

Standing and the Sources of Liberalism¹

Whatever else liberalism involves, it involves the idea that it is objectionable, and often wrong, for the state, or anyone else, to intervene, in certain ways, in certain choices. Why is this?

One wants to say: “Because of the importance of individual liberty.” But which of the many senses of “liberty” would one then have in mind? What makes “liberty,” so understood, important? And why assume that the case for this core liberal idea rests entirely on “liberty,” and not also on other values? This paper aims to evaluate different possible sources of support for this core liberal idea, some of which answer more readily to the name of “liberty” than others.² The result is a pluralistic view, which joins some familiar elements with some more speculative proposals, which in turn appeal to two distinct, but compatible, forms of social standing.

Section 1 considers what this liberal idea might come to: that it is objectionable, and often wrong, for the state, or anyone else, to intervene, in certain ways, in certain choices. Section 2 explains why it needs defense. The rest of paper asks what the defense might be.

One broad approach holds that illiberal interventions are wrong because they impair one’s ability to pursue certain (instrumentally or non-instrumentally) valuable activities that flow from one’s own choices or attitudes. These include religion, association, occupation, movement, and so on: the sorts of things that give content to traditional “lists of liberties.” Some such impairments, which I discuss in Section 3, are straightforward. If one is locked up, one can’t make pilgrimages. Other such impairments, which I discuss in Section 4, are subtler. Even if the interventions leave one free to go through the motions, to put one foot forward then the other on the road to Canterbury, still they may not let one do so “authentically.” The trouble with this approach is that it seems, at least on the most plausible construals, incomplete. That is, many illiberal interventions seem objectionable even though they don’t impair, and may even facilitate, these valuable activities. This is not to deny that this approach, which appeals to the value of activities, tells an important part of the story. It’s just to say that our liberal sentiments, or at least mine, seem to outrun what it can account for.

A different, although not incompatible, approach argues that illiberal interventions are wrong because they violate a right against certain “invasions,” whether or not such invasions impair valuable activities. Section 7 considers a right against “force”—against physical invasions of one’s body. Section 8 considers a (to my mind more dubious) right against “threats”—against certain invasions of one’s “choice situation.” But even if we grant that there are such rights, we still can’t account completely for liberal idea. For there are interventions to which any liberal would object, I suspect, but that don’t involve force or threat, and that don’t impair valuable activities.

So we turn, more speculatively, to two further sources of support for liberalism, each of which represents a certain kind of social standing. Section 9 explores the possibility that merely being subject to certain kinds of commands can itself compromise a valuable social standing. Section 10 suggests that condemning choices with which certain groups are identified may mark them as a kind of underclass, compromising a different kind of social standing. In this latter case, the underlying value is not so much the value to the individual of the liberty that liberal guarantees protect, but instead the value of relations of equality among individuals that such guarantees sustain. Or, if it is a form of liberty, it is a form that makes “Liberty, equality, fraternity” a kind of conceptual stutter.

Needless to say, other sources of support for liberalism have been proposed. However, I doubt that they add much to the materials just described. Section 5 discusses Rawls’s defense of the “basic liberties.” Section 6 considers a possible prohibition on “paternalism.” And Section 11 discusses “justificatory restrictions,” such as Rawls’s “Liberal Principle of Legitimacy,” on certain forms of “problematic treatment” that cannot be justified in ways that those subject to the treatment could “reasonably accept.” These sections are admittedly digressions, meant chiefly for readers who are drawn to such proposals, and inserted at the points in the paper where my reservations about those proposals can best be conveyed. These sections are not essential to the main thread of argument, and readers who are little inclined to such proposals are invited to skip them.

1. What counts as an illiberal intervention?

What does it mean: that it is wrong for the state, or anyone else, to “intervene,” in at least certain ways, in at least certain “protected” choices about how to live one’s life? Which choices are “protected”? Which “interventions” are wrong? I take it that we have various particular judgments, to the effect that this or that illiberal intervention would be impermissible. Or at least we have a tacit understanding that can generate such judgments. But I doubt that, at this stage, we can go helpfully beyond this. Accordingly, I simply try to assemble materials sufficient to explain these particular judgments, while keeping in mind, in the spirit of reflective equilibrium, that, as the justifying materials come into focus, the judgments themselves may change.

The alternative would be to set our sights on an intermediate principle, which proposed to codify these particular judgments. The obvious candidate is Mill’s (1859) Harm Principle. The protected choices, roughly, are those that don’t harm others.³ And these choices are protected from, roughly, threat, coercion, force, enforcement, imprisonment, punishment, and criminalization—Mill’s “compelling... visiting with evil”—but not from mere advice—“remonstrating... reasoning... persuading... entreating.” However, I don’t think it’s clarifying, or even correct, to identify liberalism with the Harm Principle.

1.1. Which interventions?

To begin with, the line that the Harm Principle draws between prohibited and permissible interventions is not at all clear. The literature often casually treats the items on the list of prohibited interventions—threat, coercion, force, imprisonment, punishment, criminalization—as, on the one hand, interchangeable with one another and, on the other, clearly distinct from other interventions. Yet the items on the list differ significantly, in morally relevant ways, from one another, and they can be hard to distinguish, again in morally relevant ways, from items left off the list.

To get a sense of the differences, as well as to have some useful distinctions on the table, let’s begin by assigning the artificial label, “steering,” to attempting to get someone to do something by means other than simply informing him (as advice does) of the reasons there are to do it independent of that very attempt. One way of steering someone to do something is to *raise the cost*, and to inform him that one has raised the cost, of his *refusing* to do it. Threatening someone with forcible imprisonment does this.

But so can threats of other penalties or fines, as well as fees and taxes.⁴ However, another way of steering someone to do something is to *increase the benefit, or lower the cost* of his doing it. This is what offers and subsidies, in contrast to threats and taxes, are said to do. Yet the line between, say, threats and offers is not at all clear or stable. What looks like a “stick” from one standpoint may look like a “carrot” from another.

And there are still other forms of steering. One can make the *psychological* feat, as it were, of the disfavored choice *harder* or *less likely*, by mind control, “choice architecture” (Thaler and Sunstein 2008) or simply issuing a command to someone reflexively disposed to comply. Or one can make *successful execution* of the disfavored choice harder or less likely (even if one could otherwise, psychologically choose it). This might involve force or imprisonment. But it might instead involve making it difficult or impossible to obtain the necessary means. These means might be commodities, whose sale might be prohibited, even if their use was not. Or they might be institutional or associational supports: the enforcement of a contract, the recognition of a marriage, or the mere presence of likeminded people.

The line between “coercive” and “non-coercive,” at least on some understandings, cuts across these categories of steerings. For example, to coerce someone to do something is often thought to involve steering him so compellingly as to mitigate his responsibility for complying. Some threats are non-coercive, so understood, whereas some non-threats, such as bodily restraint, are coercive. Threatening to frown unless you stay put doesn’t relieve you of blame for staying put, whereas tying you down mutely surely does.

Furthermore, some potentially relevant forms of intervention are not steerings of the target of intervention at all. First, one can, *without trying to get* someone to refrain from a choice, nevertheless increase its relative cost, or the difficulty of making or executing it. Are such “interventions” ruled out? Why not, if they have the same effects? Second, one can merely *express* approval or disapproval of a choice, without any intent to steer it. Punishment and “criminalization” characteristically involve not only the imposition of costs for certain choices, but also the condemnation of those choices. Is it the cost or the condemnation from which protected choices need protection? And, third, Primero can *follow*

through on a threat against Segundo, which is intended to steer not Segundo, but instead an onlooker, Tercero. So, to sum up the first worry: What, exactly, is the Harm Principle supposed to rule out?

1.2. Harm to others?

A second worry is that it is unclear what counts as “harm to others.” One might say that one “harms others,” *inter alia*, by contributing to the social availability of a bad way of life, which one does simply by pursuing a bad way of life. In that case, the Harm Principle does not protect very much. We might avoid this result by defining “harm to others” narrowly, limiting it to the use of force on their person, or violation of their property rights. But this would mean that the state cannot “intervene” to ensure contributions to public services. While libertarians might be content with this result, others will not be. Searching for a middle ground, we might broaden the notion of “harming others” to “failing in a duty owed to others.” While there is a duty owed to others to contribute to public services, we might argue, there is no duty owed to others to refrain from contributing to the availability of a bad way of life. However, as I will argue in Section 7.3, this way of drawing the line, at least for certain purposes, is poorly motivated and, I think, mistaken.

1.3. Harm to self?

A third worry about the Harm Principle: it’s not obvious that interventions to prevent harms to self should be prohibited. “End-paternalistic” interventions—which try to steer one from a poor choice of final, organizing ends, such as religion, career, or relationship—seem more objectionable than “means-paternalistic” interventions—which try to steer one from poor choices about all-purpose materials for pursuing such ends, such as one’s health, safety, or financial security. Many otherwise liberal states engage in means-paternalistic interventions. They impose “sin” taxes, for example, which (at least professedly) aim at reducing alcohol, tobacco, and sugar consumption (even if one worries that they enjoy political success merely as regressive ways to raise revenue). They regulate prescription medicine (Conly 2013 18). They require that goods for commercial sale have built-in mechanisms (e.g., seat-belt buzzers) to deter imprudence. One might argue that permitting such means-paternalistic interventions is compatible with the Harm Principle, since the targets of the interventions would otherwise harm others,

by exposing them, say, to second-hand smoke or higher insurance premiums. But such arguments can feel strained and not entirely in good faith.

