

## THE LIMITS OF LIBERAL NEUTRALITY

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### ABSTRACT

The most plausible arguments for toleration — the need for pacification, for endorsement, the consequences of fallibility, and the argument from the conditions of acquiring justified belief — do not support a full-fledged neutrality-principle. If only because supposedly neutral goods have to be specified and weighed against each other, daily politics is irretrievably perfectionist. This can be justified, first, by the fact that not only polyvalent instrumental goods but also intrinsic goods may have a public dimension, secondly by the perfectionist character of positive obligations. The strongest defense of constitutional restrictions on perfectionism concern policies aimed at changing thought, not only action.

### 1. *Environmental policy and individual life-style*

Patterns of consumptive behaviour are an important cause of environmental problems. Relevant examples are provided by mobility and the production of refuse. The use of private cars for example requires an infrastructure which reduces and fragments the area available for plants and animals, leading to smaller populations and a decreasing number of species. It is also one of the most prominent causes of air pollution. The emission of carbonmonoxid contributes to the production of photochemical smog in the cities, and to the impairment of the vitality of forests, and the emission of carbondioxyd brings about a mondial change of climate of still unknown proportions. Changing patterns of purchasing and using consumer goods on the other hand create an enormous increase of refuse. As recycling is expensive and obstructed by the growing use of inseparable materials, refuse is mainly disposed of by dumping or burning. Dumping pollutes the soil, burning the air and eventually the soil as well.

If a government wishes to lessen the negative impact of consumer behaviour on the environment, which policy instruments does it have at its command? It can raise the price of possessing or of using a private car, it can promote the use of public transport by reducing its price and improving the frequency and the quality of its service, it can stimulate transport by foot or by bicycle by proper infrastructural measures, it can stop the building of new roads, and it can even introduce a maximum number of miles which each motorist is allowed to drive, requiring the installation of a tachograph in each car in order to enforce this quota. It has similar options in the area of the production of refuse: impositions on products made from dangerous materials (e.g. PCB's, mercury, cadmium), or even full prohibitions, legal requirements on the composition of products, obligatory deposits on bottles etc., restrictions on advertising. Some of these measures only provide information about options and their effects, other measures create new options (e.g. of the separate collection of kinds of refuse), others eliminate old ones or raise the costs of choosing them. Still other measures don't aim at changing the benefit-cost balance as such, but rather of general preferences, e.g. the preference for following quickly changing "life-style"-trends.<sup>1</sup> Prohibitions, sanctions and negative price-incentives (as well as the taxes to be raised for paying positive price-incentives and creating new options) obviously restrict individual freedom, policies aiming at preference-change may affect freedom in more subtle ways. Such policies are controversial, perhaps primarily because of the Prisoner's Dilemma structure of the "game" of paying for them, but also because of the controversial nature of the values they are supposed to serve. (These considerations are not completely independent of each other.)

Is it justifiable for the state to interfere with individual freedom in such ways, and, if so, to which extent? That is the question I want to discuss in this paper.

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<sup>1</sup> Cf. Annette Schermer, *Consument, milieu en mentaliteit*, Wiardi Beckman Stichting 1991, 29-30. The factual information of this section also mostly derives from this study commissioned by the think tank of the Dutch Labour Party.

## 2. *The area of proper political concern*

I will approach the question from a liberal perspective. Liberalism as a political morality believes in the existence of a "private domain", a sphere within which the individual should be free, in particular from state interference, to engage in the pursuits she chooses.<sup>2</sup> But what exactly should be the extent of the private domain?

It is often claimed that it should be co-extensive with the pursuit of conceptions of the good life. Government, on this view, should be neutral between rival conceptions. It should not promote the realization of particular ideals, but only create or maintain the conditions under which individuals may choose their own ideals and orient their lives towards them. If some ideals stand to benefit more by this policy than others — an inherently implausible world view may not survive its exposure to freedom of criticism — this does not compromise neutrality as long as the result is unintended.<sup>3</sup> Liberalism wants to exclude perfectionist considerations from the area of political concern.

This is the mainstream view (Rawls<sup>4</sup>, Nozick, Dworkin, Ackerman, Feinberg, Larmore, Kymlicka, Gutmann, Waldron, Van Parijs). A growing number of authors however believe liberalism to be a form of perfectionism itself, some commending<sup>5</sup> and some condemning it for its values. The autonomous individual, the pluralist society: these are liberalism's favourite images of the good life and the good society, but will a society

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<sup>2</sup> The "private domain" in this sense should not be confused with the sphere of domestic and family life. Not only because it may include the spheres of private enterprise and voluntary association as well, but primarily because it doesn't identify a sphere of activity at all. The state may intervene legitimately in each of these spheres, but only for certain reasons. The area of legitimate political concern is defined by the acceptable aims of state action.

<sup>3</sup> Rawls has mistakenly been thought to subscribe to neutrality of effects, e.g. by Joseph Raz, *The Morality of Freedom*, Oxford U.P. 1986, 117ff; cf. John Rawls, *Political Liberalism* (PL), Columbia U.P., New York 1993, 1991-194.

<sup>4</sup> In his general retreat from controversial views, Rawls has now restricted the range and scope of the neutrality principle in several ways, cf. PL, 213-216, 247-254.

<sup>5</sup> These liberal perfectionists include Joseph Raz, Vinit Haksar, *Equality, Liberty and Perfectionism*, Oxford U.P. 1979, and William Galston, *Liberak Purposes: Goods, Virtues, and Diversity in the Liberal State*, Cambridge U.P. 1991.

which adopts them really thrive? Aren't they too thin, too bloodless, too abstract-individualistic? (To the mainstream view this criticism is besides the point precisely because liberalism does not even pretend to offer an attractive picture of the good life.)

I have problems with both views. On the one hand, if autonomy and pluralism are values, they clearly are only second-order ones. If you have no independent interest in the substance of your choices, it cannot matter to you whether these choices are made autonomously or not: autonomy cannot be a 'comprehensive' ideal of the good life<sup>6</sup>. It is therefore possible to accept autonomy as a 'meta-value'<sup>7</sup> and to proclaim neutrality concerning first-order values at the same time. And it seems that the liberal love of autonomy indeed has to be neutral in this way. Liberalism wants to endow people with exercisable rights, but having a right of this kind means being free to do what is wrong from a perfectionist point of view. When you are given freedom of religion, you are thereby allowed to worship false gods. If anyone wants to restrict, by political means, the choice of options to morally acceptable ones, perhaps he will be able to retain a recognizable ideal of autonomy, but it is no longer a liberal one.<sup>8</sup> By insisting on respect for exercisable rights liberalism adopts the policy of neutrality at least for a certain area: the area of the exercise of those rights.

But this, on the other hand, does not imply that liberalism has to adopt the policy without any restrictions. Liberalism pretends to be an expression of the 'overlapping consensus'<sup>9</sup> on principles of political morality in Western democratic societies. But it is obvious that political debate in those societies, not only as a matter of incidental aberration but fundamentally and continuously, concerns conflicting ideals of the good life. Should the unemployed be forced to accept labour they do not like?

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<sup>6</sup> For this concept, see Rawls, PL, 13f.

<sup>7</sup> G. Doppelt, 'Rawls' Kantian ideal and the Viability of Modern Liberalism', *Inquiry* 1988, 413-449.

