense of the past: essays in the history of philosophy* (Princeton: Princeton University Press), 277-98.

The music man (1999) (videorecording, Warner Home Video) 1 videodisc (181 min.) :
sd., col. ; 4 3/4 in.

Wolterstorff, Nicholas (1997), 'The role of religion in decision and discussion of political issues', in Robert Audi (ed.), *Religion in the public square: the place of religious convictions in political debate* (Point/counterpoint.; Lanham, MD: Rowman & Littlefield), 67-120.

--- (2005), *God, justice, and duty* (Notre Dame, IN: University of Notre Dame Press).

Wright, Larry (2001), *Critical thinking: an introduction to analytical reading and reasoning* (New York: Oxford University Press).

Young, Iris Marion (1990), *Justice and the politics of difference* (Princeton, NJ: Princeton University Press).