1.4. State advice?

A final worry is that the Harm Principle, even on the broadest definition of “harm to others,” doesn’t protect enough. Consider, again, advice: simply informing someone of reasons that independently obtain. According to the standard contrast, advice is the one thing that, unlike, say, coercion, is supposed to be unproblematically permissible. But not even this is clear. Although it may be permissible for *individuals* to advise one another to avoid a particular religious choice, is it permissible for the *state* to do so?

1.5. Condemnation for wrongdoing?

Having said this, a limited version of the Harm Principle seems clear and compelling:

Condemnation Principle: *Condemning* someone *for* wronging others is unfitting unless she has in fact wronged others.

Suppose (as I am inclined to think) that one does not, in general, wrong others by making a protected choice. And suppose that punishment involves condemnation for wronging others. Then the Condemnation Principle deems punishment for protected choices unfitting (Husak 2005). Even if we grant, for the sake of argument, that “unfitting” implies “impermissible,” however, the Condemnation Principle would not forbid the state from “subtracting” from its punishment, as it were, condemnation for wronging others. The state could still condemn the choice as a bad one. And it could still impose other, nonexpressive aspects of the penalty (compare Tadros forthcoming, ch. 6).

2. The illiberal challenge and two replies

Putting aside, for the moment, what exactly liberalism comes to, why should any defense of it be needed? What’s to be said on the other side? The challenge to liberalism is simple. Illiberal interventions can make it more likely that people will make choices that will be good for them, or will avoid choices that will be bad for them. Making people more likely to make choices that will be good for them, or to avoid choices that will be bad for them, can benefit them, or protect them from harm. And it seems beyond dispute that this can be a compelling reason to make people more likely to make such choices. Suppose

that two people, Lucky and Unlucky, face exactly the same choice between Good and Bad, ignorant of the stark difference between them. Whereas Lucky is about to choose Good, Unlucky is about to choose Bad. If we can warn only one of them about the difference, we surely have more reason to warn Unlucky. And this is surely because it will do more to reduce the probability of Unlucky's choosing Bad than it will to reduce the probability of Lucky's choosing Bad. Such is the illiberal's challenge. In the rest of this section, I review two initial replies, to clear the way for more substantial answers.

2.1. The Unitarian reply

The Unitarian reply, as we might call it, is that illiberal interventions can't benefit people, or protect them from harm, because no intuitively protected choice is bad for the person who makes it. Indeed, it seems the first thing to say against a proposed ban on occasional, low-stakes gambling; moderate use of marijuana; same-sex sex; and so on: namely, that these are just not bad for those who make them. And, patronizing or romanticizing though it may be, one might want to say the same thing of many religious choices. As an unreligious person, these choices strike me as involving false, or even incoherent, beliefs. But there are worse things. And they provide community, a sense of purpose, prompts to reflection, and so on, that I, as an unreligious person, have envied. On balance, these are not bad ways of life. Of course, some choices clearly jeopardize one's health, safety, or financial security, without promising anything of significant value in return. So the Unitarian reply may not protect these choices. But this may pose no problem if intuitively these choices are not protected: if means-paternalistic intervention, of the kind described in the last section, is not illiberal.

If only things were so easy. The trouble is that there are still choices that, on the one hand, appear to merit protection, but that, on the other hand, are bad for those who make them. Or, at least, our thought and practice seems to reflect a belief that they are bad for those who make them. Even the most open-minded and pluralistic among us agonize in their own deliberations, or at least in their advice to their children, about choices that will be bad for them. And some of these choices, it would seem, are protected choices, about religion, choice of mate, and so on.

To go out a little further on this limb, imagine the Temple of Brainechanics, practiced in the United States, since the mid-1800s, spreading slowly to other parts of the globe. It's organized around the half spiritual, half pseudo-scientific ramblings of an obscure, Verne-era science-fiction author. Although these ramblings are too incoherent and untethered to amount to any orienting ethic or worldview, the Brainechanics nonetheless devote their entire lives to memorizing the author's ramblings, to celebrating his life, and to drawing more people into the fold, admitting no other relationships and pursuits save those that further these ends. It is hard to see how a liberal, committed to religious freedom, could deny protection to Brainechanics. And yet if your children were to join the Temple, so described, you would see it as a disaster, a kind of moral lobotomy. You would think that they were throwing their lives away. The reasons you have to try to convince them not to join are powerful, entirely of a piece with other efforts to protect them from harm. No one could fault you, for example, for breaking a promise to make a last-ditch effort to dissuade them.

2.2. The pragmatic reply

The pragmatic reply to the illiberal challenge is that even if it is possible, in theory, to intervene to good effect, neither the state, nor anyone else, can be relied on, in practice, to have the necessary benevolence, capacity, or competence. While the present ruling party may be well intentioned, we may not want any successor to come to power with an established precedent of illiberal intervention. The state's instruments may be too blunt. If long-term imprisonment is the only cure, it may be worse than the disease (Raz 1986 418). Criminalization may only drive the practice underground, out of the state's ameliorative reach. Perhaps more importantly, the state may have worse information than those facing the choices (at least barring costly research). This is especially likely with "matching" choices. Unlike the choice of Brainechanics, which is bad for anyone, these are choices, such as choices about career or mate, whose goodness for the chooser depends on her particular traits, such as her taste, talent, temperament, and values.⁵

I set these doubts to one side. It's not because I expect that these limitations—of good will, capacity, or competence—will ever be overcome. It's not because they are contingent. Indeed, as I will

argue, the case for liberalism largely rests on contingent factors. It's instead because when we, or at least when I, imagine these limitations away, I still find myself thinking that it would be wrong for the state, or anyone else, to intervene. And I want to understand why I do, and why I should, if I should, think that.

3. Costs of intervention

Let us turn, then, to other replies to the illiberal challenge. Although illiberal interventions may tend to benefit or protect people, by influencing them toward good choices and away from bad ones, this may not compensate for the *costs* that illiberal interventions impose, especially costs that take the form of impairing one's ability to pursue valuable activities.

This reply applies most clearly to steerings that attach a cost to a bad choice. Here it's crucial to distinguish (i) *threatening* the cost *before* a chooser, Prudie, makes the bad choice from (ii) *following through* on the threat, by *imposing* the cost on her, *after* she makes the bad choice. Consider first (i), the threat itself. No doubt, the mere *threat* of a cost can wrong Prudie, even if she avoids the *imposition* of the cost by complying with the threat. Although threatening to impose a cost if she does such-and-such can wrong her in other ways (see Kolodny ms. and section 8), the simplest way is by leaving her choice situation worse than she is entitled to from the threatener. How good a choice situation she is entitled to from a given agent depends, ultimately, on balancing the burdens she bears in being deprived of a better choice situation against the burdens that others would have to bear for the agent to provide her with a better choice situation. Now, threatening to attach a cost to an option, to be sure, tends to make the choice situation worse by making that option more costly. However, this "cost" effect needs to be balanced against the "influence" effect. This is the core of the illiberal's challenge. If the threat makes her more likely to choose what was better for her (independently of the cost), then the threat tends to improve her choice situation. Why, then, can't the influence effect outweigh the cost effect, so that threat improves her choice situation overall?

Now consider (ii), following through on the threat. This makes things unambiguously worse for Prudie. No doubt about that. But imposing the penalty still has a point. It upholds the credibility of the

threat, which (we are assuming) benefits others or protects them from harm. Why can't this serve the greater good, and so be permissible?

“Because,” it might be said, “it is distributively unfair. Prudie suffers the cost, so that others may benefit. So, in fact, imposing a penalty *doesn’t* serve the greater good, any more than does taking from the poor to give to the rich.” However, if what is to be fairly distributed are choice situations themselves, then fairness may *require* following through. For following through ensures that everyone enjoys the choice situation that Prudie enjoyed (Kolodny 2016).

In any event, why must following through carry a severe cost: say, long-term imprisonment or heavy fines? A night in jail, if enforced with sufficient reliability, might be a no less effective deterrent (Kleiman 2009). And if we imagine away technological limitations, the state could do away with imprisonment or fines altogether. It might threaten an annoying whine until one gave up the bad choice. Moreover, the cost effect is more pronounced when it is attached to an option that is valuable to the agent (Kolodny ms.). But we are imagining that the option in question is not in fact valuable to the agent.

Finally, why must interventions impose costs at all? Again, some steerings attach benefits to compliance. Others simply make the choice not to comply, or its execution, harder or less likely. Of course, a liberal might reply that the state is permitted such steerings, so long as they attach no, or little, cost to the bad choice. But this seems a weak form of the doctrine.

4. Value-of-compliance effects

Even if the influence effect outweighs the cost effect, illiberal steerings might still not improve the choice situation, because they have a third kind of effect: *value-of-compliance*. Being steered to make a choice can deprive it of the value that it would otherwise have had. Here we come to the “subtler” infringements of positive liberty alluded to earlier.

First, fear of a penalty, or promise of a reward, might corrupt one’s motivations. Even if one makes (what would otherwise have been) a good choice, one does so for the wrong reasons, depriving the choice of its value (Dworkin 2000, 217, 218, 269). Yet not all interventions, not even all steerings, need to involve penalties or rewards that would displace more “intrinsic” motivations. Moreover, this

suggestion fails to explain why liberals are so specially worried about steering: measures *intended* to get one to make certain choices. After all, the relative costs of options are in constant flux even without steering. Options cease to be economically viable on the open market, for example, or public funding is redirected to more pressing purposes. Few worry about the corrupting effects of *these* changes.