<sup>8</sup> Cf. Joseph Raz, o.c. 1986, 418-419: in as far as he rejects legal paternalism -the elimination of worthless options by coercive means- he only does it in his non-ideal theory, cf. Govert den Hartogh, 'Het liberalisme van Joseph Raz', *Recht en Kritiek* 16 (1990), 164-165.

<sup>9</sup> Rawls, PL, 15, 39f and *passim*.

Should the government allow the public media to be taken over by commercial interests? Would not the federalization of Europe threaten cultural identities? Doesn't our dependence on medical technology make it difficult for us to accept suffering and death as integral parts of human life? Should we promote generosity by tax-expenditures?

To the extent that liberalism claims to account for our consensual political morality, it cannot subscribe to neutrality of aims without reservation. Liberalism wants to exclude the pursuit of some ideals of the good life — religious allegiance is the prime example — from the area of governmental concern, the “public domain”, but obviously not of all ideals. Is it possible to decide in a principled way how the distinction should be made? In order to do that, it will be necessary to consider, once again, the reasons for anti-perfectionism.

### 3. *Pacification as a moral aim*

Our starting-point must be the fact of pluralism. In a society characterized by consensus concerning the good life, and the good society as a patterning of good lives, the question of neutrality is not likely to arise. But the ‘community’ of communitarians, whether one applauds or deplores the fact, is irretrievably lost.

By taking the diversity of religious and moral opinions to be a fact of modern life I am not committing myself to the idea of ‘presocial atomistic individuals’ well-known for two centuries from the standard stock of anti-liberal criticism (and, to be fair, from some liberal prose as well). Of course conceptions of the good life are acquired in the first place by a socialization-process. Each individual discovers her identity by finding her place in a pattern of relations which are governed by shared norms and values. But these relations will not all belong to one homogeneous tradition. Even if she is ‘situated’ squarely within one particular tradition, from a certain moment on she will be aware that it coexists with others within one political society. This plurality of traditions presents her with some freedom of manoeuvre. From the fact that you have to start taking your values from others, it does not follow that you have to wind up with those same values; that it will be impossible for you to reflect on them in the light of your experience — especially your experience in interacting with people from other traditions. There is no self

without ends; but that doesn't mean that the self has to resign to its once given ends. So people will be able — to different extents — to adjust their traditional roles, and, cumulatively, their traditions, to changing circumstances, individual talents, and new insights. This is the way in which traditions develop: by people incorporating the outcomes of experience and reflection, and trying to maintain a reflective equilibrium. One has not to be a foundationalist to be a liberal. (Rawls isn't.)

I do not claim that this description is a sociologically correct one: it is the picture of a society strongly compartmented into different traditions (like the Netherlands until thirty years ago, and Belgium even more recently). In most western societies the relation between adult individuals and formative traditions may have become considerably more detached and more complex than this picture suggests. But this descriptive conservatism has a strategic point: it shows that the liberal argument starts from rather weak assumptions.

Between members of different traditions at least conflicts of priority between claims on scarce goods cannot be solved by appealing to shared values and traditional roles. A bargaining problem arises, threatening all participants with a suboptimal outcome (cumulating bargaining costs), unless a compromise can be found in time. Such a compromise is perhaps nothing more than 'the civil war continued by other means' (MacIntyre), but sometimes it may be literally a matter of life and death to continue by other means.

The conception of a private domain, freed from state interference, can be seen as a result of this historical quest for pacification. Because the concerns and the bargaining strengths of rival traditions strongly diverged between political communities — and also because there is no such thing as "the" rational solution to bargaining problems<sup>10</sup> —, it is only to be expected that the specification of this conception will be highly particular to each community, as indeed it is. The recent turmoil in Bavaria about the presence of crucifixes in school rooms is a reminder of this. The separation of church and school required the option for parents to choose a form of education for their children free from church control, but this requirement can be implemented in very different ways (a state

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<sup>10</sup> Govert den Hartogh, *Wederkerige Verwachtingen: Konventie, Norm, Verplichting*, Amsterdam 1985, ch. 14; Robert Sugden, "Rational Bargaining", in: Michael Bacharach & Susan Hurley, eds., *Foundations of Decision Theory*, Blackwell 1991, ch. 10.

school which educates its pupils in "christian and humanist values", a state school with separated religious education for each confessional group, or state and confessional schools financed on a foot of equality by the state). It can be shown that the option preferred by the dominant confessional group or groups, and hence the outcome of conflict about the relation between school and religion which a century ago dominated the political agenda in many European countries for decades, primarily depended on the bargaining strength of this group or groups.<sup>11</sup> The specification of the compromise cannot be determined by philosophical theory in an a priori fashion; it can only be the result of an actual historical process of negotiation (and learning).

Recent liberal theory doesn't deny the historical importance of the quest for pacification, but it generally joins MacIntyre in denying its moral relevance. The argument for liberal society as a *modus vivendi* between competing traditions is usually depreciated as nothing but a prudential one.<sup>12</sup> Even as such, it is supposed to have an inherent weakness: the stability of the solution to the bargaining problem to a large extent depends on the existing balance of power. As soon as the balance changes, the party growing in strength will be tempted to reopen negotiations, and to risk the escalation of conflict in order to improve its position.

I believe this representation of compromise to be one-sided. Peace is a worthy moral aim as well. In bargaining situations there can be moral as well as prudential reasons to accept a compromise and to adhere to it. Suppose that the parties, not only, as prudence dictates, are ready to take the personal costs of warfare into account, but are committed to maintaining peace in some stronger sense: they have a conciliatory disposition. It is clear that if you are prepared to compromise, and don't always press for further advantage, you will conclude more treaties than your more

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<sup>11</sup> Abraham de Swaan, *In care of the State, Health care, education and welfare in Europe and the USA in the Modern Era*, Polity Press 1988, ch. 3, § 4.

<sup>12</sup> Rawls throughout PL; Habermas; Charles E. Larmore, *Patterns of Moral Complexity*, Cambridge U.P. 1987, ch. 4. Brian Barry, *Theories of Justice*, Univ. of California P., Berkeley 1989, even criticizes Rawls for not totally excluding the concept of mutual advantage from his account of the moral point of view. (That would make the idea of "political morality" a contradiction in terms, concerning as it does ways of dealing with constellations of power.)

martial neighbours, even if on the whole you get less favourable terms in the treaties you conclude. But we cannot tell beforehand which disposition will be more advantageous to have in the long run: it will depend on the dispositions of the people you meet. Therefore you cannot predict whether a peaceful disposition will be rewarding; the moral reasons for conciliatory behaviour cannot be reduced to the prudential ones. But if this disposition, or the disposition to honour one's commitments, is widespread, it certainly will enhance the stability of the solution.

I take it to be facts about human nature:

-first, that human beings are capable of developing a sense of justice — a preference for giving each his due — as a secondary motive, but  
 -secondly, that they are only sensitive to its appeal when certain minimum conditions of reciprocity are respected. As Rawls says: 'to each according to his threat advantage is not a conception of justice'.<sup>13</sup> If you are prepared to use threats in order to get the other party to accept your demands, you deprive yourself from the option to appeal to her sense of justice.