Next consider the idea that some options have value, or at least a certain kind of value, only if they are selected from an adequate range of acceptable alternatives. This is one component of Raz's 1986 definition of "autonomy." If threats attach sufficiently grave costs to alternatives, for example, then they may no longer count as acceptable. And if threats do this to a sufficient number of alternatives, then there may no longer be an adequate range. These threats will then have an adverse value-of-compliance effect. The chosen option will not count as "selected." However, a more limited regime of threats might still leave enough acceptable options (Hurka 1993). And, again, why is steering special? Alternatives to options become unacceptable, or simply unavailable, without steering, and yet few clamor to halt or reverse these processes, to ensure the options in question can count as selected.⁶

Finally, consider the suggestion that some options have value, or at least a certain kind of value, only if the *causal history* of their choice was suitably *independent*: free from certain kinds of steering by others. This is another component of Raz's definition of "autonomy." Here we can say why steering is special. Suppose, for simplicity, that we begin with only two alternatives, Bad and Good. If Bad becomes unacceptable or unavailable without steering—say, if the market for the means to Bad dries up—one can still independently choose (although presumably not select) the one remaining option, Good. But if one is *steered* away from Bad—say, if someone made the means unavailable *in order to ensure that one would avoid Bad*—then one cannot independently choose Good.

Why is this? According to what we might call the "subjugation model," the answer is that, in choosing Good, one has been made to do the will of the steerer. One has become the "tool" or "servant" of another. According to the "achievement model," the problem is not so much an evil, as the absence of a good: that choosing Good does not count as "one's own" achievement. The underlying idea is that one faces a kind a problem or challenge, which is defined relative to a benchmark of how things stand *prior to*

any steering. By analogy, imagine a competition to make a collage from found objects on a beach, or a dinner from whatever happens to be in the cupboard. Contrast cases in which the objects were cast about by the tides, or the ingredients left there by the natural ebb and flow of kitchen inventory, with cases in which the same objects or ingredients were deliberately selected and placed in that order so as to suggest a certain arrangement or dish. In the former case, one's creation counts as one's achievement, one's own solution to the problem, whereas in the latter case, it seems more the achievement of the intelligence selecting and placing the objects. One might not feel reduced to a mere instrument of another's will, as under the subjugation model, but one will take less pride in what one thought one had done on one's own.

However, not all steering undermines independence. If Meryl Streep does not independently value her career as an actor, this is not because studios pay her to perform. So how do we distinguish between steering that does and does not undermine independence? Raz draws the line at "coercion," which requires not only inducing someone to do something, but also *compelling* him to do it, giving him "no other choice," such that he is *justified* or at least *excused* in doing it. The terms of Streep's employment, attractive though they may be, don't compel her to perform. This suits the subjugation model. It's when another sees to it that one has "no other choice" that it seems most apt to say that one has become their tool, or that one's will has become theirs. However, this permits more illiberal intervention than one might have thought. Even *threats of long-term imprisonment, if caught and convicted*, need not be coercive *so defined*. If such threats compelled, prisons would be empty (Kolodny ms.).

Dworkin draws a different line between steerings that do and don't undermine independence. What matters is not whether the steerings compel (2011 212; see also 2000 273), but instead whether they are motivated by a judgment that a certain way of life is good or bad (2000 282; 2011 369). Call these "end-paternalistic steerings." Presumably, a studio's efforts to get Streep to take the part are motivated by its bottom line or artistic ambitions, not by her quality of life. This line suits the achievement model, where the challenge involves, in part, coming to one's own conclusions about what one values. If

someone intervenes on the basis of a judgment about that, then they have done the work for you, as it were.

In any event, how seriously do these steerings compromise independence? If compelling or end-paternalistic steering removes the option of badminton, then, granted, one cannot independently choose the “negative” option of *not-badminton*. Still, one might independently choose one of the “positive” options of tennis or ping-pong. This distinction is obscured by stylized cases like the one with which this section began. For when Good and Bad are the only alternatives, we equate the negative option of not-Bad with the positive option of Good.

Indeed, on the subjugation-cum-coercion model, it seems particularly implausible that coercing someone away from one option reduces her to a mere “tool” of another will insofar as she pursues any of the positive alternatives to that option. After all, when we pursue our relationships, careers, or faiths within the confines of the law of a liberal state, we are, in effect, pursuing alternatives to a life of crime, from which we are (supposedly) coercively steered away. Perhaps we are mere tools of the state insofar as we pursue the abstract, “negative” option of: “some alternative to a life of crime.” But surely we aren’t mere tools of the state insofar as we pursue our particular relationships and careers.

The analogous thought on the achievement-cum-end-paternalistic-steering model is not much more plausible. Not all steering toward an option, on the basis of a view of its merits, diminishes one’s achievement in pursuing that option. *Public* funding that aims to steer one to engagement with the arts, on the basis of a judgment that a life of such engagement is good for one, is not obviously objectionable (Dworkin 2011 372; 2000 274). Moreover, *private* agents engage in all manner of end-paternalistic steerings, from charitable funding for the arts to the provision of houses of worship and religious texts. Surely these private efforts don’t objectionably diminish one’s achievement. One might reply that it’s different when the state does it. But how is the present model to explain this? What matters is simply whether the achievement is one’s own or someone else’s. Whether the “someone else” is the state or your neighbor the evangelist seems immaterial. In any event, independence is surely a matter of degree.

Removing a single bad option diminishes independence only marginally. It's just a slight tailwind. Why isn't it outweighed by benefit of being steered from a bad choice?

5. Rawls on the basic liberties

One might protest that we have neglected perhaps the most influential defense of liberalism of living memory. This is Rawls's (1971, 1993) argument for the "first principle of justice," which requires (a "basic structure" that secures) an equal and fully adequate distribution of the "basic liberties." However, two points already made indicate why this argument is unlikely to advance us beyond the point we've reached thus far.

First, Rawls's case for the basic liberties would appear to boil down to the claim that the basic liberties are instrumental to the pursuit of certain more or less abstractly conceived activities in which citizens—or, alternatively, those whom parties in the original position are supposed to represent—are assumed to have an interest. Specifically, these activities are: the pursuit of a determinate conception of the good, the development and exercise of a capacity for a conception of the good, and the development and exercise of a capacity for a sense of justice. Consequently, Rawls's argument shares the limitations, reviewed in Sections 3–4, of similar arguments that illiberal interventions impair valuable activities. For instance, many illiberal interventions, such as those that prune away only a single option, simply don't impair any of these three activities. And other social processes, such as the organic withering away of the same option, would, in any event, impair these activities to the same extent without intuitively calling for any institutional response.

Second, for reasons that are never clearly explained, citizens are conceived to have an interest in a determinate conception of the good, *whether or not that conception is worthwhile*. Accordingly, parties in the original position care simply about securing the conditions for pursuit of the determinate conception of the good, *whatever it is*, held by those they represent. Thus no case can be put to the parties for a more discriminating principle, which would secure the conditions for pursuit of, specifically, a worthwhile conception of the good. Rawls's framing of the problem, for reasons that are nowhere clearly explained, seems to bar the illiberal's challenge from getting so much as a hearing.

6. Paternalism

The foregoing suggests that illiberal interventions can benefit their targets, or protect them from harm.

The influence effect can outweigh the cost and value-of-compliance effects. We now turn to one of several “side-constraint” replies to the illiberal challenge: that illiberal interventions are still impermissible, even if they do benefit people, or protect them from harm.

To begin with, illiberal interventions might be said to violate a side-constraint on “paternalism”: very roughly, on benefitting someone, or protecting them from harm, against their consent. But, such a side-constraint would seem to rule out too little, in three ways. First, if the paternalistic character of an intervention depends on what motivates it, then the charge of paternalism is escaped by a simple change in motivation. The state might steer Prudie not for her own good, for example, but instead from a sense of religious obligation. Second, the state faces a choice of steering either everyone or no one. And Prudhomme, not only Prudie, benefits from being steered. So illiberally steering everyone in order to benefit Prudhomme needn’t treat *Prudie* paternalistically. And it needn’t treat Prudhomme paternalistically if he consents to it (de Marneffe 2010 81). Yet his consent should not make it permissible to impose on Prudie. Finally, assuming that mere advice is not paternalistic, a stricture on paternalism would not rule out the state’s advice against Brainechanics.

In any event, what is wrong with paternalism in the first place? The best attempt to explain it, in my view, is Shiffrin 2000. She defines “paternalism,” roughly, as substituting the agent’s judgment or agency for the patient’s, about the patient’s good or what lies within his sphere of “legitimate agency,” on the grounds that the agent’s judgment or agency is superior. And she argues that paternalism wrongs the patient because of the superiority that it expresses.

Set aside the question whether paternalism must always express superiority (Quong 2011; Conly 2013). The underlying objection to paternalism, despite its initial resonance, is deeply puzzling. First, a person’s judgment and agency often concern things other than his private affairs: such as his duties to others or his respect for impersonal values. Judgment and agency in those domains may be as much a source of pride. If it isn’t objectionable for others to express that their judgment or agency is superior to

his in those domains, then why it is objectionable for them to express it with respect to his private affairs? Second, it's not wrong as a rule to *report* that someone has inferior judgment or agency (setting aside independent moral prohibitions on misleading, causing gratuitous pain, etc.). Yet reporting it *expresses* it at least as baldly as substitution. So even if an objection to paternalism could account for a prohibition on illiberal interventions, it isn't clear on reflection that there is any basis for such an objection.

7. A right against force

The objection to paternalism is often casually confused with a quite different idea: namely, that illiberal interventions are wrong because they infringe one's right against certain "invasions." In this vein, Feinberg (1986 27) models "autonomy as sovereignty" as something like the right of an owner over her property, or of a sovereign nation over its territory.

What, though, is the content of this right? What counts as an "invasion"? Rousing though many descriptions of the right may be, it is often unclear what they come to. Feinberg, for example, writes: "The life that a person threatens by his own rashness is after all *his* life; it *belongs* to him and to no one else. For this reason alone, he must be the one to decide—for better or worse—what is to be done with it" (59). But what sort of invasion would violate his right "to decide what is to be done with his life"? Presumably not just *any* action that affects "his life." After all, what action doesn't affect "his life" in some way? So what sort of invasion, exactly?⁷ One might say, I suppose, that the relevant invasions just are illiberal interventions. That is, the right in question just is a right against illiberal interventions. But the explanation wouldn't be terribly illuminating. Nor would it offer us any guidance in deciding what does or doesn't count as an illiberal intervention.

The analogies to property and territory, however, suggest a more articulate answer. The "invasion" is just literal, physical invasion of one's body (or, more controversially, one's external property). Indeed, apart from any antecedent concern about liberalism, one might think that we have a right against force, whose core incident is expressed by the:

Force Constraint: It wrongs someone to use force on her, unless she consents to it, or some other condition lifts the constraint. The mere fact that the use of force would achieve a greater good is not such a condition on its own.⁸

A right against the use of force in illiberal interventions might then just be a special case. The illiberal interventions prohibited by the Force Constraint would be just those that use force: not threats themselves, but instead *following through on threats to use force* (or, less centrally, forcible steerings, such as physically restraining someone without prior threat). And following through on such threats would be prohibited even though it achieves a greater good: namely, by sustaining the credibility of threats that improve others' choice situations, in a distributively fair way.

For Kantians and libertarians, in particular, the impermissibility of illiberal interventions seems to be just a special case of the more general impermissibility of nonconsensual force. Kantians may speak here of "equal external freedom"; libertarians may speak of "self-ownership." And these notions may involve more than the Force Constraint. For example, self-ownership may imply that one is morally permitted to do whatever one likes with one's body; that one can permit, by consent, anything to be done to one's body (whether or not it achieves a greater good); or that one can transfer such rights over one's body to someone else.⁹ But all we need here is the more widely held Force Constraint.

An obvious difficulty for this approach, however, is that the state is permitted to use nonconsensual force in *some* cases (albeit in a way that is perhaps permitted to any agent, whether or not a state, in similar circumstances). Given this, why isn't the state *also* permitted to use nonconsensual force in illiberal interventions? What's the relevant difference? The following two sections consider two different ways in which the illiberal might press this point.

7.1. The Hypothetical Consent Principle

The first way for the illiberal to press the point, "If the state may use nonconsensual force in some cases, why not in illiberal interventions?" is to appeal to the:

Hard Paternalist Principle: The fact that force would benefit the target, or protect him from harm, lifts the Force Constraint.

Why accept the Hard Paternalist Principle? Because, it will be said, it best explains why it's permissible, say, to shove Mr. Magoo out of the way of an oncoming truck, when there's no time to warn him.

Suppose that when the state follows through on its illiberal threat to Prudie, it benefits her, or protects her from harm (Christiano 2006; Conly 2013 3). Then the Hard Paternalist Principle seems to imply the illiberal's desired conclusion:

Illiberal Imposition: The Force Constraint is lifted, for the purposes of deterrence, when the target has violated the state's illiberal prohibition of a bad choice.

This argument is doubly flawed. First, we can explain why it's permissible to shove Magoo not with the Hard Paternalist Principle, but instead with the:

Hypothetical Consent Principle: The fact that force against someone would benefit him, or protect him from harm, lifts the Force Constraint when *there is no way to enable him to give or refuse consent without depriving the force of its beneficial or protective power* and *he would grant consent if so asked*.

And this principle wouldn't apply to Prudie in the way it applies to Magoo. For while we cannot ask Magoo for his consent to the shove, the state *could* ask Prudie for her consent before imposing the penalty. Second, while the *threat* benefits Prudie, *carrying out* the threat does not, and is not meant to, benefit her. It is meant to benefit others, by upholding the credibility of the threats that they face (De Marneffe 2005, 128). So neither principle would apply to Prudie in any event.

7.2. The Responsibility Principle

Here's the second way for the illiberal to press the point, "If the state may use nonconsensual force in some cases, why not in illiberal interventions?" Even the most extreme libertarians will accept the elementary Lockean idea that:

Natural Imposition: The Force Constraint is lifted, for purposes of imposing a deterrent, when the target has violated a *natural prohibition on the use of force*.

If some state-of-naturalist, Flintstone, violates a natural prohibition on the use of force, then the Force Constraint is lifted for the purposes of imposing a deterrent on him. Why then isn't it also lifted in Prudie's case? Why doesn't Illiberal Imposition follow (Conly 34–5)?

While the liberal may not have a *good* answer, the liberal's *best* answer appeals to the: *Responsibility Principle*: The fact that force would protect others from their own choices cannot lift the Force Constraint.

Whereas the force used on Flintstone protects others from harms that do not arise from their own choices, the force used on Prudie protects others from harms that do arise from their own choices. That's the difference.

Why accept the Responsibility Principle? Begin by considering what explains the Force Constraint and Natural Imposition in the first place. Underlying the Force Constraint, is the target's interest in controlling others' uses of force against her. This interest must be balanced against the burdens others bear in providing the target with this control. So we are led to the:

Avoidance Principle: The Force Constraint is lifted when the target has or had adequate opportunity to avoid the use of force, where "adequate" balances the interest of the target in greater control against the burdens that others would have to bear to provide the target with greater control (Hart 1968, Scanlon 1998, 1999, and Otsuka 2003).

In some circumstances, the only control that would count as adequate is the target's present consent. In other circumstances, weaker control is adequate, given the burdens of providing stronger control. In particular, it would burden others, such as Vic, severely to require Flintstone's present consent, after violation, before imposing the deterrent. Since he could always escape it by refusing consent, this would make the deterrent empty. And Vic needs the deterrent to sustain the credibility of a threat that steers others to promote a desirable distribution of freedom from force. So weaker control is adequate in Flintstone's case: the control exercised in complying with the natural prohibitions. Flintstone's adequate opportunity to avoid force was his opportunity not to violate the natural prohibitions. This is what explains Natural Imposition.

Why not say the same in Prudie’s case? Like Flintstone, she could have complied with the state’s directive to refrain from the bad choice. To be sure, *some* illiberal measures would *not* give Prudie adequate opportunity to avoid. For instance, it would violate the Avoidance Principle to implant devices in Prudie’s body to deliver a shock when she contemplated the choice, or to manipulate her brain, as a kind of puppetry, to get her to choose differently, or to confine her forcibly and preemptively (Quong 2011, 55). But we are mostly considering cases in which Prudie is told what is in store if she doesn’t comply and is given a chance to comply. Why isn’t that opportunity as good as what Flintstone had?

Moreover, just as to provide Flintstone with even better opportunity (e.g., to require his present consent) in order to impose a deterrent would burden others severely, so too to provide Prudie with even better opportunity (e.g., to require her present consent) in order to impose a deterrent would burden others. Just as others rely on the deterrent in Flintstone’s case to sustain the credibility of a threat that induces behavior that benefits them, or protects them from harm, so too they rely on the deterrent in Prudie’s case to sustain the credibility of a threat against them that benefits them, or protects them from harm. If the state gives Prudie better opportunity to avoid force, i.e., requiring her consent after violation, then it must give the same opportunity to everyone. But that means depriving them of the threat’s protection (or benefit). For if one can avoid the threatened force merely by refusing consent to its imposition, then threat loses its power to influence. It no longer protects (or benefits).

So far, Prudie’s situation seems, in relevant respects, just like Flintstone’s. Hence, so far, following through on Prudie seems permissible, just like following through on Flintstone. But now the Responsibility Principle enters to distinguish them. Vic has no other way to avoid the harms except to limit Flintstone’s control. By contrast, Sage—a representative person to be benefitted by the illiberal threat to Prudie—clearly does have another way to avoid the harms other than to limit her control. Since the harms would come from Sage’s own choices, he can avoid the harms by choosing appropriately. Why isn’t that *his* responsibility? Why is it fair to limit Prudie’s control, when Sage, by choosing appropriately, could enjoy the same benefits?

To be sure, much will depend on whether it is fair to treat the harm to Sage as “his responsibility.” Was he in a position to know what he was getting into? Was his judgment impaired by disease or drink? It seems fairer that Prudie’s control should be limited so as to protect Sage from his faultlessly ignorant or impaired so-called “choices,” than from his well-informed, cool-headed, capital-C, Choices. So the Responsibility Principle may help to explain the intuition that “soft-paternalistic” force—which enforces directives that prohibit ignorant or impaired “choices” (e.g., “You may not engage in this activity until you have passed a quiz and a breathalyzer test”—may be permissible when “hard-paternalistic” force—which enforces directives that prohibit Choices—may not be. Soft-paternalistic force on Prudie is justified as a way of protecting Sage (as always via a credible deterrent) from harms that wouldn’t, in the relevant sense, be due to his Choices. That is like protecting Vic from Flintstone. Hard-paternalistic force on Prudie, by contrast, would have to be justified as a way of protecting Sage from his own settled will. That *isn’t* like protecting Vic from Flintstone. At that point, it’s up to Sage, not Prudie, to protect himself. The objection to hard-paternalistic force against Prudie, then, is *not that it is paternalistic*. It is instead that it is *unfair*. Prudie’s control over others’ use of force against her is limited in order to provide protection to Sage that he could provide for himself. By contrast, soft-paternalistic force against Prudie provides protection that Sage cannot provide for himself, just as the force against Flintstone provides protection that Vic cannot provide for himself.