These facts, if true, provide a footing for a theory of justice: it should answer the question under which conditions a legitimate appeal to the sense of justice can be made. A possible form this inquiry may take is that of a hypothetical contract theory, asking which range of solutions would be generally acceptable to rational agents, motivated by a sense of justice, and knowing each other to be so motivated. The theory will not determine a unique point within the range, but it will do two things. In the first place it will determine the range, establishing — to speak the language of bargaining theory — the *status quo point* (or State of Nature): the position each party should be prepared to guarantee the other parties before being allowed at the bargaining table. Part of this 'minimum content of the contract' can be specified in a quite general way (Hume, Hart) because it is a necessary part of the 'cooperation surplus' of accepting the compromise. What everyone necessarily gains by continuing civil war by other means, is a guarantee of certain fundamental 'noninjuries': for instance the non-exercisable rights to life and bodily integrity. Another part of this minimum content, however, may critically

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<sup>13</sup> John Rawls, *A Theory of Justice*, Oxford U.P. 1971, 134.

depend on the assumption of the fact of pluralism.<sup>14</sup> This may be true of the exercisable rights of freedom of religion, of speech etc., which delineate the individual's "private domain" and characterize liberal political morality.

Consider for instance the question of religion again. Every person wants to be free to hold his own religious (or a-religious) views, to confess to them in public, to perform the appropriate individual and communal forms of worship, and to conform to the demands of his religion in his life. Many persons also want the community as a whole to conform to the demands of their religion. Some even would prefer to have their views imposed on others. We may however assume that everybody would rather sacrifice the uniformity of practice and belief than his own freedom. It is futile to ask the others to accept the dominance of your particular views. It could be proposed that everybody rather accept a procedure of identification of the dominant view. But that would imply to risk your own freedom for the chance of ideal uniformity. Perhaps *you* would be prepared to take the risk because you believe it to be highly probable that the outcome of the procedure would be agreeable to you. But then again you cannot really expect the others to accept the proposal. So the only compromise acceptable to everyone who is prepared to accept any compromise at all, will be to accord freedom of religious belief and practice to all, forbidding the use of coercive means of conversion, and requiring strict neutrality of all government agencies. Religion should paradigmatically belong to the private domain.

In the second place, once certain forms of the use of power are excluded, theory may also aspire to identify a generally acceptable *arbitration procedure* for identifying determinate outcomes. The conventional form of arbitration arrived at by the learning processes of Western liberal society is democracy, and there may be an argument of the "hypothetical contract" type for its prominence. No single arbitrator is identified, but a single decision procedure is. Everybody has the right to play a role in the procedure, primarily because this reduces the probability that the outcomes of the procedure will always be to the advantage of the same people, but also in order to satisfy the reciprocity requirements

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<sup>14</sup> Cf. the way G.M. van Asperen, "Praktische Filosofie en/of Toegepaste Ethiek", in: *Het bedachte leven*, Boom, Amsterdam 1993, distinguishes between two sense of the concept of a "morality in the narrow sense".

needed to secure to the procedure its appeal to everyone's sense of justice. You should respect the decision, because you took a part in reaching it. (In as far as this argument has any force, it can never be more than an additional one. It presupposes that you have a moral reason to respect the outcome of a fair arbitration procedure, and only partially specifies what it means for the procedure to be fair.) These are the arguments for the particular exercisable rights of political participation.

So the quest for pacification takes two general forms. It will secure a domain of free execution of personal life plans, secure against state interference; and it will identify an arbitration procedure for the solution of remaining conflicts. The procedure itself cannot be a reflection of a particular set of ideals of the good life. Does the argument for accepting the procedure exclude its outcome in particular cases to do so? It does not. Suppose that for some reason or other two parties, which are the only competing ones within a particular community, have decided upon a rule of strict neutrality. Then it may be the case that they by allowing the state to adopt two perfectionist policies at the same time both improve their position, for in both cases the adoption of the policy may be far more important for one of the parties than its non-adoption for the other. (Think of the freedom of holding a religious procession. In the Netherlands this used to be forbidden in areas with a Protestant majority, and to be allowed in areas with a Catholic one.) A combination of perfectionist policies may be Pareto-superior to a rigidly neutral one.

It is a mistake to think that in order to arrive at a morally acceptable agreement we should, to begin with, all forget about everything we do not agree about.<sup>15</sup> Propositions of peace cannot be found independently of the 'war aims' of the parties to the conflict. What we need is a peace conference of parties who are prepared, not to forget about their aims, but to make concessions.

Suppose all the actual persons who are to be the citizens of the same political community to come together in order to agree on a new charter of fundamental rights and decision procedures for their community. Suppose that each of them is prepared to abandon all considerations, the recognition of which would necessarily lessen the appeal of the agreed

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<sup>15</sup> Govert den Hartogh, 'Rationality in conversation and neutrality in politics' *Analysis*, 30 (1990), 202-205 (criticizing Larmore, o.c.), and 'The Ideal behind the Exclusion of Ideals', *Rechtsfilosofie en Rechtstheorie* 18 (1989), 217-236 (criticizing Rawls).

arrangements to everybody's (or even somebody's) sense of justice. What I object against is the attempt to enforce this abandonment by the introduction of a veil of ignorance. For it will not be possible to withdraw all irrelevant and to allow all relevant information at the same time. If people are not permitted to know their bargaining advantages, it is hard to see how they could be permitted to know their conceptions of the good life. But it is necessary that they know these, for their problem is: how to live together in peace without requiring anyone to sacrifice altogether the pursuit of her ideals. If you are to agree to a compromise, you should insist on retaining a clear view of the gains and losses involved. Compromise is a matter of give and take; but if you forget about the stakes you will no longer be able either to 'give' or to 'take'.

There is indeed something resembling consensus among social democrats, christian democrats, conservatives etc., on the desirability of the private domain, and on its minimum range as identified by a list of 'human rights'. This consensus can be called a 'liberal' one in the wide sense common in political philosophy, and used in this paper. But the extent of the private domain beyond the minimum is a matter of political dispute between these groups, to be solved piecemeal by arbitration. In this dispute each of the disputants will appeal to his own values and priorities. (Is it allowed to help another to commit suicide on his earnest request? Is it permitted to sell pornography? Should individuals be taxed or households?) Conservative politicians are often accused, in this kind of dispute, of 'trying to impose their values on others'. But this is to suppose that the delimitation of the private domain is a kind of 'natural' datum, and that the mistake of the conservative is not to recognize the fact. However, everything people think or do regularly has a social dimension: it makes them enter into public life as different people. It is a matter of convention or of social decision to consider some matters to be private, although they also have a clear public aspect. Even if, as I have argued, the decision can, at least sometimes, be made in a principled way — there is an obvious difference between treating the consumption and the display of pornography as a private matter —, there are always public and private aspects to begin with, which have then to be weighed against each other. Therefore the accusation of 'imposing values' only makes sense, if it is backed up by a consensus concerning the extent of the private domain, or by a principle underlying this consensus. It cannot be used as an independent argument to advocate an exten-

sion of the domain. Politicians who want to give the greatest priority to the autonomy of the individual — they can be called ‘liberals’ in a more narrow sense of the word (which may be specific to Europe) — are taking a perfectionist stance, no less than the conservatives.

So far as the pacification argument goes, I conclude, any compromise deserving to be called a liberal one, will consist in two parts: a list of fundamental rights protecting an area of neutrality against perfectionist policies; and a democratic decision procedure which in particular cases, within the limits drawn by the basic rights, may identify a particular perfectionist policy as binding on every citizen.

#### 4. *Fallibility and endorsement: other arguments for toleration*

The pacification argument for religious freedom goes back to the seventeenth century at least; we find it very clearly expressed in Locke’s *Epistola de Tolerantia* (1689).<sup>16</sup> But Locke is mainly relying on other arguments which haven’t lost their actual relevance either.