7.3. Contrasts: Libertarian Principles and the Duty Principle

Although the Responsibility Principle seems to me the liberal’s best response to the illiberal’s second challenge (that is, to explain Natural Imposition without a commitment to Illiberal Imposition), it is not, as far as I can tell, the liberal’s usual response. Two other responses are more common. First, libertarians respond with either the:

Strong Libertarian Principle: The fact that force would protect others from ills other than the target’s force cannot lift the Force Constraint

or the:

Weak Libertarian Principle: The fact that force would protect others from ills other than *someone's* force cannot lift the Force Constraint.

The trouble, in brief, is this (Kolodny 2016). No one who accepts Natural Imposition can accept the Strong Principle. For suppose that, after his violation, Flintstone is reformed or incapacitated so that there is no prospect of him using force in the future (Otsuka 2003, ch. 3). In that case, imposing a deterrent on Flintstone does nothing to protect Vic from *Flintstone's* force. So the Strong Principle would rule out that imposition. Yet Natural Imposition countenances it, on the grounds that it protects Vic from *someone's* force (Locke 1689, §8). Once the Strong Principle is abandoned, the Weak Principle becomes untenable. For once it is granted that protecting people from the force of others, for which Flintstone is not responsible, can justify using force on him, why can't protecting people from other harms, such as disease or poor nutrition, for which he also is not responsible, also justify using force on him? The Responsibility Principle, by contrast, does not rule out using force to protect people from ills other than force, such as disease, malnutrition, or illiteracy. It rules out only using force to protect people from ills that result from their own Choices. It is compatible with a "more-than-minimal" or "welfare" state.

Other liberals respond to the illiberal's second challenge with the:

Duty Principle: (Absent consent) the Force Constraint is lifted when and only when the target violates, or would otherwise violate, a duty.

Since Flintstone had a duty to refrain from force, the "when" direction of the Duty Principle permits the use of force against him. If Prudie has no duty to refrain from a bad choice, the "only when" direction forbids the use of force against her. To be sure, the illiberal might reply that Prudie has a duty to refrain from bad choices. Perhaps she has a duty to herself (Arneson 2013a). Or perhaps she has a duty to Sage to spare him of one more bad example or potential partner in crime (Wall 2013a, 2013b, 2013c). But the liberal can reasonably reply, first, that even if there are duties to self, the Duty Principle applies only to duties to others, and, second, that there is no duty to others to refrain from bad choices. After all, when making major life choices, we don't fret about whether we are fulfilling a duty to set a good example.

The problem for the liberal, however, is that the “only when” direction of the Duty Principle is unmotivated and untenable (De Marneffe 2005 130, 2010 76; Tadros forthcoming ch. 6, although his doubts seem prompted by exceptional cases). Once the Avoidance Principle has been clarified, there is little reason to accept it. In justifying force, the load-bearing considerations are that the force serves a greater good and that the target had adequate opportunity to avoid it by X-ing. Whether the target also had a duty to X plays no direct role. Moreover, there are counterexamples to the Duty Principle (Kolodny 2016). Setting aside tidier, but more contrived counterexamples, consider laws that solve coordination problems, or require licensing, or prohibit “attempts” that will not succeed. Barring a general duty to obey the law, some violate no duty in breaking these laws. Yet, it seems, such laws may be enforced.

Finally, there are two error theories for the Duty Principle: explanations of why it is so natural, at first glance, to assume that deterrents may be forcibly imposed only for the violation of a duty. First, the Condemnation Principle, which *deems unfitting condemning the target for wronging others* when he hasn’t wronged others, is easy to confuse with the Duty Principle, which *forbids using force* when he hasn’t wronged others. Second, there is the:

Wrongful Benefits Principle: One cannot cite as “costs” of exercising one’s opportunity to avoid force by X-ing that one thereby forwent the benefits of wrongfully refusing to X.

Hence, if one had a duty to X, the opportunity to X was likely adequate. But it is compatible with having no duty to X that the opportunity to X was nonetheless adequate. This is likely to be so for Prudie, since her X-ing—abstaining from the bad choice—has no cost to her at all.

7.4. Must illiberal intervention involve force?

If the Responsibility Principle is correct, then the state may not follow through on hard-paternalistic threats to use force. So far, so good for the liberal. The trouble is that some interventions, which any liberal would want to rule out, do not use force. Imagine (to take an example from Kolodny 2016) the Omittite Empire. Their Emperor, the Guardian of the Ladder, need not put violators of his directives in prison. This is because each Omittite, to survive the elements, must descend into his naturally carved hole each night. Every morning, the Guardian drops the Ladder into each hole to enable its occupant to

climb back up. His deterrent is simply to withhold the Ladder, confining the occupant there for a fixed period. Suppose an Omittite, “Holton,” violates some illiberal directive, and so the Guardian, as announced, does not drop the Ladder into Holton’s hole for several months. This isn’t a use of force or an “active harming.” It’s simply a failure to aid. Yet it seems that no liberalism worth the name would countenance the Guardian’s threats of imprisonment for violating illiberal directives. All the same, he uses no force, nor violates any other familiar deontological constraint. So, in sum, the Force Constraint is not enough to prohibit illiberal interventions that *don’t* use force.

8. A right against “coercion” or “threat”

We have just been considering a right against *force*. Why not consider instead a right against *threats*? After all, even if the Guardian doesn’t use force, he nevertheless threatens Holton. On this proposal, the relevant “invasions” are not physical incursions into one’s “personal space,” but instead *a certain species of changes to one’s choice situation*.

Yet the proposal faces three basic objections. First, we don’t have a right against *all* changes to our choice situations. Others change our choice situations left, right, and center. Nor can we say that we have a right against, more specifically, changes to our choice situations that take the form of announcing an intention to X unless we Y. People can offer us, without our leave, to X if we don’t Y. The right must be against a still more specific class of changes. It’s tempting to reply: “The relevant class is of ‘coercive announcements,’ whatever ‘coercive’ means in plain, old English (or, alternatively, of ‘threats,’ whatever ‘threat’ means...).” The trouble is not that “coercion” has multiple meanings (Berman 2002). Nor is it that these meanings each have vague boundaries. The trouble is none of these meanings serves the present purpose. Some uses of “coercing” mean: “*using force* on someone so that they do something, or at least so that their body is located or arranged in a certain way.” But that’s back to the proposal of Section 7: a right against force. Other uses mean: “announcing an intention to *use force against* the addressee unless the addressee does something.” But this does not account for the Guardian’s forceless threats. Other uses mean: “announcing an intention to *wrong* the addressee unless the addressee does something.” But, again, we are supposing that imposition of the cost is not itself wrong. Other uses

mean, with Raz, “steering so compellingly as to excuse or justify compliance.” But, again, even threats of imprisonment, needn’t compel.¹⁰ Other uses mean “announcing an intention to X unless the addressee Y’s where that *announcement itself wrongs* the addressee.” But then the announcement has to be wrong independently of the right.

Second, what evidence do we have of a right of the kind that the liberal needs? It might be said that such a right best explains why certain announcements wrong us. But we can explain this well enough without such a right. For the most part, as we noted at the start of Section 3, such announcements wrong us by leaving our choice situations worse (again see Kolodny ms).

Finally, not all illiberal interventions need to change choice situations by announcing intentions to X unless the addressee Ys. Suppose that the state were to continue to command us as it currently does, but without any threats. In this *Trusting Future*, the state’s commands, even without the backstop of jails and gallows, serve as decisively salient coordination points or tap dispositions to reflexive compliance. Would *this* make it permissible for the state to command citizens to avoid Brainechanics (Wall 2005 292; Bird 2013; Quong 2014)? Our liberal sympathies seem to resist that conclusion.

9. A right against commands? Social standing as sovereign over oneself

Perhaps the lesson to draw is that commands themselves can be “invasions”: that we have a right against being addressed by certain kinds of commands. The idea, admittedly speculative, would be that there is a right against being addressed with certain commands, by a “de facto authority,” even when they are not backed by any further penalties. A “de facto authority,” in my (idiosyncratic) usage, is an (individual or corporate) agent whose commands are generally obeyed, for whatever reason: whether from a belief in the agent’s moral authority, fear of the consequences of disobedience, a reflexive disposition to comply, or temporizing calculation. By contrast, a routinely ignored, sidewalk crank, who urges “Repent!” would not be a de facto authority.

Suppose that this right, like the right against force, was a right to enjoy adequate control over subjection to such commands—“adequate” as balanced against the burdens that others would have to bear to provide one with greater control. Then analogues to the Avoidance and Responsibility Principles

would follow. And they would single out the state's hard-paternalistic commands for special concern. For, while we may control our subjection to certain de facto authorities, we don't control our subjection to the de facto authority of the state. This is so even if the state, as with the Omittites, wields no force, or, as in our Trusting Future, makes no threats. So, if the state's commands were hard paternalistic, we would not have adequate control, according to the Responsibility Principle, over our subjection to those commands. So the right would stand as a bulwark against such commands.

Granted, a right against commands may seem like moral shadow boxing. For commands do not invade anything "real," one wants to say, such as one's body, or property, or choice situation. Suppose, however, that what is to be protected is a kind of social standing. Then it is perhaps less mysterious that there should be right against being addressed by those commands that, in virtue of being routinely obeyed, have social reality as commands. For whatever else one's social standing may depend on, it would seem to depend on how one is addressed, where that in turn depends not simply on what is said to one, but also on the broader, recognized significance, in one's society, of what is said. The speculation, then, is that one enjoys a certain kind of social standing insofar as de facto authorities, whether individual or collective, do not, in ways that one does not adequately control, command one. One is sovereign over oneself, one might say. No other earthly authority, individual or collective, tells one what to do, or "bosses one around."¹¹

One may be tempted to put this by saying that such commands are "symbolically" important. But this is misleading. It's like saying that a (seeming) friend's falseness is "symbolically" important. On the contrary, a (genuine) friend's loyalty is partly constitutive of the friendship. Likewise, not being subjected to such commands, we are speculating, is partly constitutive of the relevant social standing. Moreover, like friendship, this social standing may be partly constituted by attitudes toward the social standing itself (in addition to the attitudes toward commands that constitute de facto authority). In a society with no conception of this form of social standing, no conception of people as sovereign over themselves, the social standing itself cannot exist, just as in a society with no conception of friendship,

friendship itself cannot exist. Instances of that kind of value are simply not to be had in that society—even if instances of other (perhaps incompatible) values are.

If there were such a right, against subjection to the commands of a de facto authority, it would be unsurprising if we were apt to confuse it with a right against force or coercion (understood, say, as compelling steering). For, when we set aside the Omittites and our Trusting Future, and consider instead the normal run of human affairs, we find that de facto authorities tend to establish themselves, and establish themselves as inescapable, only insofar as they have the capacity for force or coercion (or both, e.g., the capacity to control, by credibly threatened violence, access to food stores). Thus, Raz would be right that coercion is specially connected to illiberal interventions. However, the connection would not be, as the Harm Principle suggests, that only coercion can be illiberal. For, as we have seen, non-coercive commands can also be illiberal, when they issue from a de facto authority. The connection would instead be that, as things usually are, a de facto authority cannot establish itself, and establish itself as inescapable, unless it can coerce.

This right against commands might permit some ends-paternalistic interventions. Funding for the arts might be permitted, insofar as it did not command anything, but merely made options available. This seems a palatable consequence. However, this right might forbid some hard, means-paternalistic interventions, such as sin taxes on cigarettes, which seems more rigoristic.

But this may be the least of our worries. What's more troubling is that the right against commands does not explain why parallel interventions against particular religions—sin taxes on the purchase of certain religious articles—are far more objectionable. Furthermore, the right does not explain why the state may not *advise* people, with reasoned public service announcements, to stay away from Brainechanics, even if it does not *command* them to do so.¹² So, even if we take up the speculative idea of a right against commands, we still need some further support for liberal protections.

10. Disparities of consideration and social standing as an equal

This further support may be found, I now want to suggest, in an idea of Raz 2001: that illiberal interventions somehow treat those who are identified with the choices that they target as “second-class

citizens.”¹³ As I would put it, illiberal interventions constitute, or encourage, relations of superiority and inferiority between members of groups that are socially identified with certain choices, just as, in other contexts, certain measures or institutions constitute, or encourage, relations of superiority and inferiority between members of groups defined along the lines of race, class, ethnicity, or gender. They put members of one group—in a sense that is immediately familiar, even if its analysis is elusive—“beneath” members of another.

What are relations of social superiority and inferiority? Kolodny 2014 suggests that they consist, perhaps among other things, in asymmetries in power and de facto authority, and, more relevantly for present purposes, in disparities of “consideration.” These disparities are pervasive patterns of responses toward people, in virtue of their being believed to have certain traits, that mark them as “higher” or “lower” in a social hierarchy.¹⁴ These asymmetries and disparities are more important for relations of social superiority and inferiority insofar as they are inescapable and “final”: that is, insofar as they occupy the highest point in the hierarchy that regulates the distribution of other forms of power, de facto authority, and consideration.

“Consideration,” our focus here, eludes easy analysis. On the one hand, merely recognizing someone’s special attributes or accomplishments needn’t amount to a disparity of consideration, marking him off as belonging to a higher caste. Buyers in a slave market can recognize special skills or strength in their prospective purchases. On the other hand, disparities of consideration need not (although they usually do) take the form of unequal respect for people’s “independent” claims: that is, claims to things other than relations of equality themselves, such as claims to a good choice situation. And they need not (although they sometimes do) take the form of a judgment that some lack the basis, such as humanity or rationality, for moral standing: for bearing the full range of rights and duties. People can be assigned to a lower order without such judgments. To think otherwise is to underestimate our genius for social distinctions.

Still, we can list some necessary conditions of consideration. First, consideration spreads to the person as whole; it isn’t cabined to a particular aspect. Second, the responses that constitute consideration

are apt to be triggered (when someone is thought to have the trait) in a wide range of social contexts (compare Lippert-Rasmussen 2014). Third, the responses that constitute consideration, unlike love and friendship, are agent neutral. Members of the higher caste are favored over members of the lower caste, whoever does the favoring. Finally, the responses that constitute consideration aren't mere detached appraisals, but have practical import, for how to treat the target of the response.

While what is primarily objectionable is the pattern of responses that constitute the disparity of consideration, particular responses can be wrong by helping to constitute or sustain it, or by endorsing it. These responses can wrong different parties in different ways: the specific target, if any, of the response; the members of the group defined by the trait; and, in the broadest sense, everyone, including those outside that group, whom that pattern deprives of relations of equality. Many paradigm cases of wrongful discrimination are wrong, at least in part, because they are such responses.¹⁵ Of course, many cases of wrongful discrimination are wrong in addition, or instead, because they simply do not equally respect people's independent claims. But these are distinct wrongs, and, in principle, discrimination can wrong by contributing to a disparity of consideration, without failing to meeting anyone's independent claims.¹⁶

Which brings us to the intervention against Brainechanics. Just picture it—and you needn't go to extremes. There aren't any house-to-house searches or forced confessions. Rather, when the practice of Brainechanics is so blatant that peace officers can't pretend that it escaped their notice, they will issue a citation, which will escalate, after repeated violation, from a warning to confiscation of ritual equipment, a small fine, or a night in jail. Nothing terribly ham-handed or Orwellian. Yet how could this fail, in a social world anything like those we are acquainted with, to mark Brainechanics as "beneath" others?¹⁷

Why is this? Because, I suggest, the measures in question express, and encourage the expression of, condemnation of Brainechanics, not necessarily as a practice that wrongs others, but as no way to live. And in a social world anything like ours, to condemn that choice is to rank those who are socially defined by the choice as inferior. In this context, there is no way to distinguish condemnation of the trait from subordination of the identity that trait is assigned. Compare the tension in declaring: "People are just objectively uglier when they have the physical characteristics associated with your race. But I don't mean

that in a racist way.”¹⁸ It’s not just a matter of disentangling the trait from the identity in one’s own thoughts, or of conveying to others that one has so disentangled them. It’s also a matter of what the context even makes it possible to say (Eisgruber and Sager 2007, Hellman 2008).

The suggestion, then, is that, despite everything else that might be said in favor of the intervention, it shares some of the characteristics of certain paradigm forms of, e.g. racial, discrimination and so is objectionable for much the same reason. And that objection is standardly treated as something approaching a side-constraint. The argument, “Yes, it would be discrimination, but think of the gains in efficiency!” scarcely gets a hearing.

This isn’t to deny that the illiberal interventions in Brainechanics improve choice situations in a way that isn’t unfair to anyone: that no one’s independent claims get short shrift. Moreover, they might be, in principle, known to have precisely that aim (although, in that case, at least the Brainechanics will think that they are well-intentioned mistakes). And the illiberal interventions need not deny anyone’s basic moral standing. Indeed, the Brainechanics might be our daughters and sons. But, as we noted earlier, disparities of consideration need not consist in a neglect of independent claims or a denial of humanity. Nor is this to claim that disapproval of any trait, as a rule, somehow amounts to a disparity of consideration. While, in principle, any trait might attract a disparity of consideration, in practice, not all do. In practice, disapproval of some traits is cabined, relevant only in special contexts, and so on. Some traits, like political affiliation in a healthy democracy, may not lend themselves to hierarchical divisions. How and why this happens is a largely matter of historical contingency.

Against this, it might be said that the Brainechanics are relevantly different from the sort of group, such as those defined by race, that are the paradigmatic targets of wrongful discrimination. First, it might be said that whereas, say, members of a racial group can do nothing to shed their membership, Brainechanics are free to leave the Temple at any time. But, on the one hand, ceasing to practice or identify with a faith is not always enough to shed the membership associated with it. One may forever be a lapsed Brainechanic. And, on the other hand, racial discrimination might, if anything, be more objectionable if one could escape it by “shedding” one’s racial identity (e.g., “passing”). Second, it might

be said that being a Brainechanic is due to a flaw: namely, poor judgment. “Race,” by contrast, involves no such flaw. True, but personal flaws don’t, in general, justify different grades of citizenship.¹⁹

Illiberal interventions will be objectionable, on this account, insofar as they are seen to condemn the relevant choice. Criminal punishments otherwise reserved for serious wrongs to others will be seen to condemn the choice. The same is true of public prohibitions, even if not backed by any penalty. And the same is true of mere advice, when it comes from the state. Imagine state-funded television spots featuring the admonitions of celebrities. (The crusty-but-benign judge intones: “I’d advise you to steer clear of Brainechanics. It’s no way to live.”) Nothing totalitarian, but the stigma seems clear.