‘The commonwealth’, Locke writes, ‘seems to me to be a society of men constituted only for preserving and advancing their civil goods. What I call civil goods are life, liberty, bodily health and freedom from pain, and the possession of outward things, such as lands, money, furniture, and the like.’ It is the duty of the civil magistrate to secure for everyone the just possession of these goods, by impartially enacting equal laws and by punishing the violation of these laws. But the salvation of souls cannot belong to his jurisdiction.

*Primo*, because no man can abandon the care of his own eternal salvation. Whatever profession you make, to whatever outward worship you conform, if you are not fully persuaded in your own mind that it is both true and well pleasing to God, it is an obstacle to salvation. ‘Whatever in religion may be called in question, this at least is certain, that no religion which I do not believe to be true can be either true or profitable to me.’ But no man, even if he would, can believe at another’s dictation. The power of the magistrate consists in compulsion; but penalties are in no way capable of producing belief. And therefore ‘a man cannot be

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<sup>16</sup> Ed. R. Klibansky, Oxford U.P. 1968.

forced to be saved. In the end he must be left to himself and his own conscience.'

*Secundo*, even if the authority of laws and the force of penalties were capable of converting men's minds, this would not help at all in the salvation of their souls. Which church should have the right to deprive the members of all other churches of their liberty or property? No doubt it will be answered that it is the orthodox church which has this power over the erroneous or heretical. But every church is orthodox to itself, for whatever it believes it believes to be true. Nor is there any judge on earth by whose sentence the matter can be decided. Least of all the civil magistrate, 'either at Constantinople or elsewhere'. Amid all the variety of opinions that different princes hold about religion, the narrow way and the strait gate that leads to heaven would inevitably be open to very few, and they in one country only; and men would owe their eternal happiness or misery simply to the accident of their birth. There being but one true religion, one way to heaven, what hope is there for a man to reach it if he does not follow his own reason and conscience but the direction of his prince? 'Suppose I trail a feeble body and am stricken by a grave disease, for which there is only one cure, and that unknown. Does it therefore belong to the magistrate to prescribe a remedy, because there is only one, and that, among so many different remedies, unknown? Because there is only one way for me to escape death, will it therefore be safe for me to do what the magistrate ordains? The things that every man ought sincerely to inquire into for himself, by reflection, study, judgement, and meditation, cannot be looked upon as if they were the peculiar possession of any sort of men. Princes are born superior in power, but in nature equal to other mortals. Neither the right nor the art of ruling carries with it the certain knowledge of other things, and least of all of true religion. For if it were so, how does it come about that the lords of the earth differ so vastly in religious matters?'

Both arguments, taken on their own, are not really very impressive. As for the argument from fallibility, how does it establish that everyone should follow his own reason and nobody that of his prince? For the argument seems to suggest that you have as little chance of finding the way to heaven in the one case as in the other. It is true that the magistrate cannot give any 'security' for the kingdom of heaven, but no private individual can, it seems, be more certain of the quality of his own investment. If our judgments are *very* unreliable, why is it that we do better

by making up our own mind on the merits of the case than by following the guidance of arbitrarily any other person?

The same point applies to views concerning the value of particular forms of life. Human beings, being bound by the horizon of their own experience, and reluctant to disown their own past choices, are very prone to make mistakes on the matter.<sup>17</sup> Should we hesitate to press our fallible views on others?<sup>18</sup> Only if these others were in a better position to make these judgments with respect to their own life. It is, indeed, often claimed — it seems even to be a truism of bioethics — that no person can ever be a better judge of the quality of another person's life than the person himself. But I suggest such statements are best interpreted as expressions of a strong commitment to a principle of respecting autonomous choice. As statements of fact they aren't very plausible.<sup>19</sup> It is true that by coming to share a person's experience we may discover aspects of value which can't be perceived from a greater distance — and we can never share another's experience to the extent *she* does. But it is equally true that there is no greater source of bias than the fact that a person has only his own experience to go by. It may be a true judgment that it is better to be Socrates unsatisfied than a pig satisfied, but we can hardly expect the pig to concur.

The first argument seems not a particularly strong one either. It makes one point which I shall accept, and which can be generalized from religious belief to beliefs concerning the good life: no person can be said

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<sup>17</sup> Cf. Rawls PL, 54-58 (on "the burdens of judgment").

<sup>18</sup> Joel Feinberg, *Harmless Wrongdoing*, Oxford U.P. 1988, xx, 286, 310-1; Bruce A. Ackerman, *Social Justice and the Liberal State*, Yale U.P. New Haven 1980, 12, 362-9, Peter Jones, 'Liberalism, Belief and Doubt', in: Richard Bellamy ed., *Liberalism and Recent Legal and Social Philosophy*, Steiner Verlag 1989. Arguments of the same type: (a) governments cannot be trusted not to abuse their power; (b) even acceptable perfectionist intentions cannot be trusted to be executed by the general failures of bureaucratic efficiency.

<sup>19</sup> What is needed is a comparative judgment on the abilities of individuals and state officials, Simon Caney, 'Consequentialist Defences of Liberal Neutrality', *Philosophical Quarterly*, 41 (1991), 463-465. Carey's assessment seems to me a little biased as well: the good life may be different for different people, and the state may lack the relevant information about their capacities and personal history to decide on this. And the value of innovations in life-style is usually under-rated by majorities and/or established elites.

to flourish who follows the path to heaven (or to paradise) without his own consent. Suppose I see you living an ascetic life of long and hard labour and hardly any pleasure. I diagnose you to be the victim of a fundamentalist education which has left you the burden of an omnipotent superego. But it will be of no help to you if I make you loose your job and condemn you to daily visits of theatres and restaurants. For even if this really is the good life for you, it will have no value at all as long as you do not *endorse* it as such.<sup>20</sup>

But it doesn't follow that only a policy of toleration — let alone of neutrality — is acceptable. If life has no value if it isn't valued "from the inside", as Dworkin would say, it doesn't follow that it *has* value if it *is*. Perhaps there are two ways of living worthless lives: by following a right course but not endorsing it, or by following a wrong course with enthusiasm. (As there are two ways of moral failure: by doing the right thing against your conscience, or by doing the wrong thing in accordance with it.) The argument gives us no reason to prefer the second alternative.<sup>21</sup> And therefore this balance can be tipped by other considerations.

The endorsement argument succeeds in showing that by compelling people to live a life deemed valuable by others we don't act in *their* interest. But people may want to coerce their erring neighbours to at least the outward forms of living the good life, not so much because they think that is good *for them*, but because they don't themselves want to live in a public environment confronting them with error and heresy, or because they expect the next generation to become really sincere believers in the Truth.

This brings me to another weakness of the endorsement argument. Even if I can't cause you to live a valuable life by compelling you to do so, I may have more efficient means at my disposal. Perhaps, by creating

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<sup>20</sup> Ronald Dworkin, "Liberal Community" *California Law Review* 77 (1989), 486; "Foundations of Liberal Equality" *The Tanner Lectures on Human Values*, Vol. XI, University of Utah, Salt Lake City 1990, 50; *Life's Dominion*, Harper Collins, London 1993, 206.

<sup>21</sup> This refutation of the endorsement argument is reinforced by a commitment to pluralism. If people have the opportunity to choose from many incompatible and competing worthwhile alternatives, and nevertheless insist on being allowed to waste their lives by e.g. developing a taste for necrophilia, how is their life improved by granting them their wish?

the right environment, by eliminating bad influences, or even by forced re-education, I can bring it about that you really *endorse* the proper way of life. It simply isn't true that 'light is needed to change men's opinions'. The exercise of power can result in belief, and in true belief as well.

Dworkin objects that if the mechanism of change lessens your ability to consider the merits of the change in a reflective way, your life is not really improved. (Apparently it isn't even improved if you endorse that kind of life!) We may concede that a restricted moral imagination counts on the debit-side of life's account, but is it true that this is a cost which can never be compensated by any benefits? Suppose one person accidentally happens to lead a fulfilling life, realizing his human and personal potential to the maximum, but so to speak accidentally, having formed his values by a suspect mechanism. And suppose another person in full awareness of the options decides on a risky "experiment in living", which, as he was fully aware it could, leads to disaster. Do we really want to say that the latter had the better life after all?

### 5. *Strengthening the arguments*

Both arguments can be strengthened considerably by combining them. If people are left to their own devices, they can only fail on account of their fallibility, but if the state undertakes to plan their lives, they can fail on account of the fallibility of the state's agents<sup>22</sup> — which, as Locke suggests, we have no reason to believe to be substantially lesser than our own — *and* for the lack of endorsement. Hence even from a perfectionist view the first policy is to be preferred. Its advantage could only be taken away by a full-proof method of manipulating people into the inner acceptance of their planned lives, but clearly such a method doesn't exist.

The arguments can be strengthened as well by another consideration which I think Locke himself implicitly relies upon. I objected to Locke's argument that the exercise of power cannot result in true belief. But can it result in justified belief? Everyone who holds a belief, must also be-

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<sup>22</sup> One of the "regrettable sources of political freedom", as Raz, o.c., 429, calls them.

lieve that he holds it on adequate, and therefore also on relevant grounds.<sup>23</sup> Therefore he must be prepared to revise his belief as soon as he is persuaded of its incorrectness. But that the adherents of a certain religious belief happen to exercise the civil power in the territory you inhabit, is certainly an irrelevant ground for you to embrace that belief. *Cuius regio eius religio* is a cynicism. (For the same reason, as Locke says explicitly, a church can only be a voluntary society: nothing more absurd can be imagined than owing your faith to your parentage.) By following your own reason and conscience perhaps you do not enlarge your *chance* of finding the right faith than by following 'the accident of your birth'. But if that was the way you arrived at your belief, it is only by self-deception that you can believe to believe it at all. Believing something is not compatible with knowing that the acquisition of the belief was not subjected to the operation of criteria of true belief, was not sensitive to relevant arguments, evidence etc. (This is the reason why religion is one of the 'things that every man ought sincerely to inquire into for himself, by reflection, study, judgement, and meditation.' And why the church can have 'no sanctions but exhortation, admonition and advice'.) Finding the truth requires a 'machtsfreier Dialog', with yourself or with others. (Which does not imply that truth can be defined as the outcome of such a dialogue.)

So we can strengthen Locke's argument in the following way. Suppose that following the instructions of your prince you arrive at the truth. You will not then have arrived at it *in the right way*. And then your belief will have no value whatsoever: it cannot be the faith that saves your soul.

This type of argument, again expanded from the sphere of religious to that of scientific and moral beliefs, justifies the endowment of individuals with exercisable rights. (The rights of political participation are thereby justified only indirectly. Not only negative rights are justified, but some positive ones as well, at least as guarantees for the possibility of intelligent examination of ideals: a right to education for instance.) The

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<sup>23</sup> 'Nun kann man sich unmöglich eine Vernunft denken, die mit ihrem eigenen Bewusstsein in Ansehung ihrer Urtheile anderwärts her eine Lenkung empfinde, denn alsdenn würde das Subjekt nicht seiner Vernunft, sondern einem Antriebe, die Bestimmung der Urteilskraft zuschreiben.' Kant, *Grundlegung zur Metaphysik der Sitten*, III, section 4, BA 101.

reasoning is fundamental to Mill's *On Liberty*, and to Rawls' arguments for the priority of liberty.<sup>24</sup> Even Mill most of the time suggests that the free competition of life-styles will guarantee, or at least promote, their correct evaluation.<sup>25</sup> This survival of-the-fittest doctrine seems to me hardly warranted by experience.<sup>26</sup> Toleration is not a sufficient condition for the truth to triumph, it is only a necessary condition for it to do so *recognizably*. However true your opinion may be, 'if it is not fully, frequently, and fearlessly discussed, it will be held as a dead dogma, not a living truth.' (Mill, *On Liberty*.)

The argument answers the objection that, if there is a determinate and discoverable good, it cannot be to a person's fundamental interest to be free to disregard it. The answer is that the good is only discoverable in the right way if people are generally free to disregard it.<sup>27</sup> The point is not, as Dworkin suggested, that a person stumbling over the truth is necessarily worse off. Rather no rational animal can accept that this is what, at best, will happen to him: to arrive at the truth without being in a position to know it.

We have found two additional arguments for toleration, besides the pacification argument. They support the conclusion that the state should permit people to choose their own way of life, not restricting this permis-

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<sup>24</sup> Rawls, PL, 311-315; 'The Basic Liberties and their Priority', in: S.M. McMurrin ed., *The Tanner Lectures on Human Values*, Vol. 3, Cambridge U.P. 1982, 25-26; Ackerman, o.c., 11, 365-7; 'What is neutral about neutrality?', *Ethics* 93 (1983), 387; David Lloyd Thomas, *In Defense of Liberalism*, Blackwell, Oxford 1988, 1-2.

<sup>25</sup> Cf. also F.A. Hayek, *The Constitution of Liberty*, Routledge and Kegan Paul London 1960, 36; Wil Kymlicka, *Contemporary Political Philosophy: an Introduction*, Oxford U.P. 1990, 219.

<sup>26</sup> Caney o.c., 460.

<sup>27</sup> Caney, o.c., 468, makes an interesting comparison with a classical theodicy argument: if people were not free to choose for evil, they could not really be good. Caney goes on to argue (following Joseph Raz) that it is enough to have a plurality of valuable, but incompatible and competing ideals on offer, it is not necessary that the supply of options contains worthless ones. Would this move refute the analogous theodicy argument? As Mill said, we can often only assess the value of a form of life, if it has been tried out. It is relevant here that the fallibility of the state tends to take the form of a bias against innovation. We have to allow *tares among the weeds* because we can only claim to be able to identify them as such when they have grown up.

sion to the range of ways of life it deems to be decent. The boundaries of acceptable pursuits should not be coextensive with present perceptions of the truth. For these perceptions are fallible. A policy of imposing the truth doesn't improve the chances of arriving at it, while at the same time it risks forcing people to lead lives with which they can't identify. Even more basically, it tends to destroy the conditions for recognizing the truth when you meet it.

Obviously these arguments do not require the range of ways of life people can choose to be unrestricted. If any neutral principles of restriction can be formulated — the harm principle being the principal candidate<sup>28</sup> — they will bypass the objections anyway. However, the arguments do not even establish that only neutral principles of restriction are acceptable. What they actually rule out of court is only a particular *reason* for restriction: paternalism.<sup>29</sup> If a particular way of life is thought to have no net value, it isn't a sufficient reason to forbid that way of life, that this is in the interests of the people who would otherwise be tempted to choose it. For the sum of such prohibitions has negative effects of its own, on the possibility of identification and of the search for truth.