To be sure, it is not wrong in the same way for an individual (or private association) to give such advice. The state remains special, despite all that we have done to question the importance assigned to “force” and “coercion.” First, even if the state does not use force or threats, it nonetheless wields final, inescapable, and overwhelmingly superior de facto authority (as well as other forms of power) over individuals. Consequently, each individual is, in a manner of speaking, “subordinate” to the state. Or, more carefully, the fact that the state wields final, inescapable, and overwhelmingly superior power and authority over individuals risks their being subordinated to those individuals whom the state represents. Second, the state defines a basic social standing, citizenship, within which people are equals regardless of other hierarchies within private associations. For both of these reasons, if the risk of disparities of consideration is already live—if, say, there is a history of disparities of consideration among groups of that kind—and the state affiliates itself with one of the relevant groups against another, this itself can contribute to the disparity, not simply causally, but also constitutively. Third, individuals cannot but form and express judgments about the worth of certain choices. This is part of their deciding how they themselves are to live. The state, by contrast, does not need to make up its mind. Finally, these very differences, in turn, provide a context within which private individuals can effect a distinction between condemning the choice and denying equal standing. One citizen can preface her advice to another with something like the line Hall puts on the lips of Voltaire: “I disapprove of what you say, but I will defend to the death your right to say it”: “While (i) you are, or would be, making a mistake in remaining within,

or joining, the Temple, (ii) I oppose any intervention in your doing so that threaten your standing as an equal member of our shared society.” The advice is thus focused explicitly on the value of the choice and not the social standing of the person. The state, by contrast, can’t say this without a kind of pragmatic contradiction. For, in saying (i), the state does the very thing it commits itself to oppose in (ii).

Which measures “condemn” or “affiliate” is a contingent matter. As is the nature of symbols, a great deal will depend on history and context. In particular, the fact that a line was drawn in the past may make crossing it now significant in a way that it would not otherwise be. The establishment of a Federal Church of America is not only constitutionally, but also morally, unthinkable. But comparable alarm about the Church of England, given what it has become, may seem provincial (like certain arguments for the necessity, in all times and places, of judicial review of primary legislation).

Now, this account—which might be caricatured, with some justice, as “liberalism as identity politics”—has an obvious limitation. It protects only those choices that are associated with an identity that might attract a disparity of consideration. Religious affiliation—along with its negative image, the rejection of any religious affiliation in an overtly religious society—may be such a choice. But there are other choices, not associated with any such identity. Illiberal interventions in these choices, such as means-paternalistic interventions in health or finances, needn’t mark members of any group as lower. So, on this account, if end-paternalism tends to be more objectionable than means-paternalism, it is because social identities tend to coalesce around ends rather than means. And some ends, such as engagement with the arts, don’t gather social identities around them, which would imply leniency toward the associated end-paternalistic measures.

These implications are not unwelcome, since these interventions don’t seem objectionably illiberal, at least not in the way that a ban on Brainechanics would be. However, other such interventions, which do not mark an underclass, *do* seem objectionably illiberal. Consider a system that steers people toward good career or relationship “matches.” In principle, everyone’s options might be pared back equally (e.g., each astrological sign might be banned from dating exactly one other sign). Or, to take an example put to me by Jon Quong, consider a homogenous, puritanical society in which all agree that sex

outside of marriage is bad. Even in such a society, criminal penalties for fornication would seem intuitively illiberal, but there would be no non-puritans to be subordinated. To explain why these interventions are illiberal, then, we must hope that the materials of Sections 3–4, 7, and 9 suffice.

These examples, incidentally, illustrate how social equality, discussed in this section, is a different kind of social standing from self-sovereignty, comprised by the right against commands, discussed in section 9. On the one hand, self-sovereignty can be compromised even when one is the social equal of other individuals. For one can be subject to the commands of a *collective* de facto authority, without being subject to the *superior* de facto authority of any other *individual*.²⁰ On the other hand, as the case of the state advice reflects, one can suffer from a disparity of consideration, and so stand to others as inferior, without being subject to commands (that one does not adequately control) of a de facto authority.

11. A justificatory restriction?

Some may marvel that we have not yet discussed another explanation of the prohibition on illiberal interventions, associated with the phrase “public reason”—so widespread is it in the philosophical literature on liberalism. The explanation begins with the idea that certain forms of treatment—most often “force” or “coercion”—pose a “problem” or “objection” (e.g., a kind of “disrespect” or “alienation”) which makes such treatment impermissible, unless those so treated could “reasonably accept” grounds that, if true, would justify that treatment.²¹ On a stronger reading of “reasonably accept,” the grounds in question must be compatible with the actual, particular religious, moral, philosophical, “comprehensive,” etc. commitments of the person so treated (Cohen 2009, Estlund 2008, Gaus 2011, Quong 2011 168, Tadros forthcoming, Ch. 8), unless these commitments are “unreasonable.” On a weaker reading, they may instead be relevantly “generic”—based on ideas from the “public political culture” or “common human reason”—even if they aren’t compatible with the actual, particular commitments of the person so treated (Rawls 1993, Freeman 2007 236–7). A now vast literature proposes “justificatory restrictions” of this kind, with Rawls’s “Liberal Principle of Legitimacy” being perhaps the best-known instance (see also Nagel 1991 and Larmore 2008). Suppose, to resume the explanation, that illiberal interventions involve

the problematic forms of treatment. And suppose there is no justification of illiberal interventions that those so treated can reasonably accept. Then the justificatory restriction would seem to prohibit illiberal interventions.

If I have postponed considering the appeal to a justificatory restriction until now, it is because the foregoing discussion better positions us to see why that appeal is unlikely to be much help. To begin with, it's not clear why we should accept a justificatory restriction. That is, why is a justificatory restriction the correct “solution” to the “problem” posed by the problematic treatment? The literature offers little in the way of direct answers.²² And offhand the suggestion that a justificatory restriction is the correct solution is mysterious. If the problematic form of treatment is force, then the problem would seem to be that it violates the Force Constraint. In that case, a sufficient solution would seem to be adequate opportunity to avoid force (the Avoidance Principle of section 7), as our imagined illiberal uses of force provide. If the problematic form of treatment is threat or coercion, then (barring the identification of a right against changes to choice situations of the kind that went missing in section 8) the problem would seem to be leaving someone’s choice situation worse than he is entitled to. In that case, a sufficient solution would be not to do that, and again our imagined illiberal interventions do not. In sum, once we state the problem that a justificatory restriction is to solve, a more direct solution suggests itself.

Even if we accept a justificatory restriction, we should not expect to be able to derive the prohibition of illiberal interventions from it. First, some cases for the justificatory restriction presuppose liberal protections. For example, Freeman (2007 218–9) suggests that a violation of a justificatory restriction would be wrong because it “borders on a violation of liberty of conscience” (compare Tadros forthcoming Ch. 8: I: i).²³ Second, the justificatory restriction would not rule out some illiberal interventions in any event. Some illiberal interventions might be justified on grounds, such as domestic peace, that are either generic or compatible with a wide range of particular views (Arneson 2014; however see Cohen 2009 238). And even illiberal interventions that can be justified on grounds that are compatible only with a narrow range of particular views might nevertheless take place in a society, such as that of Quong’s Puritans, whose members agree on those particular views.²⁴ Finally, it is not clear that

the state must even involve the “problematic” form of treatment. If the treatment is force or coercion, then the justificatory restriction would not apply to the Omittites or our Trusting Future—any more than it now applies to the prayers or sermons of private citizens.

Granted, one might try to defend a justificatory restriction, without appealing to force or coercion, by expanding the suggestion of Section 10: that when the policies of a superior, final, and inescapable power or de facto authority affiliate it with one group against another, where there is a live risk of a disparity of consideration between these groups, this itself can contribute to a disparity of consideration. Going further, one might argue that the very fact that *some people cannot reasonably accept* those policies itself subordinates those people to those who can (Nussbaum 2011; for criticism see Wall 2005 301–3, 2014).²⁵ Yet I doubt that the mere absence of this sort of abstract justificatory relationship would subordinate anyone. It lacks the right sort of social salience. For instance, state funding of the arts, based on premises that some cannot reasonably accept, would not seem to subordinate them to those who can.²⁶ Nor would state policies implementing liberal justice, based on premises that some established academic philosophers, because they are committed, on abstract philosophical grounds to utilitarianism, cannot reasonably accept (at least not compatibly with their actual particular commitments, as the stronger reading requires).²⁷

12. Conclusion

This paper has canvassed, in a pluralistic spirit, familiar candidate elements of a defense of liberalism. Some of these familiar candidates, such as liberal protections as conditions for valuable activities and a right against force, we concluded, are indeed an important part of the story. Other of these familiar elements, such as a stricture on paternalism, or a right against changes to one’s choice situation, or a justificatory restriction requiring reasonably acceptable grounds, have a less certain basis and add little to the defense of liberalism. In any event, all of these familiar candidates, even when taken together, leave a residuum. There are intuitively illiberal interventions that they do not explain.

This led us to explore further, less familiar, elements of a defense of liberalism. In a frankly speculative spirit, we considered a possible right against commands, understood to comprise a kind of

social standing, of self-sovereignty. We also suggested that a disparity of consideration, and so a loss of a different kind of social standing, of equality, can be wrought by condemnation of choices with which social groups are identified. Adding these more speculative elements to the more familiar elements just mentioned would make for a pluralistic defense of liberalism that keeps better faith with our (or at least my) liberal sentiments. Whether they are more than speculation, however, is another matter.

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² Of course, “liberalism” may involve more. There is freedom of thought and expression, which, in ways both manifest and elusive, seems categorically different from freedom of action. (We protect public advocacy of crime, for example, in a way in which we do not countenance its conspiracy, attempt, facilitation, or commission.) There are rights to participate in democratic processes. And there are procedural safeguards, such as the right to a fair trial.

³ Too few choices count as protected if they are defined, instead, as choices that not only do not harm others, but also are such that intervening in them averts no harm to others.

⁴ Some “fees” and “taxes,” like “sanctions,” “steer” people from relevant activities. Sanctions tend to differ in that they (i) condemn the activity, (ii) are sensitive to its intent, (iii) increase abruptly when the activity crosses some threshold, and (iv) increase with repetition (Cooter 1984, Cooter and Siegel 2012).

⁵ An “endorsement constraint,” as it is sometimes called, is a special case of matching, in which a choice is good for the chooser only if she endorses it.