So we have to ask whether other appeals to perfectionist considerations are possible besides the paternalistic one. What this inquiry starts from may be a general *presumption* of neutrality, but we shouldn't exclude the possibility that the presumption may not sometimes be overridden. We cannot allow all appeals to good-life considerations indiscriminately, but perhaps we can allow particular types of such considerations with special credentials.

## 6. *Specifying and weighing "neutral" goods*

Let me return to an observation I made already: daily politics is always

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<sup>28</sup> Feinberg, *Harm to Others*, Oxford U.P. 1984. I am sceptical about the claim.

<sup>29</sup> If a perfectionist argument which does not refer to the interests of living beings is logically possible ("perhaps nobody is harmed if you adopt that way of living, but the world will be an objectively better place if you don't"), such arguments are ruled out as well.

perfectionist politics, in liberal societies no less than elsewhere. One reason is that neutrality isn't really feasible.

According to the neutrality doctrine states exist to provide their citizens (and perhaps other people and other living beings to some extent as well) with *polyvalent instrumental goods*.<sup>30</sup> Such goods are useful to people whatever conception of the good life they subscribe to, because they provide or protect essential means or conditions for the pursuit of (almost) any conception whatsoever. A sea-wall, to take an obvious example (to a Dutchman at least), is a polyvalent instrumental good for the people living in the area it protects, for there is no calling which can't be better exercised with dry feet. To this class of things you have reason to want, whatever else you want, we may want to reckon education, health care, and the prevention of poverty, the protection of the environment, the prevention of force and fraud, the provision of punishment, the construction of roads and the upkeep of the infrastructure generally, national defense and the preservation of the cultural heritage. All these are neutral goods, not tied to any specific "comprehensive" conception of the good life.

But this can only seem true on a very superficial view, by giving these goods a specification in the most vague and general terms. An environmental policy which only attempts to minimize risks and hindrances for human beings (as 'primary evils') will be different from a policy which recognizes the intrinsic value of nature. Is punishment meant to have a retributive quality or a preventive function only? Which aesthetic principles should be used in the shaping and designing of the public space (including infrastructural works and the surrounding land-or townscapes)? What exactly does belong to the cultural heritage: mines? newspapers? What subjects are to figure in the curriculum of public education: history? ancient history? national history? Which health care provisions should be included within the minimum package of the obligatory health insurance scheme: In Vitro Fertilisation, circumcision, artificial hearts, homeopathic medicine, physiotherapeutic treatment of sporting injuries, preventive screening programs for various forms of cancer, home help, breast-cor-

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<sup>30</sup> "Primary goods" as Rawls calls them. Note that states cannot be neutral concerning the question which beings are to awarded moral standing. An appeal to the principle of neutrality for deciding the abortion controversy as Dworkin offers in *Life's Dominion*, therefore fails.

rections for psychological reasons, breast-corrections because of back-problems, birth-control, abortion, special homes for the elderly, adaptations of homes for handicapped people, preventive dental care, appendectomy, hip-replacements for elderly people, lung-transplants? Etc.

And even if it would be possible to find a way of providing these goods which would leave them their 'neutral' status, this would not open any real perspective for a neutral way of policy-making. For there would be a plurality of such 'neutral' goods, competing for scarce means of production. These would therefore have to be compared and weighed against each other. And it would be impossible to find a neutral (e.g. monetary) index of their value.<sup>31</sup> Even if they are all valuable to all persons over an equal range of provision, they are not equally valuable to all for every amount. Political society has to start an arbitration process to decide on the investment it will make in each of them. But in order to determine the optimal mix of investment levels, every participant in the decision procedure has to consult his own conception of the good life. Provided everyone is free to form and to express his opinion on these matters, and to use his rights of political participation in trying to bring society to take his side, if we accept public production at all, we have to accept perfectionist grounds for production decisions.

The strong-minded neutralist will reply that, if specifications and distributions cannot be made in any other neutral way, they can at least be made at random. But my point is that actually no-one, whatever his political affiliation, would really dream of deciding those matters by throwing a dice.

Why not? Two answers can be given to this question. I will deal with them in the next two sections.

### *7. Intrinsic goods with a public dimension*

It is generally agreed that it is one proper task of government to provide

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<sup>31</sup> This is a well-known problem with the list of primary goods as provided by Rawls, first signalized by Kenneth J. Arrow, 'Some Ordinalist-Utilitarian Notes on Rawls' Theory of Justice', *Journal of Philosophy* 70 (1973), 245-263.

for goods with a public dimension.<sup>32</sup> I do not mean goods with a social dimension, for many of those can be produced by individuals on a voluntary basis, i.e. within groups characterized by an exit-option for all participants. (I do not mean to suggest that all *entry* into these 'voluntary' associations usually is a matter of free and informed choice.) A good is a public one if it is not feasible to exclude from its 'consumption' those prepared to exercise their exit-option. This means, in the usual analysis, that people will be insufficiently motivated to take their fair share of the costs of the production of those goods. Another problem however is that, even if all those who value the good take their fair share, and even more, the actions and omissions of the others may frustrate their endeavours.

In this sense the religious and moral beliefs entertained within a community have, as we saw, necessarily a public dimension: being a catholic in an atheist, or a puritan in a libertine, society is a different thing from being a catholic in a catholic, or a puritan in a puritan society. But, as we also saw, there are several reasons for individuals to rate the private (including voluntary-social) dimension of a religious or moral belief higher than its public one. Therefore the liberal compromise acquiesces in the 'external effects' of the exercise of liberty-rights.

But the argument cannot be generalized to cover every good with a public dimension. If people are free to determine their own relation to nature, and to act in this matter on their own beliefs and values, the negative external effects may be catastrophic. There is no more reason to leave such decisions to the private domain than there is to leave the decisions to use violence and fraud in the pursuit of one's aims. It is therefore legitimate for the political process to impose on individuals and corporations duties concerning the impact of their actions on the environment.

In accordance with the neutrality-thesis the collective provision of public goods should be restricted to polyvalent instrumental ones. However some intrinsic goods have a public dimension as well, at least when they are properly specified. Then the usual reasons apply for bringing government in to provide for its production. These reasons may be overriden by others, as it is in the case of the public good of the mental and

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<sup>32</sup> Recent studies of the public good argument include Anthony de Jasay, *Social Contract, Free Ride*, Oxford U.P. 1989; and David Schmidtz, *The Limits of Government*, Westview Press, Boulder/Oxford 1991.

moral climate of a society. But it is not a paternalistic reason, and therefore it is not ruled out of court to begin with by the arguments for toleration I considered. The principal reason is that people cannot always secure their values by their own efforts, independently of the actions of others who either don't share their values, or don't participate in the effort necessary to realize them. (One problem of public goods is that it is very difficult to distinguish between those groups: lazy people have a reason to masquerade as disbelievers.). So it may be justified to protect the basic interest of people in having a good life against the external effects of the actions and omissions of third parties.

Let me consider an example. High culture is a public good to a certain extent, if only because of the dissemination of its inventions throughout the culture as a whole (Beethoven in beer advertising). Can we therefore apply the usual arguments for state provision? Not unreservedly. For the production of art, science and philosophy seems only partially to be regulated by market forces. Being an artist, a historian or a philosopher is, to a certain extent a calling: something people choose to do for its inherent, not its monetary rewards. It is "free labour" in the sense of Marx (and the prototype he actually had in mind). It follows that investing time and energy in its production is not a "cost" in the usual economic sense. Something similar can even be said about the preservation of "monuments" of art and science: some people love restoring a historic house. Furthermore, one of the possible expressions of a sense of community is to contribute to local historical societies, to associations of "friends" of a castle, a museum, a steam drain-mill etc. The public good argument assumes that goods can be provided in two ways only: by relying on the forces of supply and demand, or by the state. But the production of goods on the basis of voluntary cooperation may derive its charm from the very fact that it is left alone by the market and the state.

On the other hand, it isn't necessarily true that any time we value some state of affairs, we also sufficiently value the effort needed to bring it about.<sup>33</sup> Hence it may well be a proper task of the state to *support* private and cooperative activities in this area. Secondly, and principally,

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<sup>33</sup> When Gerald Postema, 'Collective Evils, Harms, and the Law', *Ethics* 97 (1987), 414-440 states that the temptation to free-riding is conceptually dependent upon viewing the common good as a private instead of a collective good, he is in danger of undermining his important insight that "collective goods" are a proper area of political concern.

the products of these activities should be protected against the possible destructive activities of third parties, including their nominal owners, who are not sufficiently interested themselves. This consideration is reinforced if we take the interests of future generations into account. We are justified to blame our XIX-century ancestors for destroying most of our historic monuments, even if not to the extent we blame the people responsible for the wanton destruction of the cathedral of Sibenik and the mosques of Mostar.

Once it is accepted that people by participating in the political process may strive to realize ideals of the good life with a public dimension — perhaps including the preservation of a national or cultural identity — and not only the fair distribution of polyvalent instrumental goods, there is no reason to exclude the ideal of participation in the political process itself. There is no general liberal objection to be made against a state trying to educate the inhabitants of its territory into active and responsible citizens, or against political parties trying to get the state to accept this policy. (Objections can only be liberal in the narrow, perfectionist sense.) Again, this is not a form of paternalism (as Dworkin would have it): one is not necessarily trying to impose one's own view of the good individual life on others. For, again, it is a different thing to be a civic humanist in a private society than in a *res publica*. If liberalism can incorporate a measure of perfectionism, there is no reason why it should be incompatible with a modicum of republicanism either.<sup>34</sup>

### 8. *The perfectionist nature of positive obligations*

The humdrum perfectionism of daily politics I described in section 6 does not only apply to non-excludable goods. I will set aside the question whether the package of basic non-injuries and exercisable rights which are to be constitutionally guaranteed, i.e. irrespective of the balance of power within the decision-making process can be specified — in par-

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<sup>34</sup> As a matter of historical fact, the two have certainly often been associated with each other. Cf. J.F. Isaac, 'Republicanism vs Liberalism? A Reconsideration.' *History of Political Thought*, 1988, 349-377.

ticular at the points at which these rights and non-injuries conflict<sup>35</sup> — in a neutral way. I will even grant that providing people with a guaranteed minimum income is a neutral policy, because money is the polyvalent instrumental good *par excellence*.<sup>36</sup> However, at the moment that we decide to provide from collective funds some additional goods in kind, e.g. education, health care insurance, housing, or methadon, our problems of specification and weighing return.<sup>37</sup>

Of course they do. For why should we take these goods from the exchange circuit to begin with? The argument that they are necessary conditions for the exercise of one's autonomy is not compelling, at least if we are discussing people who have the capacity of this exercise to begin with. For these people could take care for the maintenance of these conditions from their guaranteed income, if they wished. That is why this income is guaranteed to them. So it seems that we are not only interested in providing people with the conditions of autonomy; we also want them to be minimally educated, healthy, free from pain, etc., because these things themselves belong to the good life, on an equal footing with autonomy.<sup>38</sup>

It would be a mistake to consider this a form of paternalism. It is true that we feel ourselves obligated to guarantee each other some basic goods, not as conditions of the exercise of free choice, but as essential components of the good life.<sup>39</sup> But we don't thrust these goods upon them against their will, they can always refuse our offer. We, on the other hand, even if so asked, refuse to give them the monetary equivalent of our offer, because we don't want our money to be wasted. We are

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<sup>35</sup> E.g. the conflict between the right of homosexuals not to be discriminated against on the job market and the right of fundamentalist schools only to appoint personnel sharing their values.

<sup>36</sup> If monetary redistribution is used to compensate for special handicaps, perfectionist reasoning may be needed to determine the rates.

<sup>37</sup> See note 31.

<sup>38</sup> Cf. the "thick vague theory of the good" defended by Martha Nussbaum, "Human Functioning and Social Justice: In Defence of Aristotelian Essentialism", *Political Theory* 20 (1992), 202-246.

<sup>39</sup> Rawls includes "the social bases of self-respect" among his primary goods; these instrumental goods are certainly not polyvalent.

prepared to pay for our neighbour's health care insurance, but not to give him a lottery ticket of the same value including travelling to Ibiza and a chance of getting a fatal illness uninsured. In this matter we act on our own views of the good life, but what is wrong with that? It is our money. Not in the sense that we are free to spend it as we like. But we can't sincerely consider ourselves to have a duty to spend it, unless we believe we are doing someone some good.<sup>40</sup>

### 9. *Consensual goods*

In a similar spirit it is often said that liberals have no real objection to the common pursuit of *consensual* values; they only object to requiring people to contribute to the production or maintenance of values they don't recognize themselves. Wouter Achterberg for example has argued that the preservation of nature is an intrinsic public good the recognition of which is the object of an "overlapping consensus" between the adherents of all the major world-views (Christian interpretations of the doctrine of the Creation; Humanism) represented in liberal-democratic society.<sup>41</sup>

The notion of a consensual value is a rather tricky one because it refers to an unspecifiable number of non-identifiable individuals. For example, if I claim (rather implausibly) that belonging to the Dutch nation is a consensual value in the Netherlands, I imply that a substantial number of other persons, mainly but not exclusively living on Dutch territory today, consider being Dutch as part of their identity, but how many, how strongly etc., I cannot tell. It seems consensual valuation can co-exist with quite a substantial numbers of outsiders. So if "we" are agreed to maintain a Dutch identity, is this a good reason for the State to require immigrants to learn Dutch, schools to teach Dutch history, and university-teachers to use exclusively the Dutch language?

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<sup>40</sup> This argument presupposes a conception of welfare which isn't (fully) subjectivist, because it assumes that people's preferences, even their basic ones, may be prudentially mistaken. If this is the case, why should others have a duty to assist them to satisfy these preferences?

<sup>41</sup> W. Achterberg, 'Can Liberal Democracy Survive the Environmental Crisis?', in: A. Dobson & P. Lucardie eds., *The Politics of Nature, Explorations in Green Political Theory*, Routledge & Kegan Paul, London 1993, 81-101.

But suppose Achterberg is right: all Dutch citizens on reflection would be prepared to grant that nature has an intrinsic value. This is a very vague and general credo, it requires a lot of specification if we want to translate it into specific policies. And when we start this process of specification, it will immediately appear that this value is interpreted in different ways, and given diverging relative priorities (even if weighed against the instrumental value of a clean "environment"). It is true that we can discuss these matters by appealing to shared principles and intuitions, but this public debate cannot be expected to result in consensus, and we can't wait with developing policies until it does. So political decision-making, even if it tries to implement this "consensual value", will necessarily have to choose between rival interpretations of its precise meaning and relative weight. Public debate about these matters will inevitably have not only a perfectionist, but also a controversial character, and the same is true about the policies eventually adopted.