⁶ Although Raz 1986 suggests than an “adequate range” need not require any bad options, some might resist this. But even so, why would the interest in an adequate range supply any argument against attaching costs to bad options? Is the argument that attaching a cost makes those bad options unacceptable, thereby depriving people of an adequate range? But weren’t the options, qua bad, already unacceptable, before the cost was attached?

⁷ The same problem arises if we define one’s “life” more narrowly in terms of the valuable activities of Sections 3–4: one’s “religious life” or “sexual life.” Compare De Marneffe 2010 33–34 on “sexual autonomy.” What counts as an invasion of one’s sexual life?

⁸ To cover the famous trolley case, we might prefix: “Except where the force is the flip-side of the greater good, not a means to, or a side effect of a means to, the greater good...” (Kamm 2006).

⁹ These further libertarian commitments, however, have further implications for liberal protections if the Duty Principle, below, is assumed: that (absent consent) the Force Constraint is lifted just when a duty is at stake. Libertarians who hold that one can, by voluntary choice, make it permissible for another to kill one in gladiatorial combat, or hold one in slavery, will then hold that it is wrong to use force to prevent him from killing one in gladiatorial combat, or recovering one as a fugitive slave, because he has no duty to act otherwise.

¹⁰ Raz seems to suggest, at several points, something like a right against coercion so understood. Compelling steering can be wrong, even when beneficial, because it expresses disrespect for, or lack of concern for, autonomy (1986 378, 416). But this is puzzling. The value of autonomy, for Raz, derives from the value of an independently selected worthwhile life. The steerings that we are presently considering *better* enable one to live such a life (Quong 2011 58). A further puzzle is that Raz seems to suggest that coercion will nonetheless be *interpreted* as expressing disrespect for, or lack of concern for, autonomy, unless it takes place within a relationship of trust (1986 157, 419; 2001). But Raz grants that coercion to get someone to fulfill his duties of autonomy, even without trust, won’t be so interpreted, since such coercion doesn’t face the same objection. So why does only coercion (without trust) for the sake of *coerced*’s autonomy, and not also coercion for the sake of *others*’ autonomy, express disrespect the *coerced*’s autonomy? Wouldn’t one expect precisely the opposite?

¹¹ To be sure, a right against commands would place great weight on the distinction between commands and other speech acts. How commands differ from advice is perhaps clear enough. But how they differ from promises of rewards is less so. But perhaps promises of rewards for desisting from bad choices, if they were generally accepted, would themselves be objectionably illiberal.

¹² One might respond by trying to expand the class of objectionable “invasions” to include advice. But warning about the risks of smoking, or offering statistics on good career and relationship “matches,” does not seem objectionably illiberal.

¹³ Raz suggests, more precisely, that paternalistic coercion assigns the coerced second-class status. This in turn undermines trust, without which he argues that paternalistic coercion is subject to objection (see note 10). But why not cut out the middleman? Assigning second-class status is

objectionable in itself. We needn't go on to argue that it vitiates the defense against a different objection (i.e., to paternalistic coercion without trust). Moreover, what assigns second-class status is not coercion, but condemning choices with which some are identified. Also compare Wall and Klosko 2003, Wall 2005, Christiano 2006, Nussbaum 2011, and, especially, Eisgruber and Sager 2007.

¹⁴ Some might say that disparities of consideration are objectionable only because, if recognized, they carry psychic costs. But this is like saying that the insincerity of a (seeming) friendship matters only if one finds out about it. Moreover, I doubt that we can identify which psychic costs matter, and explain why they matter, in a way that does not depend on some prior objection to disparities of consideration and to the resulting social inequality. If, for example, the inferior internalize the lesser consideration, so that they are less pained by it (or if the superior are buoyed by the greater consideration) is this an unambiguous good? Furthermore, recognition of lesser consideration presumably has these psychic costs because people attach importance to the disparity of consideration itself. Why second-guess them?

¹⁵ Compare Hellman 2008; Scanlon 2008. Hellman, however, seems to view the expression as somehow denying the “humanity” or, as I would put it, basic moral standing of the target. The view I’m suggesting is closer to a revision of Hellman’s view, proposed, for criticism, by Arneson 2013b 93.

¹⁶ Hellman 2008 gives the example of black prisoners under apartheid being issued more comfortable, but demeaning, short pants. For other excellent contributions to the recent efflorescence of philosophical work on the question, see Moreau 2010, Arneson 2013b, and Lippert-Rasmussen 2014.

¹⁷ This may help to explain something that should have struck us as odd in Rawls. Although Rawls presents banning a particular religion as the paradigm of unequal liberty (1971 §33), it’s obscure, on reflection, why it should be so. After all, everyone faces the same ban. It removes the very same option from everyone’s menu, like the prohibition of alcohol, or a law against perjury. On the present understanding, it’s not because it involves any inequality in liberty, in the sense of what is permitted to people—or even in the “value” of that liberty, assuming that the religion is one that everyone would be better off without. It’s instead because of the subordinate status it assigns to those who are socially identified with the banned choice.

¹⁸ Indeed, I feel I need to apologize for even using the example.

¹⁹ Does a concern for social equality then give us a reason to refrain from otherwise justified criminal penalties on the grounds that they condemn the choice to commit crime and so condemn the criminal (Wall and Klosko 2003 20; Wall 2005 299–300)? To begin with, not all criminal penalties need to target an existing identity, as a “career criminal,” or assign a new identity, as “convict.” In many cases, it would be better if they focused on particular violations of the law, imposing the regrettably necessary deterrent cost in a way that is more or less cabined from the rest of the target’s social identity. In those cases in which targeting a existing criminal identity (e.g., as a Mafioso or militant white supremacist) or assigning a new identity as a convict (e.g., by long-term incarceration) seems more acceptable, the criminals have not simply broken the law, but moreover wronged others in grave ways. Since their stigmatization is more or less the flipside of insisting on the equal standing of their victims, it is unclear how a concern for the equal standing of all concerned could counsel mitigating such stigmatization. By contrast, Brainechanics does not wrong anyone (at least not gravely) or deny anyone’s equal standing.

²⁰ One might say that this makes one the “inferior” of the collective, but it’s a difficult thought. Does one have a claim to equality with collectives, such as Indonesia or the Roman Catholic Church?

²¹ Why does it suffice that one could (i) *reasonably* accept (ii) the *grounds*, even though one does not (i) *actually* accept (ii) the *justification*? Perhaps the idea is that burdens on both sides must be fairly balanced. First, even if one is burdened to the extent that one is “further” from actual acceptance of the justification, others are burdened to the extent that the treatment is forgone. Hence the fact that one could reasonably accept the grounds may be “close enough,” in light of the burdens that others would have to bear either to bring one closer or to forgo the treatment. Second, it may be fair to ask others to do their part in bringing it about that one is not subject to problematic treatment whose justification one does not accept. But they can do their part either by refraining from the treatment or by helping one accept it. If others have ensured that one could reasonably accept the grounds, they may have given adequate help.

It's not *their* responsibility if one refuses to actually accept the justification. This is especially so, if one's refusal is epistemically unreasonable (e.g., intellectually lazy) or morally unreasonable (e.g., unwilling to take others' interests into account). If this explanation is right, however, then the justificatory restriction would seem to require not only that there be grounds that one could reasonably accept (as is so often suggested), but also that one receives adequate help to actually accept the justification.

²² Gaus 2011 gives a clear answer: the problematic "treatment" of others is holding attitudes, such as resentment, toward someone that presuppose that they have, or had, a duty to act otherwise. This is appropriate, he forcefully argues, only insofar as that person could accept that he has that moral obligation. (The argument, roughly, is that it best explains why it is inappropriate to resent children or the mentally impaired.) Yet, as we saw earlier, illiberal interventions need not presuppose any such duty. Gaus also suggests that "coercing" people is impermissible unless it is "publicly justified" (2003, 2009 89, 2011 17.3) (though he acknowledges at times a "blameless liberty" to coerce even without public justification (2011 22.3.b, 2014)). But *this* restriction is not supported by the argument just described, since coercing someone does not presuppose that he has any duty. (Indeed, the argument only makes it harder to justify *resenting* someone for coercing you.)

²³ Similarly, Quong (2011 291) defines "reasonable" to require acceptance of certain liberal ideas. But then to motivate the resulting justificatory restriction, it seems, we must independently motivate these liberal ideas, which directly justify liberal protections (183). For why else care what can be justified to those who accept these ideas, as opposed to any other arbitrarily defined group? So the justificatory restriction seems to presuppose an argument for liberal protections that does not depend on it.

²⁴ It seems implausibly constraining to require grounds compatible with any commitments that someone *might* hold (so long as they are reasonable) (Cohen 2009 234).

²⁵ Note that, on this argument, reasonable acceptability matters *only relationally*. If *no one* could reasonably accept the policies, then there would be no one to be subordinated to.

²⁶ Some reply that the justificatory restriction applies only to "basic justice" or "constitutional essentials" (Rawls 1993). But why (Arneson 2003 209; Quong 2011 258)? And why does public support for a particular religion, say, involve "constitutional essentials" whereas public support for the arts does not? It is hard to imagine an answer that would not recapitulate the dialectic of this paper.

²⁷ One might argue that the utilitarian's inability to accept policies implementing liberal justice is necessarily unreasonable (Quong 2011 185) and so his subordination is somehow not objectionable. But what seems implausible is that he is subordinated at all. And if he has an objection, it isn't clear how classifying him as "unreasonable" in the present sense answers it. For "unreasonable" in the present sense means not accepting specific liberal ideas, as opposed to something that would make it unfair to press one's objection, such as being lazy or self-centered. (See note 21.)