It follows that even if we may interpret political debate as a discussion about the proper interpretation and specification of a tradition we are consensually committed to, this doesn't turn the political arena into a sphere in which no power reigns but the power of the better argument. It is a mistake to think that bargaining only concerns competing values, it can equally well concern rival interpretations of shared ones. Therefore even if everyone is prepared to contribute to the common good, there is no guarantee that contributions will be forthcoming. And therefore we continue to need political institutions as a peaceful way of arbitration.

In saying this I don't intend by any means to belittle the importance of the appeal to shared understandings. If we are prepared to accept perfectionist policies when they can be justified by the appeal to shared views, our anti-perfectionism obviously is primarily inspired by a pacification motive. And indeed, if we are aiming at peace, it is the obvious move first to consider to what extent our moral views can be made to converge. My point is only, once again, that we then should move on to consider Pareto-superior bargaining results as well. And this even (but not only), when bargaining concerns the implementation of our "shared views".

In the final analysis, my view is not formally different from the latest position taken by Rawls. On the basic or "constitutional" level we have

either neutrality or consensus, we could say<sup>42</sup>; and besides we have a neutral procedure of deciding between the inevitably value-laden specific policies implementing these constitutional values. Citizens are required to accept political choices, not on the force of their substantial merits, but on the force of their shared adherence to the constitutional values, including the value of peaceful arbitration.

The only thing is that I am not all that impressed by the constraining power of these "constitutional values". For when concrete policies are necessarily compromises between competing values, simply listing the values to be compromised tells us almost nothing about the attractiveness of the possible resulting packages. (The art of the politician strongly resembles that of the auctioneer.) Even President Bush and Prime Minister Thatcher in their time posed as environmentalists.

Daily politics is perfectionist politics. If actual political debate had to proceed in neutral terms, it would be impoverished beyond recognition, and the rational formation of public conceptions of the good life, perhaps the formation of conceptions of the good life altogether, would be threatened. The full neutrality thesis contributes to a political culture dominated by 'one-dimensional' economic parameters; and the political culture is one of the main determining factors of social values.

Nevertheless, there is more than a kernel of truth in the neutrality thesis: in the first place liberal society guarantees to each person the conditions of the rational formation and revision of her conception of the good life, including the opportunity to propagate it and to act on it within the confines of her private domain. These liberties are protected against perfectionist politics.

In the second place, even if actual political decisions — including distributive ones — have to be made by reference to an understanding of the goods involved,<sup>43</sup> there is not always a world of meanings that we share which can be used to found a *common* understanding.<sup>44</sup> But this

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<sup>42</sup> Cf. Peter de Marneffe, 'Liberalism, Liberty, and Neutrality', *Philosophy and Public Affairs* \* (1989), 253-274

<sup>43</sup> M. Walzer, *Spheres of Justice*, Robertson, Oxford 1983.

<sup>44</sup> This is a common criticism of Walzer, cf. Ronald Dworkin, *A Matter of Principle*, Oxford University Press 1985, ch. 10; Joshua Cohen, Review of 'Spheres of Justice', *Journal of Philosophy* 83 (1986), 457-468; G. Warnke, *Justice and Interpretation*, Polity

does not mean that we have to find a ‘Herculean’ theory in which these problems of priority can be solved in a principled but neutral way. That is an impossible task. Daily politics is not a matter of applying an all-embracing but neutral ‘theory of justice’ to particular cases. It is an ongoing debate and bargaining-process between adherents of different, though partially overlapping, conceptions of the good life, who are nevertheless pledged to remain within the bounds of a single solution procedure. Only the *design* of the procedure is neutral.

### 10. *Solving the conflict of values*

If the provision of essential public goods is a proper political concern (§ 7), and if our mutual positive obligations concern basic intrinsic goods besides freedom (§ 8), our simultaneous acceptance of at least some of the arguments for toleration (§ 3 & 5), confronts us with the prospect of recurring conflicts of values. Are there any guidelines for resolving these, besides the relegation to proper democratic procedure?

To give an example: public symbols (the flag, the national anthem, the celebration of national holidays, the royal house) serve to express and to renew the consciousness of national identity. They focus attention on common memories. Is it, therefore, a proper task of the state to keep public symbols intact. More specifically, has the state the right to prescribe the respectful treatment of symbols? Some authors<sup>45</sup> argue that, if the preservation and development of the national identity is an essential public good, anything which affects it negatively, should be seen as a form of “public harm”. I agree with Feinberg that it can at most be seen as a form of offense, precisely because the value of symbols is only a symbolic one. I am not thereby denying that the treatment of symbols can have a real causal effect on the actual good they symbolize. But if that it sufficient to speak of “harm”, the whole distinction between harm and offense collapses.

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Press, Cambridge 1992, ch. 2.

<sup>45</sup> Postema o.c., Charles Taylor, Cross-Purposes: ‘The Liberal-Communitarian Debate’, in: Nancy L. Rosenblum ed., *Liberalism and the Modern Life*, Harvard U.P., Cambridge Mass. 1989, 159-182.

There is a reason to be very cautious in allowing even for offences against symbols (as distinct from offences against property). Symbols have a meaning which has to be interpreted; and this interpretation will usually make truth claims. If the symbol is made sacrosanct, this amounts to a certain immunization, or at least privileging of the truth claim, and this is something which a state should be careful to avoid. As we saw, perhaps the strongest argument for toleration is that the difference between truth and falsehood can only be discerned in a tolerant milieu. Attacking the symbol can be one way of forcefully making a certain (political) statement. This should be protected by the right of free speech.

This brings me back to the problem which introduced my discussion. Environmental policies should start from a clear conception of the value of nature. This conception should not, on any anti-perfectionist motivation, be reduced to the impoverished conception of nature as a resource for human productive activity, i.e. as "environment", it should be prepared to consider intrinsic dimensions of the value of nature as well.<sup>46</sup> For the alternative is not to leave these intrinsic goods to be implemented within the "private domains" of volunteers, but to have them destroyed by the external effects of the economic activity of "third parties".

The implementation of perfectionist policies should, as far as possible, but not exclusively, appeal to shared views, as they have emerged from public debate. It should prioritize creating new options to closing old ones, and making dispreferred ways of life more costly to forbidding them entirely. But these rankings don't fully exclude the prohibition of forms of behaviour on controversial perfectionist grounds. It would be rather far-fetched to argue that such prohibitions would leave some people with no prospects at all of forming a life plan with which they can identify.<sup>47</sup>

It doesn't follow, however, that it is also a permissible policy option for governments to try to change people's preferences and views of the good life. It is sometimes argued that the environmental issues are too important to allow much room for scruples about state moralism. But that

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<sup>46</sup> I mean: as a component of the good life of sentient beings!

<sup>47</sup> I make an exception if full implementation of a new policy results in important discontinuities in the lives of people who have lived for a long time under the old dispensation. Transitional policies should provide them with a "soft landing".

argument is completely wrong-headed, as we saw in our discussion of the classical arguments for toleration. That religion paradigmatically belongs to the private domain, isn't because the care of our soul is unimportant. It is precisely because it is of overriding importance that we cannot be prepared to leave it to a majoritarian, or to any other, decision procedure.

The formation of beliefs and of belief-dependent values can only be trusted in a context of maximum freedom. Perfectionist policies should therefore only directly aim at changing ways of acting, not of thinking. It should be made far more costly to drive a private car, or to use consumer products leaving refuse which cannot be recycled. Some such behaviour should perhaps be forbidden completely. But it doesn't belong to the proper task of government to distribute assy-marks on life-styles.

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